

Statement of Richard M. Whitman
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Before the
Committee on Energy and Natural Resources
Hearing on Water Resource Issues in the Klamath Basin
United States Senate
June 20, 2013

Chairman Wyden, Ranking Member Murkowski, and members of the committee, my name is Richard Whitman, and I am the Policy Director for Oregon Governor John Kitzhaber's Natural Resources Office. I am here today to testify on behalf of Governor Kitzhaber, and to convey the urgency of the need for Congressional action to help the interests in the Klamath River Basin resolve the repeated crises brought on by many decades of poor management decisions.

None of the interests before you today, including the states, the federal government and the people of the basin, are blameless for the situation we now face -- competing demands for over-allocated water resources. The question before you today, however, is not how we got to where we are, but how we transform the management of this river basin so that it sustains all facets of our communities, our economy and our environment. If we do not act soon, serious harm is going to occur in many parts of the basin, from the upper basin off-project irrigators represented on this panel, to the lower Klamath wildlife refuges, and downstream to the Tribes and other fishing interests that depend on water to support Coho salmon, Chinook salmon and other fisheries.

There is a way to move this basin away from conflict and crisis to stability. That way is outlined by the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA). The State of Oregon is a signatory to the KBRA and the KHSA, and Governor Kitzhaber reaffirmed his and Oregon's support of those agreements last December in agreeing to extend and amend the KBRA. Oregon stands ready to work with Congress and all basin interests to craft legislation that moves this region away from the cycle of conflict we have seen over the past twelve years.

Oregon's Commitments and Interests

Oregon's support for these agreements is not merely a matter of signing a piece of paper. Oregon ratepayers have already contributed over 50 million dollars to implement the KHSA, through a surcharge on electric rates approved by the Oregon legislature and the Oregon Public Utilities Commission. Oregon also has invested millions of dollars in actions to improve water quality and restore habitat in the upper Klamath River Basin. Additional investments have been made by other governmental and non-governmental actors. Oregon is committed to continued investment in the Klamath basin, as it works with irrigators, the Klamath Tribes, local governments and industry to restore this area to health.

We are already seeing improvements as a result of the KBRA, KHSA and related actions. Water quality is starting to improve in the upper basin. Levels of a key pollutant, phosphorus, are declining as a result of the restoration of marshes and riparian areas. Stream flows are increasing above the lake as well, albeit slowly. Collaborative actions have been undertaken to stabilize the threatened and endangered bull trout and sucker populations in the upper basin, with significant increases in bull

trout numbers in local streams. Future actions contained in the KBRA are expected to move these populations toward recovery.

Oregon's interests come down to assuring that the farming and ranching communities dependent on water resources in the Klamath River Basin are afforded reasonable stability and certainty on which they can base decisions, that the Klamath Tribes have a land base restored to them along with water quality and quantity needed for healthy fisheries, and that downstream fisheries are also healthy. Oregon is still very much a farm state. Agriculture is Oregon's number two industry, and agriculture in Klamath County is an important part of that success. Klamath County is ranked 7th out of 36 counties in Oregon for the value of agricultural production (\$150 million in 2007 and \$284 million in 2011, with half in crops and half in livestock sales). Farming within the Klamath Irrigation Project generates about half of the value of agricultural production in the region, and approximately 13% of the employment is in agriculture and agricultural processing.

Oregon also cares deeply about the success of our Indian Tribes. Governor Kitzhaber signed an executive order to assure that state government works with Oregon Tribes on a government to government basis, and that order was subsequently enacted as legislation by the Oregon Legislature. Oregon has worked closely with the Klamath Tribes to improve water quality above Upper Klamath Lake, and the Oregon Watershed Enhancement Board has recently designated this area for its Strategic Investment Program. Oregon strongly supports the Klamath Tribes efforts to reacquire lands within the former Klamath Indian reservation, as it has supported other tribal efforts to acquire a land base.

Klamath River Basin Water Rights Adjudication

Many members of the committee likely have read or heard that irrigators in the upper Klamath River basin are having their water shut off this year as a result of the severe drought conditions in this part of the state. I want to take this opportunity to describe for you what is going on, and how it relates to our current predicament.

Up until this year, when water was short in the Klamath basin, the burden of that shortage fell largely on two sets of interests - the Klamath Tribes and the Klamath Irrigation Project. Oregon, like other western states, regulates water use by the prior appropriation doctrine: "first in time - first in right." But in a basin where pre-water code water rights, including those of both the Klamath Irrigation Project and the Klamath Tribes, had not been determined, those water rights were not and could not be protected under state law. As a result, water users in the upper part of the basin were able to use water without limitation, and shortages downstream of those uses - in tributaries to Upper Klamath Lake and in the lake itself, occurred regardless of seniority.

