

The Impact of the Draft Klamath Agreement
On
Lower Klamath and Tule Lake National Wildlife Refuges

Summary: On January 15, 2008, the Proposed Klamath River Basin Restoration Agreement, Draft 11, (“draft agreement”) was publicly released. This draft agreement attempts to address various Klamath Basin issues, including management of some of the basin’s National Wildlife Refuges. Instead of promoting sound management of our Klamath Basin National Wildlife Refuges, the draft agreement includes provisions harmful to the refuges, including locking in commercial farming on Tule Lake and Lower Klamath National Wildlife Refuges, and foreclosing the best opportunities to secure water to meet refuge needs.

Background: The Klamath Basin historically contained 350,000 acres of wetlands and tremendous populations of waterfowl and other wetland birds. A century ago the basin showcased what was believed to be the largest concentration of waterfowl in the world with up to 10 million birds occupying basin wetlands at one time. Unfortunately, 75% of the historic wetlands have been drained in the Klamath Basin to make way for irrigated agriculture, while 95% of the wetlands in the state of California have been lost. This greatly increases the importance of the remaining wetlands, some of the most important of which are located in Lower Klamath and Tule Lake National Wildlife Refuges. These refuges are located on the original lakebeds of Lower Klamath Lake and Tule Lake, and the refuge lands offer the best opportunity to reclaim and restore vital and much needed wetlands in the basin and in the Pacific Flyway. The importance of these National Wildlife Refuges is summarized in Attachment A.

The Tragic Draining of Lower Klamath and Tule Lakes: There has been a long running conflict between farming in the Klamath Basin and Lower Klamath and Tule Lake National Wildlife Refuges (NWRs). Lower Klamath NWR was created in 1908 by President Theodore Roosevelt as the first National Wildlife Refuge for waterfowl. The entire 81,000 acres of Lower Klamath Lake was originally protected as a refuge, however, President Roosevelt’s vision collided with the push to “reclaim” the lake and marshes for agriculture. The newly created refuge was within the boundaries of a massive Bureau of Reclamation irrigation project, and in 1917 the Bureau of Reclamation worked with a railroad company to build a dike that cut off Lower Klamath Lake from the Klamath River thereby drying up the entire lake and refuge for a quarter of a century. This led photographer and former Oregon Game Commissioner, William Finley, to write in 1925:

“Today, Lower Klamath Lake is but a memory. It is a great desert waste of dry peat and alkali. Over large stretches fire has burned the peat to a depth of from one to three feet, leaving a layer of white loose ashes onto which one sinks above his knees. One of the most unique features in North America is gone. It is a crime against our children.”

The draining of Lower Klamath Lake paved the way for homesteading and farming on the drained lakebeds and subsequent administrations reduced the refuge to 53,600 acres to make way for privatization and farming of approximately 30,000 acres of what was once a national wildlife refuge. On top of that another 6,000 acres of remaining Lower Klamath NWR lands are being leased for commercial farming that provide little or no wildlife benefit. Today, only 12,000 to 27,000 acres of the remaining refuge lands are maintained in permanent and seasonal wetlands, compared to the 81,000 acres in wetlands that were originally protected.

Tule Lake originally ranged from 50,000 to 100,000 acres in size. This lake was also drained to make way for agricultural development. In 1928, Tule Lake NWR was created to preserve the remnants of this once vast lake. 37,000 acres were eventually protected, but with the construction of a tunnel through Sheepy Ridge, through which water from Tule Lake can be pumped, it became possible to further drain the lake and there was a push to privatize and homestead these refuge lands. This became known as the “ducks” versus “farmers” controversy and it led to the passage of the Kuchel Act in 1964. The Kuchel Act prohibited homesteading and privatization of the refuges, but allowed commercial farming on Tule Lake and Lower Klamath NWRs. Tule Lake NWR was once considered the premier waterfowl refuge in the nation, but it is not the case today. The biological resources and productivity of Tule Lake NWR have declined significantly since the passage of the Kuchel Act. Today, 15,500 acres of the original lakebed are leased for commercial farming on Tule Lake NWR, while only 13,000 acres are maintained in wetlands.

