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April 15, 2016

The Honorable Doug LaMalfa
United State House of Representatives
322 Cannon House Office Building
Washington, D.C. 20515-0501

Re: Klamath Irrigation District Request for Your Presence
At Scheduled Sacramento, CA Bureau of Reclamation Meeting

Dear Congressman LaMalfa,

I serve as Counsel to and Legal Representative of the Klamath Irrigation District (“KID”), one of sixteen irrigation districts of the federal Klamath Irrigation Project (“Project”) spanning the states of Oregon and California. KID has operations and maintenance responsibility for 160 acres and related project infrastructure (“transferred works”) located in the state of California.

I write to request your presence or the presence of your senior staff at the forthcoming meeting I have scheduled with senior Bureau of Reclamation (“BOR”) officials at the BOR’s Sacramento, California headquarters; the meeting will take place on Thursday, April 21, 2016, at 1:00 pm. The primary purpose of the meeting will be to address questionable BOR activities that could potentially disrupt and jeopardize the KID’s ability to maintain operations and maintenance (“O&M”) control over its portion of the Project’s transferred works, and consequently, the KID’s future ability to purchase those transferred works from the BOR.

As I previously discussed in great detail with Ms. Erin Ryan of your Redding, CA offices, the BOR has required the KID to undertake major O&M work on the C Canal Flume entailing replacement of that 4,400 foot structure within the next twelve months. The C Canal Flume delivers water to Tule Lake Irrigation District. To facilitate this work, the BOR has offered to provide the KID with \$7.45 million (and potentially up to \$10 million) in fully reimbursable government financing.

On March 15, 2016 and March 24, 2016, KID Board Chairman Cheyne and I attended meetings with BOR officials from Klamath Falls and Sacramento who stated that the financing contract’s terms and conditions were non-negotiable. These officials insisted that the KID Board convene a special meeting to approve the BOR contract immediately thereafter, which meeting was later held on March 30, 2016. They also insisted that the KID Board execute the contract as-is upon the close of the 60-day public comment period (i.e., on or about May 31, 2016).

The KID Board would not have asked me to contact your offices and to request your or your staff’s presence in the upcoming Sacramento meeting had the BOR contract’s terms and conditions been fair

and reasonable. Much to the contrary, however, the BOR financing contract is essentially a ‘take-it-or-leave-it’ contract bearing terms and conditions that are quite one-sided, onerous and deleterious to KID member interests. It is, without doubt, a contract that no individual farmer or rancher would sign.

Most importantly, the terms and conditions of the BOR financing contract depart significantly from the terms of the KID’s 1954 and 1983 contracts with the BOR (attached hereto). They do not, for example, provide for the same 12-month period within which to cure a late payment or performance “default.” Were a late payment or performance default to occur, the BOR contracting officer would have the absolute discretion to suspend water deliveries to the KID and to reclaim Project transferred works currently under KID control for O&M purposes.

In addition, the BOR financing contract provides the KID with a short 10-year loan repayment term. It also grants the BOR contracting officer the absolute discretion to shorten the 10-year loan repayment term if the KID’s annual financials show an ability to prepay the loan, even if the KID were to decide otherwise. Since the KID would have difficulty in satisfying even a fixed 10-year loan repayment schedule, the contract’s sliding-scale repayment schedule would enable the BOR to call the loan in fewer than 10 years would likely place the KID and its membership in substantial financial jeopardy.

If KID members suffer several successive bad years of agricultural production and/or lower commodity prices and find themselves unable to meet the repayment schedule in a timely fashion, the combination of a less than 10-year repayment term and the lack of a default cure provision would likely result in KID contractual default. Without a written assurance from the BOR that a KID contractual default would not trigger the BOR’s suspension of water deliveries and/or the take-back of KID transferred works, the KID and its members would likely lose their 2016 irrigation season as well as control over the transferred works for O&M purposes. The KID’s signing of the BOR financing contract as-is, in other words, would leave the KID and its members saddled with substantial debt, entirely at the mercy of the BOR without legal recourse, and unable to control, let alone, purchase its Project transferred works.

