

Federal, State, Tribal and Environmentalist Efforts To Curtail Irrigation in the Klamath Basin Compilation

The Klamath Irrigation District Board and many District members are very concerned about the ongoing clandestine efforts of the U.S. Department of Interior (“DOI”)’s Bureau of Reclamation (“BOR”), in cooperation with the DOI’s Fish & Wildlife Service (“FWS”), the Federal Energy Regulatory Commission (“FERC”), the U.S. Department of Commerce (“DOC”)’s National Oceanic and Atmospheric Administration (“NOAA”) and National Marine Fisheries Service (“NMFS”), the Fish & Wildlife and Natural Resources Departments of the States of Oregon and California, the Klamath, Hoopa Valley, Karuk and Yurok Tribes, and Warren Buffet’s PacifiCorps to diminish the use of irrigation and the access of the [Klamath Irrigation Project](#) to irrigation water in the Klamath Basin by: 1) [removing four perfectly operational dams in the Lower Basin \(John C Boyle, Copco 1, Copco 2 and Iron Gate\)](#); 2) transferring to the BOR full title and control to two other dams in the Upper Basin one of which provides water to the KID which may potentially be curtailed; 3) recognizing the time-immemorial priority of reserved tribal water rights at the expense of irrigator water rights; and by 4) saddling the KID and its members with an exorbitantly high debt burden incident to the KID's forced undertaking of maintenance/replacement of a key Project-related structure known as the "C Canal Flume."

The grand plan these federal, state and private actors have developed to curtail irrigation in the Klamath Basin features the execution and implementation of a complex panoply of new and existing federal-state-tribal agreements, including the Klamath Basin Restoration Agreement ("KBRA") (2010), the Upper Klamath Basin Comprehensive Agreement ("UKBCA") (2014), the Klamath Hydroelectric Settlement Agreement ("KHSA") (2010), and the new Klamath Power and Facilities Agreement ("KPFA") (2016) accompanied by proposed congressional legislation (the Merkley-Wyden bill), which individually and collectively overlook, ignore and expand upon the 1956 Klamath Basin River Compact ("KBRC"). Although the KBRA expired on January 1, 2016, when Congress refused to authorize it, the UKBCA and KHSA continue to live on, with the federal, state, tribal and private actors noted above endeavoring to insert amendments that would enable the implementation of these agreements without Congress' approval.

In the interest of public transparency, we have made the following documents relating to these issues available online:

- [KBRC](#)
- [KBRA](#)
- [UKBCA](#)
- [KHSA](#) (original)
- [KHSA](#) (containing new amendments)
- [BOR's one-sided take-it-or-leave-it high debt burden financing agreement](#)
- [KPFA](#) (new)
- [Merkley-Wyden bill](#) (linking signing of amended KHSA, tribal water rights preference, BOR reimbursable C Flume financing & lower cost power via signing of new KPFA)

In order to ensure the completion of their agenda, the BOR and Oregon and California state officials have pitted Klamath Basin irrigator against irrigator, and have endeavored to

marginalize this attorney's efforts to highlight for all KID and Project members and Basin residents the objectionable features of the amended KHSA, the new KPFA and the BOR's one-sided take-it-or-leave-it financing contract which, if executed, could potentially result in the BOR's take-back from the KID of the Project "transferred works" for which it already has daily operations and maintenance ("O&M") responsibilities, thereby preventing the KID from ever acquiring title to them as provided for in the 1954 BOR-KID Agreement. The distribution of the following documents relating to the BOR financing agreement at the KID Special Board Meeting scheduled on March 31, 2016, a summary of which also is available, was unfortunately stymied by BOR officials based in Klamath Falls and Sacramento, California and by recalcitrant Board members with something to hide:

- [KID Press Statement](#)
- [BOR Take-or-Leave-it C-Flume Financing Agreement](#)
- [KID-Modified Red-lined C Flume Financing Agreement](#)
- [Memo to KID Board Explaining Redline Edits](#)
- [Memo to KID Board Re: 3/24/16 BOR Mtg Proceedings](#)
- [Exhibit 1 to KID Board Memo Re: BOR 3/24/16 Mtg](#)
- [Exhibit 2 to KID Board Memo Re: BOR 3/24/16 Mtg](#)
- [1954 KID-BOR Agreement](#)
- [1930 Project Right-of-Way BOR Granted to BNSF Railway](#)
- [1940 Project Right-of-Way BOR Granted to Oregon DOT](#)
- [2014 GAO Report](#) Re: BOR Failure to Provide Accounting to Klamath Irrigation Project & KID of Net Accumulated O&M Expenditures

Even more disturbing are media revelations that, perhaps, certain BOR officials based in the local Klamath Falls, Oregon, Sacramento, California, Denver, Colorado, and Washington, D.C. offices, along with certain Klamath Basin irrigator members of the Klamath Water and Power Association ("KWAPA") who are also members of the Klamath Water Users Association ("KWUA") may have committed federal crimes – i.e., the misappropriation of BOR monies. According to one article, "The U.S. Office of Special Counsel has opened an investigation into the expenditure of \$48 million in taxpayer funds in the Upper Klamath Basin following a scathing whistleblower declaration." It is quite possible that these missing monies were used, in part, to secure Basin irrigators' sign off on the KBRA, UKBCA, KHSA and amended KHSA and the new KPFA and related Merkely-Wyden bill. The following articles discuss this evolving legal and political scandal in greater detail:

- Lacey Jarrell, *Claim Against BOR Gains Traction - Whistleblower Case Claims Misappropriated Funds*, Herald and News (July 2, 2015), available at: http://www.heraldandnews.com/news/local_news/claim-against-bor-gains-traction/article_d406827b-173c-5653-9b6b-8e63f7bd4bb1.html
- David Smith, *Whistleblowers Claim Millions Wasted in Klamath Project*, The Siskiyou Daily News (July 2, 2015), available at: <http://www.siskiyoudaily.com/article/20150702/NEWS/150709946/?Start=1>
- Jim McCarthy, *Senators Put Pork Before Klamath Basin Water*, The Register-Guard (Feb. 27, 2016), available at: <http://registerguard.com/rg/opinion/34093492-78/senators-put-pork-before-klamath-basin-water.html.csp#>