

October 13, 2016

The Honorable Sally Jewell  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20420  
Email: Secretary\_Jewell@ios.doi.gov

**Re: Water for the Klamath Basin National Wildlife Refuges**

Dear Secretary Jewell,

We are writing to request that your office direct the U.S. Bureau of Reclamation (BOR) to immediately provide full water deliveries to otherwise dry marshes on Tule Lake and Lower Klamath National Wildlife Refuges (NWRs). Specifically, a total of 45,000 acre feet of water is needed to sufficiently meet Lower Klamath NWR's fall migration of hundreds of bald eagles, and hundreds of thousands of geese, swans, and other waterfowl. We also request that you work with U.S. Fish and Wildlife Service to ensure that these refuges' water rights are best utilized to support refuge purposes.

This fall, the wetlands of Tule Lake and Lower Klamath NWRs in the Upper Klamath Basin of southern Oregon and northern California are once again being denied the water needed to provide necessary habitat for the upwards of one million migratory birds dependent upon these public lands. In 2016, Lower Klamath National Wildlife Refuge wetlands received just under 7,900 acre-feet in water deliveries from January 1st through July 31st, and are slated to receive only 13,000 acre-feet of water between August and the peak of fall waterfowl migration in late October.<sup>1</sup> This volume of water delivery represents a fraction of the refuge's recognized water rights, and will leave most refuge wetlands parched and dry throughout the fall waterfowl migration period. This action will place these refuges at risk of yet another catastrophic avian disease outbreak due to lack of water.

As you are aware, since 2012, tens of thousands of birds on these refuges have died for lack of water resulting from allocation decisions made within the Department of the Interior. When few wetland acres are available on these refuges due to lack of water, large numbers of waterfowl pack together during migration periods, leading to lethal disease outbreaks. Refuge staff estimated that some 20,000 birds perished this way in 2014. Similar conditions on these refuges sparked massive waterfowl die-offs in 2012 and 2013.

This ongoing degradation and exclusion of these NWRs' designated purposes is happening while commercial agricultural operations, permitted to operate on these NWRs with little or no benefit to wildlife, continue to receive full water deliveries under the refuges' most senior water rights held by the U.S. Fish and Wildlife Service. Allocating these refuges' scarce water supplies to commercial agribusiness purposes

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<sup>1</sup> *Klamath Falls Herald & News*, "BOR: 'A fairly good' water year," September, 14, 2016: <http://bit.ly/2dfkpvC>

comes at the public's greater expense, and to the significant detriment to the region's wetland habitat, water quality, waterfowl, and other wildlife.

Conservation organizations have repeatedly urged your office to provide needed water for these refuges, with mixed results. For example, on March 27, 2012 a coalition of over two dozen national, regional, and local conservation groups asked your office to ensure that the refuges receive overdue water deliveries. While much needed and appreciated water deliveries were later provided, unfortunately these deliveries did not occur in time to head off the death of an estimated 20,000 ducks, geese, and swans that were confined to diminished wetland habitats where fowl cholera easily spread.<sup>2</sup>

### **Hope for a Comprehensive Solution for a Threatened National Treasure**

In addition to providing much-needed emergency water supplies, we also hope the forthcoming Comprehensive Conservation Plan for these refuges will ensure the Klamath Basin NWRs' senior water rights and federal refuge law will be honored, ensuring that the Department of the Interior does not continue with management decisions that damage critical wetlands and harm the wildlife of these national treasures.

Today, approximately 80% of the Klamath Basin region's historic wetlands are commercially farmed on both private and public lands. Tule Lake and Lower Klamath NWRs were created to mitigate the past century's enormous wetland losses, and to restore waterfowl abundance in the western U.S. Wetland habitats of the Lower Klamath and Tule Lake NWRs are critically important to migratory birds throughout the Pacific Flyway. During the peak of the spring and fall migrations, Lower Klamath NWR alone has supported 40% of all the waterfowl in the Pacific Flyway. The Klamath Basin NWRs host the largest concentration of wintering bald eagles in the lower 48 states. In the mid-1950's Klamath Basin NWR managers once described this abundance as "the greatest concentration of waterfowl in North America and probably the world." This natural resource abundance needs to be restored and protected for future generations.

Yet, despite the vital importance of these refuge wetlands, over 22,000 acres of publicly-owned refuge lands are leased to commercial agriculture interests. This shameful practice displaces wildlife habitat and consumes valuable water using the refuges' own senior water rights. Phasing out the federally-managed practice of leasing land on Klamath Basin NWRs for commercial agriculture would not only help restore and protect these national treasures, it would be a key step towards a comprehensive solution for the Klamath Basin's longstanding water woes.

Commercial agriculture for non-wildlife purposes on the Klamath Basin refuges has caused a host of problems and controversies:

- Commercial agriculture on the refuges displaces the wetland habitats for fish, wildlife, and plants which the refuges were created to conserve. Roughly one third of the total land area within Tule Lake and Lower Klamath NWRs is

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<sup>2</sup> *San Francisco Chronicle*, "Migrating waterfowl die from lack of water," April 21, 2012: <http://bit.ly/2dQ7eYi>

farmed. Indeed, less than half of the Tule Lake NWR's potential waterfowl habitat is actually available for waterfowl. Setting aside sagebrush and lava rock outcroppings, 51% of Tule Lake National Wildlife Refuge is devoted primarily to commercial agribusiness, not wildlife.