The BOR contract, moreover, needn’t impose such a substantial debt burden (likely to exceed \$10 million, considering anticipated cost overruns) on the KID and its members. From the beginning, the BOR has demanded that the KID replace rather than repair the C Flume because its old age and ongoing deterioration pose a real human health and safety risk. Indeed, local BOR officials have portrayed to the media and to the community at-large that the C Flume’s condition requires emergency action. Yet, these same officials have, thus far, refused to characterize the replacement of the C Canal Flume *in the contract* as an “emergency extraordinary maintenance” (“EXM”) item eligible for up to 35 percent non-repayment financing (e.g., \$3.5 million), as the reclamation law enables them to do. The Bureau’s actions to date, therefore, strongly suggest that the BOR seeks to place the District deep into debt in order to prevent it from retaining O&M control over, and ultimately, from buying back, its transferred works.

The second purpose of the forthcoming Sacramento meeting is to address the BOR’s ongoing failure to provide the KID with an annual accounting of its net Operations & Management (“O&M”) expenditures for that portion of the Project for which it remains responsible under its 1954 contract with the BOR.

The KID Board Chairman and I first raised this issue with Ms. Therese Bradford, Area Manager for the BOR’s Klamath Basin Area Office, and her assistant, George (Moss) Driscoll, a Colorado attorney, during our March 15th meeting with them. The KID, however, had previously requested such annual accountings on multiple prior occasions, to which they received inadequate responses. For example, during the March 15 meeting, Ms. Bradford and Mr. Driscoll stated that they were unable to determine this amount due to the complexity of accounting for leased lands on and near the Klamath National Wildlife Refuge. We found this statement, upon subsequent investigation, to be patently untrue.

As a 2014 U.S. General Accountability Office report reveals, the BOR has apparently failed to meet its legal obligation to determine, less provide, the required annual Statements of Project Construction Cost and Repayment (“SPCCR”) setting forth each district’s respective share of the Project’s accumulated repayment obligation, since at least 2001 – the time of the infamous Bucket Brigade protest against the BOR’s shutoff of water to the Project. It is not difficult to see how the BOR’s continued denial of annual accounting statements for the Project has been used to keep the KID and its members in the dark about the status of their BOR repayment contract. Arguably, the absence of annual accountings renders the Project “transferred works” vulnerable to BOR take-back when considered along with the contract issues discussed above.

The third purpose of the forthcoming Sacramento meeting is to address internal KID personnel and management disruptions caused by continued unauthorized BOR communications with KID Board members, and KID management, staff and contractors. On March 15, 2016, I instructed BOR’s Klamath Falls officials not to communicate either with KID Board members and staff or with the KID’s C Canal Flume engineering consultant (Adkins Engineering) without first securing the authorization of KID’s legal counsel. However, Ms. Bradford and Mr. Driscoll have continued to ignore this instruction. For example, the BOR recently summoned KID ditch-riders to a meeting to discuss how the KID manages its Project-related O&M activities, which served to unsettle these KID employees. Ms. Bradford and Mr. Driscoll also have so significantly inserted themselves into the KID’s business relationship with its C Canal Flume engineering contractor that they essentially dictated the engineering consultants’ recommendations for C Flume replacement and the previous KID Board’s and manager’s decisions to accept them. Such BOR interference with KID management decisions is wholly inappropriate and unacceptable, and likely violates well established Interior Department rules and procedures.

I trust that the foregoing provides you with a sufficient basis for directing your senior staff to accompany me to next week’s BOR Sacramento meeting. Thank you, once again, for your sincere interest and concern, and your willingness to support the KID and its Board of Directors in addressing these important matters.

Very truly yours,

Lawrence A. Kogan

Lawrence A. Kogan
Managing Principal