June 30, 2020

Jeffrey Nettleton
Area Manager
Klamath Basin Area Office
U.S. Bureau of Reclamation
6600 Washburn
Klamath Falls, OR 97603

Re: Lower Klamath NWR Water Supply Needs

Dear Mr. Nettleton:

California Waterfowl Association is extremely concerned about the water supply situation of the Lower Klamath National Wildlife Refuge (LKNWR). With the overall shortage of water in the Klamath Basin this year, we are concerned that the refuge may receive no water at all this summer and fall which would be catastrophic for the ducklings that are being hatched out over the summer and will likely lead to a botulism outbreak in the late summer. It is almost a foregone conclusion that there will be very little hunting opportunity in the fall. Although the refuge had some carry-over water from 2019, that water is dwindling fast and by September, most of the refuge will be bone dry

Additionally, the California Waterfowl Association is extremely concerned with the failure to deliver water that has been transferred from the U.S. Fish & Wildlife Service's (Service) Agency Lake and Barnes Ranch properties to the LKNWR. That water is to be delivered at a rate of 30 cubic feet per second over six months for a total of 11,000 acre-feet, under a change of place of use issued by the Oregon Water Resources Department (OWRD). The transfer has been acknowledged by the Bureau of Reclamation in its 2020 Operations Plan, 2019 Proposed Action, and 2020 Biological Assessment yet we are told this water will no longer reach the LKNWR.

The 2020 Annual Operations Plan says of the Barnes/Agency transferred right:

> *Any water rights transferred to LKNWR pursuant to state law, such as those water rights originally appurtenant to the Agency Lake and Barnes Ranch properties, are separate from the water available to LKNWR from UKL under the Interim Operations Plan. FWS has administrative discretion over the exercise of these non-Project water rights.*

The 2019 Proposed Action states:

> *Delivery of the transferred water right occurs from April 1 through September 30. This water right, transferred from its original place of use at UKNWR, is for a daily flow of up to 30.3cfs, which is the determined consumptive use volume of the transferred right. This flow is delivered on a daily basis in the model and is not subject to reduction via the UKL control logic. Delivery of this transferred*

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water right is only available if Sevenmile Creek is not regulated to a senior water right (i.e., the Project).

And the 2020 Biological Assessment states:

In addition to the proposed fall/winter and spring/summer deliveries, Reclamation also anticipates that from April 1 through September 30 LKNWR may exercise a water right temporarily transferred from the Agency Lake and Barnes Ranch properties to irrigable lands in LKNWR . . . Collectively, the transferred water right from the Agency Lake and Barnes Ranch properties allows for diversions at the Ady Canal of up to approximately 31 cfs and 11,200 AF in total annually. This transferred water right has a priority date of September 13, 1920 and is potentially subject to water rights regulation in the Upper Klamath Basin based on calls by senior water rights holders, including potentially a call made on behalf of the water rights for the Project. In the event of call by the Project or other senior water rights holders, USFWS may not be able to exercise this transferred water right due to regulation by OWRD. For purposes of this PA, the KPBM assumes that diversions at the Ady Canal associated with this transferred water right will be approximately 11,000 AF. Water diversions by the USFWS to the Ady Canal pursuant to the water right transferred from the Agency Lake and Barnes Ranch properties are not subject to UKL control logic, given that in approving this transfer, OWRD determined that this water would have historically been diverted and consumed upstream of UKL.

This failure to deliver a transferred water right is problematic for several reasons. First, the water is not being received at the refuge at the time it is most needed. Second, the water transfer has apparently been subsumed into the Project allocation of 140,000 acre-feet, despite the fact that the above-mentioned documents state that it is not subject to the control logic for the Upper Klamath Lake, and it has not been regulated by a senior water right holder. Third, this treatment of the transferred water right is problematic in the event that the refuge is able to secure any additional water rights from above Upper Klamath Lake, which would need assurances from the Bureau that the water could be delivered to the LKNWR.

California Waterfowl requests that the Bureau provide the Service with written assurances that, in the future, transferred water obtained by the Service will be delivered under the conditions set forth in the 2020 Operations Plan, the 2019 Proposed Action, and the 2020 Biological Assessment. Otherwise, the acquisition of future transfers of water from above Upper Klamath Lake, which appear to be the best option for obtaining a secure water supply for the Lower Klamath NWR, will not have any value in dry years.

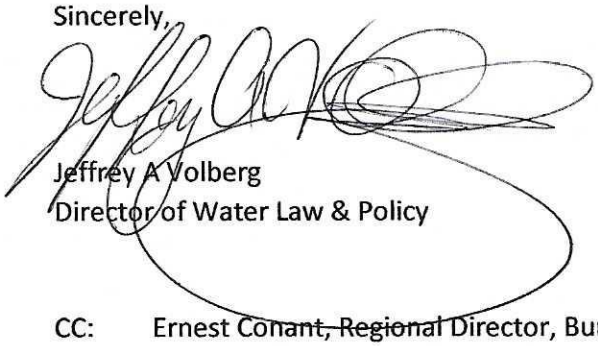
The remaining water supply options available to the LKNWR for the rest of the summer and into the fall appear to include the following:

1. Some undetermined amount of Klamath Project water that might be obtained by the Drought Relief Agency; or,

2. Some relaxation of the elevation requirements for Upper Klamath Lake to make water available in excess of the 140,000 acre-feet allocation to the Klamath Project and delivered under the Agency/Barnes transfer

Most of all, California Waterfowl is concerned that an historic lake and marsh complex is being turned into a desert. Whatever efforts the Bureau could make to alleviate these disastrous conditions will be greatly appreciated.

Sincerely,



Jeffrey A Volberg
Director of Water Law & Policy

CC: Ernest Conant, Regional Director, Bureau of Reclamation
Paul Souza, Regional Director, U.S. Fish & Wildlife Service
Greg Austin, Refuge Supervisor, U.S. Fish & Wildlife Service