

Summary of the Klamath Basin Restoration Agreement

January 15, 2007

Summary and Status

Klamath River Basin stakeholders have developed a Proposed Klamath Basin Restoration Agreement. The Agreement is intended to result in effective and durable solutions which: 1) in concert with the removal of four dams, will restore and sustain natural production and provide for full participation in ocean and river harvest opportunities of fish species throughout the Klamath Basin; 2) establish reliable water and power supplies which sustain agricultural uses, communities, and National Wildlife Refuges; and 3) contribute to the public welfare and the sustainability of all Klamath Basin communities.

For over two years the Klamath Settlement Group, representing 26 organizations, has been working to develop a comprehensive solution for the Klamath Basin. All parties agreed to public release of the Proposed Agreement to inform the public and, where appropriate, to enable public review and comment before taking final action.

The Klamath Settlement Group is also negotiating with PacifiCorp to reach agreement on the removal of the utility's four lower dams on the Klamath River. Dam removal is a necessary part of the overall restoration effort, and the Hydropower Agreement along with the Proposed Agreement will provide a comprehensive solution for the Basin. The group is working to finalize both agreements in February.

The Klamath Settlement Group organizations are listed at the end of this summary.

Scope of the Agreement

General Provisions: Part I (Sections 1 - 7) details the general provisions. These include the purpose of the agreement, the parties' obligations to support and implement the agreement, funding, dispute resolution, governance, and other general provisions. The agreement establishes a Klamath Basin Coordinating Council and Technical Advisory Team to coordinate implementation. The term of the agreement is 50 years and can be extended by the parties to the agreement; some water provisions would be permanent.

Hydropower Agreement: Part II (Section 8) states the parties' obligations to support the Hydropower Agreement (Appendix D). This provides for the removal of the lower four Klamath River dams under conditions that protect and advance the public interest.

Fisheries Program: Part III (Sections 9 - 13) describes the Fisheries Habitat Restoration, Reintroduction, and Monitoring Program. This will contribute to the sustainability and robust harvestable surplus of anadromous and other fisheries throughout the Klamath Basin.

Water Resources Program: Part IV (Sections 14 - 19) describes the Water Resources Program. This consists of schedules, plans, and other provisions to substantially change the management of delivered water supply for irrigation and related uses in the Klamath Reclamation Project, upper Klamath Basin, and the National Wildlife Refuges.

Regulatory Assurances: Part V (Sections 20 - 24) states the regulatory assurances under the federal Endangered Species Act and other laws, related to the performance of the Fisheries and Water Resources Programs.

Power Resources Program: Part VI (Sections 25 - 28) describes the Power Resources Program. This will provide power security for the irrigators participating in the agreement and for the National Wildlife Refuges. The Program will result in conservation and efficiency improvements as well as new renewable power generation.

Counties Program: Part VII (Sections 29 – 32) describes the Counties’ Impacts Mitigation and Benefits Program. This will assure that the removal of the four dams and the performance of other obligations under the agreement occur in a manner that benefits the interests of Klamath County, Oregon; Humboldt and Siskiyou Counties, California, and their residents.

Tribal Program: Part VIII (Sections 33 - 36) describes the Tribal Program. This will assure that the removal of the four dams and the performance of other obligations under the Agreement occur in a manner that benefits the interests of the Hoopa Valley Tribe, Karuk Tribe, Yurok Tribe, and Klamath Tribes and their members.

Key provisions of the agreement are summarized below; for a copy please go to the following website: <http://www.edsheets.com/Klamathdocs.html>.

Rebuilding Fisheries

Goal: The purpose of the Fisheries Program is to restore and sustain natural production of fish species throughout the Klamath River Basin. The program: 1) provides for reintroduction of anadromous species above the current site of Iron Gate Dam, including tributaries to Upper Klamath Lake; 2) establishes conditions that, combined with effective implementation of the Water Resources Program and removal of the four lower dams on the Klamath River, will contribute to the natural sustainability of fisheries and full participation in harvest opportunities, as well as the overall ecosystem health of the Klamath River Basin; 3) assesses status and trends of fish and their habitats; and 4) assesses the effectiveness of actions and provides for adaptive management.

