



**Oregon**

Kate Brown, Governor

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TO: Jeff Nettleton, Area Manager, U.S. Bureau of Reclamation  
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John Sample, PacifiCorp  
823 NE Multnomah Street, Suite 2000  
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Cc: Michael Gheleta  
Nathan Reitmann

FROM: Thomas M. Byler, Director  
Oregon Water Resources Department

DATE: April 16, 2020

**NOTIFICATION OF DISPUTE AND INVESTIGATION  
IN AID OF DISTRIBUTION**

You are hereby NOTIFIED of a petition by the Klamath Irrigation District (“KID”) for an order from the Oregon Water Resources Department (“Department” or “OWRD”) to immediately take exclusive charge of the Upper Klamath Lake (“UKL”) reservoir to “ensure that stored water is not released out of UKL reservoir through the Link River Dam except to meet the needs of secondary water right holders calling upon the source until the irrigation season ends on October 31, 2020.”

You are hereby NOTIFIED that a dispute exists as provided in Oregon Revised Statutes (“ORS”) 540.210.

NOW THEREFORE, the Department commences this investigation in aid of distribution and division of water according to the relative and respective rights of the various users from the UKL.

## AUTHORITIES

### *A. Distribution of Water from Irrigation Ditches and Reservoirs*

“Whenever any water users from any ditch or reservoir either among themselves or with the owner thereof, are unable to agree relative to the distribution or division of water through or from the ditch or reservoir, either the owner or any such water user” may apply by written notice to the watermaster of the district in which the reservoir is located setting forth the facts of the disagreement and “asking the watermaster to take charge” of the reservoir “for the purpose of making a just division or distribution of water” from the reservoir “to the parties entitled to the use thereof.”<sup>1</sup>

The watermaster upon receipt of an application “shall then take exclusive charge” of the reservoir, for the “purpose of dividing or distributing the water therefrom in accordance with the respective and relative rights of the various users of water” from the reservoir and shall continue the work “until the necessity therefor shall cease to exist.”<sup>2</sup> The distribution and division of water “shall be made according to the relative and respective rights of the various users” from the reservoir as determined by the Water Resources Director.<sup>3</sup>

### *B. Payment of Assistant Watermaster*

A watermaster may appoint an assistant to take charge of a reservoir involved in the distribution or division of water under ORS 540.210.<sup>4</sup> The “assistant watermaster shall be paid” by the water users from the reservoir for the cost of the distribution. The Water Resources Commission may require the water users to “pay in advance” the “estimated compensation and expenses of the assistant involved in the distribution or division of the water.”<sup>5</sup>

In the case of a reservoir, the wages of the assistant watermaster and expense incurred by the assistant in making the distribution provided for by ORS 540.210 to 540.520, and “the necessary and proper expense of installation and maintenance of measuring devices and headgates to provide for the just distribution of water among the several users in accordance with their respective and relative rights, shall be a lien” upon the reservoir.<sup>6</sup> The “lien shall attach to each tract of land entitled to the use of water for irrigation” from the reservoir, and “upon the crops

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<sup>1</sup> ORS 540.210(1).  
<sup>2</sup> ORS 540.210(2).  
<sup>3</sup> ORS 540.210(3).  
<sup>4</sup> ORS 540.220(1).  
<sup>5</sup> *Id.*  
<sup>6</sup> ORS 540.240.

produced upon the lands during the irrigation season for which the distribution is made.”<sup>7</sup> The wages and expense of the assistant watermaster “shall be paid monthly by the water users.”<sup>8</sup>

### ***C. Rights Determined in the Klamath Adjudication***

Before the adoption of the Oregon Water Code in 1909, the Oregon courts had adopted the doctrine of prior appropriation of water rights which key tenets require beneficial use of water without waste and priority of use in terms of priority of right – or first-in-time is first-in-right.<sup>9</sup> “Customarily, the intent to apply water to a beneficial use was manifested by some form of public notice, and the date of the appropriation related back to the date of the notice, as long as the appropriator both began the diversion of the water and put the water to beneficial use within a reasonable time.”<sup>10</sup> The scope and extent of an appropriation “turned on the appropriator’s intent, typically manifested in the notice and ultimately limited by the beneficial use to which the water was put.”<sup>11</sup>

A water rights adjudication is an action to determine all respective water rights on a stream system.<sup>12</sup> The result of an adjudication is a decree of the court which conclusively establishes the rights of all existing claimants upon the stream or other body of water embraced in the determination.<sup>13</sup> An adjudication decree does not create any new water rights, rather it confirms pre-existing rights.

In 1975, the Department “invoked Oregon’s statutory procedure for the mass adjudication of water rights in order to determine all claims to surface water in the Klamath River Basin.”<sup>14</sup> Toward that end, the Department notified over 25,000 potential claimants, and began the process for the administrative phase of the adjudication which constituted the taking and assessing of claims, the issuance of a preliminary determination, and the subsequent acceptance of contests to claims. Upon resolution of contests in an administrative action, the Department issued its Amended and Corrected Findings of Fact and Order of Determination (“ACFFOD”) on April 10, 2014,<sup>15</sup> which order constitutes the final order of the Director. Since the order was entered in the Klamath County Circuit Court, and “until a certified copy of the judgment order or decree of the court is transmitted to the director, the division of water” from the streams involved in the

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<sup>7</sup> *Id.*

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

<sup>9</sup> *Teel Irrigation District v. Water Resources Department*, 323 Or 663 (1996).

<sup>10</sup> *Klamath Irrigation District v. United States*, 348 Or 15, 24 (2010) citing *Nevada Ditch Co. v. Bennett*, 30 Or 59, 84 – 86 (1896) and referring to *Re Rights to Waters of Silvies River*, 115 Or 27, 101 – 102 (1925) (describing pre-1909 code methods of providing notice and making an appropriation).

<sup>11</sup> *Id.*

<sup>12</sup> ORS Chapter 539

<sup>13</sup> ORS 539.150; ORS 539.200.

<sup>14</sup> *U.S. v. Oregon*, 44 F3d 758, 762 (Providing background on the Klamath Adjudication and finding a comprehensive stream adjudication for the purposes of the McCarran Amendment).

<sup>15</sup> After initial filing of the administrative determination in 2013, the Department made corrections and filed ACFFOD in 2014.

adjudication “shall be made in accordance with the order of the director.”<sup>16</sup> This means that the ACFFOD is presently enforceable and governs the distribution and division of water from UKL (among other sources in the basin).

The U.S. Bureau of Reclamation (“BOR”) is the sole owner of a determined claim in the ACFFOD, KA 294. KA 294 authorizes the BOR to store a maximum annual volume of 486,828 acre feet (“AF”) of water in UKL between certain elevations of the lake bed.

KID is a co-owner of determined claim KA 1000. BOR and other Klamath Project Water Users (“KPWU”) are also co-owners of KA 1000. KA 1000 authorizes KID, among others, to use natural flow from UKL, or water stored under KA 294 in UKL, for irrigation, domestic and incidental stock watering uses. KA 1000 authorizes the KID to beneficially use up to 3.5 AF per acre for irrigation purposes during the irrigation season March 1 through October 31.<sup>17</sup>

The ACFFOD establishes the relative rights of the entities to store and use water, but does not direct the means of distribution or the delivery of water and is not a guarantee of water availability.<sup>18</sup> As the ACFFOD expressly states:

“The Klamath Basin Adjudication is limited to a determination of interests in the use of water. A determination of the relative rights of the KPWU entities and the United States to control or operate diversion and distribution works, including headgates, pumps, canals and other structures, is not within the scope of the Adjudication, and must take place in another forum. The Adjudication is concerned only with establishing the points of diversion that are, in fact, used to convey water to the claimed place of use. These points of diversion have been adequately established based on the record of this proceeding. The description and recognition of these points of diversion in this Partial Order of Determination is not intended to and does not alter in any way the relative rights of the United States and the irrigation entities to control or operate the irrigation works.”<sup>19</sup>

Other Oregon laws control the Watermaster’s duties including the obligation to participate in division and distribution of water according to the respective and relative rights established by water rights of record and, in some cases, by determined claims such as those presently enforceable as a result of the ACFFOD. Those authorities are explained in more detail in the next section.

#### ***D. Distribution of Water Generally***

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<sup>16</sup> ORS 539.170.

<sup>17</sup> KBA\_ACFFOD\_07155, 07160

<sup>18</sup> ORS 540.610 (“Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.”).

<sup>19</sup> KBA\_ACFFOD\_07085-07086 (pp 69-70 of 261 in the Case 003 Partial Order of Determination).

The Water Resources Commission has divided the state into water districts and the Director has appointed a watermaster for each water district. The Director is also authorized to appoint other duly authorized assistants who “shall have the powers and authority of a watermaster in the distribution of water in any district.”<sup>20</sup> Each watermaster shall:

“Upon the request of the users, distribute water among the various users under any partnership ditch, pipeline or well or from any reservoir, in accordance with the users’ existing rights of record in the Water Resources Department.”<sup>21</sup>

Pending completion of the proceedings in the Klamath County Circuit Court, the Department is directed to divide the waters from the streams involved in the adjudication in accordance with the ACFFOD rather than according to “existing water rights of record.”<sup>22</sup>

Regulation of water is accomplished by attaching to the headgate, valve or other control work a written notice dated and signed by the watermaster, setting forth that the headgate, valve or other control works has been properly regulated and is wholly under the control of the watermaster.<sup>23</sup> Owners of diversion works may also be required to install controllable regulation and measuring devices.<sup>24</sup> The watermaster is also authorized to issue final orders pertaining to a water user’s rights under the terms of the water right.<sup>25</sup>

#### 1. Regulation of Stored Water

KA 294 authorizes the BOR to store a maximum annual volume of 486,828 AF of water in UKL. This storage water right together with groundwater discharge into UKL and natural stream flow entering UKL is the source of water for KA 1000 which authorizes the KID, among other water users, to apply up to 3.5 AF per acre for irrigation purposes during the irrigation season from March 1 through October 31. “For purposes of regulating the distribution or use of water, any stored water released in excess of the needs of water rights calling on that stored water shall be considered natural flow, unless the release is part of a water exchange under the control of, and approved by, the watermaster.”<sup>26</sup> In addition, “[u]se of legally stored water is governed by the water rights, if any, which call on that source of water.”<sup>27</sup>

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<sup>20</sup> ORS 540.010(Water Commission shall divide the state into districts so as to secure the best protection to the claimants for water and the most economical supervision on the part of the state); ORS 540.020 (The Director shall appoint one watermaster for each district and may appoint duly authorized assistants).

<sup>21</sup> ORS 540.045(1)(b).

<sup>22</sup> ORS 539.170; ORS 540.045.

<sup>23</sup> ORS 540.045(1)(d).

<sup>24</sup> ORS 540.320.

<sup>25</sup> *Teel Irr. Dist. v. Water Resources Department*, 323 Or at 676.

<sup>26</sup> ORS 540.045(3).

<sup>27</sup> OAR 690-250-0150(4).

Whenever the owner of a reservoir uses the bed of a stream, or other water course to carry stored water from the reservoir to the consumer of the stored water the owner is required to notify the watermaster in writing of the date stored water is to be released, the quantity of water released (rate of flow), the names of the persons which are to receive the water and the diversion locations of where the stored water is to be taken from the stream or water course.<sup>28</sup>

Measuring devices are required when the reservoir is across or upon the bed of a natural stream.<sup>29</sup>

### *E. Investigating Complaints and Disagreements*

The present disagreement by the KID involves a complaint that the BOR intends to release stored water from the UKL rather than distributing stored water to secondary water right holders entitled to that source through the end of the irrigation season.

#### 1. The process of investigating complaints

The process for investigating complaints is instructed by Oregon Administrative Rules (OAR) Chapter 690 Division 250 which govern the investigation of complaints of a shortage of surface water:

“(1) The watermaster shall investigate and respond to all complaints of water shortages or unlawful use based on a review of appropriate records and performance of field inspections, as judgement may require. The watermaster’s response may be oral or written communication to appropriators involved in the complaint or shortages, or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster may begin regulation if investigation reveals a valid complaint of water shortage or unlawful use. Water shall be regulated in accordance with the relative rights or rotation agreements of the appropriators involved in the complaint or shortage.”<sup>30</sup>

In conclusion, upon receipt of a complaint of a shortage of water, the watermaster is directed to investigate the complaint by reviewing appropriate records and performing field inspections “as judgement may require.” The watermaster may begin regulation “if investigation reveals a valid complaint of water shortage or unlawful use.”

#### 2. The process of performing investigations to carry out the duties of the Commission

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<sup>28</sup> ORS 540.410.

<sup>29</sup> ORS 540.330.

<sup>30</sup> OAR 690-250-0100.

In addition to the authority to investigate complaints of water shortages or unlawful use, the Water Resources Commission or a person designated by and acting for the commission may:

- “(a) Conduct public hearings.
  - (b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.
  - (c) Administer oaths.
  - (d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Water Resources Department under ORS 196.600 to 196.921, 541.010 to 541.320, 541.386, 541.430 to 541.545 and 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543.
- (2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2).”<sup>31</sup>

In sum, the Director is authorized to investigate a complaint of a surface water shortage caused by the purported mismanagement of stored water, and the Commission is authorized to “receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Water Resources Department under,” among other statutes, ORS 540.210.<sup>32</sup> In the conduct of its investigation the Commission is authorized to serve subpoenas and to gather any other information it requires to “take exclusive charge” of the UKL “for the purpose of dividing or distributing the water therefrom in accordance with the respective and relative rights of the various users of water from the \* \* \* reservoir.”<sup>33</sup>

3. Determining the estimated compensation and expenses of the assistant involved in the distribution or division of water

A watermaster may appoint an assistant to “take charge” of the reservoir involved in the distribution of water under ORS 540.210.<sup>34</sup> The assistant “shall be paid by the water users” from the reservoir for “the cost of the distribution.” In turn, the “Water Resources Commission may require the water users to pay in advance the estimated compensation and expenses of the assistant involved in the distribution or division of the water.”<sup>35</sup>

In aid of determining the costs of taking exclusive charge of the UKL to “ensure that stored water is not released out of the UKL reservoir through the Link River Dam except to meet the needs of secondary water right holders calling upon the source until the irrigation season

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<sup>31</sup> ORS 536.026.  
<sup>32</sup> ORS 536.026(1)(d).  
<sup>33</sup> ORS 536.026; ORS 540.210(2).  
<sup>34</sup> ORS 540.220(1).  
<sup>35</sup> *Id.*

ends on October 31, 2020,” the Commission is obligated to perform an investigation of the estimated compensation and expenses of the assistant in the distribution and division of water.<sup>36</sup>

4. Expenses incurred by the assistant in making the distribution

In the case of a reservoir the expenses incurred by the assistant in making the distribution provided for by ORS 540.210 to 240 and the “necessary and proper expense of installation and maintenance of measuring devices and headgates to provide for the just distribution of water among the several users in accordance with their respective and relative rights, shall be a lien upon the \* \* \* reservoir” which lien “shall attach to each tract of land entitled to the use of water for irrigation” from the reservoir.<sup>37</sup>

The Commission, in implementing its duties pursuant to ORS 540.210 must make an investigation of the necessary and proper headgates and measuring devices to distribute water and for the expense of installing those headgates and measuring devices. Such investigation may include determining the cost of taking “exclusive charge” of the Link River Dam to distribute water in accordance with the respective and relative rights of lawful users.

### NOTICE OF DISPUTE

On April 3, 2020, the Oregon Water Resources Department received a *Notice of dispute and request that OWRD take charge of Upper Klamath Lake reservoir pursuant to ORS 540.210* (“Notice”). The Notice alleges that Klamath Irrigation District and others “are involved in a dispute with the United States Bureau of Reclamation concerning the distribution of stored water in Upper Klamath Lake” and “[t]he dispute centers on whether Reclamation is entitled to use stored water in UKL reservoir for instream purposes in the Klamath River when it does not have any form of water right authorizing such use.”

A copy of the Notice is attached hereto as Exhibit A101. A copy of a further letter reiterating the Notice is attached at Exhibit A102. A copy of an email further explaining the demand contained in the Notice is attached hereto as Exhibit A103.

A copy of the BOR’s 2018 Interim Plan with which KID previously disagreed is attached as Exhibit A104.

The Department recognizes that the Marion County Circuit Court has previously concluded that KID’s stated disagreement with the Bureau’s 2018 Operations Plan was sufficient to trigger the duty of ORS 540.210. Therefore, the Department assumes without deciding that the Notice states KID’s disagreement with the Bureau’s 2020 Operations Plan (anticipated to be issued on April 17, 2020) and is sufficient to trigger the duty of ORS 540.210.

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<sup>36</sup> ORS 540.220; ORS 536.027.

<sup>37</sup> ORS 540.240.

Jeff Nettleton, USBOR  
Gene R. Souza, KID  
John, Sample, Pacificorp  
April 16, 2020  
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In accordance with the authorities described in this notice, the Department and Commission commence an investigation in aid of distribution as follows.

## **PROCESS OF INVESTIGATION**

### ***A. Issuance of Subpoenas***

Pursuant to its authorities in ORS 540.045, ORS 540.210 and ORS 536.027, subpoenas in aid of investigation will be issued to the following entities: 1) the Klamath Irrigation District; 2) the U.S. Bureau of Reclamation; and 3) PacifiCorp. **Subpoenas will be issued by no later than May 1, 2020.**

The deadline for response to the subpoenas will be as provided in the subpoenas and in no case does issuance of a subpoena preclude voluntary production of the information requested.

### ***B. Taking of Testimony***

At its May 1, 2020 meeting, the Commission is expected to appoint a representative to preside over the investigation in aid of distribution. Subsequently at a date to be determined but, as soon as reasonably possible, the Commission and a representative of the Director will hold a hearing for the purpose of asking any additional questions or taking any further evidence as it may be necessary to determine distribution pursuant to ORS 540.210 and ORS 540.045. This hearing may be a virtual hearing held solely by electronic means.

### ***C. Regulatory Order and Estimate of Compensation***

After an investigation as the Commission and the Director consider is necessary or proper to carry out the duties of ORS 540.210 and ORS 540.045, the Director shall determine the distribution and division of water according to the relative and respective rights of the various users from the reservoir and shall issue an order.

After investigation as the Commission considers is necessary or proper to determine the estimated compensation and expenses of the assistant involved in the distribution or diversion of water, the Commission may provide such estimate to water users and may require for payment in advance of the distribution or diversion of water.

Attachments:

1. A101
2. A102
3. A103
4. A104



RIETMANN LAW, P.C.

April 3, 2020

Oregon Water Resources Department  
Attn: Dannette Watson  
305 Main Street  
Klamath Falls, Oregon 97601

RE: Notice of dispute and request that OWRD take charge of Upper Klamath Lake reservoir pursuant to ORS 540.210

Ms. Watson:

The Klamath Irrigation District (“KID”) and other districts and individuals within the Klamath Reclamation Project are involved in a dispute with the United States Bureau of Reclamation concerning the distribution stored water in Upper Klamath Lake (“UKL”) reservoir. Exhibit 1. The dispute centers on whether Reclamation is entitled to use stored water in UKL reservoir for instream purposes in the Klamath River when it does not have any form of water right authorizing such use.

The Districts and individuals are unable to resolve this dispute with Reclamation on their own. Therefore, KID is asking the Oregon Water Resources Department (“OWRD”) to immediately take charge of UKL reservoir and resolve the dispute pursuant to ORS 540.210. **Timely action on the part of OWRD is of the absolute essence as Reclamation is planning to use approximately 50,000 acre-feet of water from UKL reservoir for instream purposes on or before April 15, 2020.** The facts and circumstances surrounding this dispute are set forth in detail below.

#### FACTS AND CIRCUMSTANCES

1. KID is a quasi-municipal entity duly organized and existing pursuant to ORS Chapter 545. By law, it is governed by the landowners it serves, which are largely comprised of small family farmers and ranchers. ORS 545.002; ORS 545.007; ORS 545.025; ORS 545.043.

2. In 1954, KID and the United States Department of the Interior Bureau of Reclamation entered into Contract No. 14-06-200-3784 (“1954 contract”). Exhibit 2. The purpose of the contract was for KID to “take over (from the United States) the operation

and maintenance of certain project works.” *Id.* at Pg. 4. The works that KID to operates and maintains pursuant to the 1954 Contract include “[t]he entire Main or ‘A’ Canal,” which is the specific structure that KID uses to divert water from UKL reservoir. *Id.* at Pg. 6. Under the 1954 contract, KID has also assumed the United States’ obligation to deliver water to Pine Grove Irrigation District, Van Brimmer Ditch Company, Enterprise Irrigation District, Malin Irrigation District, Shasta View Irrigation District, and all the individual contractors listed in the exhibits to the 1954 contract. KID has also assumed the United States’ obligation to deliver water to Klamath Basin Improvement District, Sunnyside Irrigation District, and others. All told, it is estimated that KID is responsible for diverting and delivering water to approximately 122,000 acres of land within the Klamath Project.

3. Oregon adopted its Water Rights Act in 1909. *See*, ORS 537.010. The Water Rights Act recognizes all pre-1909 water rights as undetermined vested rights. ORS 536.007(11). Under the law, undetermined vested rights to “take and use water shall not be impaired or affected by any provisions of the Water Rights Act.” ORS 539.010(4). However, the Water Rights Act provides that all predetermined vested rights must be quantified and determined through Oregon’s general stream adjudication process, which is currently set forth in ORS Chapter 539. *Id.*

4. The United States Supreme Court has upheld the constitutionality of Oregon’s general stream adjudication process. The United States Supreme Court has also held that in Oregon’s general stream adjudication process “[a]ll claimants are required to appear and prove their claims; not one can refuse without forfeiting his claim, and all have the same relation to the proceeding. It is intended to be universal and to result in a complete ascertainment of all existing rights...” *Pac. Live Stock Co. v. Lewis*, 241 US 440, 447–48, 36 S Ct 637, 641, 60 L Ed 1084 (1916).

5. In 1975, OWRD initiated a *comprehensive* general stream adjudication of pre-1909 water rights in the Klamath Basin pursuant to ORS Chapter 539.

6. In 1991, the United States brought a declaratory judgment action against the State of Oregon asserting that it did not need to participate in the Klamath Basin Adjudication to preserve its federal reserved water rights in Upper Klamath Lake and other portions of the Klamath Basin. The Klamath Tribes joined in this suit. The Ninth Circuit Court of Appeals held that the McCarran Amendment (43 U.S.C. §666) waives the sovereign immunity of the United States and Indian Tribes in general stream adjudications, such as the Klamath Adjudication, and therefore the United States and Indian Tribes claiming federal reserved water rights in waters encompassed within the scope of the Klamath Adjudication (e.g., UKL reservoir) are required to participate in the Klamath Adjudication to preserve their claims. *See, United States v. State of Or.*, 44 F3d 758, 762 (9th Cir 1994).

7. On March 7, 2013, OWRD filed its Findings of Facts and Order of Determination (“FFOD”) in the Klamath Adjudication with the Klamath County Circuit Court comprehensively determining the water rights in UKL reservoir.

8. On February 28, 2014, the FFOD was superseded by an Amended and Corrected Findings of Fact and Order of Determination (“ACFFOD”).<sup>1</sup>

9. Pursuant to ORS 539.130(4) and ORS 539.170, the ACCFOD is in full force and effect and water is to be distributed in accordance with the ACCFOD unless or until the ACCFOD is stayed either wholly or in part pursuant to ORS 539.180.

10. As of this date, the ACCFOD has not been stayed, either fully or in part.<sup>2</sup>

11. The ACCFOD recognizes that the United States Bureau of Reclamation is the owner of the banks and beds of Klamath Lake reservoir, but that a water right is not conferred on the United States by virtue of such ownership. KBA\_ACFOD\_07084 fn. 42.

12. The ACCFOD provides that the United States Bureau of Reclamation (“Reclamation”) “is the owner of a right to store water in Upper Klamath Lake to benefit the separate irrigation rights recognized for the Klamath Project.” KBA\_ACFOD\_07084. The storage right consists of the right to store 486,828 acre-feet between the elevations of 4143.3 and 4136 with a season of storage of January 1 through December 31. KBA\_ACFOD\_07060. The right to store water under the “primary” storage right “does not include the right to divert and use stored water, which must be the subject of the secondary permit.” *Cookinham v. Lewis*, 58 Or 484, 492 (1911).

13. The ACCFOD provides that KID, its landowners, and other individuals and irrigation district within the Klamath Reclamation Project hold secondary rights to use water that Reclamation lawfully stores in UKL reservoir. KBA\_ACFOD\_07075 – 7082.

14. The irrigation season for KID and the other districts and individuals it serves is from March 1<sup>st</sup> to October 31<sup>st</sup>.

15. The ACCFOD does not grant Reclamation a right to use stored water in UKL reservoir for instream purposes and Reclamation does not otherwise have any such right. Nevertheless, Reclamation has committed to a Biological Opinions by the United States

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<sup>1</sup><https://www.oregon.gov/OWRD/programs/WaterRights/Adjudications/KlamathRiverBasinAdj/Pages/ACFFOD.aspx>

<sup>2</sup><https://www.courts.oregon.gov/courts/klamath/resources/Pages/KlamathBasinAdjudication.aspx>

Fish and Wildlife Service (“USFW”) and the National Marine Fisheries Service (“NMFS”)(collectively services) obligating Reclamation to use more than 400,000 acre-feet of water in UKL reservoir, including stored water, for instream flows in the Klamath River.<sup>3</sup> The stored water in UKL reservoir that Reclamation has committed to using for instream purposes is diverted out of UKL reservoir through the Link River Dam, as well as the regulating reservoirs of Lake Ewauna and Keno. Reclamation owns the Link River Dam.

16. Pursuant to the NMFS BiOp, Reclamation has committed providing a “flushing flow” in the Klamath River on or before April 15, 2020. *See*, NMFS BiOp, Pg. 39-40. This will entail Reclamation diverting water from UKL reservoir through Link river dam to enable flows at Iron Gate Dam, which reach or exceed 6030 cfs for 72 hours. *Id.* As the inflow into UKL reservoir is insufficient to enable such flows, the overwhelming majority of these instream flows will be provided from water stored in UKL reservoir. And even if Reclamation deviates from the flushing flow release as modeled in the NMFS BiOp, a similar amount of stored water will be released into the Klamath River during April, May, and June as if flushing happens as modeled. Although Reclamation has committed to using stored water in UKL reservoir for instream purposes, it has failed to obtain an instream right authorizing such use in accordance with Oregon law and the Reclamation Act of 1902.

17. Reclamation contends that because it is using stored water in UKL reservoir to meet the commitments it has made under the Endangered Species Act, it is not necessary for it to obtain an instream water right. KID disagrees. The existence of an obligation to provide water for instream purposes under the Endangered Species Act (“ESA”) does not grant Reclamation an instream water right or excuse it of the requirement to obtain an instream water right in accordance with Oregon law. *See, Sierra Club v. Babbitt*, 65 F.3d 1502, 1510, (9<sup>th</sup> Cir. 1995)(The “ESA “directs agencies to ‘utilize their authorities’ to carry out the ESA’s objectives; it does not *expand* the powers conferred on an agency by its enabling act.”)(emphasis in original).

Under Section 8 of the Reclamation Act of 1902, Reclamation is required to comply with state law in the “control, appropriation, use, or distribution of water.” *California v. U.S.*, 438 US 645, 675, 98 S Ct 2985, 3001, 57 L Ed 2d 1018 (1978). And Section 7 of the Reclamation Act of 1902, 43 U.S.C. § 421, provides that “when it becomes necessary to acquire any rights or property, the Sectary on the Interior is authorized to acquire the same for the United States by purchase or condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose...” In short, if Reclamation needs to use water stored in UKL reservoir for instream purposes, federal law (i.e., the Reclamation Act) requires Reclamation to obtain an instream water right through

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<sup>3</sup> [https://archive.fisheries.noaa.gov/wcr/publications/Klamath/19-03-29\\_nmfs\\_biop\\_klamath\\_project\\_operations.pdf](https://archive.fisheries.noaa.gov/wcr/publications/Klamath/19-03-29_nmfs_biop_klamath_project_operations.pdf)

appropriation, purchase, or condemnation under judicial process in accordance with Oregon law.

Moreover, Reclamation does not have discretion to release water from Link River Dam however it pleases. Instead, the Reclamation Act requires Reclamation to operate the dam (which controls storage water in UKL reservoir) in accordance with the ACFFOD. *Nat. Res. Def. Council v. Patterson*, 791 F.Supp. 1425, 1435 (E.D. Cal. 1992). This is because “Section 8 [of the Reclamation Act] protects from federal interference both those state laws which have a connection with the control, appropriation, use or distribution of water used in irrigation, and individual rights which have vested under those, or any other, laws.” *Nat. Res. Def. Council v. Patterson*, 791 F.Supp. 1425, 1433 (E.D. Cal. 1992). Consequently, Reclamation must operate Link River Dam (which controls water storage in UKL reservoir) in accordance with the ACFFOD. *Id.* at 1435 (“Section 8 incorporates state statutes which affect both dam operation and water impoundment or distribution and statutes which solely affect water impoundment or distribution.”).

Oregon law is clear that “[o]nce water from a natural source has been legally stored, use of the stored water is subject only to the terms of the secondary permit that grants the right to use of stored water.” Op Atty Gen OP-6308 (1989); ORS 540.210(3) (“The distribution and division of water shall be made according to the relative and respective rights of the various users from the ditch or reservoir.”) (Emphasis added); OAR 690-250-0150(4) (“Use of legally stored water is governed by the water rights, if any, which call on that source of water.”). *Tudor v. Jaca*, 178 Or 126, 147–148 (1945) (impounded water may only be used to satisfy the secondary right). For such reason, “legally stored water is not subject to call by senior rights to natural flow, even if the stored water originated in that stream.” Op Atty Gen OP-6308 (1989) (Emphasis added). Therefore, the only parties entitled to the use of water Reclamation stores in UKL reservoir are secondary right holders and water stored in UKL reservoir is not subject to call from any senior user who does not hold a secondary right in the stored water.

18. All available information indicates that because Reclamation is using water stored in UKL reservoir for instream purposes without a water right, there is going to be inadequate stored water available in UKL to satisfy the water rights of KID and other water rights holders within the Klamath Project. Exhibit 3. Moreover, even if there were sufficient stored water available to meet the irrigation needs of KID and other secondary right holders within the Klamath Project (and there is not), KID and other water right holders would desire to instream lease or sell any water they hold rights to which is beyond their irrigation demand to Reclamation, pursuant to Sections 1 and 2, chapter 445, Oregon Laws 2015 and ORS 545.367. However, this is impossible when Reclamation is using more than 400,000 acre-feet of water from UKL reservoir for instream purposes without a water right.

KID'S SPECIFIC IMMEDIATE REQUEST

Pursuant to ORS 540.210, KID is requesting that OWRD immediately take charge of UKL reservoir and ensure that stored water is not released out of UKL reservoir through the Link River Dam except to meet the needs of secondary water right holders calling upon the source until the irrigation season ends on October 31, 2020. As noted at the outset, time is of the essence as Reclamation has committed itself to providing a "flushing flow" on or before April 15, 2020, which will involve the diversion of stored water from UKL to enable flows at Iron Gate Dam, which reach or exceed 6030 CFS for 72 hours.

Please do not hesitate to contact me if you need additional information or otherwise seek to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan R. Rietmann', with a long horizontal line extending to the right.

Nathan R. Rietmann

Cc: Mr. Thomas Byler, Director, Oregon Water Resources Department  
Mr. Jeffrey Nettleton, Area Manager, U.S. Bureau of Reclamation



## KLAMATH IRRIGATION DISTRICT

6640 K.I.D. LANE

KLAMATH FALLS, OREGON 97603

Phone: (541) 882-6661 Fax (541) 882-4004

31 March 2020

U.S. Bureau of Reclamation  
Attention: Jeffrey Nettleton, Area Manager  
Klamath Basin Area Office  
6600 Washburn Way  
Klamath Falls, Oregon 97603

Reference: Distribution of stored water from UKL reservoir

Mr. Nettleton:

The United States Bureau of Reclamation is currently distributing water from Upper Klamath Lake (“UKL”) reservoir in accordance with the 2019 Biological Opinions from the United States Fish and Wildlife Service (“USFW”) and the National Marine Fisheries Service (“NMFS”) (collectively “Services”), as modified by the “Interim Operations Plan for Operation of the Klamath Project for Water Years 2020-2022.”

Pursuant to these documents, I understand Reclamation intends to use more than 407,000 acre feet of water from UKL reservoir for instream purposes between 1 April and 30 September 2020. I further understand stored water in UKL reservoir will be used to provide a substantial portion of these instream flows. The use of stored water is projected to begin in April in the form of a “flushing flow,” and continue at varied rates through September 2020. See, NMFS BiOP, Pg. 39. At the same time, these documents articulate “Project Supply” for the 2020 Spring/Summer period will be significantly reduced from the amount of water available for beneficial use by the owners of the secondary water rights that call on water stored in UKL reservoir.

My understanding is Reclamation has not secured any lawful right to use water in UKL reservoir for instream purposes. This is extremely problematic because Reclamation is required to comply with state law in the control, use, and distribution of water. *California v. U. S.*, 438 US 645, 667, 98 S Ct 2985, 2997, 57 L Ed 2d 1018 (1978). Under Oregon law, Reclamation’s water rights in UKL reservoir are as set forth in the Amended and Corrected Findings of Fact and Order of Determination (“ACFFOD”) entered in the Klamath Adjudication. Oregon State, through the ACFFOD, does not recognize Reclamation as having an instream water right in UKL reservoir. Furthermore, Oregon water law prohibits Reclamation from using water stored in UKL reservoir without a water right. ORS 537.130; ORS 540.720. *Nat. Res. Def. Council v. Patterson*, 791 F.Supp. 1425, 1435 (E.D. Cal. 1992) (“Section 8 incorporates state statutes which affect both dam operation and water impoundment or distribution and statutes which solely affect water impoundment or distribution.”)

Klamath Irrigation District (“Klamath ID”), understands Reclamation does not believe it is required to comply with state law because it is using water from UKL reservoir for purposes outlined in the Endangered Species Act (“ESA”) 16 U.S.C. § 1531 et seq. However, the ESA does

not grant Reclamation new authority to use water without complying with the requirements of Oregon law. See, *Sierra Club v. Babbitt*, 65 F.3d 1502, 1510, (9th Cir. 1995) (The ESA “directs agencies to ‘utilize their authorities’ to carry out the ESA’s objectives; it does not expand the powers conferred on an agency by its enabling act.”) As the Oregon Attorney General has stated in relation to a different Reclamation Project in Oregon:

[T]he bureau may release stored water for beneficial use only if both authorized by federal law and consistent with the water right certificate issued by the WRD. Although federal law provides for other uses besides irrigation, the bureau's storage right authorizes only irrigation as the secondary use of the stored water. Accordingly, to be able to use the stored water for the non-irrigation purposes authorized by federal law, the bureau must obtain a water right to appropriate water for those purposes. Op Atty Gen OP-6423 (1992)

The fact is that the water Reclamation lawfully stores in UKL reservoir is fully appropriated by the secondary water rights holders who call upon the source between 1 March 2020 to 31 October 2020. These secondary water right holders include Klamath ID as well as the numerous irrigation districts and individuals Klamath ID serves within the Klamath Reclamation Project who also own secondary water rights to water stored in UKL reservoir. The secondary water rights of Klamath ID and others constitute “a vested property interest which cannot be divested without due process of law.” *Skinner v. Jordan Valley Irr. Dist.*, 137 Or 480, 491, 300 P 499, 503 (1931), opinion modified on denial of reh'g, 137 Or 480, 3 P2d 534 (1931).

Klamath ID, and the secondary water right holders it serves, are amenable to resolving this disagreement by instream leasing their secondary water rights to Reclamation pursuant to Section 1 and 2, chapter 445, Oregon Laws 2015, or through a forbearance agreement. However, time is of the essence because Reclamation is planning to use stored water for a flushing flow on or before 15 April 2020. Therefore, while Klamath ID and other secondary right holders stand ready, willing, and able to immediately negotiate the terms of an instream lease or forbearance agreement, we need notification that Reclamation is prepared to enter into such negotiations on or before 1 April 2020 and any such negotiations must be completed by 12pm on April 3, 2020. Otherwise, pursuant to ORS 540.210, KID will ask OWRD to take charge of UKL reservoir, as well as the regulating reservoirs of Keno and Lake Ewauna as necessary, to stop Reclamation from distributing water stored in UKL reservoir for instream purposes, which are not authorized by the ACFFOD nor an instream water right permit or certificate.

Sincerely,



Gene R. Souza  
Executive Director and District Manager  
Klamath Irrigation District

**From:** Enterprise Irrigation District [eidistrict1918@gmail.com](mailto:eidistrict1918@gmail.com)  
**Subject:** OWRD  
**Date:** April 3, 2020 at 1:56 PM  
**To:** [nathan.riemannlaw.com](http://nathan.riemannlaw.com) [nathan@riemannlaw.com](mailto:nathan@riemannlaw.com)

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Dear Nathan Rietmann

I am sending this e-mail on behalf the board of directors for Pine Grove Irrigation District (PGID) and Enterprise Irrigation District (EID). We dispute Reclamation's right use water in UKL for instream purposes without an instream water right and support KID's request that OWRD do its due diligence in enforcing Oregon water rights per Oregon Water law on Upper Klamath Lake. Please let OWRD know that the board of directors of PGID and EID fully support KID's request to OWRD.

Shane McDonald



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11/29/54

Contract No.  
14-06-200-3784

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Klamath Project, Oregon-California

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE KLAMATH IRRIGATION DISTRICT

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CONTRACT NO.

14-06-200-3784

Regional Office Draft 8-1-54  
(Revised W. O. 9-9-54)  
Approved W. O. 9-17-54

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Klamath Project, Oregon-California

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE KLAMATH IRRIGATION DISTRICT

THIS AMENDATORY CONTRACT, made this 29th day of November,  
1954, between THE UNITED STATES OF AMERICA, hereinafter called the  
United States, acting through the Secretary of the Interior, pursuant to  
the Federal reclamation laws, and the KLAMATH IRRIGATION DISTRICT,  
organized and existing under and by virtue of the laws of the State of  
Oregon, hereinafter called the District:

WITNESSETH, THAT:

EXPLANATORY RECITALS

WHEREAS, under authority of the Federal reclamation laws the  
United States has constructed and continues to construct the irrigation  
project in the States of Oregon and California, known as the Klamath  
Project, consisting of facilities for storing water in Upper Klamath  
Lake and Gerber Reservoir in Oregon, and Clear Lake Reservoir in  
California, together with works for delivering irrigation water therefrom  
to areas where it may be beneficially used; and

WHEREAS, the United States and the District, acting pursuant  
to the Federal reclamation laws and the laws of the State of Oregon, have  
previously entered into a contract dated July 6, 1918, as amended and  
supplemented by contracts dated June 28, 1920, April 10, 1922, June 25,  
1927, November 24, 1928, April 1, 1938, and June 2, 1950, for the repay-  
ment of the costs of construction of certain of the Project works; and

WHEREAS, the District is obligated, among other things, to repay to the United States that part of the expenditures made by the United States in the construction of the Project which is properly allocable to the District; and

WHEREAS, the District, as the duly authorized representative of the water users within its geographic boundaries, desires to enter into an amendatory contract with the United States, which would provide for the District to take over the operation and maintenance of certain of the Project works;

NOW, THEREFORE, in consideration of the mutual and dependent covenants and stipulations herein contained, it is mutually agreed between the parties hereto as follows:

DEFINITIONS

1. The following terms, whenever used in this contract, shall have the following respective meanings:

(a) "District" shall mean the Klamath Irrigation District, except where indicated otherwise.

(b) "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

(c) "Federal reclamation laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto.

(d) "Reserved works" shall mean all Project works located outside the District boundaries but within Klamath County, Oregon, and

Siskiyou and Modoc Counties, California, which contribute to the irrigation, drainage or flood protection of the District lands but will continue to be operated and maintained by the United States or by some agency other than the District, under contract with the United States, plus the following works located wholly or partly within the District:

(i) The entire "J" Canal and distribution system, including the headworks and Lower Lost River Diversion Dam.

(ii) All buildings at the Project headquarters, except those which may be transferred to the District under provisions of Article 4(e) of this contract.

(iii) Lost River Diversion Dam and the Lost River Diversion Channel, including all appurtenant control works.

(iv) The Project telephone system.

(v) Link River Dam.

(vi) Enterprise Hydroelectric Plant.

(e) "Transferred works" shall mean all of the irrigation works set forth in Article 4 and such other irrigation works constructed by the United States for the irrigation of the lands located within the geographic boundaries of the District which upon agreement between the United States Bureau of Reclamation and the District may hereafter be transferred to the District for operation and maintenance.

(f) "Operation and maintenance costs" shall mean all costs properly chargeable to operation and maintenance of the works in reference to which the term is used, including, without limitation by reason of

this enumeration, the costs of replacements and betterments of such works or any part thereof.

SCOPE OF CONTRACT

2. This contract supplements the previous contracts enumerated herein between the United States and the District. All provisions of such contracts not in conflict with this contract shall remain in full force and effect.

INDEBTEDNESS OF DISTRICT

3. The construction cost obligation of the District to the United States as established by previous contracts, or as said contracts may hereafter be amended, is not affected by this contract.

TRANSFERRED WORKS TURNED OVER TO DISTRICT

4. Effective January 1, 1955, there is transferred to the District for care and operation and maintenance the real and personal property listed below, used or useful for operative purposes of the Klamath Project, subject to the provisions of Article 5. Title to said property shall remain in the United States except as provided in Article 5.

(a) The entire Main or "A" Canal, and the "B", "C", "D", "E", "F" and "G" Canals, including the "C-G Cutoff," (but excluding the Enterprise Hydroelectric Plant) and all their related distribution systems;

(b) The entire drainage system within the District, including the Melhase-Ryan drainage pumping plant and the "J" Canal North Side

Parallel Drain and drainage works constructed pursuant to the agreement of November 24, 1928, as set forth in said agreement;

(c) All structures used in connection with the above canals, distribution and drainage works;

(d) The Adams and Miller Hill Pumping Plants;

(e) The residences, outbuildings, shops, warehouses, and office buildings designated by the District pursuant to the procedure set forth in Article 5 hereof;

(f) All equipment, records and supplies used in connection with the operation and maintenance of the transferred works which the United States desires to transfer with said works and which the District designates pursuant to the procedure set forth in Article 5 hereof.

#### SELECTION AND TRANSFER OF PROPERTY

5. Prior to the time that the transferred works are turned over to the District for care and operation and maintenance as provided in Article 4 hereof, the Board of Directors of the District shall determine which, if any, it desires of the Klamath Project residences, outbuildings, shops, offices, warehouses, or other structures to be used in connection with the operation of the District but which are not integral parts of the irrigation and drainage systems, and what equipment, records and supplies it wishes to accept, pursuant to Article 4 hereof. Upon making such determination, the Board shall submit to the Secretary a list of those structures, equipment, records and supplies, whereupon such

list shall be appended to and become part of this contract. Upon the transfer to the District of the operation and maintenance of the works as provided in Article 4, the items on said list shall be transferred to the District for use in connection with the care and operation and maintenance of said transferred works. Whenever, and to the extent, authorized by law, title to said structures, equipment, records and supplies shall be vested in the District.

OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

6. The District accepts the care, operation, and maintenance of the transferred works and will care for, operate, and maintain the transferred works and deliver water therefrom in full compliance with the Federal reclamation laws as they now exist or hereafter may be amended, the regulations of the Secretary now in force or hereafter promulgated, and the terms of this contract and any other contract in force affecting the transferred works.

KEEPING TRANSFERRED WORKS IN REPAIR

7. (a) No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the Secretary.

(b) The District shall promptly make any and all repairs to the transferred works which, in the opinion of the Secretary, are necessary for their proper preservation in as good condition as they were on the effective date of this contract.

(c) In case of neglect or failure of the District for a period of one (1) year to make such repairs, the United States may, at the option of the Secretary, take back the care, operation and maintenance of the transferred works as provided in Article 21 hereof, or may cause suitable repairs to be made and charge the cost thereof to the District, which charge the District shall pay as provided in Article 16.

(d) In event of major disaster to, or failure of, the transferred works, or any part thereof, which results in damage of such severity or magnitude that immediate repairs to the transferred works are imperative, in the opinion of the Secretary, to protect against substantial hazard to life or property, and the District is then unable or unwilling to promptly accomplish such repairs, the United States may, at the option of the Secretary, immediately take and temporarily retain possession of the transferred works for such time as may be necessary to protect life and property and to prevent further damage to the transferred works. The District shall pay to the United States, as provided in Article 16, the cost of any emergency repairs made during such period of temporary possession by the United States.

INSTALLATION AND MAINTENANCE OF MEASURING DEVICES  
AND REPORTING OF DATA

8. The District shall, at its expense, and in a manner satisfactory to the Secretary, maintain all water measuring and controlling devices and gages as have been constructed or installed by the United States or by the District in connection with the transferred works,

collect the data from such devices and gages, and furnish the United States with written reports of such data. If the District at any time fails to do so, the United States may replace or repair such devices and collect such data at the expense of the District, which charge the District shall pay in accordance with Article 16.

#### CROP CENSUS

9. The District shall, at its own expense, keep a reasonably accurate record of all crops raised, including agricultural and livestock products produced on District lands, and furnish the Secretary on or before December 31 of each year a crop report, including the aforesaid data, in a form prescribed by the Secretary.

#### INSPECTION OF TRANSFERRED PROPERTY

10. The Secretary shall cause to be made from time to time a reasonable inspection of the transferred property to ascertain whether the terms of this contract are being satisfactorily executed by the District. Such inspection may include examinations of the transferred property and of the books, records, and papers of the District, together with examinations in the office of the District of all contracts, papers, plans, records and programs connected with the transferred property. The actual expense of such inspection as found by the Secretary shall be paid by the District to the United States as provided in Article 16, provided that the maximum cost for which the District shall be obligated for such inspection shall not exceed fifteen (15) man-days within any period of three (3) consecutive years, plus actual travel and per

diem expenses. The foregoing limitation shall not apply to inspections reasonably necessary to assure that repairs required pursuant to Article 7 have been satisfactorily completed. All inspections shall be held to the minimum necessary to protect the interests of the United States.

#### INSPECTION OF BOOKS AND RECORDS

11. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the Project account books and official records of the Bureau of Reclamation, insofar as the same pertain to the matters and things provided for in this contract, relating to the construction, acquisition, care, operation and maintenance of the transferred property, the status of individual accounts and the account of the District, and payments of operation and maintenance and construction charges, with the right at any time during office hours to make copies thereof, and the proper representative of the United States shall have similar rights in respect to the account books and records of the District.

#### OPERATION AND MAINTENANCE OF RESERVED WORKS

12. The reserved works shall be operated and maintained by the United States or by some other agency under contract with the United States. The District will pay to the United States its appropriate share of the cost of operating and maintaining the reserved works as provided in Article 16.

DELIVERY OF WATER SUPPLY AND ASSUMPTION BY DISTRICT OF  
OUTSTANDING CONTRACT OBLIGATIONS OF THE UNITED STATES

13. (a) The District shall take the water supply for the lands within the limits of the District, as the same are now or hereafter defined, to be served by or through the transferred works, at the head-works of the main canal and other delivery locations now in existence or that may be constructed in the future, and shall distribute the same to the water users entitled thereto.

(b) The District hereby assumes and agrees to carry out, during the term of this contract, to the satisfaction of the Secretary, all the obligations imposed upon the United States by the contracts listed on Exhibit "A", or any amendments or supplements thereto, appended to and made a part of this contract, for the carriage and delivery of water, in force as of the effective date of this agreement, insofar as said contracts relate to the delivery and carriage of irrigation and drainage water through the transferred works.

(c) Upon execution by the United States of future water right contracts providing for carriage and delivery of irrigation and drainage water through the transferred works to serve the lands of the Pumping Division of the Klamath Project, or to serve the lands of individual water users which are outside the District but so located that they can be served through the transferred works, the District shall be notified thereof by the Secretary and the District shall thereupon assume the obligation of carriage and delivery thereunder the

same as if said contracts had been in existence at the time of execution hereof: Provided, however, That further contracts shall not be entered into by the United States for carriage or delivery of irrigation water through the transferred works which will require additions to or enlargements of the same unless the expense of said additions or enlargements is borne by the United States or by the contractors.

(d) During the life of this agreement the District shall be entitled to collect and retain for its own use, but the United States assumes no responsibility whatever for the payment or collection thereof, all revenues payable to the United States under the hereinabove mentioned contracts as annual operation and maintenance charges. The District shall have the right to withhold delivery of water to any contractor that fails to pay such charges in the amounts and at the time provided in its contract with the United States. All other provisions of said contracts shall remain unaffected hereby. The District shall not be responsible for collection of any revenues due the United States under said contracts which became due and payable before the effective date of this contract.

(e) The District shall deliver water to District lands at the points the United States is now delivering water. For lands outside the District boundaries, and served through the transferred works, water shall be delivered in the quantities, at the times and at the points of diversion from the transferred works as required from time to time by

contractors that have executed contracts with the United States in such manner as to meet obligations which the United States has assumed under said contracts. Responsibilities of the District for delivery of water outside its boundaries shall be limited to the contracts listed on Exhibit "A" hereto and such other contracts as the United States may henceforth execute with others for delivery of water through the transferred works, provided that the terms of such future contracts with others are not contrary to any of the terms of this contract.

(f) The District agrees that it will make no water deliveries under contracts mentioned in this article at times when notified by the Secretary that the contracting parties are not entitled to the delivery of irrigation water because of nonpayment of charges due the United States, or for other reasons.

(g) Within thirty (30) days after the effective date of this contract, the United States shall furnish to the District an itemized statement showing the status of fund accounts with the United States for the District, and for other contractors that receive water through the transferred works, and the status of stores and equipment accounts with the United States for the District. This statement will include the following items:

(i) Unexpended balances of funds advanced for operation and maintenance work, itemized by each contractor.

