

KLAMATH BASIN COORDINATING COUNCIL

Annual Report

Klamath Basin Settlement Agreements

May 2011



The Klamath Basin Coordinating Council has prepared this first annual report on the accomplishments implementing the Klamath Basin Settlement Agreements.

Annual Report Implementing the Klamath Basin Settlement Agreements

Prepared by the Klamath Basin Coordinating Council

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Introduction

This is the first annual report from the Klamath Basin Coordinating Council on the accomplishments in implementing the Klamath Basin Restoration Agreement (Restoration Agreement or KBRA) and the Klamath Hydroelectric Settlement Agreement (Hydroelectric Settlement or KHSA). These agreements were signed on February 18, 2010. They provide a comprehensive solution for water, fishery, and power issues in the Klamath Basin. There are 45 Parties to these agreements, representing Federal agencies, California and Oregon, three Indian tribes, two counties, irrigators, and conservation and fishing groups. The Parties are listed at the end of Appendix A¹.

The Restoration 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.

The Hydroelectric Settlement lays out the process for additional studies, environmental review, and a decision by the Secretary of the Interior regarding whether removal of four dams owned by PacifiCorp: 1) will advance restoration of the salmonid fisheries of the Klamath Basin; and 2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and tribes. The four dams are Iron Gate, J.C. Boyle, Copco 1 and Copco 2 dams on the Klamath River. The Hydroelectric Settlement includes provisions for the interim operation of the dams and the process to transfer, decommission, and remove the dams.

This annual report describes the accomplishments during the first year in implementing the agreements. The Parties to the agreements have made good progress on establishing the coordination and oversight organizations called for in the Restoration Agreement and implementing many of the near-term KBRA actions. Some actions have been delayed because of a lack of funding. The Parties have also made good progress on implementing the provisions of the Hydroelectric Settlement.

The studies for the Secretarial Determination process described in Section 3 of the KHSA are on schedule. All of the other commitments of the Parties in the KHSA are being implemented on schedule.

¹ The federal agency parties are not signatories to the KBRA and therefore not members of the KBCC as of this time. Although a number of the activities called for under the KBRA are authorized under existing law and may be implemented by specific federal agencies under these existing authorities if appropriations are available, until there is an authorization that addresses implementation of the KBRA, the federal agency parties are not members of the KBCC.

Klamath Basin Restoration Agreement

The actions taken during the past year to implement the agreements are summarized below; for a copy of both agreements and the documents described in this report please go to: www.klamathcouncil.org.

1. General Provisions

1.1 Formation of the Klamath Basin Coordinating Council

A key feature of the Restoration Agreement is a commitment by the parties to cooperate fully in its implementation. The KBRA Parties have established the Klamath Basin Coordinating Council (KBCC) to facilitate coordination, cooperation, collaboration, and accountability by the KBRA Parties and to ensure that the commitments in the Restoration Agreement are carried out effectively. However, the KBRA does not create any new governmental entities, nor does it supersede, change or modify any of the existing governments' legal authorities (see KBRA Sec. 2).

The KBCC provides for general implementation oversight, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Restoration Agreement. It also serves as the primary forum for informing the public and for public involvement (See KBRA Appendix D).

The KBCC held its first organizational meeting on July 21 and 22, 2010 in Redding California. The KBCC has held a total of six meeting since the Agreements were signed. These meetings have rotated between Klamath Falls, Oregon, the Arcata and Eureka areas in California, and Redding, California. A listing of the meetings and all of the materials from the meetings are posted at the website.

The KBCC has adopted internal operating protocols and a communications plan. All KBCC meetings are open to the public and there are public comment periods at each meeting for people to make general comments or to comment on specific decisions before the KBCC.

1.2 Formation of the Interim Klamath Basin Advisory Council

The Restoration Agreement also established the Klamath Basin Advisory Council (KBAC) to advise federal agencies in the implementation of the agreement, consistent with the Federal Advisory Committee Act. The Interim KBAC held its organizational meeting on July 22, 2010. It will convene when there are issues that involve recommendations to the Federal government. The Interim KBAC is comprised of the KBRA governmental agencies that are exempt from the requirements of the Federal Advisory Committee Act (FACA).

The KBRA Parties have consulted with the Department of the Interior on the preparation of a Charter for the KBAC under FACA. The Parties have provided comments on a draft charter. The Department of the Interior is currently working to finalize the KBAC Charter. Once the FACA charter is final, the KBAC membership will automatically expand to include the non-governmental Parties to the KBRA. For more details about the KBAC and its functions, see KBRA Appendix D-1, Section III.

1.3 Formation of the Technical Advisory Team

The Restoration Agreement provides that implementation of certain of its sections will be informed through the activities of a Technical Advisory Team (TAT). The TAT, a subgroup of the KBAC, provides recommendations for the identified Federal Agency Lead Parties, or other Parties, and to the KBAC or KBCC. In carrying out its purpose, the TAT will comply with a separate charter being developed pursuant to FACA.

The KBRA Appendix D-2 describes the TAT's purpose, membership, and operation and the specific procedures to be followed by the TAT concerning Managed Environmental Water.

The Interim TAT held its organizational meeting on February 24, 2011. The group has reviewed its roles and responsibilities and prepared a list of potential tasks for 2011. Those materials are available on the website. The TAT organizations also provided comments to the Department of the Interior on a draft FACA charter for the TAT; Interior is currently working to finalize this charter.

1.4 Public Information and Involvement Plan

The KBCC was established to “promote continued collaboration, cooperation, coordination, and consultation among Parties and others as elements of the Restoration Agreement are implemented. The KBCC will provide for general oversight and administration, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Agreement...The KBCC will serve as the primary forum for public involvement in implementation of the Agreement.” (KBRA Appendix D-1, page D.3)

The KBCC has independent obligations under the KBRA not only to encourage public involvement in KBRA implementation, but also to keep the public informed about KBRA activities.

Many of the actions contemplated by the KBRA are also actions by federal or state agencies. Additional public input to such actions will be managed by the relevant agencies pursuant to applicable laws which mandate public participation in the decision making process such as the National Environmental Policy Act or California Environmental Quality Act. However, the KBCC will serve as an information clearing house so that members of the public have a one-stop access point to what could otherwise be scattered information on these related agency processes.

The KBCC has also established communication objectives, developed tools for meeting these objectives, and defined the scope of its communications responsibilities. That scope, however, relates to official KBCC communications, and does not limit the communications efforts of any of its member Parties.

Communication Plan Scope: The KBCC purpose and function as stated in the KBRA (see Appendix D-1, Sec. II) commits the KBCC to the following in terms of communications:

1. Provide public updates on the progress of KBRA implementation.
2. Provide public access to relevant KBCC decisions and recommendations along with any minority reports.
3. Provide a forum and mechanism to solicit, receive, and consider public input on KBCC activities.

KBCC Communications Committee: The KBCC Communications Committee is a standing committee that meets on an *ad hoc* basis as directed by the KBCC. The KBCC Communications Committee makes recommendations to the KBCC, or otherwise offers advice, as to what events are newsworthy enough to warrant official KBCC press outreach, drafts press materials, drafts language for the KBCC website, and helps prepare any other outreach materials that will be specifically originating from, or be attributed to, the KBCC.

These materials must be approved by the KBCC in accordance with its Communications Protocols (see Section 1.5 below) before release to the public. As needed, the KBCC Communications Committee will recommend one or more individuals to serve as a KBCC contact spokesperson for approval by the full KBCC as needed, on a case-by-case basis.

