

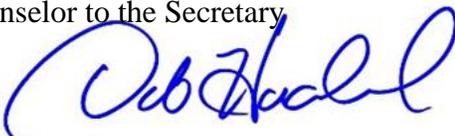


THE SECRETARY OF THE INTERIOR  
WASHINGTON

APR 08 2021

Memorandum

To: Deputy Solicitor – Indian Affairs<sup>1</sup>  
Principal Deputy Assistant Secretary – Water and Science  
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks  
Principal Deputy Assistant Secretary – Indian Affairs  
Senior Counselor to the Secretary

From: Secretary 

Subject: Withdrawal of Klamath Project-Related Memoranda, Letters, and Analyses

On January 20, 2021, President Biden signed Executive Order (EO) 13990, entitled “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” 86 Fed. Reg. 7037 (Jan. 25, 2021). EO 13990 affirms the new administration’s commitment to organize and deploy the full capacity of its agencies to combat the climate crisis, increasing resilience to the impacts of climate change; protecting public health; conserving our lands, waters, and biodiversity; and delivering environmental justice. Among other things, the EO directs agencies to “immediately review and, as appropriate and consistent with applicable law, take action to address” certain regulations or other agency actions that conflict with national objectives set forth in the EO. The Biden-Harris administration has also made clear its commitment to respect Tribal sovereignty and self-governance and to fulfill Federal trust and treaty responsibilities to Tribal Nations through regular, meaningful, and robust consultation.

The Klamath Basin in southern Oregon and northern California is facing one of the worst drought years in 4 decades. Water flowing from the Upper Klamath Lake and in the Klamath River is critically important to communities in this region, including farmers and ranchers, sport and commercial fishermen, and multiple Tribes in the Klamath Basin that depend on these waters, fisheries, and other natural resources for their livelihoods. Given the dire and unprecedented drought conditions that we are facing, we know that difficult decisions will need to be made in the coming days and weeks to address water shortages. Through this memorandum, I am directing each of you to work collaboratively, across our agency and across the Federal Government, and with our State, local, Tribal, and community partners to identify steps that can be taken to minimize the impacts of upcoming water allocation decisions and develop a long-term plan to facilitate conservation and economic growth in the Klamath Basin.

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<sup>1</sup> The Principal Deputy Solicitor is recused from this matter.

Consistent with these principles, I hereby withdraw the following memoranda, letters, and analyses related to the Bureau of Reclamation's Klamath Project issued during the previous administration:

- August 19, 2020, Memorandum to File re: "Reclamation Decision on Yurok Tribe's Request for Boat Dance Flows," to the extent it may have precedential effect on future operations.
- October 28, 2020, Memorandum from Carter L. Brown, Associate Solicitor – Division of Water Resources and Lance C. Wenger, Regional Solicitor – Pacific Southwest to Daniel H. Jorjani, Solicitor re: "An Updated Review of Legal Issues concerning the United States Bureau of Reclamation Operation of the Klamath Project" (Solicitor Jorjani signed and concurred on October 29, 2020).
- November 12, 2020, Letters from David Bernhardt to Paul Simmons, Klamath Water Users Association, and Nathan Rietmann, Rietmann Law PC, respectively, re: "Klamath Project Water Contracts and the Endangered Species Act."
- January 2021 Reassessment of U.S. Bureau of Reclamation Klamath Project Operations to Facilitate Compliance with Section 7(a)(2) of the Endangered Species Act.
- January 14, 2021, Memorandum from Solicitor to Secretary re: Analysis of Klamath Project contracts to determine discretionary authority in accordance with the November 12, 2020, Letter of the Secretary of the Interior.
- January 14, 2021, Memorandum from Solicitor to Secretary re: "Use of Water Previously Stored in Priority for Satisfaction of Downstream Rights."
- January 16, 2021, Letters from David Bernhardt to Paul Simmons, Klamath Water Users Association, and Nathan Rietmann, Rietmann Law PC, respectively, re: completion of analysis based on November 12, 2020, letter (enclosing January 14, 2021, memoranda and January 2021 reassessment).

These documents were issued without government-to-government consultation with affected Tribes and do not reflect the current administration's goals for long-term water recovery and economic restoration in this region. The documents also conflict with longstanding Departmental positions and interpretation of governing law and should not be relied upon for any purpose. My directive is made under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), 209 DM 3.2, and other applicable authorities.<sup>2</sup>

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<sup>2</sup> A 2018 Operations Plan and 2020 Interim Operations Plan (IOP) currently govern Klamath Project operations and serve as the basis for a negotiated stay of proceedings in *Yurok Tribe, et al. v. U.S. Bureau of Reclamation, et al.*, Civ. No. 3:19-cv-04405-WHO (N.D. Cal.). The IOP, the terms of which were agreed upon by the parties to the litigation (including the Klamath Water Users Association, representing Klamath Project irrigators), is intended to remain effective through September 2022. The majority of the memoranda being withdrawn here, in contrast, was intended to guide the ongoing Endangered Species Act consultation, which is not expected to reach completion until 2022. Reclamation has informed interested parties that it is evaluating operations under the IOP in 2021 in light of extreme drought conditions and has not otherwise altered operations or sought to change the 2018 Operations Plan and/or 2020 IOP based on the new analyses.