(ii) Book value of unused materials and supplies purchased with advanced funds.

(iii) Undepreciated value (book value at date of transfer) of equipment purchased with advanced funds.

If a credit balance exists in the fund account of the District, the amount of such balance will be refunded in accordance with Article 24. If a credit balance exists in the fund account of any other contractor, the United States will retain that balance on its books to be applied against the next succeeding payment or payments becoming due on obligations of the Klamath Irrigation District to the United States. In consideration of the total of all such credits being allowed the District, the District will likewise allow corresponding credits to the other contractors on its subsequent billings to those respective contractors. If a debit balance exists in the account of the District with the United States, the District shall pay to the United States the amount due on its own account within ninety (90) days after receipt of statement. Debit balances existing in the accounts of other contractors will be collected by the United States.

DELIVERY OF WATER TO TULE LAKE LANDS

14. (a) The United States retains for use in irrigating non-district lands, and will continue to maintain and operate, or will contract with another agency to maintain and operate, (1) the diversion dam and appurtenant works on Lost River at the heading of the "J" Canal, and (2) the "J" Canal, and the Project buildings at the headworks thereof, and laterals leading therefrom, and (3) the drainage system

below the "J" Canal as shown on map entitled Exhibit "B" which is appended to and made a part of this contract. The United States, or another agency acting under contract for the United States, will deliver irrigation water to the Tule Lake lands within the boundaries of the Klamath Irrigation District served by the said "J" Canal, lateral and drainage systems. The United States will charge the District annually for such service the amount per acre that is charged the Tule Lake lands in California served from the "J" Canal for operation and maintenance, to be paid to the United States in the manner stated in Article 16 hereof.

(b) The District shall maintain and operate for the United States the irrigation and drainage works serving lands lying between the "D" and "J" Canals and above the "D" Canal in California, as shown on map entitled Exhibit "B", and will deliver irrigation water through the "D" Canal to such of those lands in California served from the "D" Canal, as may be designated by the Secretary. For gravity delivery of water to lands which were served by the United States prior to the effective date of this contract, the District shall charge the United States annually the amount per acre of land irrigated that is charged to lands within the District in the State of Oregon for operation and maintenance, and the United States will credit said amount to the District annually upon any payments due hereunder, as provided in Article 16. For future delivery of water to additional lands not

previously served, the District shall charge such amount per acre as may be agreed upon by future supplement to this contract.

WATER FOR LANDS IN KLAMATH FALLS, MALIN AND MERRILL

15. The District shall deliver for use on non-district lands within or adjacent to the District, including but not limited to those within or near the corporate limits of the towns of Klamath Falls, Malin, and Merrill, the water supply which said lands are entitled to receive under existing water rental contracts, under water right applications of various individuals, and under public notices issued by the Secretary, as listed in Exhibit "C" attached to and made a part hereof, or under future public notices issued by the Secretary. The District shall likewise deliver water to any of said lands which may hereafter contract with the United States for a water supply. Water shall be delivered at the respective points where now received, or as may be agreed upon between the District and such water users. The District shall be entitled to collect and retain for its own use all revenues payable for such deliveries, in the same manner as for deliveries to other contractors under the provisions of Article 13 hereof and shall be entitled to withhold delivery of water if charges are not paid when due.

CHARGES TO BE PAID BY THE DISTRICT

16. (a) On or before February 1 of each calendar year during the term of this contract, the United States shall furnish to the District an itemized estimate of all costs expected to be incurred by the United

States under the provisions of this contract during that calendar year which are properly chargeable to the District and a statement of the differences between estimated and actual costs for the previous calendar year, with appropriate charges or credits to adjust the previous year's estimate to the total of actual costs for that previous year. The District shall pay to the United States the total of such estimated costs for the current calendar year, as adjusted by the reconciliation of actual and estimated costs for the previous calendar year, within sixty (60) days after receipt of said estimate and statement. Each such annual estimate and statement shall list separately the following types of costs:

(i) The estimated annual general expense, as determined by the Secretary, to be incurred by the United States and apportioned to the Main and Pumping Divisions of the Klamath Project. This estimate shall be itemized by office and by activity but shall not include the costs itemized under other subdivisions of this article. Such costs shall not exceed Five Thousand Dollars (\$5,000) per year during the first 5-year period following the transfer of operation and maintenance to the District. At the end of said 5-year period and at the end of other appropriate periods throughout the remainder of the term of this contract the Secretary shall analyze the services required to be performed by the United States, and upon the basis of such analysis will establish a similar limit of expenditure for each such period in the light of the then general cost index.

(ii) Estimated annual costs of any bookkeeping, accounting, engineering, legal, drafting, clerical or other technical or administrative services which the District has specifically requested from the United States in writing, or which are furnished by the United States pursuant to some mutual agreement in writing, which costs shall be itemized for each type of service.

(iii) An equitable proportion of the estimated annual costs of operating and maintaining the reserved works, except for the charges provided in subdivision (vii) hereof, as determined by the Secretary. The estimate for these costs shall show the basis on which total costs for operating and maintaining the reserved works are allocated between the District and other agencies.

(iv) Estimated cost of repairs to the transferred works, if any, expected to be made by the United States under the provisions of Article 7 hereof.

(v) Estimated cost of installations, repairs, or maintenance by the United States of measuring and controlling devices and gages, and collection of data, if any, expected to be performed by the United States under the provisions of Article 8 hereof.

(vi) Estimated cost of all inspections expected to be performed by the United States under the provisions of Article 10 hereof.

(vii) Estimated water rental charges or estimated costs of operation and maintenance for lands within the District supplied with water from the "J" Canal, in accordance with the provisions of Article 14 hereof.

(b) The District shall pay the United States any actual costs in excess of the previous year's estimate for work performed or services furnished by the United States during that calendar year under provisions of this contract, itemized by each of the preceding subdivisions (i) through (vii) of this article.

(c) The District shall be credited for any amounts by which the actual costs of work performed or services furnished by the United States during the previous calendar year under provisions of this contract were less than the amounts for such work shown in the previous year's estimate, itemized by subdivisions (i) through (vii) of this article.

(d) The District shall be credited for operation and maintenance charges due the District on lands in California served from the "D" Canal by the District, in accordance with Article 14 hereof.

GENERAL OBLIGATIONS OF THE DISTRICT

17. The obligations of the District under this contract shall be considered general repayment obligations and the District agrees to pay to the United States such obligations according to the terms stated in this contract, notwithstanding the individual default in payment by any of the individual water users of assessments or other charges. Notwithstanding any provisions of this contract, the United States reserves the right to pursue any and all remedies which it may have against the District for default in any payment due under the terms of this contract or under the terms of any contract which the District may have with the United States.

DISTRICT TO USE ALL POWERS TO COLLECT CHARGES

18. (a) The District agrees that it will cause to be made and collected all necessary assessments and charges to cover costs apportioned to it and will use all the authority and resources of the District including, without limitation by reason of this enumeration, its taxing power, the power to create liens in connection with its taxing power, and the power to withhold delivery of water, to meet the obligations of the District to the United States under this contract in full on or before the day such payments become due, and to meet the District's other obligations under this contract. The District is hereby granted the power to withhold delivery of water from any water users receiving water from the transferred works whose payments to the District are in arrears.

(b) The District shall make each year a reasonable estimate of probable delinquencies in collections based on past experience, and shall levy assessments or other charges sufficiently large against the lands in the District to meet the requirements stated in (a) of this article, notwithstanding any individual delinquency which may occur in the payment to the District of any District assessments, or other charges.

WATER RENTAL AGREEMENTS

19. The District may enter into water rental agreements, in a form approved by the Secretary, providing for the delivery of water from the transferred works to water users other than those holding water rights or those having executed contracts with the United States or the

District. The charges to be made for such water rentals shall be those stated in Public Notices of Water Charges for the Klamath Project issued by the Bureau of Reclamation: Provided, That if issuance of such Public Notices by the Bureau be discontinued, the charges to be made in water rental agreements by the District each calendar year shall be established in advance by the Board of Directors of the District. The District shall collect and retain for its own uses all revenues from water rental agreements executed after the effective date of this contract. Delivery of water to holders of water rental agreements shall be subordinate to deliveries to other water users, and the rental agreements shall so state.

REFUSAL OF WATER TO DISTRICT IN CASE OF DEFAULT

20. The United States reserves the right (in addition to the rights elsewhere herein reserved to the United States) to refuse to deliver water to the District in the event of the default of the District for a period of more than twelve (12) months in any payments due the United States under this contract. The provisions of this article are not exclusive, and shall not in any manner hinder the United States from exercising any other remedy to enforce collection of any amount due the United States hereunder.

RESUMPTION OF MANAGEMENT AND CONTROL IN EVENT OF DEFAULT

21. (a) In event of default by the District for a period of one (1) year on any payment to the United States provided by this contract, or failure of the District to perform necessary repairs for a period of one (1)

year as provided in Article 7, or of any other violation by the District of the terms of this contract, the United States may, at the option of the Secretary, resume operation and maintenance of the transferred works, or any part thereof, for the purpose of enforcing the provisions of this contract.

(b) Prior to resuming operation and maintenance, the Secretary shall give the District written notice of his intent to exercise such option, which notice shall inform the District of the specific provisions of this contract which have been violated or the obligations that are in default, shall describe the property and works to be returned to the custody of the United States and shall name the date on which return to the United States shall be effected, which date shall be not less than sixty (60) days after the date of notice sent to the District. The District agrees that if it fails to make payment of all sums in default, or to initiate measures that will correct the violations of contract provisions, prior to the date set by the Secretary in accordance with this article, it will upon that date relinquish to the United States the custody of Project works as specified by the Secretary, together with all equipment, records and supplies appurtenant to the operation and maintenance thereof.

(c) In event of resumption by the United States of the operation and maintenance of any or all of the transferred works, the United States shall, within ten (10) days after taking custody of such works, furnish to the District an estimate of cost for operation and maintenance of such works from the date of transfer of custody to the

United States until the end of the calendar year. Within thirty (30) days after receipt of such estimate, the District shall pay to the United States the amount thereof. If the amount so paid to the United States is insufficient to pay the costs of operation and maintenance to the end of the calendar year, the United States shall notify the District, within thirty (30) days after the end of such year, of the amount required to pay the balance of such costs and the District shall within ten (10) days after receipt of such notice pay such amount. Any balance of funds advanced by the District in excess of the amount necessary to pay such costs to the end of the calendar year shall be returned to the District or, at the option of the United States, credited to operation and maintenance costs for the following year.

(d) Operation and maintenance costs for any subsequent years in which the United States retains the operation and maintenance of said works shall be paid by the District in the manner and at the times provided in the existing contracts between the United States and the District and in contracts with other organizations and with individuals involved in operations under this contract.

(e) Any resumption of the management and control of said property and works by the United States, as herein provided for, shall not relieve the District of its obligations under this contract.

(f) Notwithstanding any such resumption of operation and maintenance by the United States all or any part of the Project works may, pursuant to this contract, at the election of the Secretary, be

retransferred by the United States to the District for operation and maintenance in accordance with the terms of this contract by giving sixty (60) days' written notice to the District of such election, of the property and works to be retransferred, and of the effective date of such retransfer. The District agrees to accept the retransfer of any property and works on the effective date of such retransfer, as specified in any such written notice.

(g) It is agreed that in the event the United States, its officers or employees, resume the operation and maintenance of the Project works, or any part thereof, as provided in this contract, neither the United States, nor its officers or employees, shall be liable for any damages resulting directly or indirectly from any such resumption, and the District agrees to hold the United States, its officers and employees, harmless from any and all claims for such damage.

PENALTY FOR DELINQUENCY

22. In the event the District defaults in the payment of any amount due the United States as provided in this contract, there shall be added to the amount unpaid a penalty of one-half (1/2) of one (1) per cent on the day following the due date, and there shall be added a like penalty of one-half (1/2) of one (1) per cent of the remaining unpaid amount on the first day of each calendar month thereafter so long as such default shall continue.

EXCESS-LAND PROVISIONS

23. Pursuant to the provisions of the Federal reclamation laws, water supplied to the District under the terms of this contract shall not be delivered to more than one hundred sixty (160) irrigable acres in the ownership of any one person or corporation, except that, if irrigable lands in excess thereof have been acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance or devise, water therefor may be furnished temporarily for a period not to exceed two (2) years from the effective date of such acquisition and except that delivery may be made to lands held in excess of this limitation if the excess lands are covered by a recordable contract made in accordance with the provisions of Section 46 of the Act of May 25, 1926 (44 Stat. 649). These limitations shall cease to operate when the construction charge obligation allocable to such land has been paid in full to the United States.

RESERVE FUND

24. (a) Commencing with the calendar year 1955, and continuing until all construction charge obligations to be paid to the United States are paid in full, the District shall include in the annual operation and maintenance assessments to be collected from its water users, amounts sufficient to accumulate and maintain a reserve fund which shall be available only for the purposes and in the circumstances hereinafter set forth.

(b) Said reserve fund shall be accumulated as follows:

The balance of advance operation and maintenance funds held by the United States for the credit of the District at the time of transfer of operation and maintenance to the District shall be refunded to the District and deposited in the reserve fund and become a part thereof; in addition thereto the District shall, commencing with the calendar year 1955, and continuing until all construction charge obligations to be paid to the United States are paid in full, include in the annual operation and maintenance assessments to be collected from its water users amounts sufficient to collect annually not less than Five Thousand Dollars (\$5,000) to be deposited in said reserve fund until the reserve fund thus accumulated shall total Seventy-five Thousand Dollars (\$75,000), which total sum shall be maintained thereafter: Provided, That upon the depletion of the reserve fund for any of the purposes hereinafter set forth, the District shall not be required to replenish said reserve fund by an amount in excess of Five Thousand Dollars (\$5,000) in any one year.

(c) The reserve fund shall be used only for the purposes of meeting large, unforeseen costs of operation and maintenance, repairs and replacements of works transferred hereunder and for ordinary operation and maintenance costs when the District is otherwise unable to meet such costs.

(d) Such funds shall be maintained by the District apart from other of its funds and shall be deposited with such depository

or may be invested in such securities as are approved by the Secretary:  
Provided, however, That said funds may be left with the County Treasurer  
as provided by statute.

UNITED STATES HELD HARMLESS

25. After the transfer of the transferred works, as herein provided, the District shall hold the United States, its officers and agents, harmless as to any and all damages or claims for damages which may in any manner grow out of the care, operation and maintenance of the transferred works after the effective date of transfer.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

26. On account of drought or other causes, there may occur at times a shortage in the quantity of water available in Project reservoirs and, while the United States will use all reasonable means to guard against such shortage, in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom and the payments to the United States provided for herein shall not be reduced because of any such shortages.

UNCONTROLLABLE FORCES

27. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of an uncontrollable force. For the purpose of this contract the term "uncontrollable force" means any cause beyond

the control of the party affected, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid.

Either party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to remove such inability with all reasonable dispatch.

WASTE, SEEPAGE AND RETURN FLOW

28. The United States does not abandon or relinquish any of the waste, seepage, or return flow waters coming from the lands of the Project irrigated through works constructed by the United States, but the same are reserved and intended to be retained by the United States for the use and benefit of the Project. The District shall be entitled to use for irrigation all return flows available through the transferred works.

ASSURANCE RELATING TO VALIDITY OF CONTRACT

29. The execution of this contract shall be authorized by the qualified electors of the District at an election held for that purpose. The District, after the election and upon execution of this contract, shall file and prosecute to a final decree, (including any appeal therefrom to the highest court of the State of Oregon) in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings leading up the making of this

contract. This contract shall not be binding upon the United States until the contract shall have been so confirmed by a court of competent jurisdiction or pending appellate action if ground for appeal be laid.

#### NOTICES

30. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office, on the part of the United States, in a postage-prepaid envelope addressed to the District at its office and, on the part of the District, in a postage-prepaid envelope addressed to the Bureau of Reclamation, Department of the Interior, P. O. Box 2511, Sacramento, California, or such other address as from time to time may be designated by the Secretary in a written notice to the District: Provided, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

#### CHANGES IN DISTRICT ORGANIZATION

31. While this contract is in effect, no changes shall be made in the District, either by inclusion or exclusion of land, or by partial or total consolidation or merger with another District, or by proceeding to dissolve, or otherwise, except with the consent of the Secretary evidenced in writing.

#### SELECTION OF MANAGER OR SUPERINTENDENT

32. Until completion of payment to the United States of the construction charges against the lands in the District, the District

shall employ a competent and suitable District Manager or Superintendent to have charge of the transferred works while they are being operated and maintained by the District. The selection and continued employment of said person shall be subject to the mutual approval of the District and the Secretary: Provided, however, That such Manager or Superintendent may at any time be discharged by the District.

ADJUSTMENT OF DISPUTES

33. Should any dispute arise between the District and any of the parties receiving water from the works operated by the District, concerning the operation or management of the transferred works or any part thereof, in which dispute it is claimed that the transferred works are not being properly operated or maintained or that any party is not receiving water in the manner and amount to which such party is entitled under contract with the United States; and should the District and parties be unable to settle such dispute, the matter in dispute immediately shall be referred to the Secretary, who shall promptly render his decision on such disputed question. Said decision shall be accepted by all parties as final and conclusive, except that it may be subject to review by a court having jurisdiction over the matter in dispute. The District shall promptly comply with such decision, and shall operate in conformance with such decision until or unless the same is reversed or modified by the Secretary or by said court.

RIGHTS RESERVED UNDER SECTION 3737, REVISED STATUTES

34. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States (U.S. Code, Title 41, Section 15), relating to assignment of contracts.

TERMINATION OF CONTRACT

35. (a) All obligations of the District to make payments to the United States under Article 16 hereof, except those required by subdivisions (iii) and (vii) of Article 16, shall terminate whenever all of the following have taken place:

(i) The United States has relinquished its title to the transferred works.

(ii) The District has notified the United States that it no longer has any foreseeable need for technical or administrative services from the United States, of the types mentioned in subdivision (ii) of Article 16 hereof.

(iii) All amounts of money owed by the District to the United States under provisions of this and other contracts have been paid in full.

(b) By such termination of payment obligations, the District shall permanently acquire from the United States all water rights then held by the United States pertaining to lands within the boundaries of the District: Provided, That such acquisition of water rights by the District shall be in no way contrary to the laws of the State of Oregon

as then existing, or to the provisions of any compact which may be then in effect between the State of Oregon and California with respect to water rights in the watershed drained by the Klamath River.

DISCRIMINATION AGAINST EMPLOYEES OR APPLICANTS  
FOR EMPLOYMENT PROHIBITED

36. The District shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the District which are not related to or involved in the performance of this contract.

OFFICIALS NOT TO BENEFIT

37. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

ASSIGNMENT LIMITED--SUCCESSORS AND  
ASSIGNS OBLIGATED

38. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Secretary.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ C. H. Spencer  
Regional Director, Region 2  
Bureau of Reclamation

KLAMATH IRRIGATION DISTRICT

By /s/ E. M. Hammond  
President

(SEAL)  
Affixed  
Attest:

/s/ John L. Stewart Jr.  
Secretary

EXHIBIT "A"

WARREN ACT CONTRACTORS ENTITLED TO WATER FROM DISTRIBUTION SYSTEM

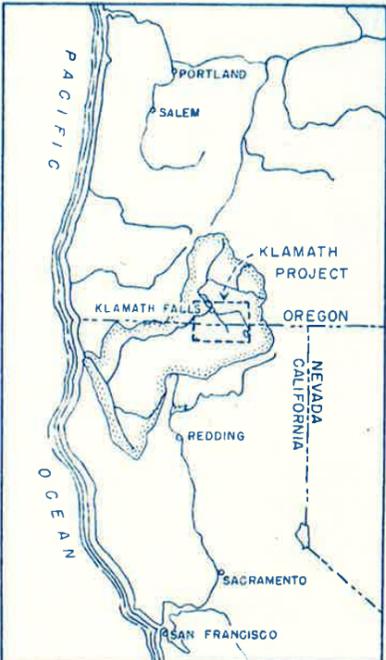
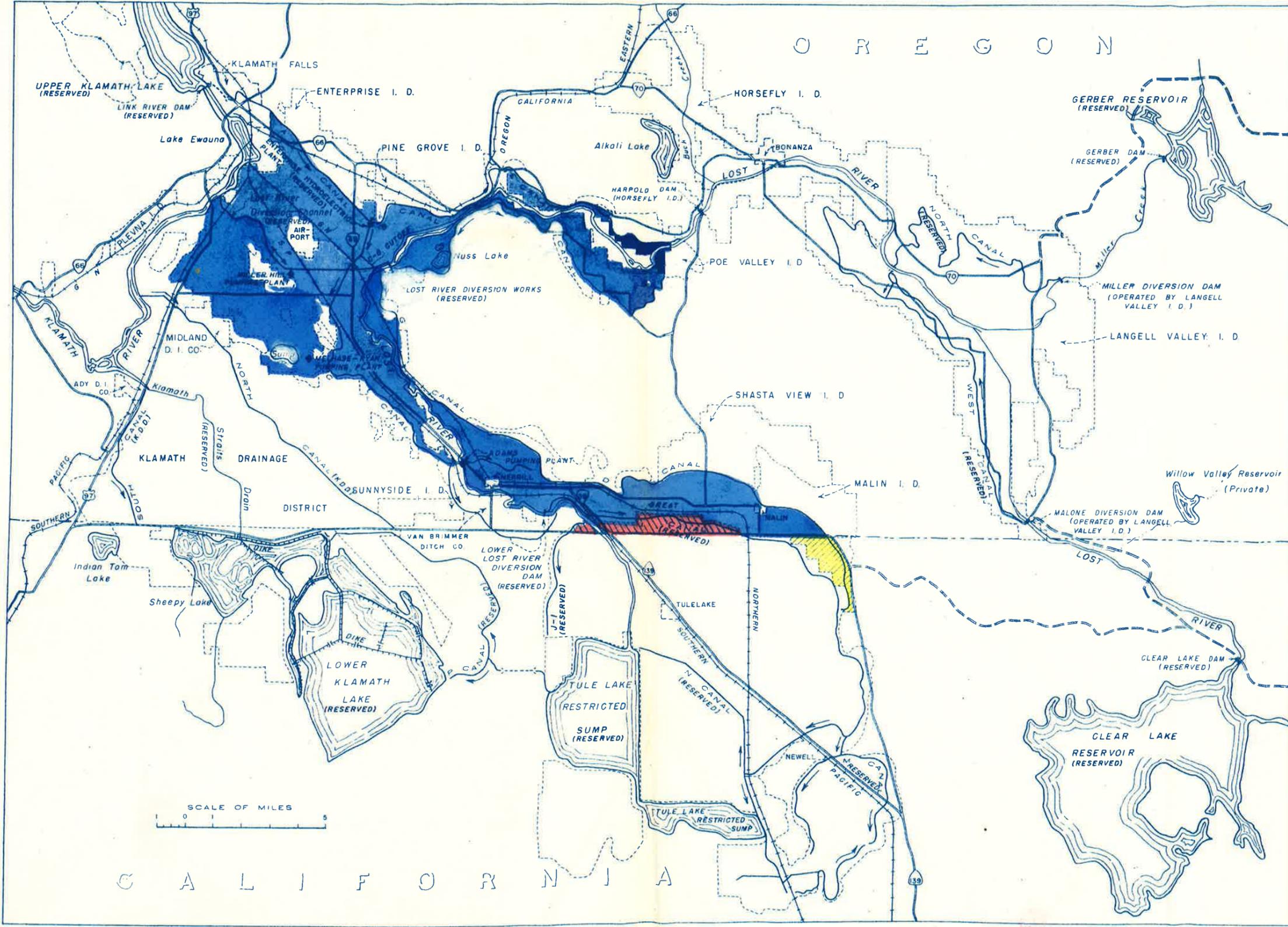
<u>Contract Number</u>	<u>Contract Date</u>	<u>Water User</u>	<u>Acres</u>
Ilr-403	Dec. 21, 1918	Pine Grove Irrigation District	954.
I8r-1065	Feb. 3, 1943	Van Brimmer Ditch Company	Excess Only
Ilr-399	Oct. 5, 1920	Enterprise Irrigation District	2980.8
Ilr-195	Sept. 9, 1922	Malin Irrigation District	3479.2
Ilr-1531	Aug. 20, 1948	Shasta View Irrigation District	3991.0
Ilr-401	Aug. 23, 1924	E. H. Johnson	20.0
Ilr-174	Oct. 24, 1922	Sunnyside Irrigation District	595.0
Ilr-143	May 16, 1927	Charles W. Lewis	52.9
Ilr-144	May 28, 1927	R. C. Burleigh	107.0
Ilr-144	May 28, 1927	Phelps Lewis	32.5
Ilr-145	May 18, 1927	L. Kandra	91.6
Ilr-146	May 21, 1927	I. C. Johnson	90.1
Ilr-147	May 16, 1927	Clyde M. Horsley	35.2
Ilr-147	May 16, 1927	Roy Houck	12.6
Ilr-148	May 27, 1927	I. C. Johnson	61.9
Ilr-149	May 20, 1927	J. A. Carpenter	89.6
Ilr-149	May 20, 1927	J. A. Carpenter	46.8
Ilr-150	May 24, 1927	Charles B. Rice	16.0
Ilr-151	May 24, 1927	William F. Jinnette	60.2
Ilr-152	May 24, 1927	W. E. Hammond	50.4
Ilr-155	May 19, 1927	Myrtle Beasly	133.5
Ilr-156	May 19, 1927	Myrtle Beasly	45.1
Ilr-157	May 28, 1927	Hill Brothers	57.0
Ilr-159	May 26, 1927	J. A. Carpenter	37.2
Ilr-159	May 26, 1927	J. A. Carpenter	103.2
Ilr-161	June 11, 1927	James W. Dolan	70.5
Ilr-162	June 14, 1927	James Lacey	31.5
Ilr-163	June 16, 1927	Joe Meeker	80.0
Ilr-164	June 11, 1927	Elizabeth L. Stewart	73.7
Ilr-165	June 7, 1927	Roy F. Beasly	30.0
Ilr-166	June 9, 1927	Fred Peterson	10.0
Ilr-175	June 22, 1927	Anton Steyskal	5.1
Ilr-175	June 22, 1927	J. A. Carpenter	18.3
Ilr-248	Nov. 30, 1927	Karl F. Dehlinger	60.5
Ilr-304	May 26, 1928	Harry Kinney	45.4

EXHIBIT "A" (CONT'D.)

<u>Contract Number</u>	<u>Contract Date</u>	<u>Water User</u>	<u>Acres</u>
I1r-316	June 6, 1928	June F. Grimes	131.1
I1r-329	June 8, 1928	M. J. Barnes	1.6
I1r-328	June 15, 1928	Harold E. Dehlinger	56.0
I1r-337	July 7, 1928	Cecil Drew	28.8
I1r-531	Feb. 13, 1929	G. W. Crew	25.4
I1r-582	Nov. 9, 1929	George E. Stevenson	63.0
I8r-375	Dec. 15, 1930	Neva Haskins	55.5
I8r-376	Dec. 15, 1930	Neva Haskins	25.4
I8r-377	Dec. 15, 1930	V. G. Reinmiller	20.4
I8r-374	Dec. 18, 1930	A. J. Manning	105.3
I8r-384	Feb. 24, 1931	George Chin	20.7
I8r-414	May 15, 1931	F. H. Hadley	35.0
I8r-414	May 15, 1931	F. H. Hadley	25.0
I8r-415	May 16, 1931	Robert J. Petrik	11.2
I8r-416	May 16, 1931	W. W. Ochs	29.4
I8r-418	May 16, 1931	J. W. Reeder	39.2
I8r-419	May 16, 1931	I. E. Icenbice	80.0
I8r-419	May 16, 1931	C. F. Icenbice	33.2
I8r-420	June 1, 1931	Geo. Retterath & Sons	23.5
I8r-421	May 29, 1931	Robert Petrik	40.1
I8r-426	June 17, 1931	F. H. Hadley	5.4
I8r-426	June 17, 1931	Bernace Wilson	67.6
I8r-508	July 7, 1931	C. Bruce Campbell	17.7
I8r-510	Dec. 26, 1931	Wilbur Robinette	30.1
I8r-511	Dec. 26, 1931	W. M. Williams	79.7
I8r-549	June 20, 1932	C. Bruce Campbell	13.8
I8r-592	June 14, 1933	Anna C. McConnell	34.4
I8r-626	May 15, 1934	William F. Jinnette	38.8
I8r-631	May 23, 1934	J. C. Wright	17.9
I8r-630	May 16, 1934	Lester Wilson	3.3
I8r-633	July 23, 1934	J. M. Walker	9.0
I8r-675	Dec. 18, 1935	Joseph Brandejsky	66.3
I8r-676	Dec. 18, 1935	Lloyd Davidson	15.5
I8r-677	Dec. 19, 1935	John A. Marshall	17.8
I8r-685	Dec. 28, 1935	Earl Mack	37.3

EXHIBIT "A" (CONT'D.)

<u>Contract Number</u>	<u>Contract Date</u>	<u>Water User</u>	<u>Acres</u>
I8r-688	Jan. 16, 1936	Joe Steele	51.0
I8r-689	Jan. 16, 1936	John D. O'Connor	155.9
I8r-696	May 11, 1936	C. L. Webber	41.0
I8r-701	June 22, 1936	L. W. George	33.7
I8r-702	June 23, 1936	Stanley F. Kendall	7.4
I8r-702	June 23, 1936	James Sexton	14.8
I8r-703	June 26, 1936	V. C. Jackson	37.0
I8r-704	June 29, 1936	Mary M. Johnson	10.2
I8r-705	July 2, 1936	Lulu Storey	71.6
I8r-793	Nov. 28, 1936	Emil Wells	31.2
I8r-818	May 28, 1937	Gerald D. West	36.0
I8r-820	May 28, 1937	Harold E. Dehlinger	22.9
I8r-821	May 28, 1937	Wilbur Reiling	45.5
I8r-823	June 12, 1937	W. M. Williams	35.6
I8r-824	June 18, 1937	Sam Wong	68.3
I8r-829	Aug. 5, 1937	Stanley C. Masten	36.4
I8r-830	Aug. 5, 1937	A. R. Dickson	15.2
I8r-848	March 5, 1938	M. D. Fiegi	29.0
I8r-865	June 21, 1938	Glen Stough	23.8
I8r-867	June 21, 1938	F. E. Gordon	21.4
I8r-864	June 21, 1938	William Gray	101.6
I8r-864	June 21, 1938	Kelley Robinette	37.9
I8r-866	June 21, 1938	John Lehto	6.9
I8r-896	March 10, 1939	W. M. Williams	28.0
I8r-927	Jan. 30, 1940	John Stirling	16.5
I8r-930	March 5, 1940	Mary M. Johnson	48.7
I8r-931	March 5, 1940	Charles R. Schmeiser	9.9
I8r-937	March 27, 1940	Don M. Smith	65.9
I8r-938	April 12, 1940	J. Leland Pope	123.4
I8r-939	April 16, 1940	Dale Bebbler	95.0
I8r-940	April 18, 1940	West & Lyons	48.3
I8r-941	April 22, 1940	Thomas Lacey	30.1
I8r-943	April 24, 1940	Harvey E. Wise	50.5
I8r-946	May 17, 1940	George Reiling	30.6
I8r-947	June 14, 1940	Otto Balin	85.6
I8r-977	June 24, 1941	Earl Mack	6.4
I8r-1035	March 10, 1942	L. W. George	13.0
I8r-1066	March 26, 1943	Cecil Drew	20.3
I8r-1085	May 10, 1944	George Reiling	20.4
I8r-1088	June 1, 1944	Leland Cheyne	153.1



EXPLANATION

- Klamath Irrigation District Lands
- Oregon Lands Served by United States or another agency under Part (a), Art. 14 of Contract.
- California Lands Served by Klamath Irrigation District under Part (b), Art. 14 of Contract.

NOTE

Project Features marked "reserved" will not be operated or maintained by Klamath Irrigation District.

ROADS

- Primary
- Secondary

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
K L A M A T H P R O J E C T  
O R E G O N — C A L I F O R N I A  
LANDS SERVICED FROM WORKS  
TRANSFERRED TO KLAMATH IRRIGATION  
DISTRICT JANUARY 1, 1955

NOVEMBER 16, 1954

12-201-536

C A L I F O R N I A

O R E G O N

EXHIBIT "C"

NON-DISTRICT LANDS IN OREGON TO BE SERVED THROUGH DISTRIBUTION SYSTEM

INDIVIDUAL WATER RIGHTS:

<u>Serial Number</u>	<u>Public Notice Date</u>	<u>Water User</u>	<u>Acres</u>
49-1	Nov. 18, 1908	C. J. Shuck	9.9
49-4	Nov. 18, 1908	Great Northern Railway	1.1
67-1	Nov. 18, 1908	C. J. Shuck	7.1
67-2	Nov. 18, 1908	Great Northern Railway	12.3
72	Nov. 18, 1908	William Hodges	3.0
80	Nov. 18, 1908	Sarah Hodges	5.8
123	Nov. 18, 1908	Neva Haskins	2.0
152	Nov. 18, 1908	John Turner	5.5
313	Nov. 18, 1908	C. J. Shuck	5.0
346	Nov. 18, 1908	Maurice O'Keefe	1.0
388	Nov. 18, 1908	Loyal Order of Moose	1.0
392	Nov. 18, 1908	David J. Dean	3.6
392-1	Nov. 18, 1908	City of Merrill	1.0
392-2	Nov. 18, 1908	Agnes Welshans	1.3
392-3	Nov. 18, 1908	Kenneth Caldwell	.1
483	Nov. 18, 1908	School District No. 22	2.0
511-1	Nov. 18, 1908	L. A. Geraghty	28.5
511-2	Nov. 18, 1908	Great Northern Railway	4.8
511-4	Nov. 18, 1908	Anton Suty	5.2
550	Nov. 18, 1908	Joe Meeker	1.9

LONG-TERM WATER RENTAL CONTRACTS:

<u>Contract Date</u>	<u>Contract No.</u>	<u>Contractor</u>	<u>Area Served</u>	<u>Term of Contract</u>	<u>Acres</u>
May 23, 1938	I8r-860	Union High School District No. 2	Athletic Field	25*	6
Jan. 14, 1950	I8r-1371	City of Klamath Falls	North Entrance Park	25	10
Jan. 23, 1950	I8r-1372	City of Klamath Falls	Conger Field	25	7

CONTRACT FOR USE OF DRAINAGE SYSTEM FOR SEWAGE DISPOSAL:

	<u>Contract No.</u>	<u>Contractor</u>		
May 10, 1939	I8r-905	City of Malin	**	--

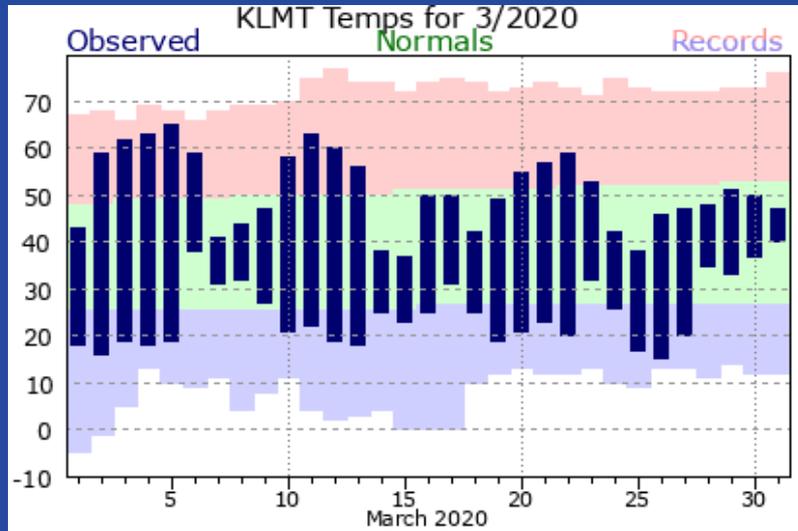
\*Option to renew for additional 25 years

\*\*Indefinite - Either party may cancel on two years notice

# Hydrologic Update

**April 2, 2020**

# Klamath Falls Airport



Departure from normal, WY2020

October = -0.66"

November = -2.08"

December = +0.22"

January = -0.35"

February = -1.80"

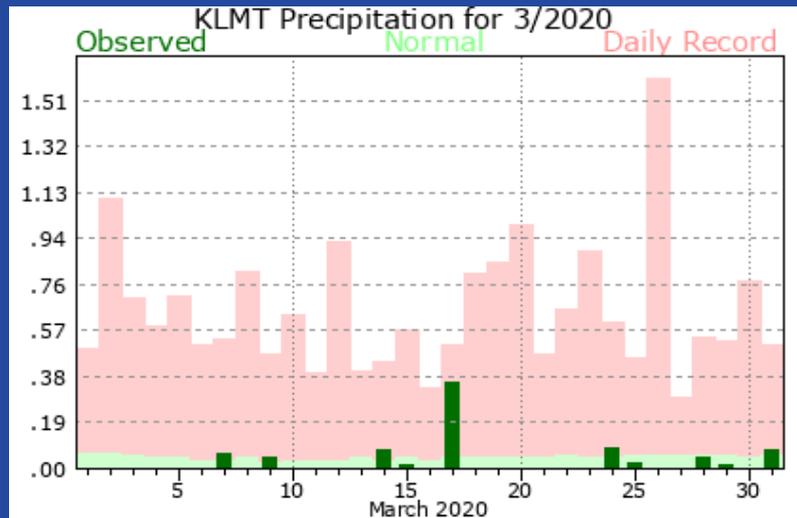
March = -0.52"

April 1 = -0.03"

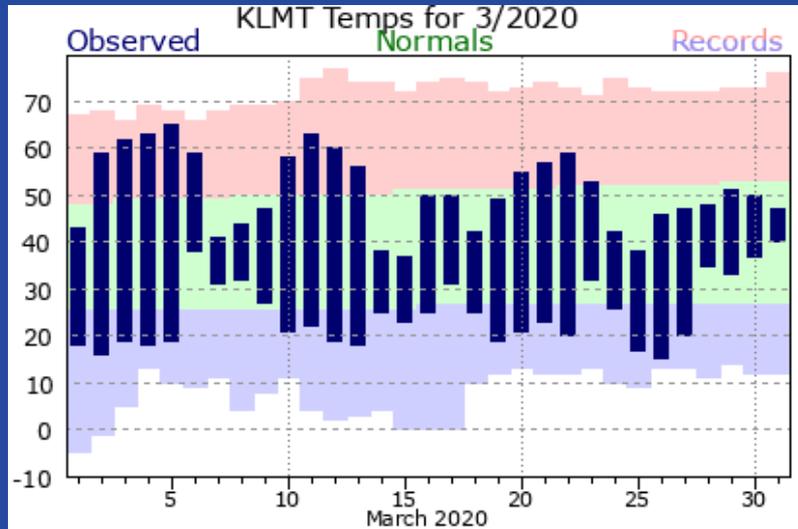
---

Total to Date = -5.22" (-53%)

2



# Klamath Falls Airport



Departure from normal, WY2020

October = -0.66"

November = -2.08"

December = +0.22"

January = -0.35"

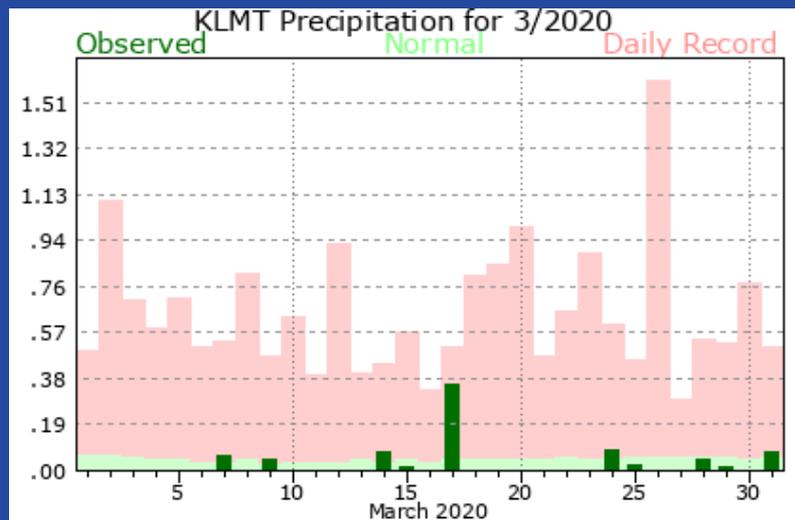
February = -1.80"

March = -0.52"

April 1 = -0.03"

Total to Date = -5.22" (-53%)

3

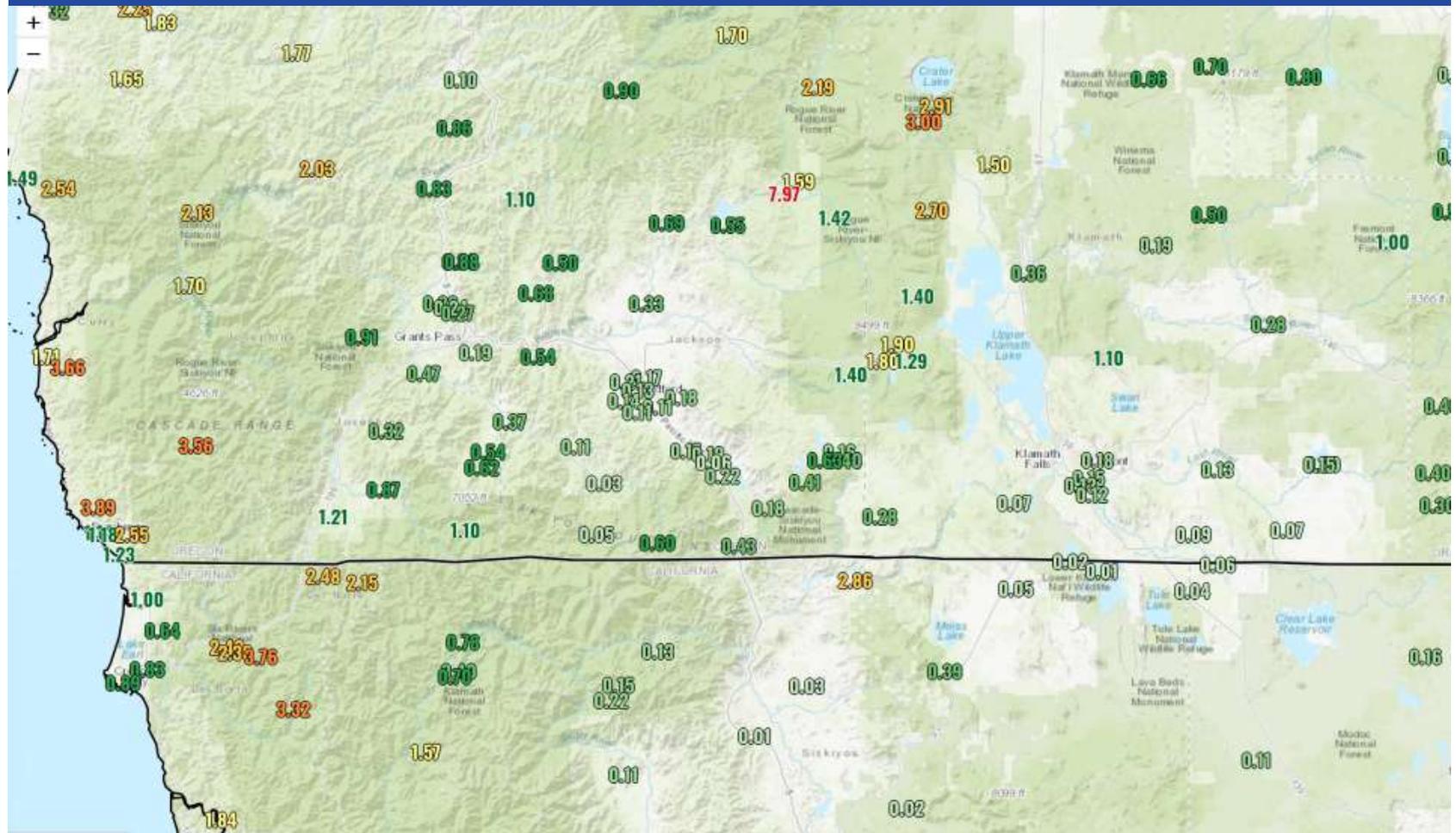


# Klamath Basin Climate Stations

Wednesday, April 1, 2020					
Station & Historical	WY to Date	Avg	% of Avg	Code	Elev
	ppt (in)	ppt (in)			ft
Lorella (2002-2018)	4.69	7.92	59%	LORO	4159
Beatty (2005-2018)	4.47	7.54	59%	BATO	4319
Agency (2001-2018)	5.59	10.86	51%	AGKO	4149
KFalls (1999-2018)	7.35	8.20	90%	KFLO	4099
Airport (1981-2010)	4.54	9.76	47%		4095

As previously noted, KFalls station total inflated due to problems with wind shield vane being misplaced

# 72-hr Precip as of 4:30 p.m. 3/31/20

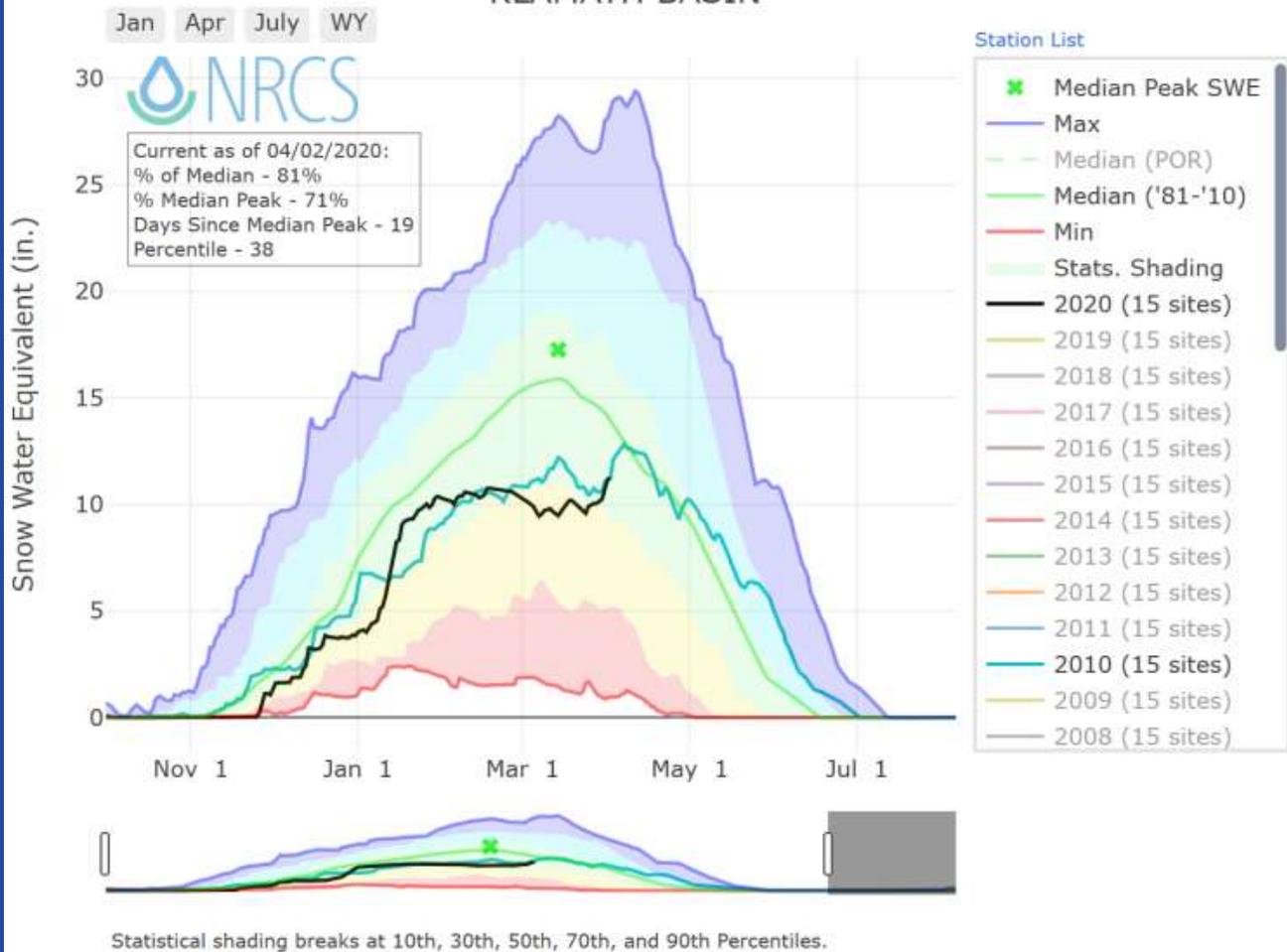


# Upper Klamath Basin SNOTEL

Data based on the first reading of the day (typically 00:00) for Thursday, April 02, 2020

