**Testimony of**

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**Before the Committee on Energy and Natural Resources**
**United States Senate**

# Hearing on Water Resource Issues in the Klamath River Basin

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**Chairman Wyden, Ranking Member Murkowski and Members of the Committee:**

Thank you for the opportunity to be here today, and thank you for your leadership in holding this hearing on an issue that is so important to so many people. My name is Greg Addington and I am the Executive Director for the Klamath Water Users Association (KWUA). With me today is Mr. Luther Horsley. Mr. Horsley is a third-generation Klamath Project farmer and a member of the KWUA Board of Directors. He served as President of KWUA during the difficult negotiations and ultimate signing of the two agreements that you will hear about today.

KWUA is a non-profit organization whose members are primarily irrigation districts and similar entities holding contracts with the federal Bureau of Reclamation for the diversion, delivery and use of water from the Klamath Reclamation Project (Klamath Project). Thus, my testimony focuses primarily on the circumstances and interests associated with the Klamath Project. KWUA members operate on more than 170,000 acres sustaining approximately 1,200 farms and ranches that depend on the Upper Klamath Lake/ Klamath River system for their water supply.

## Introduction

KWUA is a party to the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA). Additionally, KWUA member districts have been actively engaged in the ongoing Klamath River Basin Adjudication process and work daily with federal agencies, tribes and other stakeholders in determining water supply availability, consistent with the Biological Opinions that ensure that the operation of the Klamath Project is in compliance with the federal Endangered Species Act (ESA).

The Klamath River watershed covers nearly 16,000 square miles and it often seems like there are about 16,000 interests with their own individual opinions about how to solve the difficult problems of the Klamath Basin. Every person at this table today agrees that the Klamath Basin is in trouble and I believe that everyone here wants to fix that. This year's desperate water situation is just the latest installment of a continuing, slow-motion disaster that is grinding away at our communities and ways of life. All of us are encouraged by Committee's willingness to examine the complex water resources problems of the Klamath Basin, where federal actions and responsibilities influence almost everything we do. Congress needs to be part of the solution.

And we need a solution urgently. As we meet here today for this hearing, farmers and ranchers on thousands of acres in the federal Klamath Project face the possibility having their water cut off mid-season, drying up crops before they can be harvested. Ranchers and farmers outside the Project may have no water at all to sustain their operations, causing tensions with irrigators within the Project and with tribal communities who themselves are struggling to protect fishery resources that have sustained them for generations. Federal wildlife refuges are enduring another too-dry year. Added to all of this are unprecedented increases in energy costs. In sum, 2013 looks like a very bleak year for the Klamath Basin. Another year of crisis. Another year of severe stress for our economy, communities, natural resources and people.

We believe that the KBRA and the KHSA (Klamath Settlement Agreements or 'Agreements') together offer the best, most durable approach to end this cycle of crisis and decline. They form a

comprehensive solution that is intended to meet the needs of all the communities in the Basin. They constitute the only proposal derived from consensus and the only plan that doesn't seek to advantage one community or point of view at the expense of others. We ask the Committee to fully examine the Klamath Settlement Agreements and to advance legislation that capitalizes on the efforts that so many diverse interests have put into finding a meaningful resolution to one of the West's most intractable water conflicts.

Mr. Chairman, you know better than most the contentious nature of these issues. You have witnessed it firsthand. For many years we "argued the science" with the agencies and other stakeholders. We tried to have our public relations efforts outdo theirs. We talked to commercial fishermen, tribes and conservation groups only from opposite sides of a courtroom, and we often dueled from different sides of the political aisle through our elected Representatives at Congressional field hearings and in Washington. Nothing got better. You and other Members offered constructive ideas, but told us that for any solution to work it had to come from the Basin, and that meant doing things differently. It meant working with each other, instead of against each other. And that's what we did. Some interests came and went from the table, others decided to draw a line in the sand and not negotiate, but most of us hung in there and did the hard work of finding common ground and a common purpose. The result was the Klamath Settlement Agreements.

The remainder of my testimony will outline the recent and contentious history of water resources issues in the Klamath Basin and then discuss how Klamath Project water users and our former adversaries arrived at the Klamath Settlement Agreements; what water users gave and gained to make the Agreements work for us; and identify the elements that should be part of any viable solution advanced by Congress. I will also outline my view of what continuing the status quo will mean for irrigated agriculture in the Basin. But mostly I want to emphasize to you how these Agreements, despite what you will hear from interests on the extremes, offer a positive and productive path forward that will allow us to begin to repair our fractured community.

