



**To:** Subcommittee on Water, Oceans and Wildlife Republican Members  
**From:** Subcommittee on Water, Oceans and Wildlife Republican Staff; Kiel Weaver ([Kiel.Weaver@mail.house.gov](mailto:Kiel.Weaver@mail.house.gov)), Annick Miller ([Annick.Miller@mail.house.gov](mailto:Annick.Miller@mail.house.gov)), and Rob MacGregor ([Robert.MacGregor@mail.house.gov](mailto:Robert.MacGregor@mail.house.gov))  
**Date:** March 7, 2022  
**Subject:** Oversight Hearing on the “*Klamath River Basin Conditions and Opportunities*”

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On **Tuesday, March 8, 2022, at 2:00 p.m. EST, via Cisco Webex**, the Subcommittee on Water, Oceans and Wildlife will hold a remote oversight hearing entitled the “Klamath River Basin Conditions and Opportunities”.

**Member offices are requested to notify Annick Miller no later than Monday, March 7, at 4:30 p.m. EST**, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at [HNRCDOcs@mail.house.gov](mailto:HNRCDOcs@mail.house.gov). Please contact David DeMarco ([David.DeMarco@mail.house.gov](mailto:David.DeMarco@mail.house.gov)) or Everett Winnick ([EverettWinnick@mail.house.gov](mailto:EverettWinnick@mail.house.gov)) should any technical difficulties arise.

## **I. KEY MESSAGES**

- The Klamath River basin in Southern Oregon and Northern California continues to experience water use conflicts due, in part, to drought, federal endangered species regulations and other causes.
- Since the Bureau of Reclamation shut-off of the Klamath Project in 2001, Congress and the Executive branch have devoted considerable time, water, and taxpayer dollars to try to resolve these water conflicts.
- Yet, more than twenty years later, very little has been resolved. Uncertainty and water conflicts continue, and serious questions remain over the long-term impacts of potential dam removal and the appropriate level of diverting irrigation water towards species and downstream needs in the basin.
- The federal government cannot fully quantify its expenditures or measure success from those efforts.
- Family farming is in peril, species continue to decline, and tribal communities are suffering. This hearing will focus on defining what short and long-term success could be in the basin and how the federal government proposes to spend additional funds.
- In light of the ongoing crisis in Ukraine, Committee members may wish to use this hearing as an opportunity to speak about the need to [responsibly develop American energy resources](#) to [reduce our dependence on Russian oil and gas](#) and support our allies.

## II. WITNESSES

### *Panel I – Federal*

- **Mr. Stephen Guertin**, Deputy Director for Policy, U.S. Fish and Wildlife Service, Washington, D.C.
  - Mr. Guertin will be accompanied by Mr. David Palumbo, Deputy Commissioner of Operations for the Bureau of Reclamation, Washington, D.C.

### *Panel II – Non-Federal*

- **The Honorable Geri Byrne**, Chair of the Modoc County Board of Supervisors, Alturas, California (*Republican witness*)
- **Ms. Tricia Hill**, former President of the Klamath Water Users Association, Merrill, Oregon (*Republican witness*)
- **The Honorable Russell “Buster” Attebery**, Chairman, Karuk Tribe, Happy Camp, California
- **Ms. Amy Cordalis**, General Counsel, Yurok Tribe and Principal, Ridges to Riffles Conservation Fund, Klamath, California
- **The Honorable Joe Davis**, Chairman, Hoopa Valley Tribe, Hoopa, California

## III. HISTORY

The Klamath River Basin covers approximately 15,750 square miles (see Figure 1). The beaver pelt market lured trappers to the Klamath area in the early nineteenth century and around 1882 landowners introduced irrigation for agricultural purposes.<sup>1</sup> In October 1903, the Reclamation Service (now called the Bureau of Reclamation), investigated the Klamath region as a potential project site.<sup>2</sup> This led to the authorization of the Klamath Project (Project) by the Secretary of the Interior in May 1905 under the authority of the Reclamation Act of 1902 and the Act of February 9, 1905.<sup>3</sup> Along with the federal laws, the States of Oregon and California enacted laws in 1905, ceding certain lands to the United States and authorizing the United States to use Upper Klamath Lake for storage

