



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

June 27, 2022

The Honorable Jared Huffman
Chair, Natural Resources Subcommittee
on Water, Oceans, and Wildlife
U.S. House of Representatives
Washington, DC 20515

Dear Chair Huffman:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the March 8, 2022, oversight hearing entitled, "Klamath River Basin Conditions and Opportunities."

Thank you for the opportunity to respond to you on this matter.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Cliff Bentz
Ranking Member

Questions from Chair Jared Huffman

Question 1: The status of water rights claims differs in the two Klamath Basin states. Oregon has fully adjudicated the water rights in its portion of the Klamath Basin, but in California, the Yurok Tribe has claims to substantial water rights that, once quantified, would be significant senior water rights on the river. What can the Department of the Interior do to help protect the Tribe's water rights?

Response: The State of Oregon initiated the Klamath Basin Adjudication (KBA) in the 1970s to adjudicate the relative rights of those who hold pre-1909 state law-based water rights (but not those with state permits issued after enactment of the Oregon water code) as well as federal law-based water rights in Oregon. The initial phase of the KBA resulted in an Amended and Corrected Findings of Fact and Order of Determination (ACFFOD) that the Oregon Water Resources Department issued in 2014, and the judicial phase of the KBA remains ongoing. With respect to water rights in the California portion of the Klamath Basin, the Department of the Interior (DOI) has long taken the position that the Yurok Tribe and others hold federal reserved water rights to support reserved tribal fishing rights (among other purposes) that vested no later than the establishment of their respective reservations, and several court decisions have confirmed these views. DOI agrees that full resolution and recognition of the Tribe's senior water rights is essential and DOI will work with the Tribe and others to determine how best to protect these interests.

Question 2: Last year, Reclamation reported that most of the 33,000 acre-feet of water allocated to the Klamath Project was instead “consumed through unauthorized diversions.” That’s nearly the amount of water reserved for flushing flows in previous years. Can you describe the connection between the amount of water consumed through unauthorized diversions, and other water needs along the Klamath that were left unmet in 2021? Did Interior take any action to stop unauthorized diversions in 2021, and what will the agency do to prevent unauthorized diversions in 2022?

Response: The challenge faced in 2021 manifested as a water volume and timing challenge where the supply needed in the spring was insufficient to simultaneously meet the requirements of Biological Opinions for both the lake and the river, even with a zero-irrigation allocation. Consistent with court-approved operations plans, Reclamation announced in April 2021 that it would manage Project diversions from Upper Klamath Lake (UKL) and the Klamath River to achieve a minimum annual water surface elevation in UKL greater than or equal to 4,138.3 ft, rather than allocate a specific volume of water to the Project. At the time, Reclamation anticipated that a minimum of 33,000 acre-feet would be available as Project supply, which would have entitled senior contractors to a partial supply. In May 2021, in part because of unauthorized diversions, Reclamation announced that no water was available for the Project. As a result, senior contractors' water needs, which would have otherwise been partially met, were left entirely unmet in 2021.

Unauthorized diversions exist because of different interpretations of the relationship between federal and state law in the Klamath Basin. These differing interpretations were left unresolved when the Klamath Basin Restoration Agreement was not enacted into law before its December 2015 expiration.

DOI and the Department of Justice are discussing legal options for having the courts further address the relationship between federal and state law, including in ongoing litigation in the Northern District of California in which the United States has filed a claim that implicates these issues.