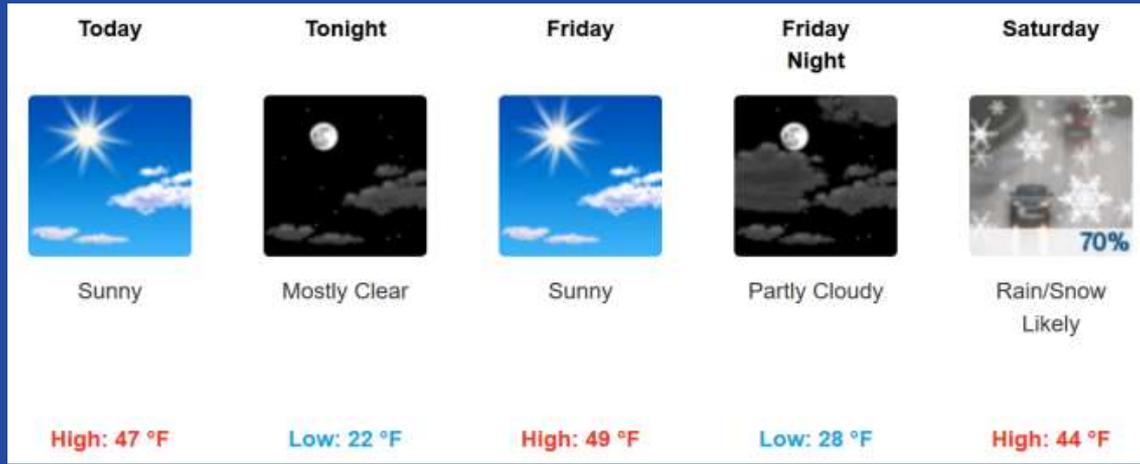
Basin Site Name	Elev (ft)	Snow Water Equivalent			Water Year-to-Date Precipitation		
		Current (in)	Median (in)	Pct of Median	Current (in)	Average (in)	Pct of Average
<b>KLAMATH</b>							
Fish Lk.	4660	11.2	6.2	181	27.4	33.0	83
Chemult Alternate	4850	0.0	1.9	0	13.8	21.3	65
Gerber Reservoir	4890	0.1	0.0 <sub>C</sub>	*	8.7	11.3 <sub>C</sub>	77
Taylor Butte	5030	0.0	2.6	0	9.6	16.1	60
Crowder Flat	5170	0.0	0.0 <sub>C</sub>	*	9.3	12.9 <sub>C</sub>	72
Billie Creek Divide	5280	19.9	20.7	96	32.3	40.7	79
Diamond Lake	5280	11.9	9.9	120	25.9	37.1	70
Sun Pass	5400	13.9	N/A	*	21.2	N/A	*
Sevenmile Marsh	5700	29.0	31.6	92	36.9	49.6	74
Quartz Mountain	5720	0.1	0.0 <sub>C</sub>	*	9.7	12.0 <sub>C</sub>	81
Silver Creek	5740	5.4	6.9	78	12.4	20.2	61
Strawberry	5770	0.0	1.0	0	12.4	16.5	75
Cold Springs Camp	5940	18.3	28.8	64	23.5	44.0	53
Fourmile Lake	5970	21.7	28.7	76	31.1	42.4	73
Annie Springs	6010	30.3	41.3 <sub>C</sub>	73	33.4	55.8 <sub>C</sub>	60
Crazyman Flat	6180	8.9	13.0 <sub>R</sub>	68	15.5	26.9 <sub>R</sub>	58
Swan Lake Mtn	6830	19.7	N/A	*	20.2	N/A	*
Summer Rim	7080	12.2	16.4	74	11.1	20.5	54
<b>Basin Index (%)</b>		<b>81</b>			<b>68</b>		

# Snow Water Equivalent in KLAMATH BASIN

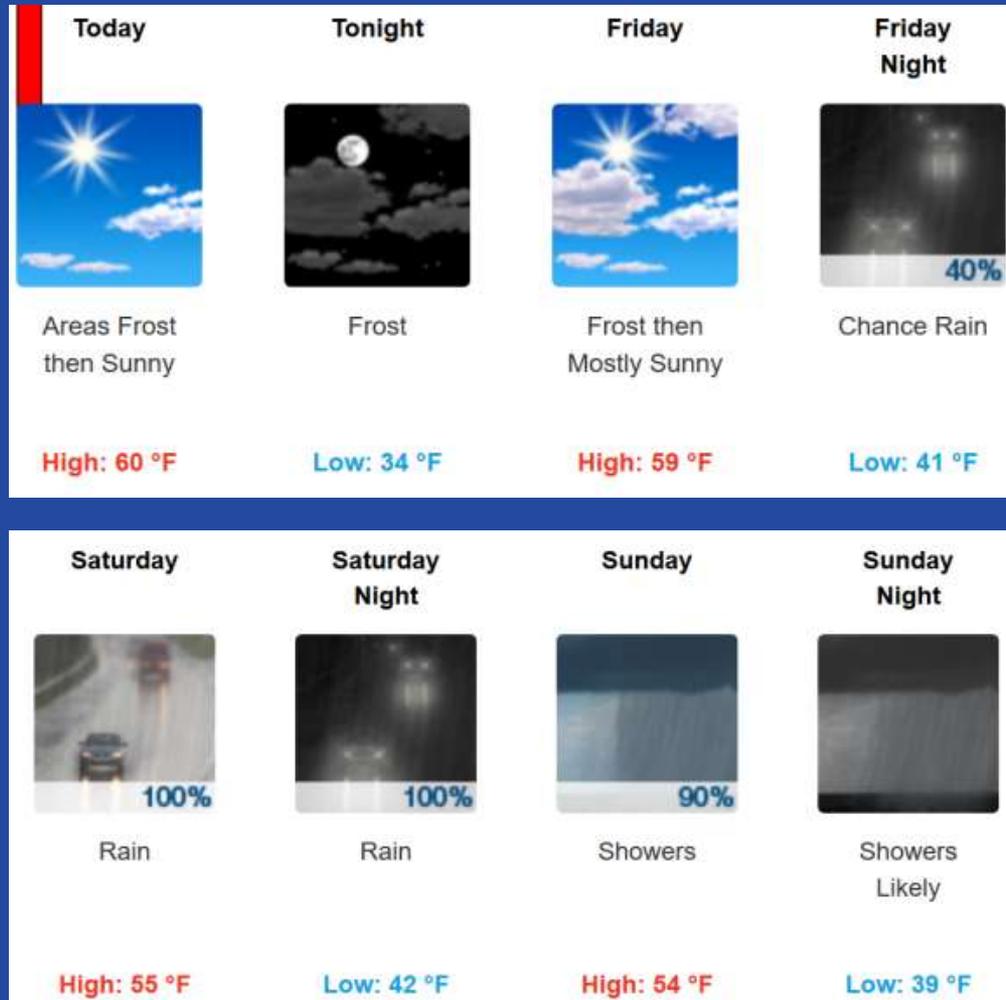


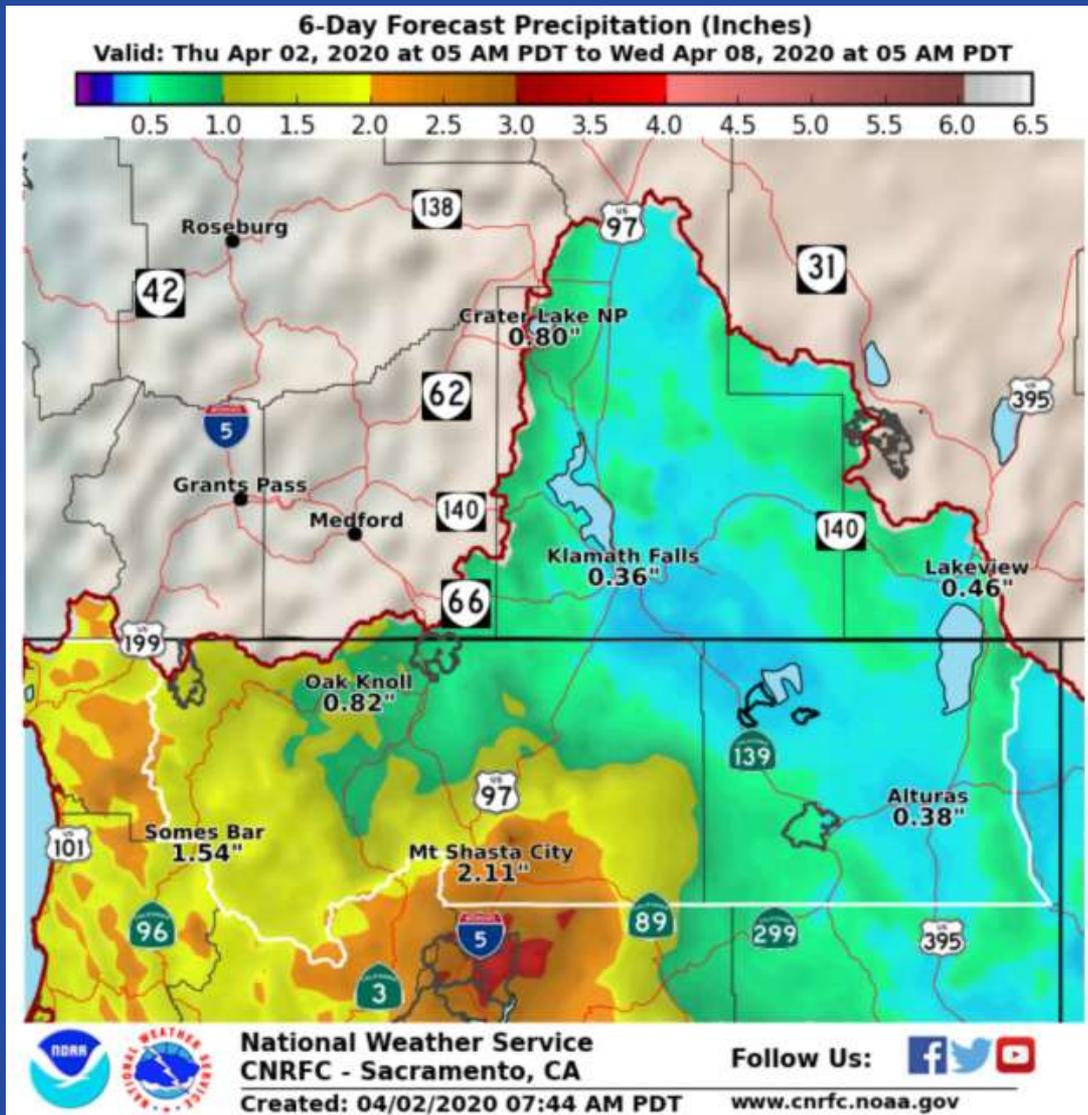
<https://www.nrcs.usda.gov/Internet/WCIS/basinCharts/POR/WTEQ/OR/KLAMATH%20BASIN.html>

# Klamath Falls weather forecast

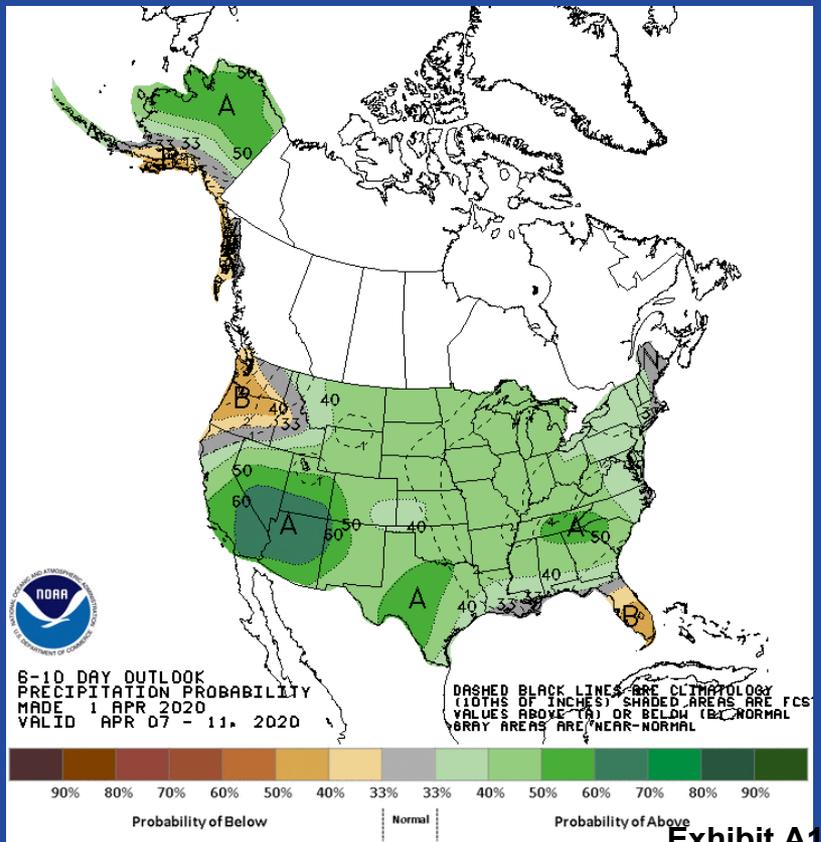
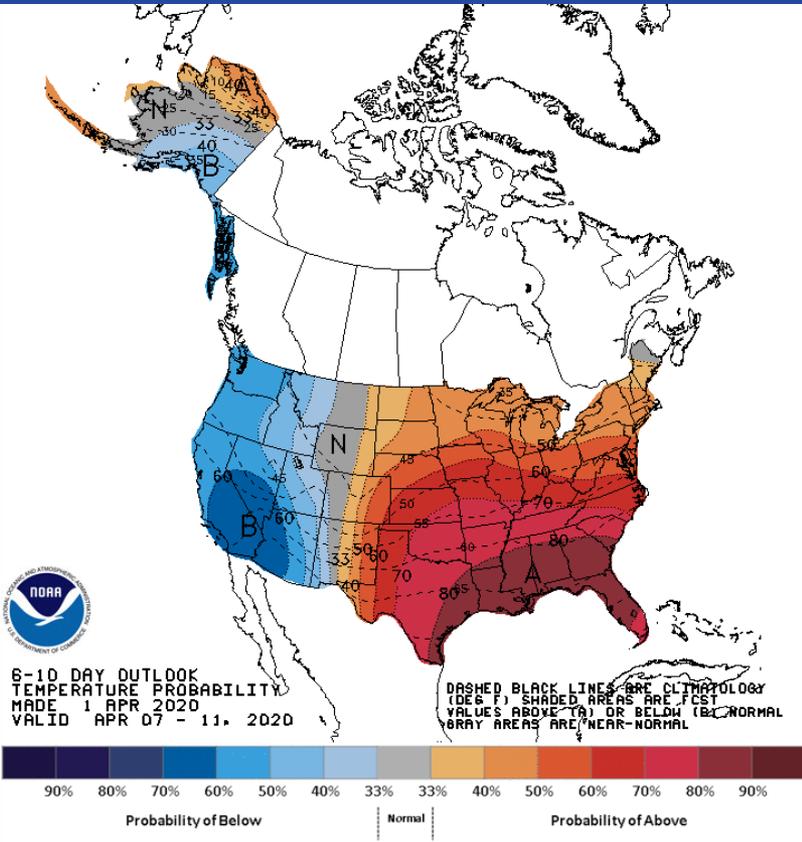


# Orleans weather forecast

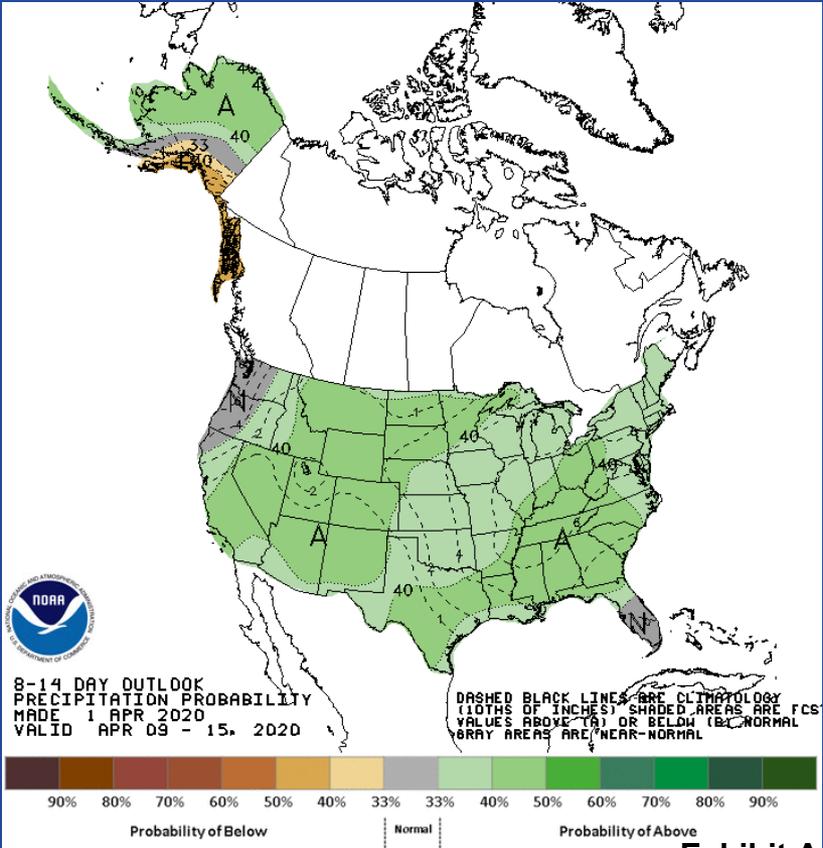
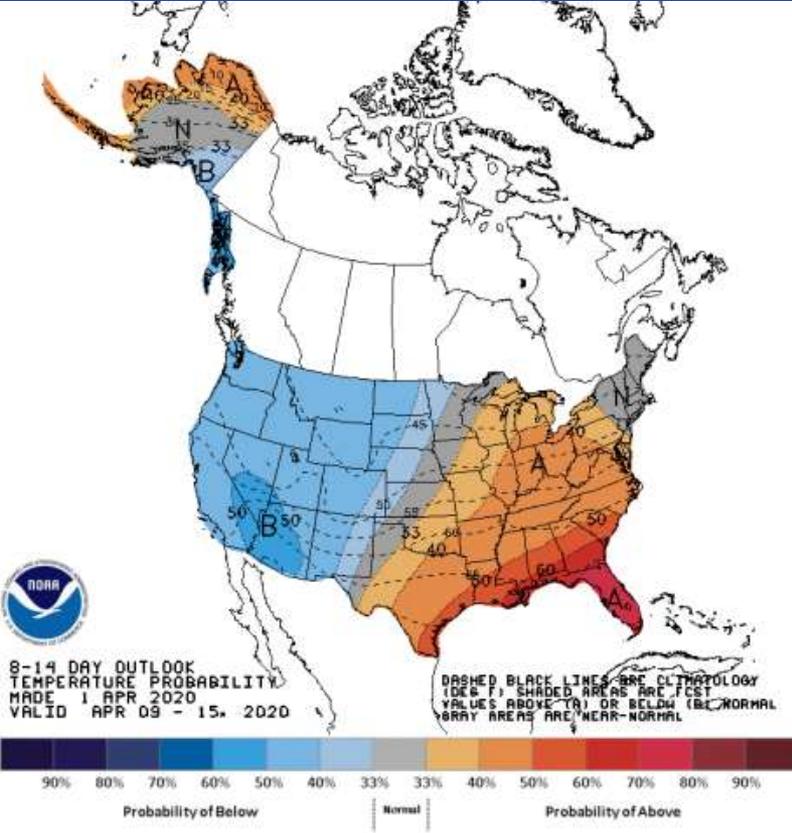




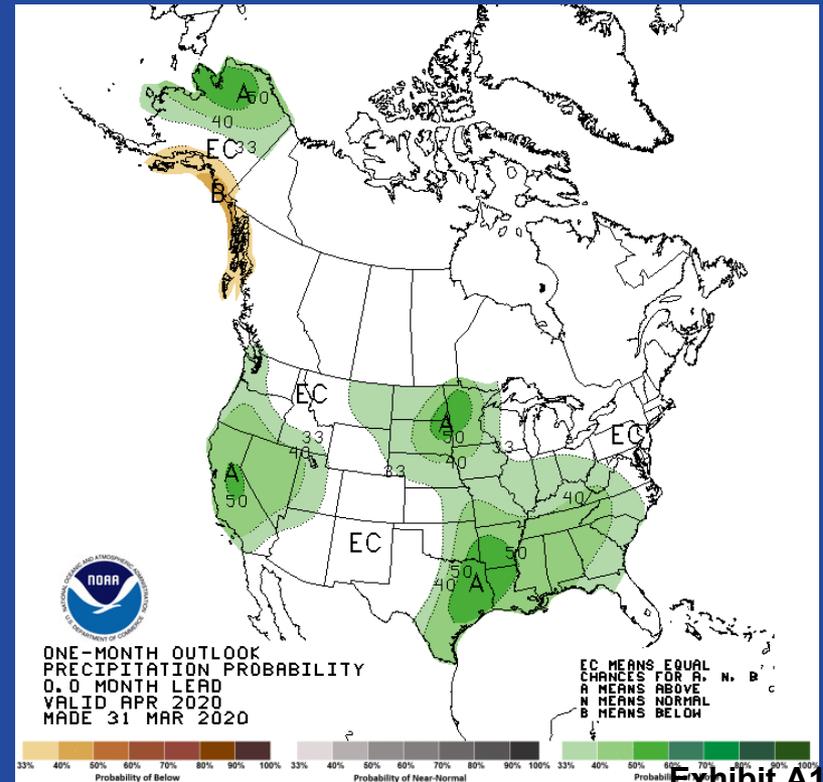
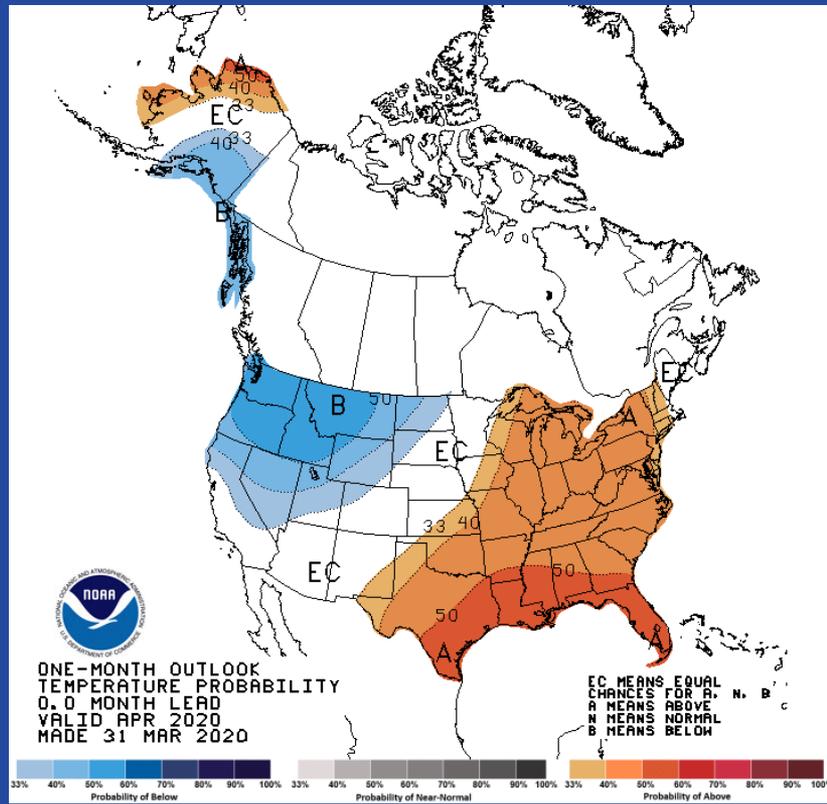
# 6-10 day weather outlook



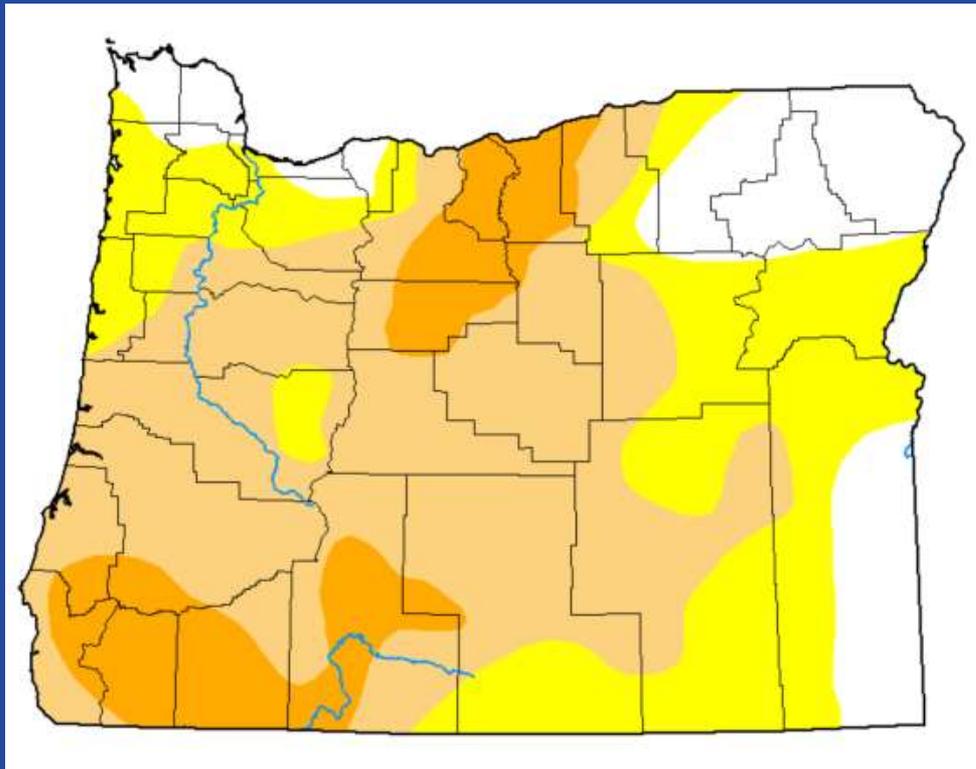
# 8-14 day weather outlook



# Monthly weather outlook



# United States Drought Monitor - Oregon



**Map released: Thurs. April 2, 2020**

Data valid: March 31, 2020 at 8 a.m. EDT

### Intensity:

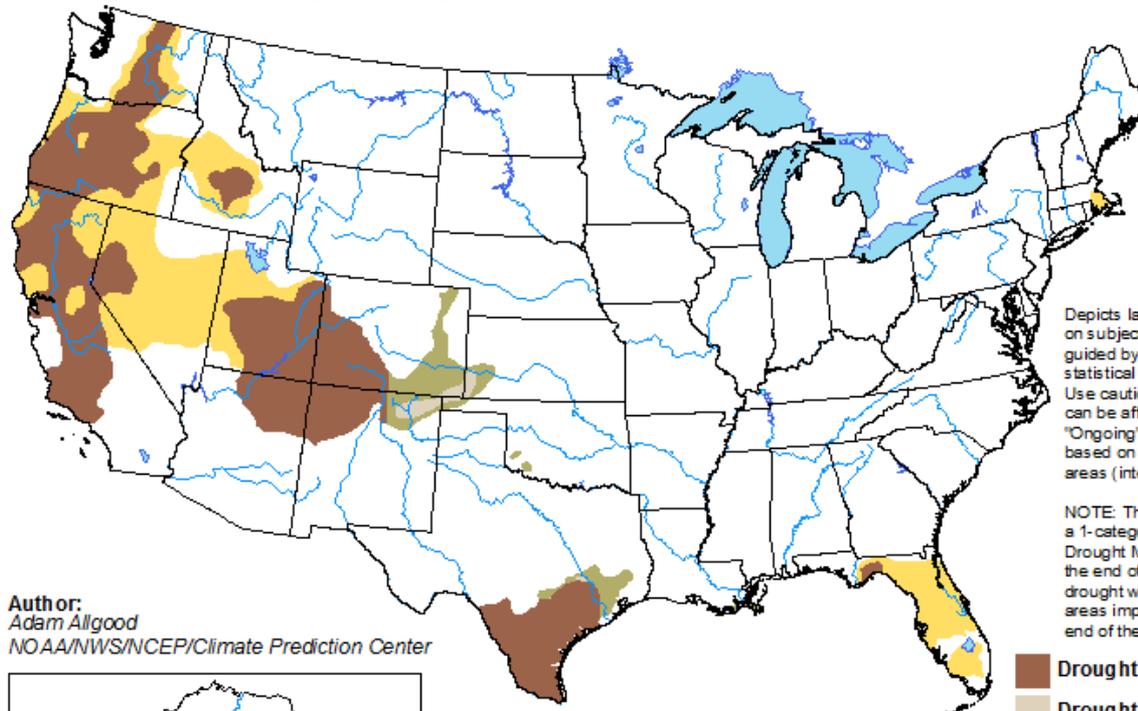
- None
- D0 (Abnormally Dry)
- D1 (Moderate Drought)
- D2 (Severe Drought)
- D3 (Extreme Drought)
- D4 (Exceptional Drought)
- No Data

Author(s): David Miskus, NOAA/NCEP/CPC  
The National Drought Mitigation Center, University of Nebraska-Lincoln

# U.S. Seasonal Drought Outlook

## Drought Tendency During the Valid Period

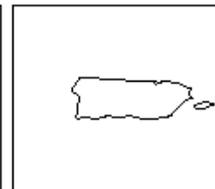
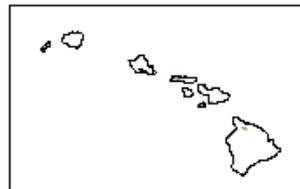
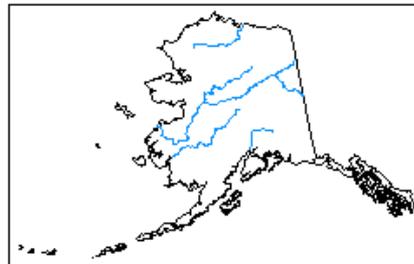
Valid for March 19 - June 30, 2020  
Released March 19



Depicts large-scale trends based on subjectively derived probabilities guided by short- and long-range statistical and dynamical forecasts. Use caution for applications that can be affected by short lived events. "Ongoing" drought areas are based on the U.S. Drought Monitor areas (intensities of D1 to D4).

NOTE: The tan areas imply at least a 1-category improvement in the Drought Monitor intensity levels by the end of the period, although drought will remain. The green areas imply drought removal by the end of the period (D0 or none).

Author:  
Adam Allgood  
NOAA/NWS/NCEP/Climate Prediction Center



-  Drought persists
-  Drought remains but improves
-  Drought removal likely
-  Drought development likely



<http://go.usa.gov/3eZ73>

# NRCS March Mid-Month Klamath River Basin Water Supply Forecast

USDA NRCS National Water & Climate Center

\* - DATA CURRENT AS OF: March 18, 2020 07:48:02 AM

- Based on March 15, 2020 forecast values

## KLAMATH RIVER BASIN

Forecast Point	period	50% (KAF)	% of avg	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr avg
Gerber Reservoir Inflow (2)	APR-JUL	4.0	29	19.6	10.3	0.0	0.0	14.0
	APR-SEP	4.0	28	19.7	10.4	0.0	0.0	14.4
Sprague R nr Chiloquin	APR-SEP	115	55	177	138	93	66	210
Williamson R bl Sprague R nr Chiloquin	APR-SEP	235	66	320	270	197	145	355
Upper Klamath Lake Inflow	APR-SEP	250	54	415	305	200	86	465

Max (10%), 30%, 50%, 70% and Min (90%) chance that actual volume will exceed forecast.

Averages are for the 1981-2010 period.

All volumes are in thousands of acre-feet.

footnotes:

- 1) Max and Min are 5% and 95% chance that actual volume will exceed forecast
- 2) streamflow is adjusted for upstream storage
- 3) median value used in place of average

Mid-month forecasts are unofficial and not used for final calculations of UKL Supply, EWA, or Project Supply

## 2020 Projected Water Supply

- **March-to-date observed UKL inflow of approximately 56,000 AF is less than 1% of average during the POR (1981-2016)**
- **The 2020 Apr-Sep mid-March forecast of 250,000 AF is 54% of 30-year average. This will be updated with April 1 forecast.**
- **Combine actual March inflows with Apr-Sep forecast to get Mar-Sep values for UKL supply.**
- **Mid-month forecasts are unofficial, “sneak” preview of next month’s forecast**

# Upper Klamath Basin water rights regulation- UKL tributaries

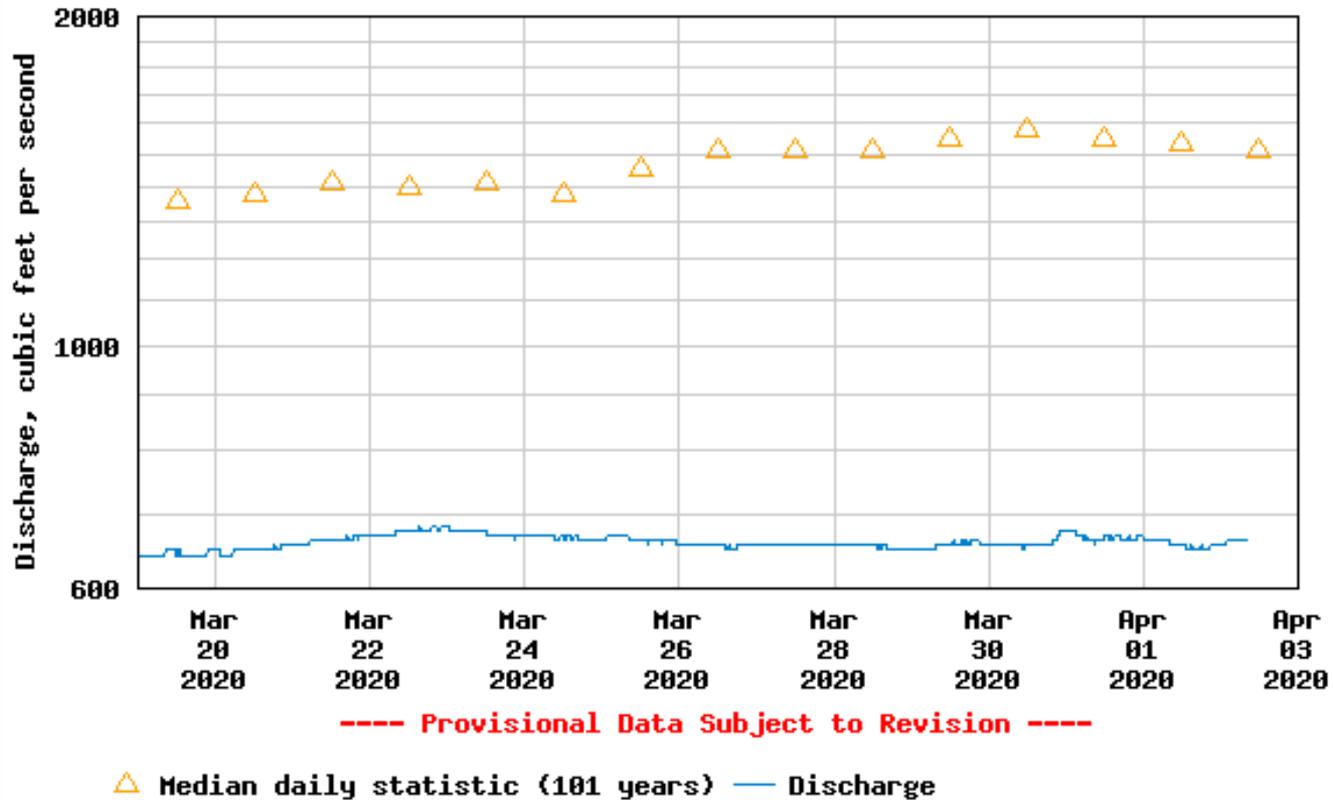
Water Body	Status
Wood River	A call has been placed by a senior water determined claim holder, 3/3/2020
Lower Williamson River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020
Middle Williamson River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020
Lower Sprague River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020
Upper Sprague River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020

Information from OWRD site: [http://apps.wrd.state.or.us/apps/misc/dsb\\_area\\_status/Default.aspx?wm\\_district=17](http://apps.wrd.state.or.us/apps/misc/dsb_area_status/Default.aspx?wm_district=17).

This table only covers major tributaries to UKL; there are additional streams subject to regulation in the Upper Basin. Refer to link above for full list of regulated Upper Klamath Basin water bodies.

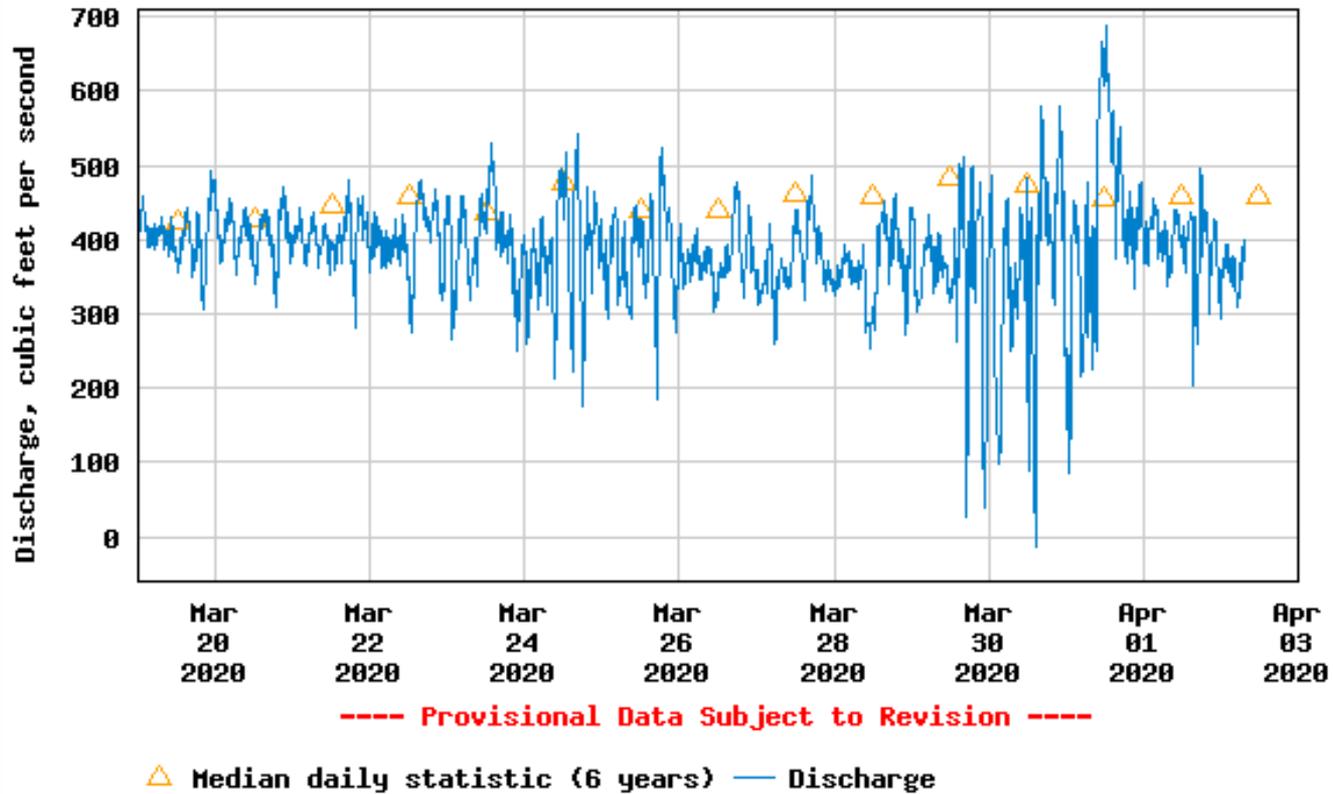


### USGS 11502500 WILLIAMSON RIVER BLW SPRAGUE RIVER NR CHILOQUIN, OR

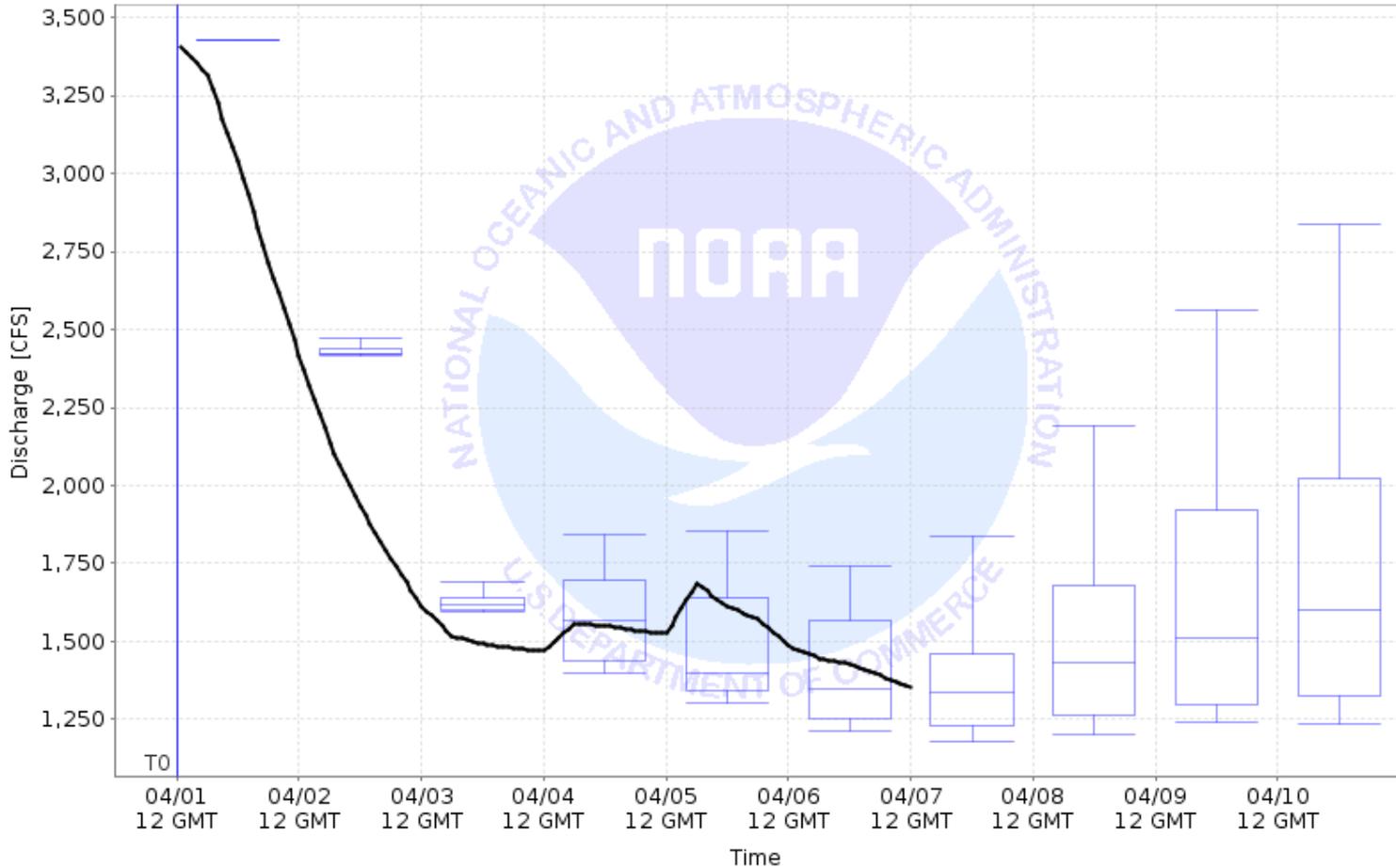




### USGS 11504115 WOOD RIVER NEAR KLAMATH AGENCY, OR

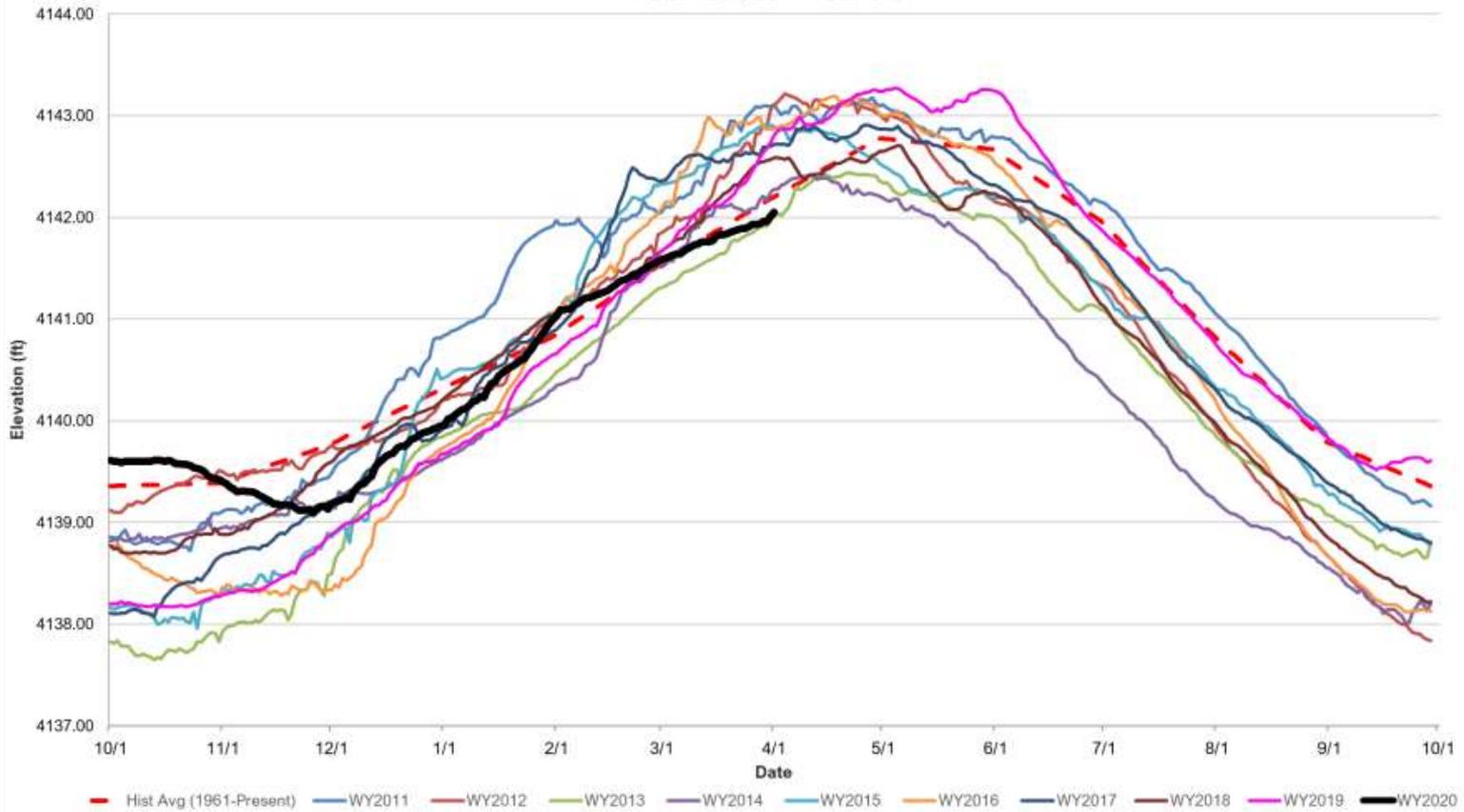


10-Day Maximum Flow Probabilities on the UPR KLAMATH FALLS-INFLOW  
 Latitude: 42.25 Longitude: -121.8  
 Forecast for the period 04/01/2020 - 04/11/2020  
 This is a conditional simulation based on the current conditions as of 04/01/2020  
 (src=D)

