

Water Users Quarterly

Volume 1, Issue 3

April 2009 thru June 2009

KWUA Mission Statement

To preserve, protect and defend the water and power rights of the landowners of the Klamath Basin, while promoting wise management of ecosystem resources.

Contact Us!

Klamath Water Users Association
2455 Patterson Street, Suite 3
Klamath Falls, Oregon 97603
Phone (541)-883-6100
Fax (541)-883-8893
Visit us online at:
www.kwua.org

Staff:

Executive Director:
Greg Addington
Outreach / Program Coordinator:
Belinda Stewart

Inside this issue:

| | |
|---|---|
| <i>Senate Bill 76 Passes Through Oregon State</i> | 1 |
| <i>Klamath Adjudication Maintains Momentum with Retained Budget Dollars</i> | 2 |
| <i>Klamath River TMDL</i> | 3 |
| <i>KWAPA Update</i> | 3 |
| <i>Oregon Supreme Court Visits Klamath Falls to Hear Takings Case</i> | 4 |
| <i>KWUA Files as Interveners in PacifiCorp Rate Case</i> | 4 |
| <i>Tours and Meetings</i> | 5 |
| <i>A Note From the KWUA President</i> | 6 |

Senate Bill 76 Passes Through Oregon State Legislature

The Oregon House approved legislation on Friday June 12th to protect Oregon’s PacifiCorp ratepayers should PacifiCorp, the federal and state governments decide to move forward with decommissioning of the four lower Klamath River dams, as a part of a larger settlement effort. The passing of this bill is a step towards the Klamath Basin Restoration Agreement (KBRA) being brought to fruition, and for KWUA and it’s members, a step closer to sustaining agricultural production in the Basin.

The bill passed 34-24 and has now moved to the desk of Governor Ted Kulongoski, who has indicated support of the legislation and the larger settlement effort.

It is important to note that this bill does not mean dams will be removed, but that ratepayers will realize capped costs as the utility collects for potential removal. Oregon’s ratepayers can expect to see an additional \$1.50 per month for the next 10 years to build a

\$180 million fund. This bill protects ratepayers in that consumer costs cannot exceed the \$180 million cap. If PacifiCorp were to proceed with relicensing the \$180 million collected would be applied towards relicensing, although relicensing is estimated to be at least \$350 million.

The entire agreement is still subject to economic and environmental studies, and a final decision on dam removal from the Secretary of Interior by 2012. Senate Bill 76 also reserves the right of the Oregon Public Utility Commission to make a final determination on whether dam removal is in the best interest of Oregon ratepayers.

Negotiations on the final hydro agreement and greater KBRA are ongoing. A self-imposed deadline of June 30th has been extended in order to finalize more details of the agreement. A new deadline has been set for September 1st. **WUQ**

Klamath Adjudication Maintains Momentum with Retained Budget Dollars

With Oregon's budget crunch, KWUA learned that the State of Oregon had programs and staff on the chopping block for the current budget process. One of the items in the Oregon Water Resources Department's budget suggested for cuts was the Klamath Adjudication line item. This item was budgeted for \$600,000 for the 2-year biennium. It is of vital importance to Klamath County for the State to complete its water right adjudication both for landowners and for the progress of the KBRA. To cut this budget item too drastically could mean a stall in the adjudication, already ongoing for the last 34 years.

The following is a transcript of the testimony given by Belinda Stewart, KWUA's Outreach and Program Coordinator, at the public budget meeting held in Ashland on April 30th;

April 30, 2009

I appreciate that it must be difficult to serve as leaders of this committee and we recognize the significance of the decisions that you and your committee face. I am here today to bring to your attention the possible adverse impacts if the Oregon Water Resource Department budget is cut, especially with respect to the line item for the Klamath River Adjudication.

KWUA is a nonprofit corporation, formed in 1953. Its members are primarily irrigation districts and similar entities who deliver water to approximately 200,000 acres of

productive irrigated land and to more than 1200 family farms and ranches in the federal Klamath Reclamation Project. Most of this water is from the Klamath River system. KWUA members are both claimants and contestants of claims in the Klamath River Adjudication and have invested considerably in this very involved proceeding to date.

The funds in question are essential to bring to conclusion the administrative phase of the Klamath River Basin water rights adjudication, a process which is very near complete after many years of effort. This adjudication will allow for comprehensive administration of water rights in the Klamath Basin, which has been lacking to date. Deferral of the process would undoubtedly result in significantly greater state expenditures, and loss of efficiency, if and when the process resumed years in the future.

