



CSG West Legislative Council on River Governance

Kalispell, Montana

August 24, 2015

Dan Keppen, Executive Director



Robert B. Tate – Western and Wildlife Artist, Commercial
Pilot of 55 years, Retired Ph. D Paleontologist, and....
Kalispell Red Lion Airport Shuttle Driver



First Nations / Tribal Issues: The Klamath Settlement Agreements – Perspective of Federal Project Irrigators



Dan Keppen, P.E.
Executive Director





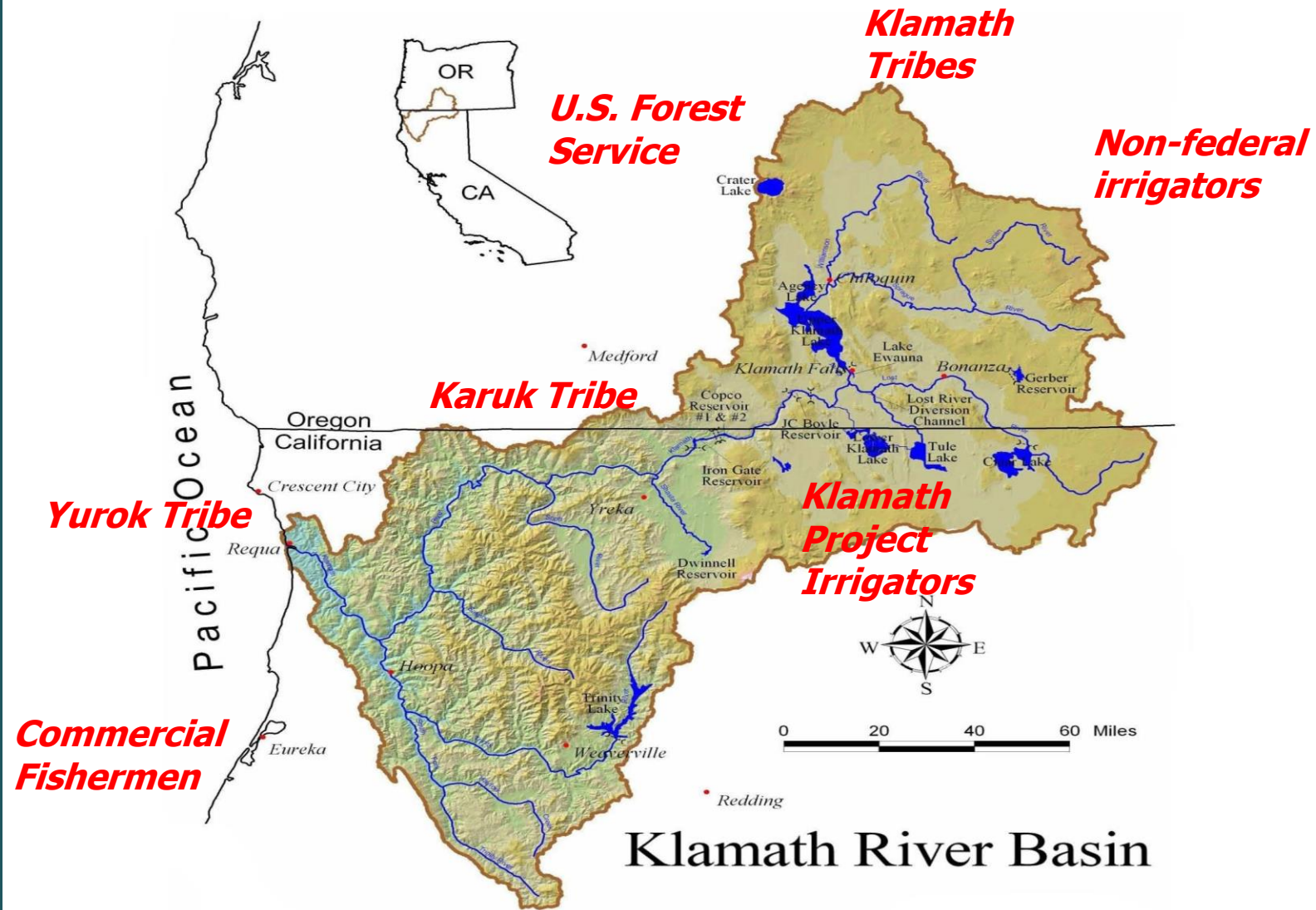
About the Alliance

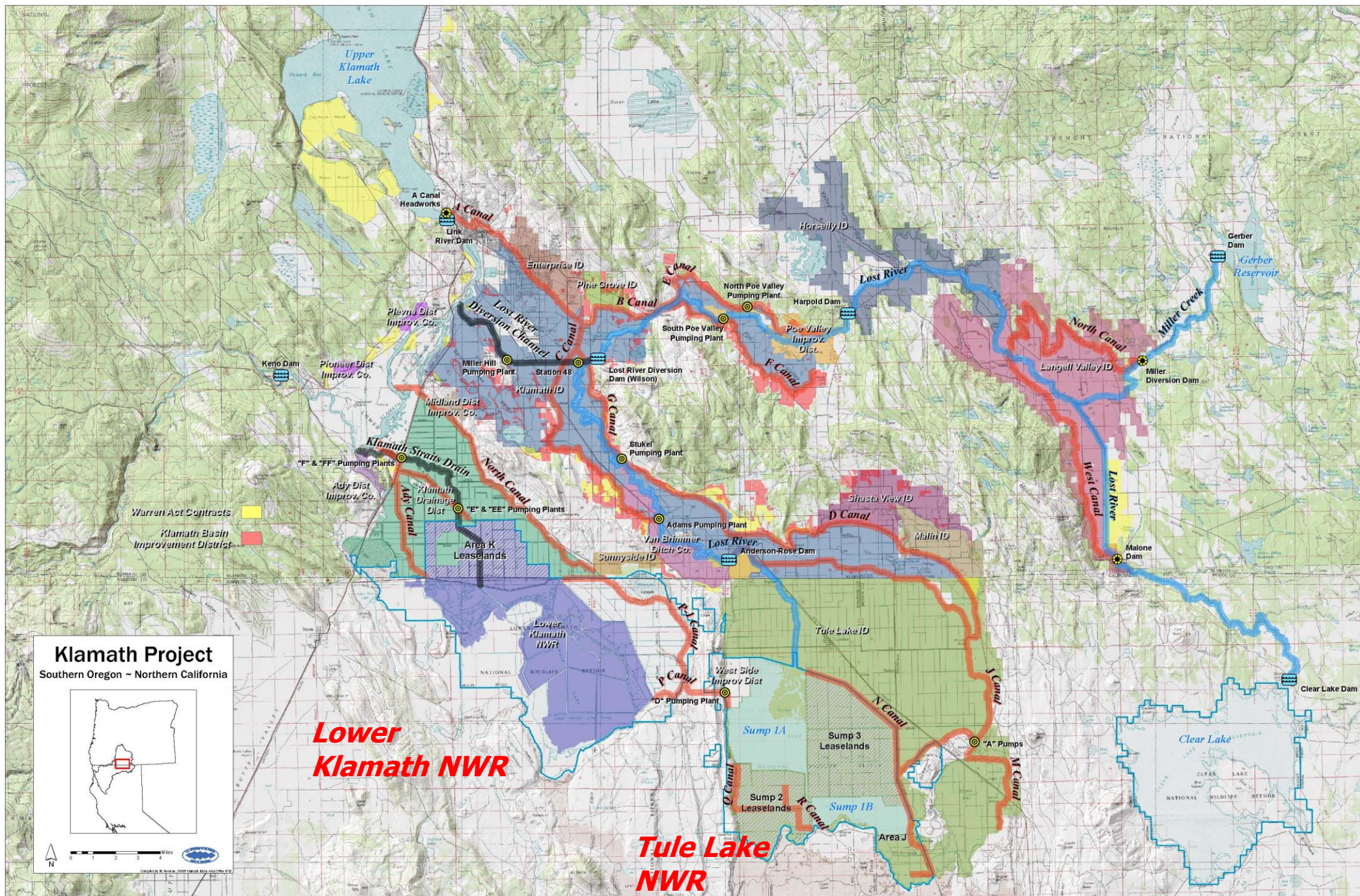


Klamath Settlement Agreements (California / Oregon)

- History / Background of Klamath Water Conflict
- Summary of Settlement Agreements
- Challenges
- The Look Ahead







The Klamath Irrigation Project

Our Actions Affect Consumers!
One 400 lb. Drum of Mint Oil Produces:
400,000 Tubes of Toothpaste
5 Million Sticks of Gum
20 Million Mint Candies
THINK FOOD SAFETY!



Klamath and NEWS

www.klamathnews.com

April 8, 2001—No. 19,739

Klamath Falls, Oregon

50 Cents

No water for most farmers

Thousands of acres will go dry for benefit of fish

By JOHN BRAGG
Klamath Staff Writer

Federal officials today announced that no water will be available from Upper Klamath Lake to supply farmers of the Klamath Reclamation Project.

However, Bureau of Reclamation officials said, about 70,000 acre-feet of water from other sources will be available for irrigation of lands on the east side of the project. That includes Horowitz and Longell Valley irrigation districts, according to Dave Solum, director of the Klamath Irrigation District.

The decision makes no allocation for farmers in the Klamath and Tulelake irrigation districts.

In a terse announcement at noon today, the Bureau of Reclamation said it could not supply irrigation water and

spokesman for Walden, said there was little to do now but try to minimize the damage.