The unregulated use of water in the basin ended this year, with the completion of the administrative phase of the Klamath Water Rights Adjudication. Now that water rights are quantified and confirmed, the state is required to protect them by regulating water use under the prior appropriation system. Last week, seven irrigation districts with a priority date of 1905, and the Klamath Tribes with the earliest priority date in the basin, among others, made "calls" for water to the state - - requesting regulation to protect their senior water rights. Given current weather conditions in the basin, and the lack of snowfall this past winter, a large portion of the water right holders above Upper Klamath Lake may be required to stop irrigating.

Most of the water use above Upper Klamath Lake is to irrigate pasture and grow hay for cattle. Many of these lands are used as summer pasture by operations that move livestock between California and Oregon. It is estimated that there are approximately 70,000 head of cattle on the lands above the lake. While ranchers were able to irrigate into early June, fields will begin to dry out quickly as we move to July, and ranchers likely will have to reduce herd sizes by selling or moving cattle as a result. As drought conditions are widespread in the west, opportunities to move cattle are very limited and hay prices are high.

Another set of interests that will be affected by water regulation this year are the wildlife refuges managed by the U.S. Fish and Wildlife Service. These refuges have priority dates for their water rights of 1925 to 1985, well-after the Klamath Irrigation Project. As a result, the refuges are unlikely to receive much, if any, water (and this will be true in most drought years absent agreements to the contrary). These refuges seasonally support a large proportion of the migratory waterfowl and associated species in the Pacific Flyway, as well as significant wildlife-oriented recreation and tourism.

Other interests affected by water regulation this year are likely to include Park Service facilities as well as Forest Service campgrounds and another Bureau of Reclamation facility that supplies water to the Medford, Oregon area. While the effects on the Medford area are expected to be minor this year, disruption of past patterns is likely to extend beyond ranchers.

You may hear from some that the State of Oregon has "given away" water to federal and other interests in quantities well-beyond amounts that have ever been used. That allegation is simply not true, as demonstrated in the charts provided at the end of my testimony. The rights confirmed for the Klamath Tribes are rights that were reserved by the Tribes as part of their treaty with the United States. The priority dates of those rights were determined based on federal court decisions, and the quantities of those rights reflect legal standards set by federal court decisions and the evidence presented by the parties in the adjudication, quantities that were reduced substantially from what was claimed, and that are below the median stream flows in the Upper Basin.

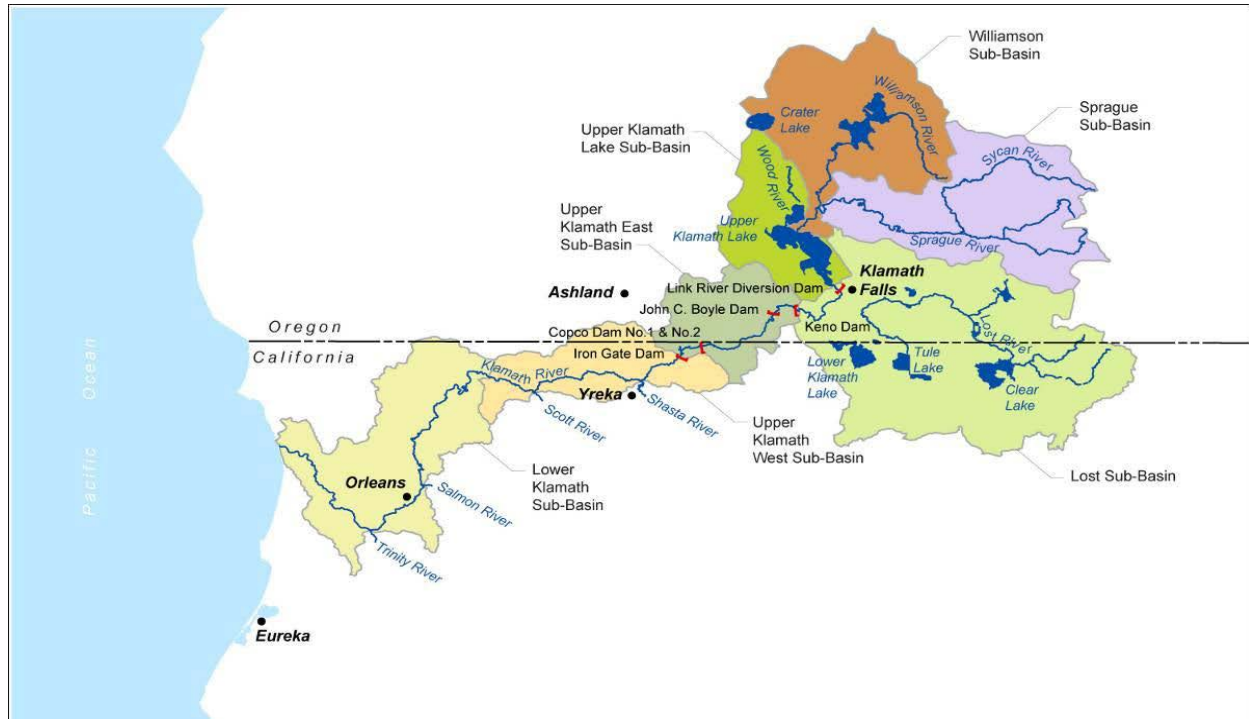
Some parties argue that their rights are being taken away before they have had their day in court. You need to know that the Klamath Adjudication afforded all participants a full opportunity to make their cases over a 38-year period. The claims and contests were heard first by an independent hearings officer, who then made a recommendation to an independent adjudicator. Yes, there is an opportunity for all parties to file exceptions in state circuit court, with yet another round of independent review. But under Oregon law, the rights confirmed by the adjudicator must now be enforced unless the circuit court grants a stay. A stay request is currently pending in state court, and is likely to be decided within the next month. All in all, it will likely be a number of years more before we all know the final results of the adjudication. For now, though, the burden of uncertainty has shifted to the Upper Basin.