Public comment: The KBRA outlines a responsibility to implement its programs and to operate in a publicly transparent manner, actively solicit public input, and consider public input in decision making.

To facilitate this, the KBCC provides public notice of upcoming meetings through general notices to local media outlets, emails to individuals requesting information, and on the KBCC website.

Each KBCC meeting provides an opportunity for general public comment and comment on any agenda item where the KBCC will make a decision.

Development of the KBCC Website; the KBCC has a website that lists meetings, meeting materials, and official documents. The Communications Committee is in the process of expanding the website and developing a separate KBCC domain. When completed the website will have at least the following elements:

- KBCC description
- KBRA description
- Downloadable copies of the KBRA and KBRA Summary
- List of Parties and their designated representatives
- Meeting calendar and meeting agendas with attached documents
- A record of previous KBCC decisions and minority reports
- Official KBCC Press releases
- Official KBCC reports, publications or updates
- Links to real-time monitoring data and data archives to the extent available
- Fact Sheets and other information as approved by the KBCC

Additional elements will be added as needed. Management of that web site will also be necessary on an ongoing basis in order to assure that the content is current, accurate and available in easily accessible downloadable formats. The Communications Committee is discussing the ongoing funding for dedicated staff time for this purpose.

1.5 Communications Protocols

Communications by Klamath Settlement Parties

Objective: Communications should facilitate implementation of the Klamath Basin Settlements.

Coordination: The Klamath Settlement Parties intend to coordinate communications regarding implementation of the settlement agreements within the scope of activities of the KBCC and/or KBAC.

KBCC and KBAC communications: Draft press releases and other external documents regarding the KBCC and/or KBAC from the Klamath Settlement Parties will be reviewed and approved by the KBCC and PacifiCorp. When communications are needed between meetings, the facilitator will seek electronic approval from these Parties before release to the press. As a matter of courtesy, contacts listed in a press release related to the Klamath should be notified and provide approval of being listed as a contact, prior to release.

When a Party is communicating on behalf of all Parties they should follow the talking points or other communications materials that have been agreed to by Parties to the KBRA and KHSA.

Communications by individual organizations: Parties may initiate external communications (press releases, letters to the editor, opinion articles, etc) about their individual position on issues related to the scope of activity of the KBCC and/or KBAC; parties that plan to independently initiate communications to external organizations should provide prior notice to other Klamath Settlement Parties to the maximum extent possible. Such notice is intended to: 1) improve coordination of communications; 2) avoid surprises; and 3) reduce the risk of actions that other Parties may view as inconsistent with the settlements. The Klamath Parties understand that Parties will not be

able to provide such prior notice when responding to press inquires or communications from non-parties.

KBCC and KBAC Meetings

Public notice of meetings and distribution of meeting materials: The facilitator will send notices for the time and location of KBCC and KBAC meetings to a public distribution list and press distribution list. The facilitator will also post meeting information on the website. The facilitator will post draft agendas on the website prior to meetings and all materials from each meeting within five working days after the meeting.

KBRA Parties may participate in KBCC meetings by conference phone. KBCC representatives may vote on KBCC decisions by phone. Each Public Agency Party will follow applicable public notice provisions if they participate by phone. Each Public Agency Party, where applicable, will post at their primary office a notice stating the location where they will call into the meeting so the public can observe their participation and post a copy of the agenda on the door of the room where they will participate.

KBCC conference calls: The KBCC may utilize conference calls to address time-sensitive information or issues between regular meetings. Given the limitations on the Klamath conference line, participation on KBCC conference calls will be limited to KBRA Parties.

The facilitator will make best efforts to provide notice for KBCC conference calls, including any requests by KBRA Parties to provide notice under applicable requirements. The KBCC will provide locations at public facilities for the public to listen to the conference call. In addition, individual KBCC Parties will follow any applicable open meeting requirements regarding their participation on conference calls. Each Public Agency Party, where applicable, will post at their primary office a notice stating the location where they will call into the meeting so the public can observe their participation and post a copy of the agenda on the door of the room where they will participate.

1.6 Workplan and schedule to monitoring implementation of Klamath Basin Settlement Agreement. (See Appendix C-1)

The KBCC has developed a process to track implementation of all near-term commitments in the KBRA. The facilitator prepares a status report on all these actions and it is reviewed at each KBCC meeting. Copies of these reports are posted on the website. The status of the implementation of these actions is summarized in this report.

1.7 Legislation (Section 3.1.1.B)

A number of the actions in the KBRA and KHSAs can be implemented under existing authorities. The Non-Federal KBRA Parties have identified the actions that require additional authority and prepared draft legislation needed to implement both agreements.

The Non-Federal Parties are working with congressional offices and committees to provide information and support the passage of legislation to implement the Klamath Settlement Agreements.

1.8 Funding

The KBRA includes initial estimates for the costs to implement the actions in the Restoration Agreement. Those estimates were developed in 2007. The KBCC has formed a workgroup to review the cost estimates and prepare recommendations for revising them. KBRA Section 4.1.2.A and B describe the process for the KBCC to periodically review the estimated costs and to adopt and recommend a successor to budget.

The KBRA also includes provisions to establish specific funds (see KBRA Section 14.3) including; 1) An On-Project and Power for Water Management Fund, 2) Water Use Retirement and Off-Project Reliance Fund, and 3) Klamath Drought Fund. Work on these funds is pending passage of the implementing legislation. The Parties will also establish a Klamath Basin Restoration Agreement Fund (see Section 4.2) to receive non-federal funding.

2. Fisheries Program

The goals of the Fisheries Program are to: 1) restore and maintain ecological functionality and connectivity of historic fish habitats; 2) re-establish and maintain naturally sustainable and viable populations of fish to the full capacity of restored habitats; and 3) provide for full participation in harvest opportunities for fish species.

The Fisheries Program will: 1) provide for reintroduction of anadromous species above the current site of Iron Gate Dam, including tributaries to Upper Klamath Lake; 2) establish 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) monitor the status and trends of fish and their habitats; and 4) assess the effectiveness of actions and provides for adaptive management.

2.1 Fisheries Restoration and Monitoring Program

Under Sections 10.1 and 12 of the KBRA, the Klamath Fish Managers are working to prepare a Fisheries Restoration Plan and a Monitoring Plan. The Fish Managers have made progress on these plans; however, they requested an extension for the draft until 18 months after the Fish Managers receive funding necessary to develop the draft plan.

The Restoration Agreement was signed in the middle of FY 2010, after the preparation of the FY 2011 Federal budget; therefore, no funds were available for developing the plan in FY 2010 or FY 2011. Preparation of the plan will require significant effort beyond the

current capabilities of the Fish Managers; the Fish Managers are working to identify staffing and funding resources.

The Klamath Fish Managers are comprised of: the California Department of Fish and Game, the Karuk Tribe, the Klamath Tribes, the National Marine Fisheries Service, the Oregon Department of Fish and Wildlife, The U.S. Bureau of Land Management, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the Yurok Tribe.

The Fish Managers have been meeting since July 2010 to begin the initial work on the Fisheries Restoration and Monitoring Plan. The Fish Managers prepared a draft *KBRA Phase I Fisheries Restoration and Monitoring Plan: Proposed Outline and Approach* on November 29, 2010 and made a presentation to the KBCC on December 15, 2010. Comments from KBCC members were due by December 30, 2010.

