



United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240

APR 05 2017

IN REPLY REFER TO:

Ms. Catherine McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036

Re: OSC File Nos. DI-15-2383 and DI-15-2452 – SUPPLEMENTAL REPORT

Dear Ms. McMullen:

This Supplemental Report on OSC File Nos. DI-15-2383 and DI-15-2452 constitutes the Department of the Interior's Response to your email request of February 15, 2016 for additional information in these matters. The Office of Special Counsel did not request in that email a formal, signed supplemental response, and the Bureau of Reclamation provided an email response to the request on March 15, 2016.

The memorandum extending the WUMP through 2023, prepared in 2012, had three purposes. First, at the time of the memorandum, the WUMP had operated in only two years since its inception in 2008, and it was perceived that more years of experience were needed. The three consecutive drought years which followed were not anticipated, and it was thought that it could take several more years to encounter enough drought years to fully explore the potential of the program.

Second, in 2012 Reclamation was facing extreme uncertainty over water supplies due to Endangered Species Act requirements, Klamath Basin Water Rights Adjudication, Tribal Trust responsibilities, Klamath Basin Restoration Agreement (KBRA – see #1 below) commitments, National Wildlife Refuge needs, and full tariff power rates. Continuation of the WUMP or a similar follow-on program was considered necessary as a means to study the impact of each of those uncertainties on a WUMP-type program and its ability to mitigate water supply shortages, including shortages to the Lower Klamath National Wildlife Refuge (LKNWR).

Finally, Reclamation was beginning to anticipate the need for a program to bridge the irrigation community from the WUMP to the more long-term programs of the On-Project Plan (OPP – see #2 below), a component of the KBRA. Specifically, there was a perceived need for the irrigation community and KWAPA to gain experience in pricing long-term, multi-year land idling and groundwater substitution contracts, as opposed to the annual contracts used by the WUMP.

The follow-on program was going to be a new agreement, structured to address the shortcomings of the WUMP, and to encourage the irrigation community to experiment with more innovative, market-based, and sustainable (i.e., not requiring federal funding) methods of mitigating water



shortages. Examples considered in the planning phase included water exchanges, purchase of off-project water above and below the Klamath Project, and a risk management program to compensate farmers for trying new crops, deficit irrigation, laser leveling, range improvements, etc. that would reduce irrigation demand.

Planning for the follow-on program occurred sporadically from early 2013 to 2015 as Reclamation's understanding of the program's needs and objectives evolved. However, by 2015, when it would have been necessary to increase efforts to develop the new program, it was becoming clear that funding was unlikely to materialize due to other priorities within the Mid-Pacific region, and development stalled. The expiration of the KBRA in December 2015 (see #3 below) removed both the impetus for a transitional program and the hope for funding it.

#1 - KBRA



The Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities (KBRA) was a multi-party agreement negotiated between 2005 and 2010 between irrigators, fisheries interests, Native American tribes, and county, state, and federal government entities throughout the Klamath River watershed for the purpose of achieving effective and durable solutions which: (i) restore and sustain natural production and provide for full participation in harvest opportunities of fish species throughout the Klamath Basin; (ii) establish reliable water and power supplies which sustain agricultural uses and communities and National Wildlife Refuges; and (iii) contribute to the public welfare and the sustainability of all Klamath Basin communities. It was signed by non-Federal parties in February 2010, with agreement from the Federal parties to implement it to the extent possible within existing authorities and funding while federal authorizing legislation and funding were being obtained.

A companion agreement, the Klamath Hydroelectric Settlement Agreement (KHSA), signed at the same time, provided for removal of four dams on the mainstem of the Klamath River. The original KHSA also anticipated federal authorizing legislation; an amended agreement, signed in April 2016, provides for dam removal through the FERC relicensing process instead.

The central premise of the Klamath Agreements (as the KBRA and KHSA were collectively known) was a finely balanced set of "bargained-for benefits" that ensured each party received fair consideration for any concessions it made. For Klamath Basin irrigators, the KBRA established a secure, albeit reduced, Project water supply which would have included the LKNWR. In return, the KBRA would have provided funding (~\$90 million) to adapt to the reduced water supply and funding (~\$47 million) to develop an affordable power program.

#2 - On-Project Plan (OPP) and the WUMP



Expenditure of the aforementioned funding to adapt to the reduced water supply, expected with implementation of the KBRA, was to be guided by an On-Project Plan (OPP), an irrigator-prepared blueprint for addressing annual water supply shortages of up to 100,000 acre-feet (roughly 25% of the Klamath Project's average annual consumption).

Under the KBRA, the ability of the irrigation community to adapt to a reduced water supply, that included water for the LKNWR, depended on the OPP. The plan prepared by the irrigation community relied significantly on land idling and groundwater pumping programs similar to those utilized in the WUMP. A major difference, however, was that while the WUMP executed annual contracts for land idling and groundwater production, the OPP would have featured long-term or permanent land idling or groundwater options contracts. Given that these were to have been market-based contracts, Reclamation perceived a need by early 2013 to assist the irrigation community in establishing a market for multi-year contracts so that they could learn to price such contracts appropriately.

Had federal legislation been passed, the OPP would have been phased in between 2016 and 2023; the WUMP follow-on program would have provided resources during that period to augment the LKNWR water supply and to improve implementation of the OPP by providing incentives for irrigators to experiment with other market-based approaches and with changes in farming practices, all with a goal of establishing a more fiscally sustainable program for adapting to shortages in water supply.

#3 - Failure of the KBRA

The proximate cause of the failure of the KBRA in December 2015 was the lack of passage of federal legislation authorizing and funding its implementation; the agreement was structured to expire if legislation was not achieved. Ultimately, the lack of Congressional support responsible for this failure can be attributed to a) local opposition in some Klamath Basin communities, particularly to dam removal and b) the price of the agreements.

Since the failure of the KBRA, the U.S. Fish and Wildlife Service has been pursuing other means of securing a reliable water supply for the LKNWR.

If any additional information is needed, please contact Richard Myers, Senior Counsel, 202-208-4723.

Sincerely,

Acting For



David Murillo
Acting Commissioner