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September 21, 2012

Honorable Ken Salazar
Secretary of the Interior
1849 C Street, NW
Washington, DC 20420

Re: Water for the Klamath Basin National Wildlife Refuges

Dear Secretary Salazar,

On March 27, 2012 a coalition of numerous national, regional, and local conservation groups, asked your office to ensure that Tule Lake and Lower Klamath National Wildlife Refuges (NWRs) of southern Oregon and northern California receive overdue water deliveries. While much needed and appreciated water deliveries were later provided, unfortunately these deliveries did not occur in time to head off the death of an estimated 20,000 ducks, geese, and swans that were confined to diminished wetland habitats where fowl cholera easily spread. (Please see the *San Francisco Chronicle* article of April 21, 2012: "Migrating waterfowl die from lack of water," at http://www.sfgate.com/science/article/Migrating-waterfowl-die-from-lack-of-water-3498382.php)

Sadly, this fall, the wetlands of these premier National Wildlife Refuges in the Klamath Basin have once again been denied even minimally sufficient amounts of water needed to provide necessary habitat for upwards of one million birds. **Lower Klamath National Wildlife Refuge wetlands received no water deliveries from May 17th through August 30th**, leaving refuge wetlands parched and almost totally dry at the beginning of the fall waterfowl migration period. This is happening in a year when commercial agricultural operations, uniquely permitted to operate on these national wildlife refuges, continue to receive deliveries from scarce water supplies at the public's greater expense, and to the significant detriment to the region's wetland habitat, water quality, waterfowl, and other wildlife.

Thus, we are writing once again to request that your office direct the Bureau of Reclamation (BOR) to immediately provide full water deliveries to otherwise dry marshes on Tule Lake and Lower Klamath National Wildlife Refuges. Specifically, a total of 45,000 acre feet of water is needed to sufficiently meet Lower Klamath NWR's fall migration and year-end water needs.

Hope for a Comprehensive Solution for a Threatened National Treasure

In addition to providing much-needed emergency water supplies, we also hope that this Administration may provide a comprehensive solution that respects the Klamath Basin NWRs' reserved water rights and federal refuge law while insuring that the biological wealth of these once great National Wildlife Refuges are not simply allowed to continue to slowly decline and die.

Today, approximately 80% of the Klamath Basin region's historic wetlands are commercially farmed on both private and public lands. Tule Lake and Lower Klamath NWRs were created to mitigate the past century's enormous wetland losses, and to restore the West's waterfowl abundance. Wetland habitats of the Lower Klamath and Tule Lake NWRs are critically important to migratory birds throughout the western continents' Pacific Flyway. During the peak of the spring and fall migrations, Lower Klamath NWR alone has supported 40% of all the waterfowl in the Pacific Flyway. The Klamath Basin NWRs host the largest concentration of wintering bald eagles in the lower 48 states. In the mid-1950's Klamath Basin NWR managers once described this abundance as "the greatest concentration of waterfowl in North America and probably the world." This natural resource abundance needs to be restored and protected for future generations.

Yet, despite the vital importance of these refuge wetland habitats, as over 22,000 acres of these refuge lands are annually leased to commercial agriculture interests. Phasing out the federally-managed practice of leasing land on Klamath Basin NWRs for commercial agriculture would not only help restore and protect these national treasures, it would be a key first step towards a comprehensive solution for the Klamath Basin's longstanding water woes.

Commercial agriculture for non-wildlife purposes on the Klamath Basin refuges has caused a host of problems and controversies:

- Commercial agriculture on the refuges displaces the wetland habitats for fish, wildlife, and plants which the refuges were created to conserve. One-third of the total land area within

Tule Lake and Lower Klamath NWRs is farmed. Indeed, *less than half of the Tule Lake NWR's potential waterfowl habitat is available for waterfowl.* Not including Tule Lake refuge's 8,476 acres of waterfowl-unfriendly sagebrush and rock outcroppings, 51% of this refuge is devoted to commercial agriculture.

- Commercial agriculture on refuge lands uses roughly 60,000 acre-feet of scarce water supplies each year, blocks over 100,000 acre-feet of potential wetland water storage, and intensifies groundwater depletion problems in and around the refuges.

