



EARTHJUSTICE

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August 6, 2003

**INFORMATION REQUEST**

*Via Certified Mail, Return Receipt Requested*

Executive Office of the President  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Mr. Karl Rove  
Executive Office of the President  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500  
*[FAX] 202-456-2461*

Re: Klamath Irrigation Project

Greetings:

On behalf of Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, WaterWatch of Oregon, Oregon Natural Resources Council, Northcoast Environmental Center, Oregon Chapter of the Sierra Club, Defenders of Wildlife, Public Employees for Environmental Responsibility, The Wilderness Society, and Friends of the Earth, we write to request documents and materials related to the Klamath Irrigation Project. This request describes: (1) the records sought; (2) the entitlement to a fee waiver for production of these records; and (3) the need to expedite this request in order to enable the requesters to participate in public processes concerning the ongoing operation of the Klamath Irrigation Project. This request is made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and its implementing regulations, or alternatively, under your discretion.

**The Records Sought in this Request**

**LAW FIRM FOR THE ENVIRONMENT**  
203 HOGE BUILDING, 705 SECOND AVENUE, SEATTLE, WA 98104-1711  
T: 206 343-7340 F: 206 343-1526 E: eajuswa@earthjustice.org W: www.earthjustice.org

The above groups seek disclosure of all records of meetings, emails, telephone conversations, correspondence, proposals, offers, counteroffers, PowerPoint presentations, or other communications from or to the Executive Office of the President concerning the ongoing operation of the U.S. Bureau of Reclamation's ("BOR") Klamath Irrigation Project from March 2001 to the present. In particular, they seek information about the activities of Mr. Karl Rove or members of his staff, including a PowerPoint presentation Mr. Rove gave to Department of the Interior managers in January 2002; (2) a list of meetings, with dates and names of participants, that Mr. Rove or his staff has had with executive branch agencies (outside of the White House and Cabinet members) on Klamath basin issues; (3) all PowerPoints, speeches, and speaking notes from those meetings; (4) a breakdown of tax-supported costs incurred by Mr. Rove's offices with respect to Klamath basin issues; and (5) an accounting of costs for political activity by Mr. Rove's offices reimbursed to the Treasury of the United States as required by the Hatch Act, 5 U.S.C. § 7324.

By records, we mean any and all (whether in draft or in final form) scientific and technical data, reports, analyses, studies, correspondence, electronic or computer mail, memoranda, notes, meeting notes, telephone logs, photographs, maps, diagrams, polls, surveys, and other records.

Mr. Rove works for the White House and manages the Office of Political Affairs, the Office of Public Liaison, and the Office of Strategic Initiatives. Even if the requested records from Mr. Rove and others do not fall within FOIA's reach, these documents should be released toward the fostering of open, accountable government. Until the public is aware of the specific political influence involved in decisions affecting the Klamath River basin, the search for solutions to this ecosystem crisis will be in vain.

#### Entitlement to a Fee Waiver

The above groups request a waiver of all search and copying fees associated with this request. FOIA and its implementing regulations require agencies to waive such fees where disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and the request is not primarily in the commercial interest of the requesters. See 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.9(c). This request satisfies these criteria or any analogous criteria applied to a discretionary release.

The BOR's Klamath Irrigation Project has been the focus of legal and scientific debate between commercial fishermen, Native Americans, conservationists, irrigators, and federal officials for several years. Recent droughts have confirmed the fact that the demand for water in the Klamath Basin exceeds supply. In 2001, in the midst of an extremely dry year, the federal agencies curtailed a portion of the normal irrigation deliveries to protect coho salmon in the Klamath River and two species of endangered fish in Upper Klamath Lake. In 2002, these

decisions were reversed, and irrigators received full deliveries, causing a massive fish kill in the Klamath River that claimed more than 33,000 adult salmon before they could spawn.

