

Klamath Settlement Issues – Tribal Trust

IN THE KLAMATH RESTORATION AGREEMENTS

PRESERVE AND PROTECT TRIBAL RIGHTS

It is the position of the Yurok, Karuk and Klamath Tribes that in order to meet Tribal Trust responsibilities of Tribes that actively fish the Klamath River, the United States is obligated to actively participate in these agreements which were collaboratively developed by a broad and diverse array of stakeholders and serve as the blueprint for the greatest basin wide river restoration effort ever attempted in United States history.

- Neither the KBRA nor the KHSA provides that any Indian tribe, whether it endorses the settlement agreements or not, will have its water rights “terminated” or otherwise adversely affected.¹
- As an exercise of their authority as sovereign Indian nations, and consistent with their senior water rights in the Basin, the Yurok, Karuk and Klamath Tribes agree that the Reclamation Project farmers may continue to divert water and maintain their agricultural operations; however, the diversions are substantially reduced, particularly in dry water years, and remain subject to applicable laws including the Clean Water Act and Endangered Species Act. In return for greater (though by no means absolute) certainty of water deliveries, the farmers agree to a substantial reduction in diversions and to support removal of the lower four Klamath River dams and restoration of fish habitat.
- The Trinity River Record of Decision (2001) is not affected by these agreements. The settlement parties deliberately included explicit language to preserve the integrity of the Trinity restoration program. Consistent with that position, funding for the Trinity River restoration remains entirely distinct from that proposed for the Klamath River.²

¹ Klamath Basin Restoration Agreement section 2.2.11: “No water rights or water rights claims of any Party are determined or quantified herein. No water rights or potential water rights claims of any non-party to the Agreement are determined herein. No provision of the Agreement shall be construed as a waiver or release of any tribal water or fishing rights in the Klamath River Basin in California, including claims to such water or fishing rights that have not yet been determined or quantified.”

² Klamath Basin Restoration Agreement section 2.2.12: “The Parties intend that this Agreement no adversely affect the Trinity River Restoration Program ...”

- Legislation to implement these Agreements, S. 2379, expressly reaffirms the fact that the Agreements do not undermine Tribal Rights: *“Nothing in this Act or the Settlements (1) affects the rights of any Indian tribe outside the Klamath Basin; or (2) amends, alters, or limits the authority of the Indian tribes of the Klamath Basin to exercise any water rights the Indian tribes hold or may be determined to hold except as expressly provided in the Agreements.”*³
- *“as expressly provided in the Agreements”* means that the Party Tribes agree to not file claims against Klamath Irrigation Project irrigators or Bureau of Reclamation for operating the Project IF specific terms are met including the removal of the lower four Klamath Dams, water use is capped at specified levels to the benefit of fisheries, and restoration projects are fully funded.⁴
- Professor Charles Wilkinson⁵, a Federal Indian Law and Water Law expert who has been a Tribal advocate for decades wrote an analysis of the Agreements and noted, *“What the Tribes have done ... is the exact opposite of termination. It is full-scale self-determination... Assuming that the Upper Basin Agreement, KBRA, and KHSAs are approved by Congress, the Tribes will have installed their priorities as the priorities of several federal and state agencies; taken the lead in restoring a major natural system; established meaningful water rights; established a cutting-edge scientific staff and program for healing the land... and acted in full accordance with ... traditional cultural values.”*

For more information:

see www.klamathrestoration.org or contact Craig Tucker, Klamath Coordinator, Karuk Tribe: ctucker@karuk.us or 916-207-8294

³ Klamath Basin Water Recovery and Economic Restoration Act of 2014, page 14
<http://www.wyden.senate.gov/download/?id=2cee8ce5-8a25-4c3f-9289-62cff33d6b7b&download=1>

⁴ See section 15.3 of the Klamath Basin Restoration Agreement

⁵ Charles Wilkinson is a University of Colorado Distinguished Professor, Moses Lasky Professor of Law History and Society in the American West; and is a leading expert in Indian Law; Public Land Law; and Water Law. See <http://lawweb.colorado.edu/profiles/profile.jsp?id=65>