The *KBRA Phase I Fisheries Restoration and Monitoring Plan: Proposed Outline and Approach* was the culmination of a series of meetings among the Fish Managers. The purpose of the document was to outline the initial steps and general approach toward achieving the KBRA directive to develop a monitoring plan and a restoration plan. The document expressed the Fish Manager's general consensus to integrate the restoration and monitoring plans into a single "Phase I Fisheries Restoration and Monitoring Plan" using a multiple-scale approach and to base restoration and monitoring actions on basin-scale ecological goals. Integrating the plans in this manner ensures that science is connected with decision making, that the Fish Managers make good use of existing knowledge, and that goals and objectives are defined early so as to serve as the basis for prioritization of methods and actions.

As an interim step, the Fish Managers are developing a budget justification document to provide further explanation of the restoration and monitoring budget presented in KBRA Appendix C-2, which details specific restoration actions and associated costs. Although the budget justification was based on best professional judgment at the time of its development, Fish Managers intend to implement a more goal-driven, comprehensive landscape-based restoration prioritization strategy and associated monitoring approach based on adaptive management and consistent with the collaboratively produced outline. The details within the budget justification are thus subject to evaluation and review as outlined within the process document, *KBRA Phase I Fisheries Restoration and Monitoring Plan: Proposed Outline and Approach*.

Following the paradigm described in the *Proposed Outline and Approach*, next steps necessary to achieve progress toward the development of a Phase I Fisheries Restoration and Monitoring Plan would include the following:

1. Develop a scope of work to develop detailed costs for preparing the draft Phase I Fisheries Restoration and Monitoring Plan and continue to work on funding.
2. Develop a synthesis of existing scientific studies, restoration planning efforts, and monitoring activities to inform the process and to reduce duplication of effort. This activity would also serve as the basis for the introduction and background

sections of the Phase I Restoration and Monitoring Plan and potentially populate a metadata library for use by program partners.

3. Collectively, define goals and objectives consistent with KBRA associated with restoration and monitoring (instream, riparian and upland) so as to directly benefit existing fish resources and significantly contribute to protecting and preparing habitats for use by anadromous fish.
4. Identify and develop an initial prioritization of restoration actions based on defined goals so as to directly benefit existing fish resources and significantly contribute to protecting and preparing habitats for use by anadromous fish. Develop government cost estimates for tasks based on this prioritization that can be used to refine initial cost estimates provided in KBRA Appendix C-2.
5. Develop adaptive monitoring processes to evaluate restoration effectiveness, fish population status and trends, and environmental water quality/quantity as described in KBRA.

These steps are proposed to allow for objective prioritization of tasks using a process-driven approach that can then be compared and used to modify the tasks listed in the budget justification details, where appropriate. It should be noted that each of the activities listed above will draw from existing information and incorporate existing programs, where practical, to avoid redundancy and improve cost effectiveness.

On February 8, 2011, the Fish Managers agreed to move forward with finalizing the outline and approach document and beginning to work towards achieving the next steps. Because dedicated funds have not yet become available, agencies are currently working together to identify funds to address items 1 and 2 above. Completion of these tasks will jumpstart the prioritization process and provides a strong foundation for the development of the full Phase I Fisheries Restoration and Monitoring Plan. It is understood that items 1 and 2 must be completed in a collaborative manner that incorporates the participation of stakeholders and partners.

2.2 Fisheries Reintroduction Plan

Oregon Plan (KBRA Section 11.3)

The Oregon Fish and Wildlife Commission adopted an amendment to the Klamath River Basin Fish Management Plan on July 18, 2008. The 2008 Amendment (OAR 635-500-3890 *et seq.*) provides policy direction for the Oregon Department of Fish and Wildlife's (ODFW) participation in the implementation of this section of the KBRA.

General Policy: Oregon's Wildlife Policy (ORS 496.012) recognizes that the Oregon Fish and Wildlife Commission represents "the public interest of the State of Oregon" and further will implement the goal "to develop and manage the lands and waters of the state in a manner that will enhance the production and public enjoyment of wildlife." By statutory definition, wildlife includes fish. Nothing in the Restoration Agreement

modifies or abrogates the Oregon Fish and Wildlife Commission's statutory responsibilities.

Amended Klamath Policy: Oregon's goal is to re-establish in Oregon self-sustaining, naturally-produced populations of chinook, steelhead, coho, and lamprey that were historically present in the Upper Klamath Basin, into historic habitats currently vacant of anadromy.

The 2008 Amendment to the Klamath River Basin Fish Management Plan (1997) directs ODFW to develop a Reintroduction Implementation Plan and an Anadromous Fish Conservation Plan for the Oregon portions of the Klamath River Basin. The Reintroduction Implementation Plan corresponds with the Phase I Plan described in KBRA Section 11.2 and 11.3.1. The Anadromous Fish Conservation Plan corresponds with the Phase II Plan described in KBRA Section 11.3.2.

The 2008 Amendment to the Klamath River Basin Fish Management Plan (1997) provides policies that direct ODFW to: develop a Reintroduction Implementation Plan prior to release of any chinook above Upper Klamath Lake; monitor the volitional re-colonization of the Oregon portion of the Klamath River and tributaries by chinook salmon, steelhead, coho salmon, and Pacific lamprey, and not release anadromous fish into the Oregon portion of the Klamath River and tributaries below Upper Klamath Lake unless re-colonization is proceeding too slowly according to criteria developed in the Reintroduction Plan; and develop a Reintroduction Implementation Plan prior to release of any chinook above Upper Klamath Lake.

Under KBRA Section 11.3, ODFW and Klamath Tribes, in collaboration with other tribes and Fish Managers will initiate plan development when funding is available, but no later than State Concurrence of an Affirmative Declaration by the Secretary of the Interior under KHSA Section 3.3. In preparing the plan, these agencies will seek input from interested KBRA Parties and others with technical expertise. The schedule calls for completing the Phase I Plan within 12 months.

California Plan (KBRA Section 11.4)

The California Department of Fish and Game (CDFG), in collaboration with other Fish Managers will initiate the California Reintroduction Plan when State Concurrence of an Affirmative Declaration by Secretary of Interior under KHSA Section 3.3 is complete. CDFG will seek input from other Parties and public and complete the plan within 24 months.

3. Water Resources

The Restoration Agreement contains a number of measures to provide water supply reliability. The Restoration Agreement also includes a number of actions to increase the amount of water to improve instream flows, maintain the elevation of Upper Klamath

Lake, and provide specific allocations and delivery obligations for water for the Lower Klamath and Tule Lake National Wildlife Refuges.

3.1 File validation actions (Section 15.3.1.B)

The Klamath Project Water Entities filed actions in accordance with Applicable Law seeking validation or confirmation of the Restoration Agreement, and are diligently prosecuting such actions to final judgment. The Parties acknowledge that the Klamath Project Water Entities may request, or the courts may determine, that: judgment should be entered only after the enactment of federal Authorizing Legislation; or that the court retain jurisdiction over a judgment entered before enactment of federal Authorizing Legislation for the purpose of entering a supplemental order or judgment. If requested by the Klamath Project Water Entities, other KBRA Parties will support the requested judgments as *amicus curiae* or other appropriate method.

3.2 Collaboration to benefit agriculture and Wildlife Refuges.

The U.S. Fish and Wildlife Service (FWS) and Klamath Project Water Users are working on interim actions under KBRA Section 15.1.2.J to resolve outstanding issues related to water rights for the Refuges. Other provisions will on a schedule that will allow implement when the diversion limits in Appendix E-1 becomes effective in 2020 or 2021. (See KBRA Section 15.1.2.C)

3.3 On-Project Plan

The Restoration Agreement established limitations on the quantity of water diverted from Upper Klamath Lake and the Klamath River for use in the Klamath Reclamation Project. The Restoration Agreement calls for 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 the Yurok Tribe have estimated that once the On-Project Plan is fully implemented 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.