A recent article in the Wall Street Journal (“Oregon Water Saga Illuminates Rove’s Methods with Agencies,” July 30, 2003) uncovers a troubling series of events regarding decisions made by the federal agencies on how to manage water resources in the Klamath Basin. The activities of Mr. Karl Rove, who works for the White House, are particularly suspect. According to the report, Mr. Rove gave a January 6, 2002 presentation to Department of the Interior officials connecting regulatory actions in key states, including Oregon and the Klamath Basin, to Republican candidates in the coming elections. Mr. Rove stayed involved in the process, meeting with Congressman Walden (R-OR), Senator Smith (R-OR), irrigators, and ranchers in March 2002. On June 26, 2003, BOR reversed a plan to reduce irrigation deliveries based on hydrologic conditions only one day after a concerned congressman called Mr. Rove’s office for assistance. Based on these reports, it appears that Mr. Rove influenced BOR and Department of the Interior decision-making processes by injecting political considerations into what should have been questions of science and law.

The Wall Street Journal article strengthens the whistleblower disclosures of Mr. Michael Kelly, the former lead National Marine Fisheries Service biologist for the Klamath Irrigation Project, who testified earlier this year that he was instructed to accept the BOR’s 10-year operation plan without performing the needed scientific analysis. Unable to do his job and unwilling to play a further role in an illegal process, Mr. Kelly asked to be reassigned.

The public has an interest in uncovering the full extent of this political influence over the future of the Klamath River ecosystem. The records sought in this request will contribute significantly to the public’s understanding of the manner in which the federal agencies are proceeding in the ongoing operation of the Klamath Irrigation Project and whether or not those decisions are based, as they must be, on scientific and legal considerations.

The requesting groups are well-qualified to review the information and synthesize it for consumption by the general public. Each of these groups has expertise in the Klamath River Basin, water resources, and ecosystem protection. Each group engages in extensive advocacy on Klamath issues and western water use in the administrative and judicial processes. These groups have also developed close ties to leading experts in relevant fields, including fisheries biology, stream ecology, and population viability, who may review the requested documents.

These groups will disseminate the requested information to the public at large and not merely a narrow segment of interested persons. These groups have extensive programs to educate members and the public on ecosystem protection and Klamath River issues. For example, these groups regularly publish newsletters and magazines; conduct conferences and symposia; prepare reports to state and federal legislative bodies; give news releases, interviews, and press conferences to the media. Most of these groups are part of a larger coalition, the

Klamath Basin Coalition, that focuses on the many aspects of the Klamath River ecosystem. See [www.klamathbasin.info](http://www.klamathbasin.info). Moreover, these groups may also use the requested information to enforce applicable laws through administrative appeals, litigation, and lobbying, all of which contribute to public understanding of important public issues surrounding the Klamath River Basin.

Finally, these groups will not benefit financially from the use or dissemination of this information. All but one of these organizations are nonprofit organizations, and none has any commercial interest in the requested records.

In sum, release of the requested information to the requesters will make a significant contribution to public understanding of how federal decisions governing the Klamath Irrigation Project were made and of the inside access that the federal agencies are giving to specific political interests.

#### The Need for Expedition

The BOR continues to operate the Klamath Irrigation Project in a manner that harms threatened and endangered species, Native American tribes, and downstream coastal communities. In fact, a federal district court recently held that the biological opinion for BOR's ten-year plan for the Project violates the Endangered Species Act. See [PCFFA v. BOR/NMFS](#), Opinion, No. 02-2006 (N.D. Cal. July 15, 2003). In order for the public to knowledgably participate in the creation of a new plan, and in order for the agencies to prevent another fish kill this fall, it is necessary for the public to expeditiously learn the extent of the political involvement of the White House in this issue.

Thank you for your assistance, and we look forward to prompt receipt of the requested records. We would be glad to work with you and your staff to identify the materials sought in

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this letter. Please do not hesitate to call should you need clarification about whether certain records fit within the parameters of this request.

Sincerely,

/s/ Kristen L. Boyles  
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Earthjustice  
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Seattle, WA 98104  
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*For Pacific Coast Federation of  
Fishermen's Associations, Institute for  
Fisheries Resources, WaterWatch of  
Oregon, Oregon Natural Resources  
Council, Northcoast Environmental Center,  
Oregon Chapter of the Sierra Club,  
Defenders of Wildlife, Public Employees for  
Environmental Responsibility, The  
Wilderness Society, and Friends of the Earth*