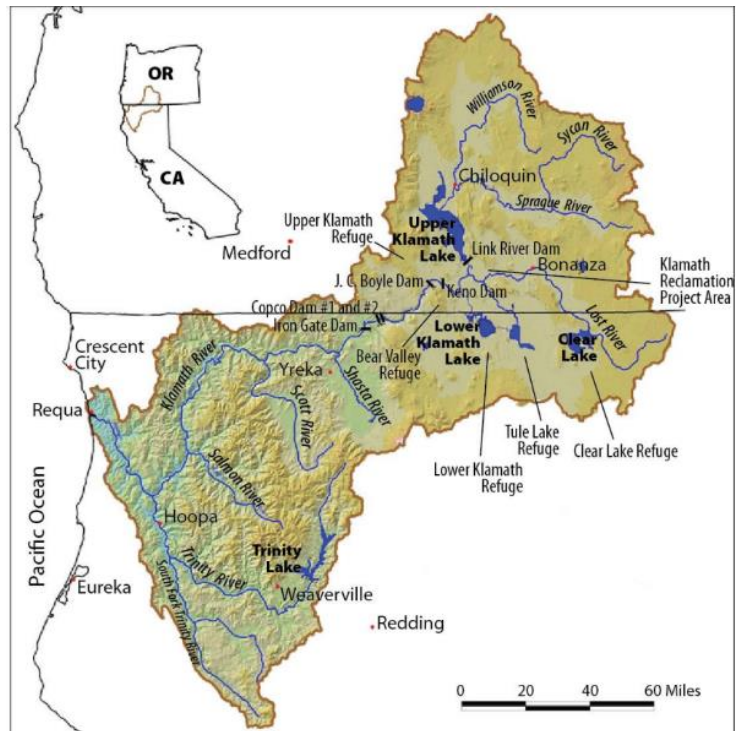


Figure 1: The Klamath watershed  
Source: Bureau of Reclamation, adapted by CRS.

<sup>1</sup> Stone, Eric A., U.S. Bureau of Reclamation, *Klamath Project History*, (1994), <https://www.usbr.gov/projects/pdf.php?id=129> .

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; 32 Stat. 388; 33 Stat. 714.

operations in connection with a federal irrigation project.<sup>4</sup> Upper Klamath Lake is the largest freshwater body by surface area west of the Rockies<sup>5</sup>, with a surface area of more than 91,000 acres when full and active storage capacity of 562,000 acre-feet.<sup>6</sup>



Picture 1: Klamath Homestead Drawing on December 18, 1946  
Source: Bureau of Reclamation

Veterans returning from World Wars I and II participated in “homestead lotteries” to acquire the land served by the Project. There were five such lotteries from 1922 to 1937 and three post- World War II lotteries between 1946 and 1949. Between those three years, more than 200 homesteads were awarded to veterans “with at least two years of agricultural experience, \$2,000 or more in personal savings and proof of ‘honesty, temperance, thrift and industry.’”<sup>7</sup>

As fully developed, the Project is the primary water source for approximately 1,200 farms across 210,000 acres and is the regional hub for agricultural food production, in addition to serving as the

sole source of water for two national wildlife refuges. The Project covers territory in Klamath County, Oregon, and Siskiyou and Modoc counties in California.<sup>8</sup>

Operations of the Project, namely diversions from Upper Klamath Lake, are believed to affect several species of fish that are currently listed as threatened or endangered under the Endangered Species Act (ESA).<sup>9</sup> Two species of fish – Lost River and shortnose suckers – that reside in Upper Klamath Lake have been listed as endangered since 1988.<sup>10</sup> In addition, coho salmon on the Klamath River have been listed as threatened since 1995.<sup>11</sup> The U.S. Fish and Wildlife Service (USFWS) is responsible for overseeing administration of the ESA with respect to the sucker fish.<sup>12</sup> The National Marine Fisheries Service (NMFS) is responsible for managing coho salmon under the ESA.<sup>13</sup>

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<sup>4</sup> General Laws of Oregon, 1905, p. 63; Cal. Stats. 1905, p. 4.

<sup>5</sup> Southern Oregon, *Upper Klamath Lake*, <http://www.southernoregon.com/lakes/klamathlake/index.html>.

<sup>6</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *Major Storage Reservoirs in the Klamath River Basin*, <https://www.usbr.gov/pn/hydromet/klamath/teacup.html>.