Admittedly, my emphasis is on the Klamath Project and we believe that the Klamath Settlement Agreements are, for Klamath Project interests, superior to other alternatives and their attendant uncertainty, risks, costs and conflict. Others will speak to the Agreements from their own perspectives. Clearly, the Agreements do not solve every problem or address every possible concern. No plan can fix everything or make everyone happy. The Parties to the Agreements have always been, and continue to be, absolutely willing to consider constructive ideas that would expand the benefits of the Agreements and broaden the consensus behind them. We offer the Committee our assistance in crafting viable legislation to implement a consensus-based solution for the Basin. And we respectfully request that you act soon. The future of our communities is at stake and multiple crises are already upon us.

## Background and Status Quo

Klamath Project Development

Irrigation development in the area now constituting the Klamath Project began in the last part of the 19th century. Individuals initiated appropriations of water under state laws and began the

development of irrigation systems as more settlers moved into the region. In 1902, Congress enacted the Reclamation Act to encourage and facilitate irrigation systems that would expand food production for a growing nation and provide water and electric power to promote settlement and development of the West. The Klamath Project was authorized in 1905, as one of the earliest projects under the Reclamation Act. Project lands lie in Klamath County, Oregon, and in Modoc and Siskiyou Counties, California. Individuals and later irrigation districts entered into contracts with the Bureau of Reclamation (Reclamation) for the delivery of water in exchange for repayment of project construction costs (Klamath Project costs have been repaid) and payment of costs associated with operation and maintenance of federal facilities. In the Klamath Project, the responsibility for operation and maintenance of federally-constructed diversion and delivery facilities has been permanently transferred to irrigation districts. Also, districts and individuals constructed and own substantial components of the works that divert and deliver Project water.

The agricultural production of Klamath Project lands is a pillar of the local economy and the reason for the existence of several towns and small communities. Farms and ranches served through the Project produce grains, hay, potatoes, onions, mint, horseradish, livestock, dairy, and numerous other crops. Overall agriculture in Klamath County and the Klamath Project (Oregon and California lands) represents a nearly $600 million dollar impact to the local and regional economy.

Operational Changes

For decades, irrigation water supplies available to the federal Klamath Project proved sufficient to meet the needs of our area's burgeoning farming and ranching communities. But starting in the 1990's, regulatory and policy demands began to negatively affect water availability in the Klamath Project. In 1988, the shortnose sucker and the Lost River sucker, two species found in Upper Klamath Lake, were designated as endangered under the Endangered Species Act (ESA). Biological opinions (BiOps) issued by the U.S. Fish and Wildlife Service (USFWS) in the early 1990s concerning operation of the Klamath Project identified Reasonable and Prudent Alternatives (RPAs) to avoid jeopardy to suckers. The BiOps included minimum reservoir elevations aimed at protecting the listed sucker species. These operating elevations were ultimately adopted by Reclamation. At that time, the reservoir elevations pertaining to Upper Klamath Lake generally allowed the Project to operate for its intended purposes in all but very dry years.

By the mid 1990s, there were demands for Reclamation to reprioritize and reallocate water from irrigation to environmental uses. In particular, Reclamation was asked to take steps to increase both Klamath River flows (as measured at Iron Gate Dam in California) and Upper Klamath Lake reservoir elevations above and beyond previously adopted ESA lake levels. The result was that new flow requirements and lake elevations were set and meeting these criteria became the first priority of Klamath Project operations. Water for irrigation and the federal wildlife refuges associated with the Klamath Project was made available only if and when the flow and lake level requirements were met. For a number of years, there were annual debates about who would get what, an exercise that one of our settlement partners has aptly characterized as "March Madness." Klamath Project irrigators were never sure whether, when or how much water they would receive each year or from year to year.

The 2001 Water Crisis and Subsequent Years

On April 6, 2001, Reclamation announced another change in the historic operation of the Project. On that day, the USFWS and the National Marine Fisheries Service (NMFS) each issued new BiOps (for the two species of suckers and the 1997-listed Klamath River coho salmon, respectively) for Klamath Project operations. Achieving the Klamath River flows and the Upper Klamath Lake elevations specified in these BiOps would result in no 2001 water deliveries from the Klamath system to the 170,000 acres in the Klamath Project service area. Reclamation immediately adopted the BiOp standards for 2001 Project operations, triggering a disaster. The hardship, conflict and controversy associated with the 2001 water curtailment were heavily publicized and are well known. Our communities remember the pain as if it were yesterday.