- Commercial agriculture on refuge lands uses roughly 60,000 acre-feet of scarce water supplies each year, blocks over 100,000 acre-feet of potential wetland water storage, and intensifies groundwater depletion problems in and around the refuges.
- Commercial agriculture on the refuges consumes scarce water that otherwise could be provided to parched refuge wetlands. As in previous years, a large portion of the refuge marshes were left dry this year, even as irrigated commercial leaselands on the refuges received full water deliveries. Adding insult to injury, this program uses senior water rights that belong to the NWRs – rights that should be used to provide for wetlands and wildlife, not commercial agribusiness.
- Commercial agriculture on the refuges contributes to the impairment of already severely degraded water quality on the refuges, and requires the application of dozens of toxic pesticides. Water quality in Tule Lake is currently so poor, blankets of algae cover extensive areas of open water on the refuge in summer.
- Commercial agriculture on the refuges results in erosion and sedimentation of refuge wetlands, and destruction of habitat in Tule Lake for critically endangered suckers.

### **A Legal Basis for Positive Change**

The BOR's paper<sup>3</sup> on Klamath Project "Historic Operations" explains:

"Reclamation has an obligation to ensure that the refuges receive adequate water to fulfill their federal reserved water rights (i.e., the amount of water necessary to fulfill the primary purposes of the refuges) when in priority and when water is available. In addition, Reclamation can continue to provide available Project water for beneficial reuse by the refuges to the extent of past and current usage and consistent with Project purposes (DOI, 1995). The refuges have federally reserved water rights for the water necessary to satisfy the refuges' primary purposes. In addition, the Lower Klamath and Tule Lake refuges have water rights based on a portion of the Klamath Project water right." These rights have been quantified and recognized in the State of Oregon's Klamath Basin adjudication order, Findings of Fact and Final Order of Determination on March 7, 2013.

While the 1964 Kuchel Act provided for agriculture on the refuges, it is only allowed to the extent that it is consistent with wildlife conservation. The intention of the law was never to provide water to leased agricultural lands if this meant denying water for wetlands and wildlife. Specifically, this law states: "Such lands [the refuges] shall be

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<sup>3</sup> See <http://digital.lib.oit.edu/cdm/ref/collection/kwl/id/1858>

administered by the Secretary of the Interior for the major purpose of waterfowl management, but with consideration to optimum agricultural use that is consistent therewith."

The 1964 Act also states in a further provision that "The Secretary shall, consistent with proper waterfowl management, continue the present pattern of lease the [refuge]." Conservationists strongly believe that a refuge agricultural leaseland program that consumes tens of thousands of acre feet of water, at the expense of the refuge's remaining wetlands that are allowed to go dry, is inconsistent with the Act and does nothing to assure "proper waterfowl management."

Additionally, and most recently, Section 5 of the 1997 National Wildlife Refuge System Improvement Act establishes affirmative stewardship obligations of the Secretary of the Interior with respect to the Refuge System including the following:

"In administering the National Wildlife Refuge System, the Secretary shall ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans."

"In administering the National Wildlife Refuge System, the Secretary shall assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge."

"In administering the National Wildlife Refuge System, the Secretary shall ensure that priority public uses [hunting, fishing, wildlife observation and photography, or environmental education and interpretation] of the System receive enhanced consideration over other general public uses in planning and management within the System."

50 C.F. R. 29.1 of the US Fish and Wildlife Service's regulations also requires that any economic use of a refuge, such as commercial agriculture production, must not only do no harm to refuges, but they must also contribute to achieving the purposes of the refuge or the mission of the National Wildlife Refuge System.

Incredibly, the U.S. Fish and Wildlife Service has previously and inappropriately concluded that its commercial agricultural practices are compatible with refuge purposes. With the ongoing severe lack of water for wildlife purposes, no credible case can be made that water intensive commercial agribusiness is consistent with the refuges' principal purposes.

### **Honoring the Law and Protecting National Treasures**

U.S. Fish and Wildlife Service regulations also require a prompt termination of existing refuge uses that are found to be incompatible with the purposes of that refuge. We request that the Interior Department make the long overdue finding that utilizing the Tule Lake and Lower Klamath NWRs' senior water rights to promote private commercial agribusiness on refuge lands is not compatible with the purposes of these refuges. The agency should immediately prioritize all water delivery to wildlife purposes.

The U.S. Fish and Wildlife Service should also make the long-overdue determination that commercial farming on the refuges is not compatible with refuge purposes. No credible argument can be made that this program is compatible when refuge wetlands sit dry while adjacent agribusiness leaselands are fully irrigated, using the refuge's own senior water rights. The U.S. Fish and Wildlife Service should immediately take the appropriate steps required to use the NWRs' 1905 priority dated water rights for refuge purposes, including for the betterment of waterfowl, other wildlife, and fish.

These two steps are decades overdue, and would set Tule Lake and Lower Klamath National Wildlife Refuges, and the entire Klamath Basin, on a healthier, more sustainable path. In the near term, we request that your office direct the U.S. Bureau of Reclamation to act immediately to ensure that sufficient water is provided this fall to Lower Klamath NWR to flood and sustain its essential seasonal and permanent marshes, and to maintain Tule Lake levels consistent with the current Biological Opinion to sustain Tule Lake NWR's two species of endangered fish.

Sincerely,

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WaterWatch of Oregon

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Conservation Director  
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