<sup>7</sup> Oregon History Project, *Klamath Homestead Drawing* (2003), <https://www.oregonhistoryproject.org/articles/historical-records/klamath-homestead-drawing/#.YiExWOjMKUk>

<sup>8</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *Klamath Project Factsheet* (Feb. 2016), <https://www.usbr.gov/mp/mpr-news/docs/factsheets/klamath-project.pdf>

<sup>9</sup> 16 U.S.C. 1531 et seq.

<sup>10</sup> 53 Fed. Reg. 27130 (July 18, 1988).

<sup>11</sup> 60 Fed. Reg. 38011 (July 25, 1995).

<sup>12</sup> The Lost River sucker and shortnose sucker were listed as endangered on July 18, 1988 (53 FR 27130).

<sup>13</sup> National Oceanic and Atmospheric Administration, 62 CFR, p. 24588 (May 6, 1997); 64 CFR, p. 24099, (May 5, 1999).

There are six national wildlife refuges in the Klamath Basin.<sup>14</sup> Two of these refuges, the Lower Klamath and Tule Lake, provide critical habitat and food resources for more than a billion birds that use the Pacific Flyway annually.<sup>15</sup> Portions of these refuges are also farmed for agricultural purposes, generating food for both human and wildlife consumption.

Tribal nations in the Klamath Basin – including the Klamath (a confederation of three tribes), Yurok, Karuk, and Hoopa tribes – have rights under federally authorized treaties and executive orders to harvest fish and other species. Several of the endangered species are culturally and religiously significant to the tribes.<sup>16</sup> Three downstream tribes will testify at this hearing. The conflicting water needs within the Klamath Basin between multiple stakeholders have been a continual source of controversy.<sup>17</sup>

Specifically, operating requirements imposed on the Bureau of Reclamation (Reclamation) under the ESA have impacted Project water deliveries since the early 1990s. Until recently, the most notable example of this was 2001, when Reclamation initially made no water available from the Upper Klamath Lake to farmers in the Project area, for the sake of protecting threatened and endangered fish.<sup>18</sup> The controversy prompted Congress to appropriate \$70 million through the U.S. Department of Agriculture for conservation activities in the Klamath Basin, which (as described further below) was only the start of federal spending intended to resolve this issue.<sup>19</sup>

Under Republican leadership, the House Committee on Natural Resources held two field hearings on this topic (2001<sup>20</sup> and 2004<sup>21</sup>) in Klamath Falls, Oregon. At the latter hearing, Mr. David Carman, a veteran homesteader, testified:

“After 4 years and 8 months of service, I came home with the rank of a 1st Lieutenant. When I heard about a homesteading opportunity in Tulelake, California, I applied. In 1948 I was one of 44 applicants chosen out of 2000. At the time I had never heard of Tulelake except as a great hunting area. When I arrived to see my homestead there was nothing there, just an expanse of opportunity. No roads, no houses, no trees, just bare ground. I then pitched my tent in the corner of my homestead. My wife Eleanor was



Picture 2: Klamath Tribes Rally Amid Water Crisis  
Source: Indian Country Today, May 20, 2021

<sup>14</sup> The refuges are Upper Klamath, Lower Klamath, Tule Lake, Clear Lake, Bear Valley, and Klamath Marsh (located on the Williamson River).

<sup>15</sup> Congressional Research Service, *Klamath River Basin: Background and Issues*, R42157 (June 7, 2012), <https://crsreports.congress.gov/product/pdf/R/R42157>.

<sup>16</sup> *Id.* at 12.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.* at 14.

<sup>19</sup> The 2001 and 2002 farm bills (P.L. 107-20 and P.L. 107-171, respectively), gave the Department of Agriculture \$20 million and \$50 million in funding for water conservation in the Klamath Basin, in addition to funding under other emergency authorities.

<sup>20</sup> Committee on Natural Resources field hearing (June 16, 2001), <https://www.govinfo.gov/content/pkg/CHRG-107hhrg73135/html/CHRG-107hhrg73135.htm>.