KWAPA has begun work toward preparing a draft On-Project Plan (see Section 15.2.2.B.i) under the Klamath Basin Water Supply Enhancement Act of 2000. KWAPA presented a workplan and schedule at the KBCC meeting on February 24, 2011: 1) KWAPA is reviewing qualifications from contractors to prepare the Plan; 2) proposals from contractors are due May 24, 2011; 3) KWAPA will review recommendations to award contract on June 7, 2011; 4) the project begins on June 22, 2011; 5) the completion date is September 30, 2012.

3.4 Groundwater Technical Investigations

USGS, in cooperation with OWRD, has initiated groundwater studies pursuant to the workplan in Appendix E-2. (See Section 15.2.4.B).

KWAPA will meet with OWRD and other interested Parties at least once during development of On-Project Plan and at least 30 days prior to completion of the On-Project Plan (Section 15.2.4.B.iv.a) regarding groundwater issues.

3.5 Klamath Basin Adjudication Process

KPWU and Klamath Tribes filed amended stipulations by May 18, 2010 (Section 15.3.2.B). Over the last six months, during a time of KBRA public review and implementation, the Klamath Basin Adjudication (KBA) has been proceeding on schedule for the Oregon Water Resources Department to submit its Findings of Fact and Order of Determination of Rights to the Klamath County Circuit Court by the end of 2012 or early 2013. In the short term, the Office of Administrative Hearings (OAH) begins evidentiary hearings on April 18, 2011 for consolidated cases 282 and 286, the last remaining two cases for which evidentiary hearings are to be heard by OAH in the KBA.

3.6 D Pumping Plant Costs

Reclamation, TID, and LKNWR have reviewed cost allocation in Section 15.4.2.A. The parties agreed to maintain the allocation stated in this Section.

3.7 Klamath Reclamation Project operations

The Secretary of the Interior is working with Project contractors to establish a process to analyze the Klamath Reclamation Project costs (Section 15.4.7).

3.8 OPWAS negotiations.

The purposes of the Off-Project Water Program are to: (i) develop an Off-Project Water Settlement (OPWAS) if possible that, upon approval, resolves water rights disputes between the Off-Project Irrigators, Klamath Tribes, and BIA; and (ii) through the OPWAS, or the Water Use Retirement Program (WURP) described in KBRA Section 16.2.2, provide for increased stream flow and inflow into Upper Klamath Lake through voluntary retirement of water rights or water uses, or other means as agreed to by the OPWAS Parties, or the Upper Basin Team (UBT) consistent with KBRA Section 16.2.2, to improve Fisheries habitat and also to provide for stability of irrigation water deliveries in the Off-Project Water Program. The area for the Off-Project Water Program (Off-Project Area) includes the following sub-basins: the Wood River, Sprague River, Sycan River, and Williamson River sub-basins. The Parties who develop the OPWAS, referred to as the “OPWAS Parties,” are the Klamath Tribes, Upper Klamath Water Users Association (UKWUA), and the BIA. The deadline for OPWAS is February 18, 2012.

3.9 Power Resources

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 actual realization of the delivered power cost target depends on several factors and variables, and is not guaranteed by the KBRA. 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 is intended to deliver affordable power as part of the implementation of the On-Project plan and for moving water to the National Wildlife Refuges and the return of water to the Klamath River.

KWAPA and the Upper Klamath Water Users Association (UKWUA) have formed the Management Entity known as the Klamath Basin Power Alliance or KBPA and developed operating protocols and guidelines. KBPA has also developed a communications plan. Other guidelines are pending completion of the power sales contract between Reclamation and BPA. (See Section 17.4.1 and 17.4.3).

KBPA is working to identify eligible customers and provided a status report at the KBCC February 24th meeting (See Section 17.3). KBPA will develop a system to distribute funds to eligible customers (Section 17.4.4). KBPA is working with PacifiCorp; some of this work is pending funding for the interim power program and Federal power program.

Reclamation is working to negotiate a power sales contract with BPA. (See Section 17.6). This work includes preparation of an interconnection agreement with BPA and other technical work. KBPA is developing the technical information needed for the contract. KBPA described the workplan and schedule for this work at the April 7, 2011 KBCC meeting: 1) the pre-bid conference was April 6, 2011; 2) proposals are due May 24, 2011; 3) KBPA staff will make recommendations to Board on June 7, 2011; 4) the project begins on June 22, 2011.

KBPA will is beginning work on a financial and engineering plan. This plan will benefit from a biomass study by Cal Poly with funding from Reclamation. (See Section 17.7.2).

3.10 Williamson River Delta (Section 18.2.1)

In accordance with the preferred alternative described in the Environmental Impact Statement and with funding provided by Reclamation, Natural Resource Conservation Service and the U.S. Fish and Wildlife Service (FWS), The Nature Conservancy (TNC) completed the breaching of the levies in November 2008 to restore approximately 28,800 acre-feet (gross) of lake storage capacity when Upper Klamath Lake elevations are between 4143.3 and 4136.0 feet. The Parties have agreed to support efforts to monitor the effects on fish populations and water quality associated with this restoration project.

3.11 Agency Lake and Barnes Ranch

To achieve water management outcomes consistent with this Agreement, the diked and drained areas of Agency Lake and Barnes Ranches that once were part of Agency Lake will be operated as pumped storage within existing dikes subject to KBRA Section 18.2.2.D, with the goal of reconnecting to Agency Lake by breaching existing dikes.

Reclamation and FWS completed a transfer agreement and are working to transfer Reclamation lands. Reclamation is in the process of transferring data and documentation. (See Section 18.2.2.B).

FWS is working to complete a study by March 31, 2012 on options identified in KBRA Section 18.2.2.C. FWS had the area mapped using a LIDAR system in 2010. The data is currently being analyzed and will be available for use by the end of 2011, providing new and detailed cover data.

3.12 Wood River Wetland

To achieve water management outcomes consistent with the Restoration Agreement, the Parties' ultimate goal is to reconnect Wood River Wetland to Agency Lake when physical and biotic conditions are sufficient to provide the wetland restoration benefits for which the property was acquired.

BLM currently manages the Wood River Wetland to restore wetlands adjacent to Agency Lake. In furtherance of the Restoration Agreement and the ultimate goal, BLM, in collaboration with the KBAC and TAT is preparing a study, by March 31, 2012, that evaluates options for enhancing water management flexibility in providing benefits for water storage, fish, wildlife, and wetlands habitat. This study will consider options including, among others, whether diked and drained areas of Wood River Wetland that once comprised Agency Lake should be operated as pumped storage within existing dikes, or fully reconnected to Agency Lake by breaching dikes. Either option would result in a total water volume of approximately 16,000 acre-feet of gross storage between elevations 4143.3 and 4136.0 feet, but would provide differing arrays of water management opportunities and ecosystem benefits.

3.13 Future Storage

Reclamation is working on a study on potential sites that could provide more storage in the Upper Klamath Basin. Reclamation has provided progress reports to the KBCC (See Section 18.3.1). A copy of the Upper Klamath Basin Off-Stream Storage report will be posted on the website when it is available later this year.

3.14 Develop Drought Plan

The Restoration Agreement includes a number of programs related to water diversion and use, and improvements for fish habitat and passage. The Parties to the Restoration

Agreement recognized that additional measures would be needed in certain low-water years and committed to developing a Drought Plan under Section 19.2 of the Restoration Agreement. The Drought Plan's purpose and use is limited exclusively to implementation of the applicable terms of the Restoration Agreement by the Parties to the KBRA.