The announcement included word from the Department of Agriculture that most crops in the affected area are eligible for crop insurance or other assistance, including "prevented planting" payments for farmers who purchased crop insurance before the drought was declared. Farmers should contact their crop insurance agents for details, Reclamation officials said.

Then, Gordon Smith will be in Klamath Falls Saturday morning for a town hall meeting at 10:30 a.m. at the Shilo Inn. Afterwards he will have lunch privately with the Klamath Water Users Association and community leaders, Chris Matthews, Smith's spokesman, said the agenda for the meeting was not yet finalized.

Don Russell, chairman of the Klamath Water Users Association, was disappointed, but he said the only long-term solution is to create more water storage in the upper Klamath Basin.

"We can't keep spending year to year in crisis mode," Russell said. The drought emphasizes the need for



Bank's Marsh lies saturated on the east side of Upper Klamath Lake in this photo taken Thursday. Water in the lake will be conserved to keep marshes flooded this summer, while no water from the lake will be diverted for agricultural use.

Each photo by Tony Thompson

U.S. Fish and Wildlife Service office in Klamath Falls, said the water opinion includes a contingency plan for sharing water between the suckers and the salmon.

The 4,130-foot level is a foot below the level that a draft opinion said was necessary to protect suckers. The lower

conserved to keep marshes flooded this summer, while no water from the lake will be diverted for agricultural use.

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The 2001 Klamath Water Crisis