Since the ESA listing of these aquatic species as endangered or threatened in the Klamath Basin, water shortages or curtailments to irrigation water users in the Klamath Project have occurred in 1992, 1994, 2001 (complete shut off), 2009, 2010, 2012 and 2013. The national wildlife refuges that receive water through Klamath Project facilities have also experienced shortage in these years and others. The trend is not a good one.

In the meantime, as you know, there have been problems for Basin fisheries, including a large die-off of salmon near the mouth of the Klamath River in late summer of 2002. While there are different points of view on the cause or causes of the die-off, there is no disagreement that various fisheries have generally declined, and population numbers of some species are very low.

A new ESA BiOp and related operations plan for the Klamath Project have just been released. Although the new BiOp provides a more common-sense, real-time approach to system management than earlier BiOps, the Project cannot, in a year like this, divert sufficient amounts of water to meet the needs of our irrigators. This is to some degree a function of transition from previous, disconnected BiOps to the new BiOp, but it is also indicative of the difficulties and uncertainties we face on an ongoing basis. Farmers have to make planting and business decisions in the spring, and as a result, 2013 crops are in the ground and investments have been made in seed, fuel, fertilizer, labor and other inputs.

If the KBRA were fully implemented today, things would still be tough but we would not be facing the strong possibility of a disastrous cut-off of water supplies in mid-season. As it stands now, we're doing what we can to offset and reduce our water demand to stretch supplies through the whole season, hoping to avoid another catastrophe, but the fact is that there may not be enough water or adequate tools to manage the shortage… again.

Further, irrigators in the watersheds tributaries to Upper Klamath Lake are also experiencing hardship this year, as a result of the bad water conditions and the effect on their water availability of senior water rights as determined in March by the Oregon Water Resources Department (the agency responsible for regulating water). There is tension within and among irrigation communities, a regrettable circumstance that no one enjoys.

In the past, KWUA has testified before Congress about deficiencies and inequities associated with the ESA and other matters, and we have supported legislative efforts to address these issues. Our support for the KBRA grows from these experiences. KWUA also was the principal advocate for review by the National Academy of Sciences, National Research Council (NRC), of the scientific basis for regulatory actions taken in the Klamath Basin under the ESA. The NRC

called for a watershed-wide approach to management of the Klamath system, a concept widely supported in the local community. This approach is the foundation for the KBRA.

## How We Got to Settlement

When Reclamation evaluated the proposed Klamath Project in the early 1900s, it had planned to install hydroelectric facilities to generate inexpensive power to benefit the Project and to distribute to nearby farms and communities. Other Reclamation projects built throughout the West incorporated power generation as part of the development. However, instead of building its own hydro plants at the Klamath Project, Reclamation entered in to a hydroelectric supply contract with PacifiCorp's predecessor, the California Oregon Power Company (COPCO), in 1917. The company had built one dam on the river (COPCO I) and wanted to build more. In exchange for various benefits, the company agreed to provide at-cost power to Reclamation's Klamath Project. The original contract with COPCO was renegotiated in 1956, and extended to cover a 50-year period ending in 2006. In that contract, COPCO actually lowered the rate that Reclamation and irrigators had paid for power between 1917 and 1956. The 1956 contract with COPCO was, in our view, clearly a condition of the company's Federal Energy Regulatory Commission (FERC) license to operate in the Klamath River.

By 2004-2005, PacifiCorp had begun the process for renewal of its FERC license, which was to expire in 2006. It also took steps to bring Klamath Project (and off-project) power rates up to what the company deemed to be "market levels," which are many times higher than the agricultural rates negotiated in 1956. In fact, by and large, the Klamath Basin *is* the agricultural market for the company in the region. At the same time, increasingly restricted federal water deliveries have forced Klamath farmers into more energy-intensive on-farm operations in order to mitigate the loss of water supply by increasing the efficiency of how they use, reuse and recycle water.

The KWUA was an intervener in the FERC license proceeding because of our interest in power rates and as the ultimate beneficiaries of the 1956 power contract. Other parties, most of who ended up as signatories to the Settlement Agreements, also were interveners in that process for other reasons. PacifiCorp facilitated confidential settlement discussions as it pertained to their license renewal. This led to the discussions that eventually produced the KBRA and KHSA.