<sup>21</sup> Committee on Natural Resources field hearing (July 17, 2004), <https://www.congress.gov/event/108th-congress/house-event/LC14204/text?s=1&r=18>.



expecting our second child, but could not join me until later. A tent was not acceptable living quarters for a young woman, a small child and another baby on the way. When I began my new life as a Tulelake homesteader, there were approximately 300 homesteaders, most of them with families. We united and began to build schools, churches and a hospital in Klamath Falls. We started a community. We were living the American dream and our dream was achieved by hard work and dedication, and I must say we could never have done this without our wives. In 1957, we formed our own irrigation district taking over from the U.S. Bureau of Reclamation. In 1967 we paid off our portion of the Klamath Project debt to the federal government and the irrigation district became totally ours. In closing, I want to say we fulfilled the American dream and in 2001 the Endangered Species Act came very close to destroying our dream. Our dream was changed into a nightmare.”<sup>22</sup>

Between 2006 and 2010, settlement talks occurred among multiple parties.<sup>23</sup> These negotiations resulted in two parallel agreements between federal, tribal, state and local governments, irrigation districts and non-governmental organizations.<sup>24</sup> Specifically, the Klamath Basin Restoration Agreement (KBRA) proposed hundreds of millions of federal dollars and actions to help restore Klamath fisheries and critical habitat and implement a process aimed at securing water supplies for irrigation and the refuges, among other things.<sup>25</sup> Additionally, the Klamath Hydroelectric Settlement Agreement (KHSA) outlined a process to remove four of PacifiCorp’s hydroelectric producing dams on the Klamath River.<sup>26</sup> Some called the KHSA a model for dam removal elsewhere. For example, former American Rivers CEO Rebecca Wodder said the same process could be used to remove four federal dams on the lower Snake River.<sup>27</sup> This prompted concerns from elected officials and others in the Columbia and Snake basins. Both KBRA and KHSA had local supporters and opponents, with the latter particularly troubled by dam removal.<sup>28</sup> The anticipated cost of the KBRA was also an issue.<sup>29</sup> As a result, Democratic bills introduced in the U.S. Senate to codify these agreements in the 113<sup>th</sup> and 114<sup>th</sup> Congresses were not enacted prior to December 31, 2015, at which point the KBRA expired on its own terms.<sup>30</sup>

In 2016, some of the parties to these agreements discussed a new path forward to implement the KHSA that would not rely on congressional authorization. This resulted in amendments to the KHSA that specified a pathway by which PacifiCorp would apply to the Federal Energy Regulatory Commission (FERC) to transfer ownership of J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate dams to a state-organized non-profit entity that would be responsible for removing

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<sup>22</sup> Committee on Natural Resources Oversight Field Hearing (July 17, 2004), <https://www.congress.gov/108/chr/CHRG-108hrg94998/CHRG-108hrg94998.pdf>, at 14.

<sup>23</sup> Congressional Research Service, *Klamath River Basin: Background and Issues*, R42157, at 14 (June 7, 2012), <https://crsreports.congress.gov/product/pdf/R/R42157>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 15; Klamath Basin Restoration Agreement (Feb. 18, 2010), <http://www.klamathrenewal.org/wp-content/uploads/2020/07/Klamath-Basin-Restoration-Agreement-2-18-10.pdf>.

<sup>26</sup> Klamath Basin Secretarial Determination, 75 Fed. Reg. 33634 (June 14, 2010), <https://www.federalregister.gov/documents/2010/06/14/2010-14174/klamath-hydroelectric-settlement-agreement-including-secretarial-determination-on-whether-to-remove>.

<sup>27</sup> Wodder, Rebecca, *Lessons for Snake River Dams in the Klamath Basin Agreement*, Seattle Times (Oct. 25, 2009), <https://www.seattletimes.com/opinion/lessons-for-snake-river-dams-in-the-klamath-basin-agreement/>.

<sup>28</sup> Mapes, Jeff, *Klamath Basin: Water Pact Crumbles in Congress After Years of Work*, Oregon Live (Dec. 19, 2015), [https://www.oregonlive.com/mapes/2015/12/klamath\\_basin\\_water\\_pact\\_crumb.html](https://www.oregonlive.com/mapes/2015/12/klamath_basin_water_pact_crumb.html).

<sup>29</sup> Templeton, Amelia, *Wyden: Klamath Basin Restoration Agreement Costs Too Much*, (June 21, 2013), <https://www.opb.org/news/article/wyden-klamath-basin-restoration-agreement-costs-to/>.