Fall 2002 Klamath River Fish Die-Off

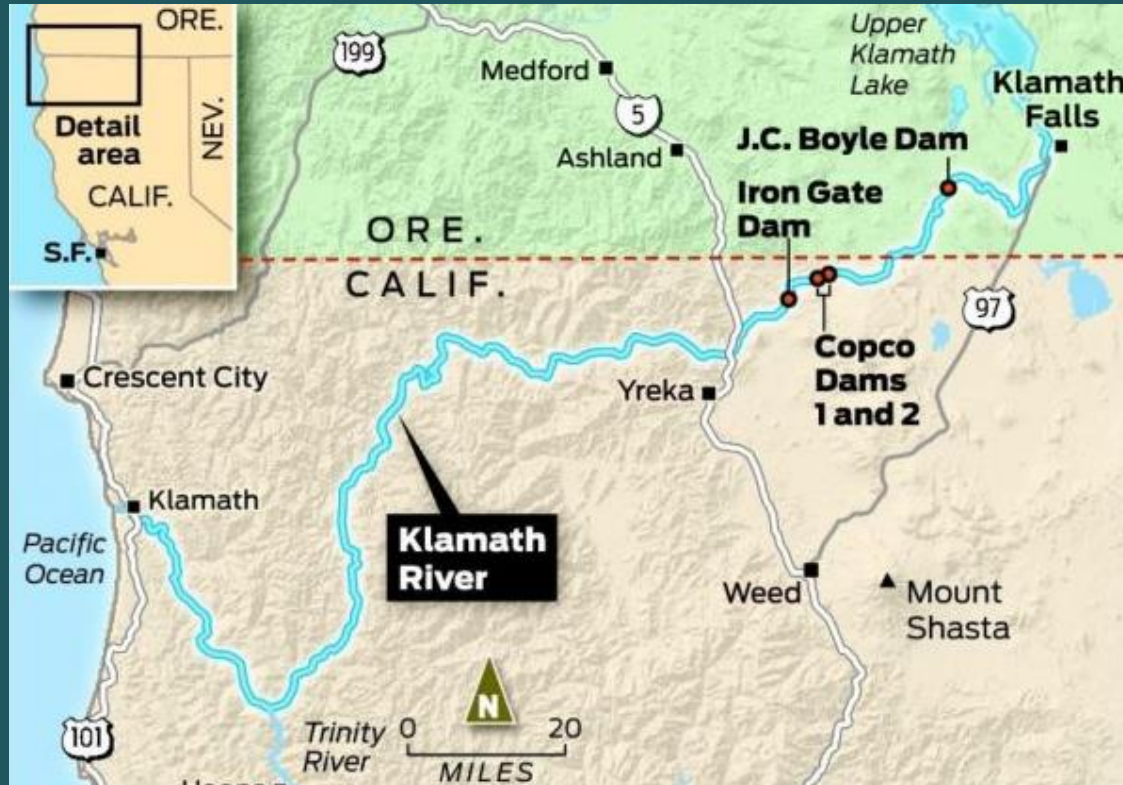


Eugene Register-Guard

**Why the salmon died: Pattern
points to Bush administration policies**

A Register-Guard Editorial

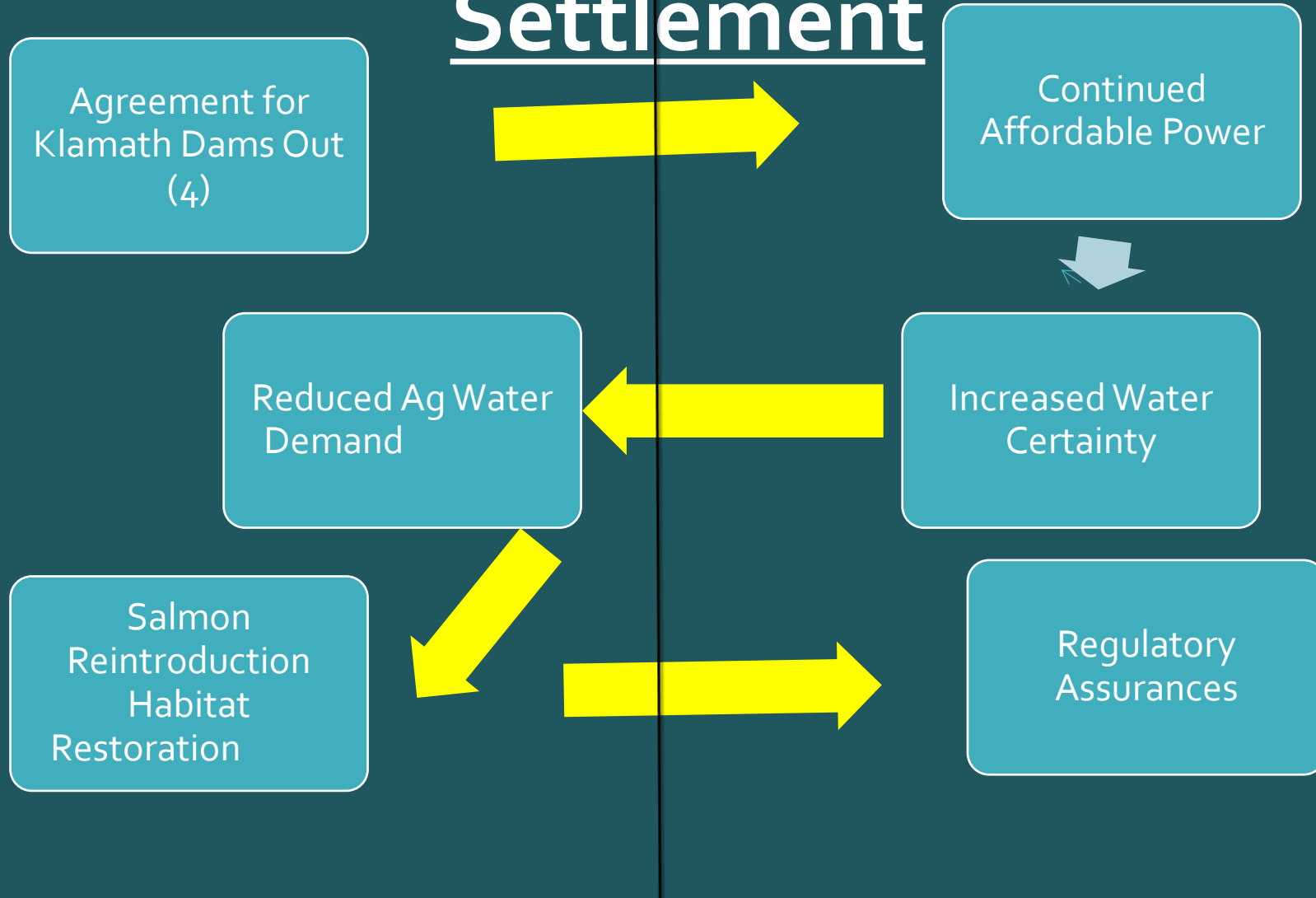
Expiration of Long-Term Power Contract with Pacific Power & FERC Relicensing of Klamath Hydroelectric Project



TRIBES &
OTHERS

The Path to Settlement

IRRIGATOR
S



Tribes Get

Agreement for Klamath Dams Out (4)

- Tribes view as most important step for salmon restoration & improving/protecting runs
- Ongoing negotiations with PacifiCorp

Reduced Ag Water Demand

- BoR Project capped at 330 – 385 taf
- Drought Plan for really bad years
- 30 taf from Tributaries

Salmon Reintroduction Habitat Restoration

- Massive restoration/ reintroduction program
- More stakeholder influence in water management

Ag (and Others) Get

Continued Affordable Power

- Allocation of Federal Power (15 avg MgW)
- Renewable Development

Increased Water Certainty

- Adjudication Settlement with Klamath Tribes
- Limited “no-call”
- Drought Plan

Regulatory Assurances

- ESA compliance
- Habitat Conservation Plan
- Protects both fish and landowners



KBRA / KHSA Signed - 2010



Public Reaction – Political Ramifications

- Tribal Land Return
- Dam Removal
- Impacts to Taxpayers
- Political Consequences



The Klamath Adjudication

- On March 7, 2013, OWRD submitted its FOD for the Klamath River Basin Adjudication to the Klamath County Circuit Court.
- The FOD is the culmination of a 38-year administrative process, and provides the basis for water rights-based regulation in the Upper Klamath Basin until the Circuit Court has issued a judgment after its trial on exceptions to the FOD that parties may file.



