



THE KBRA'S UNWARRANTED AND COSTLY SUBSIDIES

Background: On January 7, 2010, the final draft of the Klamath Hydroelectric Settlement Agreement (KHSAs) and the final draft of the Klamath River Basin Restoration Agreement (KBRA) were released for public review. The KHSAs is an agreement to initiate a process that may or may not lead to the removal of one or more of PacifiCorp's lower four dams on the Klamath River. The KHSAs is unnecessarily linked to the KBRA, which has a \$970 million price tag, though including no funding for dam removal. The KBRA addresses other natural resource issues in the Klamath Basin that are totally unrelated to dam removal, including management of Lower Klamath and Tule Lake National Wildlife Refuges. There have been many questions raised over the purpose, meaning, impact, and propriety of many of the KBRA's provisions; particularly those provisions pushed by the former administration to reward special interests in the Bureau of Reclamation's Klamath Irrigation Project. These provisions consist of various forms of subsidies that are not based on good public policy and are costly to the taxpayer and the natural environment. The worst of these subsidies is discussed below:

1. Water Development Subsidy: The KBRA provides \$92,500,000 to KWAPA (an entity controlled by Klamath Project irrigators) for development and implementation of a Klamath Project water plan to align water supply and demand for Klamath Project irrigators that rely on water diversions from the Klamath River (line 66, page 8, Appendix C-2, and Section 15.2, Page 66 of the KBRA). The KBRA does not require any NEPA review or other public oversight of the development of the plan or expenditure of the funds, and the only review allowed is a 60 day review by the Bureau of Reclamation. Parties to the KBRA are bound to support funding to implement the water plan even though no plan yet exists. Pre-agreement to provide millions of dollars for implementation of a Project water plan, before being able to assess specifically how taxpayer dollars will be spent is not a responsible commitment of federal funds.

A large public investment needs to be made to permanently reduce water demand in the Klamath Basin in order to bring water use into balance with what is sustainable. Therefore, it is essential that funding is spent on a plan that will actually help solve the basin's water crisis and serve the public interest. In the 2002 farm bill, \$50 million was allocated to Klamath Project farmers to reduce water demand. Project irrigators acquired new equipment, but no measurable water savings resulted from this significant public expenditure. The U.S. taxpayer should not again be asked to invest additional dollars until it knows what public benefits will be achieved. A scientifically based, permanent demand reduction program should be developed by the federal government with full public participation and review under NEPA, otherwise there is a great risk that this funding results in another subsidy to Project irrigators without measurable public benefits.

There is a great concern that these public funds will be used by Project irrigators to drill new wells and install new groundwater pumping plants that would be owned and operated by Project irrigators. As most groundwater in the basin is connected to surface water this would amount to taking the same water, just through a different straw. Such an investment would contribute little to solving the water crisis in the basin, and could end up being another drain on public resources and contribute to future water problems.

There need to be strict guidelines on how funds should be spent in the basin. The best investment for bringing water use back into balance with what is sustainable would be the permanent acquisition of water rights or conservation easements that prohibit or limit irrigation during below average water years. A certain percentage of any funding to be required to be spent in this manner.

2. Power Subsidy: The KBRA provides over \$50,000,000 in power subsidies (See KBRA Sections 14 and 17, and lines 72 -75 on Appendix C-2). These subsidies will be distributed to Klamath Project irrigators in Oregon and California, as well as certain Klamath County, Oregon off-project irrigators to reduce their power costs. \$7,690,000 of this sum will be direct payments to reduce power bills (Section 17.5), while \$42,498,000 (Section 17.7) will fund unspecified projects to generate renewable energy and increase energy efficiency to indirectly reduce power costs of Klamath Project and certain Klamath County irrigators.

Klamath Project irrigators and Klamath County off-project irrigators enjoyed power rates considerably below market rates for other agricultural users under special contracts with PacifiCorp. Those contracts were terminated as discriminatory by the Oregon Public Utility Commission and the California Public Utility Commission in 2007. To prevent rate shock, the Oregon legislature passed legislation giving affected Klamath County Oregon irrigators a 7 year period during which their power rates would be ramped up to market value and the California Public Utility Commission gave California Klamath Project irrigators a 4 year period. After the ramping periods, the two states did not find any public policy reason to support the practice of other PacifiCorp customers continuing to subsidize Klamath Project and Klamath County irrigators.

Now that other PacifiCorp customers are no longer subsidizing them, these irrigators are now looking to the U.S. taxpayer to pay for continuing to subsidize their power use. There is no public policy purpose for this subsidy. It provides an unfair competitive advantage over other nearby farmers and ranchers who just happen not to own lands in the Klamath Project or Klamath County, and encourages not only wasteful power use, but also wasteful water use as the power is used to pump water. Subsidized power in the Klamath Basin has contributed to the basin's water crisis and has also made it economical to drain wetlands on Lower Klamath and Tule Lake National Wildlife Refuges for harmful commercial farming on refuge land.

It should also be noted that Section 17.6 of the KBRA provides that Klamath Project irrigators receive an allocation of power from the Bonneville Power Administration that

will also provide them a lower preferential power rates from the Columbia River Hydropower System.

3. Pumping Cost Subsidy: The KBRA, in Section 15.4.2A, modifies existing contracts to change the cost allocation of the D plant pumping by increasing the amount the USFWS has to pay and decreasing the amount the Tule Lake Irrigation District has to pay. Since this would most likely violate current Reclamation law on cost sharing, Section 15.4.6 of the KBRA attempts to circumvent the law by having the Secretary of Interior agree that the cost sharing agreements in the KBRA are not a “contract” as defined in the Reclamation Reform Act of 1982 (Public Law 97-293).

