

In the Flow

SPECIAL WINTER EDITION



2021 WATER SITUATION DROUGHT CONDITIONS EXPECTED TO CONTINUE

As of January, inflows to Upper Klamath Lake are the lowest on record over a 30-year period. Reclamation does not predict a full reservoir prior to the beginning of irrigation season.

K.I.D. LITIGATION OREGON WATER MASTER RESPONSE

Local Water Master, Dani Watson, states, "When the Department (OWRD) determines that Legally Stored Water is passing through the Link River Dam, it will issue an order directed to the Bureau."

INTERIOR OPINION DEPARTMENT OF THE INTERIOR SOLICITOR

Reclamation responded to the Solicitor's opinion with affirmation that "Klamath Project contracts...obligate Reclamation to provide sufficient water for beneficial use...provide Reclamation with very little discretion."



MAINTENANCE SEASON UPDATE

K.I.D. is addressing several years of deferred maintenance on irrigation infrastructure across the District as resources allow. This fall, an urgent need arose to immediately address the failed concrete lining in the Upper C Canal. This project has consumed the majority of K.I.D.'s efforts this maintenance season.

Litigation Update

Klamath Irrigation District is increasing engagements to protect and defend Patron water rights.

K.I.D. V. RECLAMATION

In April 2019 the District challenged Reclamation's authority to release water from Upper Klamath Lake for instream purposes without a water right in Federal Court. This case was dismissed by the Federal Court due to claims that Tribe's were necessary parties to the case and their sovereign immunity prevents them from being joined to the case. K.I.D. appealed this decision on 24 November 2020.

YUOK V. RECLAMATION

Resolution discussions ongoing.

K.I.D. V. OWRD

In March 2020 the District engaged Reclamation and the local Oregon Water Resources Department Water Master to prevent a planned release of stored water from Upper Klamath Lake reservoir without any identified water right to do so. As no action was taken to prevent illegal release of stored water, K.I.D. brought suit against OWRD to force the Department to perform its duties under Oregon law.

This is the third successful case K.I.D. has brought against OWRD since 2018 without OWRD taking action to perform their duties nor upholding Oregon law.

OWRD INVOICE TO K.I.D.

After the 2020 irrigation season OWRD invoiced K.I.D. for the hiring of an assistant water master in accordance with Commission guidance under ORS 540.220.

K.I.D. V. OWRD CONTEMPT

No current actions

Oregon Water Resources Department Litigation

For multiple years, Oregon Water Resources Department (OWRD) has refused to perform their mandatory duty to "take exclusive charge" of Upper Klamath Lake reservoir "for the purpose of dividing or distributing the water therefrom in accordance with the respective and relative rights of the various users" as required in Oregon Revised Statute 540.210. OWRD has failed to perform this duty despite Klamath Irrigation District obtaining multiple court orders from multiple judges affirmatively compelling OWRD to do so.

In 2018, Klamath Irrigation District disputed Reclamation's distribution of stored water for instream purposes without a water right certificate, permit, limited license, or other determined claim authorizing it to do so. Klamath Irrigation District requested OWRD to resolve the dispute; OWRD refused. Consequently, Judge Burton ruled from the bench in favor of Klamath Irrigation District compelling OWRD to perform its duties under ORS 540.210.

In 2020, the same dispute again arose. Klamath Irrigation District was forced to file another action to compel OWRD to perform its statutory duties. OWRD responded in writing with its compliance; however simultaneously allowing Reclamation to release approximately 30,000 acre feet of stored water from Upper Klamath Lake without an established water right and without OWRD making any determination as to the lawful distribution in accordance with the recorded water rights of the reservoir.

OWRD's fundamental duty under ORS 540.210 is to divide and distribute stored water in Upper Klamath Lake to the water users entitled to it under their respective water rights. This duty was not being performed, resulting in additional litigation being filed by K.I.D.

After multiple hearings, the trial court issued an order to OWRD to immediately stop the distribution, use and/or release of Stored Water from UKL without determining that the distribution, use and/or release is for a permitted purpose by users with existing water rights of record or determined claims to use the Stored Water in Upper Klamath Lake.

On 4 January 2021 the court denied the motion to stay. **The case is currently before the Oregon Supreme Court.**

U.S. Department of Interior Solicitor Opinion

Following a meeting with Secretary Bernhardt in July of 2020, Klamath Project irrigators, to include Klamath Irrigation District leadership and counsel, petitioned the Secretary and his Solicitor to review Klamath Project obligations and authorities in regard to section 7(a)2 of the Endangered Species Act, section 8 of the Reclamation Act, multiple contracts, and Reclamation's trust responsibilities.