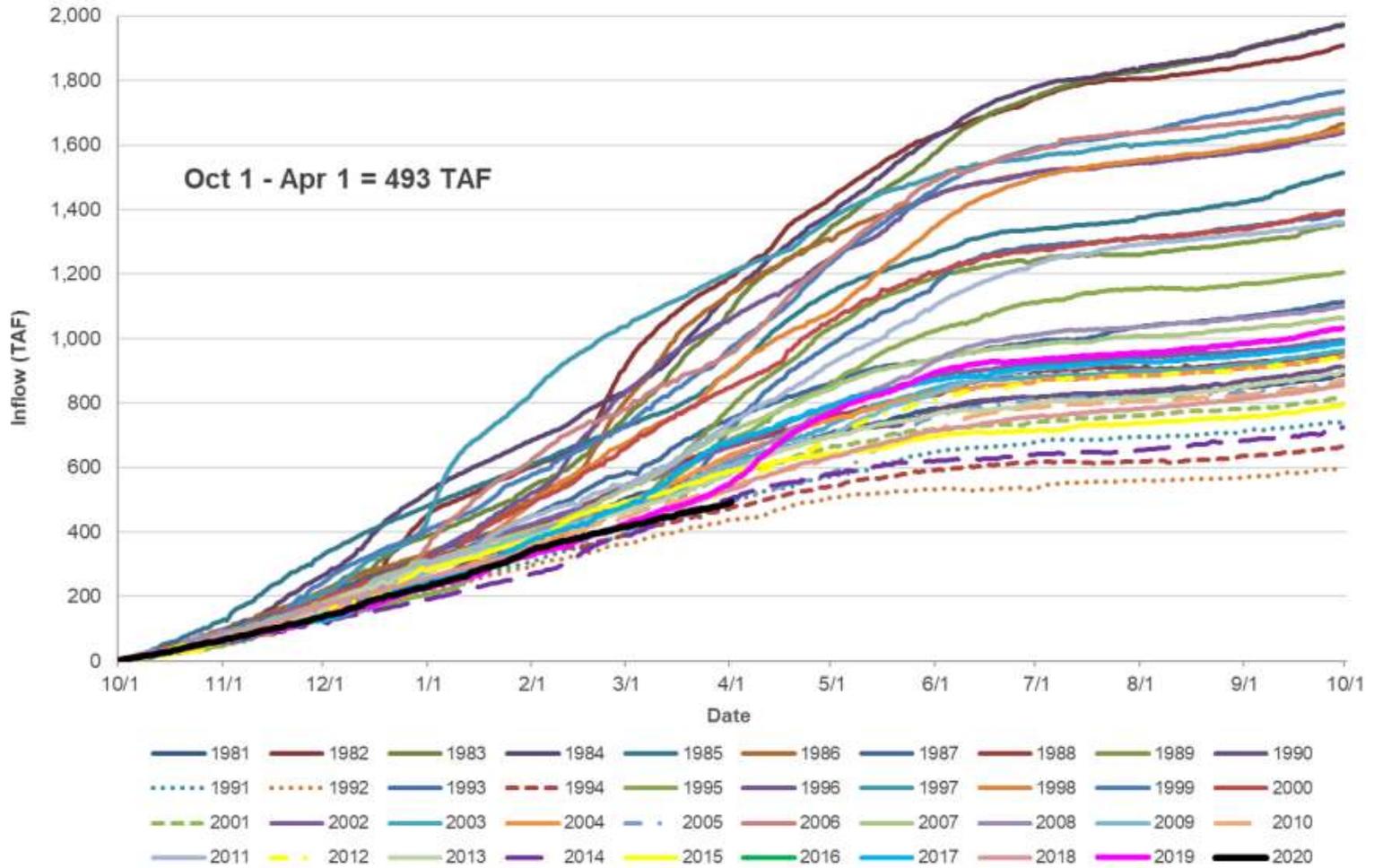


10/25/50/75/90% Exceedance Box Plot — Deterministic Forecast Flow

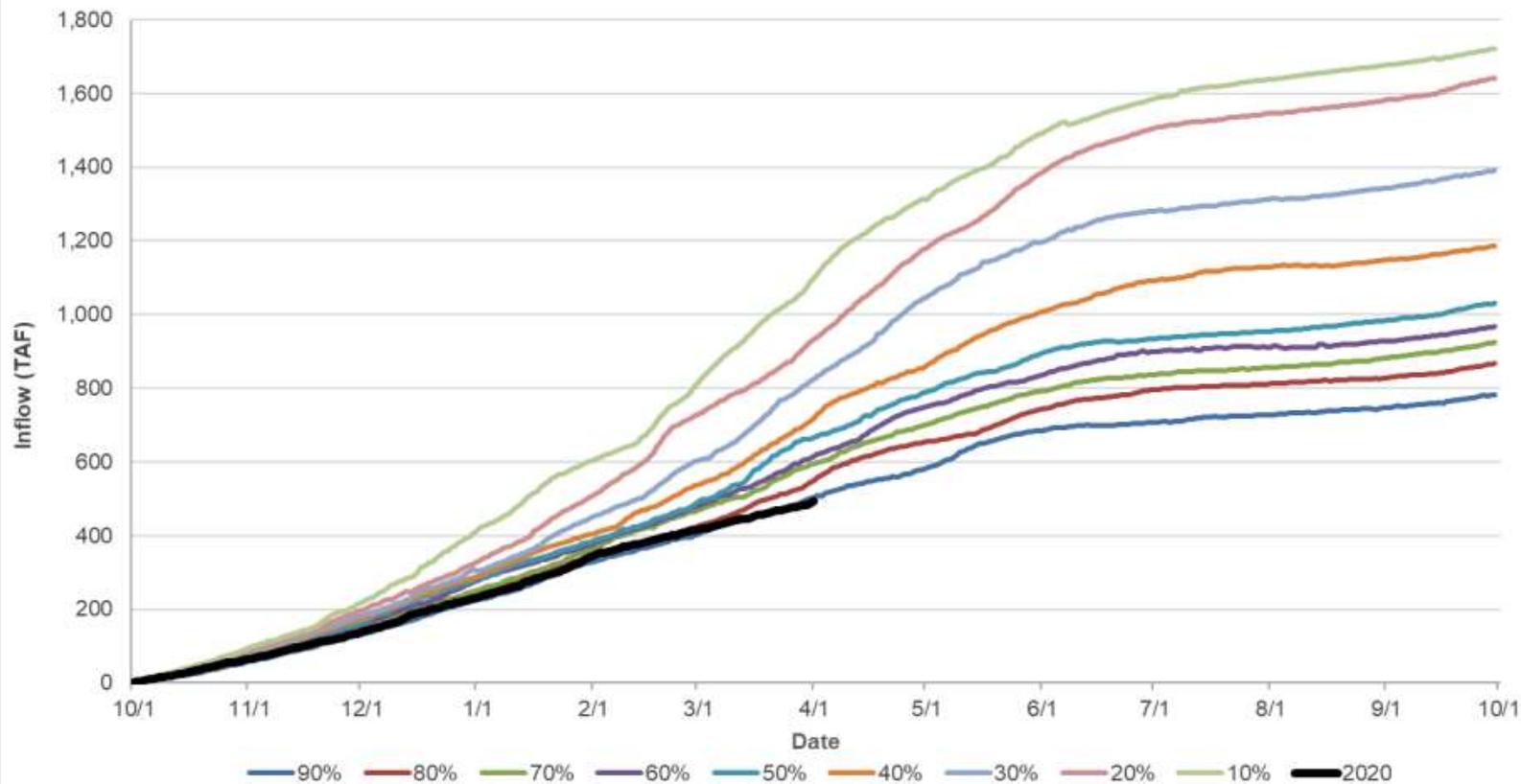
UKL Elevation  
Water Years 2011 - Current



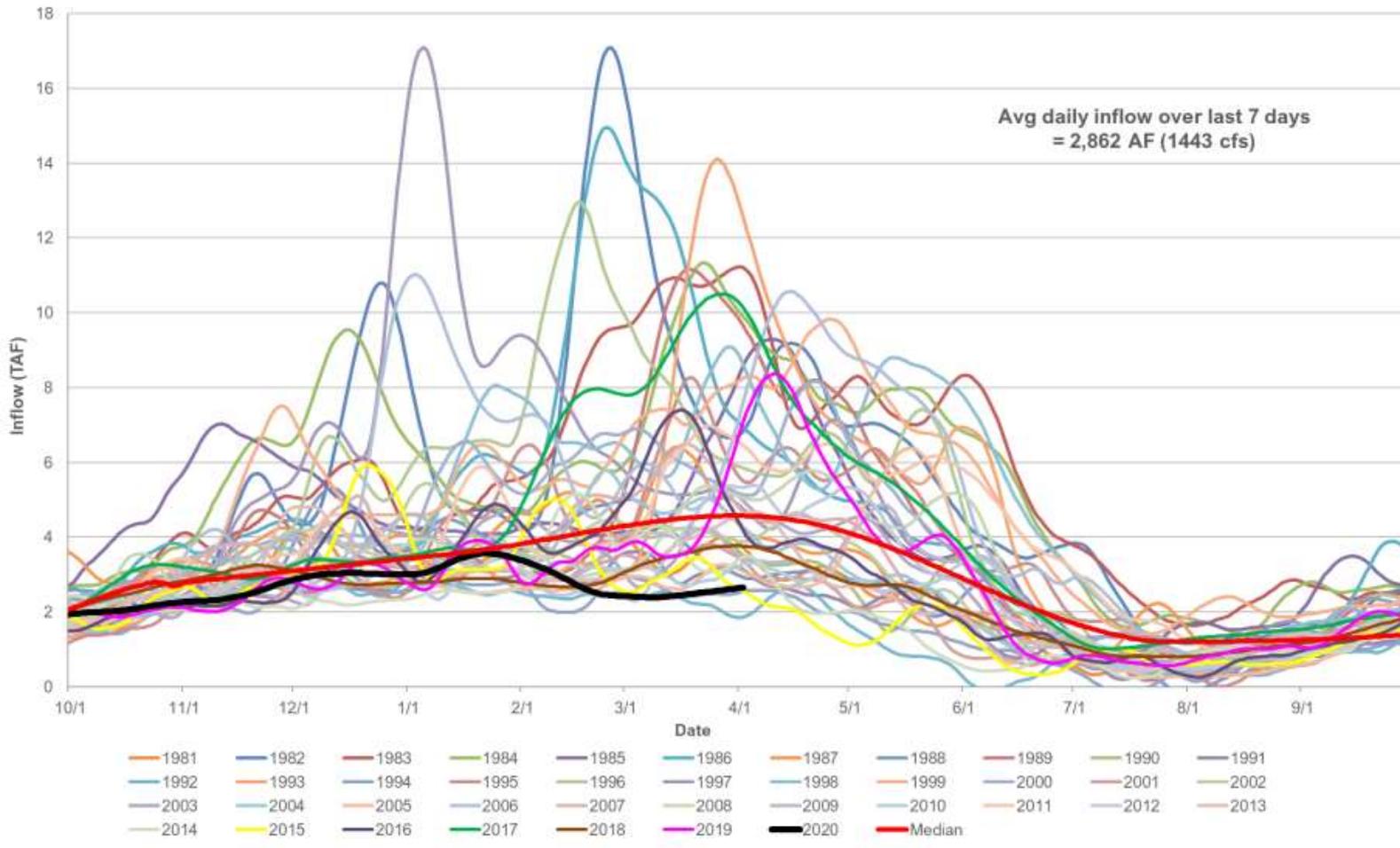
Cumulative UKL Inflow by Water Year



Cumulative Inflow by Exceedance - Current WY

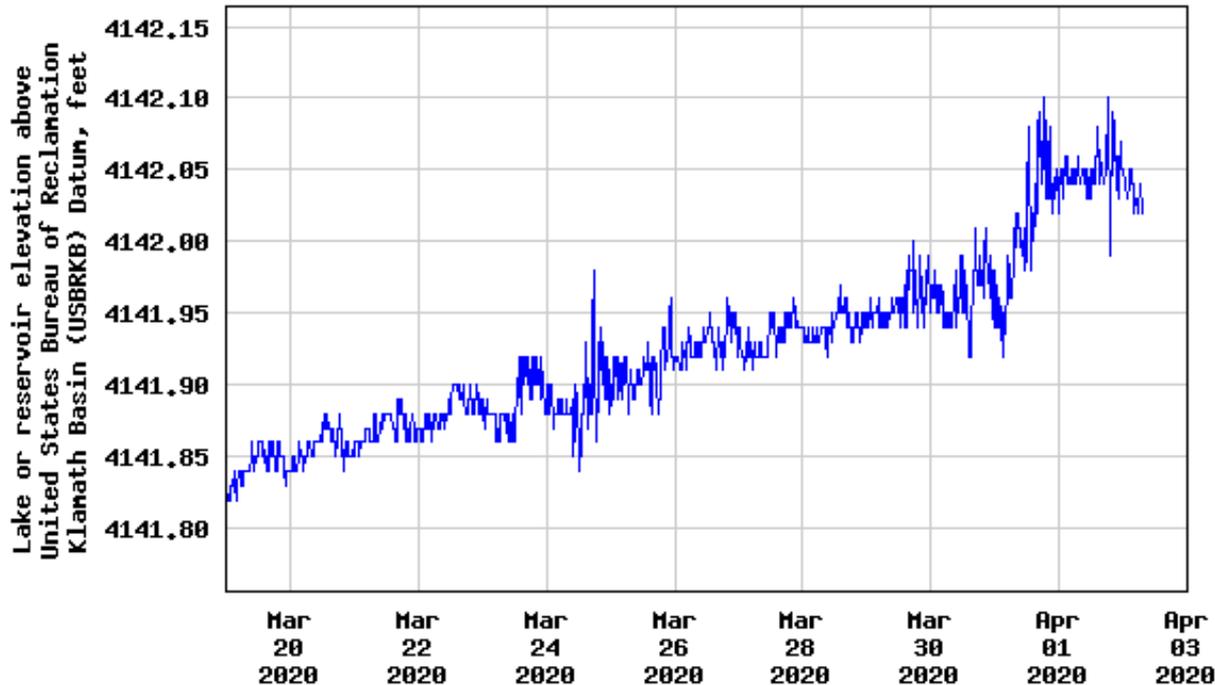


Daily UKL Inflows Using LOESS for 39 Years



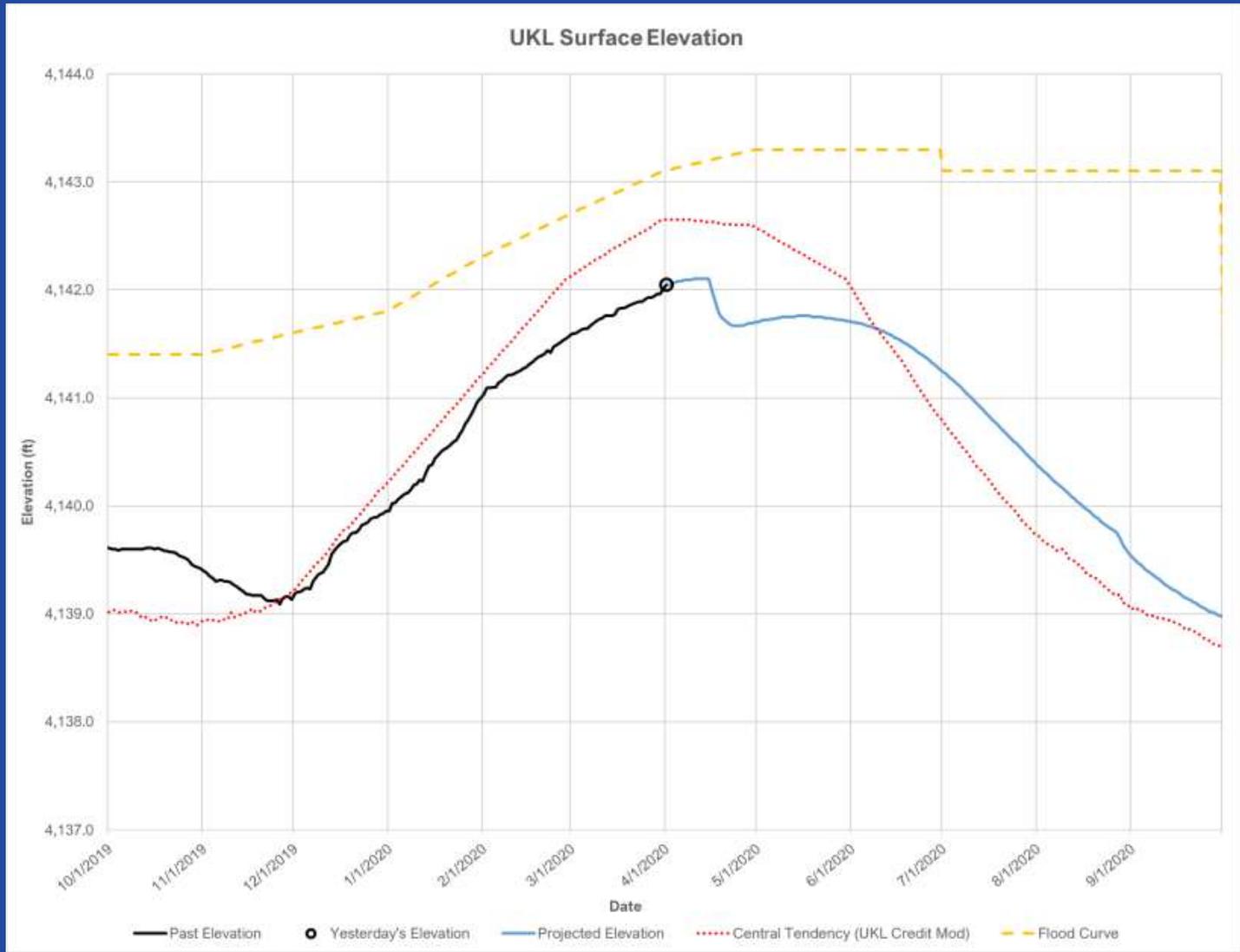


### USGS 11507001 UPPER KLAMATH LAKE NR K.FALLS(WEIGHT/MEAN ELEV) OR

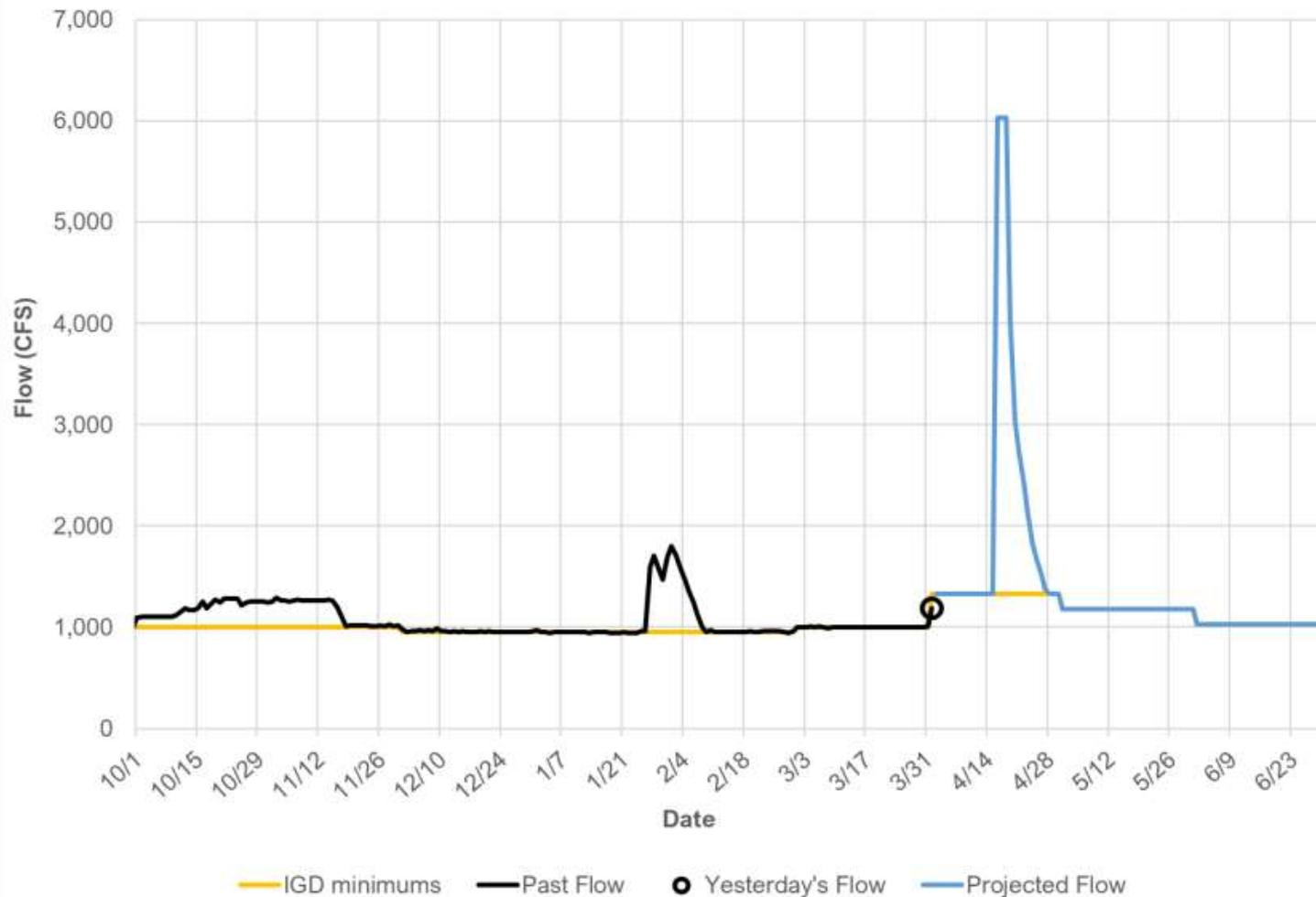


----- Provisional Data Subject to Revision -----

ELEV (FT)	DATE
4141.84	3/19/2020
4141.86	3/20/2020
4141.87	3/21/2020
4141.88	3/22/2020
4141.89	3/23/2020
4141.89	3/24/2020
4141.91	3/25/2020
4141.93	3/26/2020
4141.93	3/27/2020
4141.94	3/28/2020
4141.96	3/29/2020
4141.96	3/30/2020
4142.01	3/31/2020
4142.05	4/1/2020

