

DRAFT Summary

Klamath Basin Restoration Agreement

January 7, 2010

Summary and Status

Klamath River Basin stakeholders have developed a Final Review Draft of the Klamath Basin Restoration Agreement. The Agreement is intended to result in effective and durable solutions which will: 1) restore and sustain natural fish 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 three years the Klamath Settlement Group, representing over 30 organizations has been working to develop a comprehensive solution for the Klamath Basin. All parties agreed to public release of the Agreement to inform the public and, where appropriate, to enable public review before each organization in the Group makes a final decision on whether to sign it.

The Klamath Negotiation Group, which is comprised of most of the Klamath Settlement Group and PacifiCorp, has also completed work on the Klamath Hydroelectric Settlement Agreement. The Hydroelectric Settlement establishes a process for the potential removal of four PacifiCorp dams on the Klamath River. The Hydroelectric Settlement is also being reviewed and each organization will decide whether to sign the two agreements concurrently.

The schedule calls for both agreements to be signed in February, 2010; however, organizations that need more time for review can sign the agreement within 60 days of the original signing date. After that date, organizations that have participated in the settlement process and any other organization can apply to become a party.

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

Scope of the Agreement

General Provisions: Part I (Sections 1 - 7) states general provisions. These include the purpose of the Agreement, the Parties' obligations to support and implement, funding, dispute resolution, coordination and oversight, and other general provisions.

Hydropower Agreement: Part II (Section 8) states the parties' obligations to support the Hydroelectric Settlement.

Fisheries Program: Part III (Sections 9 - 13) describes the Fisheries 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 - 20) describes the Water Resources Program. This consists of schedules, plans, and other provisions to 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. It also describes the Power for Water Management Program to provide power cost security for On-Project and Off-Project irrigators participating in the agreement and for the National Wildlife Refuges through the use of conservation and efficiency improvements as well as new renewable power generation.

Regulatory Assurances: Part V (Sections 21 - 25) states the regulatory assurances under the federal Endangered Species Act and other laws, related to the performance of the Fisheries and Water Resources Programs. This program provides support for the development of habitat conservation plans and general conservation plans.

Counties Program: Part VII (Sections 26 – 30) describes the Counties' Impacts Mitigation and Benefits Program. This will assure that implementation of the Hydroelectric Settlement and the performance of other obligations under the agreement occurs in a manner that benefits the interests of Klamath County, Oregon; Del Norte, Humboldt and Siskiyou Counties, California, and their residents.

Tribal Program: Part VIII (Sections 31 - 34) describes the Tribal Program. This will assure that implementation of the Hydroelectric Settlement and the performance of other obligations under the Agreement occurs in a manner that benefits the interests of the Karuk Tribe, Yurok Tribe, and Klamath Tribes and their members.

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

Rebuilding Fisheries

Goal: the goals of the Fisheries Program are to (i) restore and maintain ecological functionality and connectivity of historic Fish habitats; (ii) re-establish and maintain naturally sustainable and viable populations of Fish to the full capacity of restored habitats; and (iii) provide for Full Participation in Harvest Opportunities for Fish Species.

Program Elements: The Fisheries 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 the Hydroelectric Settlement 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 of finalizing the Phase I plan, 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.

Fish Passage and Water Quality: The parties commit to support a separate Hydroelectric Settlement that establishes a process for the potential removal of 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 would give salmon access to an additional 300 miles of habitat in the Klamath River Basin. The two agreements also include measures to improve water quality.

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 Fish and Wildlife Commission has adopted a policy 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.
- Phase II: This plan will address the management of re-established fish populations in presently un-occupied habitats when fish have access to these areas.
- 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 address such entrainment at 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 to implement a water leasing and purchase program to reduce surface water diversions from the Klamath River and from its tributaries above Upper Klamath Lake and to apply the water obtained toward improving the status of anadromous and resident fish. The Parties intend that this program will be administered to increase, to the extent technically feasible, the amount of water in the Klamath River and Upper Klamath Lake toward the amounts which will result from the permanent instream water supply enhancement actions in the Agreement.
- 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 operate within the permitted diversion limits. The Department of the Interior and Yurok Tribe have estimated that the limitation will result in the availability of water for irrigation being approximately 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 water use retirement in 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 the breaching of levees in the Williamson River Delta that reconnected approximately 28,800 acre feet of storage; reconnecting Barnes Ranch and Agency Lake Ranch to Agency Lake to restore approximately 63,700 acre feet of storage; and management of, and ultimate reconnection of Wood River Wetlands to Agency Lake to provide approximately 16,000 acre feet of storage. The parties 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 to the extent permitted by applicable law 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 Upper Klamath Lake and the 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 under the plan in the Klamath Reclamation Project 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 Klamath Tribes, Karuk Tribe and Yurok Tribe, Upper Klamath Water Users Association, the Klamath Water and Power Agency, a representative of conservation and fishing groups, the Klamath Basin National Wildlife Refuges, Oregon Water Resources Department and California Department of Fish and Game 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 drought conditions of increasing severity.