The Klamath Adjudication

- The Klamath Adjudication is the most complex adjudication in Oregon's history



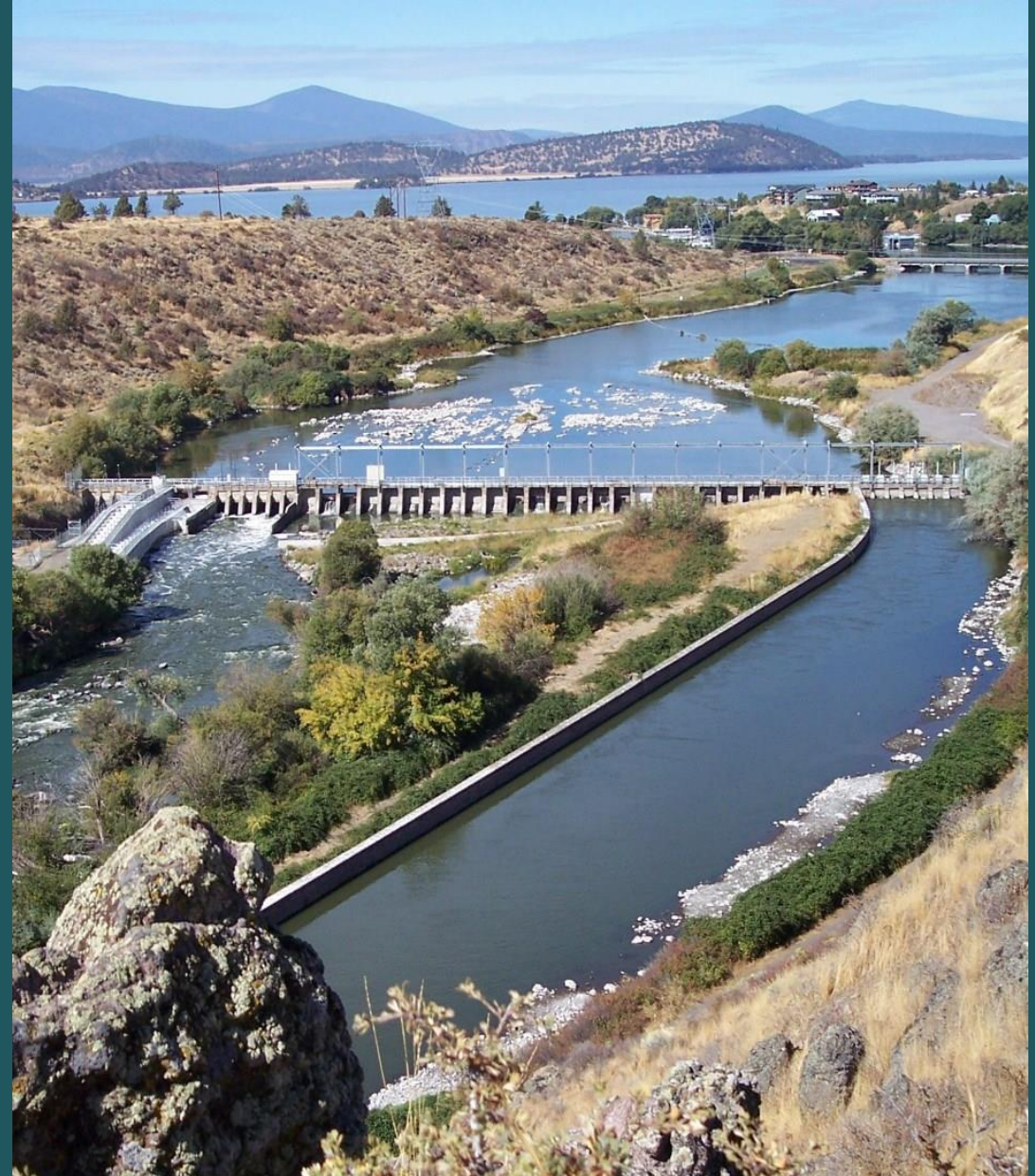
Significant Findings:

- Substantial water rights with “time immemorial” priority for the Klamath Tribes to instream flows in tributaries of Upper Klamath Lake and to water levels in Upper Klamath Lake itself;
- Irrigation rights for diversion and consumptive use for persons owning property within the former Klamath Indian Reservation;



Significant Findings:

- The United States exclusively owns the storage right for the Klamath Project.
- Irrigation districts and users are holders of rights of use of natural flow and stored waters.