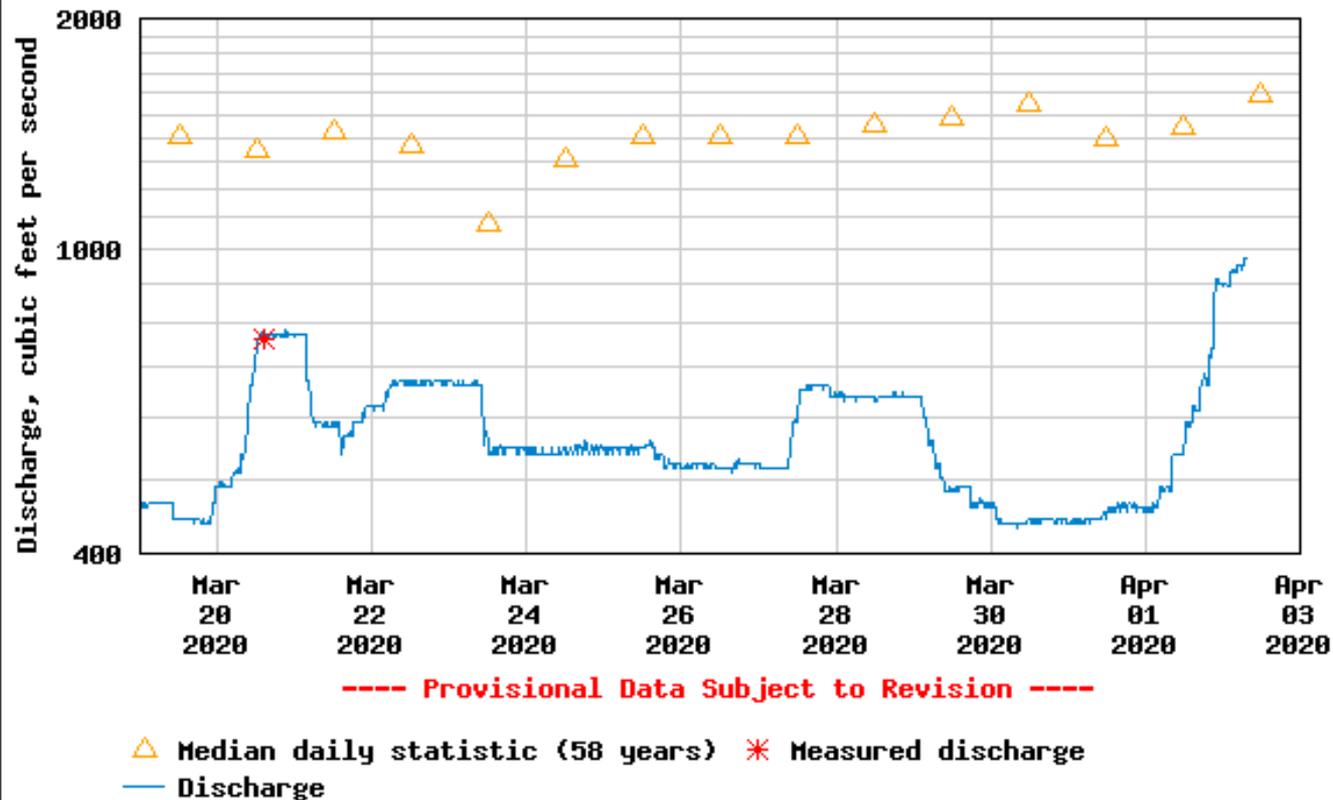


### Iron Gate Flow

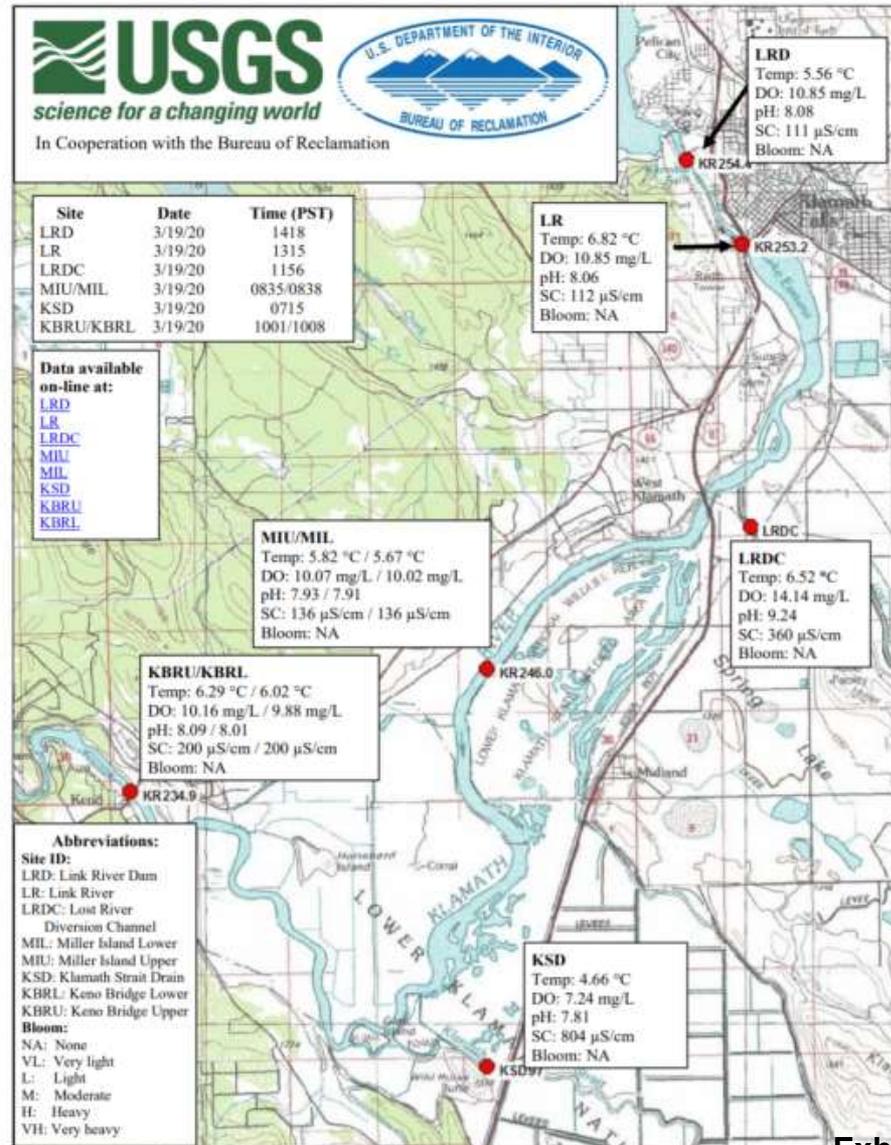




### USGS 11507500 LINK RIVER AT KLAMATH FALLS, OR

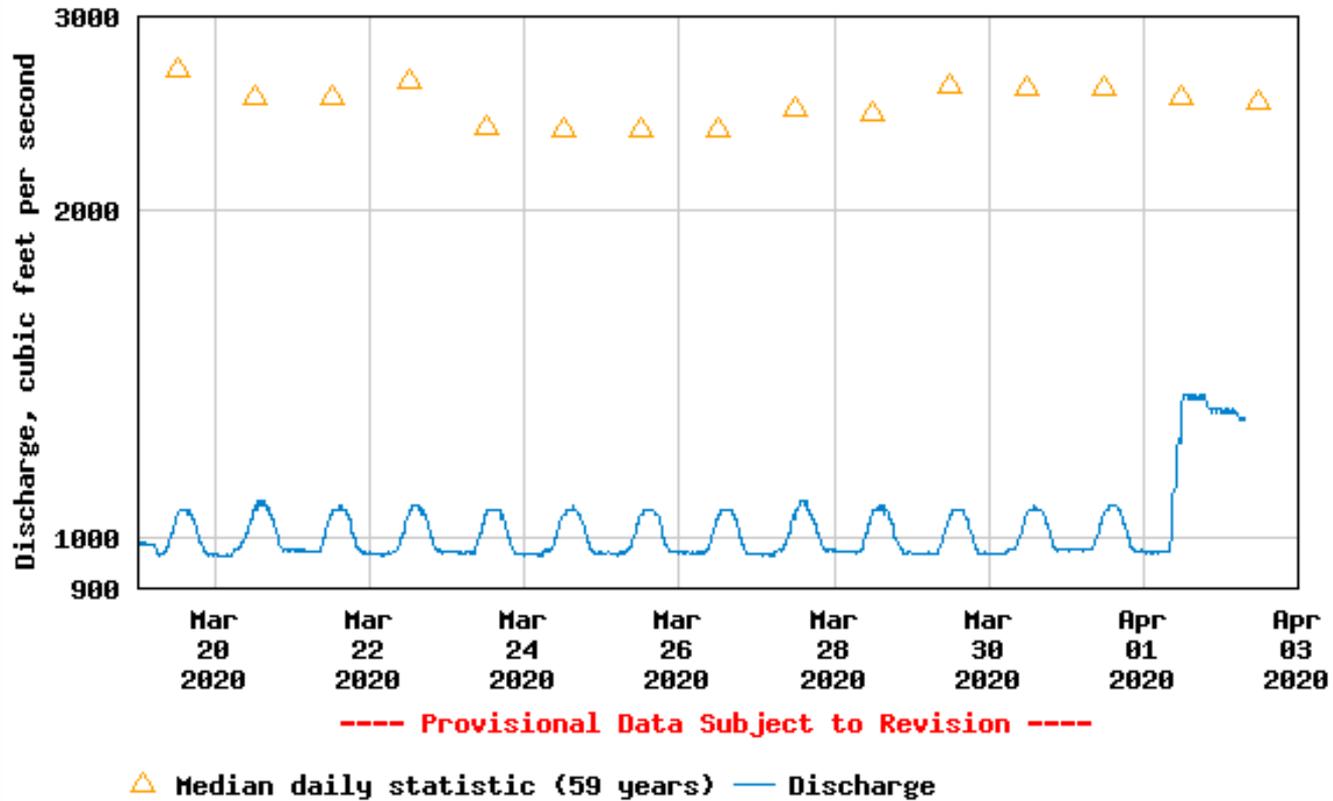


Klamath River Water Quality Update 3/19/2020



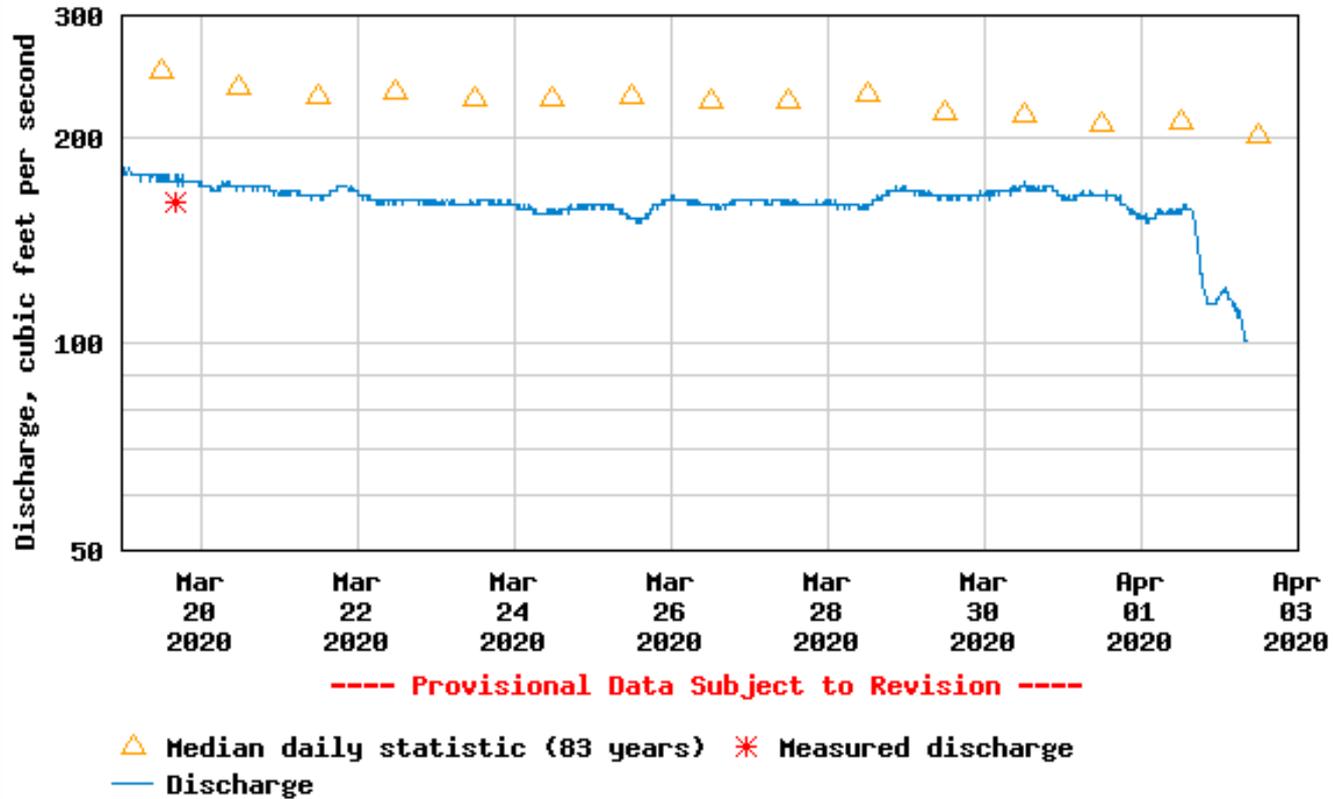


### USGS 11516530 KLAMATH R BL IRON GATE DAM CA



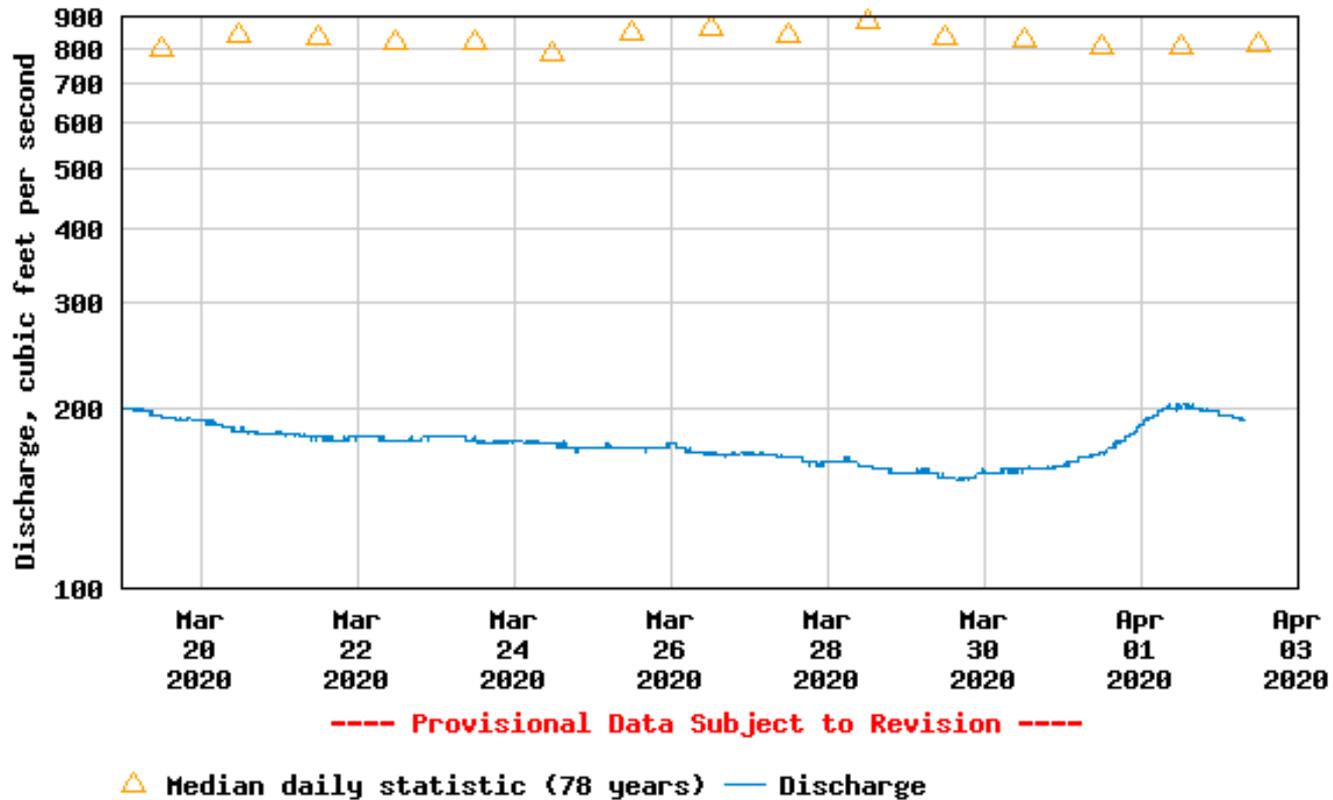


### USGS 11517500 SHASTA R NR YREKA CA



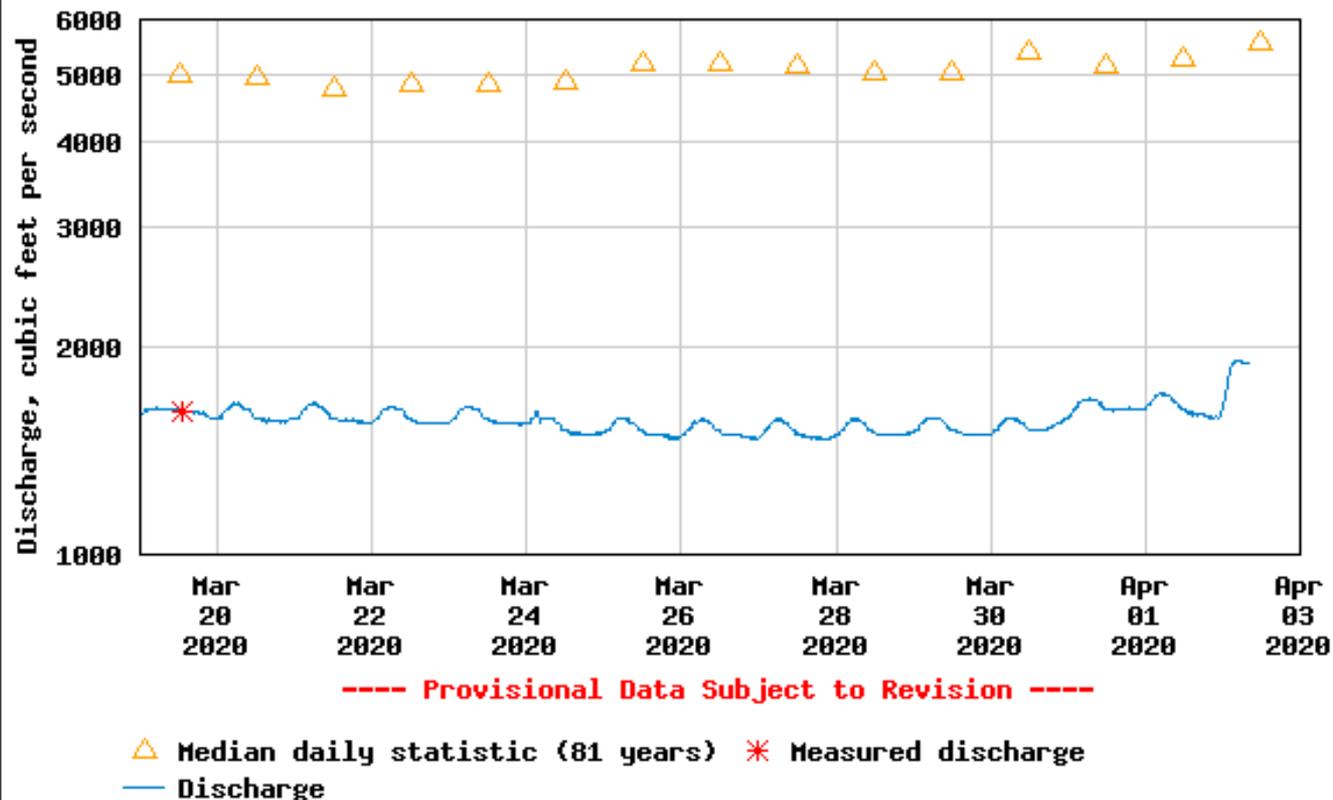


### USGS 11519500 SCOTT R NR FORT JONES CA



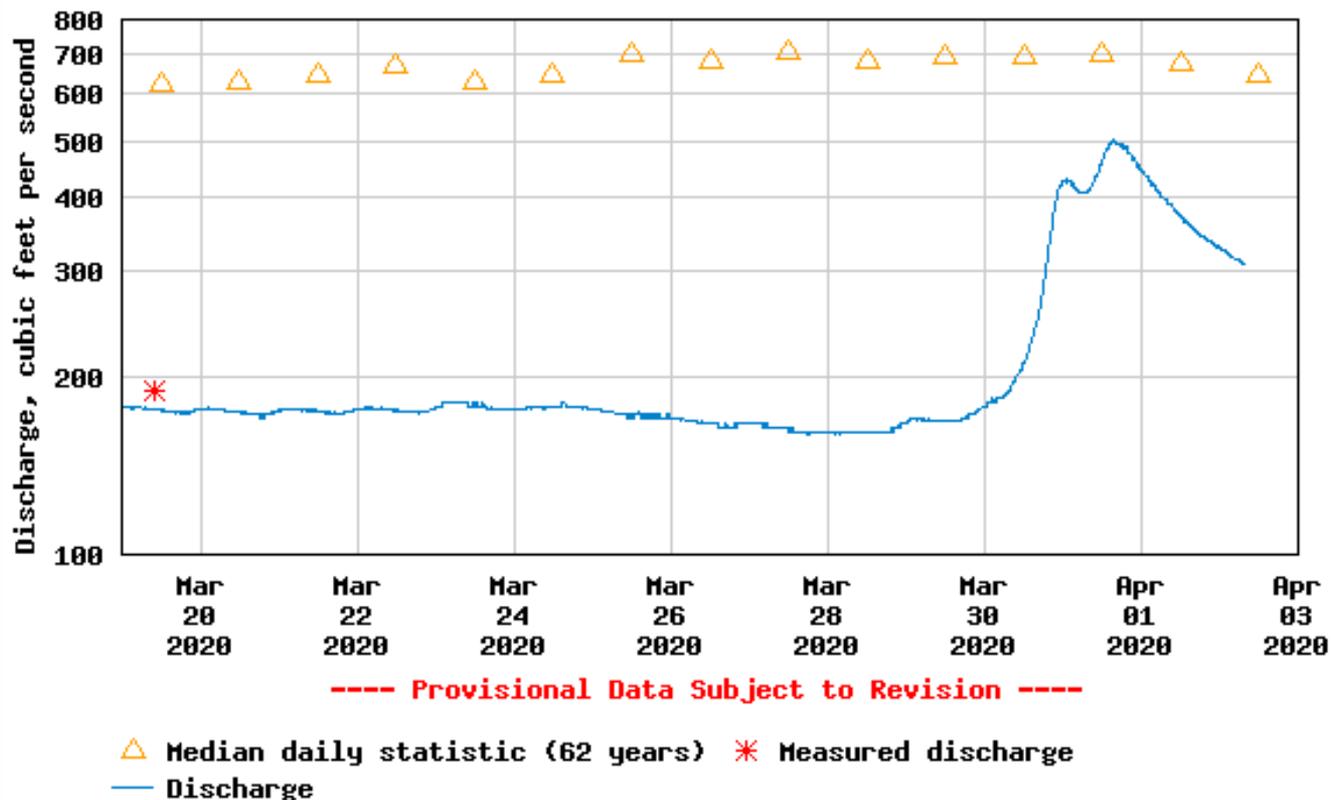


### USGS 11520500 KLAMATH R NR SEIAD VALLEY CA



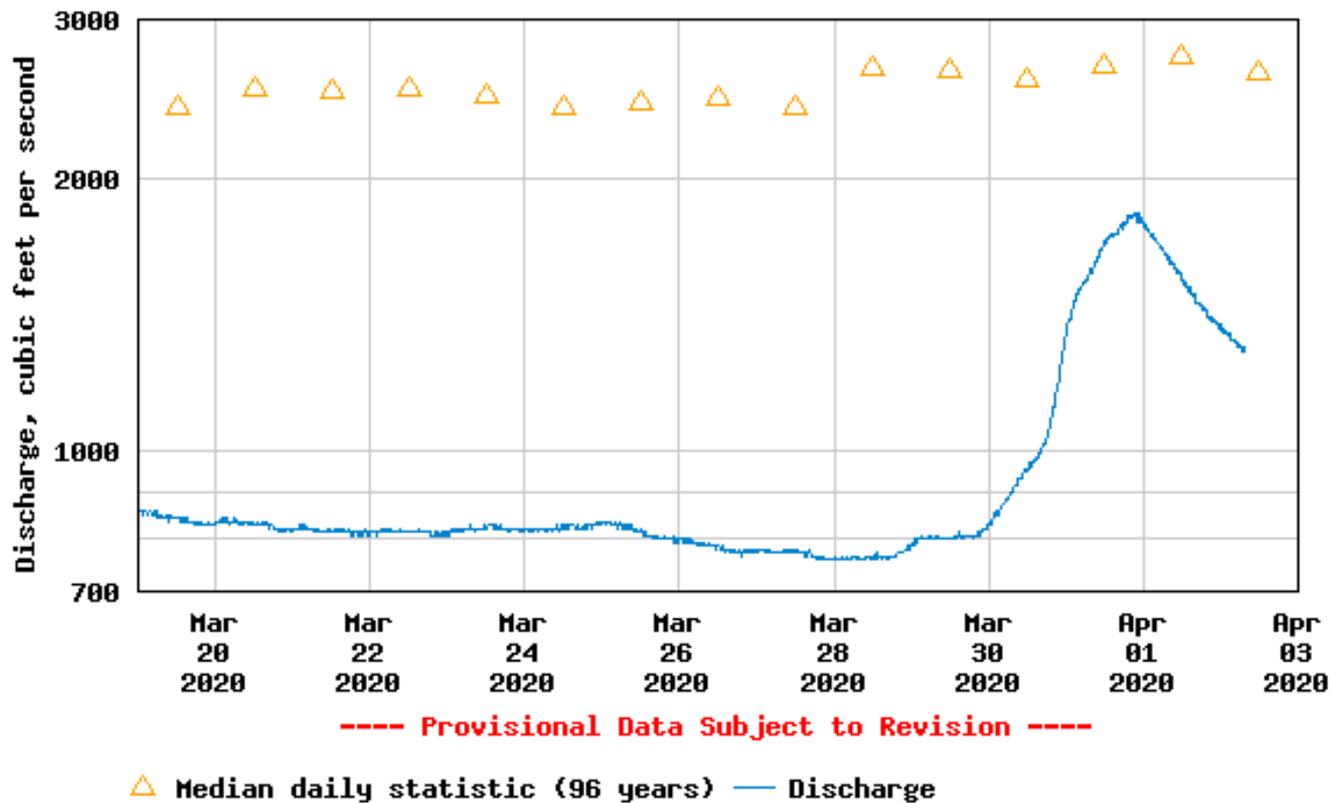


### USGS 11521500 INDIAN C NR HAPPY CAMP CA



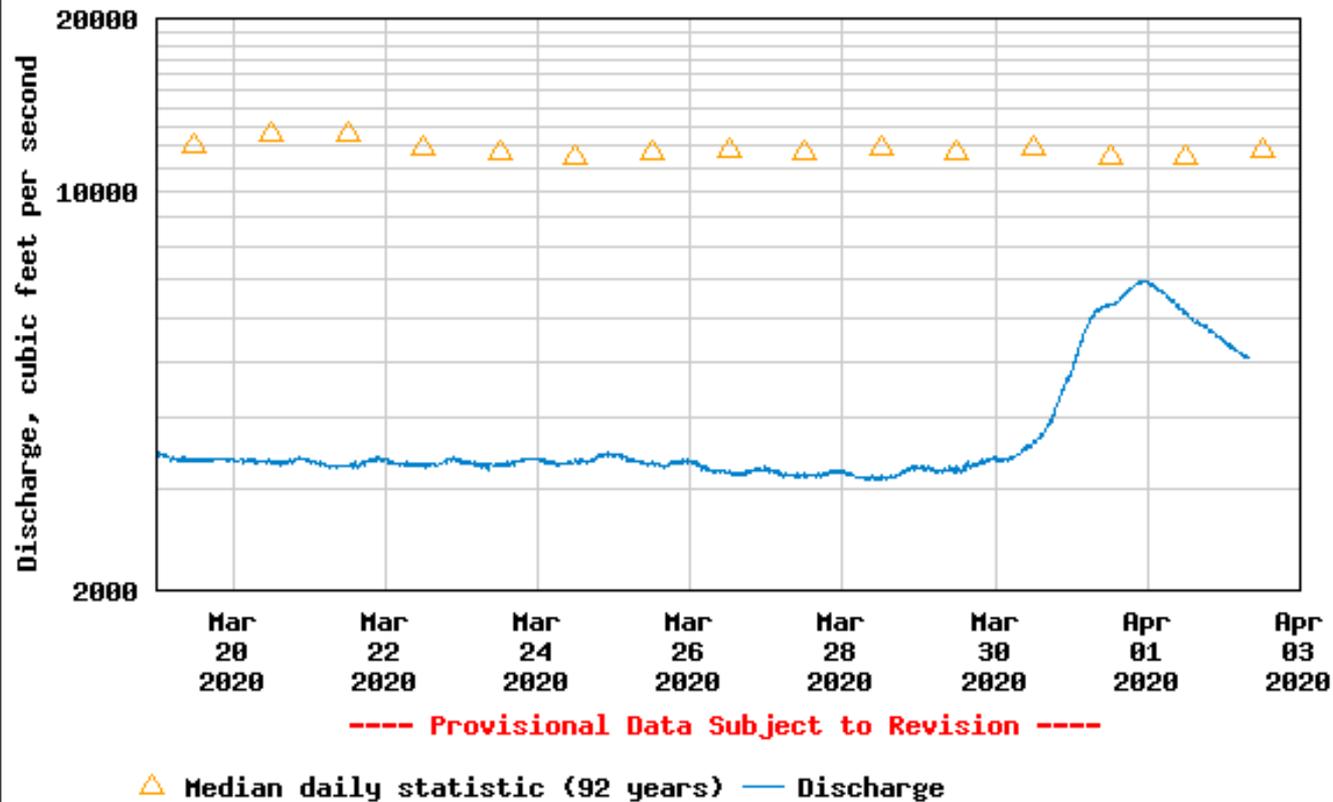


### USGS 11522500 SALMON R A SOMES BAR CA



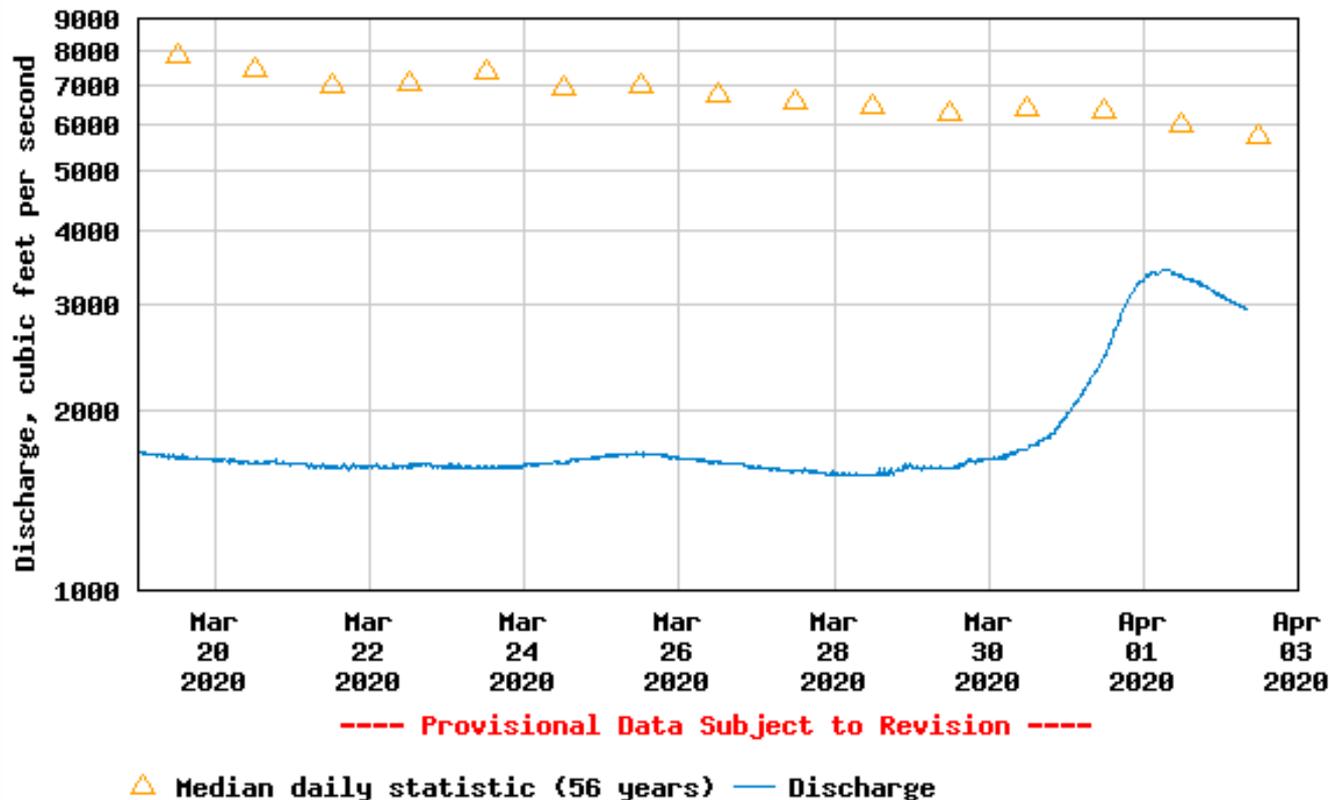


### USGS 11523000 KLAMATH R A ORLEANS



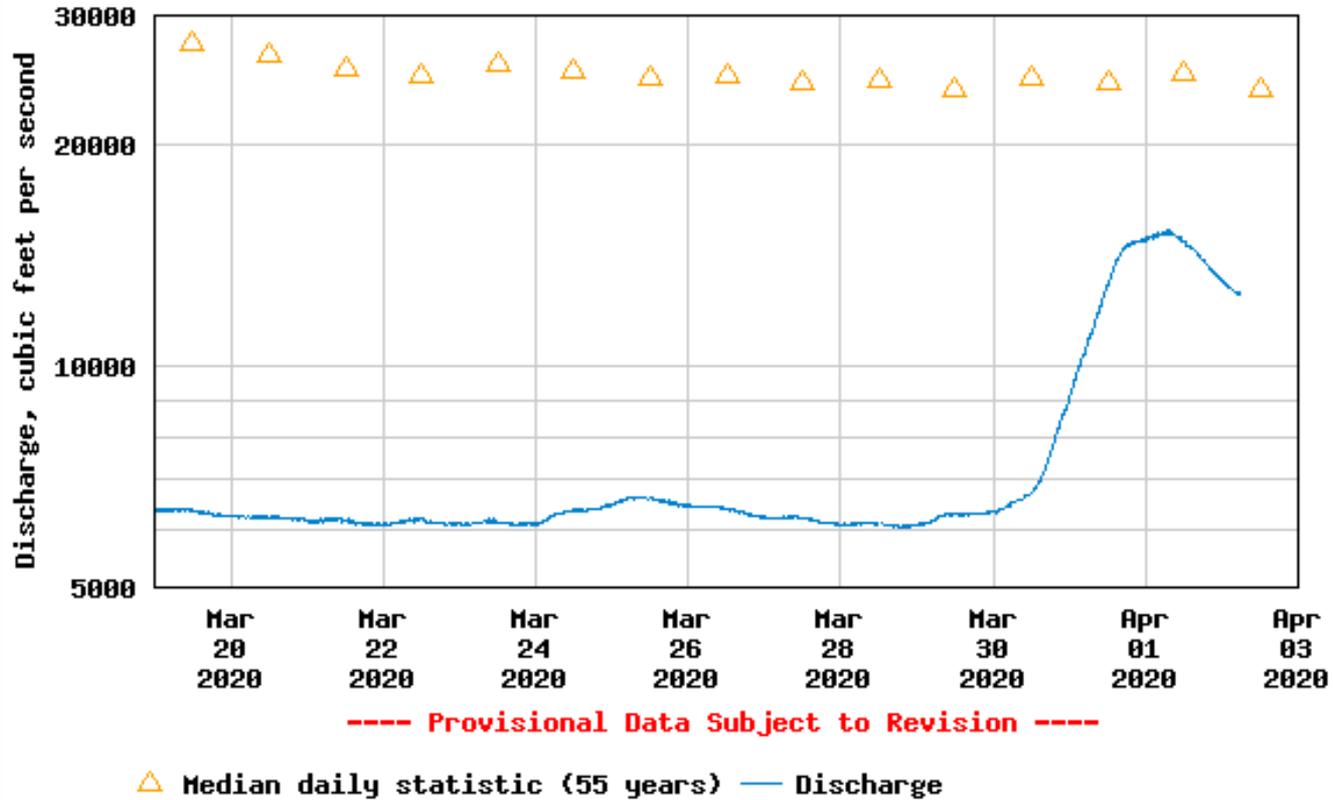


### USGS 11530000 TRINITY R A HOOPA CA

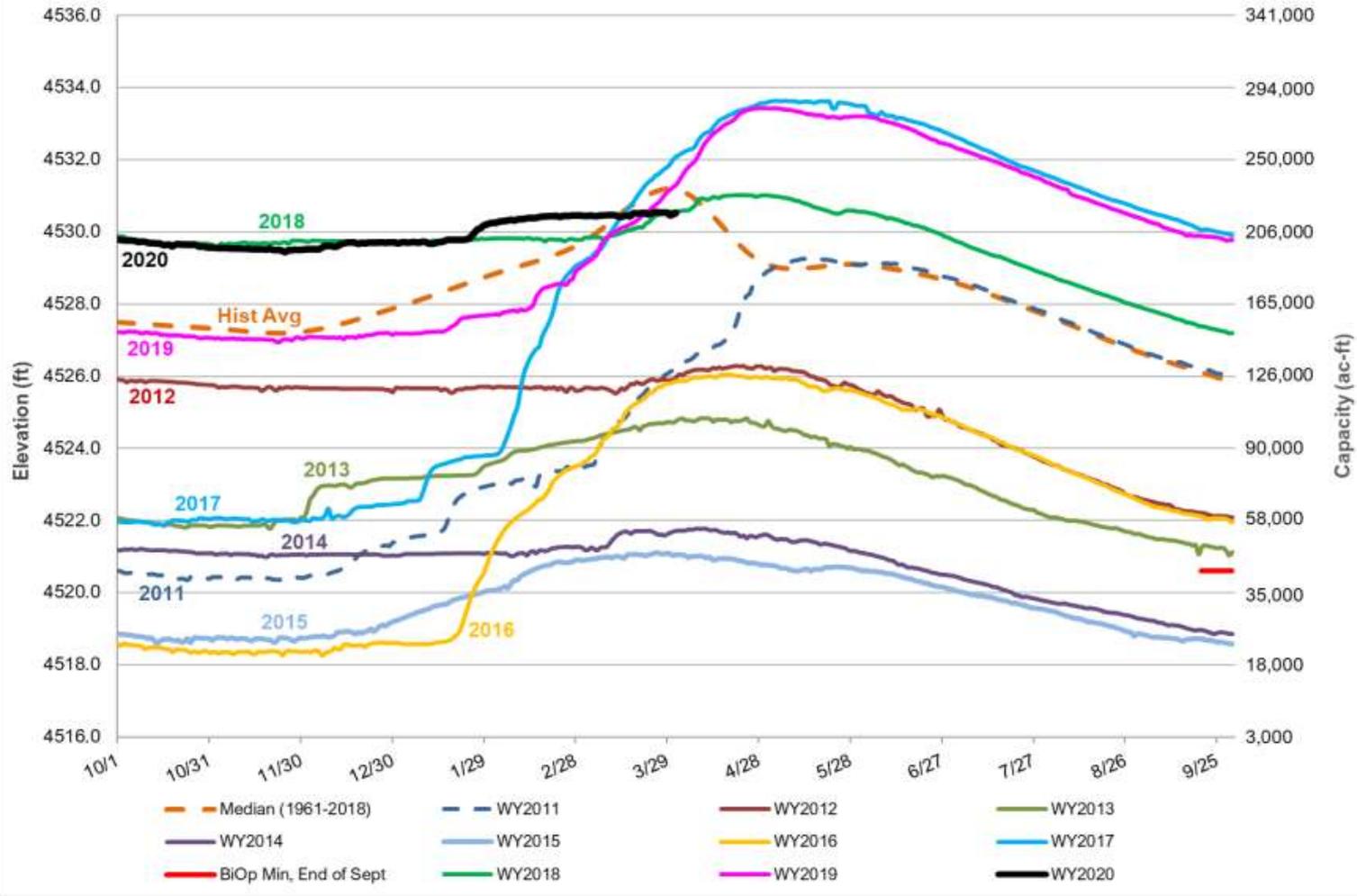


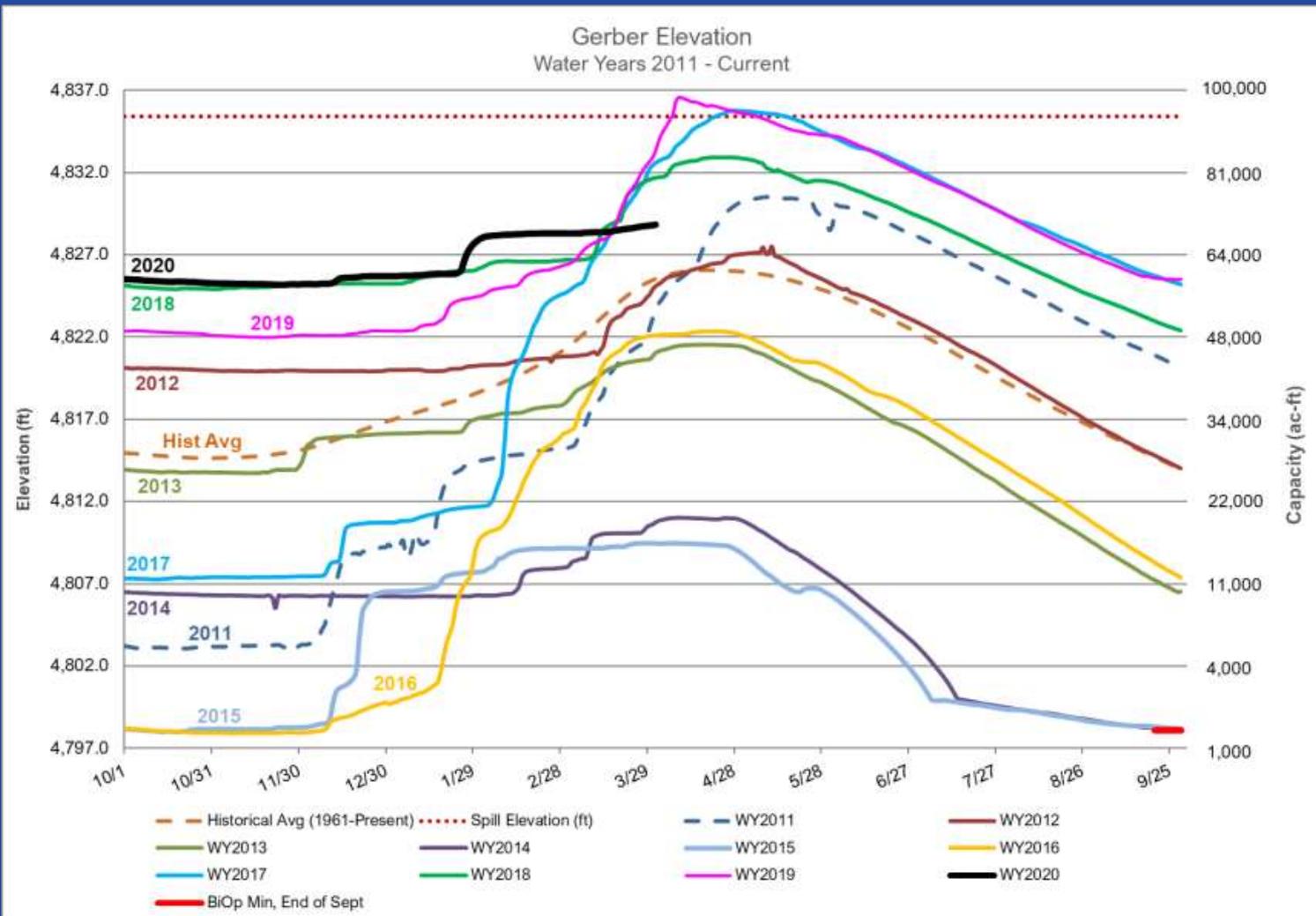


### USGS 11530500 KLAMATH R NR KLAMATH CA

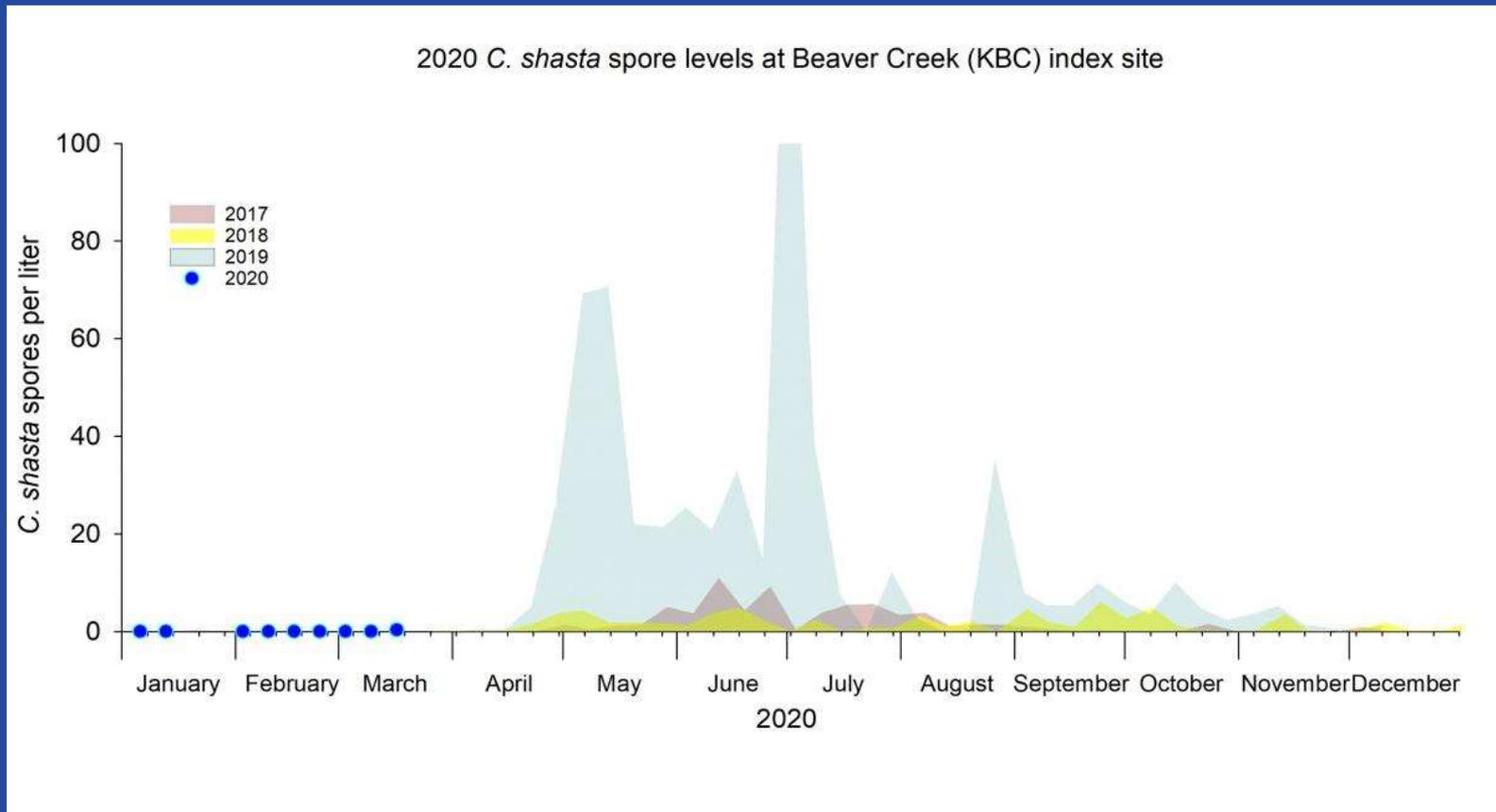


### Clear Lake Elevation Water Years 2011 - Current



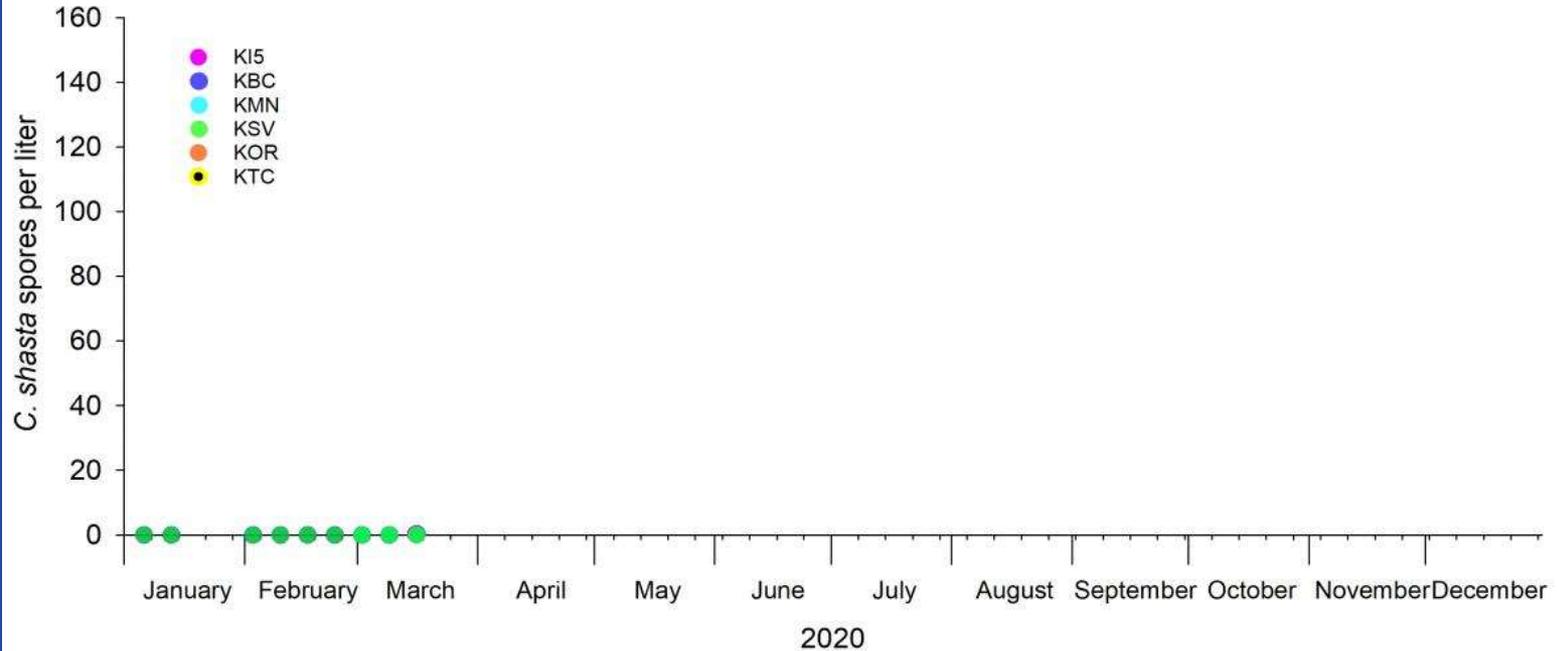


# C. shasta monitoring update



# C. shasta monitoring update

C. shasta average spore levels at all sites in 2020



Density (average spores per liter) of *Ceratonova shasta* in 24-hour composite water samples collected at the mainstem index sites in 2019. Note that KMN is sampled only during salmonid outmigration, KBC and KSV year round and remaining sites April through October. KBC = near Beaver Creek, KSV = Seiad Valley, KI5 = near I5 bridge, KTC = Tully Creek, KMN = Kinsman Fish Trap, KOR = Orleans.



RIETMANN LAW, P.C.

April 10, 2020

**TRANSMITTED VIA EMAIL ONLY:** *Darsee.Staley@doj.state.or.us*

Ms. Darley Staley  
Oregon Department of Justice  
1162 Court St NE  
Salem OR 97301

RE: Dispute concerning Reclamation's use of stored water without a water right

Ms. Staley:

Thank you for your email correspondence. I do very much appreciate the difficulties presented by this strange COVID-19 situation and hope that you and those in your circle are healthy and well.

With that being said, it is imperative that OWRD render a decision immediately on whether Reclamation is allowed to divert stored water in UKL reservoir through the Link River Dam to provide an instream flushing flow without any water right authorizing the use. In this regard, please be advised that KID stands ready to enter into an instream lease or purchase agreement with Reclamation on an expedited basis, and upon reasonable financial terms, to enable Reclamation to provide the flushing flow next week as planned. However, without immediate action on the part of OWRD, Reclamation is unwilling to enter into any such agreement and has no incentive to do so.

In this this regard, I think it is important for OWRD to keep in mind that the approximately 50,000 acre-feet of stored water Reclamation is planning to use for the flushing flow is worth millions of dollars. Therefore, if OWRD allows the flushing flow to occur, either through delay or improper legal interpretation, KID and other secondary water rights holders within the Klamath Project will suffer millions of dollars in damages. If OWRD thereafter proceeds to allow Reclamation to use more than 400,000 acre-feet of water in UKL reservoir for instream purposes during the 2020 irrigation season as planned, secondary water right holders will sustain tens of millions of dollars in damages. If these damages are caused by an erroneous OWRD water distribution decision, or OWRD's failure to make a water distribution decision as requested, OWRD should expect that KID and other secondary water right holders will seek just compensation from the State of Oregon and/or the maximum damages available under law.

To be clear, neither KID nor anyone else within the Klamath Project wants to be in the position of seeking damages from the State of Oregon. The federal government is readily capable of fully resolving this dispute by using the vast resources of the U.S. Treasury to acquire the

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Ph: 503-551-2740 • Fax: 1-888-700-0192 • [nathan@rietmannlaw.com](mailto:nathan@rietmannlaw.com)

**Exhibit A102**  
**Page 1 of 46**

secondary water rights in UKL reservoir that are needed in order to provide the instream flows Reclamation has committed itself to providing. Reclamation is simply choosing not to do so, creating a situation that is financially imperiling not only Klamath farmers, but also the entire Klamath Basin. Reclamation's recalcitrance is also creating a real and substantial risk that if OWRD fails to distribute water from UKL reservoir in accordance with law, the State of Oregon will be left holding the financial bag. Once again, please bear in mind that KID and other irrigators within the Klamath Project are ready, willing, and able to promptly negotiate instream leases or other agreements with Reclamation that would allow Reclamation to lawfully use stored water in UKL reservoir for instream purposes exactly as planned on reasonable financial terms.

In conjunction with the above, I wanted to let you know that we have reviewed the correspondence OWRD has received from the Yurok Tribe in California. As OWRD is aware, the Yurok Tribe does not have water rights in UKL reservoir. To the extent the Yurok have federal reserved water rights in California, those water rights have not been adjudicated and other water rights holders have never had notice or meaningful opportunity to be heard on the scope and attributes of the water rights claimed by the Yurok Tribe. Moreover, when there are disputes between property holders in two states about water rights in a river that crosses state lines, such as the Klamath River, these disputes must be resolved through the process of equitable apportionment, often in front of a special master. *See, e.g., Florida v. Georgia*, 138 S.Ct. 2502 (2018) (remanding case concerning apportionment of the Apalachicola–Chattahoochee–Flint River Basin to a special master). When water rights are equitably apportioned between landowners in different states, rights attributable to tribes and reservations are satisfied from the water rights attributed to the state *in which the reservation lies*. Tarlock, *Interstate Allocation § 10:13*, LAW OF WATER RIGHTS AND RESOURCES, at 644, discussing *State of Az. v. Cal.*, 373 U.S. 546 (1963); *Arizona v. California*, 460 U.S. 605 (1983).

Furthermore, if the Yurok Tribe wanted OWRD to curtail Oregon water rights in favor of their unadjudicated federal reserved water rights in California, they would need to make a call. In the absence of equitable apportionment, OWRD does not have legal authority to curtail Oregon water rights in favor of unadjudicated federal reserved water rights in California. And even if it did, it would be necessary for OWRD to curtail all junior water right in Oregon and California between the Klamath Project and the Yurok Reservation, before OWRD could lawfully curtail the more senior water rights of KID and other irrigators within the Klamath Project.<sup>1</sup> What is more, if a water rights call by the Yurok Tribe were validated by OWRD (notwithstanding all of the above), a call would not entitle the Yurok Tribe to use of water already stored in UKL. This is because stored water is only subject to the secondary water rights that call upon the source and neither the Yurok Tribe, nor the United States in its capacity as trustee for the Yurok Tribe, were granted secondary rights in UKL reservoir for instream purposes in the ACFFOD. To conclude otherwise, would be to conclude that the Yurok have a water right in UKL and imperil the comprehensiveness of the Klamath Basin Adjudication.

---

<sup>1</sup> It would also be necessary for OWRD to know the rate, duty, type, and season of use of the Yurok's federal reserved water rights claims, all of which is unknown due to the fact that the Yurok Tribe's unadjudicated federal reserved water rights claims are unadjudicated.

The one other point that should be noted, with respect to the Yurok Tribe's correspondence, is that the decision in *Baley v. United States*, 942 F3d 1312, 1318 (Fed Cir 2019), which the Yurok Tribe points to, was based on particular factual circumstances that existed in 2001, which are different from the circumstances that exist today. Specifically, the decision in *Baley v. United States* is fundamentally premised upon the assumption that all the water rights for the Klamath Project were owned by the United States. Today, however, the ACFFOD makes clear that the rights to the use of the water that Reclamation stores in UKL reservoir are owned by KID and other irrigators, not the United States. Additionally, in 2001, OWRD did not regulate for or against any pre-1909 water user in the Klamath Basin due to the fact that all such rights were unadjudicated. Today, the water rights in UKL reservoir are as set forth in the ACFFOD and enforceable by OWRD. Thus, while the decision in *Baley* was recently issued, the case involves circumstances that existed 19-years ago, not the circumstances that exist today. As a result, the case is inapposite in resolving the issue presently before OWRD.

In the interest of facilitating a timely water distribution decision by OWRD, I have attached the most recent slides from Reclamation's FASTA team. As you can see on page 27 of the attachment, there is zero question that Reclamation will be required to use stored water to provide the flushing flow planned for next week. Given that the only dispute KID has asked OWRD to resolve is whether or not Reclamation may use water stored in UKL reservoir to provide a flushing flow without a water right, and Reclamation plainly does not have a right to use stored water for instream purposes, it appears OWRD has the information it needs to effectively resolve the dispute.

Once again, time is of the essence as the flushing flow is scheduled to occur next week. It is essential that OWRD take charge of UKL reservoir and decide whether or not water may be distributed through Link River Dam for instream purposes without an instream water right, prior to such time.

Sincerely,

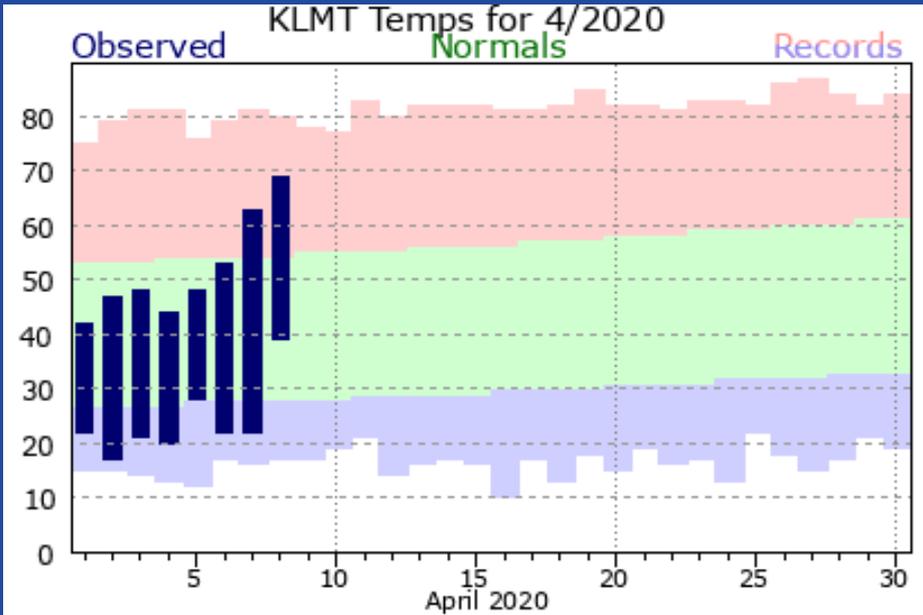
A handwritten signature in black ink, appearing to read 'Nathan R. Rietmann', with a long horizontal line extending to the right.

Nathan R. Rietmann

# Hydrologic Update

**April 9, 2020**

# Klamath Falls Airport



## Departure from normal, WY2020

- October = -0.66"
- November = -2.08"
- December = +0.22"
- January = -0.35"
- February = -1.80"
- March = -0.52"
- April 8 = -0.14"

Total to Date = -5.33" (-53%)

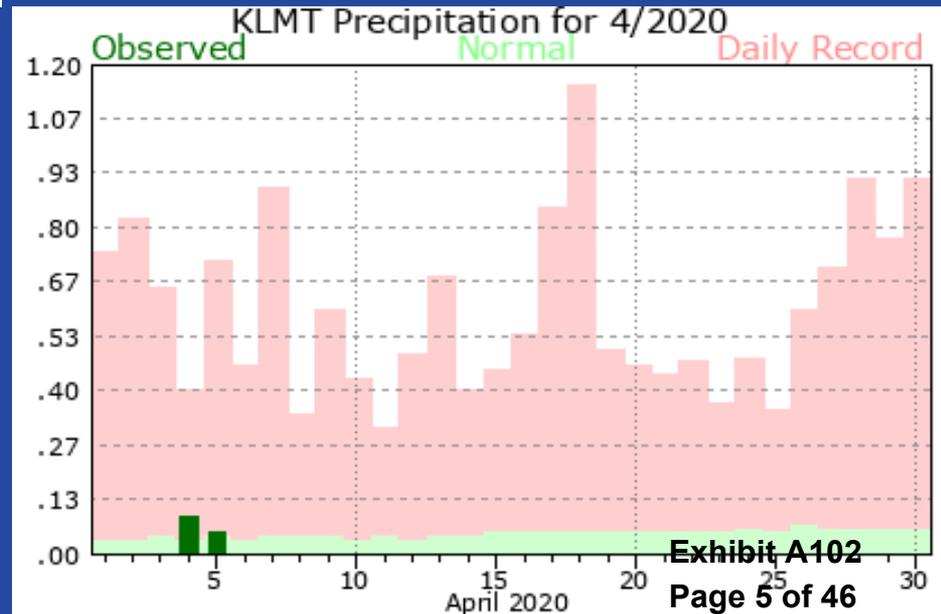


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# Klamath Basin Climate Stations

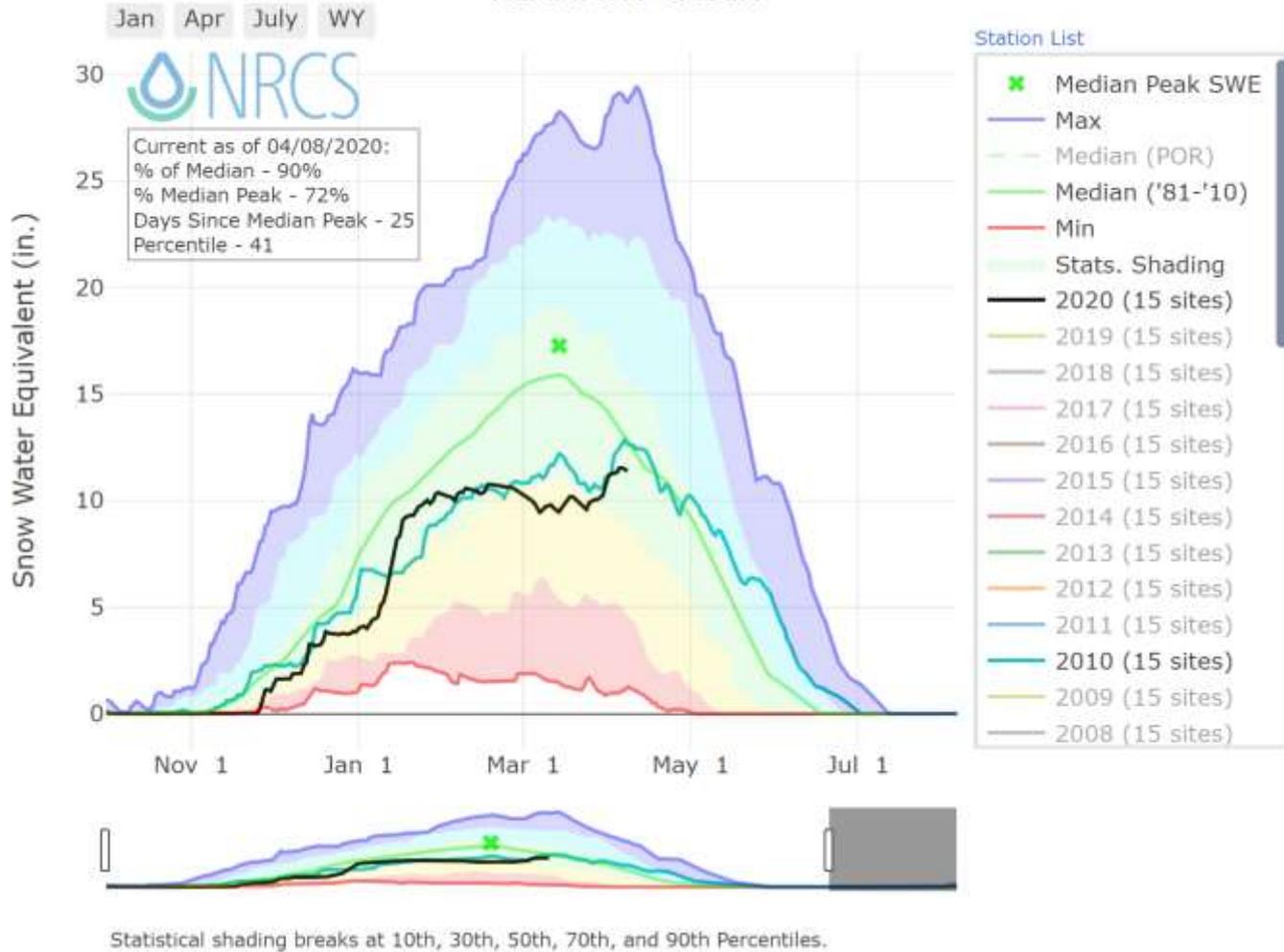
Wednesday, April 8, 2020					
Station & Historical	WY to Date	Avg	% of Avg	Code	Elev
	ppt (in)	ppt (in)			ft
Lorella (2002-2018)	4.85	8.16	59%	LORO	4159
Beatty (2005-2018)	4.55	7.84	58%	BATO	4319
Agency (2001-2018)	5.89	11.39	52%	AGKO	4149
KFalls (1999-2018)	7.55	8.44	89%	KFLO	4099
Airport (1981-2010)	4.68	10.01	47%		4095

As previously noted, KFalls station total inflated due to problems with wind shield vane being misplaced

# Upper Klamath Basin SNOTEL

Upper Klamath Basin SNOTEL Snow/Precipitation Update Report							
Based on Mountain Data from NRCS SNOTEL Sites							
**Provisional data, subject to revision**							
Data based on the first reading of the day (typically 00:00) for Thursday, April 09, 2020							
Basin Site Name	Elev (ft)	Snow Water Equivalent			Water Year-to-Date Precipitation		
		Current (in)	Median (in)	Pct of Median	Current (in)	Average (in)	Pct of Average
<b>KLAMATH</b>							
Fish Lk.	4660	9.8	2.8	350	27.6	34.0	81
Chemult Alternate	4850	0.0	0.2	0*	14.3	21.7	66
Gerber Reservoir	4890	0.1	0.0 <sub>C</sub>	*	9.1	11.8 <sub>C</sub>	77
Taylor Butte	5030	0.0	0.4	0*	9.9	16.6	60
Crowder Flat	5170	0.1	0.0 <sub>C</sub>	*	9.3	13.4 <sub>C</sub>	69
Billie Creek Divide	5280	18.8	17.3	109	32.7	42.0	78
Diamond Lake	5280	10.7	8.3	129	26.5	38.2	69
Sun Pass	5400	13.6	N/A	*	22.0	N/A	*
Sevenmile Marsh	5700	29.7	30.4	98	37.9	50.7	75
Quartz Mountain	5720	0.1	0.0 <sub>C</sub>	*	10.3	12.5 <sub>C</sub>	82
Silver Creek	5740	4.0	3.5	114	12.9	20.7	62
Strawberry	5770	0.0	0.2	0*	12.8	17.0	75
Cold Springs Camp	5940	17.9	25.8	69	23.9	45.2	53
Fourmile Lake	5970	22.2	26.0	85	31.7	43.5	73
Annie Springs	6010	32.1	43.6 <sub>C</sub>	74	34.8	57.4 <sub>C</sub>	61
Crazyman Flat	6180	8.5	12.2 <sub>R</sub>	70	16.0	28.0 <sub>R</sub>	57
Swan Lake Mtn	6830	20.2	N/A	*	21.2	N/A	*
Summer Rim	7080	12.3	16.6	74	11.4	21.4	53
<b>Basin Index (%)</b>		<b>89</b>			<b>68</b>		

# Snow Water Equivalent in KLAMATH BASIN

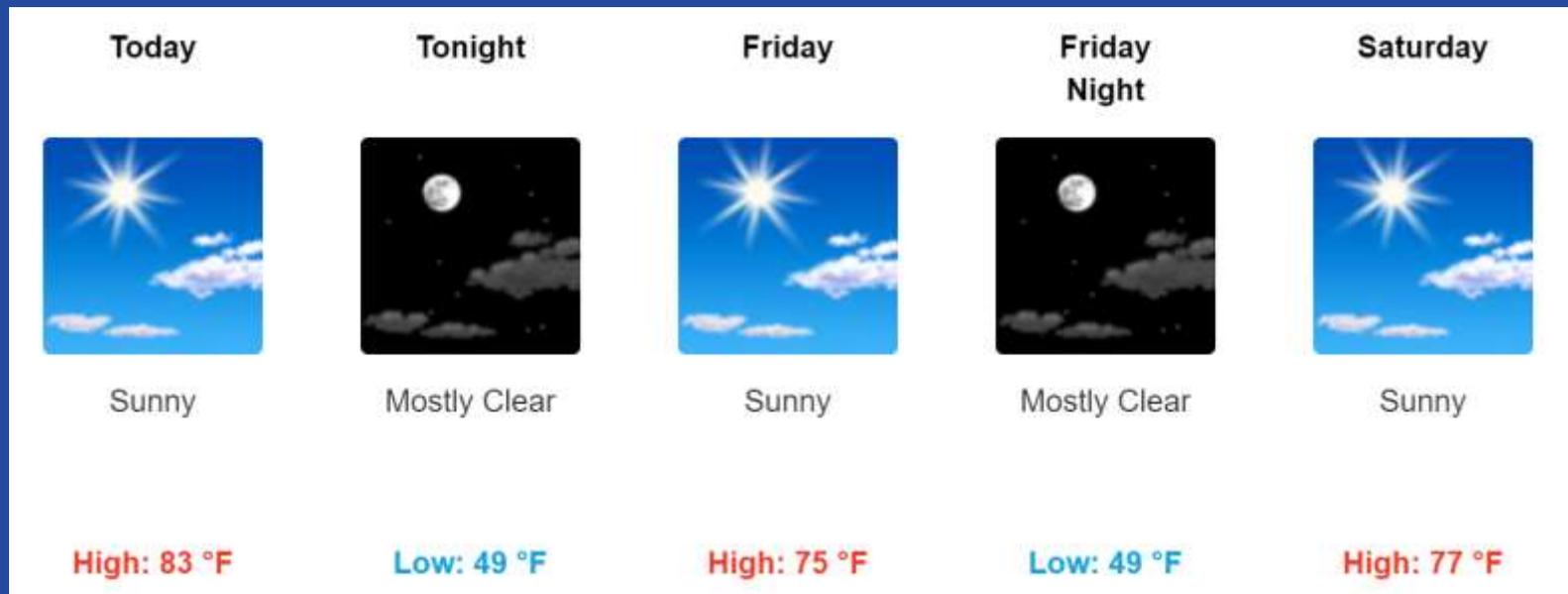


<https://www.nrcs.usda.gov/Internet/WCIS/basinCharts/POR/WTEQ/OR/KLAMATH%20BASIN.html>

# Klamath Falls weather forecast



# Orleans weather forecast

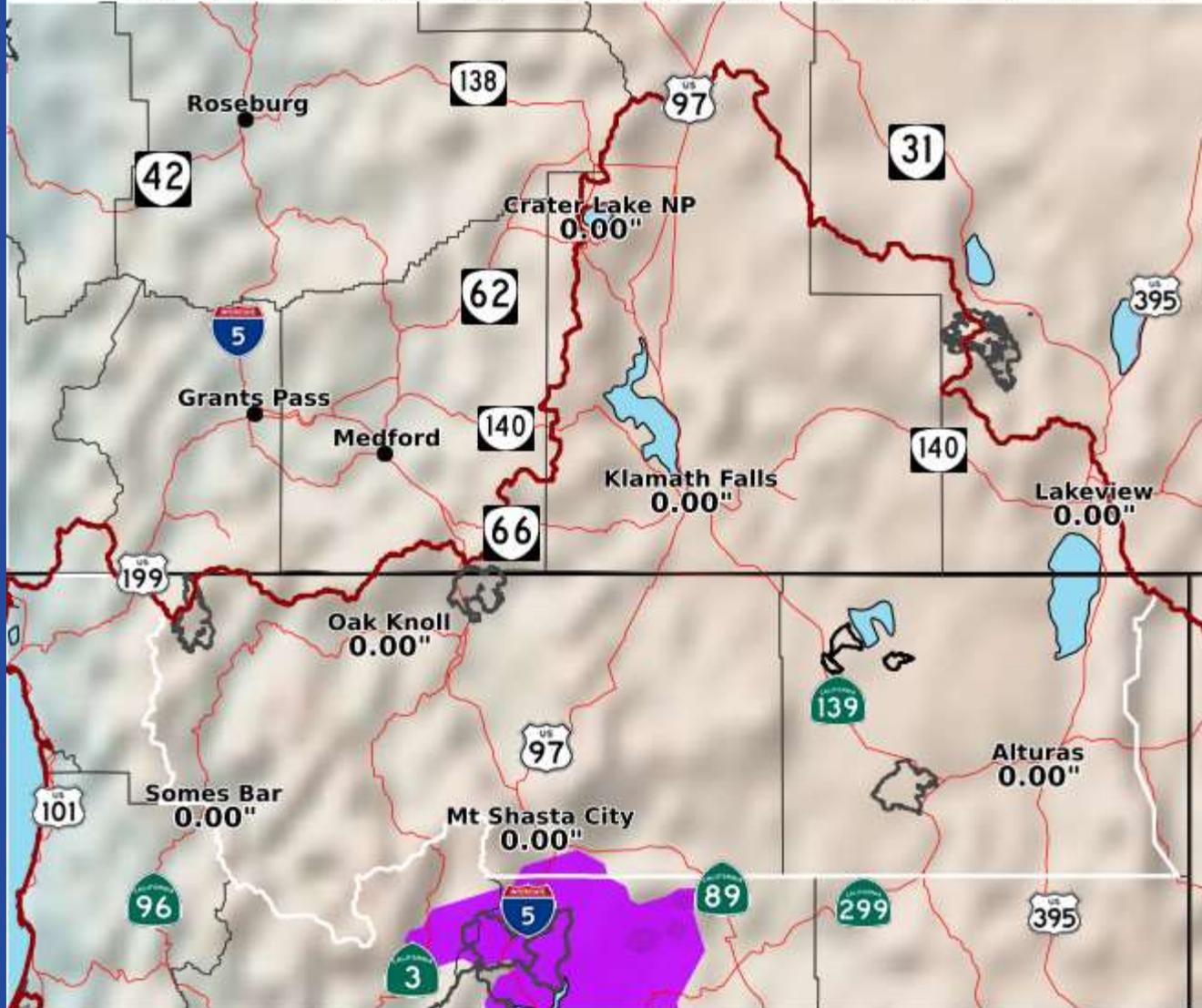


# From NWS – Medford forecast discussion

.CLIMATE...We received a question tonight about whether above normal temperatures this time of year typically leads to a hotter than normal summer. We looked into this by comparing average high temperatures in April and May from 1990 to 2019 to average high temperatures in July and August for the same years, and there was a weak correlation per a Pearson correlation test. With full acknowledgment that correlation does not equal causation, while the data points to some weak connection between a warm spring and hot summers in Medford, there is not a strong enough signal or evidence to say anything concrete about this upcoming summer based solely on spring temperatures.