During the FERC process, relationships developed among competing interests and discussions began to focus more on the overall watershed and the communities within it. We realized that this could well be our only realistic opportunity to address issues that had divided us. Slowly but surely common ground was formed among many previously adversarial parties, particularly among the signatory tribal parties and Klamath Project irrigators. Fishermen, conservation groups, federal and state agencies were also critical in this process. What finally brought these competing interests together, and what has kept them together, is the recognition that the Basin's various rural communities share many similarities, not the least of which is their ties to the Klamath River.

For KWUA, the priority was to find a practical approach to solving both the water supply and power cost issues. Other parties had objectives that challenged KWUA's perspective, including for example their desire that four Klamath River dams be removed. But at the end of the day, all

parties took an "interest-based" approach, and found ways to meet the other parties' real needs as they defined them. This was a key to success for all concerned, and we appreciated the respect for our interests shown by the other parties and are committed to supporting others' interests as well.

Ultimately, trust was built amongst parties that had never trusted each other. KWUA knew that it wasn't enough to just work out a settlement with Upper Basin interests and tribes. We knew that it also was important to have the Lower Klamath River tribes that catch Klamath River fish and coastal fishermen be part of any agreement. The contributions of the members of the conservation community who chose to be part of a productive process, while at times quite challenging for our interests, also were significant to making things work.

## Key Elements for the Klamath Project Irrigation Community

As I discussed above, a key for KWUA and others in these Agreements was to maintain an interest-based approach to negotiation. At the same time, KWUA made it clear to other parties that its important interests included water supply certainty, regulatory assurances related to introduction or re-introduction of aquatic species in the Upper Klamath Basin, maintenance of the agricultural base and economy in the Klamath Project, and low-cost power consistent with the development of the Klamath Project. The Klamath Settlement Agreements address these interests in the manner discussed below.

Water Supply Certainty and Planning

Other parties respected these interests, including recognizing that any deal would have to provide a significant degree of water supply predictability and certainty. The ability to know what our water supply will be, even if it is less than what might be needed, is critically important to effective and efficient water management. Farmers, ranchers and irrigation districts can be creative and manage water if they know what they have to work with. What is untenable is not knowing how much water is needed, how much we will get, when we can start using it, and if or when it will be shut off.

The three main sources of uncertainty of irrigation water supply are hydrologic variability, known and unknown senior rights, and regulatory requirements of laws such as the ESA. The KBRA - in interrelated ways - addresses the uncertainty associated with each of these variables in order to achieve reliability of irrigation supply. (More details on these elements can be found in the chart on the last page of this statement, and in Appendix A, *Klamath Agreement Benefits-Commitments and Risk of Doing Nothing Table.*)

Klamath Project Diversions

The KBRA creates a structure under which the irrigators on the Klamath Project will know, on March 1, the quantity of water that will be available for irrigation in that year. The quantity, agreed to by all the parties, will vary from year to year, based on the forecast of inflow to the lake. In average to wet years, the Klamath Project can divert up to 445,000 acre feet from Klamath Lake and the Klamath River during the irrigation season for irrigation and wildlife refuge supplies. The quantity declines with less favorable hydrologic conditions, and during dry

years, diversions are limited to 378,000 – 388,000 acre feet during the irrigation season. This approach is a significant change from paradigms advocated by others under which water management is driven by calendar-based minimum in-stream requirements for Upper Klamath Lake and the Klamath River, a paradigm that has not benefitted fisheries or refuges and that threatens irrigation shortage, and sometimes even threatening mid-season curtailments after crops have been planted.

The agreed-upon limitations on diversions permanently free up water that can be managed for fisheries purposes. But, and when coupled with refuge delivery commitments, the result will be that the availability of Klamath Project water will be insufficient to meet irrigation demand in a number of years, with the deficiency ranging up to about 100,000 acre-feet. The KBRA will address this shortage with the "On-Project Plan," a user-controlled program to enhance water supply management in order that irrigators in the Project can "live with" the diversion limitations.

