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# counterpunch

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## Water, Power and the Irrigation Elite

### Political Theater of the Absurd in the Klamath Basin

by FELICE PACE

When the Klamath Hydroelectric Settlement Agreement, or KHSA, and the Klamath Basin Restoration Agreement, or KBRA, were signed in February 2010 amid [pageantry and fanfare](#), the public was told these deals would unite the Klamath River Basin and end conflict over Klamath water. Promoters no longer make those claims. In light of the considerable conflict and controversy that has come to surround both Agreements, hope that they would bring "[Peace on the River](#)" has proven wildly over-optimistic.

Opposition to the KHSA Dam Deal and the KBRA Water Deal has come most prominently from the anti-environmental right and their [friends in the Republican House of Representatives](#). However, the deals have also split the environmental community: Trout Unlimited and California Trout are signatories and active promoters, Oregon Wild and Water Watch of Oregon are among the opponents. Three of the basin's six tribal governments helped create the deals and support them; three are in opposition.<sup>[1]</sup>

The opposed environmental groups and tribes want PacifiCorp's dams removed but believe that can be accomplished quicker and at less cost to taxpayers by a return to the normal Federal Energy Regulatory Commission process. They also believe the KBRA damages tribal trust rights and provides insufficient water for Klamath Salmon.



*Iron Gate – most downriver of five Klamath River Dams owned and operated by PacifiCorp.*

Opposition to the KHSA and KBRA received a boost recently when the newly elected Klamath County Commission declared its intention to withdraw from the Agreements. If the Commissioners follow through on their declared intent, Klamath County will join Siskiyou County in opposition. Together the two counties occupy the entire Upper Klamath River Basin – including all five privately owned Klamath River Dams, the federal Klamath Irrigation Project, a complex of nationally important wildlife refuges and roughly half a million acres of irrigated agriculture land.

Two “parties” to the Deals which have been among their strongest proponents, however, are saying not so fast. According to Greg Addington, spokespersons for the Klamath Water Users Association, and Craig Tucker, spokesperson for the Karuk Tribe, Klamath County is contractually obligated and can’t withdraw support for the the KHSA and KBRA without risking costly litigation.

Statements by Addington and Tucker published in newspapers ranging from the [New York Times](#) to the [Klamath Falls Herald and News](#), appear calculated to instill fear in the minds of newly elected Klamath County Commissioners and thereby dissuade them from withdrawing Klamath County from the two Agreements.

### **Weird Now and From the First**

The post-WW2 play *Huis Clos* (No Exit) by existential philosopher Jean-Paul Sartre portrays hell as a room in which one is forced to spend eternity with persons whom one can positively not stand to be around. In light of litigation threats from Addington and Tucker, those who have signed the KHSA and KBRA may be feeling a bit like the characters in Sartre’s play. The idea that in the USA elected county commissioners can not withdraw from political deals made by their predecessors may strike readers as absurd. In light of the totality of what has transpired in the Klamath River Basin in recent years, however, the threats from Addington and Tucker are not unique but typical.

The weirdness began when a group of federal, state and local officials joined with three tribal governments, federal and private irrigation interests and a collection of local, state and national environmental organizations in negotiations from which the public and three other tribal governments were excluded. Declaring itself the Klamath Settlement Group, the unlikely collection of interests took upon itself the authority to negotiate the fate of Public Trust Resources in a venue from which the public was excluded.

More weird still is the fact that the two deals were orchestrated by federal officials but the federal government is not officially a party to them. Nevertheless, it is the feds who paid (and continue to pay) consulting fees billed by the individual who facilitated the negotiations and who appears to now work behind the scene coordinating efforts to get Congress to endorse (and fund) the deals.

The Klamath Settlement Group’s shenanigans got more weird yet when the Yurok Tribe’s chief negotiator conspired with irrigation interests and others to expel two environmental groups – Oregon Wild and Water Watch of Oregon – from the closed-door negotiations.

Propaganda issued by KHSA-KBRA promoters and detractors has been equally weird. On the one hand, Tea Party types declare that privately owned dams belong to local communities and cannot be removed. On the other hand, special interest deals designed to free PacifiCorp from responsibility (and liability) for its five Klamath River dams and to insulate the federal Klamath Irrigation Project from responsibility for providing river flows needed to recover Klamath River Salmon are presented as being necessary to get the dams removed and the Klamath River restored.

The latest developments – especially statements issuing from Addington and Tucker – have, however, eclipsed the weird and entered the realm of the downright bizarre. One is reminded of lines from the classic song *Hotel California* by the Eagles: “*You can check-out any time you like, but you can never leave!*”

### **The Dragon Fumes**

In order to understand these latest developments one must know a bit about the agriculture politics of the Upper Klamath River Basin. That politics is dominated by those irrigation interests (including large growers and the dominant businesses which service those growers) operating in the Lost River Sub-Basin and in the area immediately downriver from the City of Klamath Falls. These growers receive subsidized water from the US Bureau of Reclamation. They have always had their way in the basin, whether that was securing the legislative right to conduct commercial agriculture on national wildlife refuges or to have local politicians support their desire to be first in line for Klamath River water ahead of other irrigators, wildlife refuges and the needs of the Klamath Salmon.