At the end of the Clinton administration, there was a move by the refuge manager to move the commercial farming program off of Tule Lake NWR by buying private lands in the area and moving the leasing program to it. Plenty of willing sellers were identified, but the project was abandoned after Bush was elected President. Prior to the Bush administration coming into power, the refuge manager also tried to curtail the leasing of refuge land for farming in dry years, to make more water available for refuge wetlands. This too was halted, even though in drier years, water is delivered for commercially farming refuge lands, while adjacent refuge wetlands are forced to go dry.

Before it leaves office, the Bush administration is now trying to lock in commercial farming on 22,000 acres of national wildlife refuge lands on Lower Klamath and Tule Lake NWR's for the next 50 years, and to lock in a water deal where refuge wetlands are required to give up water in drier years, while irrigation of refuge lands for commercial farming is not required to be cut back. It is trying to do this through the draft agreement that is ostensibly about dam removal.

The Draft Klamath Agreement Terms that Affect Basin National Wildlife Refuges:

1. Locks in Commercial Farming on Lower Klamath and Tule Lake National Wildlife Refuges for 50 Years. Section 15.4.3 A. on page 80 of the draft agreement requires all parties (this includes the Fish and Wildlife Service, which is listed as one of the parties under Section 1.1) to support continued commercial farming at current levels on 22,000 acres of Tule Lake and Lower Klamath National Wildlife Refuges. This would effectively lock in commercial farming of these important refuge lands for 50 years, as the term of the agreement is 50 years under Section 1.6 on page 5 of the Agreement. Commercial farming on 22,000 acres of two of the nation's most important National Wildlife Refuges should be phased out, not locked in. Restoring these important refuge wetlands is not only the right thing to do for the refuges, but is an important part of solving the water crisis in the basin. See Attachment B for a summary of why commercial farming on the refuges should be phased out.

It needs to be noted that these lands are leased for commercial farming purposes, which is very different from cooperative farming practices sometimes used as a management tool on these and other refuges (e.g. another 9,000 acres of Lower Klamath NWR is farmed cooperatively). Commercial farming provides little or no wildlife benefits and prevents these former wetlands from being restored and managed for the fish and wildlife that our national wildlife system was created to protect.

2. Water for the Refuges. The draft agreement is being touted as providing a more secure and better water allocation to Lower Klamath and Tule Lake National Wildlife Refuges. This is not accurate for the following reasons:

- a) **No Change in Tule Lake NWR Water Management.** Under the draft agreement, Tule Lake NWR would get the same water allocation it currently gets under existing contracts and biological opinions for the listed suckers that inhabit the refuge, and the draft agreement just reflects this.

- b) **Eliminates Best Tools to Secure Water for Lower Klamath NWR.** Lower Klamath NWR's water needs based on current refuge management goals are equal to 60,000 acre-feet during the irrigation season and 35,000 acre-feet in the winter. Because the refuge's water rights for refuge wetlands have a priority date of 1908 and the Klamath Reclamation Project has a 1905 priority date for irrigation, Lower Klamath NWR wetlands have suffered recently, especially in the drier years. Under the draft agreement, the irrigation season allocation is 60,000 acre-feet in the wetter years and then is progressively diminished to 48,000 acre-feet as water year types get drier, with a dramatic additional reduction in drought years (see (d) below). Though this may currently put the refuge in a better water situation than it currently is in, this is only because the Klamath Basin water adjudication is not complete and the State of Oregon does not regulate water users that have water rights junior to the refuges. It is also because the US Fish and Wildlife Service (USFWS) does not, as it should, require the

1905 priority dated water rights associated with the refuge lands farmed for commercial agriculture to be delivered to refuge wetlands rather than for irrigating 22,000 acres of refuge land for commercially farming. In fact, by locking in leaseland farming for 50 years, the draft agreement would eliminate the best way to give water security to the refuges, which would be to phase out commercial farming on the refuges and use those lands to store winter water, and use the water rights associated with those lands for refuge purposes.