Approaches: The Fisheries Program will use collaboration, incentives, and adaptive management as preferred approaches. In the basin above Upper Klamath Lake, program planning will involve and reflect collaboration among Upper Basin irrigators, Tribes, and other appropriate parties. It will emphasize strategies and actions to restore and maintain properly functioning lake and river processes and conditions, while also striving to

maintain or enhance economic stability of adjacent landowners. Further, it will prioritize habitat restoration and monitoring actions to ensure the greatest return on expenditures

Geographic Scope: The focus of restoration and monitoring will be the Klamath River Basin, excluding the Trinity River watershed above its confluence with the Klamath River. The focus of reintroduction program will be the Upper Klamath Basin. The Agreement is not intended and will not be implemented to establish or introduce populations of salmon, steelhead, or Pacific Lamprey in the Lost River or its tributaries, or to the Tule Lake Basin.

Fisheries Restoration: The agreement provides a detailed process to restore fish in the Klamath Basin. Elements include:

- Phase I Plan: The plan will establish restoration priorities and criteria for selecting restoration projects over the next ten years. Specific elements will include, but may not be limited to, restoration and permanent protection of riparian vegetation, restoration of stream channel functions, remediation of fish passage problems, and prevention of entrainment of fish into diversions.
- Phase II Plan: Within seven years, the fish managers will develop a long-term plan based on the monitoring results of the Phase I actions. The Phase II plan will establish elements, restoration priorities, and an adaptive management process for the remainder of the agreement. The fish managers will revise the plan as appropriate.

Dam Removal: In the Klamath Basin Restoration Agreement, the parties commit to support a separate Hydropower Agreement to remove Iron Gate, J.C. Boyle, Copco 1 and Copco 2 Dams on the Klamath River. These dams block coho salmon, Chinook salmon, steelhead, and Pacific Lamprey from migrating above Iron Gate Dam. Removal of these dams will give salmon access to an additional 300 miles of habitat in the Klamath River and improve water quality.

The Klamath Settlement Group is negotiating with PacifiCorp to reach a Hydropower Agreement on the removal of the utility's dams. That agreement would address all of the steps necessary to safely remove the dams, including mitigation of the environmental and other impacts. The Hydropower Agreement will become part of the overall restoration effort.

Fisheries Reintroduction: The agreement includes a program to reintroduce fish to the areas currently blocked by the hydroelectric dams (except the Lost River). The Oregon Department of Fish and Wildlife will recommend a policy to the Oregon Fish and Wildlife Commission by May, 2008 to establish self-sustaining, naturally-produced populations of Chinook, steelhead, coho, and lamprey that were historically present in the Upper Klamath Basin.

- Phase I: This plan will address the near-term investigations, facilities, actions, monitoring, and decisions necessary to initiate and accomplish the reintroduction of

anadromous fish species. Key investigations that do not require fish passage through the PacifiCorp dams will begin as early as 2009.

- Phase II: This plan will address the management of re-established fish populations in presently un-occupied habitats and as part of the fisheries of the Klamath River Basin.
- Screening Program: One objective for the reintroduction program is to prevent reintroduced salmon and other aquatic species from entering irrigation diversions. The Bureau of Reclamation will evaluate appropriate methods and locations to screen Klamath Reclamation Project diversions, including: Lost River diversion channel or associated diversion points; North Canal, ADY Canal, and other diversions from Reclamation or Reclamation contractor-owned facilities diverting water from the Klamath River/Lake Ewauna.