# 6-Day Forecast Precipitation (Inches)

Valid: Thu Apr 09, 2020 at 05 AM PDT to Wed Apr 15, 2020 at 05 AM PDT



National Weather Service  
CNRFC - Sacramento, CA

Created: 04/09/2020 07:47 AM PDT

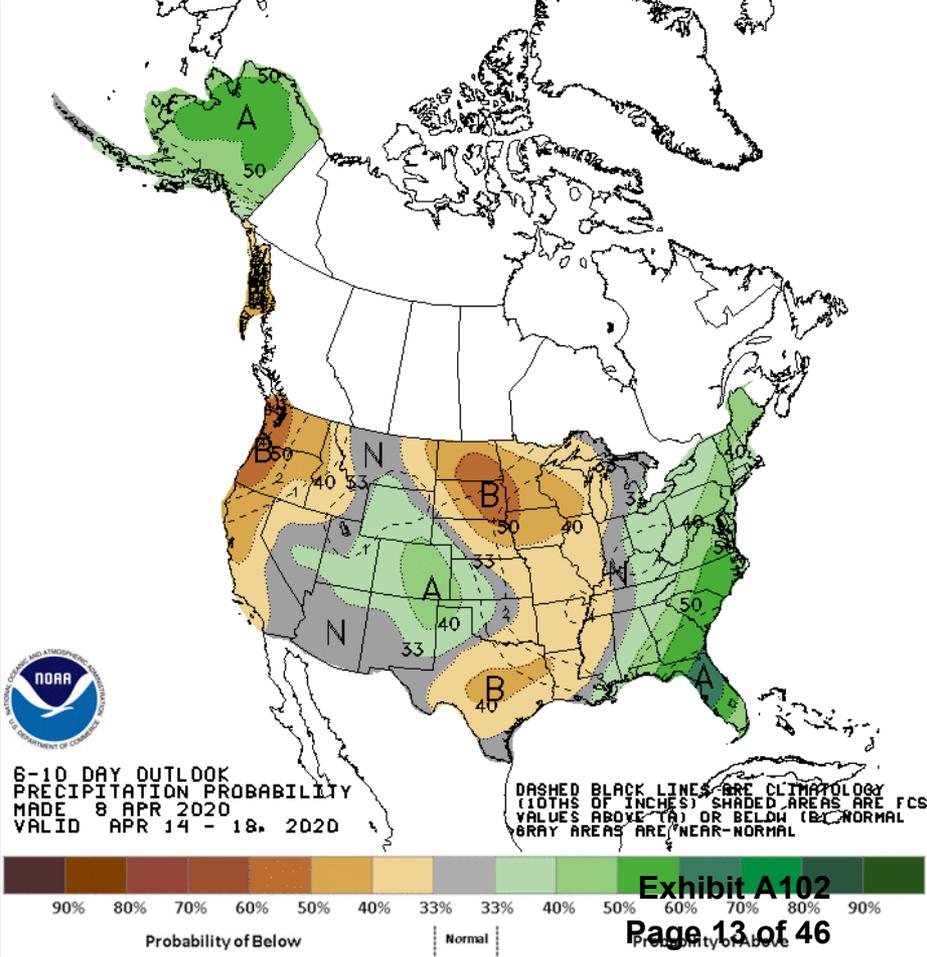
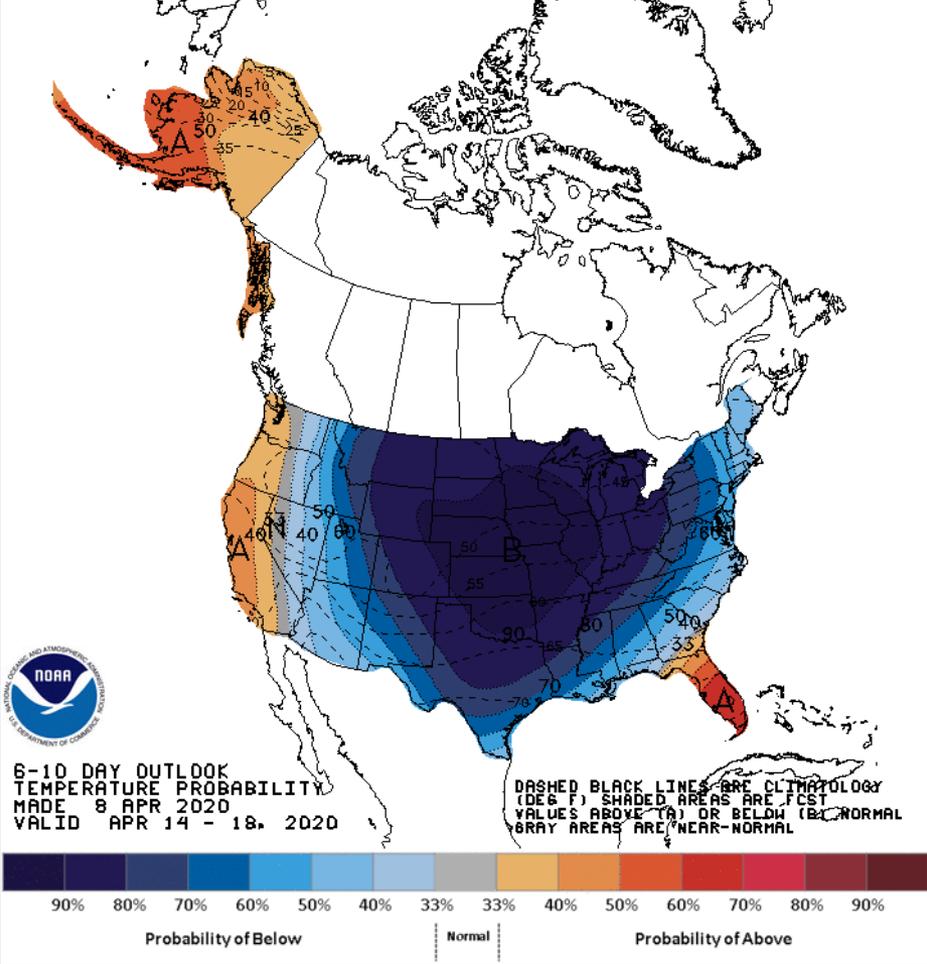
Follow Us:



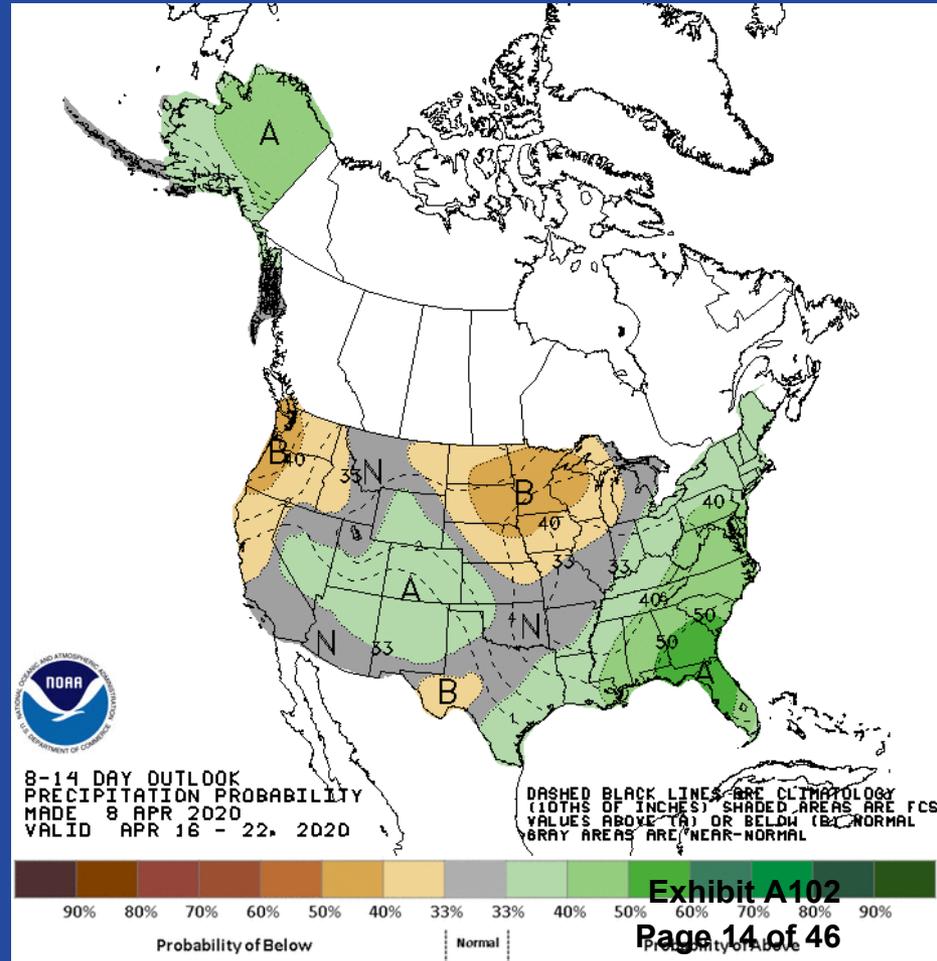
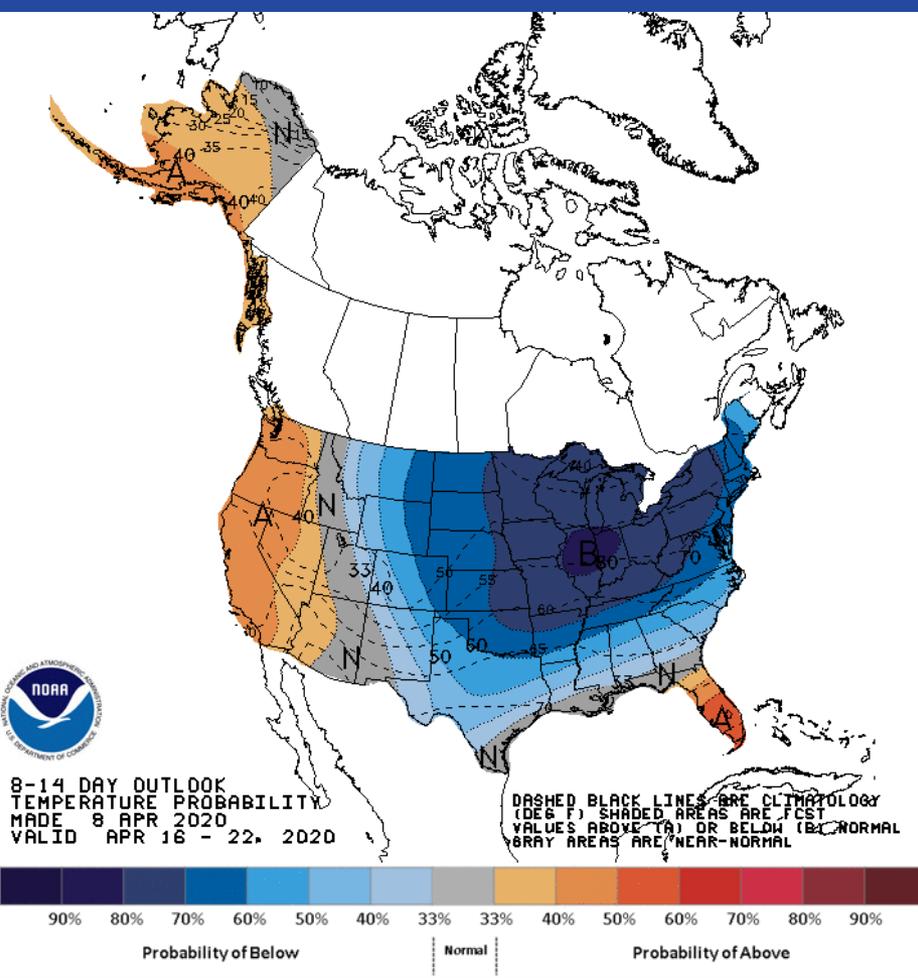
[www.cnrfc.noaa.gov](http://www.cnrfc.noaa.gov)

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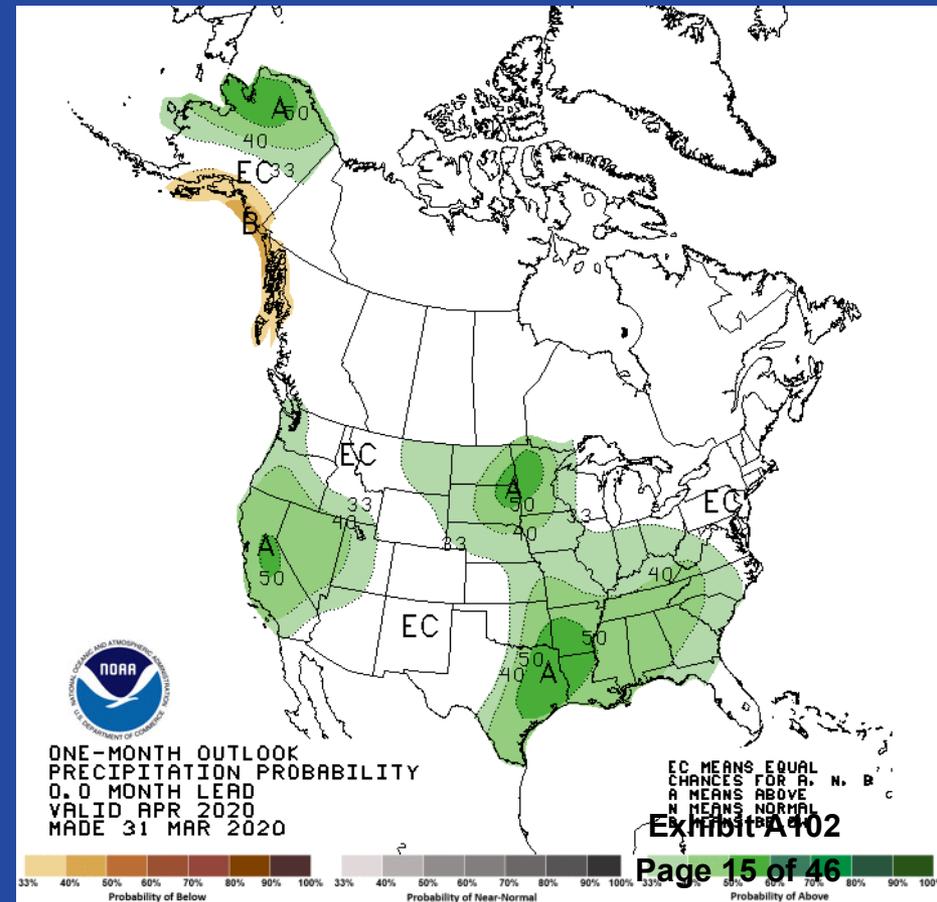
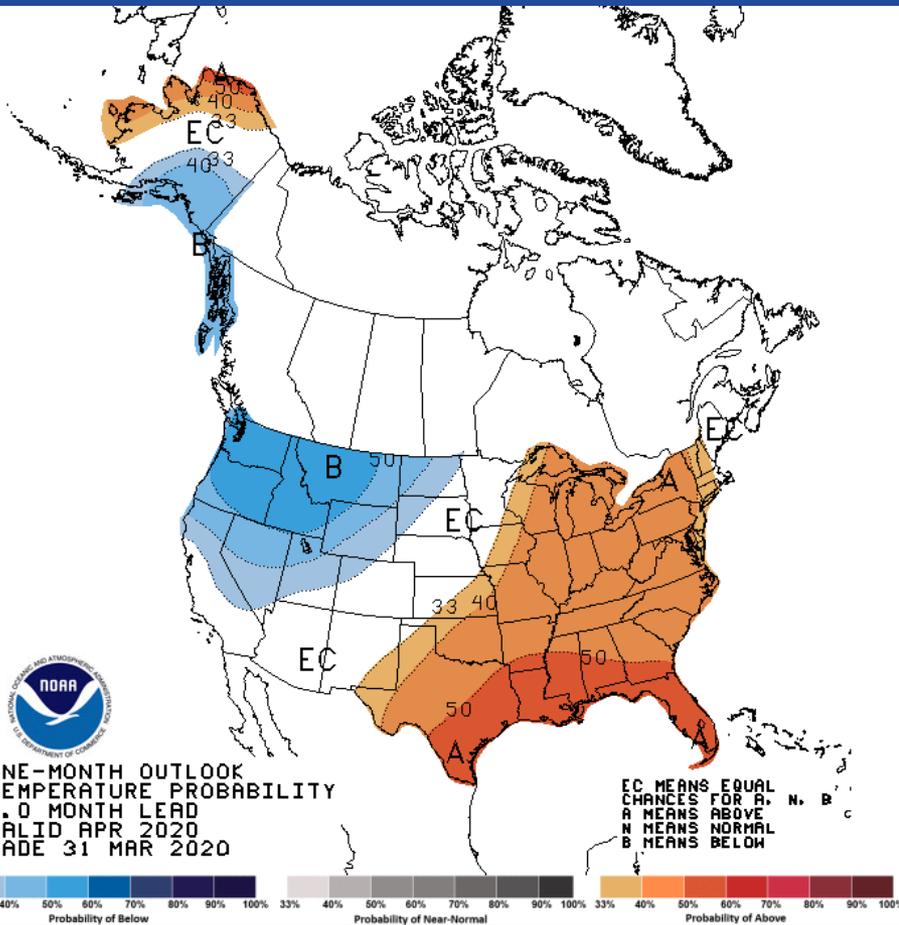
# 6-10 day weather outlook



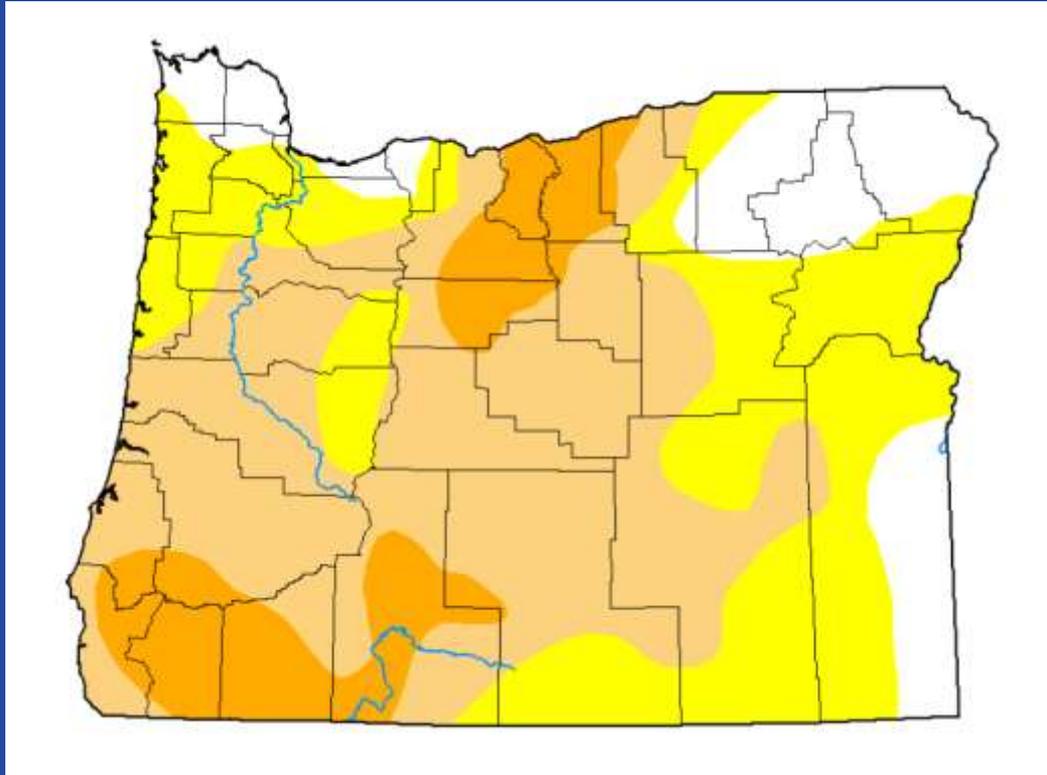
# 8-14 day weather outlook



# Monthly weather outlook



# United States Drought Monitor - Oregon



**Map released: Thurs. April 9, 2020**  
Data valid: April 7, 2020 at 8 a.m. EDT

**Intensity:**

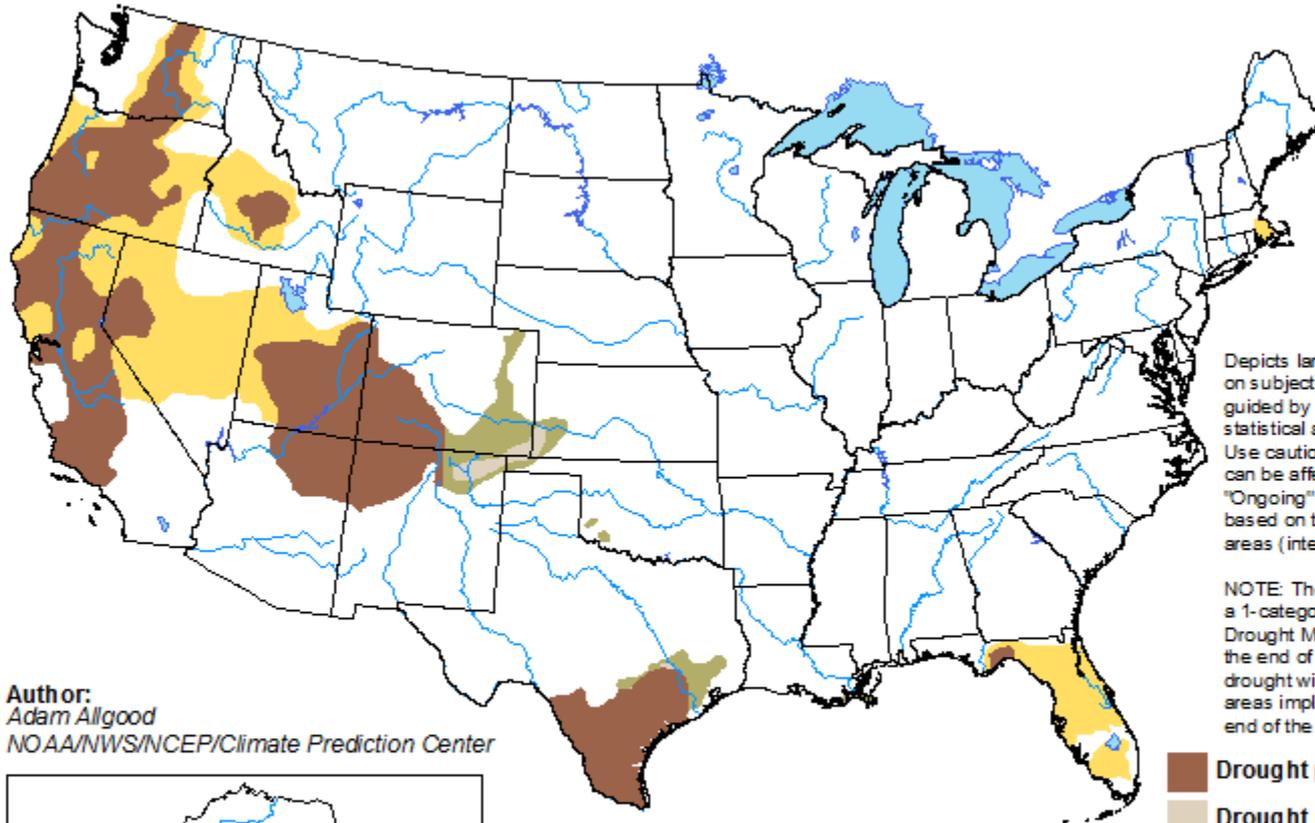
- None
- D0 (Abnormally Dry)
- D1 (Moderate Drought)
- D2 (Severe Drought)
- D3 (Extreme Drought)
- D4 (Exceptional Drought)
- No Data

Author(s): David Miskus, NOAA/NCEP/CPC  
The National Drought Mitigation Center, University of Nebraska-Lincoln

# U.S. Seasonal Drought Outlook

## Drought Tendency During the Valid Period

Valid for March 19 - June 30, 2020  
Released March 19



Depicts large-scale trends based on subjectively derived probabilities guided by short- and long-range statistical and dynamical forecasts. Use caution for applications that can be affected by short lived events. "Ongoing" drought areas are based on the U.S. Drought Monitor areas (intensities of D1 to D4).

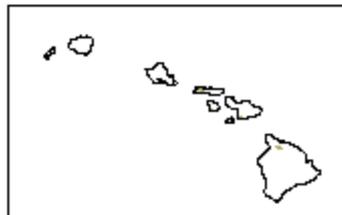
NOTE: The tan areas imply at least a 1-category improvement in the Drought Monitor intensity levels by the end of the period, although drought will remain. The green areas imply drought removal by the end of the period (D0 or none).

Author:  
Adam Allgood  
NOAA/NWS/NCEP/Climate Prediction Center

-  Drought persists
-  Drought remains but improves
-  Drought removal likely
-  Drought development likely



<http://go.usa.gov/3eZ73>



# NRCS April 1 Klamath River Basin Water Supply Forecast

USDA NRCS National Water & Climate Center

\* - DATA CURRENT AS OF: April 02, 2020 02:34:58 PM

- Based on April 01, 2020 forecast values

## KLAMATH RIVER BASIN

Forecast Point	period	50% (KAF)	% of avg	max (KAF)	30% (KAF)	70% (KAF)	min (KAF)	30-yr avg
Gerber Reservoir Inflow (2)	APR-JUL	5.9	42	19.5	11.4	0.35	0.0	14.0
	APR-SEP	6.0	42	19.7	11.5	0.43	0.0	14.4
Sprague R nr Chiloquin	APR-SEP	125	60	177	147	107	77	210
Williamson R bl Sprague R nr Chiloquin	APR-SEP	240	68	295	260	210	174	355
Upper Klamath Lake Inflow	APR-SEP	290	62	405	325	255	176	465

Max (10%), 30%, 50%, 70% and Min (90%) chance that actual volume will exceed forecast.

Averages are for the 1981-2010 period.

All volumes are in thousands of acre-feet.

### footnotes:

- 1) Max and Min are 5% and 95% chance that actual volume will exceed forecast
- 2) streamflow is adjusted for upstream storage
- 3) median value used in place of average

## 2020 Water Supply

- **NRCS April 1 Apr-Sep UKL Inflow Forecast = 290,000 AF**
- **Adjusted Mar-Sep UKL Inflow Forecast = 363,559 AF**
  - Adds observed March UKL Inflows to Apr-Sep forecast
- **UKL Supply = 577 TAF (triggers 40,000 AF EWA augmentation)**
- **EWA River = 407 TAF (incl. 7 TAF for Boat Dance)**
- **UKL End-of-Sep target elevation = 4138.84 ft.**
  - End-of-Sep target storage = 192,061 AF
- **Project Supply = 140 TAF**
  - = UKL Supply – EWA River – Ungaged Diversions – May-Jun Augmentation Project contribution
  - = 577 TAF – 407 TAF – 7.436 TAF – 23 TAF = 140 TAF

# Upper Klamath Basin water rights regulation- UKL tributaries

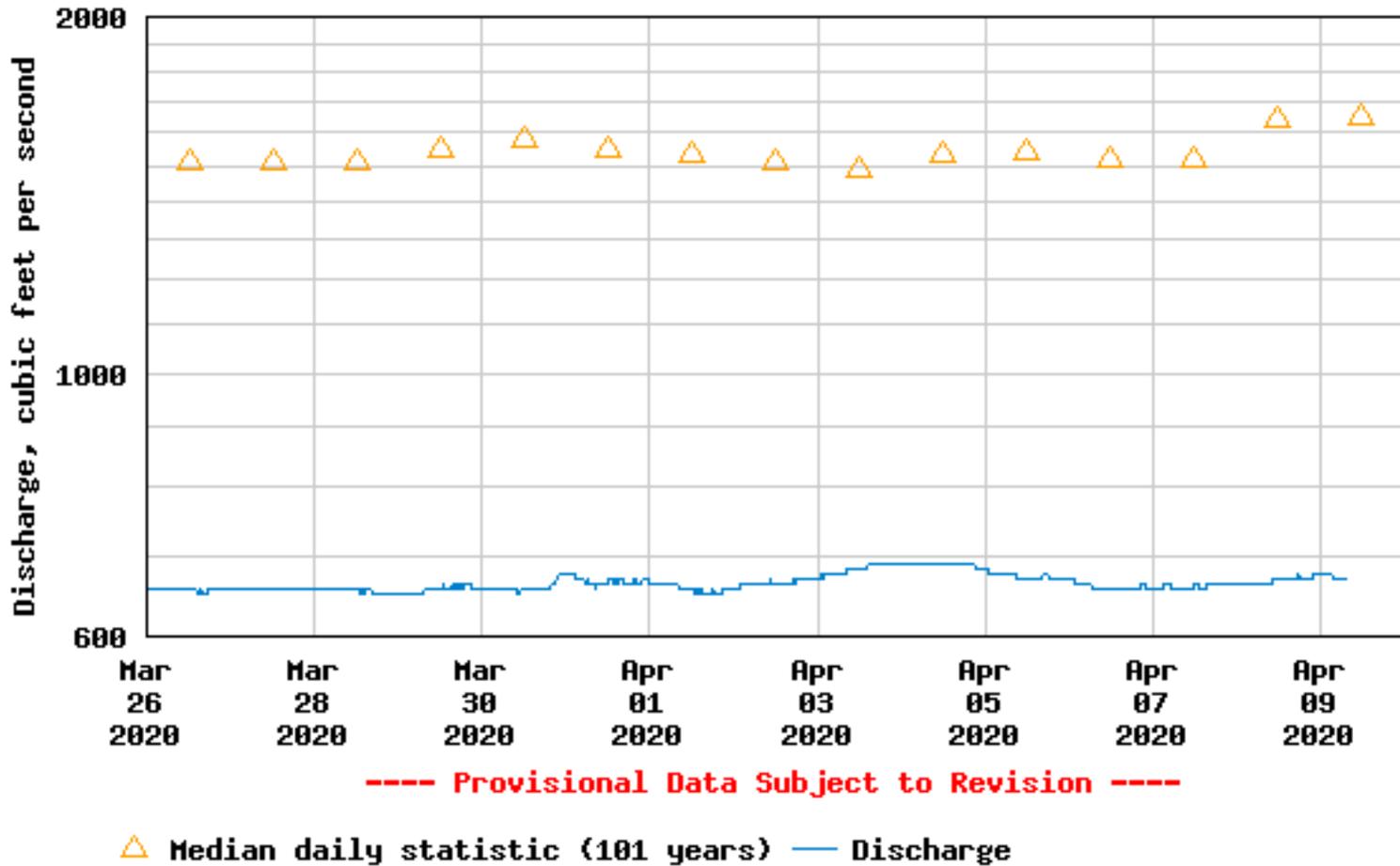
Water Body	Status
Wood River	All out of stream uses with a priority date post 4/1/1905 are regulated off until the end of the irrigation season or otherwise notified, 4/8/2020
Lower Williamson River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020
Middle Williamson River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020
Lower Sprague River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020
Upper Sprague River	All out of stream water uses are regulated off until the end of the irrigation season or until notified by the Watermaster, 3/4/2020

Information from OWRD site: [http://apps.wrd.state.or.us/apps/misc/dsb\\_area\\_status/Default.aspx?wm\\_district=17](http://apps.wrd.state.or.us/apps/misc/dsb_area_status/Default.aspx?wm_district=17).

This table only covers major tributaries to UKL; there are additional streams subject to regulation in the Upper Basin. Refer to link above for full list of regulated Upper Klamath Basin water bodies.

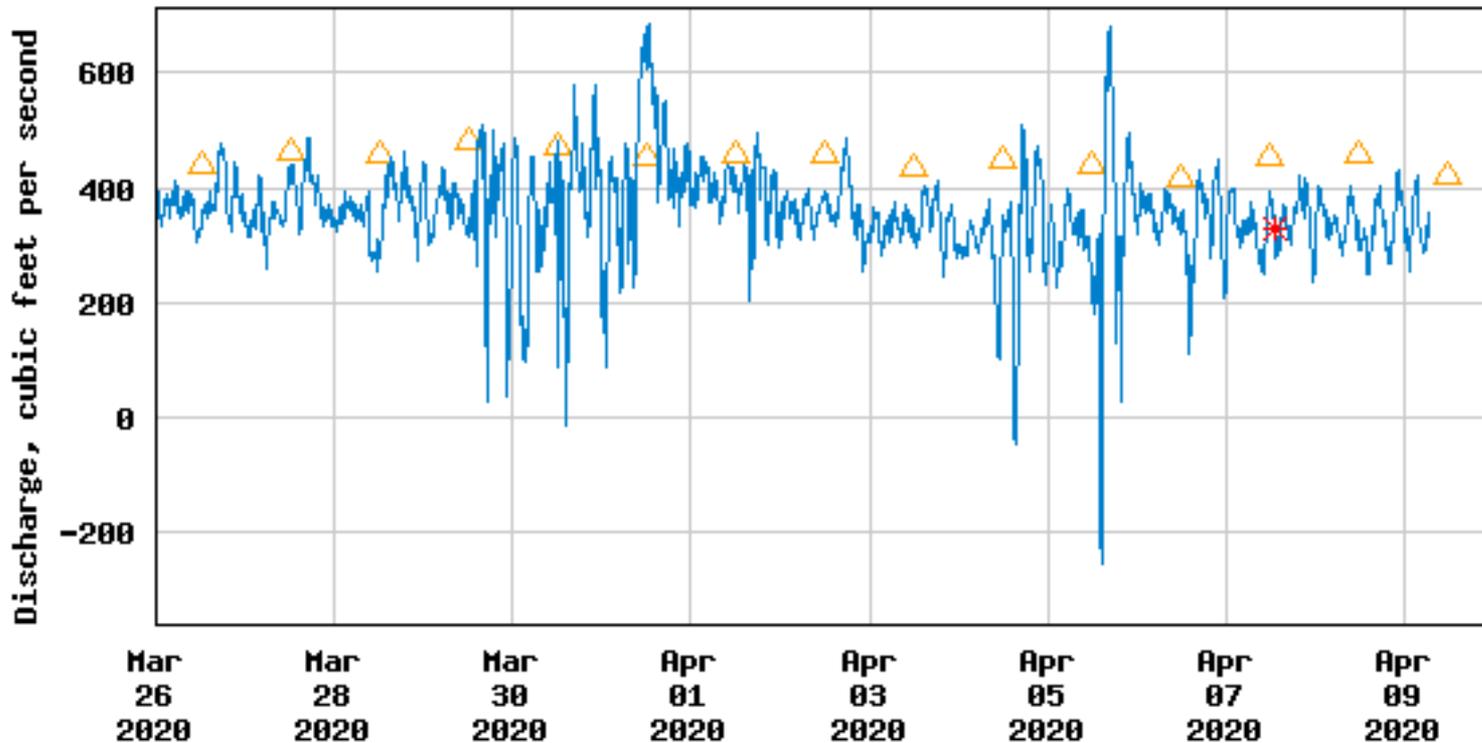


# USGS 11502500 WILLIAMSON RIVER BLW SPRAGUE RIVER NR CHILOQUIN, OR





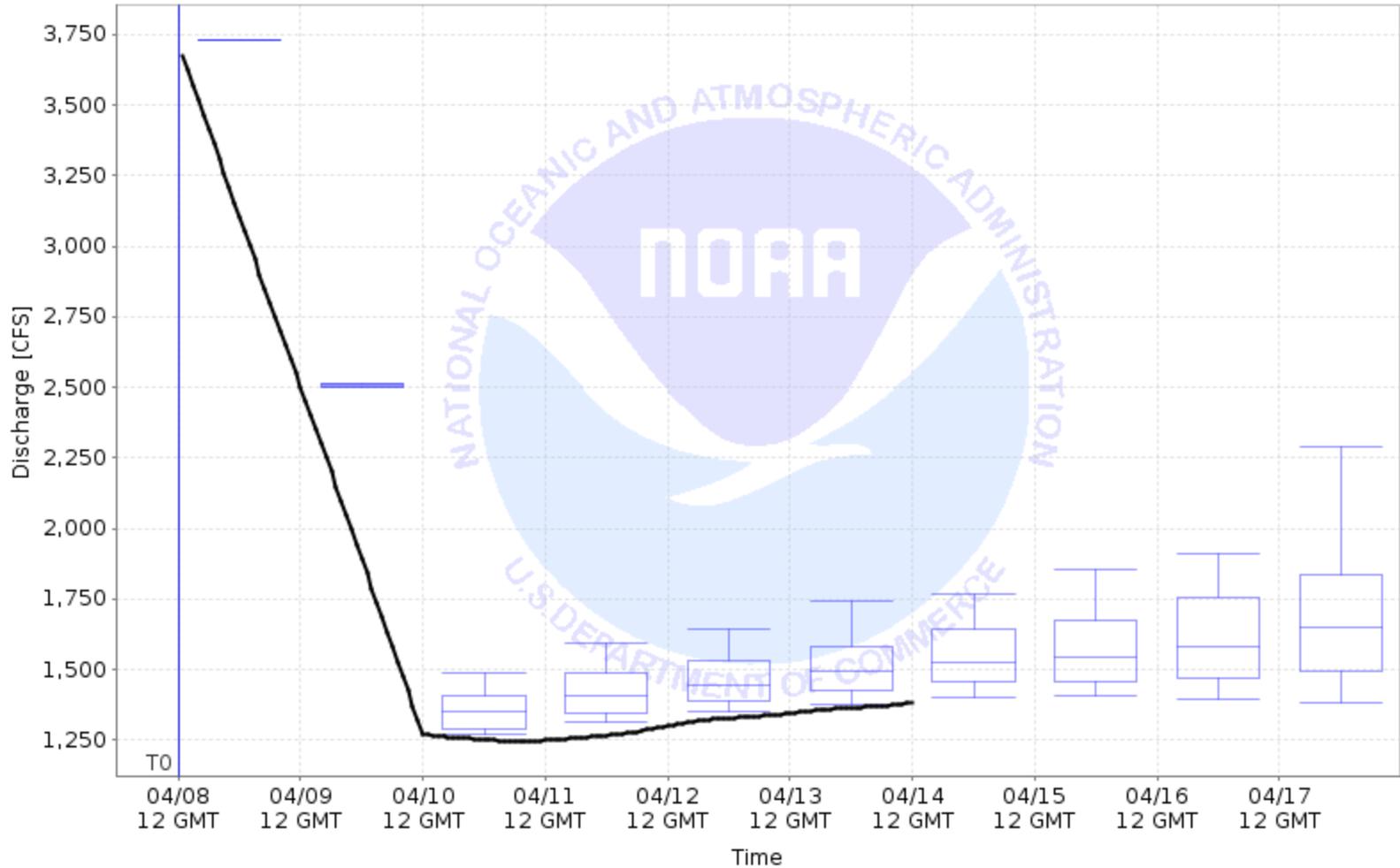
### USGS 11504115 WOOD RIVER NEAR KLAMATH AGENCY, OR



----- Provisional Data Subject to Revision -----

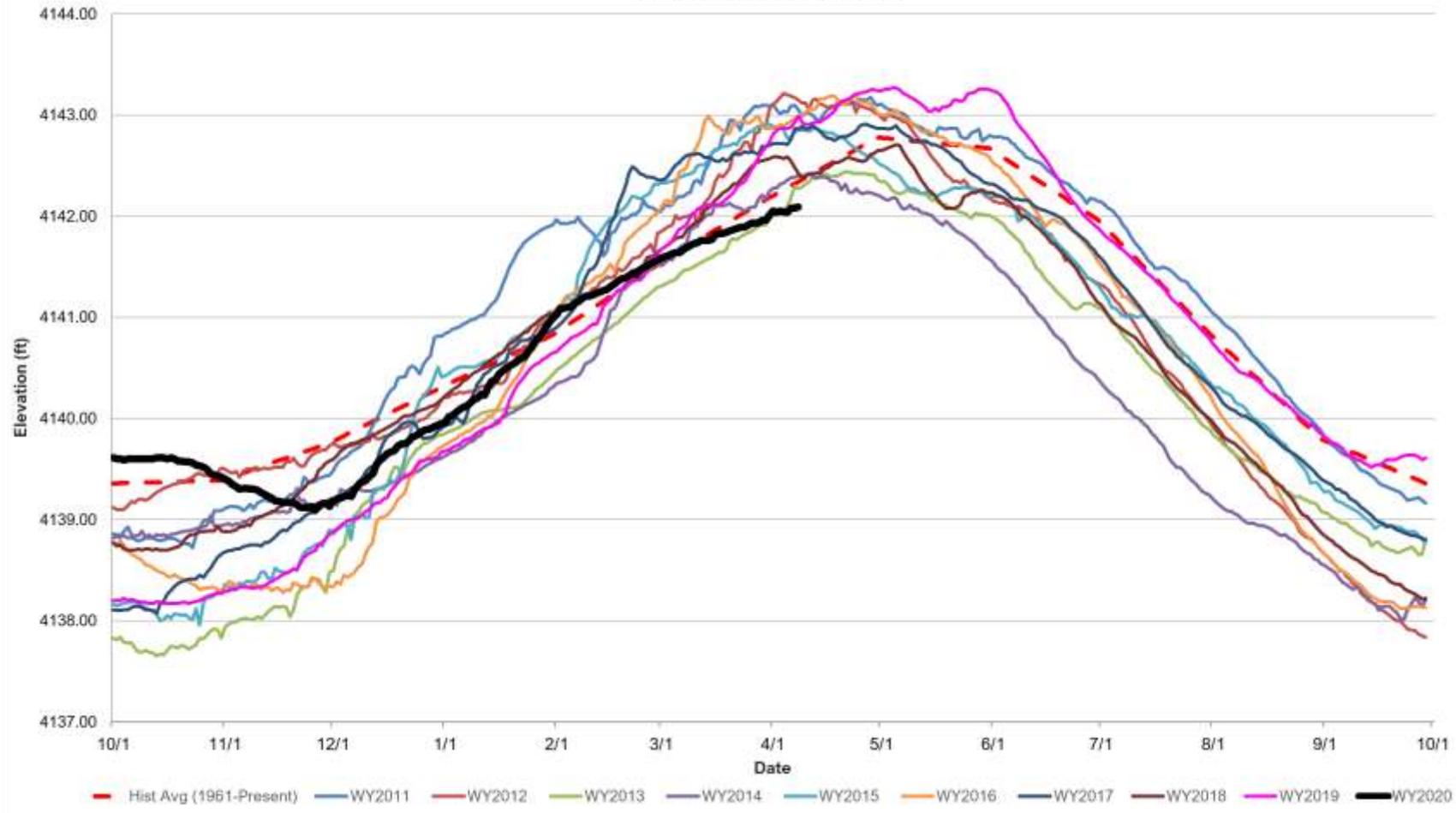
- △ Median daily statistic (6 years)
- \* Measured discharge
- Discharge

10-Day Maximum Flow Probabilities on the UPR KLAMATH FALLS-INFLOW  
 Latitude: 42.25 Longitude: -121.8  
 Forecast for the period 04/08/2020 - 04/18/2020  
 This is a conditional simulation based on the current conditions as of 04/08/2020  
 (src=D)

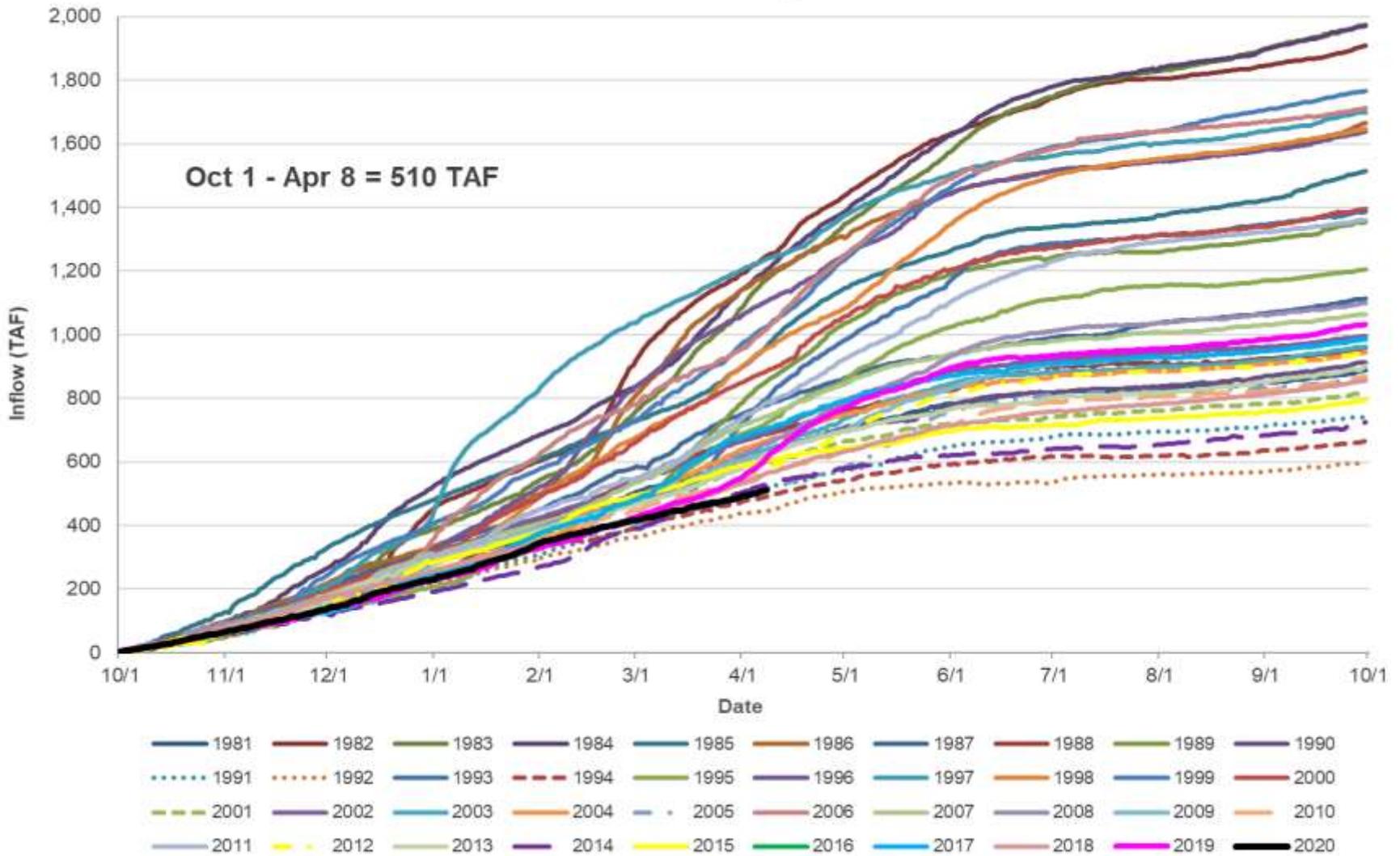


10/25/50/75/90% Exceedance Box Plot — Deterministic Forecast Flow

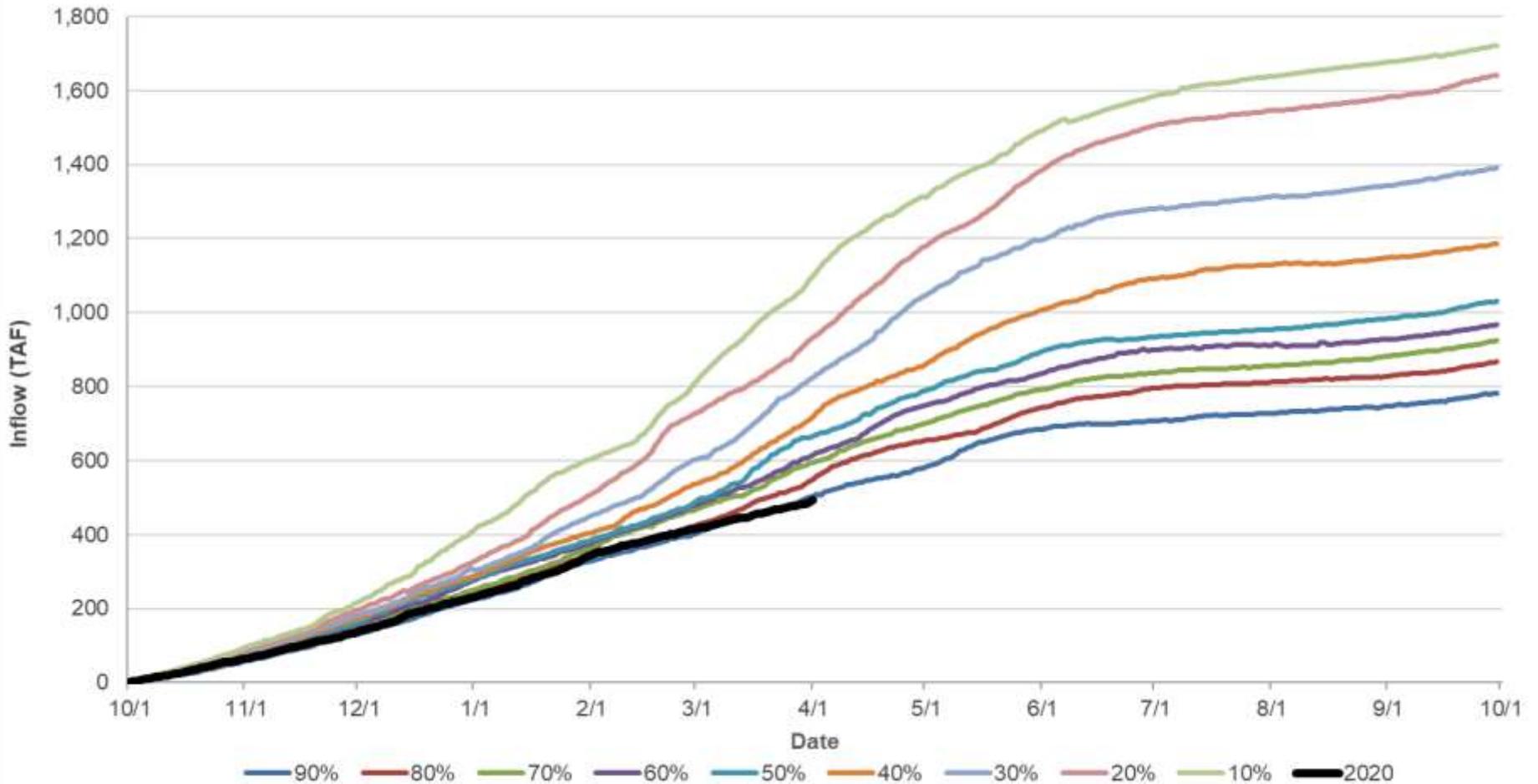
UKL Elevation  
Water Years 2011 - Current