One set of interests that has elected to forgo challenges to the Klamath Tribes water rights is the irrigation districts within the Klamath Irrigation Project. Under the KBRA, and corresponding agreements in the Klamath Water Rights Adjudication, the districts have agreed not to contest the Klamath Tribes water rights, in return for agreement by the Tribes that they will not call water rights from Upper Klamath Lake and the Klamath River below the lake that have a priority date earlier than August 9, 1908 - leaving the irrigation districts free from a tribal call for regulation. In return, the districts have agreed to support the KBRA and related provisions that limit their water demand to levels that are protective of fisheries using the lake.

This form of agreement between water users is the basic model of the way forward in resolving water use disputes in the Upper Klamath Basin. The KBRA includes similar provisions allowing "off-project" water users assurances if they agree to participate in efforts to reduce water use by 30,000 acre-feet (by purchasing rights from willing sellers), and by participating in riparian restoration efforts that will improve water quality.

With the completion of the adjudication in March, the Oregon Governor's office was asked to begin a renewed effort to bring the upper basin parties together to achieve a settlement. We are working actively to bring the key parties together to reach agreement on water use and riparian area restoration. Such an agreement is the key to avoiding the hard, black or white, winner-take-all contests that we now see. The next few months will be critical in this effort. We need the good faith and assistance of all parts of the farming and ranching communities, the Klamath Tribes, the other KBRA parties, local governments, and the multiple federal agencies involved in this complex system. We also need the encouragement and assistance of Congress. Enacting legislation that allows the key elements of the KBRA and KHSA to move forward is the only clear way to avoid years of escalating conflict and costs. Failure to act will result in major losses for many parts of the basin, and only escalate and inflate the ultimate price of reversing years of poor management decisions in the Klamath.

Klamath Water Use Fact Sheet



Upper Klamath Basin Hydrologic Sub-Basins			
Sub-Basin	Size (acres)	Irrigated Acres	Water Supply Source
Williamson River	928,000	65,100	90% diverted from streams, 10% groundwater
Sprague River	1,020,000	61,600	65% diverted from streams, 35% groundwater
Upper Klamath Lake	465,300	52,300	Diverted from streams or from Upper Klamath Lake
Totals	2,413,300	179,000	
Lost River			
<i>Upper Lost River Sub-basin</i>	1,200,000	84,500	50% of water coming from Reclamation's Klamath Project
<i>Middle Lost River Sub-basin</i>	454,500	117,000	70% of land is irrigated with BOR-supplied water; the rest is from groundwater, individual surface rights, or special BOR contracts.
<i>Tule Lake Sub-basin</i>	296,600	64,800	Groundwater provides 40–50% of water; most tail water reused from BOR
Upper Klamath River East	419,400	4,000	All irrigation water is diverted from the river or tributary streams; water withdrawals are insignificant along this stretch of the river.
Totals	2,789,500	270,800 Approx. 200,000 from Klamath Irrig. Project	
<i>Source: Natural Resource Conservation Service (United States Department of Agriculture 2004)</i>			

Upper Klamath Basin Hydrology (2013) and Water Rights