On-Project Plan

The Klamath Water and Power Agency (KWAPA), a joint powers or intergovernmental agency composed of Project irrigation districts, is charged with developing and implementing the On-Project Plan, and thereafter will administer the Plan on an annual basis in response to the given year's hydrologic conditions. The KBRA provides that KWAPA is to consider, in the development of the Plan, conservation easements, forbearance agreements, conjunctive use programs, efficiency measures, groundwater substitution, and other measures. It also provides terms to limit the effects of groundwater use on springs considered important for fisheries. (See Appendix B, *Summary: On Project Plan*)

After the Plan has been developed and approved, KWAPA will implement it over a period of about ten years, subject to the adequacy of funding. The KBRA parties express that, "implementation may include, for example, completion of measures to enhance water management and efficiency, or entering a long-term or permanent agreement with a landowner which would afford KWAPA the right to direct the landowner to forebear from use of water from Upper Klamath Lake or the Klamath River in specified future circumstances." After the 10-year implementation phase, KWAPA will administer the Plan annually, employing the tools that have been developed in the implementation phase.

KBRA Tribal/Irrigator Water Rights Settlements

The KBRA is structured to settle water rights issues between the Klamath Project and three tribes in the Klamath Basin and the United States as trustee for tribes in the Basin. As described above, under the KBRA water users in the Project will limit the quantity of water diverted by the Project from Upper Klamath Lake and the Klamath River. In exchange for the reduced Project diversions, the Klamath Tribes, Yurok Tribe, and Karuk Tribe (collectively, Party Tribes), and the United States as the trustee for Klamath Basin tribes, agree not to assert tribal rights so as to interfere with the agreed-upon water supply for the Klamath Project. The KBRA's terms are implemented through documents filed with the State of Oregon as part of its Klamath Basin Adjudication, where claims of the Klamath Tribes and others parties are being litigated, and for which the Oregon Water Resources Department has just issued its "order of determination" reflecting its determination of the scope of these rights.

The KBRA would not result in granting any tribal water rights to any tribe or affect the ability of any opponent of tribal claims other than Project water users to contest any claims of the Party Tribes. The KBRA only deals with: whether and to what extent the Klamath Tribes can make a call against, or demand water from, the Klamath Project based on the Klamath Tribes' rights in Upper Klamath Lake and the Klamath River, whatever those rights may be; and whether the Yurok or Karuk Tribe, or the United States as trustee for Basin tribes, based on water rights or federal trust obligations, can demand that the Project use less water than what is agreed upon. In both cases, the answer is no. No one else is precluded from asserting any position about their own water rights or opposing any assertion by others.

There are, in the meantime, various interim protections for the Project. Until the water users have implemented their On-Project Plan described in the KBRA (anticipated to be roughly 2022), the Party Tribes would not be able to assert a demand based on tribal water rights against any water use in the Klamath Project. There are also various provisions that ensure that, if the agreement is not implemented, Klamath Project irrigators and the Party Tribes can simply return to their positions as they exist today and assert their arguments against one another. (See Appendix C, *Water Settlements between Basin Tribes and Klamath Project*)

Regulatory Assurances Concerning Water Supply and New Species

Although the KBRA does not amend or waive the ESA or other regulatory statutes, it deals with the risks to irrigators posed by those laws. The Agreement explains that a purpose of the Project water diversion limitations agreed to by the irrigators is to "ensure durable and effective compliance" with the ESA and other laws. The non-federal parties (who do not have obligations to enforce regulatory laws) have committed to support regulatory approvals based on the agreed-upon water quantities, including revised biological opinions. The regulatory approvals that the parties support under the ESA also include a long-term permit covering a period "substantially beyond the [50-year] term of the Agreement[.]" There are also interim assurances over the period between the present and the date on which critical programs are completed.

The KBRA does not guarantee that the ESA or other laws will not result in further water supply limitations. However, certainty for irrigators is greatly enhanced by the KBRA, consistent with the parties' expressed objective that further limitations on Klamath Project diversions would be a "last and temporary resort." The parties to the KBRA also commit to take every reasonable and legally-permissible step to avoid or minimize any adverse impact, in the form of new regulation or other legal or funding obligation that might occur to users of water or land upstream of Iron Gate Dam, associated with introduction or reintroduction of aquatic species to currently unoccupied habitats or areas. (See Appendix A)

<u>Power for Water Management</u>

Power has always been critical for movement of water in the Klamath Project where limited supplies are reused and moved around to maximize efficiency. Power rates for irrigators have skyrocketed since 2006 when PacifiCorp concluded that it could not renew the 50-year contracts that had provided low-cost power to the Klamath Project and to other water users in the Upper Klamath Basin. Instead, this mutually beneficial arrangement was replaced with a new structure that phased in much higher power rates over the last 4 -7 years.