Additional Water for Fish: The agreement includes a number of actions to increase the amount of water to improve instream flows and maintain the elevation of Upper Klamath Lake; these measures include:

- Interim Program: The parties to the agreement will support funding for an interim water bank program to provide interim Klamath River flows and maintain Upper Klamath Lake levels.
- Permanent Increase in Water for Fish Management:, The agreement establishes limitations on the quantity of water diverted from Upper Klamath Lake and the Klamath River for use in the Klamath Reclamation Project. The agreement calls for the Klamath Water and Power Agency (KWAPA)—a joint powers entity comprised of irrigation districts—to develop a long-term plan which will include measures to stay within the permitted diversion. Once the plan is complete, the limitations will become permanent and enforceable. The Department of Interior and Yurok Tribe have estimated that the limitation will result in the availability of water for irrigation being 100,000 acre feet less than current demand in the driest years, with irrigation water availability increasing on a sliding scale with increasingly wet conditions.
- Upper Klamath Basin Water Program: The agreement establishes a voluntary program for the retirement water rights or water uses for the Wood River, Sprague River, Sycan River (excluding the drainage from the Sycan Marsh upstream), and the Williamson River (from the confluence with the Sprague River upstream to Kirk) that will be designed to secure 30,000 acre feet of water for additional inflow to Upper Klamath Lake. The program also includes a voluntary program to improve fisheries habitat and provides federal regulatory assurances to landowners in these sub-basins in a manner that seeks to maintain landowner economic stability.
- Additional Water Supply, Conservation, and Storage: The agreement includes additional obligations to enhance water conservation and provide for further water storage. Measures to increase water supply in Upper Klamath Lake include completion of the breaching of levees in the Williamson River Delta to add

approximately 28,800 acre feet of storage; reconnecting Barnes Ranch and Agency Lake Ranch to Agency Lake to add approximately 63,700 acre feet of storage; and reconnecting Wood River Wetlands to Agency Lake to provide approximately 16,000 acre feet of storage. The parties to the agreement will also support completion of the feasibility report under the Klamath Basin Water Supply Enhancement Act of 2000, ongoing investigations of additional storage, and criteria for the use of water from such storage.

- Protection for Additional Water: The agreement has provisions to ensure that all the additional water generated by the programs will remain in Upper Klamath Lake or the Klamath River to benefit fish.
- Management of Environmental Water: All of the additional water will be managed for the benefit of fisheries in the Upper Klamath Lake and Klamath River. The agreement establishes a Technical Advisory Team that will develop an Annual Water Management Plan that will provide recommendations to the Secretary of the Interior. During each water year, the Technical Advisory Team will also recommend ongoing, real-time operations to adjust for changing conditions.
- No Adverse Impacts from Groundwater Use: The agreement includes provisions to ensure that groundwater use does not have significant impacts on river flows important to fisheries. If investigations by the U.S. Geological Service identify defined adverse impacts, the agreement provides procedures to implement a remedy. The agreement also sets up a process if further investigations warrant other measures to respond to effects on fisheries.

Additional Water for Wildlife Refuges: The agreement provides specific allocations and delivery obligations for water for the Lower Klamath and Tule Lake National Wildlife Refuges. It also increases the water availability and reliability above historical levels.

Drought Plan: The United States, California, Oregon, KWAPA, each Tribe, off-project water users, commercial fishers, and other interested parties will develop a Drought Plan. This Plan will include a process to ensure increasingly intensive water management for agricultural, National Wildlife Refuges, and in-lake and in-river fishery purposes in drought years, and in preparation for the potential of an extreme drought to avoid or minimize adverse impacts to Klamath Basin communities and natural resources in response to increasingly dry conditions.

Climate Change: As early as practicable, the parties will determine whether and, if so, how long-term climate change will affect the fisheries and communities of the Klamath Basin. The parties will re-convene to negotiate in good faith any supplemental terms to the agreement which may be necessary to address changes in the climate in order to achieve the parties' goal of maintaining sustainable fisheries and communities.

Monitoring: The fish managers will develop a fish monitoring plan that will assess the status and trends of fish populations and their habitats; this effort will also evaluate factors that are limiting the restoration of fish populations. It will provide information for the restoration actions and the management of fisheries.