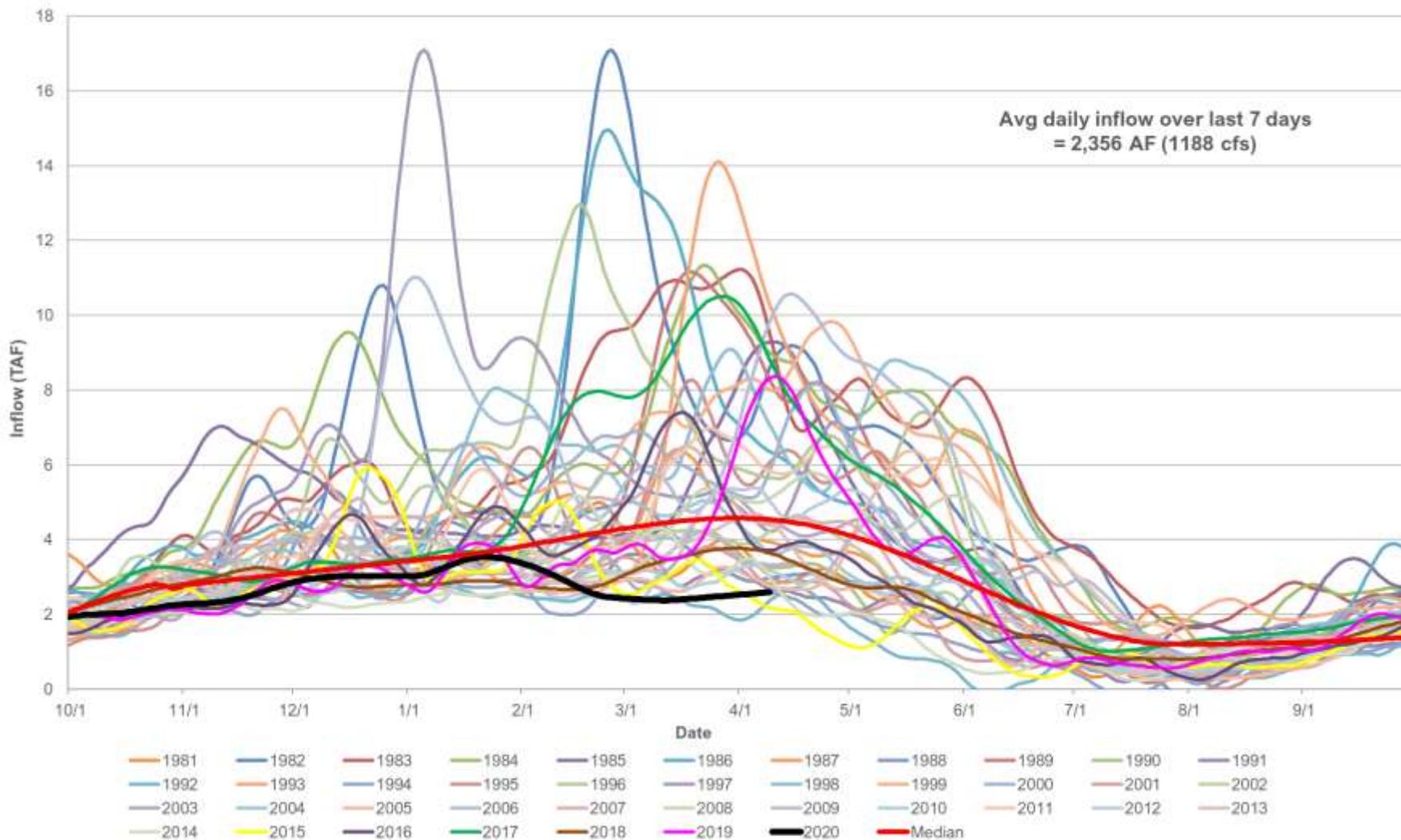
Cumulative UKL Inflow by Water Year



Cumulative Inflow by Exceedance - Current WY

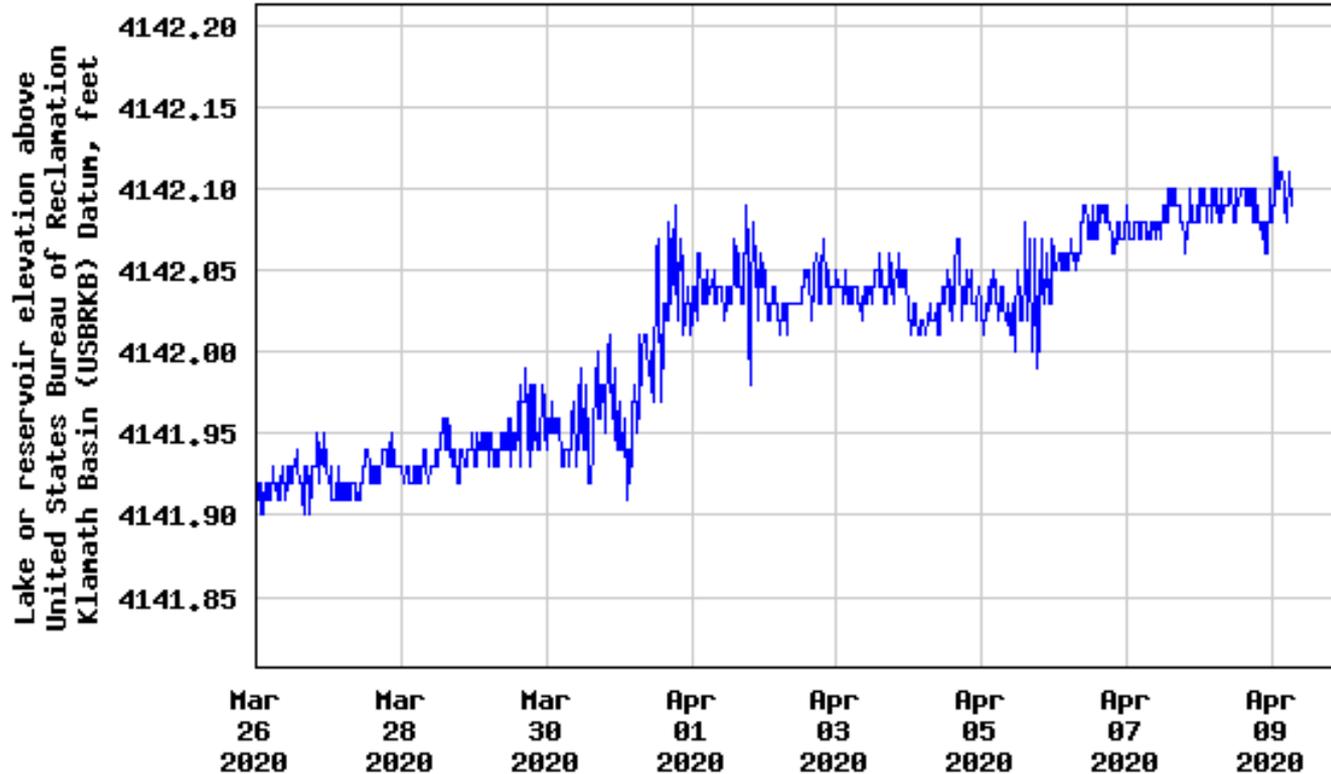


Daily UKL Inflows Using LOESS for 39 Years





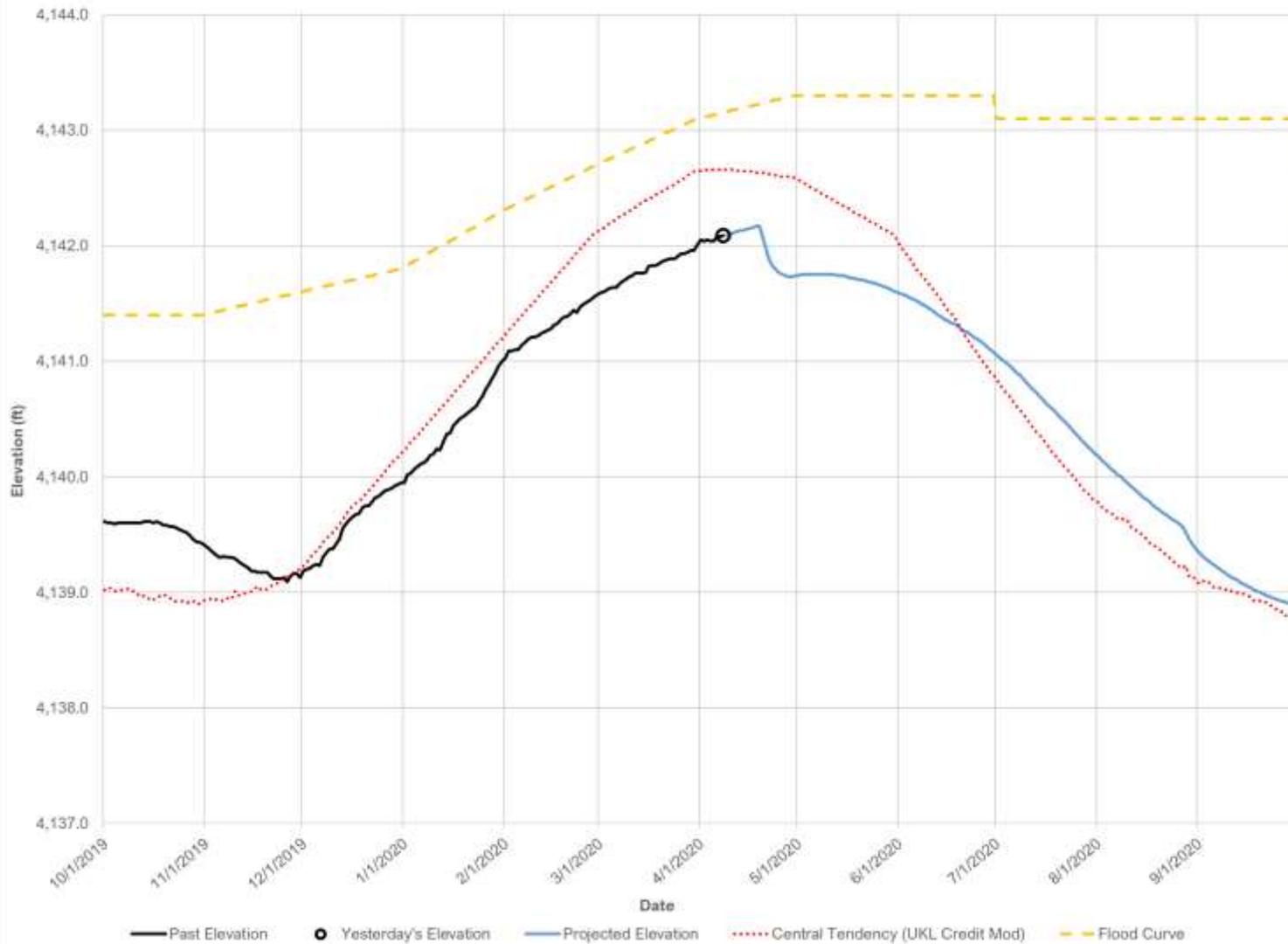
### USGS 11507001 UPPER KLAMATH LAKE NR K.FALLS(WEIGHT/MEAN ELEV) OR



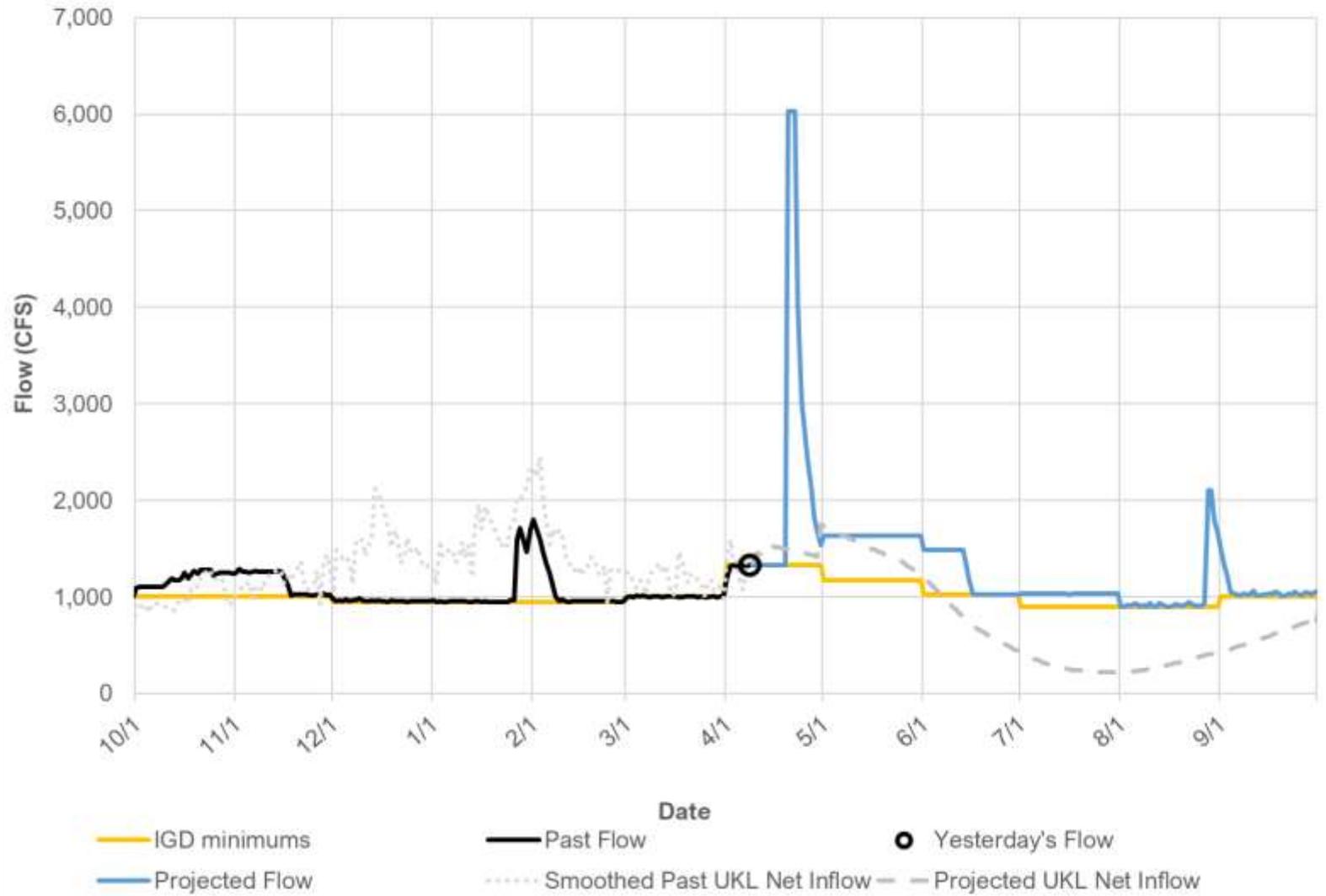
----- Provisional Data Subject to Revision -----

DATE	ELEV (FT)
3/26/2020	4141.93
3/27/2020	4141.93
3/28/2020	4141.94
3/29/2020	4141.96
3/30/2020	4141.96
3/31/2020	4142.01
4/1/2020	4142.05
4/2/2020	4142.04
4/3/2020	4142.05
4/4/2020	4142.04
4/5/2020	4142.04
4/6/2020	4142.08
4/7/2020	4142.08
4/8/2020	4142.09

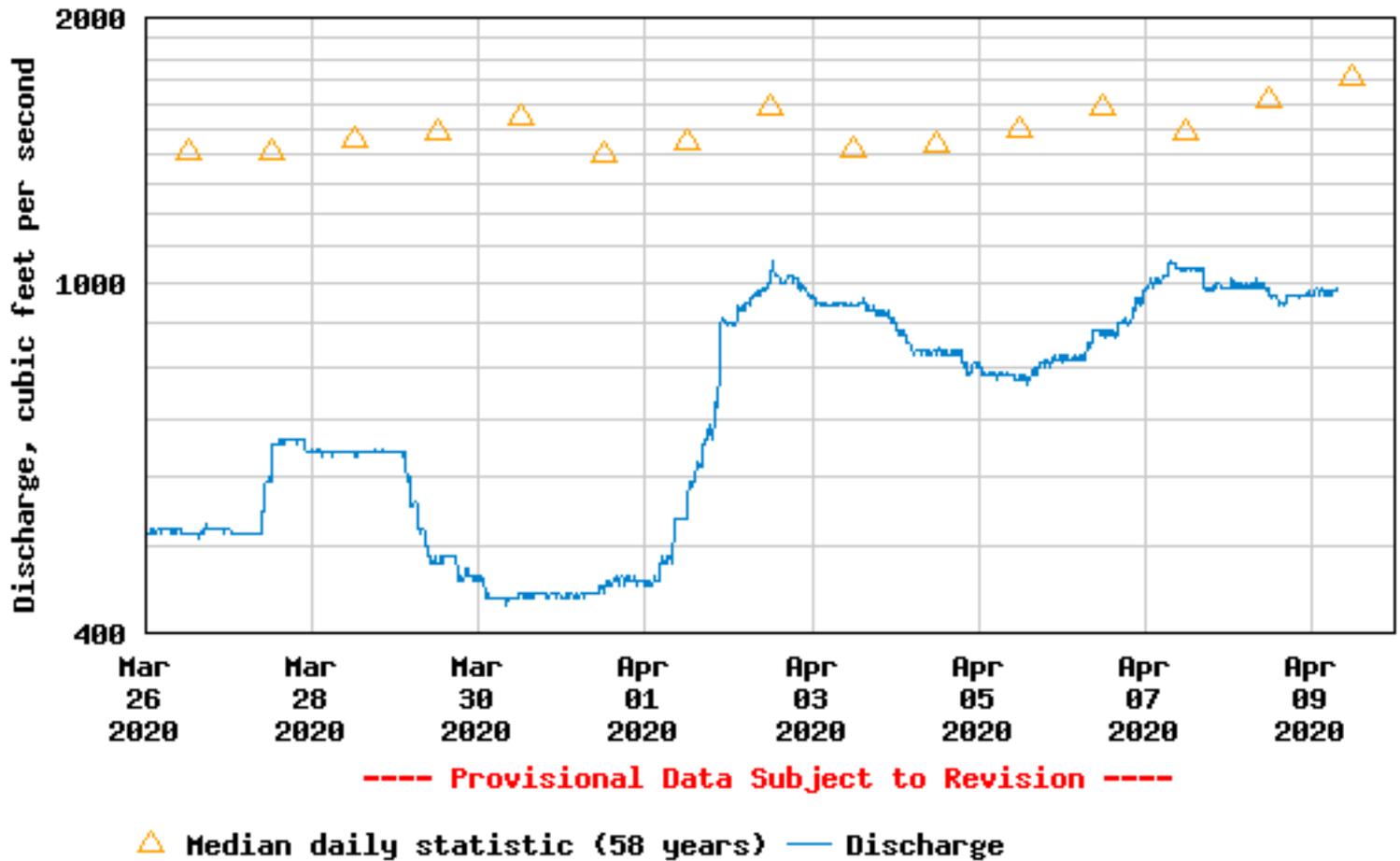
### UKL Surface Elevation



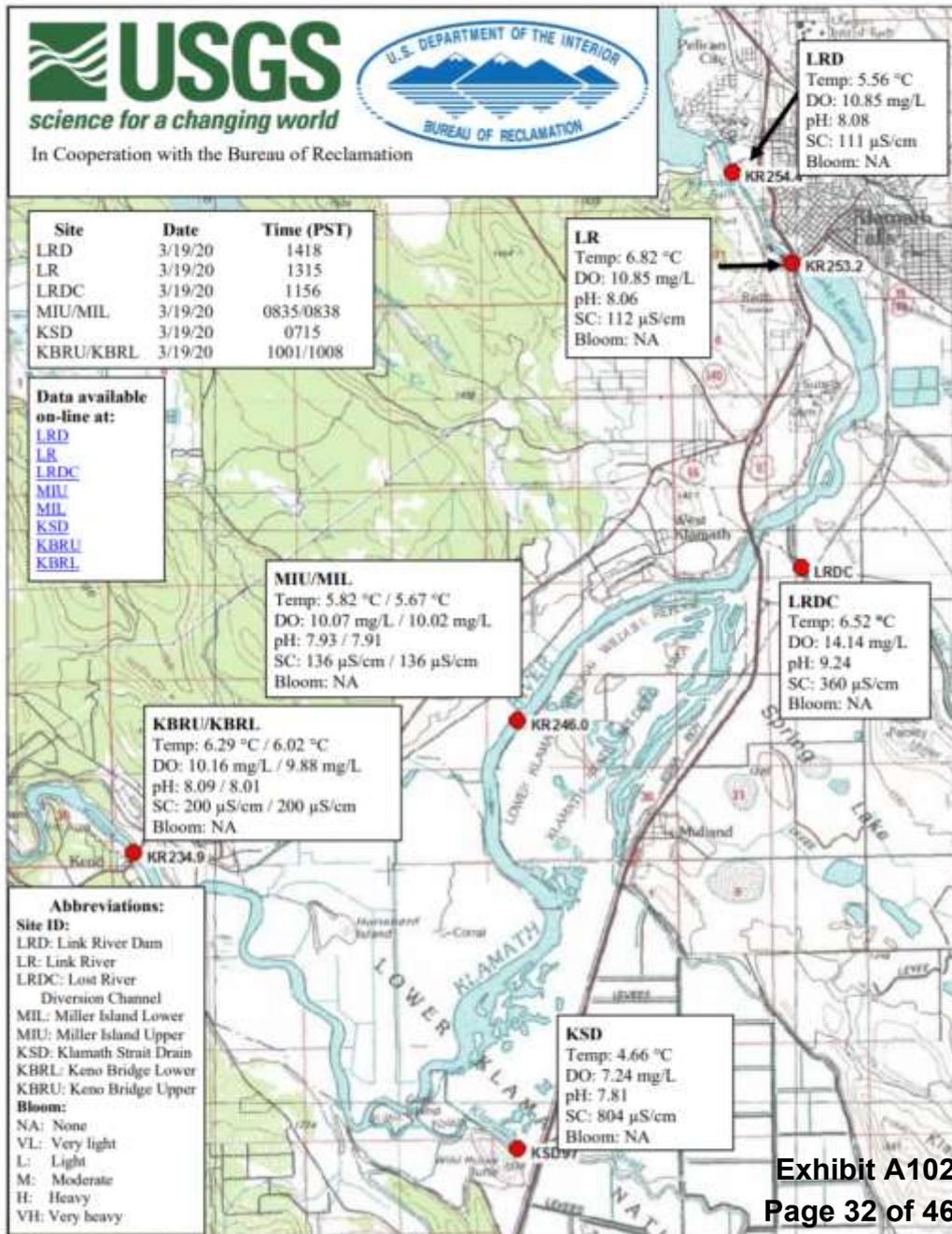
# Iron Gate Flow



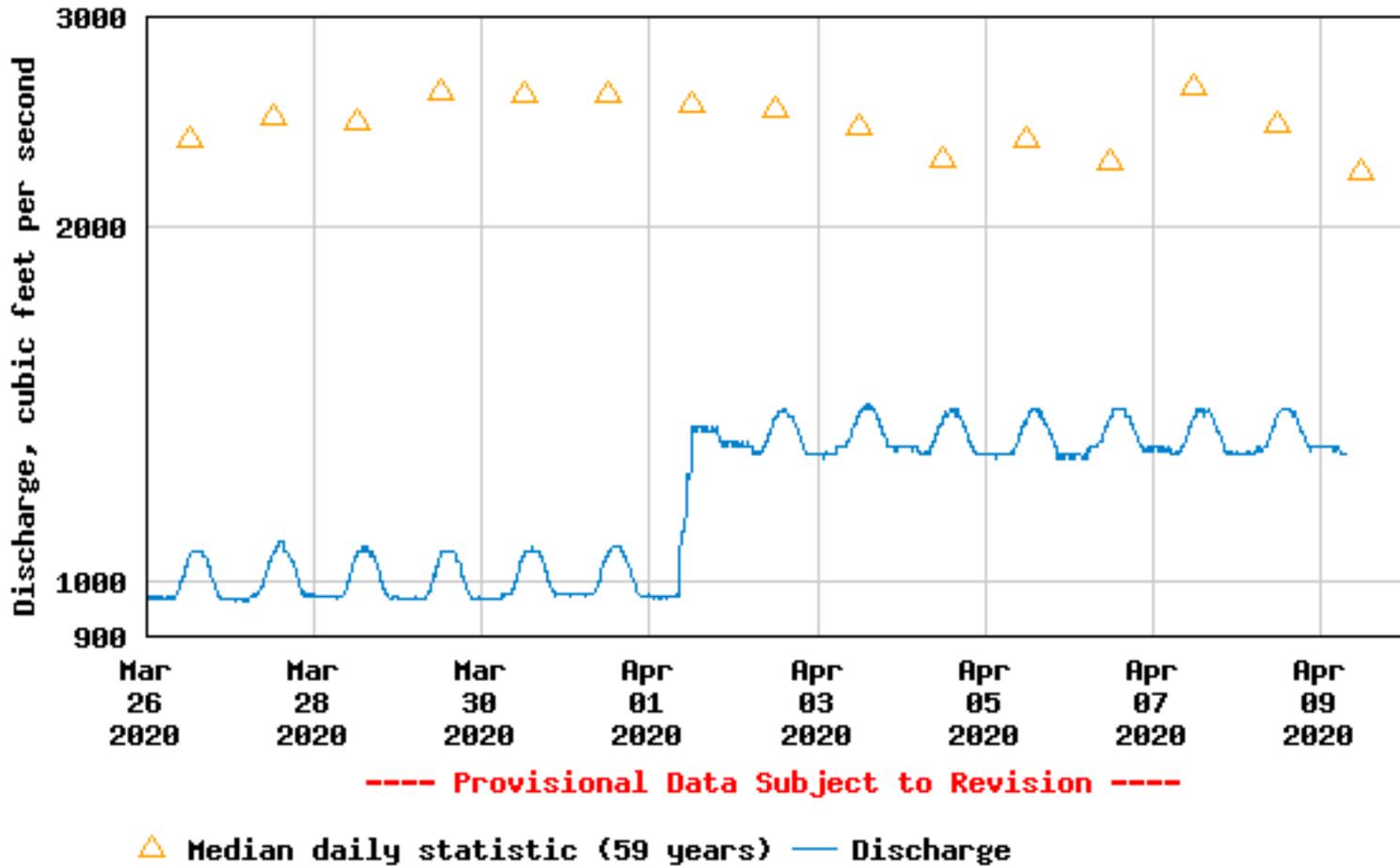
### USGS 11507500 LINK RIVER AT KLAMATH FALLS, OR



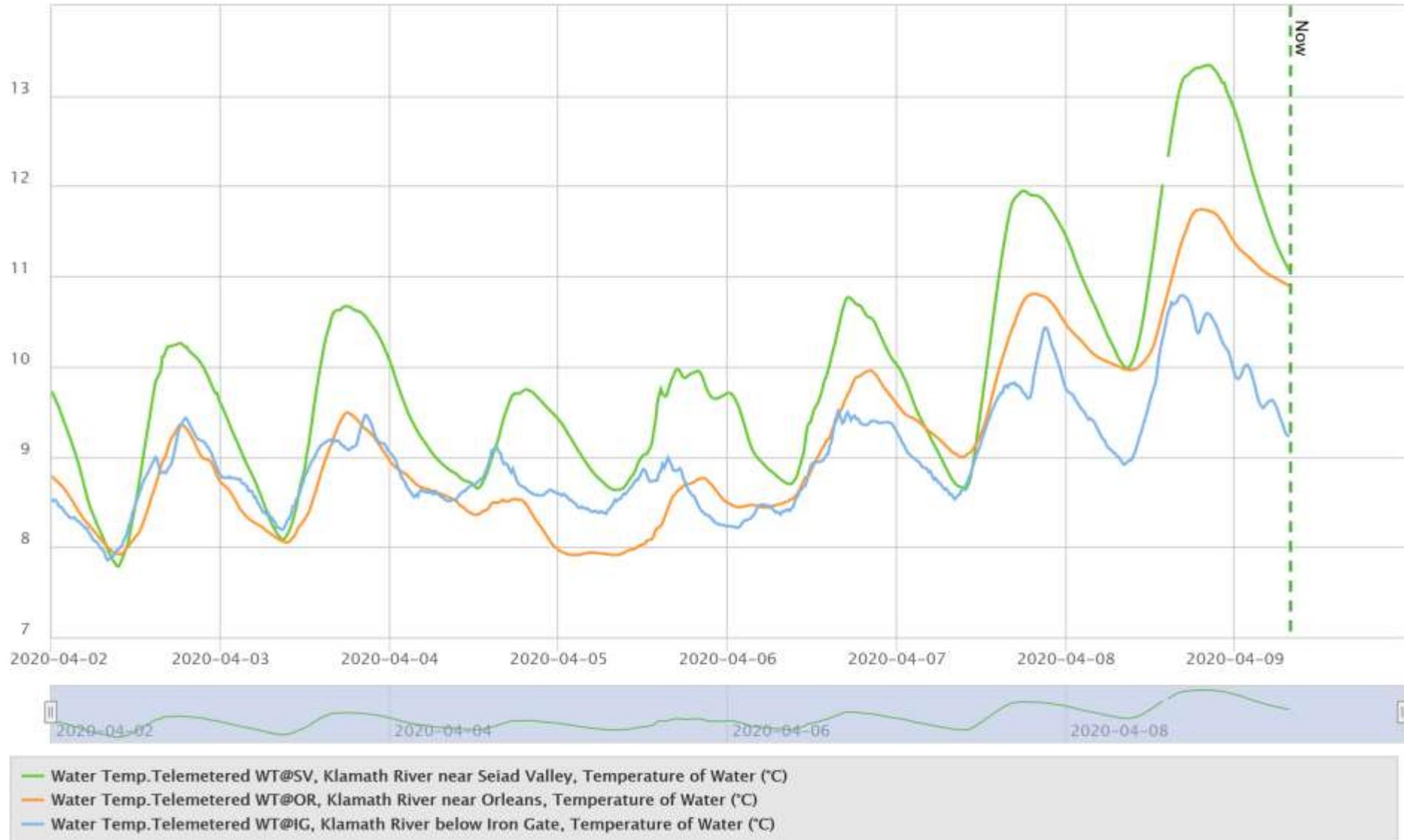
# Klamath River Water Quality Update 3/19/2020



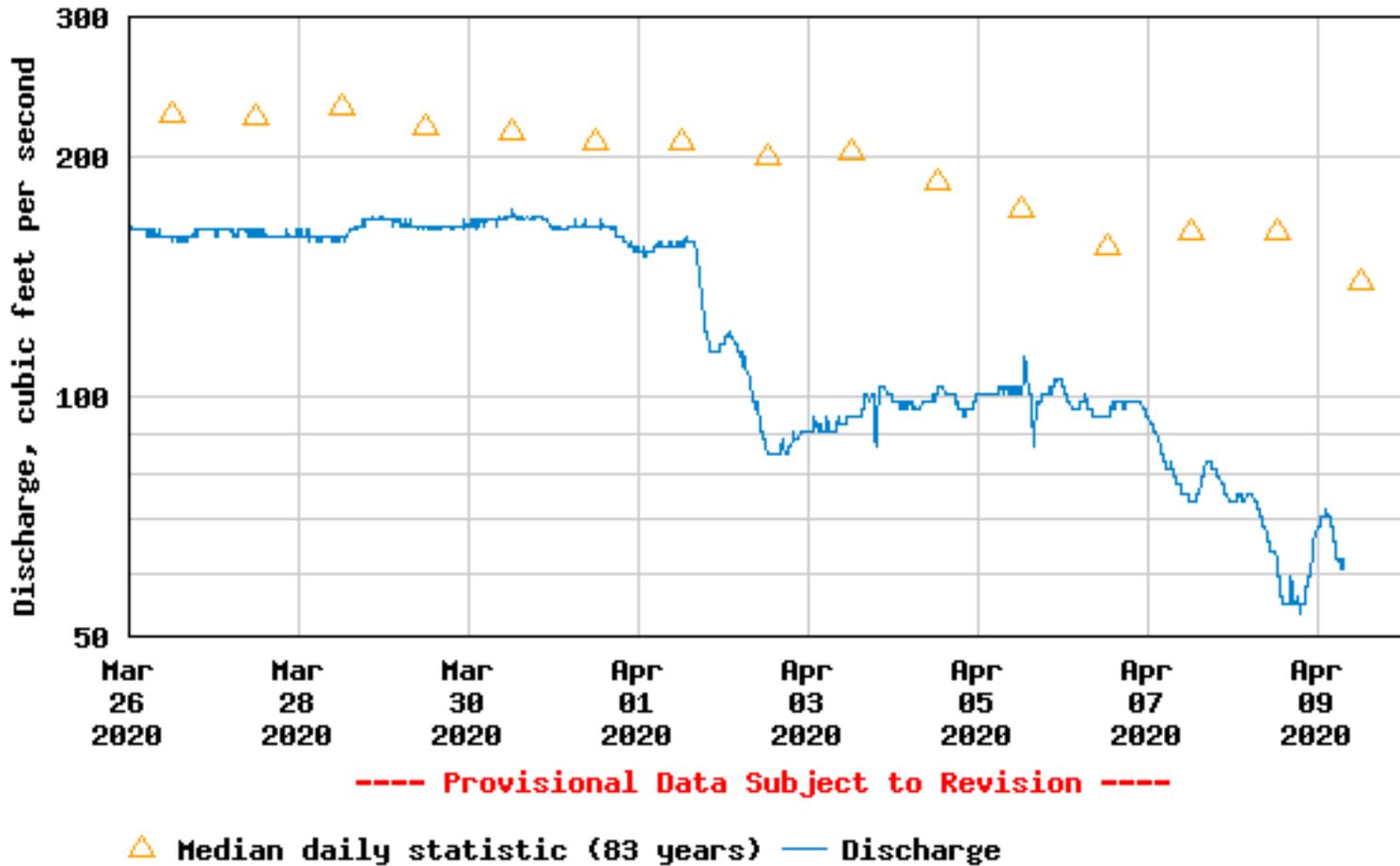
### USGS 11516530 KLAMATH R BL IRON GATE DAM CA



