



July 18, 2018

The Honorable Ryan Zinke, Secretary
 U.S. Department of the Interior
 1849 C Street, N.W.
 Washington, DC 20240

RE: Klamath Basin Litigation – What Lies at Stake / Seeking Collaborative Solutions

Dear Secretary Zinke:

We, the undersigned, write to you regarding the recent litigation that has been filed by the Klamath Tribes against the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service and the National Marine Fisheries Service that seeks a preliminary injunction to stop all Klamath Irrigation Project irrigation diversions immediately and hold that water in Upper Klamath Lake (UKL). If successful, this litigation would severely impact Lower Klamath National Wildlife Refuge and Tule Lake National Wildlife Refuge, as well as family farms – all of which provide food and habitat for migratory waterfowl and hundreds of other species.

Litigation Background

On May 23, 2018 the Klamath Tribes filed a lawsuit under the Endangered Species Act (ESA) to protect listed suckers by requiring more water to be reserved in UKL. The hearing to review this

new potential injunction is scheduled for July 20 in San Francisco. Presiding over this case is Judge Orrick, who ordered the downriver injunctive flows earlier this year. The proposed preliminary injunction, if granted, would compel a complete mid-season Klamath Project shutoff and would very quickly lead to serious local crises – both in terms of the devastating impact curtailing Project water deliveries would have upon managed wetland habitats on important National Wildlife Refuges, as well as the financial impact it would have upon the local farming community. Further, water availability to irrigators and refuges would not be available until a new Biological Opinion (BiOp) is completed, currently scheduled for the spring of 2020. That means, as things stand today, a disaster in 2018 would be closely followed by no water for Project farms or the refuges in 2019. This would result in devastating impacts to the migratory waterfowl that depend upon these refuges, and many family farms possibly forced out of business.

Waterfowl History of the Upper Klamath Basin

Historically, the Upper Klamath Basin contained very large areas of naturally occurring seasonal and permanent wetland habitats and open water. With western expansion, historic wetlands have been lost. Recognizing the tremendous importance of the Klamath Basin to migratory waterfowl, President Teddy Roosevelt established the Lower Klamath National Wildlife Refuge (NWR) by Executive Order in 1908.

One hundred and ten years later, Lower Klamath NWR remains the most important waterfowl refuge in the entire National Wildlife Refuge System. Each year, a full 80% of Pacific Flyway waterfowl – representing as much as one-third of the continental population – must depend upon the Upper Basin’s remaining wetlands and wildlife-friendly agricultural lands for critical staging habitat during their fall and spring migrations. In addition, the refuge hosts up to 100,000 shorebirds, large numbers of colonial nesting waterbirds, and over 400 other wildlife species – including the largest wintering concentration of bald eagles in the lower 48 states.

Impacts to National Wildlife Refuges

Lower Klamath NWR and Tule Lake NWR are part of the Klamath Basin National Wildlife Refuge Complex which is comprised of six different refuges located in Southern Oregon and Northern California. Due to significant changes in the natural hydrology of the Klamath Basin, these two refuges and nearly all the other remaining Basin wetlands must now be “managed” – artificially irrigated and intensely managed year-round to recreate marsh conditions. In effect, those that manage these refuges, and other public and private wetland managers in the Basin, must “farm for ducks”. Because of this unique condition, the quantity and quality of wetland habitat available in any given year is almost entirely dependent upon availability of surface wetland water supplies. Because surface water for wetland management is delivered to the Tule Lake and Lower Klamath NWRs through a system of diversion or irrigation canals associated with the U.S. Bureau of Reclamation's Klamath Project, these important refuges – as well as other Project irrigators – are extremely vulnerable to water shortages when Project water is instead reserved for fisheries purposes.