The Monitoring Plan will collect data on instream flows and Upper Klamath Lake elevations to evaluate the outcomes of the Water Resources Program. This information will also be used by the Technical Advisory Team in developing the Annual Water Management Plan.

The Monitoring Plan will also assess the effectiveness of the restoration actions. This information will be used to determine restoration priorities and other adaptive management actions.

Implementation: The agreement establishes an annual process to determine funding needs, funding availability, and set priorities for the Fisheries Program. The fish managers will also prepare annual reports on all activities that were implemented.

Sustainable Communities

Water Supply Certainty: The agreement contains a number of measures to provide water supply certainty:

- **On-Project Plan:** The parties to the agreement have agreed to a permanent limitation on the amount of water that will be diverted from Upper Klamath Lake and the Klamath River for the Klamath Reclamation Project. KWAPA will have the sole responsibility to develop and implement the On-Project Plan. The plan will align irrigation water supply and demand for the project consistent with the diversion limits. KWAPA will evaluate the following measures to meet the purpose of the plan: conservation easements, forbearance agreements, conjunctive use programs, efficiency measures, land acquisitions, water acquisitions, groundwater development, groundwater substitution, other voluntary transactions, water storage, and any other applicable measures.
- **Funding:** The parties will support the funding estimates for the plan that are in the agreement. Reclamation will consider whether funds made available for the interim flow and lake level program that are not expended in a year should be made available to accelerate the implementation of the On-Project Plan.
- **Additional On-Project Water:** The agreement would increase the allocation of water to the Klamath Reclamation Project in some years by 10,000 acre feet once the four PacifiCorp dams are removed or additional storage is available. The Klamath Basin Coordinating Council could also provide this increase after February 2020 after receipt of recommendations from the Technical Advisory Team.

- Change in Authorized Purposes of the Klamath Reclamation Project: The agreement would provide support for federal legislation which would add fish and wildlife and national wildlife refuges as authorized purposes of the Klamath Reclamation Project, with terms to protect the existing agricultural uses that are consistent with the agreement. The change will facilitate the ability to provide reliable water supplies to the National Wildlife Refuges.
- On-Project Water Rights Assurances: The Agreement includes provisions to provide water rights assurances related to water diversions from the Klamath Tribes, the Karuk, Yurok, and Hoopa Tribes, and the United States as a trustee of the tribes to the Klamath Reclamation Project and, includes resolution of certain contests in the Klamath Basin Adjudication.
- Drought Plan: The agreement identifies a number of strategies that would be used to deal with extreme drought conditions including voluntary water conservation measures, additional stored water, leasing water on a willing-seller basis, the use of groundwater (for irrigation purposes or to replace water that would otherwise be diverted), and reduction of water diversions by exercise of water rights priorities. Water diversions to the Klamath Reclamation Project could only be limited in an Extreme Drought (e.g. 1992 or 1994) and if these other measures were not sufficient.
- Upper Basin Water Adjudication: The agreement establishes a process to develop an Off-Project Water Settlement (OPWAS) to 1) resolve claims between Off-Project Irrigators, the Klamath Tribes, and the Bureau of Indian Affairs in the Klamath Basin Adjudication in Cases 277, 279, 280, 281, 282, 284, 285 and 286; 2) provide reciprocal assurances for maintenance of instream flows and reliable irrigation water deliveries, notwithstanding the outcome of any unresolved contests; and 3) provide for a voluntary Water Use Retirement Program. This program will be designed to maintain the economic character of the Off-Project agricultural community and to not adversely impact the water rights of any remaining contestants who are not signatories to the OPWAS.

Keno and Link River Dams: The parties will support provisions in the Hydropower Agreement to transfer Keno Dam to the Bureau of Reclamation. Keno and Link River dams would continue to provide water to the Klamath Reclamation Project.

