



Phone (541) 883-6100 ~ Fax (541) 883-8893 ~ 2312 South Sixth Street, Suite A Klamath Falls, Oregon 97601

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Contact Information:

Paul Simmons, KWUA Executive Director and Counsel

(916) 769-6685

psimmons@somachlaw.com

**KLAMATH WATER USERS ASSOCIATION STATEMENT REGARDING
WITHDRAWAL OF UPDATED KLAMATH PROJECT LEGAL
GUIDANCE**

Today, Secretary of the Interior Deb Haaland issued a memorandum withdrawing updated legal guidance for the operation of the Klamath Project that was completed during previous Secretary David Bernhardt's tenure.

The now-revoked guidance had been prepared after irrigation water users requested that the Department of the Interior (Interior) re-examine twenty-five-year-old memoranda issued by Regional Solicitors of the Bureau of Reclamation. Secretary Bernhardt had cautioned, "be careful what you ask for," but the legal analysis was conducted, and the guidance was completed.

The updated guidance recognized that there has been a significant change in legal authority since the time of the mid-1990s memoranda, including a key decision from the United States Supreme Court, regarding the application of section 7 of the Endangered Species Act (ESA). That provision of the ESA has been the cause of major irrigation water curtailments in various years since 2001.

There was also a critical development in 2013-2014, with the Oregon Water Resources Department's adoption of its Amended and Corrected Findings of Fact and Order of Determination in the Klamath Basin water rights adjudication.

The key conclusions from the new guidance were: 1) based on contemporary law, section 7 of the ESA does not require or authorize the curtailment of the irrigation water deliveries for the Project; 2) consistent with the ACFFOD, the only legally authorized use of water stored in Upper Klamath Lake is irrigation; and 3) downstream tribes holding federally-protected fishing rights also have water rights to flows in the Klamath that are senior to the water rights for the Project; and 4) those downstream rights, which are unadjudicated and thus unquantified, do not include the right to have lawfully stored water released to augment Klamath River flows.

The legal analysis and new guidance led to a formal re-assessment of all ESA section 7 responsibilities related to the operation of the Klamath Project (not water diversion and delivery alone). The re-assessment was modeled on an approach taken by the U.S. Army Corps of Engineers based on 2013 guidance in that agency, which was upheld by the United States Court of Appeals for the Tenth Circuit in 2020.

Klamath Water Users Association (KWUA) is very disappointed with the withdrawal of the updated legal analysis. We accept that it has occurred, and we are committed to bringing about a judicial resolution of these same issues at the earliest possible time.

KWUA's other urgent priority is to provide all assistance that it can to the Klamath Project irrigation community this year: farmers and ranchers face severe water shortages. The shortage is not attributable to today's withdrawal of the updated legal guidance. However, there must be a resolution of those legal issues and, equally important, committed engagement from several major parties, including Interior, in order to bring stability to Klamath Basin communities.

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