<sup>30</sup> *Id.*

the four dams.<sup>31</sup> That entity would apply to FERC to surrender the license for these facilities and decommission them. The amended KHSA was signed in April 2016, including by the Departments of the Interior and Commerce under President Obama. The Klamath River Restoration Corporation (KRRC) currently serves as the dam removal entity.<sup>32</sup>

There have been significant further actions under the Amended KHSA and the current state of affairs is as follows:

- (1) the KRRC has available \$450 million, collected from Oregon and California utility customers and a California water bond;
- (2) FERC has conditionally approved transfer of the licenses for the four dams to the KRRC and the states of Oregon, to become effective upon approval of a license surrender order (if such an order is issued); and
- (3) on February 25, 2022, FERC issued a draft Environmental Impact Statement for comment prior to its decision on whether to issue an order authorizing license surrender and decommissioning.

Coincidental to the 2016 amendments to the KHSA, certain parties signed the Klamath Power and Facilities Agreement (KPFA).<sup>33</sup> The KPFA was primarily intended to protect Klamath Project water users from potential regulatory impacts associated with the reintroduction of anadromous fish (primarily salmon) into the Upper Klamath Basin. The KPFA also committed the non-federal parties to continue to support and find a path towards resolution of the issues addressed in the KBRA.<sup>34</sup>

In 2019, FWS and NMFS issued new biological opinions (BiOps) to address their respective listed species. In 2020, this consultation was modified, leading to the current operating regime known as the Interim Operations Plan.<sup>35</sup> This plan details what Reclamation will do to meet the obligations under the ESA imposed by the FWS<sup>36</sup> and NMFS<sup>37</sup> in their individual BiOps.

To address the FWS BiOp, Reclamation is required to maintain the surface elevation of Upper Klamath Lake at least at 4,142 feet above sea level in April and May (during sucker spawning) and not lower than 4,138 feet at all times.<sup>38</sup> The minimum elevation of 4,138 feet means permanently maintaining a minimum of 60,000 acre-feet or ten percent of the *active* capacity stored in Upper Klamath Lake. At the same time, under the NMFS BiOp, Reclamation must

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<sup>31</sup> Klamath Hydroelectric Settlement Agreement (Feb. 18, 2010, as amended April 6, 2016 and Nov. 30, 2016), <https://klamathrenewal.org/wp-content/uploads/2020/03/2016.12.31-Executed-and-Amended-Final-KHSA.pdf>.

<sup>32</sup> Klamath River Renewal Corp., *Klamath River Renewal Project*, <https://klamathrenewal.org/the-project/>.

<sup>33</sup> Klamath River Renewal Corp., *2016 Klamath Power and Facilities Agreement*, <https://klamathrenewal.org/wp-content/uploads/2020/03/REVISED-4-6-2016-Yurok-DRAFT-2016-Klamath-Power-Facilities-Agrmt-CLEAN.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *The Effects of the Proposed Action to Operate the Klamath Project from April 1, 2020 through March 31, 2024 on Federally Listed Threatened and Endangered Species* (Feb. 2020), <https://www.usbr.gov/mp/kbao/docs/klamath-2020-ba.pdf>.

<sup>36</sup> U.S. Fish and Wildlife Service, *Biological Opinion on the Effects of Proposed Klamath Project Operations from April 1, 2019, through March 31, 2024, on the Lost River Sucker and the Shortnose Sucker* (USFWS 2019 BiOp).

<sup>37</sup> National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) *Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for Klamath Project Operations from April 1, 2019 through March 31, 2024* (NMFS 2019 BiOp).

<sup>38</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *The Effects of the Proposed Action to Operate the Klamath Project from April 1, 2020 through March 31, 2024 on Federally Listed Threatened and Endangered Species* (Feb. 2020), <https://www.usbr.gov/mp/kbao/docs/klamath-2020-ba.pdf>.

release significant volumes of water from Upper Klamath Lake – including under dry conditions, all the water and more that physically flows into the lake – to produce designated flows in the Klamath River forty miles downstream of the Project. This includes a spring “flushing flow” of over 6,000 cubic feet per second, for the purported benefit of coho salmon.<sup>39</sup> The specific purpose of the flushing flow is to disrupt and move gravel that contains microscopic worms, which are the intermediate host of a salmon parasite.<sup>40</sup>

Klamath Project water users commonly point out that re-allocation of their historic irrigation supplies in order to provide higher Upper Klamath Lake elevations and Klamath River flows has not led to any known benefit for the threatened and endangered fish populations.<sup>41</sup> A representative from the FWS will testify, but Committee Democrats refused to invite NMFS despite the agency’s role in the Klamath basin.