Maintain Lease Land Farming: The parties to the agreement support continued lease land farming on Lower Klamath and Tule Lake National Wildlife Refuge that uses practices that enhance waterfowl management while optimizing agricultural use and maximizing lease revenues.

Maintain Walking Wetlands and Other Wildlife and Agriculture Partnerships: The agreement would continue a refuge-approved program that incorporates managed wetlands into agricultural crop rotations on the Wildlife Refuge as well as on private lands in the Klamath Reclamation Project. Such wetlands support the diversity of waterfowl species endemic to the Upper Klamath Basin. Walking wetlands that are

returned to agricultural production enhance agricultural crop yields and reduce or eliminate the need for chemical inputs by enhancing soil fertility and reducing soil pests and diseases to crops.

Consistency with State Water Law: The agreement would not limit the authority of the Oregon Water Resources Department to administer existing water rights or determine water rights in the ongoing Klamath Basin Water Rights Adjudication. The agreement also will not affect the California Water Resources Control Board's regulatory authority, as it will not be a signatory.

Regulatory Assurances: The parties to the agreement commit to take every reasonable and legally-permissible step to avoid or minimize any adverse impact, in the form of new regulation or other legal or funding obligation that might occur to users of water or land upstream of Iron Gate Dam from introduction or reintroduction of aquatic species to currently unoccupied habitats or areas.

- Unforeseen Circumstances: If unforeseen consequences result from reintroduction during the course of the agreement, the parties will meet and confer to determine any necessary future actions, including, but not limited to, consideration of whether narrowly tailored regulations or legislation is necessary to minimize any impacts.
- Endangered Species Act: The agreement establishes steps designed to comply with the Endangered Species Act, including the preparation of biological opinions on specific federal actions called for in the agreement. The agreement also establishes a process to develop a General Conservation Plan(s) or Habitat Conservation Plans that would be designed to assist non-federal parties to comply with the ESA. Participation in these plans would be voluntary.
- Before seeking any further limitations on diversion, use and reuse of water related to the Klamath Reclamation Project beyond the limitations in the agreement, NMFS and FWS will consider, to the maximum extent consistent with the ESA and any other applicable law, whether increased water supply in Upper Klamath Lake and all other relevant obligations for the protection of the affected resources have been implemented. NMFS and FWS will also consider whether there are any alternatives, including additional habitat restoration actions or alternative sources of water. If other parties believe that listed species are in jeopardy of extinction, the agreement also describes the steps that the parties would take to ensure timely implementation of the measures in the agreement, explore other alternatives, and pursue dispute resolution before a party would initiate litigation that could limit the diversions.

Power Resources Program: The purpose of this program is to provide power cost security to assist in maintaining sustainable agricultural communities in the Upper Klamath Basin, including water efficiency and conservation practices in the Klamath Reclamation Project and power for water management by and for National Wildlife Refuges.

The Program includes a number of actions that are designed to maintain a power cost target level of approximately three cents per kilowatt-hour (in 2007 dollars). The Program includes an interim program, support for legislation to secure federal reserve power to serve specific pumping facilities associated with the Klamath Reclamation Project, and a long-term program to implement energy efficiency and new renewable resource generation.

This program will provide benefits to on-project customers. It will also provide benefits to off-project customers that support the Basin Agreement and Hydropower Agreement and/or participate in the water rights retirement program, the fish restoration program, or the regulatory assurance programs when they are available.

Counties Program: This program contains elements to ensure that the Hydropower Agreement addresses mitigation and other protections for the residents of Humboldt, Klamath, and Siskiyou counties. It also includes programs to address specific economic impacts associated with removal of the four dams, including programs to offset potential property tax losses in Klamath and Siskiyou Counties.

Tribal Program: The Parties support the goals of each tribe to achieve the revitalization of tribal subsistence and related economies. The parties support the Tribes as they strive to meet a reasonable standard of living, a standard recognized in the reservation of tribal fishing and other related rights, until the fisheries are restored to a level that allows full participation in harvest opportunities. Under the agreement, the parties will support funding to assist the Tribes in developing the capacity to participate as grantees and in the collaborative management of the Fisheries Program.

