

Summary
KLG Representation of
Oregon & California Farmers & Ranchers

County of Siskiyou, CA

Klamath Irrigation District

Relevant Federal-Interstate Documents:

- [KBRC](#)
 - [KBRA](#)
 - [UKBCA](#)
 - [KHSA](#) (original)
 - [KHSA](#) (3-15-16 version containing new amendments)
 - [KHSA](#) (3-31-16 version containing newer amendments)
 - [BOR's one-sided high-debt burden C Canal Flume Replacement Financing Agreement](#)
 - [KPFA](#) (new)
 - [Merkley-Wyden bill](#) (linking signing of amended KHSA, securing aboriginal tribal water rights preference, BOR reimbursable C Flume financing & lower cost power via signing of new KPFA)
 - [Memo to KID Board Re: Relationship Between Basin Agreements & BOR C-Canal Flume Financing Contract](#)
 - [KWUA Notice of Potential Termination \(1-16-6\)](#) citing original KHSA Art. 3.3.4.A and Appendix E (above) showing intertwined/interlinked relationship between KHSA & KBRA (now incorporated, in part, in 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, was unfortunately stymied by BOR officials based in Klamath Falls and Sacramento, California and by recalcitrant Board members with something to hide. These documents include:
- [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](#)
 - [Oregon Trunk Line](#) Owned/Operated by BNS
- 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 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#>.
- A 2016 exchange of email and hardcopy correspondences between governmental officials and public stakeholders regarding the former's nondisclosure of the Amended KHSA text and the new KPFA before the April 6, 2016 scheduled signing ceremony is available [here](#) and [here](#).
- A 2016 County of Siskiyou, CA letter correspondence dispatched to former Interior Secretary Jewell is available [here](#).
- The first media reports about the improper procedures behind the signing of these basin agreements are available [here](#) and [here](#).
- Recently dispatched letters to U.S. Congressman Doug LaMalfa (CA-R) and Greg Walden (OR-R) describing the oppressive terms and conditions imposed by the BOR's non-negotiable, one-sided extortion contract and requesting their presence at the Klamath Irrigation District's

scheduled April 21, 2016 meeting with senior BOR officials in Sacramento, CA are available [here](#) and [here](#).

- Evidence of questionable non-transparent prior KID Board activities is available [here](#) and [here](#).
- The first media reports about the one-sided extortion contract the BOR has compelled the Klamath Irrigation District to sign under veiled threat of water shut-off and unavailability of government funds is available [here](#).
- The KID's response to the [Bureau of Reclamation's explanation](#) of why it has been unable, since 2001, to provide the KID and other Klamath Project irrigation districts a yearly accounting of the net balance of each district's portion of Project capital costs and operation and maintenance (O&M) expenditures, is available [here](#), & initial inquiry regarding title transfer is available [here](#).
- Bureau of Reclamation's official confirmation for the first time that the KID is debt-free to the Bureau - clear on its share of Project construction costs under the 1954 contract, AND clear on its current (2015-2016) O&M expenditures - is available [here](#).
- [KID correspondence \(5/18/16\) to Congressman Doug LaMalfa \(R-CA\)'s legislative director](#) concerning desired changes to the Wyden-Merkley bill intended to address guaranteed C Canal Flume replacement non-reimbursable financing and dam removal-related issues:
 - Legislative language KID submitted for S.A. 3288 (Wyden-Merkley) seeking Congressional review and ratification of all agreements into which the Secretary has entered into or will enter into in the future with States, Tribes and other parties (including the Amended KHSA and the KPFA) to promote the objectives of the defunct KBRA and UKBCA and KHSA);
 - Legislative language guaranteeing C Canal Flume replacement non-reimbursable financing that the current bill language fails to guarantee; and
 - Inquiries with federal and state officials about issues concerning dam removal.
- The Wyden-Merkley Amendment
 - [The Dog That Don't Hunt](#)
 - [Former KID Board Members' Ad Hominem & Sophistry](#)
 - [The Myths, Lies & Deceptions of the Klamath Basin Agreements](#)
- Local biased media reporting by the [Klamath Falls Herald & News \(H&N\)](#) has assisted proponents of the Klamath Basin Agreements (currently sitting KID minority Board members and their patrons) to disparage, harass and intimidate the current KID Board majority and their District patrons in Klamath Falls, Oregon. Their objective has been to disrupt District business and to tortiously interfere with current District counsels' legal representation (and thereby raise District legal costs) to ensure a successful recall of the majority Board members and the minority's retaking of political and financial control over the District which they previously held for more than 25 years with the assistance of a family of local lawyers advising the District for 90 years. The KID Board majority had hired new counsels consistent with their November 2015 electoral mandate to prevent the implementation of the Obama administration-favored Klamath Basin Agreements which will compromise Klamath Irrigation Project farmer and rancher water and land interests.