Refuge Water Rights

- The FOD recognizes federal reserved rights for Tule Lake and Lower Klamath National Wildlife Refuges, both of which receive water through Project or Project-related facilities.
- These two refuges had claimed the 1905 Project priority for wetland uses on the refuges, but those claims were not upheld because flooding of wetlands was determined not to be within the purpose of the Project or its water rights.
- There are recognized, however, federal reserved water rights that are junior to the Project's state law rights.



Adjudication

- The submission of the FOD brought to an end the long administrative process for the Adjudication.
- While it only began the judicial process in the Oregon courts, it is highly significant because Klamath water rights in Oregon are now regulated according to the FOD.
- Once court proceedings end, the Circuit Court decree is conclusive as to all prior rights and all existing claimants.

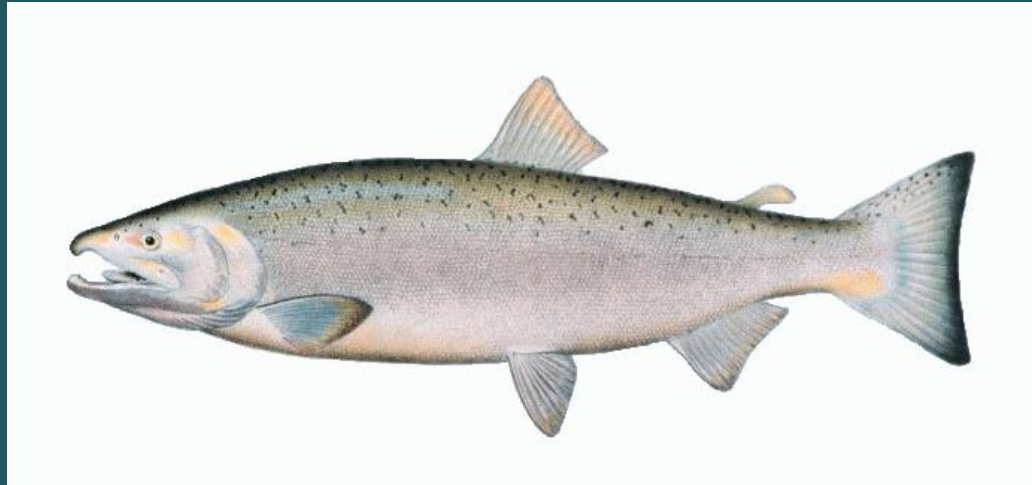
A New Paradigm

- Instream water rights determined for the Klamath Tribes will not be met unless OWRD regulates (curtails) a significant amount of existing irrigation use upstream of Upper Klamath Lake.
- The FOD is significant from the perspective of the Project, which has in the past seen its use regulated based on the ESA.

Sucker Listings 1988



Coho Salmon Listing 1997



A New Paradigm

- With the determination of rights in the Project, Project water users now have the ability to seek water rights regulation outside the Project based on the appropriation doctrine.
- These two developments have resulted in difficult circumstances in the Upper Klamath Basin due to the first-time enforcement of “first in time is first in right.”



Back to the Settlement Agreements...

- Klamath Basin Restoration Agreement (“KBRA”), approved by approximately 40 parties in 2010. Klamath Hydropower Settlement Agreement (focus on Pacific Power dams) also signed.
- Based on agreements reached in the KBRA, irrigation water users in the Project will not have their use curtailed as a result of senior tribal rights to water levels in Upper Klamath Lake, at minimum, not until after the court’s decree.
- Potential curtailment thereafter is a function of whether the KBRA is implemented as well as the outcome of the decree.

Increasing Tension

- Oregon drought emergency.
- Power rates for irrigators and refuges increased 1200% compared to 2006.
- Refuges went dry, disease outbreak killed 9,000 birds.
- Tribes and Project irrigators enforced newly-minted senior water rights.



Off-Project Agreement with Tribes

- The KBRA provides a framework for a resolution that would avoid and mitigate impacts of the tribal rights on irrigation areas upstream of Upper Klamath Lake.
- An agreement building on those terms was signed between off-Project irrigators and the Klamath Tribes in the spring of 2015.



Outlook

- The settlement agreements have not been authorized by Congress and thus cannot be fully implemented.
- Substantial challenges lie ahead.