*The Klamath Irrigation Project with major canals and pumping plants. There are four national wildlife refuges within the area shown.*

But politically dominant federal irrigation interests represent only a little more than half of total irrigation in the Upper Klamath River Basin. The other half is made up of private, non-federal irrigators most of whom are hay and beef cattle producers. Until recently, those private irrigators have not been politically organized. Consequently their interests have been ignored by local politicians who have fallen all over themselves to do the bidding of the large growers – those who receive subsidized water courtesy of the US Bureau of Reclamation and who, through consolidated ownership and leasing, control most of the best agricultural land in the Basin.

Those prime agricultural lands are located in the bed of the former Tule and Lower Klamath Lakes. Centuries of organic deposition made lake bed soils rich. Since those beds were diked and drained using federal funds, dominant growers have been mining the soils thereby generating unusually large profit margins. It is those riches – extracted from lakebed soil – which have fueled the political power these irrigation interests now wield. Their dominant political power is why I describe these growers as the Klamath River Basin's *Irrigation Elite*. The Klamath Water Users Association is the *Elite's* chief political instrument.



*Commercial agriculture in the diked and drained bed of Tule Lake*

## Unhappy Elite

These days, however, the *Irrigation Elite* is not happy. For the first time, they have pulled the political strings but puppet politicians have not danced. In fact, it is precisely because the Basin's non-federal irrigators revolted and organized politically for the first time (when they were disadvantaged in the KBRA Water Deal) that Klamath County Commissioners opposed to the two deals were elected and now seek to extract the county from both the KHSA and the KBRA.

In other words, The *Irrigation Elite* are reaping the consequences of their own greed. Via the KBRA Water Deal (which their lawyer drafted), the *Elite* has chosen to feather their own nests at the expense of non-federal irrigators. This is seen clearly, for example, in [section 16.2.2](#) which presents the KBRA's program to reduce demand for diverting and consuming water which otherwise would flow down the Klamath River.

KBRA water use retirement provisions recognize that Klamath River water is overallocated and seek to reduce demand by retiring irrigation water rights through purchase from willing sellers. At the insistence of the *Irrigation Elite*, however, demand reduction is prohibited within the 200,000 irrigated acres within the federal Klamath Irrigation Project. Instead, all demand reduction under the deal must come from those private, non-federal irrigators operating above Upper Klamath Lake. The *Irrigation Elite* refuses to allow any reduction in the roughly 200,000 acres currently irrigated using federal water because that could raise land lease costs thereby negatively impacting the large profit margins to which they have become accustomed.



*Irrigation Elite mansion and an arrogant message.*

While opposition to dam removal also figures in Upper Basin opposition to the Dam and Water Deals, it is the manner in which the KBRA disadvantages non-federal irrigators relative to federal irrigation interests which is at the heart of the political revolt that has occurred within Klamath County politics.

That political revolt has the *Irrigation Elite* fuming and that is reflected in the thinly veiled threat of litigation issued by Addington and Tucker.

## Tribal Rights on the Line

The drama playing out on the Klamath River Basin also has implications for tribal rights. If affirmed by Congress, the KBRA would absolve the Bureau of Reclamation's Klamath Irrigation Project<sup>[2]</sup> from responsibility for providing the water needed to sustain tribal trust resources which include Chinook and Coho Salmon in the Klamath River and two species of endangered sucker fish found in the Upper Klamath River Basin— Kuptu and Tsuam (aka Lost River and Shortnose Suckers). Some of these fish would still receive some protection via federal and state law, including the federal Endangered Species Act. However, tribal trust requires restoration of abundance while the ESA can only prevent extinction.

Federal courts have consistently [ruled](#) that the treaty and reserved rights of federal tribes include right to the amount of water needed to sustain a moderate living standard for tribal members living on tribal lands. The Supreme Court has [ruled](#)

that the US government's termination of a tribal reservation does not extinguish hunting and fishing rights assured in a treaty – including the amount of water needed to sustain those rights.

Because it has embedded within it settlement of water rights held by the Klamath Tribes which will soon be finalized by the State of Oregon as the long [Klamath Adjudication](#) nears completion, the KBRA must be viewed within the context of a two decade long effort by the federal government and western states to settle tribal claims which were ignored when state and federal governments divided among themselves the waters of the West's rivers. Most of the water settlements which have been negotiated with tribes and endorsed by Congress involve the tribes relinquishing or agreeing not to assert "unperfected" (i.e. paper) water rights in exchange for federal funding for tribal government programs and (sometimes) for a smaller amount of real (i.e. wet) water.