- Evidence of biased media reporting resulting in KID minority Board member and media disclosure of this counsel's unredacted confidential and privileged engagement agreement is available [here](#), [here](#), [here](#), [here](#), [here](#), & [here](#).
- [KID Correspondence to BOR](#) Objecting to New Contract Changes Reducing Funding for C Flume Replacement
- BOR Correspondences Reflecting Contract Changes:
 - [New funding committal](#)
 - [New clarification](#)
 - [BOR Response](#) to KID Correspondence
 - [KID Rebuttal](#) Stressing Inadequacy of BOR Funding
- Most Interior Department monies budgeted for the Klamath Basin during [FYs 2012-2017](#) have been allocated to the BOR, BIA and FWS for purposes of funding Klamath Basin restoration and tribal settlement rather than Klamath Irrigation Project activities.
- Three California-based federally recognized tribes filed with the BOR and the NOAA-based National Marine Fisheries Service (NMFS) 60-day notices-of-intent-to-sue under the citizen suit provisions of the Endangered Species Act, alleging that BOR's implementation of the joint 2013 U.S. Fish & Wildlife Service (FWS)-NMFS Biological Opinion governing the levels and flows of the Upper Klamath Lake and the Klamath River resulted in too much Lake water being diverted into the Klamath Irrigation Project rather than the Klamath River, causing coho salmon to contract and die from C Shasta Bacteria. The tribal reservations are located more than 240 miles southwest of Upper Klamath Lake, which suggests that the following tribes are also asserting off-reservation fishing and water rights:
 - [Hoopa Valley Tribe](#) (May 17, 2016)
 - [Yurok Tribe](#) (June 24, 2016)
 - [Karuk Tribe](#) (June 24, 2016)
 - Karuk Tribe concern re: KLG/ITSSD scrutiny of Klamath Basin Agreements ([p. 22 Karuk Tribal Council Mtg](#))
- The [Earthjustice environmental group](#) filed a similar 60-day notice-of-intent-to-sue under the citizen suit provisions of the ESA on behalf of three fisherman conservation groups (July 20, 2016):
 - Pacific Coast Federation of Fishermen's Associations
 - Institute for Fisheries Resources
 - Klamath Riverkeeper
- EACH OF THESE NOTICES CALLS FOR SUSPENSION OF WATER DIVERSIONS FROM UPPER KLAMATH LAKE TO THE KLAMATH IRRIGATION PROJECT, THEREBY REALLOCATING WATER RIGHTS FROM IRRIGATORS TO NATIVE AMERICAN TRIBES, AND [THREATENING U.S. AGRICULTURAL PRODUCTION AND NATIONAL SECURITY](#)

County of Siskiyou, CA

- Legal counsel and representative to the [County of Siskiyou](#) located in north central California along the border with Oregon, which had sought assistance in preventing the implementation of the then recently (March 2016) Amended Klamath Hydroelectric Settlement Agreement ("Amended KHSA"), "[a dam removal pact supported by the Department of the Interior, Oregon and California, and the dams' owner, PacifiCorp](#)" that did not require Congressional approval.
- Prepared a legal memorandum "researching [and analyzing] Federal Energy Regulatory Commission ("FERC") jurisdiction," including over the dam sites, and "preparing a list of actions that could be filed against the Environmental Protection Agency, PacifiCorp and FERC" to prevent dam removal.

Siskiyou County Water Users Association

- Legal counsel and representative of the Siskiyou County Water Users Association ("SCWUA"), "[representing a substantial segment of Siskiyou County water users, both agricultural and residential](#)," significantly concerned that the Federal and State Governments' plan to remove the four Klamath River Dams without "due process of law" guaranteed by the U.S. Constitution and in contravention of the 1957 Klamath River Basin Compact enacted into federal law by Congress and former President Eisenhower would adversely impact the human health and safety and private property values of county residents.
- Prepared legal memorandum analyzing the federal constitutional and statutory issues that must be addressed to successfully challenge the plan as a violation of the Compact Clause and the U.S. Constitution's 5th & 14th Amendments
- Filed with the U.S. Court of Appeals for the District of Columbia Circuit, on behalf of the ITSSD, an *amicus curiae* brief supporting the SCWUA's prior motion for mandamus to compel the FERC to rule on its prior motion to dismiss the Klamath River Renewal Corporation's application for transfer of the FERC license to four PacifiCorp-owned dams located along the Lower Klamath River.