- Commercial agriculture on the refuges consumes scarce water that otherwise could be provided to parched refuge wetlands. Again this year, as in 2010 and in previous years, a large portion of the refuge marshes were left dry, even as irrigated commercial leaselands on the refuges received nearly full water deliveries.

- Commercial agriculture on the refuges contributes to the impairment of already severely degraded water quality on the refuges, and requires the application of dozens of toxic pesticides. Water quality in Tule Lake is currently so poor, blankets of algae cover extensive areas of open water on the refuge in summer.

- Commercial agriculture on the refuges results in erosion and sedimentation of refuge wetlands.

A Legal Basis for Positive Change

The BOR's paper on Klamath Project "Historic Operations" (http://www.usbr.gov/mp/kbao/docs/Historic%20Operation.pdf) maintains:

> "Reclamation has an obligation to ensure that the refuges receive adequate water to fulfill their federal reserved water rights (i.e., the amount of water necessary to fulfill the primary purposes of the refuges) when in priority and when water is available. In addition, Reclamation can continue to provide available Project water for beneficial reuse by the refuges to the extent of past and current usage and consistent with Project purposes (DOI, 1995). The refuges have federally reserved water rights for the water necessary to satisfy the refuges' primary purposes. In addition, the Lower Klamath and Tule Lake refuges have water rights based on a portion of the Klamath Project water right."

While the 1964 Kuchel Act provided for agriculture on the refuges, it is only allowed to the extent that it is consistent with wildlife conservation. The intention of the law was never to provide water to leased agricultural lands if this meant denying water for wetlands and wildlife. Specifically, this law states that "Such lands [the refuges] shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with optimal consideration to optimum agricultural use that is consistent therewith."

The 1964 Act also states in a further provision that "The Secretary shall, consistent with proper waterfowl management, continue the present pattern of lease the [refuge]." Conservationists

strongly believe that a refuge agricultural leaseland program that consumes tens of thousands of acre feet of water, at the expense of the refuge's remaining wetlands that are allowed to go dry, is inconsistent with the Act and does nothing to assure "proper waterfowl management."

Additionally, and most recently, Section 5 of the 1997 National Wildlife Refuge System Improvement Act establishes affirmative stewardship obligations of the Secretary of the Interior with respect to the Refuge System including the following:

> "In administering the National Wildlife Refuge System, the Secretary shall ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans."
>
> "In administering the National Wildlife Refuge System, the Secretary shall assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge."
>
> "In administering the National Wildlife Refuge System, the Secretary shall ensure that priority public uses [hunting, fishing, wildlife observation and photography, or environmental education and interpretation] of the System receive enhanced consideration over other general public uses in planning and management within the System."

50 C.F. R. 29.1 of the US Fish and Wildlife Service's regulations also requires that any economic use of a refuge, such as commercial agriculture production, must not only do no harm to refuges, but they must also contribute to achieving the purposes of the refuge or the mission of the National Wildlife Refuge System.

Incredibly, the Service has previously and inappropriately concluded that its commercial agricultural practices are compatible with refuge purposes. With the seemingly continued lack of availability of water for wildlife purposes, no credible case can be made that water consumptive commercial refuge agriculture is consistent with the refuge's principal purposes.

Service regulations also require a prompt termination of existing refuge uses that are found to be incompatible. We request that the Interior Department make this long overdue finding and immediately prioritize all water delivery to the refuges for only specific wildlife purposes.

Finally, the US Fish and Wildlife Service should make a determination that commercial farming on the refuges is no longer compatible with refuge purposes and take the appropriate steps required under Oregon state law to transfer the 1905 priority dated irrigation water rights associated with irrigating refuge lands for commercial agricultural purposes to refuge purposes for the betterment of waterfowl and other fish and wildlife.

In the short run, we request that your office direct the US Bureau of Reclamation to take immediate measures to ensure that water is provided this fall to Lower Klamath NWR to flood and sustain its essential seasonal and permanent marshes, and to maintain Tule Lake lake levels

consistent with the current Biological Opinion to sustain Tule Lake NWR's two species of endangered fish.

Sincerely,

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