The current cost of power for Klamath Project (and off-project) irrigators is, by our calculation, the highest in the Northwest[1] and significantly higher than rates paid by irrigators at comparable Reclamation project elsewhere in the West. For Tulelake Irrigation District, a KWUA member agency, power costs for the 67 pumps that it operates increased by more than 2,700% between 2006 and 2011[2], despite a significant reduction in power consumption during the same period because of efficiency investments. Shasta View Irrigation District, another KWUA member agency, also reduced its power consumption, but nevertheless saw electric power rates climb from less than $7.00 per acre in 2005, to nearly $70 per acre in 2012[2].

These rates, in a project that pumps water multiple times and at different levels (on farm, district, and Project-wide drainage), seriously disadvantage Klamath Project irrigators in the marketplace.

The critical importance of reducing and stabilizing power costs is recognized by the parties in the KBRA, which states (section 17.1) that affordable power is needed to allow efficient use and management of water for irrigation, and delivery to national wildlife refuges, to facilitate return of water to the Klamath River, implement KBRA conservation programs, and maintain sustainable agricultural communities. Reducing and stabilizing power rates in the Upper Klamath Basin is critically important to the long-term viability of irrigated agriculture both on and off the Klamath Project and to other objectives.

In other Reclamation projects, low-cost "reserved" or "project use" power is made available for certain loads, including the pumping and conveyance of irrigation water and drainage. The goal of the KBRA is bring Klamath Project power rates to a level "at or below the average cost for similarly situated Reclamation irrigation and drainage projects in the surrounding area." The KBRA would achieve this goal with the "Power for Water Management Program" consisting of three elements.

First, for the short-term, funding would be provided to stabilize total power costs as other components of the program are brought on line. Second, power generated at other Bureau of Reclamation facilities would address part of the program's objectives. Power can, for example, be marketed by the Bonneville Power Authority (BPA) to serve eligible loads in the upper Klamath Basin in Oregon, and by the Western Area Power Authority (WAPA) to Klamath Project districts in California. Under the KBRA and KHSA, Reclamation commits to acquire a contract consistent with applicable law and standards of service to serve eligible loads, and PacifiCorp agrees to cooperate in delivery of power to the loads. Third, the KBRA provides for federal funding for energy efficiency, conservation and renewable generation opportunities and investment. The activities to be pursued could include installation of additional efficiency improvements in water pumping and piping, solar photovoltaic development and net metering programs, investment in renewable generation on a broader scale, and other practices. (For more details, see Appendix F, *Power for Water Management Program*)

The KBRA also contemplates the potential development of joint projects with the Klamath Tribes and irrigators under the umbrella of the renewable energy element. As with other elements, the benefits and objectives of this piece are designed to serve both irrigation interests inside the Klamath Reclamation Project and the Off-Project area in the Upper Klamath Basin.

[1]See Appendix E, *Agriculture-Irrigation Power Rate Comparison*

[2]See Appendix D, *LTID-SVID Power Rate Increase Charts*

Other Issues

Refuges and Lease Lands in the Klamath Reclamation Project

The KBRA advances the partnership between the Tule Lake and Lower Klamath National Wildlife Refuges (Refuges) and the agricultural community. The Refuges would become a purpose of the Klamath Project and receive a reliable supply of water with first-time-ever delivery commitments provided for Lower Klamath National Wildlife Refuge. Local family farming operations will continue to farm on specified portions of the Refuges working with Refuge managers to meet the energy and habitat needs of waterfowl and wildlife. Both functionally and historically, these lands exemplify co-existence of agriculture and wildlife in the Klamath Reclamation Project. The lands are part of the traditional "reclamation" project authorized in 1905, and they are also within national wildlife refuges and within the boundaries of irrigation districts.