In the instances of Drought and Extreme Drought, the KBRA Parties intended that water and resource management actions be taken such that no Klamath Basin interest would bear an unreasonable portion of burdens imposed or the risk of loss or injury. However, nothing in the Drought Plan is intended to limit the applicability or effect of the Endangered Species Act or other Applicable Law. Neither the Restoration Agreement nor the Drought Plan creates responsibilities for non-Parties to the Restoration Agreement. While not altering rights of any Party or non-Party that exist outside the Restoration Agreement, Drought Plan implementation is not intended to require any action which affects water use from Clear Lake or Gerber Reservoirs, or operation of Harpold Dam.

The Drought Plan is subject to provisions of the Restoration Agreement and does not alter the authority of any Party or non-Party over the management and use of water consistent with Applicable Law and the Restoration Agreement. The Drought Plan is intended to be consistent with, and incorporates the provisions of the Restoration Agreement but does not constitute an amendment to the Restoration Agreement. Please see Section 19.2 of the KBRA for more details.

The draft was prepared by the Drought Plan Lead Entity on February 28, 2011. This group is composed of the following Parties to the KBRA: Klamath Tribes, Karuk Tribe and Yurok Tribe, Upper Klamath Water Users Association, the Klamath Water and Power Agency, the Klamath Basin National Wildlife Refuges, Oregon Water Resources Department, California Department of Fish and Game, and Trout Unlimited.

The draft Drought Plan identifies a number of strategies that would be used to deal with drought and 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 below the diversion limit in an extreme drought (e.g. water years similar to 1992 or 1994) and if these other measures were not sufficient.

The Drought Plan Lead Entity sought comment from the KBRA Parties and the public. The draft was posted on the website and copies were sent to a distribution list of interested parties. The KBCC took comment on the draft at its April 7, 2011 meeting; written comments were due on April 15, 2011. The Drought Plan Lead Entity will review the comments and work to prepare a final plan by May 31, 2011. That plan would then be reviewed by the Department of the Interior for approval and funding; this review will also include environmental review and additional public comment.

3.15 Prepare Emergency Response Plan

Reclamation and KWAPA are the lead parties for developing a draft Emergency Plan to address problems associated with dikes that might fail in the Upper Klamath Lake area. (See Section 19.3). KWAPA does not have funding to work on the plan and has requested an extension until 12 months after funding is available.

3.16 Climate Change

The KBRA Parties will determine how long-term climate change may affect the fisheries and communities of the Klamath Basin. The parties would then re-convene to negotiate any supplemental terms to the Restoration Agreement which may be necessary to address changes in the climate in order to achieve the parties' goal of maintaining sustainable fisheries and communities.

The Oregon Water Resources Department (OWRD) and California Department of Fish and Game (CDFG), in coordination with Water Managers and Fish Managers are co-lead parties for this assessment. The schedule calls for them to initiate the assessment process by February, 2012.

3.17 Interim Flow and Lake Level Program

The Secretary of the Interior will plan and implement a water leasing and purchase program under Section 20.4 to provide additional flows and maintain lake levels for fish species until the other water programs are implemented. The Interim Flow and Lake Level program (IFLLP) will require Reclamation to receive new authority in order to administer this program.

4. Regulatory Assurances

The Restoration Agreement includes commitments by the parties to take every reasonable and legally-permissible step consistent with environmental laws and regulations 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.

The Restoration Agreement also 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 general conservation plans 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.

4.1 Fish Entrainment Alleviation

Reclamation will evaluate methods and locations and construct facilities to prevent fish entrainment at key upper basin water diversion points (Section 21.1.3.A). Reclamation is working with its Denver engineering office to develop strategies. This program would be implemented prior to the removal of Klamath Basin dams, if there is an affirmative Secretarial Determination under the KHSA, so salmon species returning to the upper basin do not get stranded in irrigation canals.

4.2 California Laws

CDFG will evaluate the necessity for incidental take coverage following concurrence with an affirmative Secretarial Determination, by the Governor of California. Within 90 days of such concurrence, CDFG will advise the Parties of its determination and recommend specific procedures for obtaining any necessary coverage.

CDFG will also evaluate the necessity for revisions to existing Fish and Game Code sections 5515(b) and 3511(b). Within sixty days following concurrence by the Governor of California with an affirmative Secretarial Determination, CDFG will provide the parties with draft legislation proposing any necessary modifications to these referenced statutes. (See Section 24)

4.3 Oregon Laws

ODFW will determine schedules for any environmental reviews in coordination with potential facilities removal. (See Section 25)

5. Counties Program

5.1 Klamath County

Klamath County will develop and adopt a Klamath County Program by June 30, 2012. (See Section 27.2). The KBRA Non-Federal Parties will seek funding for this program by July 1, 2012. (See Section 27.3). The KBRA Non-Federal Parties will support funding for mitigation for property tax impacts to be dispersed by July 1, 2016.

6. Tribal Program

6.1 Tribal Participation in Fisheries and Other Programs

The Non-Federal Parties support funding for the KBRA signatory tribes to build the capability to participate in the implementation of the fisheries and conservation management programs (See Section 32). Funding is not yet available for these activities.

6.2 Economic Revitalization

The Federal and Non-Federal Parties support acquisition of funding by the Klamath Tribes to implement the Mazama Forest Project by December 31, 2011. (See Section 33.2) Support of this component is consistent with KBRA goals to provide economic stability of Klamath Basin communities. The Parties recognize that restoration of Treaty fisheries, important to the Klamath Tribes' economic stability and culture, will take decades to achieve. Implementation of the Mazama Forest Project will help provide economic stability to the Klamath Tribes and Klamath Basin residents the interim, and into the future, while fisheries restoration occurs.

The Non-Federal Parties also support funding for the Klamath Tribes, Karuk Tribe, and Yurok Tribe to develop plans to promote economic development. Each tribe will develop plans to promote long-term, sustainable growth and development. These plans will enable the Tribes to establish long term, sustainable economic growth and development within their communities, and to plan long term economic revitalization projects and strategies advancing efforts to provide a sustainable and achievable approach to lifting tribal communities out of generational poverty.

6.3 Klamath Tribes' Interim Fishing Site

CDFG, the Klamath Tribes and relevant agencies of U.S. have developed a process for joint petition to California Fish and Game Commission for the interim fishing site. CDFG and Klamath Tribe have agreed to defer the submittal of a joint petition until September 30, 2011 (See Section 34)

Klamath Hydroelectric Settlement Agreement

7. Studies, Environmental Review, and Secretarial Determination

Under the Hydroelectric Settlement, The Secretary of the Interior, in cooperation with the Secretary of Commerce and other Federal agencies, will determine whether, in his judgment, the conditions of the Hydroelectric Settlement have been satisfied, and whether facilities removal: 1) will advance restoration of the salmonid fisheries of the Klamath Basin; and 2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and tribes. The Secretary will use best efforts to complete this determination by March 31, 2012.

Facilities removal is defined as the physical removal of all or part of each of the four PacifiCorp dams to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting.

These studies will be conducted in coordination with the parties to the Hydroelectric Settlement and the public. The California Department of Fish and Game will conduct review required under the California Environmental Quality Act, and the State of Oregon

will address applicable Oregon state laws, prior to deciding whether to concur with any affirmative determination by the Secretary of the Interior.

Federal agencies are working on the studies described in this section. These studies are on schedule. Public review and comment will be scheduled for later this year.