Climate Change: The parties will determine how long-term climate change may 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, set priorities for the Fisheries Program and engage with the public. The fish managers will also prepare annual reports on all activities that were implemented.

Sustainable Communities

Water Supply Reliability: The agreement contains a number of measures to provide water supply reliability:

- **On-Project Plan:** The parties 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 if 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 in a manner 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, Karuk Tribe, and Yurok Tribe, 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.
- Off-Project Water Settlement: 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) or 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.
- Off-Project Reliance Program: The agreement establishes a program consistent with the water use retirement program. The program funds will be used to avoid or mitigate the immediate effects of unexpected circumstances that could affect the amount of water available for irrigation in the Off-Project area.

Keno and Link River Dams: The parties will support provisions in the Hydroelectric Settlement to transfer Keno Dam to the Bureau of Reclamation. Keno and Link River

dams would continue to provide water to the Klamath Reclamation Project recognizing authorities and obligations of federal agencies.

Maintain Lease Land Farming: Parties 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.

Regulatory Assurances: The parties 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 circumstances 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.
- Regulatory processes: 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 Program: The purpose of the power program is to ensure affordable electricity for eligible On-Project and Off-Project irrigators to maintain sustainable agricultural communities. The program includes a number of actions that are designed to achieve a delivered power cost target level at or below the average cost of similarly situated Reclamation irrigation and drainage projects in the surrounding area. The program includes an interim power program, access to federal power, and a long-term program to implement energy efficiency and new renewable resource generation.

The program also delivers affordable power for moving water to the National Wildlife Refuges and the return of water to the Klamath River as part of the implementation of the On-Project plan.

Counties Program: This program includes programs to address specific economic impacts associated with implementation of the Hydroelectric Settlement, 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 Project in Klamath County, Oregon.

Implementation and Funding

A key feature is a commitment by the parties to cooperate fully in its implementation. The agreement requires each party to implement each of its obligations under the agreement in good faith and with due diligence.

Coordination and Oversight: 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 KBCC 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. The agreement also establishes the Klamath Basin Advisory Council to advise Federal agencies in the implementation of the agreement, consistent with the Federal Advisory Committee Act.

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 Coordinating 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 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 its first year 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.

Organizations in the Klamath Settlement Group

United States

The United States Forest Service

National Marine Fisheries Service

United States 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

California Natural Resources Agency

State of Oregon

Oregon Department of Environmental Quality

Oregon Department of Fish and Wildlife

Oregon Water Resources Department

Tribes

Karuk Tribe

Klamath Tribes

Yurok Tribe

Counties

Del Norte County, California

Humboldt County, California

Klamath County, Oregon

Siskiyou County, California

Parties Related to Klamath Reclamation Project

Ady District Improvement Company

Collins Products, LLC

Enterprise Irrigation District

Don Johnston & Son

Inter-County Properties Co, which acquired title as Inter-County Title Company

Klamath Irrigation District

Klamath Drainage District

Klamath Basin Improvement District

Klamath Water Users Association

Klamath Water and Power Agency

Bradley S. Luscombe

Malin Irrigation District

Midland District Improvement Company

Modoc Lumber Company

Pine Grove Irrigation District

Pioneer District Improvement Company

Plevna District Improvement Company

Poe Valley Improvement District

Reames Golf and Country Club

Shasta View Irrigation District

Sunnyside Irrigation District

Tulelake Irrigation District

Van Brimmer Ditch Company

Randolph and Jane Walthall 1995 Trust

Westside Improvement District #4

Winema Hunting Lodge, Inc.

Upper Klamath Irrigators

Off-Project Water Users Association

Upper Klamath Water Users Association

Non-Governmental Organizations

American Rivers

California Trout

Friends of the River

Institute for Fisheries Resources

National Center for Conservation Science and Policy

Northern California/Nevada Council Federation of Fly Fishers

Pacific Coast Federation of Fishermen's Associations

Salmon River Restoration Council

Trout Unlimited