This productive farmland has been leased to growers for generations. Unlike other public land developed under the Reclamation Project, the lease lands were not homesteaded, and thus provide expansive open space as well as substantial benefit for wildlife. This unique arrangement is addressed in the KBRA. Under the agreement, the non-federal parties: (i) recognize the unique history and circumstances of the lease lands, (ii) recognize practices such as "walking wetlands" and others that enhance waterfowl management while maximizing "lease revenues" and optimizing agricultural use, (iii) seek to further the beneficial partnerships that have developed between growers and wildlife refuges. These Parties express their support for continued lease land farming managed as described in (ii). The KBRA provides support for legislation that would dedicate revenue received from the Refuge lease agreements to benefit the Refuge and the Refuge water delivery system. (See Appendix G - *Lease Lands within the Klamath Project*)

Dam Removal Not a Precedent for Other Areas

The KBRA and KHSA were designed specifically to address the unique set of circumstances that are specific to the Klamath system. As such, the agreement is not precedent-setting for other regions. Supporters and signatory parties to the agreement explicitly recognize and agree to this in section 8.1 of the KBRA, which states in part: "*…the Parties acknowledge that the hydroelectric settlement is based on facts and circumstances unique to the Klamath Basin, and they do not intend to establish precedent for other basins or hydroelectric generation generally.*" In fact, in the Klamath Project alone, Reclamation contractors (irrigation districts) depend on, and operate, up to eight diversions or other dams for water supply delivery. KWUA views the KBRA as a means of protecting these important structures into the future.

Local Support

Despite assertions made by some persons, local support for the KBRA *is strong*, particularly among those whose livelihoods are at stake. Support for settling long-standing water rights disputes and avoiding catastrophes such as the 2001 water shut-off is unwavering. Water managers and irrigation district board members, who are hired and elected by their peers and represent over 97% of Klamath Reclamation Project acres that are dependent upon the Klamath River system, support the agreements. The list of parties to the agreements includes 17 irrigation and water user entities. This does not include additional local support such as city governments, Chambers of Commerce, other business and economic development organizations, individual

family farms, processing facilities, farmer-owned cooperatives and other local merchants. Finally, support for the KBRA is also strong regionally and nationally as is evidenced by the diverse list of signatory and other supporting organizations.

## Essential Elements

I often hear people say the KBRA isn't perfect. I disagree. I think this agreement is as perfect as 42 diverse parties who have had severely divergent perspectives could make it. However, we understand that Congress must consider our proposed solution in light of many factors and limitations, and there is still work to be done to develop legislation to implement a viable consensus-based solution that is in the public interest. We and our partners in the Klamath Settlement Agreements are willing and eager to do that work with the Committee, the States, federal agencies and those opponents of the Agreements who genuinely seek compromise.

For issues related to the Klamath Project, KWUA believes that any Klamath Basin legislation will need to address the following elements, all of which are within the KBRA:

- Increased certainty and predictability for Klamath Project water supplies

- "Regulatory Assurances" so that reintroduced species do not impair agreed upon water diversions and that costs associated with reintroduction do not negatively impact irrigators

- Support and adequate funding to implement programs to reduce demand on the Klamath system, without permanent downsizing of Klamath Project agriculture or negative impacts on small rural communities

- Link River and Keno Dams will continue operation to support and facilitate water deliveries to agriculture

- Implementation of a program to develop renewable energy and acquire a modest block of federal power to serve Upper Klamath Basin irrigation loads at a net cost that is at or below rates in similarly situated Reclamation irrigation and drainage reclamation projects in the west

- Acknowledgement of and support for the unique relationship between wildlife and agriculture

## Conclusion

This hearing is for the purpose of considering water resource issues in the Klamath Basin, which is to say the matters that have been the source of continuing conflict and hardship for several years. 2013 will be one of the most challenging years, if not *the most challenging* year in the history of the Klamath Basin. The combined effects of dry conditions and the past inflexible water management of the system have again this year led to severely and unnecessarily restricted water supplies to irrigators on the Klamath Project. Because of the recent rulings in the Klamath

Basin water rights adjudication, farms outside the Klamath Project in Oregon will also feel the sting of water regulation as western water law is implemented in the Basin. As each year passes, lenders, commodity buyers, input dealers and other vendors become increasingly leery about doing business in the Klamath Basin as a result of the water uncertainty.

The 2013 drought and the potential for multiple crises is the very best argument for why change is needed – why a negotiated settlement with the preceding key elements is needed. Without a new rational plan, we can look forward to more of the same every few years -- lurching from one crisis to the next. The KBRA would transform the management of the Klamath system for the better. It will result in foreseeable and reliable amounts of surface water in years like this for all irrigators dependent upon Upper Klamath Lake, its tributaries and the Klamath River - because the system will be managed differently. It will, without question, provide significantly more water to the national wildlife refuges in the Klamath Project. It will avoid unnecessary demand on our groundwater system, and it will provide jobs, stability and economic benefit to this entire region.