Crisis Mode – The Window is Closing

- “Off-ramp” for agreement signatories triggers at the end of 2015
- Senate authorization legislation has been introduced by Senate Democrats Wyden and Merkley (OREGON) and Feinstein and Boxer (CALIFORNIA).
- Companion legislation in the House has not been introduced.
- **2016 is an election year**



Key Challenges for Settlement Proponents

- Local elected officials do not fully support the agreements
 - Klamath County Board of Commissioners (Rep. Walden, OREGON)
 - Siskiyou County Board of Supervisors (Rep. LaMalfa, CALIFORNIA)
- Hoopa Valley Tribe (CALIFORNIA) does not support the agreements
- A handful of litigious environmental organizations do not support the agreements
- Dissension within the ranks of the Klamath Tribes



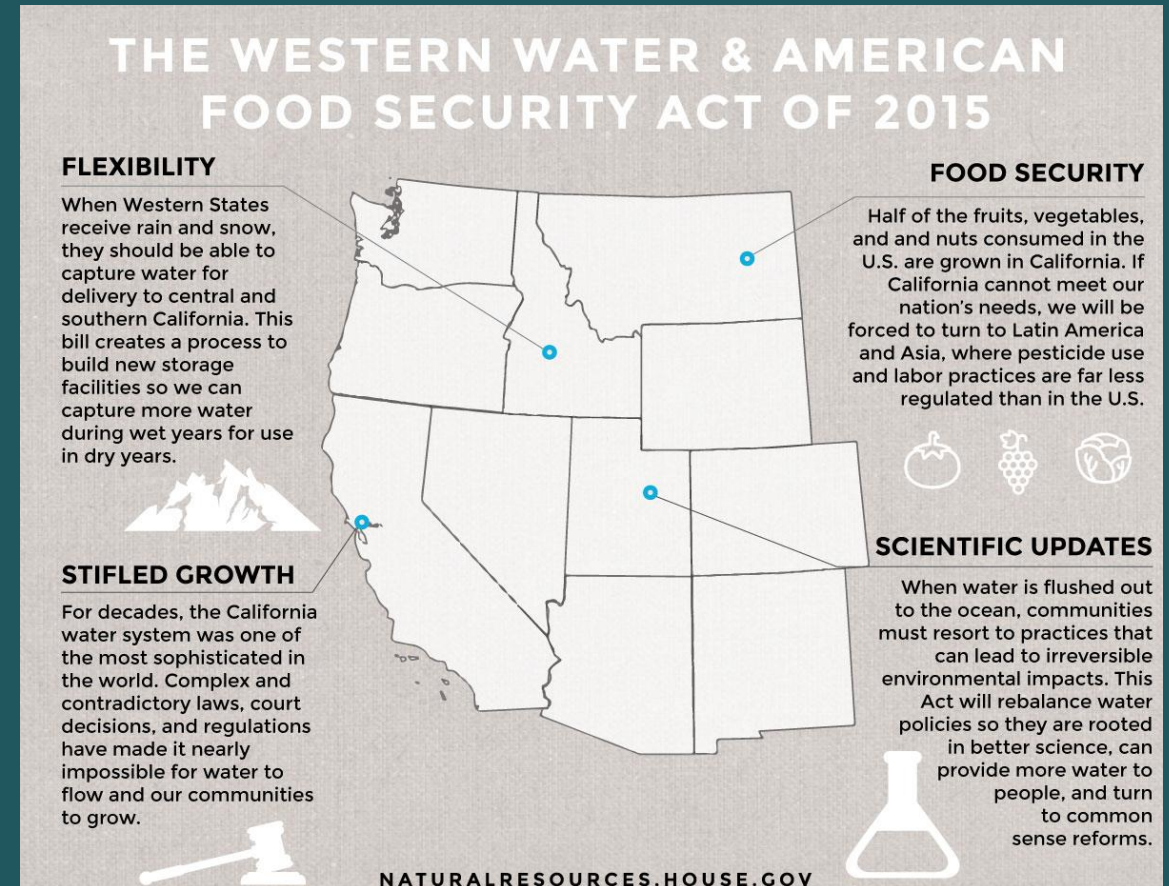
Risks if Settlement Legislation is not Enacted

- Collaborative relationships will be lost.
- The chances of developing another settlement will likely evaporate.
- Back to the “old way” of doing business:
 - Litigation
 - Dueling scientists
 - Media attacks
 - Uncoordinated, hostile legislation
- The beginning of serious agricultural decline in the Upper Klamath Basin



Positive Developments for Settlement Proponents

- Tremendous Focus on Drought and Water Challenges in Congress
 - Western Drought Bill Passed the House of Representatives
 - California Drought Bill Introduced in the Senate
 - Senate Western Drought Bill to be Introduced in September



