



— BUREAU OF —
RECLAMATION

Report on Reassessment for Conforming Operations of the United States Bureau of Reclamation Klamath Project to Legal Requirements

**Klamath Project, Oregon-California
Interior Region 10, California-Great Basin**



Mission Statements

The Department of the Interior (DOI) conserves and manages the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people, provides scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honors the Nation's trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities to help them prosper.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

Purpose

This Reassessment has been developed to guide the United States Bureau of Reclamation (Reclamation) as it operates the Klamath Project in conformance with legal requirements discussed in the May 14, 2025 Office of the Solicitor Memorandum titled *Klamath Updated Analysis of Endangered Species Act Obligations* (SOL Memorandum). This Reassessment is intended to inform the Klamath Basin Area office as it implements a new approach to Project operations through a new *Record of Decision* or other decision document as required by the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA).

Background

In January 2021, Reclamation issued a document titled *Reassessment of U.S. Bureau of Reclamation Klamath Project Operations to Facilitate Compliance with Section 7(a)(2) of the Endangered Species Act*, which fulfilled a similar role to this Reassessment. While the 2021 Reassessment provides valuable background information, it did not anticipate the different approach to Klamath Project operations required by the Klamath Basin Water Agreement Support Act, Pub. L. No. 118-246 in January 2025 (2025 Act). Furthermore, the 2021 Reassessment created an overly complex delineation of various aspects of Klamath Project operations and made assertions regarding the purportedly discretionary versus non-discretionary of those aspects which do not comport with the mandates of the 2025 Act. Therefore, to the extent that any portion of the 2021 Reassessment is inconsistent with the current Reassessment, the current Reassessment (this document) controls.

In 2020, at the direction of then Secretary Bernhardt, the Office of the Solicitor and Reclamation undertook an examination of Section 7 compliance. In October 2020, the Office of the Solicitor completed a legal analysis which concluded that Reclamation's discretion in operating the Klamath Project is likely constrained by the contracts providing water to districts and individuals within the Project. This analysis was detailed in the Memorandum from Carter L. Brown, Associate Solicitor – Division of Water Resources and Lance C. Wenger, Regional Solicitor – Pacific Southwest Region to then Solicitor Daniel H. Jorjani, 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) (2020 SOL Memo).

Based on the 2020 SOL Memorandum, then Secretary Bernhardt directed Reclamation, in coordination with the Solicitor, to review the contracts and other legal authorities governing the Project. Further, then Secretary Bernhardt directed Reclamation to reassess the Project baseline and "include in the environmental baseline the consequences to the species from such actions taken to meet the terms of those contracts which establish nondiscretionary duties for Reclamation."

In January 2021, Reclamation completed the 2021 Reassessment, which was supported by two further memoranda from the Office of the Solicitor: 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 (2021 SOL Contracts Memo); January 14, 2021, Memorandum from Solicitor to Secretary re: “Use of Water Previously Stored in Priority for Satisfaction of Downstream Rights” (2021 SOL Stored Water Memo).

The 2021 Reassessment was to serve as the basis for reinitiated consultation under Section 7 of the ESA. However, by memorandum dated April 8, 2021, then Secretary of the Interior Deb Haaland issued a memorandum withdrawing the 2021 Reassessment, the underlying legal analyses by the Office of the Solicitor, and other documents. This withdrawal was detailed in the Memorandum from Secretary, Department of the Interior, to Deputy Solicitor, Indian Affairs, et al., “Withdrawal of Klamath Project-Related Memoranda, Letters, and Analyses”.

During 2024, Reclamation completed an ESA consultation with the Services using the same conceptual approach as the approach used prior to the 2021 Reassessment.

On February 10, 2025, Secretary Burgum vacated Secretary Haaland’s rescission of the Reassessment and associated memoranda and other materials. Secretary Burgum also directed the Solicitor “to conduct a review of legal developments during the past four years and to issue updated versions of those documents at the earliest opportunity.” This direction was detailed in the Memorandum from the Secretary, Department of the Interior, to Solicitor, re ““Recission of April 8, 2021 ‘Withdrawal of Klamath Project-Related Memoranda, Letters, and Analyses’ and Examination of Legal Developments”.

On May 14, 2025, Acting Solicitor, Gregory Zerzan, issued a new analysis titled *Klamath Updated Analysis of Endangered Species Act Obligations* (2025 SOL Memorandum).