- c) **Limits Lower Klamath NWR from Improving its Water Situation.** Though the draft agreement gives Lower Klamath NWR a water allocation, it is not the full amount needed in many years, and the Settlement Agreement has language that could be interpreted to limit the ability of Lower Klamath NWR to do better in drier years, or expand its wetlands in wetter years. Section 15.1.2 E iii (5) provides that the allocation to Lower Klamath NWR shall be reduced by any delivery of surface water through Reclamation facilities from other delivery points. This would limit the ability of the refuges to increase their water supplies by developing other water sources by purchase, lease, or storage. It should be noted that under the draft agreement, the Project irrigators guaranteed water from the Klamath River is not reduced if they find or develop alternate sources of water, but the refuges are not allowed to do better by developing or purchasing alternate sources, even though under the National Wildlife Systems Improvement Act the Secretary of Interior is required to secure needed refuge water supplies. In addition, Sections 17.3.2 and 15.1.2 E (ii) of the agreement also reduce, if not eliminate, the possibility of storing water on the refuges for increasing refuge water supply. Section 17.3.2 predetermines how all new storage should be allocated regardless of where it is developed, and refuges are not identified as a priority to receive any newly stored water, and Section 15.1.2 reduces irrigation season deliveries to Lower Klamath NWR by any amount stored on the refuge in excess of the 35,000 acre-feet wintertime allocation.
- d) **Puts Heavy Burden on Lower Klamath NWR Wetlands in Times of Water Shortage.** Lower Klamath NWR's water shortages are typically most acute in the drier years and the Settlement Agreement doesn't change this. In fact the Settlement Agreement locks in a drought year response that reduces the refuge's already low dry year allocation of 48,000 acre-feet to 24,000 acre-feet and possibly lower. (In this regard it should be noted that a prior biological opinion indicated a minimum of 32,000 acre-feet is necessary just to support the waterfowl food base of the approximately 1,000 bald eagles that overwinter in the basin.) These drier year and drought year cutbacks to water delivered to Lower Klamath NWR wetlands are required under the draft agreement without first requiring cutbacks in water delivered to irrigators commercially farming National Wildlife Refuge land. This is most likely in violation of the Kuchel Act and National Wildlife System Improvement Act of 1997. There was a move at the end of the Clinton administration to enforce these laws by first requiring reductions in commercial farming on the refuges to avoid cutting back water deliveries to the refuges. Ironically, Section 15.1.2G(iv) of the draft agreement

does allow the On-Project Water plan to limit deliveries to these refuge leaselands to meet water needs on private farms.

- e) **Other Reductions in Lower Klamath NWR Water Allocation.** In addition, Section 15.1.2 E (iii) sets forth other situations that would also reduce the allocation of water to Lower Klamath NWR, including reducing the irrigations season allocation by one-acre foot for each acre placed in walking wetlands, whether the walking wetlands are on refuge or private lands, and regardless of how much water is actually delivered to the walking wetlands. The walking wetland program is discussed more thoroughly below in Paragraph 3.

3. Walking Wetlands. Walking wetlands is a program that is currently being implemented to increase wetlands on the refuge leaselands and on private lands in the basin. The program is called “walking” wetlands because the wetlands that are created are temporary (generally only in existence for one or two years), and then the land is commercially farmed again, and new wetlands are then temporarily created on other land that was previously farmed, and so on. After land has temporarily been in wetlands it is more valuable for farming because there is less need for pesticides and fertilizer thereby reducing costs, and the crops grown can qualify as organic thereby bringing in greater revenue. And of course, when land is actually in wetlands the program provides great benefits to waterfowl, but no longer does when the land is farmed again.

