



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Suzanne Knapp  
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**SUBJECT:** Agenda Item C, February 25, 2009  
Water Resources Commission Meeting

### **Klamath Basin Restoration and Hydropower Agreements**

#### **I. Issue Statement**

On November 13, 2008, the State of Oregon signed a negotiated Agreement in Principle (AIP) with PacifiCorp to remove the four lower hydroelectric dams on the Klamath River, and committed to work toward a Final Agreement by June 30, 2009. Preceding this AIP was the completion in January 2008 of a Proposed Klamath Basin Restoration Agreement, negotiated among 26 Parties, including basin interests, regional stakeholders, federal, state, and county governments, and tribes. The Klamath Basin Restoration Agreement also includes agreements among claimants within the Klamath Basin Adjudication to resolve water rights claims. Together, these agreements aim to achieve sustainability of local and rural communities and economies in the basin as well as restoration of an entire river.

#### **II. Background**

These two complex agreements are the result of over six years of settlement negotiations with PacifiCorp in response to PacifiCorp's application to the Federal Energy Regulatory Commission for a new license to operate their 160 MW Klamath Hydroelectric Project for another 50 years. Four hydroelectric dams (Iron Gate, Copco I and Copco II in California, and J.C. Boyle in Oregon) constitute the Klamath Hydroelectric Project which provides power to customers in a 7-state area (California, Oregon, Washington, Idaho, Utah, Montana, and Wyoming). Another non-hydro dam, Keno Dam below Upper Klamath Lake, is owned by PacifiCorp but operated by the Bureau of Reclamation for irrigation purposes. In 2006, when their current license expired, PacifiCorp announced it was willing to consider dam removal in lieu of relicensing, as long as its customers remained whole and the current capacity of energy was replaced. Settlement negotiations continued in parallel with the traditional relicensing proceedings for the next three years. During these settlement negotiations, the State of Oregon

was represented by the Governor's Natural Resources Office and by key members of the State's Hydroelectric Application Review Team, including Water Resources Department staff and department attorneys.

Among the issues pestering the Klamath Basin for years were water quality in the reservoirs, water allocation between fish and farms, water levels in Upper Klamath Lake and water flows in the river. Added to these, low power rates under a 50-year contract with the utility ended in 2006 and were expected to increase significantly in the near term, affecting the sustainability of Basin agriculture. And, species were listed under the Endangered Species Act (suckers and salmon) due to deteriorated habitat.

The Klamath Basin Restoration Agreement (KBRA) formed the basis for addressing these issues, in whole or part, and for maintaining or achieving community wholeness with the intended advent of dam removal. Commitments were made to rebuild fisheries, sustain agricultural uses and communities, and contribute to the public welfare. Key provisions of the KBRA include:

- A comprehensive program to rebuild fish populations sufficient for sustainable tribal, recreational, and commercial fisheries. Elements include: actions to restore fish populations and habitat, including a program to reintroduce anadromous species in currently-blocked parts of the Basin; actions to improve fish survival by enhancing the amount of water available for fish, particularly in the drier years; and other efforts to support tribes in fisheries reintroduction and restoration efforts.
- A reliable and certain allocation of water sufficient for a sustainable agricultural community and national wildlife refuges.
- A program to stabilize power costs for the Upper Basin's family farms, ranches, and for the two national wildlife refuges.
- A program intended to insure mitigation for counties that may be impacted by the removal of the hydroelectric dams.

The KBRA intersects with the Klamath Basin Adjudication in that certain remaining claims are intended to be resolved within the Restoration Agreement, particularly those of the Klamath Tribes and Bureau of Indian Affairs for instream flows on streams both on and off the reservation, and for lake levels in Upper Klamath Lake.

A number of key events took place during this relicensing and settlement process that provided the window of opportunity to reach these historic agreements. Among them were studies by various authorities that supported dam removal as a viable, cost-effective alternative to relicensing. In September 2006, a trial-type hearing by an administrative law judge regarding "disputed issues of material fact" brought forth by PacifiCorp concluded with a ruling against PacifiCorp on most disputed issues. This ruling in effect supported reintroduction of anadromous salmonids above the project through its recognition of available habitat and suitable stocks. Finally, the departments of Interior and Commerce issued their final modified mandatory prescriptions for the Project which included passage facilities at all dams for both upstream and

downstream salmonid migrants, significantly increasing the cost of relicensing. These key events set the stage for a viable dam removal scenario. But the relationship building that took place during the lengthy settlement negotiations between typically adversarial parties was the cornerstone to cementing solid commitments to securing long sought after solutions for the Basin.

The Klamath Hydropower Agreement in Principle (AIP) establishes a framework for resolution of the relicensing proceeding. A target date of 2020 was set for PacifiCorp to transfer the dams to a dam removal entity for timely removal. The Final Agreement will specify the rights, obligations, procedures, and schedules for implementing the approach to dam removal. The AIP is conditioned on the enactment of Federal and State legislation, as well as other contingencies and regulatory approvals.

Removal of the four dams on the Klamath River will improve water quality, enhance fisheries, provide access to 300 miles of historic habitat for salmonids, and restore the river to a more normative condition from headwaters to estuary. It will be the first and largest whole-basin restoration effort ever attempted in the nation, and possibly the world.

### **III. Discussion and Conclusion**

Current and future actions to carry out commitments for securing these agreements include the passing of federal and state legislation. State legislation has been crafted (LC #946) that provides for cost containment and security associated with dam removal and replacement power, thereby protecting the utility's customers. Federal legislation to support implementation of key components of these agreements is under development.

The Hydropower AIP commits the signatories to develop a Final Agreement by June 30, 2009. Efforts are underway to work out the details of the Final Agreement, and align agency statutory requirements and regulatory pathways with elements of the agreement and its implementation.

The Klamath Basin Restoration Agreement will need to be amended to accommodate and reflect the finalized Hydro Agreement. Both agreements will likely need to undergo a final public airing to fulfill the needs of those entities that require a public review.

Regarding the Klamath Basin Adjudication, once all claims have been resolved through settlement or resulted in proposed orders, the Adjudicator will complete the Finding of Fact and Order of Determination for all claims and send it to the Circuit Court.

The Governor's Office is fully committed to achieving this historic outcome. And, with the support and assistance of the Water Resources Department and other agencies, these agreements provide promise for the Klamath Basin.

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