As I have written [elsewhere](#), I believe historians will look back at these settlements as the second great rip-off of America's Indigenous natives – first they took the land and attempted to "extinguish" the people; now they are taking water rights potentially worth billions for the modern equivalent of a fist full of beads. [Others who have studied the settlements](#), however, see them as, on-balance, favorable to the tribes.

In the Klamath River Basin only the water rights of one tribe – Oregon's Klamath Tribes[\[3\]](#) – are directly affected. If the KBRA is endorsed and funded by Congress, the Klamath Tribes have agreed not to assert their right to in-stream flows sufficient to support tribal treaty fisheries – including Klamath salmon fisheries. In exchange the Tribe would receive federal funding to purchase land – reestablishing a reservation which was [terminated by the federal government in 1954](#).

The Klamath Tribes have held two referendums affirming member support for the KHSA and KBRA. The KBRA's waiver of the federal trust responsibility with respect to the Bureau of Reclamation's Klamath Irrigation Project, however, applies to all six federal tribes based in the Klamath River Basin. Three of those tribes – the Hoopa Tribe, Quartz Valley Indian Reservation and Resighini Rancheria – have not agreed to have their trust rights terminated. The tribal councils of two other tribes – the Yurok Tribe and the Karuk Tribe – voted to sign the KBRA – including the termination of trust rights – but have not held a vote of members on the Agreements or on the proposed congressional termination of trust rights. The most prominent inter-tribal organization lobbying Congress – the National Congress of American Indians – opposes involuntary termination of tribal rights as proposed in the KBRA.

### **A Theater of the Absurd**

The suggestion by the *Irrigation Elite* – a private interest group – that they can prevent an elected government from withdrawing from the KHSA and KBRA would be comic if it were not so serious. Were these Deals signed in blood? Is their yet another secret pact requiring those who have signed to make human sacrifice before they can say enough is enough?

No doubt the *Irrigation Elite* is hoping threats from Addington and Tucker will be enough to get the elected Klamath County Commissioners to back down. If threats are not effective, however, expect the *Irrigation Elite* to seek a pound or two of political flesh at the expense of those Commissioners who have dared to defy their will.

Should Klamath County Commissioners follow through and withdraw their county from the deals, however, a lawsuit by the *Irrigation Elite* seeking to block the withdrawal is unlikely. That's because such a lawsuit would highlight the undemocratic manner in which decisions are being made about the Klamath's Public Trust Resources – including water and salmon. One should not, however, underestimate the arrogance of the small group of powerful growers who control the Klamath Water Users Association. Arrogance has already caused them to overreach in feathering their own nests via the KBRA and might also convince them to attempt using the courts to control politicians who have defied their political hegemony.

What does not appear in doubt is that the drama which has been playing out in the Klamath River Basin will continue for at least a few more years. Because two very powerful entities – *PacifiCorp* and the *Irrigation Elite* – as well as several smaller tribal governments and private interest, stand to gain materially, they will not soon or easily give up seeking the golden ring – federal legislation authorizing and funding the KHSA and KBRA.

What has been banished to the dustbin of history is the promise that the KBRA and KHSA would unite the Klamath River Basin and end conflict over Klamath water. Even Greg Addington and Craig Tucker no longer make that claim.

When the drama and propaganda are stripped away, the KHSA and KBRA – the Klamath Dam and Water Agreements – are revealed as special interest deals which favor some interests at the expense of others. Any deal which favors some irrigators over other irrigators, some tribes over other tribes and some environmental interests over other environmental interests cannot bring stability or end conflict over Klamath water.

Creators of the KHSA and KBRA failed to deliver an end to the Basin's water conflicts. They failed because they were too greedy; they chose feathering their own nests over fairness and equity for all.

How long can an increasingly absurd and theatrical process continue in light of that reality?

*Felice Pace is a longtime environmental activist in northern California. You can find his writings online at [Bearitude in Black](#).*

**Notes.**

[1] Tribes opposing the KHSA and KBRA are the Hoopa Tribe, Quartz Valley Indian Reservation and Resighini Rancheria; those which have signed on include the Karuk Tribe, Yurok Tribe in California and the Klamath Tribes of Oregon.

[2] Reclamation changed the name of the irrigation project it operates in the Klamath Basin. Previously called the *Klamath Irrigation Project*, Reclamation now calls it simply the *Klamath Project*. I continue to use the prior name because it more accurately describes what the project is about – maximizing irrigation no matter what the consequences for refuges, river and at-risk fish species, including Coho Salmon.

[3] The Klamath Tribes is comprised of three ethnically different groups of Indigenous natives – the Klamath, Modoc and Yahonskin groups – making up a single tribal government. Hence “Klamath Tribes” refers to a single tribal government.