The program is being portrayed as a reason why commercial farming on the refuges is good for wildlife. Though it is certainly better to have some of the refuge leaselands in wetlands instead of all in farming, the fact remains that the value of the program to wildlife is not when the land is farmed, but when it is in wetlands. The program actually shows the enormous benefits that could be derived if commercial farming was actually eliminated from the refuge lands. In addition, it should be noted that there is no requirement in the draft agreement that any percentage of refuge leaselands must be in walking wetlands. The draft agreement does however penalize Lower Klamath NWR for any walking wetlands, by reducing the water allocation to Lower Klamath NWR wetlands by one-acre foot per acre of walking wetlands. Regardless of how much water is applied to the walking wetlands, and regardless of whether it is more or less than would have been applied if the land was farmed, water will still be withheld from Lower Klamath NWR at a rate of one-acre foot per acre of walking wetlands. Lower Klamath NWR is even being penalized where private walking wetlands are created under the program to increase the value of farming on private lands. Public wetlands on a national wildlife refuge would suffer, in order to temporarily create wetlands on private lands for the private landowners’ benefit, all at taxpayer expense. This is not good public policy. It again makes a lot more sense to just phase out the existing commercial farming leases on the refuges, and restore those valuable refuge lands to their historic wetland condition.

4. Modifies Federal Laws to Grant Unwarranted Subsidies to Klamath Reclamation Project Irrigators that Create Support for Commercial Farming on the National Wildlife Refuges. The construction of the tunnel through Sheepley Ridge and the D pumping plant in 1942, coupled with years of below market power rates, have allowed

Project irrigators to pump water off, drain, and keep drained 15,500 acres of Tule Lake NWR so that the lands can be commercially farmed. This draft agreement, 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 15.4.5 B of the draft agreement requires federal legislation to exempt the draft agreement from certain cost-sharing provisions of the Reclamation Reform Act of 1982.

In Section 15.4.4 A, existing Project irrigator debt to the United States for unpaid capital costs of the Project facilities is cancelled and in Section 15.4.4 B approximately 60% of the revenue from leasing refuge land for commercial farming will go to the Reclamation fund applied against future Project capital costs that would otherwise be charged to Project irrigators. By diverting these funds to reduce the expenses of all Project irrigators, the “Klamath Settlement Agreement” will increase 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, which would make it harder to make the changes that are needed on these refuge lands. Federal legislation is necessary to implement this debt cancellation and allocation of leaseland revenues as the proposal is inconsistent with existing law.

The draft agreement also provides \$40 million in power subsidies and preferential power rates from the Columbia River Hydropower System that will continue to subsidize draining refuge land for farming. Federal legislation will also be necessary to implement these provisions.

5. May Modify Important Federal Environmental Laws in Order to Lock in Commercial Farming on the Refuges. Not only does the draft agreement require parties to support commercial farming, but it subtly attempts to create a new management standard by requiring support for leaseland farming managed “to enhance waterfowl management while optimizing agricultural use and maximizing lease revenues” (Section 15.4.3 A. (ii)). This appears to give agricultural uses and maximizing lease land revenues equal weight to waterfowl management in managing refuge lands. This conflicts with both the National Wildlife System Improvement Act of 1997 and the Kuchel Act, which make it clear that wildlife conservation and waterfowl management are the primary purposes of the refuges, and that any commercial farming activity must be consistent and compatible with these primary purposes. In fact, the large scale commercial farming that occurs on these refuges is not compatible with refuge purposes, and this draft agreement would make it more difficult to challenge this incompatible use, especially if Congress should ratify and approve the draft agreement.

6. Upper Klamath National Wildlife Refuge Will Still Periodically Go Dry. Not only does this draft agreement adversely impact Lower Klamath Lake and Tule Lake NWRs, but it also continues irrigation diversion levels at such a high level Upper Klamath NWR will also continue to suffer. Water for Upper Klamath National Wildlife Refuge is dependent on the lake levels in Upper Klamath Lake. When lake levels go below an elevation of 4,140 feet, refuge wetlands begin to go dry and when lake levels reach 4,139 feet, all 14,000 acres of marshes in Upper Klamath NWR will be dry. With the water guarantees to Project irrigators in the draft agreement the Upper Klamath NWR will still be going dry in late summer and fall in dry years, as a result of irrigation diversions from Upper Klamath Lake to Project irrigators.

