

# Hydro agreement changes made without using the rule of law

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- 17 hrs ago

On April 4, 2016, the Browns (Kathryn & Edmund) ruling the [Peoples' Republics of Oregon and California](#), and U.S. Department of Interior Commissar [Sally Jewell](#) proudly announced the scheduling of an April 6, 2016 signing ceremony at the Yurok Tribe's reservation.

This location is more symbolic than popularly realized because the U.S. Constitution and federal and state laws largely do not apply on sovereign Indian reservations.

This ceremony was arranged to celebrate with Warren Buffet's PacifiCorp, its primary economic beneficiary, the execution of an amended interstate, intertribal and inter-municipal governmental Klamath Hydroelectric Settlement Agreement ("KHSA") which Congress had rejected in 2015 since it was not in the best interests of the American public.

All cynicism aside, this is a very grave matter that will curtail [U.S. agriculture in the Klamath Basin](#) and elsewhere throughout the West far into the future. When fully implemented in 2020, the amended KHSA will secure the removal of four perfectly operational dams — the [John Boyle Dam](#) in Oregon, and Copco 1, Copco 2 and Iron Gate Dams in California.

The intergovernmental decision to remove these dams has several questionable bases, each predictably favoring dam removal over dam Endangered Species Act retrofitting.

They include, for example, a publicly unvetted and undisclosed "private and confidential" PacifiCorp economic cost-benefit analysis incorporated by reference into the definitional section of the [amended KHSA](#) Federal and state government operatives and lobbyists had secretly relied upon that analysis to portray as a public benefit and secure bi-state approval of substantial electric ratepayer increases in exchange for removal rather than enhancement of existing energy infrastructure, and to curtail the formation of nonprofit public utility districts which could conceivably purchase the dams to stem their removal.

They also include various federal governmental scientific and engineering [studies](#) and [assessments](#) the Interior Secretary utilized to justify dam removal and to determine Upper Klamath Lake and Klamath River levels, for purposes of protecting sucker fish and coho salmon consistent with her recognition of the aboriginal time-immemorial instream flow priority rights of basin tribes, at the expense of irrigator water rights. However, Secretary Jewell has failed to demonstrate how these studies and assessments meet the strict peer review and substantive standards of the federal Information Quality Act ("IQA") (in much the same way that former EPA Administrator Lisa Jackson had asked the public to [trust without verifying](#) the IQA compliance of the [selectively chosen, postmodern non-empirical](#), climate science she relied upon as the basis for reaching its [procedurally flawed Greenhouse Gas Endangerment Findings](#)).

What is most disturbing and egregious, is the intentional failure of these federal, state and tribal government officials to follow constitutional and administrative processes and procedures calling for public transparency, accountability and due process guaranteeing members of the public an opportunity to be heard.

The convening of secret meetings open to only a select few individuals who consent to executing nondisclosure agreements that keep the subject matter of their negotiations hidden from public and congressional view is an affront to our representative democracy.

Indeed, such officials' practice of [withholding disclosure](#) of the latest drafts of the new [Klamath Power and Facilities Agreement](#) ("KPFA") and the amended KHSA in which it is mentioned until the last possible moment before a public meeting or signing ceremony, demonstrates a blatant and wanton disregard for constitutional separation of powers and the [rule of law](#).

Pursuant to the KPFA, PacifiCorps will also transfer to the Bureau of Reclamation full title and control over the Link River and Keno dams just below Upper Klamath Lake, which serves as the primary water source of the Klamath Irrigation District, and practically the entire Klamath Irrigation Project.

Should the BOR also regain control over the "A" Canal of the Project and the gate leading to it, Project irrigators will be at the mercy of BOR and Fish and Wildlife Service officials whose chief goal in life is to protect fish, tribal water rights and unimpeded white-water rafting.

That some Klamath irrigators, especially Klamath Water User Association and Klamath Water and Power Agency members, find these Chicago mob practices acceptable is quite troubling. It also is alarming to think that some of these individuals, in light of [recent whistleblower allegations](#) and the ensuing [federal investigation](#) it triggered, might be found to have signed on to these agreements upon illegally receiving from BOR officials up to \$48 million of [misappropriated BOR funds](#)!

Don't we all deserve better?