The parties acknowledge that the agreement addresses primarily tribal fishing and water matters, and accordingly agree that they will also support efforts by the Tribes to secure economic revitalization programs and funds such that the Tribes may achieve long-term economic self-sufficiency. Funding will be provided to each Tribe for the development and planning of long-term economic revitalization projects. The parties also support funding for the Mazama Forest Economic Development Project in Klamath County, Oregon.

Implementation and Funding

A key feature is a commitment by the parties to the agreement to cooperate fully in its implementation. The agreement requires each Party to perform its obligations in good faith and with diligence, zeal, and loyalty.

Governance: The agreement establishes the Klamath Basin Coordinating Council to facilitate coordination, cooperation, collaboration, and accountability by the parties to ensure that elements of the Klamath River Basin Restoration Agreement are carried out effectively. The Council will provide for general implementation oversight, including activity and program coordination, information sharing, priority setting, fund seeking,

and dispute resolution related to implementation of the agreement. It will also serve as the primary forum for public involvement.

Dispute Resolution: The agreement establishes a process to resolve issues among the parties. The process includes four steps 1) clear notice of a dispute; 2) informal meetings to resolve the dispute; 3) referral of the dispute to the Klamath Basin Coordination Council; and 4) mediation. The agreement also includes enforcement provisions and a party may take actions to enforce any contractual obligation under the agreement after complying with the dispute resolution procedures.

The parties to the agreement acknowledge that resorting to litigation will be a last resort, made only after careful consideration of the potential collateral consequences for the agreement.

Funding: The parties have developed estimates for the costs of implementing the agreement and will support authorization and appropriation of funds from federal and state governments. The Klamath Settlement Group estimates that the cost of implementing the agreement in FY 2008 would be approximately \$32 million. The long-term cost of the habitat, water programs, and other measures in the Basin Restoration Agreement would be about \$96 million dollars per year. Of the total, over 90 percent is budgeted for fisheries restoration and reintroduction and actions to enhance the amount of water for fish. The group believes that current fisheries efforts can be reallocated so the total additional funding would be approximately \$40 million per year.

Organizations in the Klamath Settlement Group

United States

U.S. Department of Agriculture, Forest Service

U.S. Department of Commerce's National Marine Fisheries Service

U.S. Department of the Interior, including Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service

State of California

California Department of Fish and Game

State of Oregon

Oregon Department of Environmental Quality

Oregon Department of Fish and Wildlife

Oregon Water Resources Department

Tribes

Hoopa Valley Tribe

Karuk Tribe

Klamath Tribes

Yurok Tribe

Counties

Humboldt County, California
Klamath County, Oregon
Siskiyou County, California

Parties Related to Klamath Reclamation Project

Tulelake Irrigation District
Klamath Irrigation District
Klamath Drainage District
Klamath Basin Improvement District
Ady District Improvement Company
Enterprise Irrigation District
Malin Irrigation District
Midland District Improvement Company
Pine Grove Irrigation District
Pioneer District Improvement Company
Poe Valley Improvement District
Shasta View Irrigation District
Sunnyside Irrigation District
Don Johnston & Son
Modoc Lumber Company
Bradley S. Luscombe
Randy Walthall and Inter-County Title Company
Reames Golf and Country Club
Winema Hunting Lodge, Inc.
Van Brimmer Ditch Company
Collins Products, LLC
Plevna District Improvement Company
Klamath Water Users Association
Klamath Water and Power Agency

Klamath Off-Project Water Users Association

Non-Governmental Organizations

American Rivers
California Trout
Friends of the River
Klamath Forest Alliance
National Center for Conservation Science and Policy
Northcoast Environmental Center
Northern California/Nevada Council Federation of Fly Fishers
Pacific Coast Federation of Fishermen's Associations
Salmon River Restoration Council
Trout Unlimited.