Klamath Basin Wetlands

- Historically contained 350,000 acres of wetlands and tremendous populations of waterfowl and other wetland birds.
- 80% of the Pacific Flyway waterfowl pass through the Basin during fall and spring migration. The abundance and diversity of waterfowl and other migratory water birds make the Klamath Basin one of the most unique and significant wetland wildlife areas in the nation.
- Some of the most productive breeding areas for water birds in the intermountain West.
- The largest overwintering population of bald eagles in the lower 48 states.
- 3 of the remaining 13 white pelican colonies remaining in the West.
- At one time up to 10 million birds in the basin thought to be the largest concentration of waterfowl in the world.
- As late as the 1950's peak waterfowl numbers reached 7 million birds, but there has been a steady decline down to 1.2 to 1.8 million birds at peak times today.
- 75% of the historic wetlands have been lost in the Klamath Basin and 95% of the wetlands in California have been lost – this greatly increases the importance of the remaining wetlands, most of which are located in the basin's 6 National Wildlife Refuges.
- The abundance and viability of suitable habitat is unquestionably the greatest limitation confronting waterfowl.
- Under current Klamath Reclamation Project operations, all 15,000 acres of Upper Klamath National Wildlife Refuge and all other wetlands around Upper Klamath Lake will be dry for extended periods, and in 50% of all future years 60 to 80% of the permanent and seasonal wetlands in Lower Klamath National Wildlife Refuge will be dry.
- The decline in wetland habitat in Klamath Basin refuge wetlands decreases the carrying capacity of the entire Pacific Flyway, having impacts from Alaska to Mexico.
- Under the North American Waterfowl Management Plan signed by the United States and Canada, wetland habitats in the Klamath Basin are currently insufficient to achieve the Plan's goals.

Lower Klamath National Wildlife Refuge

- The first National Wildlife Refuge for waterfowl, it was created in 1908 by President Theodore Roosevelt.
- Initially, the entire 80,000 acres of Lower Klamath Lake was protected, but subsequent administrations reduced the refuge to 50,000 acres of which only 12,000 to 27,000 acres are maintained in permanent and seasonal wetlands today (15,000 acres are farmed with 6,000 of those acres being leased for commercial farming).
- In 1917, the Bureau of Reclamation worked with a railroad company to build a dike that cut off Lower Klamath Lake from the Klamath River thereby drying up the lake and refuge for a quarter of a century. Water was brought back to the refuge in 1942 when the tunnel through Sheepy Ridge was constructed to drain water from Tule Lake.
- Lower Klamath Lake National Wildlife Refuge (LKNWR) is the single most important staging area for both fall and spring migratory waterfowl in the Pacific Flyway, and most heavily used waterfowl area in the entire Pacific Flyway. It regularly supports 40-60% of the Basin's migratory population.
- LKNWR supports the greatest proportion of overwintering bald eagles and is currently the chief feeding area for overwintering eagles (50-90% of the basin's overwintering eagles use LKNWR each winter month).
- LKNWR is one of the major waterfowl production areas in the intermountain west and supports one of the densest breeding populations of waterfowl in the National Wildlife Refuge system, averaging over 50,000 birds during the 10 years prior to the water crisis.
- During late summer LKNWR is a focal point for molting waterfowl with 50,000 to 100,000 birds present, some coming from over 300 miles away.
- LKNWR is home to most of the 411 species in the upper Klamath Basin, including 25 species of special concern of which 3 are threatened or endangered species.
- LKNWR supports up to 1,000 sandhill cranes during the fall migration making it one of the largest fall staging areas for cranes in the Pacific Flyway – at times 20 to 30% of Central Valley population of greater sandhill cranes (considered a threatened species by the State of California) are on LKNWR.
- LKNWR supports one of the last two remaining white pelican colonies in California (the other is in Clear Lake National Wildlife Refuge).
- At times peak spring tundra swan populations on LKNWR have approached 50% of the Pacific Flyway total.
- At times peak canvasback population numbers on LKNWR have been greater than 50% of the Pacific Flyway total, making LKNWR one of the most important staging areas for this species.
- LKNWR supports one of the only remaining breeding colonies of California gulls in California.
- LKNWR is rapidly becoming one of the major production areas for breeding white-faced ibis in the intermountain west.