While it has required more than three decades reaching this point in the adjudication, significant progress has been made in the last several years.

Presently, the State does not regulate the use of water in the Klamath Basin. ORS 539.170 provides that while the Court process is pending, OWRD shall regulate the use of water in the Basin based on the Adjudicator's Order of Determination. In other words, after decades of conflict and uncertainty we are two years away from a means of fair and equitable administration of Klamath River water. Parities, including KWUA's members and the state of Oregon, have invested tens of millions of dollars into this process. It would be extremely unfortunate, and detrimental, to shelve the process at this advanced stage.

Inertia is powerful. There is now significant institutional knowledge in the employees of the Oregon Water Resources Department, the Department of Justice and in the office of Administrative Hearings, that would likely be lost if this process does not continue. The cost of restarting the process, bringing new employees up to speed, and setting and implementing schedules for the remaining claims and contests will be significant.

As you may know, there is a major effort in progress to bring about resolution of many contentious water issues in the Klamath Basin, in the form of the proposed Klamath Basin Restoration Agreement (KBRA). The adjudication process has been a driver for the Restoration Agreement, and stands to bring needed peace to the Klamath Basin, without which unproductive conflict is likely to continue. We believe putting the Adjudication on indefinite hold could have a detrimental impact on these efforts.

We urge the Legislature's Joint Ways and Means Committee to consider these issues as you deliberate on the final State budget. Thank you for the opportunity to voice these concerns for your consideration.

Ultimately 1/3rd of the OWRD budget, for the line item of the Klamath Adjudication, has been cut. The remaining \$400,000 should allow the adjudication process to stay on schedule, hopefully completed by 2011. **WUQ**

Klamath River TMDL

On June 10th the North Coast Regional Water Quality Control Board issued a notice of availability of the draft Klamath River Total Maximum Daily Load allocations (TMDL), which includes the science and modeling by which they created this TMDL. The draft is available online at <http://www.waterboards.ca.gov/northcoast/>

Currently KWUA is going through the TMDL and working on listing items to be included in our formal comments due by August 17th.

The implementation plan will be released on June 29th, and will likely be the part of the TMDL that we will need to give significant attention to on behalf of water users.

The following is a quote from the public notice, "The TMDL implementation plan will build upon ongoing water quality control efforts in the Klamath River Basin in California by recommending

additional measures where current efforts are not sufficient to meet TMDL requirements. The implementation plan will recommend the appropriate combination of Waste Discharge Requirements (WDR's), conditional waiver of WDR's, and/or prohibitions to make the TMDL implementation measures and discharger reporting requirements enforceable. The TMDL allocations and targets and the implementation plan are summarized in a TMDL Action Plan."

KWUA staff has been in contact with NCRWQCB to ask questions about the TMDL and how it will affect local landowners. Currently the NCRWQCB is working with landowners on the Scott and Shasta Rivers to implement TMDL's. They are planning to use the same model for implementation with the Klamath Basin. This includes working cooperatively with Resource

Conservation Districts (RCD's) and landowners to implement measures to better water quality. Concerns remain about attainability given natural conditions.

While the TMDL is being formed cooperatively by Oregon and California, there are still many questions to be answered about how implementation will be streamlined between the two regulatory authorities. NCRWQCB being the California regulatory authority, and ODEQ being the Oregon regulatory authority. At a presentation in the summer of 2008, about the Oregon TMDL, it was mentioned that irrigation districts may become Designated Management Authorities (DMA's) although we are yet to get a clear understanding of what that requires.

We learned more about this TMDL and its implementation at a public meeting, July 6th, and a subsequent meeting with ODEQ July 7th. KWUA intends to remain very involved in this issue. WUQ

KWAPA Update

Activities of the Klamath Water and Power Agency (KWAPA) continue to progress since its new Executive Director, Hollie Cannon, began in April. Over the last few months Hollie has been working to improve understanding of the Water User Mitigation Program (WUMP) and KWAPA's priorities for the future. There have been many meetings with the Bureau of Reclamation to understand the requirements of WUMP and how groundwater pumping will best function. Option contracts were signed for groundwater pumping for the summer of 2009, although it

appears likely options will not need to be exercised this season. This process has been valuable for KWAPA gaining an understanding of the process should there be need to call on groundwater pumping now or in the future.

Hollie has also made many contacts to learn about KWAPA's options for renewable energy development projects and other vehicles for lowering power costs for its members. Meetings with Oregon power consultant, David Stewart-Smith, private consultant Stuart Robertson and Modoc Forest Supervisor Lawrence Crabtree have

helped to realize a variety of projects KWAPA can engage in, and which of them may yield the most benefit for its members.