7.1 Studies and Environmental Review: The Secretary of the Interior, in cooperation with the Secretary of Commerce and other Federal agencies, will:

- Use existing studies and other appropriate data, including those in the FERC record for this project;
- Conduct further appropriate studies, including but not limited to an analysis of sediment content and quantity;
- Undertake related environmental compliance actions, including environmental review under NEPA; and
- Take other appropriate actions as necessary to determine whether to proceed with facilities removal.

7.2 Detailed Plan for Facilities Removal: The Secretary will prepare a detailed plan that describes:

- The methods and timetable for facilities removal;
- Plans for management, removal, and/or disposal of sediments, debris, and other materials;
- A plan for site remediation and restoration;
- A plan for measures to avoid or minimize adverse downstream impacts;
- A plan for compliance with all applicable laws, including anticipated permits and permit conditions;
- A detailed statement of the estimated costs of facilities removal; and
- A statement of measures to reduce risks of cost overruns, delays, or other impediments to facilities removal.

7.3 Science and the Secretarial Determination Klamath River Dam Removal

The Klamath Hydroelectric Settlement Agreement calls for a Secretarial Determination on whether to remove four Klamath River dams in March 2012. The Secretarial Determination will be based on: 1) new scientific studies and a re-evaluation of existing studies found in the FERC record and from other sources, and 2) an evaluation of the potential environmental impacts of such an action pursuant to NEPA, CEQA, and other applicable laws.

The management of this process will be based on two tracks -- one for the scientific studies and one for the environmental review -- with both processes informing and relating back to the other. At the end of the process, the output from both tracks will then be available to support and inform a final decision by the Secretary.

7.4 Environmental Review Process

Environmental review under the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and other applicable laws will be coordinated to the extent practicable. The federal agencies and California intend to prepare a single, joint environmental document. Environmental review will include consideration of the combined impacts of both the KHSA and the KBRA, a no-action alternative, and other alternatives the Federal Team determines provide a reasonable range of possible alternatives.

The NEPA and CEQA processes will be led by the U.S. Department of the Interior (DOI) and the California Department of Fish and Game (CDFG), respectively. The Bureau of Reclamation is managing environmental compliance on behalf of the U.S. Department of Interior. Reclamation has awarded a contract to CDM Federal Programs for preparation of both NEPA and CEQA environmental compliance documents, in addition to participating in the scientific studies track. Oregon will prepare environmental documents as directed by state law.

Both NEPA and CEQA require public involvement opportunities. The DOI and the CDFG conducted seven public scoping meeting in July of 2010. In addition, many state, local and tribal governments, as well as federal agencies, have been invited to participate as cooperating agencies under NEPA. Cooperating agencies have opportunities to provide input on the Environmental Impact Statement/Environmental Impact Report prior to public review of these documents. The Departments are on track to present the public draft EIS/EIR in the fall of 2011. There will be an additional public meetings and a public comment period associated with the release of these documents. In addition, the KlamathRestoration.gov website is used to provide interested parties and the general public with frequent updates and information about the environmental review process.

7.5 Public Involvement Process on the Secretarial Determination Studies

As part of the Secretarial Determination process, the Department of the Interior held quarterly public meetings in 2010 and 2011 to gather input and provide updates to the general public. These meetings were held in various towns in the Klamath Basin. These meetings are separate from the NEPA/CEQA related meetings.

The Department has also created a project website called KlamathRestoration.gov. The Interior Department encourages the public and interested parties to use the website to track the science studies, peer review, and independent panel processes, to view science studies as they are completed, to access background documents and information on the project, to sign up for email/mailed updates on the process and to stay informed of upcoming meetings

7.6 Scientific Studies

The purpose of these studies is to fill in significant data gaps to ensure that Secretary will be able to make a fully informed decision in time for the March 2012 Secretarial Determination.

The Secretary of the Interior is committed to utilizing the best available science and the highest standards of scientific integrity to determine whether removal of four dams on the Klamath River will help restore salmonid fish to the Klamath Basin and whether dam removal is in the public interest.

The Federal Team, in assembling new and existing studies to help make this decision, will also follow guidance from the White House Office of Management and Budget on scientific peer review, using a system of checks and balances to gain the best understanding possible of the costs and benefits of potential dam removal.

The following planned studies/reports have been or will be conducted and provided to the Secretary as part of the Secretarial Determination Overview Report.

Secretarial Determination Data Collection

- Klamath Reservoir Sediment Investigation

Engineering, Geomorphology/Construction Studies & Information

- Preliminary Assessment of Gravel Mobility below Iron Gate Dam
- Value Engineering Study for Dam Removals
- Yreka Water Supply Modification Report
- Keno Dam Fish Passage Report (including cost estimates and drawings)
- Feasibility Design Summary for Dam Removals (including cost estimates and drawings)
- Design Estimating Construction (DEC) Review Report and Designers' Response
- Hydrology, Hydraulic and Sediment Analysis of Klamath Dam Removal
- Reservoir Area Management Plan (including cost estimates)

Water Quality Studies & Information

- Interpretive Report of Sediments and Contaminants
- Synthesis Report on Water Quality
- Report on Sediment/Oxygen Demand
- Nutrients and Restoration Analysis

Biological (Fish and Wildlife) Studies & Information

- Biological Synthesis/Nonuse Valuation Document
- Fish Production Modeling

- Report from Independent Science Panel on Lamprey
- Report from Independent Science Panel on Resident Fish
- Report from Independent Science Panel on Coho/Steelhead
- Report from Independent Science Panel on Chinook Salmon
- Report on Wildlife Refuge Effects
- Study of Effects of Dam Removal on Klamath River Fish and Wildlife

Economic Studies & Information

- Report on the Effects on Reservoir Recreation
- Report on the Effects on Non-fishing Recreation (whitewater, refuge)
- Report on the Effects on Real Estate
- Report on the Effects on Non-tribal Fisheries (ocean commercial/ocean & in-river recreational)
- Report on the Effects on Tribal Fisheries (ceremonial/subsistence/commercial)
- Report on the Effects on Agriculture
- Report on the Effects on Hydropower
- Report on the Effects on Tribal Health
- Report on County Impacts with changes in nontribal fisheries, reservoir recreation, non-fishing recreation, real estate, agriculture, hydropower, engineering/other costs
- Non-Use Values Survey Report

Real Estate Studies & Information

- Real Estate Evaluation Report

7.7. Science Panels and Peer Review

Described below are key processes underway to ensure scientific integrity.

Independent Science Panels: The federal team has contracted with an independent consulting firm to convene and facilitate four expert panels on Klamath River fish species under two scenarios: 1) if the four dams on the Klamath remain, and 2) if the dams are removed. These four Independent Science Panels will evaluate studies on populations of lamprey, coho salmon and steelhead trout, Chinook salmon, and resident fish including trout and suckers. The evaluations from these experts, generally university professors and resource managers, will be independent and not a product of any federal agency. As such, they will not necessarily represent the views and conclusions of the federal government. The results of the panel reviews will be considered, along with other available information, in the Interior Secretary's March 2012 determination on dam removal.

Additional information on the panels can be found on the independent contractor's website at www.pbsj.com/KlamathRiver/Pages/default.aspx.

Peer Review of the Science: New scientific studies, independent panel evaluations, and selected existing reports being considered for the Secretarial Determination will go through an expert, peer review process. In the case of the Independent Science Panels, this adds another layer of independent scientific review to that process.

Peer review means that scientific experts not involved with the Klamath Basin settlements will evaluate the scientific merits of studies being used by the federal teams to support the Secretary's decision. These experts give their professional judgments about the appropriateness of the study methods, the data generated, and the authors' conclusions. They provide their comments and recommendations to the study author(s) for response and edits.