Tule Lake National Wildlife Refuge

- Established in 1928, it consists of 39,116 acres, about 30,000 acres from the historic lakebeds of Tule Lake, which once ranged from 50,000 to 100,000 acres in size.
- As a result of controversy over the future of the Tule Lake National Wildlife Refuge (TLNWR) (continued reclamation of Tule Lake lands for farming or dedication to wildlife) the Kuchel Act was passed in 1964 establishing the primary purpose of the refuge to be for waterfowl, but allowing commercial farming on the TLNWR as long as it is compatible with refuge purposes.
- Today almost 50% of the TLNWR is leased for farming (17,000 acres, 15,500 of which is leased for commercial farming (as distinct from cooperative farming to produce grain for waterfowl); with 13,000 acres in two sumps filled with polluted agricultural return flow.
- The biological resources of TLNWR have declined significantly since the passage of the Kuchel Act.
- The lost productivity at TLNWR has increased the importance of LKNWR for migratory and breeding waterfowl and overwintering bald eagles.
- Before its decline, TLNWR was considered the premier waterfowl refuge in North America.
- If TLNWR is managed to enhance wetland productivity the biological potential is enormous, however the leaseland farm program severely restricts management options to increase TLNWR wetlands and wetland productivity.
- Despite the loss of its productivity, TLNWR remains one of the most important waterfowl migration staging areas in the Klamath Basin and regularly receives most of the Artic goose use within the Klamath Basin in the fall and supports large populations of fish eating birds in the spring and summer months.
- TLNWR produces an average of 4,665 waterfowl per year and supports 50,000 to 100,000 molting waterfowl in the late summer.

Ten Reasons Why Leasing 22,000 Acres of Klamath Basin National Wildlife Refuge Land for Commercial Farming Should be Terminated.

1. Commercial farming on refuge land uses scarce water resources at the expense of refuge wetlands, and the fish and wildlife of Upper Klamath Lake and the Klamath River. Commercial farms on refuge land receive water even when adjacent refuge wetlands are forced to go dry.
2. Commercial farming uses critical refuge lands that should be used for wetland and wildlife management. Eighty percent of the basin's wetlands have been drained for commercial agriculture. Keeping historic wetlands on our refuges drained to lease for commercial farming is incompatible with the purposes of our National Wildlife Refuges and a violation of public trust.
3. Commercial farming uses refuge land that could be used to store water naturally for refuge purposes. The refuges need an independent secure source of water. Up to 100,000 acre-feet of water could potentially be stored naturally on refuge land currently leased for commercial agriculture.
4. Phasing out commercial farming on the refuges is the logical place to begin reducing the irrigation season water demand of the Klamath Project (a necessary step to solve the basin's water crisis). Eliminating lease-land farming on the refuges could save up to 50,000 acre-feet (16 billion gallons) of water during the irrigation season thereby reducing Klamath Reclamation Project irrigation water use by approximately 10%. This reduction could be achieved on land already owned by the federal government and would reduce the need to purchase private lands in order to reduce demand.
5. Phasing out commercial farming on the refuges would save taxpayer dollars. The federal government currently is paying out more money per acre to Klamath Project farmers not to irrigate each year as part of a water bank than it receives from leasing refuge land to farmers to irrigate. The government could save money in meeting water bank requirements by simply not renewing leases for refuge lands for irrigated agriculture when the current leases expire.
6. Leasing out refuge lands for commercial farming unfairly competes with Klamath Reclamation Project landowners who lease their private lands for commercial farming.
7. Row crops such as onions and potatoes that are grown on refuge lands leased for commercial farming provide little or no benefit to wildlife. Even waste grain from left over grain harvests on refuge land provide only about one-tenth to one-half the food per acre as wetlands and are used by only a small number of species.
8. Heavy use of pesticides known to be harmful to wildlife are used on refuge lands leased for commercial agriculture including known carcinogens, neurotoxins, and endocrine disruptors. Some of these pesticides are so toxic EPA rules prohibit human entry into the treated fields for 24 to 72 hours after treatment.
9. Commercial farming activities (e.g. tilling, planting, mowing, cultivation, irrigation, harvesting, and pesticide/fertilizer applications) destroy nests and kill wildlife.
10. Managing the commercial farming activities on the refuges uses up time of refuge personnel and funds that should be used to manage the refuges for wildlife purposes.