Over the last few months KWAPA has been in the process of adding a new member, Shasta View Irrigation District. Shasta View will join original members; Tulelake Irrigation District, Klamath Drainage District, and Klamath Irrigation District. For more information about how your district can join KWAPA, please contact Hollie Cannon at 850-2503. WUQ

Oregon Supreme Court Visits Klamath Falls to Hear the Takings Case

On May 14th attorneys representing local water users, the federal government and fishermen argued before the Oregon Supreme Court in a case that has been ongoing since 2001.

The Oregon Supreme Court was asked by the U.S. Court of Appeals to answer questions about whether Basin water users could sue the federal government for the taking of irrigation water without just compensation. This hearing was intended for the Oregon Supreme Court to gain insight to the argument of why irrigators felt they have a right to sue the federal government for a 'taking'.

The justices will deliberate on the arguments presented and make a decision to present to the U.S. Court of Appeals over the next six months or possibly longer.

The lawsuit remained in civil court proceedings for years before a judge ruled the water users didn't have standing to file the suit. That decision was appealed to the U.S. Court of Appeals, whose judge then deferred to the state court to answer a series of questions related to Oregon water law. Those are the questions that were addressed at this hearing. After the Oregon Supreme Court weighs in, the case will move back to the Court of Appeals for further argument and a decision. **WUQ**

KWUA Files as Interveners in PacifiCorp Rate Case

On April 2, 2009 Pacific Power filed an application with the Oregon Public Utility Commission (OPUC) for a general rate increase to recover costs primarily related to capital additions made to meet the Oregon state requirements for renewable portfolio standards. These proposed rate changes, which come on the tail of already increasing rates, would disproportionately increase the rates of Agricultural pumpers (schedule 41) as compared to other classes of ratepayers. For example, PacifiCorp proposes to raise the Schedule 41 (irrigation) rates by an additional 17.5%, while raising rates to other customers by 6%. This will add a significant additional burden to agricultural pumpers throughout PacifiCorp's Oregon service territory.

The Klamath Water Users Association (KWUA) represents what is arguably the single largest association of PacifiCorp's Oregon agricultural customers. Although the rates of many of KWUA's members are currently mitigated by

implementation of ORS 757.227, also known as Oregon's 'rate shock' legislation, those members are transitioning to the full tariff Schedule 41 rate and will ultimately be impacted significantly by this rate case. Although the other customer classes are well represented by established advocacy groups, we have found that there are no other interveners representing the specific interests of agricultural pumpers under Schedule 41. We feel irrigators must be represented in this proceeding. As such, KWUA has made the decision become a formal intervener in PacifiCorp's rate case in order to defend the sustainability of irrigated agriculture in the Klamath Basin.

The benefits of this intervention should be realized by all other PacifiCorp agricultural customers throughout the state. KWUA has engaged the law firm of Cable Huston Benedict Haagensen & Lloyd ("Cable Huston") to represent it in the OPUC rate case UE-210. We have also

engaged the services of an established rate expert, Gary Seleba of the firm EES, to analyze PacifiCorp's filings and the significant inconsistency among rate payer groups. Pending analysis of PacifiCorp's filings KWUA will have a better sense of how far to proceed as interveners.

For further information on the proposed PacifiCorp Oregon rate change, including the public notice of its filing for rate change, and a map of PacifiCorp's Oregon service area. Pacific Power documents filed with the Oregon Public Utility Commission can be viewed at: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=15444>.

By intervening we are essentially representing all Schedule 41 ratepayers, and hope to gain more partners in this effort to achieve a more equitable rate standard for the state's agricultural pumpers. **WUQ**

Tours and Meetings

Over the last three months KWUA has had many opportunities to take folks on tours and meet with elected officials to brief them on the KBRA and other issues

able to come back on Memorial Day with Senator Merkley so we could brief him first hand and show him a few highlights of the Project. As a result of these tours

Another valuable opportunity for outreach was a brief visit from Congressman Tom McClintock (R-CA) at the Newell Airport. Many area farmers and businessmen were available for the meeting and voiced their support of the KBRA and why the Congressman should learn more about the effort to solve watershed wide issues through the agreement. While more outreach may be needed with the Congressman, we feel some important contact with his chief of staff and field staff has been made, and hopefully will yield a better understanding of the KBRA and other Basin issues for the Congressman. **WUQ**

we feel some comfort knowing the Merkley camp has a good understanding of issues important to Project irrigators.