The D plant pumps water from Tule Lake over to the Klamath Basin and keeps Tule Lake National Wildlife Refuge lands and surrounding private lands drained for commercial farming. The current contract between the federal government and the Tule Lake Irrigation District (TID) provides that the D plant pumping costs be paid as follows: USFWS 25%, TID 37.5% and Bureau of Reclamation pay 37.5%. Without any justifiable rationale, D plant pumping costs will increase by 6.5% for the USFWS and decrease by 6.5% for TID under the KBRA. The KBRA budget provides for \$170,000 per year to cover this cost (line 69, Appendix C-2).

It should be noted that the 37.5% of the pumping costs picked up by the Bureau of Reclamation is also highly questionable (the 37.5% was agreed to by BOR in 1975 as a result of a negotiation rather than actual documentation of non-reimbursable Project costs and increased the Bureau’s share by more than 3 times from what it was in 1974). This percentage is picked up by Bureau of Reclamation as a non-reimbursable cost of flood control to protect roads and other public property, however the majority of costs are utilized to keep farmland drained for the benefit of irrigators; and the formula used to arrive at this percentage is not based on actual costs related to flood control pumping.

Rather than provide TID irrigators with an additional subsidy, steps should be taken to determine what percentage of costs the federal government should actually pay. Subsidizing these pumping costs is not a good use of taxpayer dollars and allows irrigators to continue to drain Tule Lake National Wildlife Refuge wetlands for commercial farming, a practice that is harmful to wildlife and should be phased out.

4. Debt Forgiveness Subsidy: There is currently a dispute between the federal government and Klamath Project irrigators on the amount of Klamath Project capital costs currently owed by Klamath Project irrigators to the United States, and on how much of the leaseland revenue in the Reclamation Fund should be applied to said capital costs. Rather than protecting the U.S. taxpayer and determining the amount owed by Klamath Project irrigators, the KBRA provides that without determining the amount owed it will simply be forgiven (KBRA, Section 15.4.4 A). This is inappropriate.

5. Leaseland Revenue Subsidy: Not only does the KBRA promote leasing approximately 22,000 acres of Tule Lake and Lower Klamath National Wildlife refuge lands for commercial farming and try to lock it in for the next 50 years, but it also

changes the allocation of the leaseland revenue. Section 15.4.4 B and Appendix A, Section H, provide that approximately 60% of the net revenue from leasing refuge land for commercial farming will go to the Reclamation fund and applied to the benefit of Project irrigators, either by covering costs of maintaining and operating Keno and Link River Dams (a cost that should be born by Project irrigators), by reducing future capital costs of the Project or by subsidizing power costs to both on and off Project irrigators. By diverting these funds for these purposes, the KBRA will increase and broaden the political support for continuing commercial farming on these two national wildlife refuges at a time many have begun to question the practice. In addition 20% of the revenues would go to USFWS and 10% to Tulelake Irrigation District and 10% to Klamath Drainage District, the two irrigation districts, whose customers commercially farm the refuges. This will also create an agency dependence on farming the refuges with both the Bureau of Reclamation and USFWS, which would make it harder to make the changes that are needed on these refuge lands. This is a harmful practice that should be phased out not used to subsidize Project operations or irrigators. Federal legislation is necessary to implement this reallocation of leaseland revenues, as the provision is inconsistent with existing law.

7. Link River and Keno Dam Operations Subsidy: PacifiCorp is not seeking a new license to generate power at Link River and Keno Dam. These dams also serve as diversion structures that are relied on by Klamath Project irrigators. Under the KBRA Reclamation will be assuming all costs for operating Link River Dam and Keno Dam for Project diversion (KBRA, Section 15.4.5 A). At present, the costs of operating these facilities are currently paid by PacifiCorp; however, once they are being used solely for irrigation purposes, the federal government should not be picking up the full cost. Project irrigators should be required to pay their share as required under current cost-sharing laws.

Summary: Congressional action will be necessary to appropriate funds for these subsidies and for legislation that will allow federal agencies to enter into the special cost sharing contracts, debt forgiveness, and leaseland revenue sharing agreements. There is no policy reason to give these subsidies to the Project irrigators. It just gives Project irrigators an unfair competitive advantage; helps to perpetuate some farming in the Project, which would otherwise be economically marginal; encourages wasteful water and power use; facilitates continued draining of refuge land for commercial farming; and discourages permanent water demand reduction, all at U.S. taxpayer expense.

There has been a push over the last decade to ensure Reclamation is doing a better job in cost recovery on its projects. This would set a bad precedent, make it more difficult to balance the federal budget, and be at odds with groups working on Reclamation reform. These provisions are not appropriate for a FERC settlement, and the irrigators have not given up anything that warrants this type of special treatment.

The subsidies described above are merely a portion of the benefits that the KBRA attempts to deliver to Project irrigators. The KBRA also delivers a water deal to the Project water users that guarantees them **more** water than is currently provided to the

Project irrigators in drier years based on current flow regulation required through litigation under the Endangered Species Act. In fact, in wetter years, the KBRA actually guarantees more water to the Project irrigators than they have historically used in 12 out of the last 15 wet years. At the same time, the KBRA does not guarantee river flows for ESA listed coho salmon, and the predicted river flows under the KBRA water deal are often less than the best available science indicates fish need.

In addition, the KBRA attempts to lock in commercial leaseland farming on national wildlife refuges for 50 years, thereby undermining the Comprehensive Conservation Plan process that will determine whether commercial farming is compatible with refuge purposes as required by the National Wildlife Refuge System Improvement Act of 1997.

Congress should not confirm, approve, or ratify the KBRA, nor should Congress direct or authorize federal agencies to execute and become contractually bound by the provisions of the KBRA for the next 50 years.