Peer reviewers are independent scientists and their professional reputations depend on their evidence of objective evaluations. Their names and a summary of unattributed comments will be made available as part of the public record.

Peer review is used to ensure that the quality of published information meets the standards of the scientific and technical community. An official from the Department of the Interior will make the final decision as to whether a final peer-reviewed science study represents the official position of one or more federal agencies and whether the study is ready for dissemination and use. Additional information on the core elements of the peer review process and methods for implementation can be found at www.KlamathRestoration.gov.

8. Implementation of other KHSA provisions

The Hydroelectric Settlement includes detailed actions for the operation of the dams and mitigation activities prior to removal of the dams. The KBCC has reviewed the status of these actions at each of its meetings. A copy of the latest status report is attached as Appendix B.

Appendix A: Summary of the Klamath Basin Settlement Agreements

Summary

Representatives of 45 organizations, including Federal agencies, California and Oregon, Indian tribes, counties, irrigators and conservation and fishing groups have agreed to a comprehensive solution for the Klamath Basin. On February 18, 2010, most of the participants in the Klamath settlement process signed the Klamath Basin Restoration Agreement and Klamath Hydroelectric Settlement Agreement.

The Restoration 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.

The Hydroelectric Settlement lays out the process for additional studies, environmental review, and a decision by the Secretary of the Interior regarding whether removal of four dams owned by PacifiCorp: 1) will advance restoration of the salmonid fisheries of the Klamath Basin; and 2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and tribes. The four dams are Iron Gate, J.C. Boyle, Copco 1 and Copco 2 dams on the Klamath River. The Hydroelectric Settlement includes provisions for the interim operation of the dams and the process to transfer, decommission, and remove the dams.

Settlement organizations had 60 additional days to sign the agreements. The organizations that have signed the agreements are listed at the end of this summary. Organizations that participated in the settlement process and any other organization can apply to become a party. Key provisions of the agreements are summarized below; for a copy of both agreements please go to the following website: www.klamathcouncil.org.

Klamath Basin Restoration Agreement

Rebuilding Fisheries

Goal: the goals of the Fisheries Program are to: 1) restore and maintain ecological functionality and connectivity of historic fish habitats; 2) re-establish and maintain naturally sustainable and viable populations of fish to the full capacity of restored habitats; and 3) provide for full participation in harvest opportunities for fish species.

Program Elements: The Fisheries Program will: 1) provide for reintroduction of anadromous species above the current site of Iron Gate Dam, including tributaries to

Upper Klamath Lake; 2) establish 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) monitor the status and trends of fish and their habitats; and 4) assess 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 Restoration 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 the Tule Lake Basin.

Fisheries Restoration: The Restoration 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 Restoration Agreement. The fish managers will revise the plan as appropriate.

Fish Passage and Water Quality: In the Restoration Agreement the parties commit to support the 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 Reintroduction Plan will include actions 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 or Lake Ewauna.

Additional Water for Fish: The Restoration 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 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 Restoration Agreement.
- Permanent Increase in Water for Fish Management: The Restoration 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 Restoration 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 the 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 Restoration 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 Restoration 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 Restoration 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 Restoration 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 Restoration Agreement includes provisions to ensure that groundwater use under the On-Project Plan in the Klamath Reclamation Project does not have significant impacts on river flows important to fisheries. If monitoring by the U.S. Geological Survey identifies defined adverse impacts, the Restoration Agreement provides procedures to implement a remedy. The agreement also sets up a process if further technical investigations warrant other measures to respond to effects on fisheries.

Additional Water for Wildlife Refuges: The Restoration 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 (KWAPA), the Klamath Basin National Wildlife Refuges, Oregon Water Resources Department, California Department of Fish and Game, and a representative of conservation and fishing groups will develop a Drought Plan. This Plan will include a process to ensure increasingly intensive water management for agriculture, 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 Restoration 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 Restoration Agreement establishes an annual process to determine funding needs and 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 Restoration Agreement contains a number of measures to provide water supply reliability:

- On-Project Plan: The Restoration Agreement establishes 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 Restoration 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 Restoration 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 Restoration 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 Restoration 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 Restoration 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 Restoration 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 Restoration 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.

Maintain Lease Land Farming: Under the Restoration Agreement, parties will 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 recognizing the authorities and obligations of federal agencies.

Maintain Walking Wetlands and Other Wildlife and Agriculture Partnerships: The Restoration Agreement would continue a refuge-approved program that incorporates managed wetlands into agricultural crop rotations on the National Wildlife Refuges 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 Restoration 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 Restoration Agreement includes commitments by the parties 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 agreements, 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 Restoration 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 general conservation plans 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 Restoration 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 as part of the implementation of the On-Project plan and for moving water to the National Wildlife Refuges and the return of water to the Klamath River.

Counties Program: This program includes programs to reflect specific economic impacts associated with implementation of the Hydroelectric Settlement, including programs to offset potential property tax losses and address economic development.

Tribal Program: Under the Restoration Agreement, the parties will 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 Restoration 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 that

is a party for the development and planning of long-term economic revitalization projects. The parties will also support funding for the Mazama Forest Project in Klamath County, Oregon.

Implementation and Funding

A key feature of the Restoration Agreement is a commitment by the parties to cooperate fully in its implementation.

Coordination and Oversight: The Restoration Agreement establishes the Klamath Basin Coordinating Council to facilitate coordination, cooperation, collaboration, and accountability by the parties to ensure that elements of the 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 Restoration 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 Restoration 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 \$41 million. The long-term cost of the habitat, water programs, and other measures in the agreement would be about \$97 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.

Klamath Hydroelectric Settlement Agreement

Studies, Environmental Review, and Secretarial Determination

Studies and Environmental Review: The Secretary of the Interior, in cooperation with the Secretary of Commerce and other Federal agencies, will:

- Use existing studies and other appropriate data, including those in the FERC record for this project;

- Conduct further appropriate studies, including but not limited to an analysis of sediment content and quantity;
- Undertake related environmental compliance actions, including environmental review under NEPA; and
- Take other appropriate actions as necessary to determine whether to proceed with facilities removal.

Facilities removal is defined as the physical removal of all or part of each of the four PacifiCorp dams to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting.

These studies will be conducted in coordination with the parties to the Hydroelectric Settlement and the public. The California Department of Fish and Game will conduct review required under the California Environmental Quality Act, and the State of Oregon will address applicable Oregon state laws, prior to deciding whether to concur with any affirmative determination by the Secretary of the Interior as described below.

Detailed Plan for Facilities Removal: The Secretary will prepare a detailed plan that describes:

- The methods and timetable for facilities removal;
- Plans for management, removal, and/or disposal of sediments, debris, and other materials;
- A plan for site remediation and restoration;
- A plan for measures to avoid or minimize adverse downstream impacts;
- A plan for compliance with all applicable laws, including anticipated permits and permit conditions;
- A detailed statement of the estimated costs of facilities removal; and
- A statement of measures to reduce risks of cost overruns, delays, or other impediments to facilities removal.

Secretarial Determination: The Secretary of the Interior will use this information, in cooperation with the Secretary of Commerce and other Federal agencies, to determine whether, in his judgment, the conditions of the Hydroelectric Settlement have been satisfied, and whether facilities removal: 1) will advance restoration of the salmonid fisheries of the Klamath Basin; and 2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and tribes. The Secretary will use best efforts to complete this determination by March 31, 2012.