KWUA staff and Board members have also had opportunity to take regional leadership from National Marine Fisheries

Service (NMFS), USF&WS, and the Bureau of Reclamation, on a tour of the Project.

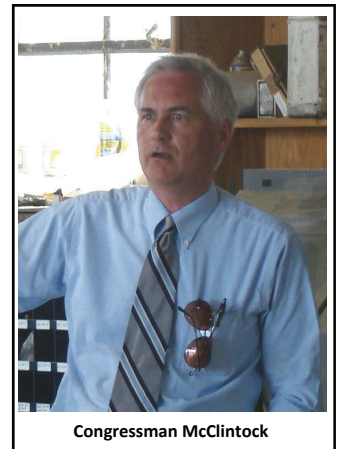
This spring Modoc County Supervisors and staff requested a tour of the Project. KWUA staff and Board members were able to provide them with information about the KBRA and how it effects Modoc County constituents.



L-R: Jessica Adams (Merkley Staffer), Senator Merkley, Luther Horsley, Bob Gasser, and Tim O'Connor

important to Klamath Project irrigators.

In April we had two Oregon staffers from U.S. Senator Jeff Merkley's (D-OR) office come to Klamath Falls to meet with KWUA and Klamath Tribes to learn about the KBRA. Following the briefing, a few of KWUA's Board members took them on a tour of the Project. We were pleased when they were



Congressman McClintock

KWUA Board Members

Our Board of Directors for 2009:

***Bold** = change from 2008 roster

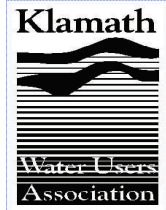
| Position | Member | Alternate |
|---|-----------------------|----------------------|
| Position 1 (TID) | Earl Danosky | Bill Heiney |
| Position 2 (KID/ Warren Act) | Dave Solem | Jason Chapman |
| Position 3 (KDD/ Klamath Hills/ Midland ID) | Luther Horsley | Tim O'Connor |
| Position 4 At Large | Gary Wright | Mike Byrne |
| Position 5 (Shasta View and Malin ID) | Rob Unruh | Luke Robinson |
| Position 6 (Enterprise/ Poe Valley/ Pine Grove ID) | Shane McDonald | L.D. Sorensen |
| Position 7 (Sunnyside/ Van Brimmer/ Westside ID) | Steve Kandra | Rob Crawford |
| Position 8 (Ady/ Pioneer/ Plevna/ Keno ID) | Bob Flowers | Jason Flowers |
| Position 9 (KBID) | Bill Kennedy | Ed Bair |
| Position 10 (Caledonia) | Mark Campbell | Karl Scronce |
| Position 11 At Large | Bob Gasser | Scott Seus |

**KLAMATH WATER USERS
ASSOCIATION**

2455 Patterson St. Suite. 3
Klamath Falls, OR 97601

Phone: (541) 883-6100
Fax: (541) 883-8893
E-mail: greg@kwua.org

42 cent
postage
required



*promoting wise management of
ecosystem resources.*

We're on the Web
www.kwua.org

A Note From the KWUA President

Negotiations for the KBRA have been ongoing over the last three years. In the last year most local irrigation districts have chosen to sign on in support of the agreement. In January 2008 when the first draft of the agreement was made public there was a lot of enthusiasm for the agreement and many good questions being asked. As the process of negotiating final details continues there has been more time and opportunity for the facts to become distorted and the initial enthusiasm for the agreement to die down.

In recent letters to the editor, and at public meetings there has been a lot of misinformation and fear spread about the agreement. This is

unfortunate, because it is fear and misinformation that could cause division with our friends and neighbors, and after all we've been through together, this is the last thing we need or want!

I want to encourage you, if you have a question about the KBRA, ask! Ask your neighbor, your district board, KWUA board and staff. Generate discussion and talk about the agreement. This is our future, and if we don't get involved and take an active role in combating the fear and misinformation that the opposition introduce, someone else will dictate our future to us.

The KBRA is being negotiated to sustain the way of life we love, and to see many generations of farmers and ranchers succeed and prosper

with more security than we have known in decades. We all have the common thread of our care and stewardship of the land we have to manage. It would be unfortunate to not dig in and learn about the agreement, ask the tough questions and find out for yourself the security we believe the KBRA will provide for our future, and be honest about the possible alternatives.

We have some great advocates in the fight to create feasible solutions to watershed wide problems, but at the end of the day this is our land, and our future. Speak up, ask questions, get involved!

-Luther Horsley