Non-Discretionary Operations

As discussed in detail in the 2025 SOL Memorandum, the statutory requirements for Klamath Project operations were fundamentally altered upon enactment of the Klamath Basin Water Agreement Support Act, Pub. L. No. 118-246 (2025 Act) in January 2025. The 2025 SOL Memorandum’s description of the effects of the 2025 Act encapsulates the new requirements which control Reclamation’s operation of the Klamath Project:

These statutory mandates clearly direct Reclamation to operate Link River Dam, the critical facility for the Klamath Project, for water diversion to the Project consistent with existing contracts and flood control. The unequivocal language does not provide Reclamation the discretion to divert water for other uses if to the detriment of the Klamath Reclamation Project contractors. For example, Reclamation cannot operate the Project *both* to provide sufficient water to fully meet contractual requirements *and* to meet requirements imposed by the Biological Opinions prepared under ESA Section 7 if doing so would impair the mandated purposes of the Act. (SOL Memorandum, (emphasis in original))

The implication of the SOL Memorandum is that Reclamation does not have discretion to operate the facility to benefit listed species if doing so would interfere with Reclamation's non-discretionary obligations including its obligations under the 2025 Act.

To adhere to the mandates of the 2025 Act, Reclamation must operate Link River Dam and other Project facilities to provide sufficient water for diversion by Klamath Project irrigators to meet contractual requirements and for flood control purposes. Contractual requirements include, but are not necessarily limited to, the maximum amount of water stated in a specific contract which irrigators can beneficially use and the date range stated in a specific contract during which water is available. Reclamation must follow these contractual terms to comply with both the 2025 Act and Ninth Circuit case law, as discussed in the SOL Memorandum. Attached is an Appendix which identifies non-discretionary terms in contracts between Reclamation and Klamath Project irrigators and which can be used to identify the specific terms with which Reclamation must comply when operating the Project.

Reclamation's operation of Link River Dam and any other facilities needed to provide the contractually required amount of water includes the entire range of actions needed to provide this amount of water. These actions include, but are not limited to, (1) storing sufficient water to meet all contractually required amounts, (2) releasing sufficient water from Link River Dam to allow for diversion by Project diverters, (3) providing any authorizations or approvals needed to operate any Project facility in a timely enough manner to allow Project irrigators to divert water to comply with contracts or with any other nondiscretionary actions, (4) operation of facilities throughout the Project area as necessary to allow delivery, circulation, and drainage of water as needed to fulfill contract obligations, (5) managing storage and release of water to prevent flooding and protect health and safety, and (6) any other action needed to operate the Project for irrigation under the terms of the contracts. Reclamation will continue to coordinate with the State and adhere to all applicable Federal laws and regulations. Because these actions are necessary to fulfill the mandates of the 2025 Act, they are non-discretionary and Reclamation lacks the authority to modify them. Therefore, the mandate of section 7(a)(2) is inapplicable to these non-discretionary actions.

Discretionary Operations

Certain aspects of Klamath Project operations are not directly related to providing water for diversion by the Klamath Project for irrigation purposes or for flood control. Such aspects are not subject to the mandates of the 2025 Act and are therefore within Reclamation's discretionary authority. These aspects include utilizing Project facilities to provide water for wildlife purposes to Tulelake and Lower Klamath National Wildlife Refuges, maintenance activities or facility modifications not needed for irrigation diversions, and other aspects of Project operations which do not curtail Reclamation's ability to provide water for irrigation diversions or engage in flood control activities. Reclamation must engage in the ESA Section 7 consultation process with respect to these aspects of Project operations with a critical caveat: consultation may not be used as a means to circumvent the 2025 Act's mandates that the Project be operated for water diversion for irrigation purposes or for flood control.

Conclusion

Reclamation intends to implement the new approach to include a 4 step process: 1) updating the 2020 and 2021 Solicitor memos to provide updated guidance on discretion (received May 2025 through the 2025 SOL Memorandum); 2) reassessing and updating policies based on the Solicitor guidance (this document); 3) incorporating the new policies into new operating criteria for the Klamath project and (estimated completion of spring 2026); 4) complete NEPA and ESA consultation on the new operating criteria (estimated completion of spring 2027). This document implements Step 2 of the implementation approach. This concludes Reclamation's reassessment and Step 2 of the implementation approach.

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