Growing Support for Klamath Settlement Agreements

Sportsmen/Conservation groups

Trout Unlimited
California Trout
Ducks Unlimited
American Rivers
The Nature Conservancy
Salmon River Restoration Council
Sustainable Northwest
Federation of Fly Fishers, Northern California Council
Audubon California
Klamath Basin Rangeland Trust
Klamath Watershed Partnership
Cal-Ore Wetlands and Waterfowl Council
California Waterfowl Association
Delta Waterfowl
Bull Moose Sportsmen
Izaak Walton League, Oregon Division
Berkley Conservation Institute-Pure Fishing Company
Backcountry Hunters & Anglers
Association of Northwest Steelheaders
Central Oregon Flyfishers
Theodore Roosevelt Conservation Partnership

Commercial and Sport Fishing Industry

Pacific Coast Federation of Fishermen's Associations
Institute for Fisheries Resources
Northwest Guides and Anglers Association
Northwest Sportfishing Industry Association
Yamsi Ranch Flyfishing
Shasta Trout guide service
Wild Waters Fly Fishing
Ted Fay Fly Shop

Newspapers

Klamath Falls Herald and News
The Oregonian
Eugene Register Guard
Salem Statesman Journal
The Sacramento Bee
The New York Times
The Eureka Times-Standard
The Chico Enterprise-Record

Growing Support for Klamath Settlement Agreements

Government

U. S. under the Obama and Bush administrations
California under Gov. Brown and Gov. Schwarzenegger
Oregon under Gov. Brown, Gov. Kitzhaber and Gov. Kulongoski

Business and Community

PacifiCorp
Associated Oregon Industries
Oregon State Chamber of Commerce
Klamath County Chamber of Commerce
City of Klamath Falls
Modoc County, California
Humboldt County

Tribes

Karuk Tribe
Klamath Tribes
Yurok Tribe

Agriculture

Family Farm Alliance
National Potato Council
Oregon Farm Bureau
Klamath/Lake County Farm Bureau
Modoc County (CA) Farm Bureau
Modoc County Cattlemen's Association
Oregon Cattlemen's Association
Klamath County Cattlemens Association
Klamath Water Users Association
Upper Klamath Water Users Association
Klamath Water and Power Agency
Oregon Potato Commission
Fort Klamath Critical Habitat Landowners
Upper Klamath Landowner Improvement District
Oregon Water Resources Congress
Resource Conservancy
Sprague River Water Resource Foundation
13 Klamath Project Irrigation Districts

HOW MUCH WATER DID THE KLAMATH RECLAMATION PROJECT GET IN 2014?

Adjudication Order :

Diversion: 560,000 ac/ft

Normal:

Diversion: 390,000 +- ac/ft

2013 – 2022 Biological Opinion

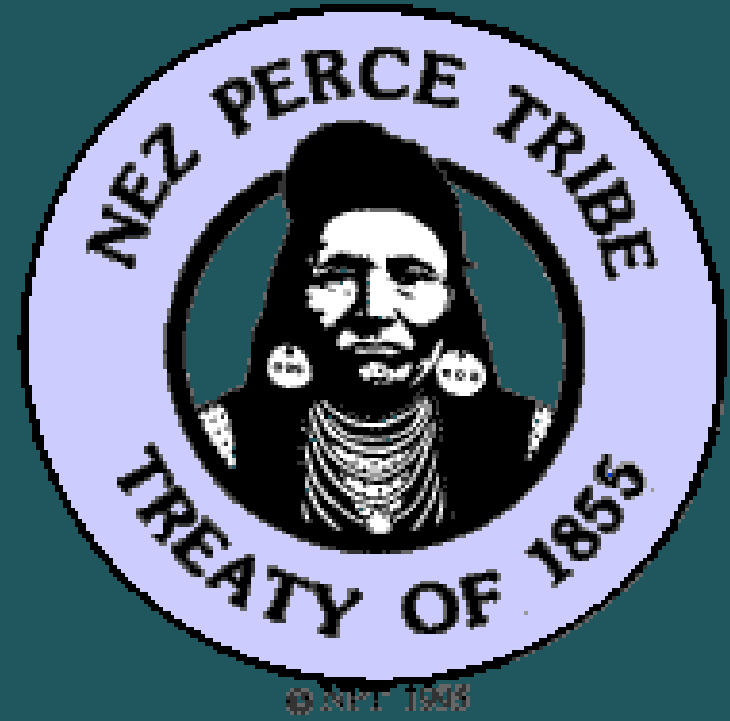
Diversion Cap: 208,000 ac/ft

KBRA (Settlement)

Diversion: 300,000 + ac/ft

Why the Family Farm Alliance Supports Klamath Settlement Legislation

- We support locally-driven collaborative solutions to water challenges
- Other Alliance members have successfully settled with Tribes (Nez Perce Agreement, Navajo / Apache, Ute Tribes)
- This is a creative way to address ESA-driven water conflicts
- It keeps farmers and ranchers in the business of providing food and fiber to the world



Questions?

Catch me later at the conference

Or e-mail me at dankeppen@charter.net