#### IV. Current Drought Conditions and Actions

Throughout 2021, large parts of the West faced extreme and persistent drought conditions.<sup>42</sup> On May 12, 2021, Reclamation announced that the project’s main delivery system, the “A” Canal, would remain closed for the entire 2021 irrigation season, and that no water would be available for delivery from Upper Klamath Lake for the first time in 117 years.<sup>43</sup> The Klamath Water Users Association (KWUA), which represents most of the farms served by the Project, estimated that the lack of irrigation water led to a loss of \$100 million in economic activity, a 40 to 60 percent decline in on-farm income, a 10 percent decline in land value, and 700 regional jobs lost. In addition, KWUA estimated that more than 300 homes lost water for drinking, cooking and sanitation purposes.<sup>44</sup> Witnesses will discuss these impacts.

In an attempt to help address the impacts to communities in the area, Reclamation awarded a total of \$20 million in drought relief funds to the Klamath Project Drought Response Agency.<sup>45</sup> The Department of Agriculture also provided \$15 million in drought relief funds to the same agency.<sup>46</sup>

Drought conditions across areas of the West, including the Klamath Basin, have persisted in 2022. On March 1, 2022, Reclamation informed districts and individual farmers that hydrologic conditions are such that it is physically impossible to meet the simultaneous requirements for the lake and river under the Interim Operations Plan.

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Alex Schwartz, *Feds pledge \$1.2 million to update Klamath Project science*, *Herald & News* (Jul. 30, 2020).

<sup>42</sup> National Oceanic and Atmospheric Admin., *Drought – Annual 2021*, <https://www.ncdc.noaa.gov/sotc/drought/202113>.

<sup>43</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *Extreme Drought Conditions Force Closure of Klamath Project’s “A” Canal*, (May 12, 2021), <https://www.usbr.gov/newsroom/#/news-release/3850>.

<sup>44</sup> Klamath Water Users Association. *Impacts of 2021 Klamath Project Water Curtailment*. [https://republicans-naturalresources.house.gov/uploadedfiles/footnote\\_33.pdf](https://republicans-naturalresources.house.gov/uploadedfiles/footnote_33.pdf).

<sup>45</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *Reclamation increases Klamath Project drought relief funding to \$20 million* (Oct. 5, 2021), <https://www.usbr.gov/newsroom/#/news-release/4002>.

<sup>46</sup> U.S. Dept. of Ag., *USDA Invests \$15 Million in Klamath River Basin* (Aug. 2, 2021), <https://www.fsa.usda.gov/news-room/news-releases/2021/usda-invests-15-million-in-klamath-river-basin#:~:text=WASHINGTON%2C%20August%202%202021%20%E2%80%94,in%20the%20Klamath%20River%20Basin>.

In the Infrastructure Investment and Jobs Act (P.L. 117-58), FWS was appropriated \$162 million for ecosystem restoration activities in the Klamath basin. FWS has not detailed how it will spend these funds. In its spend plan, FWS stated that it intends to hold workshops “in April and May to identify which priority projects are implementable in the next 12 to 18 months.”<sup>47</sup> This hearing will focus, among other things, on how federal agencies have spent existing funding and will spend these amounts.

Reclamation has requested an additional \$15.7 million in Fiscal Year 2022 for complying with the ESA on the Klamath Project. According to the Congressional Research Service, since 2001 the federal government has expended at least \$460 million in addressing the multiple issues in the Klamath Basin.<sup>48</sup>

Witnesses at this hearing will discuss past federal, state and local efforts aimed at resolving Klamath water issues and how the federal government plans to spend additional funding. Above all, there will likely be a larger discussion about what short-term and long-term “success” means when it comes to water use in the Klamath basin.

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<sup>47</sup> Department of the Interior, Fish and Wildlife Service, *Implementation of the Bipartisan Infrastructure Law Initial Spend Plan* (2022) <https://www.fws.gov/sites/default/files/documents/Bipartisan-Infrastructure-Law-spend-plan.pdf>.

<sup>48</sup> Federal Expenditures for Klamath Basin, [https://republicans-naturalresources.house.gov/UploadedFiles/Federal\\_Expenditures\\_for\\_Klamath\\_Basin.pdf](https://republicans-naturalresources.house.gov/UploadedFiles/Federal_Expenditures_for_Klamath_Basin.pdf)