Tragically, due to the Upper Basin's extremely limited surface water supply, combined with the regulatory actions called out by the BiOp, very little Project water is available for wetland habitat management or to grow beneficial food crops for waterfowl on these refuges in even the wettest of water years. Lower Klamath NWR last received water in mid-December 2017 and – due to current drought conditions, BiOp constraints and court ordered requirements – there are currently no water deliveries scheduled for the refuge.

Fall water deliveries to these refuges are especially crucial, as they are not only used to increase the availability of wetland habitats, but also used to apply to standing grain – critically important food sources for both waterfowl and shorebirds. Applying water to the refuges in the fall allows migrating waterbirds to stage longer in the Upper Klamath Basin, helping to replenish the energy they burned during the first leg of their migration south, and replenish their reserves spent on completing their molt.

However, to effectively recreate natural marsh conditions, those that manage Lower Klamath and Tule Lake NWRs must apply wetland water not only in the fall, but also at various depths and durations throughout the year to closely mimic natural hydrology. This year-round management not only generates the necessary natural wetland vegetation needed to feed the many species that depend upon these refuges, but also ensures important habitats are available for the equally large number of waterfowl that depend upon these lands for staging during their migration north each spring to their breeding areas.

Should the proposed preliminary injunction be granted, impacts to recreation on Lower Klamath NWR will also be significant. In dry years, there are fewer wetlands available for public waterfowl hunting. In addition, reduced wetland acres mean fewer opportunities for non-consumptive users. Over 130,000 visits are logged in a typical year at the Lower Klamath NWR for birdwatching, photography, and waterfowl hunting, with these visitors spending an estimated \$4.2 million annually (2015 dollars) in the local community. Refuge personnel have documented that when water is applied on the landscape at the right times, durations and depths, both bird numbers and public use increase. Should water deliveries to the refuges be shut off, the reduction in consumptive and non-consumptive wildlife users will result in significant additional negative impacts to the local economy.

Importance of Wildlife-Friendly Klamath Project Agriculture

The Klamath Basin is located along the Pacific Flyway, a major north-south flyway for migratory birds in America, extending from Alaska to South America. Every year, migratory birds travel some or all of this distance both in spring and in fall, following food sources, heading to breeding grounds, or travelling to overwintering sites. An abrupt, mid-season shutoff of water for agriculture would eliminate these public values. Removing wildlife-friendly agriculture from the Klamath Basin would further devastate the Pacific Flyway waterfowl resource by eliminating roughly half of the food base annually needed to meet the energetic requirements of these birds. Similar to California's Sacramento Valley where rice production

provides vitally important surrogate habitat and food for waterfowl, cereal grains and other wildlife-friendly agriculture in the Basin are critical to meeting the needs of Pacific Flyway waterfowl.

Shutting down the Klamath Project would not only severely impact water deliveries to the Klamath Refuge Complex, but also to the important waterfowl food resources provided by local agriculture. The serious stress placed on birds by the lack of all these habitats could mark the beginning of the end for our Pacific Flyway waterfowl resource. To make matters worse, as waterfowl are forced to crowd onto what little wetland habitat that may remain, there will be additional significant die-offs due to the increased risk of avian botulism and cholera.

Conclusion

The Klamath Basin is at another historic crossroads in its future. Although we recognize that we cannot, at this point, directly affect the outcome of this litigation, we seek to better inform others in our communities about what hangs in the balance in this very serious situation. We do not believe there can be only one "winner" in this crisis. Working together, we believe we can find solutions which meet the needs of the tribes, the local community, the Pacific Flyway, other wildlife and the fish species.

Our intent is to improve communication and encourage dialogue between the diverse interests in the Klamath Basin. We look forward to working with Alan Mikkelsen and others on your staff to enhance collaborative efforts that seek long-term, permanent solutions to the critical water and environmental issues affecting the communities, agriculture, wildlife and environment of the Klamath River watershed. This outcome, which would be a great benefit to the Klamath Basin, could provide a model for the nation. We look forward to working with you and all interests in seeking these solutions.

Sincerely,



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