# Klamath Mainstem Water Temperatures

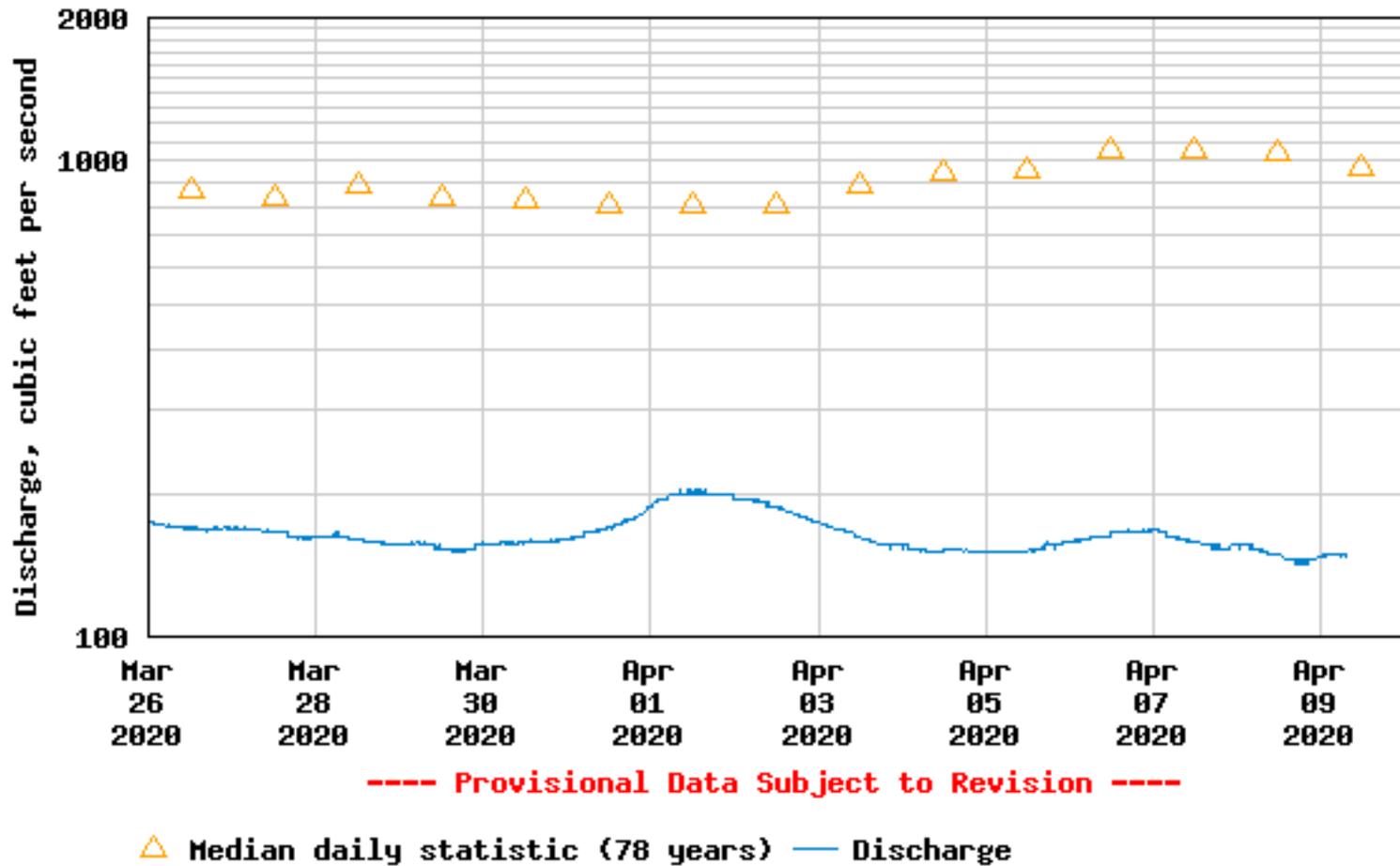


### USGS 11517500 SHASTA R NR YREKA CA



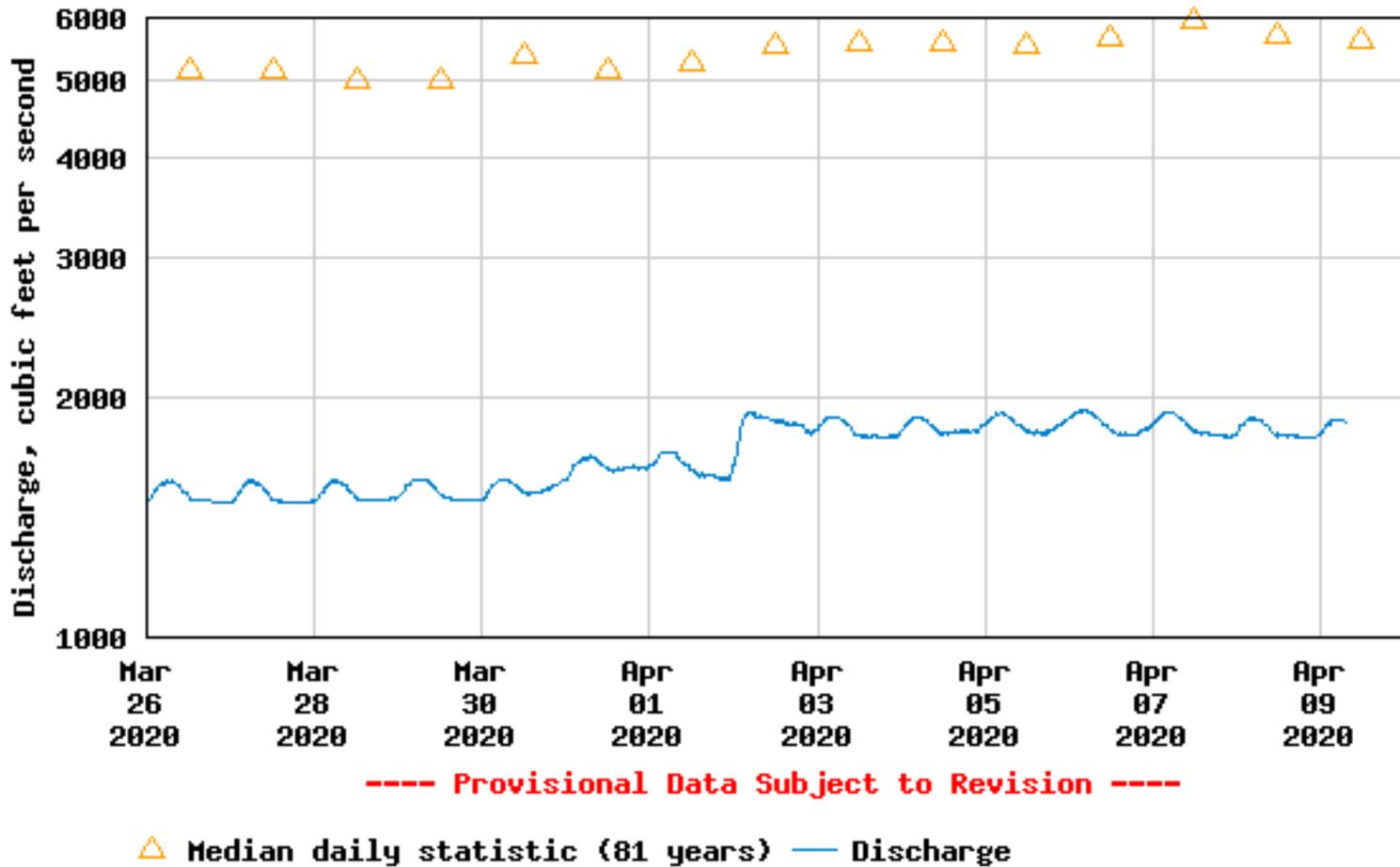


### USGS 11519500 SCOTT R NR FORT JONES CA



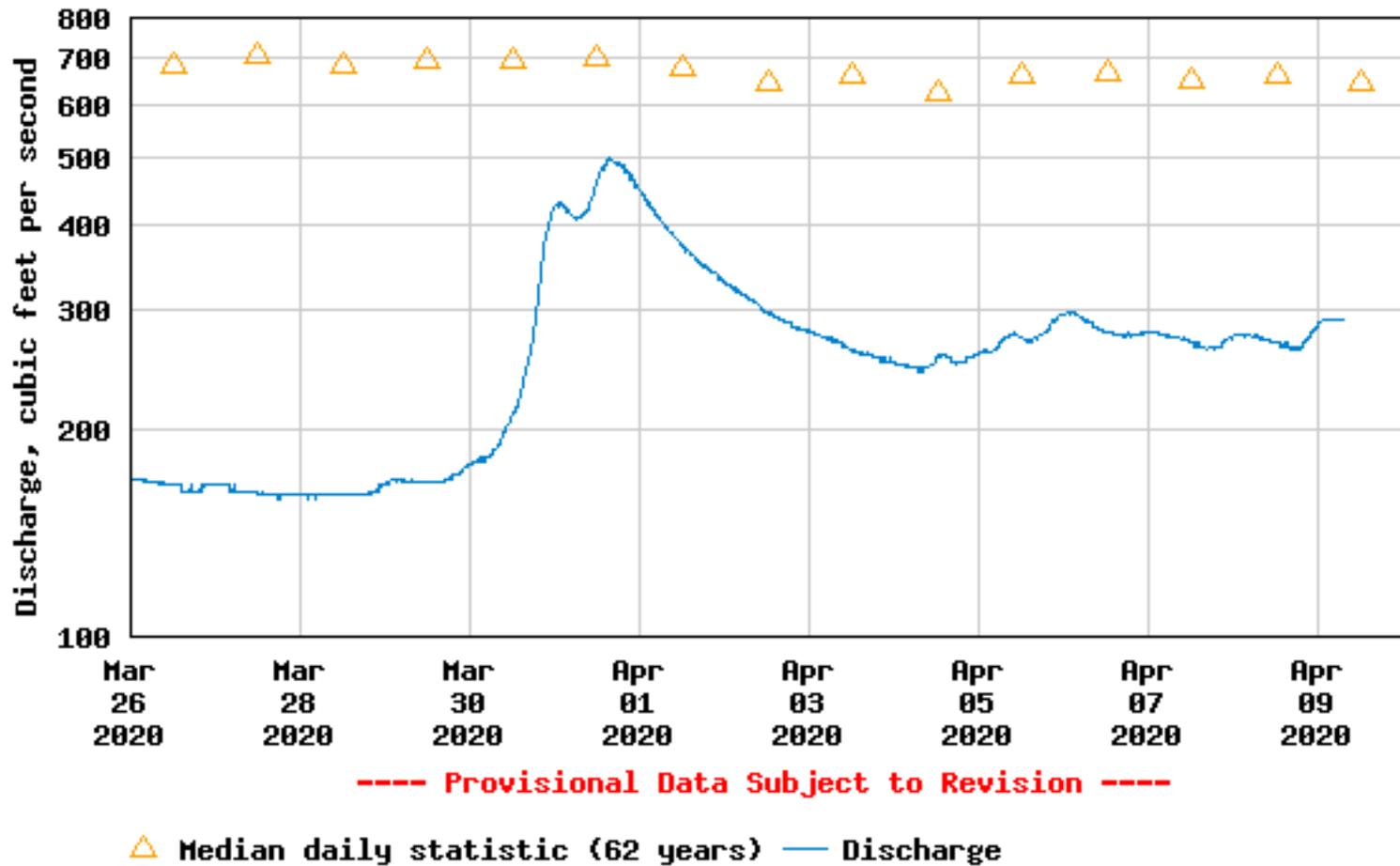


### USGS 11520500 KLAMATH R NR SEIAD VALLEY CA

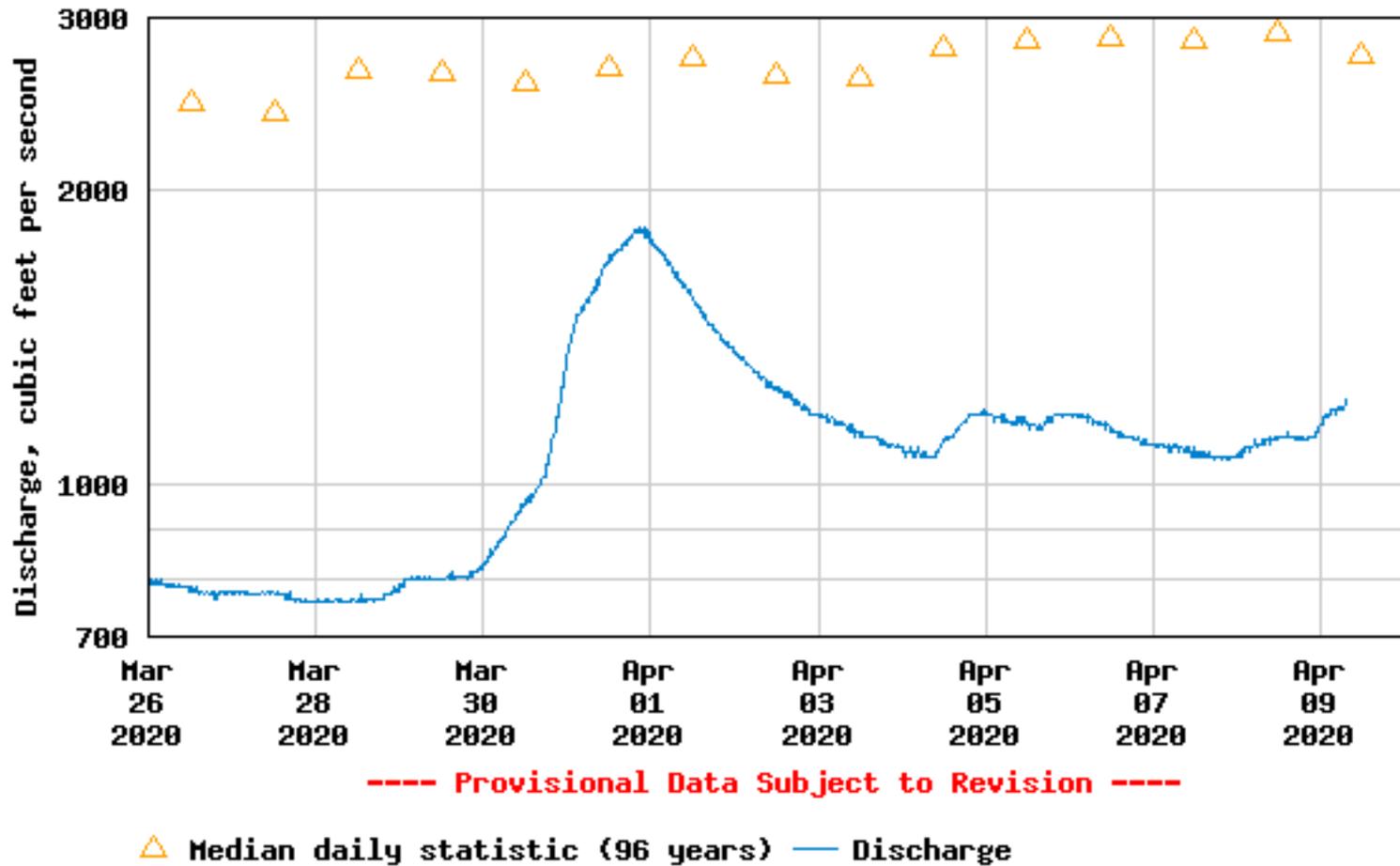




### USGS 11521500 INDIAN C NR HAPPY CAMP CA

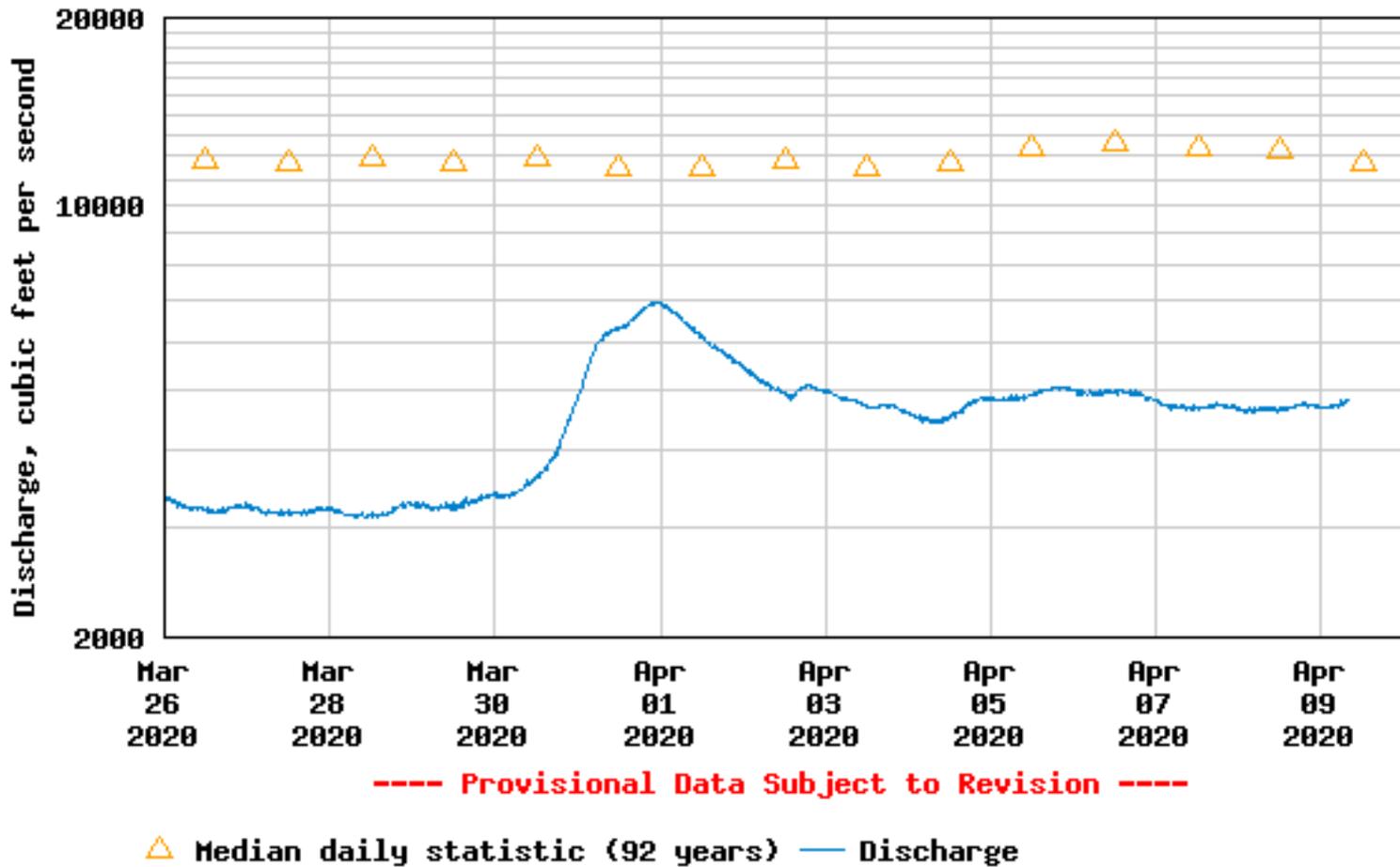


### USGS 11522500 SALMON R A SOMES BAR CA

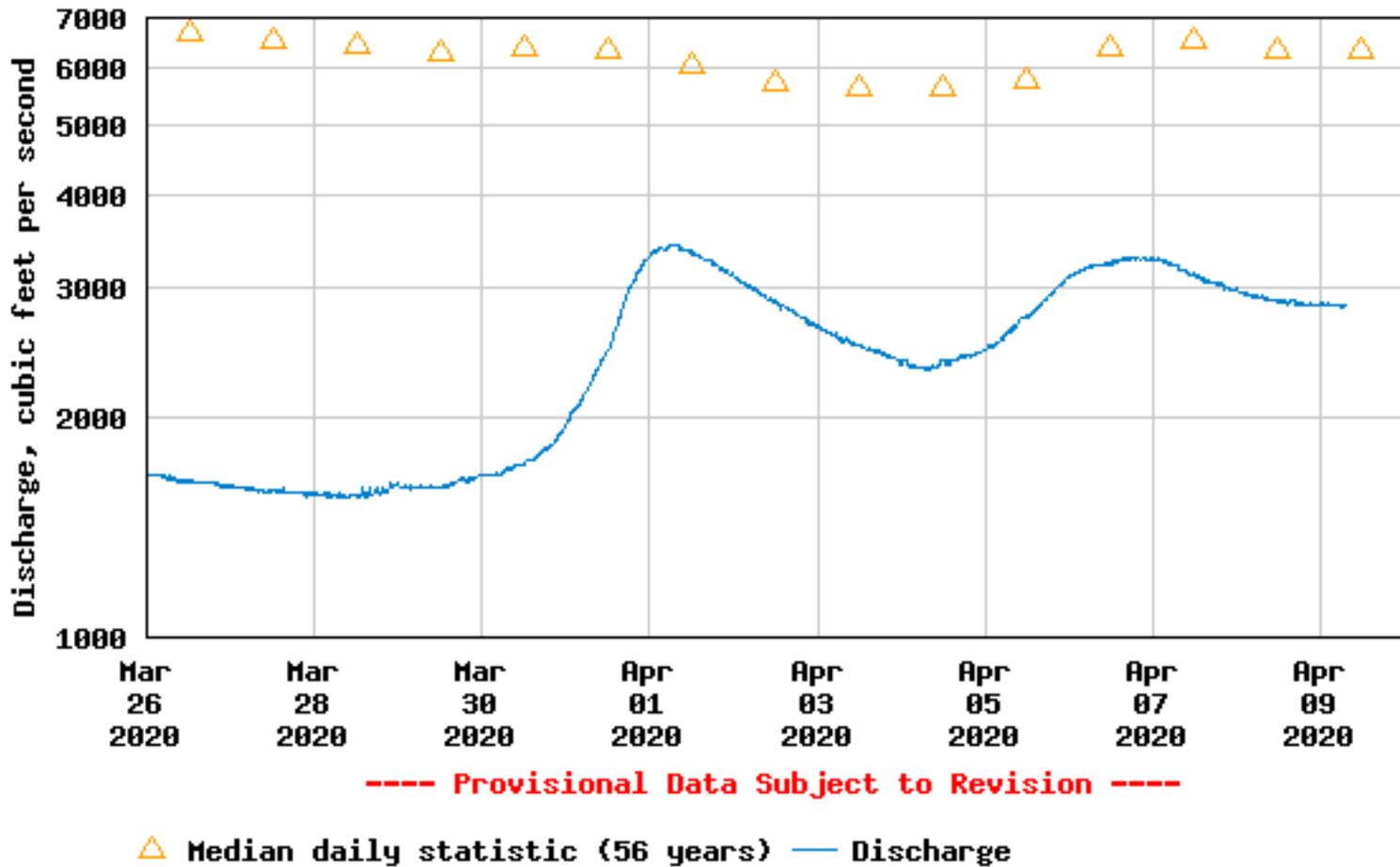




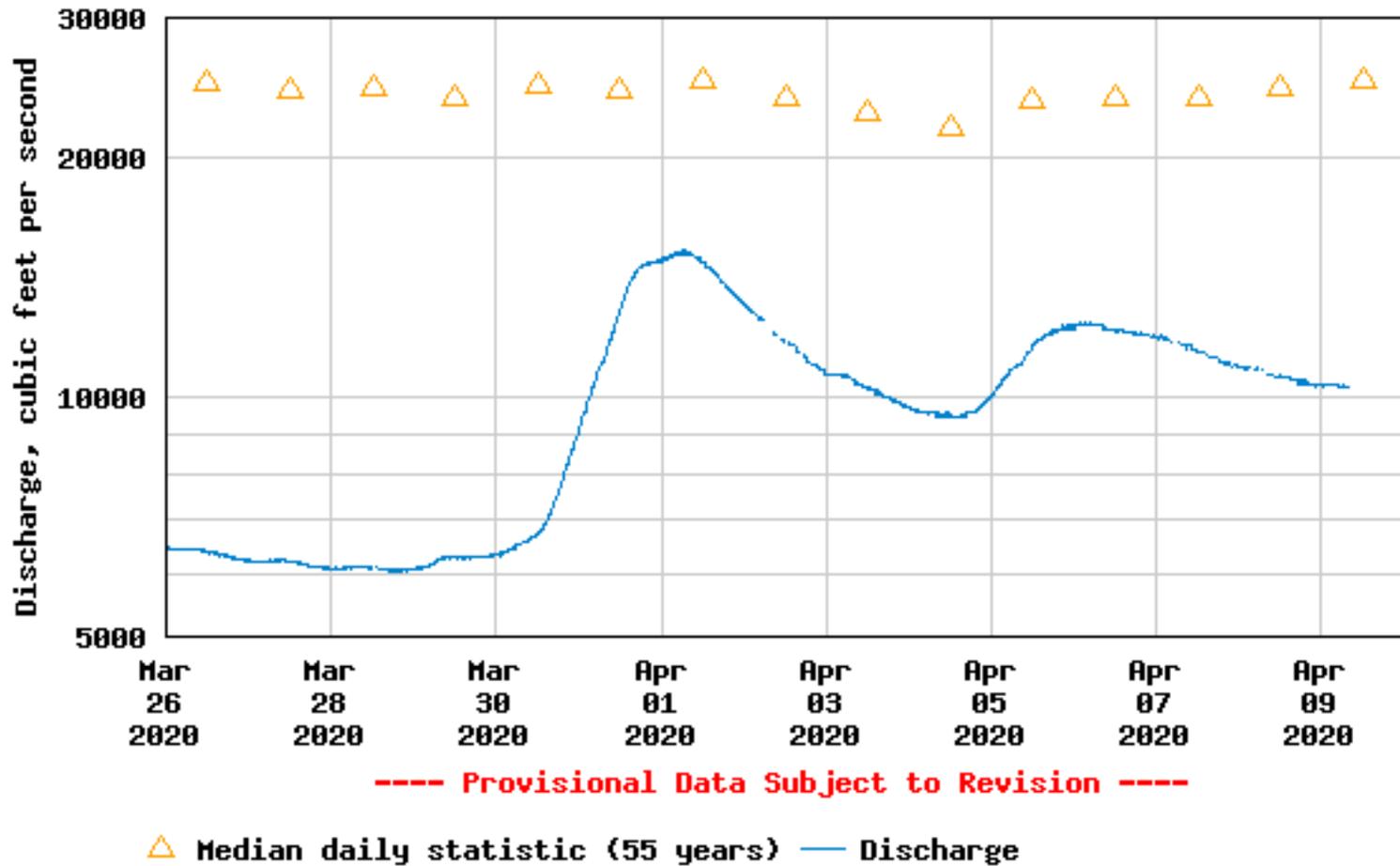
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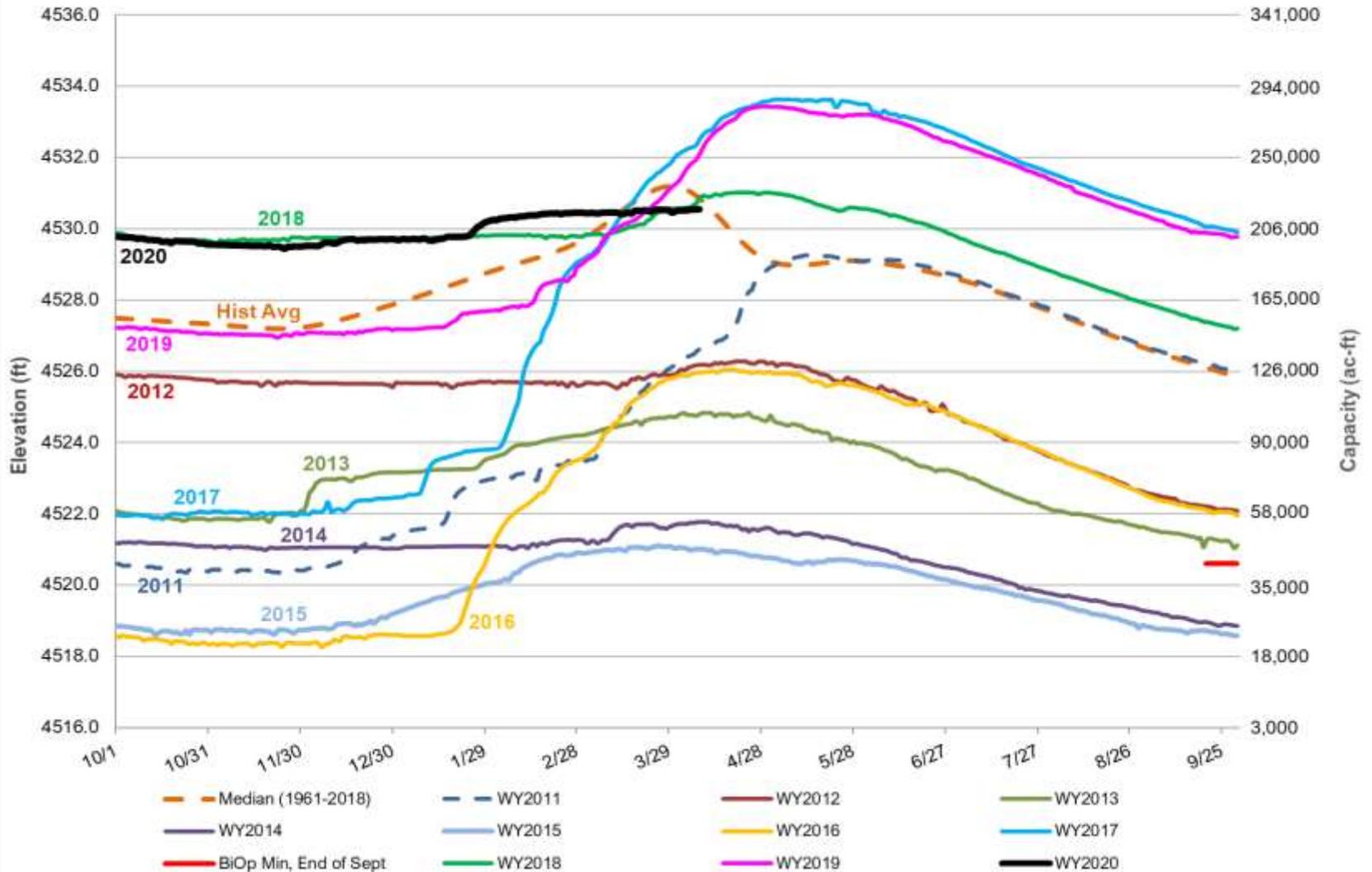
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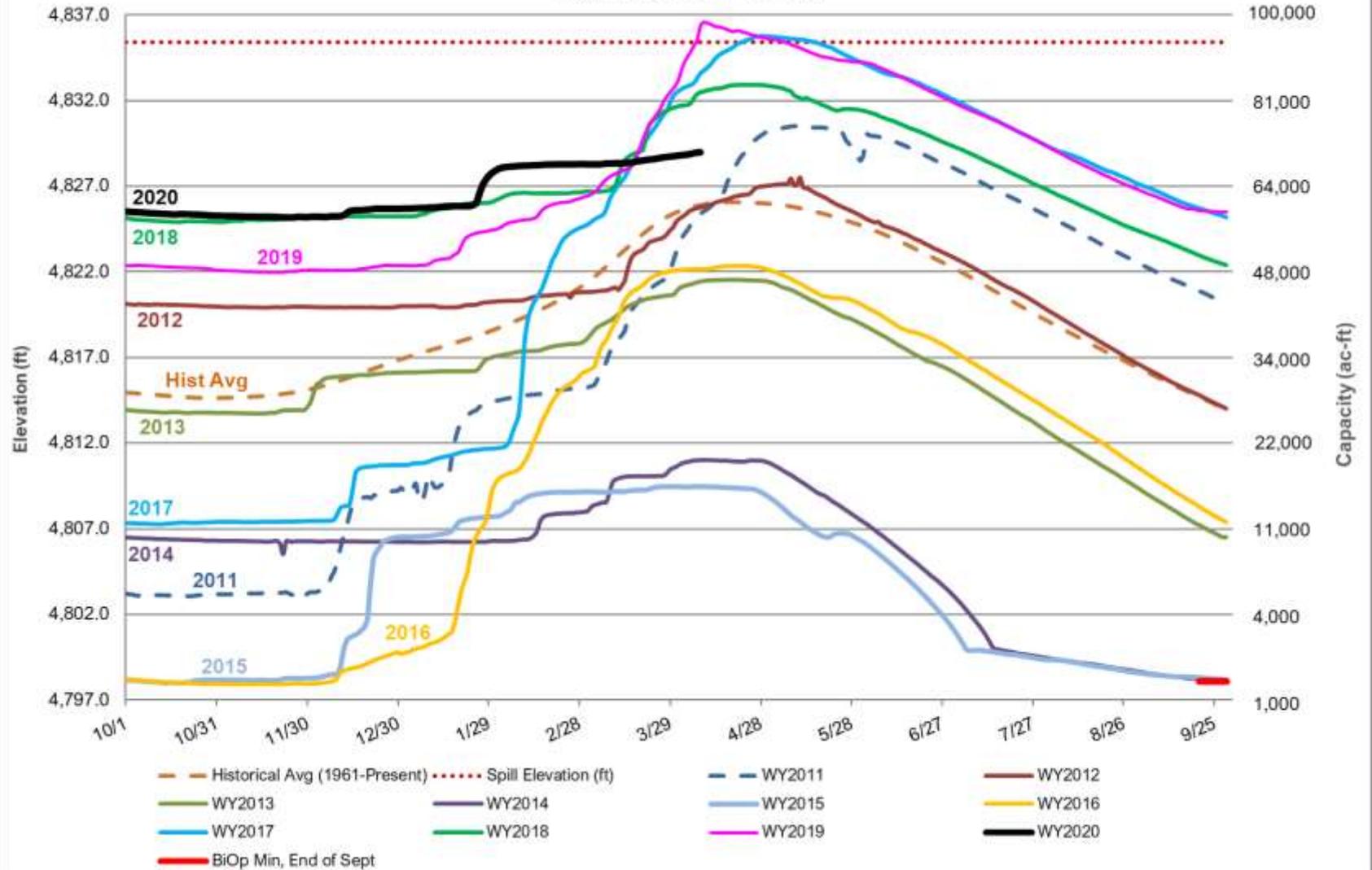
### USGS 11530500 KLAMATH R NR KLAMATH CA



### Clear Lake Elevation Water Years 2011 - Current

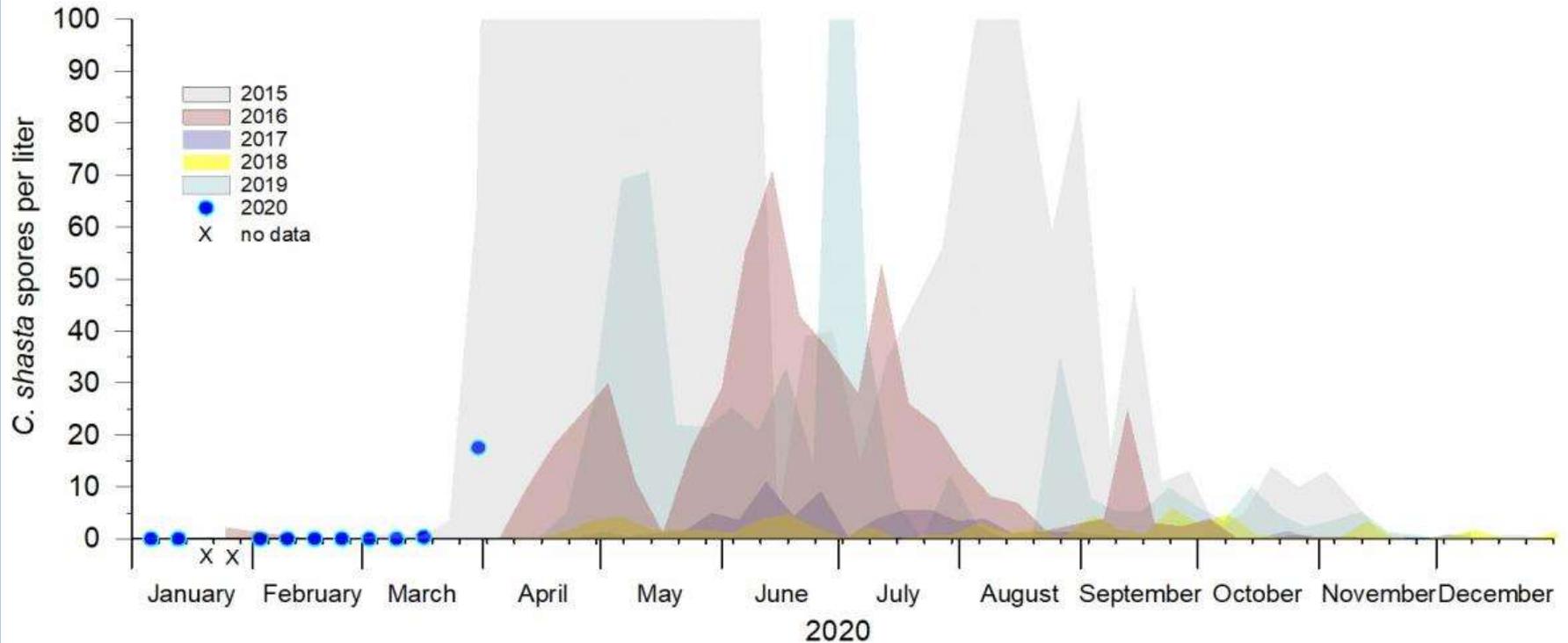


### Gerber Elevation Water Years 2011 - Current



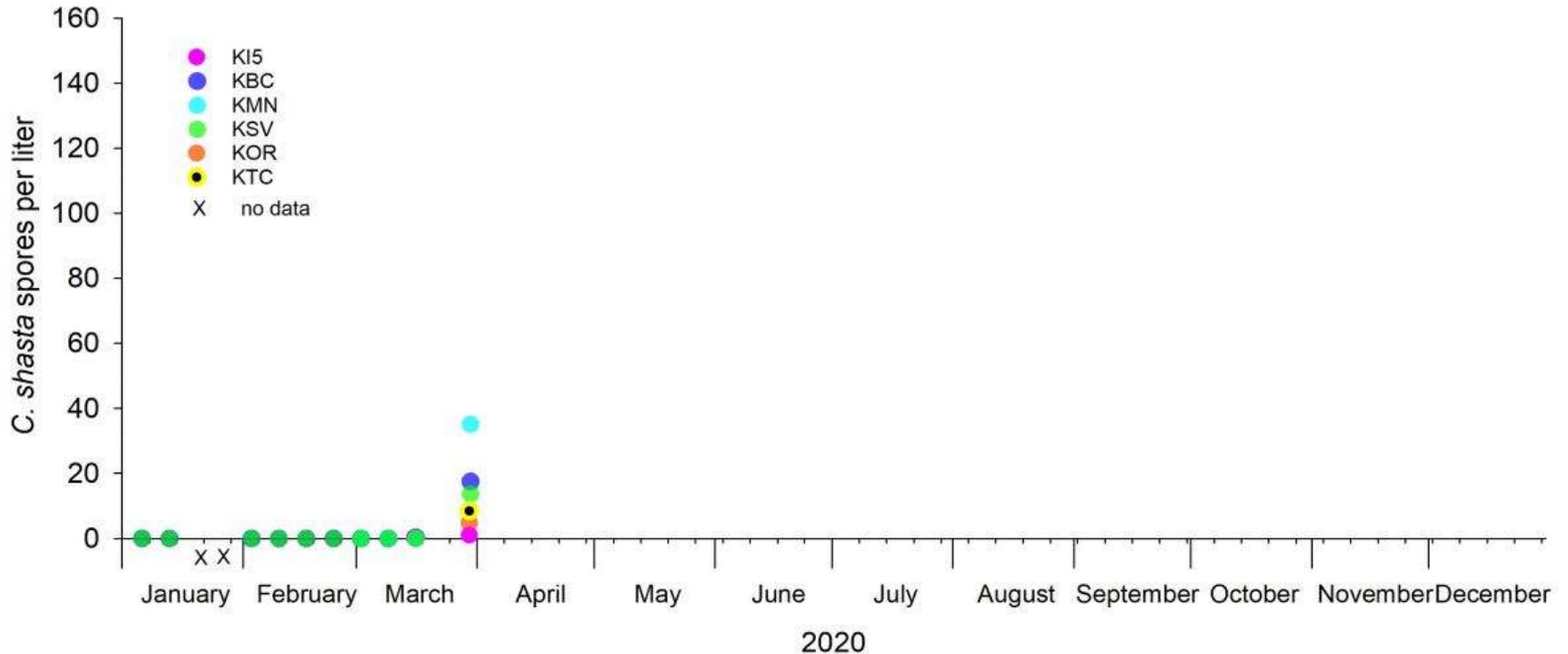
# C. shasta monitoring update

2020 C. shasta spore levels at Beaver Creek (KBC) index site



# C. shasta monitoring update

C. shasta average spore levels at all sites in 2020



**From:** nathan rietmannlaw.com <nathan@rietmannlaw.com>  
**Sent:** Wednesday, April 15, 2020 12:27 PM  
**To:** Staley Darsee <Darsee.Staley@doj.state.or.us>  
**Cc:** Moulun Renee M <renee.m.moulun@doj.state.or.us>; John Kinsey <jkinsey@wjhattorneys.com>; Christopher Lisieski <clisieski@wjhattorneys.com>; Iris Chiu <ichiu@wjhattorneys.com>  
**Subject:** Re: Question about call

Darsee -

Thank you for taking the time to speak with Mr. Enman and I yesterday. The purpose of this letter is to reiterate the need for timely action on the part of OWRD. Please share this correspondence directly with your client.

As communicated many times, Klamath Irrigation District (“KID”) holds secondary water rights and is obligated to divert and deliver water from Upper Klamath Lake (“UKL”) to approximately one-thousand Oregonians and Oregon small businesses who own farms encompassing approximately 122,000 acres of irrigable land in the Klamath Basin. The families of these one-thousand Oregonians and Oregon small business have suffered, are suffering, and will continue to suffer unless or until OWRD takes charge of UKL reservoir in accordance with Oregon law as KID has requested.

All KID is asking OWRD to do is protect the private property rights of KID and the more than one-thousand Oregonians and Oregon small business it serves by taking charge of UKL, in advance of the impending flushing flow, through issuance of an order prohibiting Reclamation (by and through PacifiCorp) from diverting water through the Link River Dam unless:

- (1) the water is being lawfully diverted through Link River Dam to fulfill secondary water rights in UKL reservoir set forth in the ACFFOD or the other water rights records of OWRD, or
- (2) the water is being diverted through Link River Dam pursuant to a lawful written agreement between Reclamation and secondary water rights holders in UKL, which will not cause injury to other secondary water right holders;

**and**

- (3) the diversion of water out of UKL reservoir through the Link River Dam has first been approved, in writing, by the state water master.

KID asks that the order remain in effect for the duration of the 2020 season of use associated with the secondary water rights in UKL, which is October 31, 2020, in the case of KID, its patrons, and the other water right holders KID is responsible for serving. The 2020 season of use for other secondary water right holders may extend longer.

As KID has repeatedly explained, the United States is perfectly capable of satisfying its ESA commitments in a manner that complies with Oregon law and it is legally obligated to do so. The ESA does not grant Reclamation any right to use water that it does not otherwise possess. It is black letter law that "the Endangered Species Act "directs agencies to 'utilize their authorities' to carry out the ESA's objectives; it does not expand the powers conferred on an agency by its enabling act"). *Sierra Club v. Babbitt*, 65 F.3d 1502, 1510 (9th Cir. 1995). It is also black letter law that Sections 7 and 8 of the federal Reclamation Act affirmatively require Reclamation to comply with state law in the control, use, distribution and condemnation of water. *California v. U.S.*, 438 US 645, 667, 98 S. Ct. 2985, 57 L Ed 2d 1018 (1978). The law is also clear that the Reclamation Act requires Reclamation (acting by and through PacifiCorp) to operate Link River Dam in accordance with state water laws and the ACFFOD. *See, e.g., Nat. Res. Def. Council v. Patterson*, 791 F.Supp. 1425, 1435 (E.D. Cal. 1992) ("Section 8 incorporates state statutes which affect both dam operation and water impoundment or distribution and statutes which solely affect water impoundment or distribution").

The United States' position that its *obligations* under the ESA grant it the *right* to use water in violation of Oregon law and the federal Reclamation Act is meritless to the point of being objectively unreasonable. Obligations are different than rights. If KID had an obligation to pay the State of Oregon \$1000, the existence of this undisputed *obligation* would not grant KID the *right* to break the law and steal \$1000 from its patrons in order to pay its debt obligation to the State of Oregon. In the same way, the fact that Reclamation has ESA *obligations* does not mean it has the *right* to meet those obligations by breaking the law and stealing stored water that KID and the thousands of Oregonians it serves own the water rights to.

KID and the more than one-thousand Oregonians and Oregon small businesses it serves need OWRD to protect their private property rights from the federal government's overreaching by carrying out its solemn obligation to uphold the law. Is it really the circumstance that the State of Oregon is willing to stand-up to the federal government on issues like recreational marijuana use, but is unwilling to stand up to the United States when it is blatantly trampling the property rights of its citizens in clear violation of the law? Is it really the circumstances that OWRD is unwilling to enforce the rule of law concerning water distribution in UKL even after a judge has already determined that OWRD is obligated to do so and it is very likely that any litigation concerning this matter will go before the very same judge? For the sake of my client, the Oregonians it serves, and the State of Oregon more generally, I certainly hope not.

OWRD is obligated to uphold the law impartially irrespective of the political or public policy consequences. However, I hope that OWRD and the Oregon Governor are wise enough to recognize that in this particular instance, upholding the rule of law concerning the distribution of water from UKL will not prevent Reclamation from conducting the flushing flow in accordance with law, will not otherwise harm the environment, and will do more than anything else the State of Oregon has the power to do, to incentivize the United States to get serious about solving the problems it has created for farmers and tribes in the Klamath Basin.

While KID continues to hope that OWRD will fulfill its solemn obligation to uphold the rule of law, it has real, substantial, and well justified concerns that it won't. Therefore, as indicated yesterday, KID will seek a writ of mandamus and/or order to compel OWRD to take charge of

UKL, along with other relief, if OWRD has not appropriately taken charge of UKL in accordance with law by 3:00pm on Thursday, April 15th. Further, if OWRD fails to explicitly require Reclamation to obtain secondary water rights or enter into a lawful agreement with secondary water rights holders, which meet the approval of the state water master, before it is permitted to divert stored water from UKL through the Link River Dam for the impending flushing flow, KID will bring an action seeking maximum damages from the State, in addition to the federal government. My office will be working with Wanger Jones Helsey P.C. to prosecute these claims and I have copied John, Chris, and Iris from that office on this email so that you have their contact information.

On behalf of my client and the thousands of Oregonians whose livelihoods directly or indirectly depend on it, I sincerely hope such litigation is unnecessary and that the State of Oregon chooses to protect the Oregonians it exists to serve by upholding the rule of law.

Nathan



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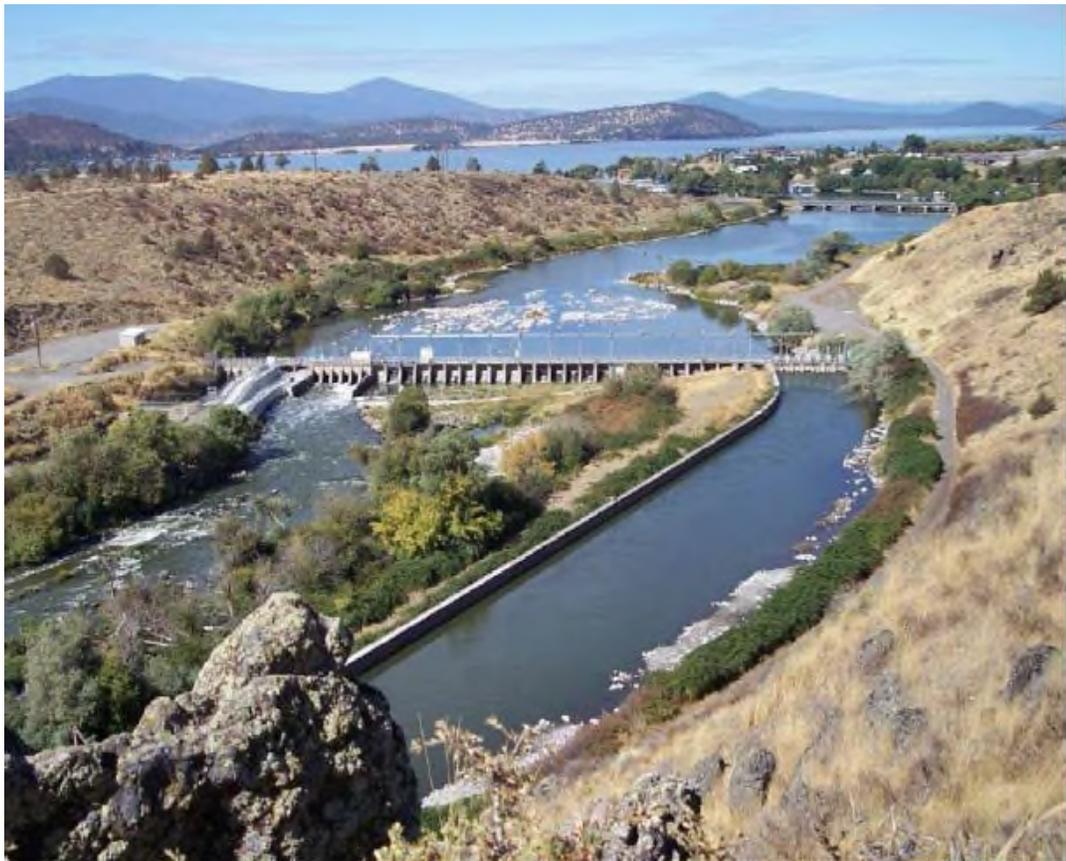
[nathan@rietmannlaw.com](mailto:nathan@rietmannlaw.com)

# RECLAMATION

*Managing Water in the West*

## Klamath Project, Oregon-California, Mid-Pacific Region

# 2018 Annual Operations Plan



U.S. Department of the Interior  
Bureau of Reclamation  
Mid-Pacific Region

June 2018

## **Mission Statements**

The Department of the Interior protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

## Introduction

The Klamath Project (Project) delivers water for irrigation purposes to approximately 230,000 acres in southern Oregon and northern California. This 2018 Operations Plan (Plan) describes Project operations that are anticipated to occur during the 2018 spring-summer irrigation season (March 1 to November 15), based upon current and projected hydrologic conditions. The Plan is consistent with Reclamation's proposed action analyzed in the biological opinions issued jointly by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on May 31, 2013 (2013 BiOp). The Plan also addresses the effect of the modified injunctive order of the U.S. District Court of Northern California, dated March 24, 2017, in Case Nos. 3:16-cv-06863-WHO and C16-cv-04294-WHO (2017 Court Order) on 2018 Project operations.

This Plan is divided into three sections. The first section describes the estimated water supplies available for irrigation during the 2018 spring-summer season. The second section discusses the voluntary water conservation measures that Reclamation and Project water users will employ to manage and conserve limited water resources. The third section addresses additional operational considerations.

## 2018 Hydrologic Conditions and Project Water Supplies

The Klamath Basin, similar to much of California and Oregon, had a prolonged dry winter. As of April 1, snowpack in the upper basin was 55 percent of normal; May 1, 46 percent of normal and as of June 1 no snowpack remained at SNOTEL sites. The minimal snowpack melted approximately 1-2 weeks earlier than normal. May precipitation was 76 percent of average resulting in a streamflow forecast for June – September to be as low as 26 percent of normal in various parts of the basin (USDA NRCS Oregon Basin Outlook Report, June 1, 2018).

Due to the continuing drought conditions, there is a shortage of surface water from Upper Klamath Lake for the Project resulting in unreliability of water supply to all users, and serious concerns regarding availability of late season deliveries. Reclamation has been informed that the resulting shortage will result in the majority of producers not having an adequate water supply to meet the requirements of good irrigation practices for the acres served by the Project.

## Upper Klamath Lake & Klamath River

Consistent with the proposed action analyzed in the 2013 BiOp, Reclamation uses the monthly 50 percent exceedance inflow forecasts from the Natural Resources Conservation Service (NRCS) as the basis for Project operations with respect to UKL and the Klamath River during

the spring-summer irrigation season. To estimate the water supply available from UKL and the Klamath River, Reclamation relies on actual inflows to UKL and NRCS inflow forecasts for UKL to determine three key operational values: (1) the volume of water to be reserved in UKL to maintain lake elevations analyzed in the 2013 BiOp (UKL Reserve); (2) the volume of water designated for the Klamath River, referred to as the Environmental Water Account (EWA); and (3) the volume of water available from UKL for delivery for irrigation purposes to the Klamath Project (Project Supply).

Reclamation makes a preliminary calculation of these three values on March 1; however, those estimates are subject to change based on actual UKL inflows after March 1 and subsequent NRCS inflow forecasts. Reclamation recalculates these values on April 1, based on actual UKL inflows observed in March and NRCS UKL inflow forecast for April 1 to September 30. This April 1 calculation establishes the minimum Project Supply available from UKL during the spring-summer irrigation season. This calculation is subsequently updated based on the May 1 and June 1 inflow forecasts, which may result in an increase in the available Project Supply over that determined based on the April 1 forecast.

Based on the June 1, 2018, NRCS inflow forecast, Reclamation calculates: (1) the UKL Reserve to be 123,487 acre-feet (AF); (2) the EWA volume to be 365,000 AF; and (3) the Project Supply to be 310,881 AF (See Part 4 of the 2012 Biological Assessment and Chapter 4 of the 2013 BiOp for further details regarding the calculation of UKL Reserve, EWA, and Project Supply).

Beginning in 2017, Klamath Project operations related to UKL and the Klamath River are subject to the 2017 Court Order. The 2017 Court Order applies until Reclamation completes reinitiated consultation with NMFS and the USFWS regarding the effects of Project operations on threatened coho salmon (*Oncorhynchus kisutch*) in the Klamath River and Lost River suckers (*Deltistes luxatus*) and shortnose suckers (*Chasmistes brevirostris*) in the Upper Klamath Basin.

The 2017 Court Order requires Reclamation to implement three specific flows in the Klamath River, as measured immediately downstream of Iron Gate Dam: (1) a surface flushing flow of 6,030 cubic feet per second (cfs) for 72 hours, required every year; (2) a deep flushing flow of 11,250 cfs, required every other year after 2017, subject to certain conditions; and (3) an emergency dilution flow of 3,000 to 4,000 cfs from a reserve of 50,000 AF established by April 1 of each year if certain triggers are eclipsed. The Court ordered these flows in an attempt to mitigate the risk of *Ceratonova shasta* disease conditions for threatened coho salmon in the Klamath River. Although the Court Order mandates that Reclamation implement the flows, it gives Reclamation the discretion as to the timing of the flows, as long as flows occur within the timeframes specified in the 2017 Court Order. The applicable time period for implementing the flushing flows is November 1 to April 30. The time period for emergency dilution flows is April 1 to June 15, or until 80 percent of juvenile salmon have out-migrated from the middle Klamath River, whichever occurs first.

In 2018, complying with the Court Order required Reclamation to implement a 38,425 AF surface flushing flow (April 6-15) and a 50,000 AF emergency dilution flow (May 7-28). The water necessary to produce these separate flow events was released from Upper Klamath Lake (76,713 AF). Reclamation borrowed non-Project water that was volunteered by the Refuge to

implement the court-ordered flushing flow; 4,011 AF were provided from the Upper Klamath National Wildlife Refuge, and 7,701 AF were provided from Lower Klamath National Wildlife Refuge (collectively Refuges).

The 2017 Court Order states that the flows cannot interfere with the conditions necessary to protect endangered suckers in UKL as specified in the 2013 BiOp. Additionally, the 2017 Court Order states that the downriver flows cannot impact EWA calculations or come out of EWA supply. Accordingly, the only sources of water for the 2017 Court Order are Project Supply and non-Project water. In 2018, the flows released for the 2017 Court Order were provided from both Project Supply and non-Project water (i.e., 11,712 AF supplied from the Refuges). Accordingly, the 76,713 AF used this year from Upper Klamath Lake to meet the flows required under the Court Order must come from Project Supply. In other words, the 2017 Court Order requires that the Project Supply be reduced by an amount equivalent to that used to implement the Court-ordered flows.

Under the 2013 BiOp, Project Supply is also required to meet the “enhanced” Klamath River minimum flows from March 25 through June 23 (up to 16,400 AF). To date, 257 AF have been utilized towards these enhanced minimum flows. Reclamation anticipates that additional volume may be necessary to meet the enhanced minimum flows during the month of June, though this additional volume is likely to be less than 1,000 AF.

Reclamation estimates that an additional volume of approximately 8,000 AF from Upper Klamath Lake will be necessary to implement the Yurok Tribal Boat Dance Ceremony (Boat Dance) in late August. The Boat Dance flow is to be implemented in even years as specified in the 2012 Biological Assessment (page 4-31). The actual amount of water required will depend on hydrologic conditions at the time of the event.

Accounting for these various considerations, the estimated Project Supply for the 2018 irrigation season is 233,911 AF.

As of June 18, 2018, approximately 38,000 AF of the Project Supply from UKL has been diverted and used for irrigation within the Project, leaving a remaining estimated Project Supply of approximately 196,000 AF.

The actual amount of water available for delivery to the Project during the 2018 spring-summer period from UKL and the Klamath River may be less than the above calculated Project Supply under certain hydrologic conditions. Project Supply may also be impacted by the need to refill PacifiCorp reservoirs following transfer operations that occurred in April and May 2018. In addition, Reclamation may be required to reduce the amount or rate of Project deliveries based on criteria established in the 2013 BiOp, due to tribal trust obligations, and to meet the requirements of the 2017 Court Order. Reclamation will coordinate with Project stakeholders in advance of any decision to adjust the amount and rate of Project deliveries. Reclamation will also continue to monitor conditions throughout the spring-summer period to determine the availability of additional unforeseen water supplies and if any additional volume could be provided to the Project.

## Clear Lake Reservoir

The estimated Project water supply available from Clear Lake Reservoir is based on several factors, including current hydrologic conditions and projected inflows over the end of September minimum elevation analyzed in the 2013 BiOp, as well as the rate and volume of irrigation releases and non-beneficial losses (e.g., evaporation and seepage). The estimated available water supply is tracked daily, with updates to Project water users occurring approximately every two weeks during the irrigation season or as needed.

As of April 1, 2018, the water surface elevation in Clear Lake Reservoir was 4,530.57 feet above sea level (USBR datum), representing a total volume of 218,540 AF of stored water. The end of September minimum elevation in Clear Lake Reservoir analyzed under the 2013 BiOp is 4,520.60 feet above sea level (USBR datum). With the anticipated inflows and estimated evaporation and seepage rates, Reclamation estimates there to be a near full supply of Project water available from Clear Lake Reservoir during the 2018 spring-summer irrigation season; the average historic Project demand from Clear Lake Reservoir is approximately 36,680 AF.

As of June 18, 2018, approximately 10,080 AF have been released from Clear Lake Reservoir for irrigation use within the Project (2,058 AF were used to meet irrigation demand within the Klamath Irrigation District (KID) and Tulelake Irrigation District (TID)), leaving a remaining supply of approximately 26,600 AF. Reclamation assumes that no additional stored Clear Lake water will be released for use on the Westside of the Klamath project for the remainder of the 2018 irrigation season.

## Gerber Reservoir

Similar to Clear Lake Reservoir, the estimated Project water supply available from Gerber Reservoir is based on several factors, including current hydrologic conditions, projected inflows for April through September, the end of September minimum elevations analyzed under the 2013 BiOp, as well as the rate and volume of irrigation releases and non-beneficial losses (e.g., evaporation and seepage). The estimated available water supply is tracked daily, with updates to Project water users occurring approximately every two weeks during the irrigation season or as needed.

The water surface elevation of Gerber Reservoir, as of April 1, 2018, was 4,831.64 feet above sea level (USBR datum), representing a total volume of 80,264 AF of stored water. The end of September minimum elevation in Gerber Reservoir analyzed in the 2013 BiOp is 4,798.10 feet above sea level (USBR datum). With the anticipated rates of evaporation and seepage, Reclamation estimates there will be a near full supply of Project water available from Gerber Reservoir during the 2018 spring-summer irrigation season; the average historical Project demand from Gerber Reservoir is 34,050 AF.

As of June 18, 2018, approximately 8,800 AF have been released from Gerber Reservoir for irrigation use within the Project (671 AF were delivered to meet irrigation demand from TID and KID), leaving a remaining supply of approximately 25,250 AF.

## Lost River

Natural runoff and return flows in the Lost River may also be available at certain times for irrigation use within the Project. Diversions from the Lost River during the spring-summer irrigation season are not included in the calculation of the Project Supply available from UKL and the Klamath River analyzed under the 2013 BiOp during the corresponding period. As such, the Project water supply from the Lost River is primarily constrained by the physical availability of water, primarily from return flows, as opposed to operational constraints within the analysis in the 2013 BiOp. Normally Reclamation does not formally estimate the available supply from the Lost River during the spring-summer irrigation season, but rather allows Project water users to divert the supply as it becomes available, consistent with the terms of their respective contracts. This year, due to a provision in the 2017 Court Order that states “Reclamation shall manage the Klamath Reclamation Project...in a manner that will not preclude the ability to provide Reserve Water to implement up to 50,000 AF for dilution flows and/or interfere with its ability to meet its obligations under the ESA with regard to endangered suckers and/or their critical habitat,” diversions from the Lost River were restricted until such time as the required 50,000 AF was available for the Court Ordered flows.

## Voluntary Water Conservation Measures

In an effort to continue responsible resource stewardship and eliminate or minimize the extent of Project water shortages during drought conditions, Reclamation and Project water users will continue to employ strategies to conserve water.

There are a number of active conservation efforts that Reclamation and Project water users can employ to conserve water and to extend available Project water supplies during water shortage situations. Such strategies range from Project-wide actions, to district initiatives, to individual efforts at the farm or field level. Reclamation is currently working with districts on additional strategies to navigate the challenges presented this year.

Reclamation works with districts and individuals to encourage independent initiatives aimed at conserving Project water supplies. District-level conservation initiatives may include rotating water use among irrigators that receive water from a particular canal or lateral, de-watering certain irrigation laterals when not in use, and limiting tailwater flows at the ends of canals and laterals.

Individual, on-field efforts may include planting less water intensive crops, using high-efficiency irrigation systems such as sprinklers or gated pipes, and employing so-called “deficit” irrigation techniques, where water is applied at less than the full consumptive use demand of a particular crop type. Reclamation encourages Project water users to employ all available tools to conserve water and keep demands at a minimum, especially when water shortages exist.

To assist in on-field conservation efforts, Reclamation operates AgriMet stations in the Klamath Basin, which use site-specific weather data to estimate evapotranspiration (i.e., crop water use)

for various crop types typically grown within the Project. This information can be used to identify the required amount of water to apply to a crop based on current weather conditions and growth stage. AgriMet crop water use charts for the Klamath Basin are updated each morning, and can be found online at <http://www.usbr.gov/pn/agrimet/agrimetmap/agrimap.html>.

For more information regarding conservation or relief strategies, please contact your respective district. Irrigators and districts are also encouraged to discuss relief or government funded conservation strategies with your local Farm Services Agency, Natural Resources Conservation District, extension offices, and other state or local conservation agencies. Reclamation continues to explore relief opportunities in coordination with Project districts.

## **Other Operational Considerations**

There are a number of other operational considerations that Reclamation and Project water users should take into account when operating the Project including voluntary water transfers within Project lands and refuge water deliveries.

### **Voluntary Project Water Transfers**

Reclamation supports voluntary transfers of Project water as a means of promoting flexibility in managing limited water supplies and maximizing Project benefits. Accordingly, subject to its approval as described below, Reclamation will allow transfers of Project water, within the limits of applicable federal and state law.

With respect to state law, Reclamation may require that parties to a proposed transfer first demonstrate compliance with applicable state law. Reclamation will coordinate with Oregon Water Resources Department (OWRD) to facilitate any transfers approved by OWRD.

Federal law also imposes certain limitations on transfers of Project water. Reclamation can only approve transfers of Project water among lands eligible to receive Project water under an existing contract with Reclamation, or for refuge purposes within Lower Klamath National Wildlife Refuge (LKNWR) or Tule Lake National Wildlife Refuge (TLNWR). Transfers of Project water to LKNWR or TLNWR will also require the approval of USFWS and the districts that serve refuge lands. Compliance with other applicable federal laws may also be necessary.

Reclamation's prior written approval is required to transfer Project water between Project districts. However, prior approval is not required if districts elect to allocate or distribute water within their respective service areas for lands irrigated under existing contracts with Reclamation. Individual landowners who are interested in transferring Project water are advised to work through their respective districts to obtain Reclamation's approval of Project water transfers.

Such transfers will be contingent, in part, upon the ability to accurately measure corresponding water use, on both the transferring and receiving lands, in order to ensure that the amount of water used does not exceed the associated total available duty.

## **National Wildlife Refuge Deliveries**

LKNWR and TLNWR also use water from Upper Klamath Lake and the Klamath River for refuge-related purposes, including irrigation. LKNWR encompasses 51,713 acres, which were reserved by Executive Order “as a preserve and breeding ground for native birds.” TLNWR consists of 39,990 acres, also reserved by Executive Order “as a refuge and breeding ground for birds.” USFWS manages both LKNWR and TLNWR to provide a variety of habitat types for native birds, including wetland, open water, and agricultural habitats.

The United States holds Project water rights for lands in LKNWR and TLNWR for agricultural irrigation, and claims to additional water for irrigation and other refuge purposes.

Certain refuge lands are within the boundary of TID and the Klamath Drainage District (KDD) and receive water for irrigation and refuge purposes within those districts.

For the portion of LKNWR outside KDD (i.e., within the State of California), the 2013 BiOp specifies that these lands can receive a portion of the unused Project Supply from UKL and the Klamath River, as well as receive additional deliveries from UKL and the Klamath River under wetter hydrologic conditions. Accordingly, the amount of water from UKL and the Klamath River that will be available for the portion of LKNWR in California during the 2018 spring-summer irrigation season, consistent with the 2013 BiOp, is undetermined at this time.

Outside the processes specified in the 2013 BiOp, described above, LKNWR can potentially receive water from UKL and the Klamath River as a result of voluntary water transfers within the Project.

Reclamation may also acquire Project water for the LKNWR and TLNWR, through voluntary contracts with water users within the Project. Reclamation will make information publicly available and solicit comments regarding proposals to acquire additional water for LKNWR or TLNWR.

For more information, please visit <http://www.usbr.gov/mp/kbao/> and or contact Laura Williams at 541-883-6935 or [ljwilliams@usbr.gov](mailto:ljwilliams@usbr.gov).