On 12 November 2020, the Solicitor provided a memorandum in response to the request which indicated Reclamation's discretion could be constrained under specific contracts; however, further analysis of each Project contract was required.

Klamath Irrigation District, in coordination with our partners, encouraged D.C., regional, and local Reclamation officials to complete and publish an analysis of the Project contracts.

On 14 January 2021, the Department of the Interior completed the analysis of Reclamation's discretionary authority. The analysis outlines constraints on Reclamation authority of the provisions for:

- (1) Liability Waivers - **Because liability waivers in the Klamath Project do not authorize the United States to alter the amount of water delivered, they do not provide sufficient discretion for Reclamation to consult;**
- (2) Provisions addressing beneficial use to determine the amounts of water delivered under a contract and the dates of delivery - **Reclamation does not appear to have the discretion to modify water deliveries under an executed contract based upon a determination of beneficial use;**
- (3) The total amount of water which a contract obligates Reclamation to provide per year or irrigation season – **It is the contractor and not Reclamation that determines the schedule, volume, and rate for water deliveries;**
- (4) The total amount of water which a contract obligates Reclamation to provide per month – **Reclamation lacks the discretion to reduce the amount of water delivered per month...and therefore lacks the discretion needed to consult;**
- (5) The dates of delivery - **Reclamation lacks discretion to alter the dates of delivery, and;**
- (6) Reapportionment clauses – **Reclamation is limited in its authority to allocated water in the event of a shortage.**

2021 WATER YEAR ANALYSIS

There is less than 60 days before water begins to flow into K.I.D. canals to charge the system. At this time, assessing the storage in Upper Klamath Lake, the minimal precipitation, the low levels of snowpack, and the weather forecast indicate that operating under Reclamation's 2019 Biological Assessment which guides their operations plan for 2021, there will not be enough supply to meet irrigator needs for all Project contract holders again this year.

The lake is 1.1 feet below average and is not anticipated to fill to full capacity.

Inflows to the lake are among the lowest over a 31-year period.

The snowpack water equivalent storage is less than 70% of normal.

Lands below the snowpack are dry and are anticipated to absorb a majority of the snowpack when it melts; the basin is 11.5 inches below normal precipitation over the past 18 months.

Reclamation is not prepared to change operations in 2021 to comply with the latest Solicitor Opinion.

Tribes are engaging new administration officers in D.C. about the Solicitor Opinion.

OWRD is unlikely to do more than issue a written document to Reclamation when stored water is released for 2021 flushing flows.

Klamath Irrigation District is engaging with leaders from D.C. to local offices to find ways to mitigate anticipated impacts on our community.

2020 SDAO Safety Award

Jaxsen Sikorski, Director of Operations and Assistant Manager, received recognition from the Special Districts of Oregon (SDAO) during the Oregon Water Resources Congress (OWRC) Annual Meeting on 3 December for his actions to improve working conditions and instill a culture of safety across the District.

Since July of 2019 Jaxsen implemented two safety grants from SDAO to modernize individual safety equipment and fire suppression systems in the District.



2021 Board of Directors Update

Your 2021 KID Board of Directors are:

- Ty Kliewer - Zone 1 - President
- Jerry Enman - Zone 2 - Vice President
- Grant Knoll - Zone 3
- Dave Hamel - Zone 4
- Ryan Hartman - Zone 5

Your 2021 KBID Board of Directors are:

- | | | |
|-----------------------|---------------------------|---------------|
| George Rajnus - Chair | Ryan Kliewer - Vice Chair | |
| Tricia Hill | Scott Balin | Rodney Cheyne |
| Lane Roelle | Nick Oldham | |



Grant Knoll and Dave Hamel sworn into another 3-year term in office on 14 January 2021.

Jerry Enman received recognition for his volunteer efforts in the Basin during SDAO's Annual Meeting on 4 February 2021.

KLAMATH IRRIGATION DISTRICT MISSION

The mission of Klamath Irrigation District is to acquire, maintain, assure, and deliver an adequate water supply for beneficial use on qualified land within the Klamath Project.

We represent our Patrons before government agencies, the legislature, Congress, and in such forms as appropriate for the perfection and protection of their water rights. We defend the District from actions which would diminish our effectiveness and function.

We further promote the conservation of water, soil, and other natural resources.