The amount of bad information in circulation about the Klamath Settlement Agreements is staggering. Here are the facts: The KBRA does not infringe on any individual's "right" to water or "take" anything from anyone. The KBRA ends costly litigation between the Klamath Tribes and the Project irrigators and will avoid future legal battles. We chose negotiation over litigation, others did not. The KBRA does not change or alter any individual's right to due process. It is built on market-driven approaches and on unprecedented system-wide management that address other stressors to fish. No longer would there only be a narrow focus on how much water is diverted through the "A" canal of the Klamath Reclamation Project. The KBRA provides for improved management of the lake and river and provides protections under any necessary Biological Opinions based on this new watershed-wide approach to management. The KBRA does in fact provide meaningful protection from uncertainty associated with ESA regulations including through the development of Conservation Plans for all irrigators in the region, if they choose to participate. The KBRA also provides for economic mitigation to county governments and is the best possible outcome for the national wildlife refuges that we all value.

Water managers, full-time farmers and ranchers, local businesses and other professionals are committed to finding a better way to do business. It is these people and organizations that are the strongest proponents for the KBRA.

We hope others can begin to see the positive economic benefits that the Agreements can provide to the region. KWUA will not stop pushing for real change because we understand what it means to keep things the same. Time is of the essence and Congress must have a sense of urgency as it considers next steps. The people most affected by these resource issues support the consensus approach of the Agreements. Other interests must quickly and constructively engage on legislation to implement a consensus solution, or get out of the way. We look to the leadership of this Committee to start the process that is needed to authorize these Agreements before there is nothing left to save.

Thank you for the opportunity to provide this testimony.

# Klamath Settlement Agreements

| Water Users (Farmers and Ranchers) | | |
|---|---|---|
| **Obligations Given** | **Benefits Received** | **Risks Of Doing Nothing** |
| • Cap allowable Klamath Irrigation Project diversions, decreasing water diversions in drier years.<br><br>• Develop and implement a program to accommodate reduced water diversions.<br><br>• Support change in Klamath Reclamation Project purposes to include fish & wildlife.<br><br>• Assure firm water supply to National Wildlife Refuges.<br><br>• Support diversion of a portion of future net federal lease lands revenues to Refuge purposes.<br><br>• Support wildlife programs on public and private land.<br><br>• Settle challenges against tribal water rights claims. | • Increased certainty of water deliveries to Klamath Irrigation Project:<br><br>º enhanced ability to plan for each year's ag operations<br><br>º avoid need to litigate over water supply<br><br>º bankers better able to perform role in annual ag operations<br><br>º focus on farming instead of litigating<br><br>• "Regulatory assurances" so reintroduced species do not impair water deliveries.<br><br>• Support and funding accommodation of reduced, capped water deliveries.<br><br>• Link River and Keno Dams will continue operation to support and facilitate water deliveries to agriculture.<br><br>• Affordable power from renewables and federal power for agricultural water management.<br><br>• Clarify use of future revenues from leasing of Refuge lease lands. | • More people in the agricultural community will go out of business:<br><br>º lack of water means no income<br><br>º uncertainty of deliveries makes bankers unable to finance farming-related businesses<br><br>º attempts at planning annual or future operations are frustrated<br><br>º electric irrigation power rates climb<br><br>• Shrinkage of agricultural community means more difficulty finding support services—fertilizer, mechanics, distributors, etc.<br><br>• ESA problems may escalate.<br><br>• Farming electricity costs skyrocket.<br><br>• Demise of a way of life that has been important to the Upper Basin for generations.<br><br>• Community unrest compromises life, without redeeming benefits. |

## Appendices to the testimony of Greg Addington
## Klamath Water Users Association

Appendix A *Klamath Agreement Benefits-Commitments and Risk of Doing Nothing Table*

Appendix B *KWUA - Summary: On-Project Plan*

Appendix C *KWUA - Water Settlements between Basin Tribes and Klamath Project*

Appendix D *KWUA - TID, SWID Power Rate Increase Charts*

Appendix E *KWUA - Agriculture-Irrigation Power Rate Comparison*

Appendix F *KWUA - Summary: Power for Water Management Program*

Appendix G *KWUA - Lease Lands Within the Klamath Project*