Conditions: The Hydroelectric Settlement describes the conditions that need to be satisfied before the Secretarial Determination:

- Passage of federal legislation materially consistent with the proposed legislation to implement the Hydroelectric Settlement and the Restoration Agreement;
- The states of California and Oregon have authorized funding for facilities removal;
- Development of a plan to address any costs over the limits in the Hydroelectric Settlement; and

- Designation of a Dam Removal Entity, and, if the DRE is a non-federal entity, a finding by the Secretary that the entity meets the qualifications specified in the Hydroelectric Settlement, the states of California and Oregon concur, and the designated DRE has committed to perform facilities removal within the cost cap.

The Hydroelectric Settlement also identifies other actions that need to be taken prior the Secretarial Determination.

Affirmative Determination: In the event of an affirmative determination, the Secretary will also decide whether the Department of the Interior or a non-federal entity will serve as the DRE. California and Oregon will provide notice to the Secretary and other parties within 60 days whether each state concurs with the affirmative determination. In its concurrence decision, each state will consider whether: 1) significant impacts identified in its environmental review can be avoided or mitigated as provided under state law; and 2) facilities removal will be completed within the state cost cap. If the Secretary selects a non-federal DRE, the states would also decide whether to concur with that selection.

Negative Determination: If the Secretary determines not to proceed with facilities removal, the Hydroelectric Settlement terminates unless the parties agree to a cure for this potential termination event. Prior to adopting or public release of such a determination, the Secretary will notify the parties of his tentative determination and its basis. The parties will consider whether to amend the Settlement in a manner that will permit the Secretary to make an affirmative determination.

Costs

Cost cap: The Hydroelectric Settlement sets a cost cap of \$450 million for facilities removal. In addition, pending regulatory approval, the Hydroelectric Settlement allows for the recovery of costs of the existing investment in the facilities, the ongoing operating costs and the costs of replacement power.

Funding sources: \$200 million of the costs would come from customer contributions on a pro rata basis (up to \$184 million from PacifiCorp's Oregon consumers and up to \$16 million from customers in California); Oregon has passed the law necessary to begin the collection of the Oregon share. These contributions are designed so they would not increase any customer's rate by more than two percent. In addition, up to \$250 million to fund the difference between the costs of facilities removal and the customer contribution would come from the State of California through the sale of bonds or another appropriate funding mechanism. The Federal government and its taxpayers will not be responsible for facilities removal costs.

Management of the funds: The states of California and Oregon would establish trust accounts and provide instructions for the management and distribution of the funds. If the customer contributions are determined to result in rates that are not fair, just, and reasonable, the surcharges would be refunded to customers in accordance with the Oregon Surcharge Act and the trustee instructions. If the California or Oregon public

utilities commissions determine that there are excess funds in the accounts, the surplus funds would be returned to customers. If one or more of the dams are not removed, any remaining funds would be returned, first, to costs of relicensing, and then to customers.

Implementation

Interim Measures: The Hydroelectric Settlement includes detailed actions for the operation of the dams and mitigation activities prior to removal of the dams.

Dam Removal Entity: The DRE must have the following capabilities:

- Accept and expend non-federal funds;
- Seek and obtain necessary permits and other authorizations to implement facilities removal;
- Enter into appropriate contracts;
- Accept transfer of title to the Facilities for the express purpose of facilities removal;
- Perform, directly or by oversight, facilities removal;
- Prevent, mitigate, and respond to damages the DRE causes during the course of facilities removal, and, consistent with applicable law, respond to and defend associated liability claims against the DRE, including costs thereof and any judgments or awards resulting therefrom;
- Carry appropriate insurance or bonding or be appropriately self-insured to respond to liability and damages claims against the DRE associated with facilities removal; and
- Perform such other tasks as are reasonable and necessary for facilities removal, within the authority granted by the authorizing legislation or other applicable law.

Definite Plan: The DRE would develop a definite plan for facilities removal and include it as a part of any applications for permits or other authorizations. The definite plan will be consistent with the Settlement, the authorizing legislation, the detailed plan, and the Secretarial determination. The Settlement includes a detailed list of the elements that would be in the detailed plan.

Schedule: In the event of an affirmative determination by the Secretary, the target date to begin decommissioning the facilities is January 1, 2020. Preparatory work for facilities removal may be undertaken by the DRE before January 1, 2020, consistent with the Secretarial determination, the definite plan, applicable permits, and other provisions of the settlement. The target date for facilities removal is December 31, 2020.

The Hydroelectric Settlement also provides a procedure to accelerate facilities removal by up to twelve months if certain conditions are met. If the parties determine that the schedule for facilities removal must extend beyond December 31, 2020, then the parties will also consider whether 1) modification of interim measures is necessary to appropriately balance costs to customers and protection of natural resources, and 2) continuation of the collection of the customer surcharges up to the maximum customer contribution is warranted.

Yreka water system: The parties understand that facilities removal may affect the City of Yreka. In recognition of this potential, the Hydroelectric Settlement includes provisions to mitigate impacts to the city's water supply system.

Keno: If the Secretary makes an affirmative determination, PacifiCorp and the Bureau of Reclamation would enter into an agreement to transfer Keno Dam to Reclamation. In preparation for such a transfer, the Secretary, in consultation with the affected parties would study environmental compliance, water quality, and fish passage with the goal of addressing these issues and maintaining the benefits the dam currently provides.

Transfer: PacifiCorp would transfer each facility when the DRE provides notice that all necessary permits and approvals have been obtained for removal of a facility, all contracts necessary for facility removal have been finalized, and facility removal is ready to commence. After the transfer, the DRE would remove the facility.

Legislation: Implementation of the agreements would require legislation. The parties are developing a proposal for federal legislation to recommend to the Administration and Congress. The proposed legislation, based on Appendix A-1 of the KBRA and Appendix E of the KHSa, includes the authorization for federal agencies to implement the two agreements and specific authorities that require Congressional action. Under the provisions in the proposed federal legislation related to the Hydroelectric Settlement, operation of the four dams would continue under FERC annual licenses; in the event of an affirmative determination, the legislation would authorize the decommissioning and removal process in the Hydroelectric Settlement. In the event of a negative determination or if the Hydroelectric Settlement terminates, PacifiCorp would return to the FERC relicensing process. Another provision of the proposed legislation would provide liability protection for PacifiCorp from the effects of removing a dam after it had been transferred to the Dam Removal Entity.

Klamath Settlement Organizations

United States

National Marine Fisheries Service

The United States Forest Service

The 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

PacifiCorp

Tribes

Karuk Tribe
Klamath Tribes
Yurok Tribe

Counties

Humboldt County, California
Klamath County, Oregon

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
Pioneer District Improvement Company
Plevna District Improvement Company
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

Upper Klamath Water Users Association

Non-Governmental Organizations

American Rivers
California Trout
Institute for Fisheries Resources
Northern California/Nevada Council Federation of Fly Fishers
Pacific Coast Federation of Fishermen's Associations
Salmon River Restoration Council
Trout Unlimited

Appendix B: Klamath Hydroelectric Settlement Agreement Implementation Progress

March 31, 2010

General Settlement Implementation

Regulatory Filings - On March 18, 2010, in accordance with KHSA Sections 4.1.1 and 7.3.9, PacifiCorp filed its Economic Analysis and requested the California and Oregon Public Utility Commissions establish customer surcharges to collect the customer contribution towards dam removal costs and adjust the depreciation schedule for the Klamath hydroelectric facilities in contemplation of their potential removal in 2020. On September 16, 2010, the Oregon Public Utility Commission (OPUC) issued a final order affirming the dam removal surcharges for Oregon customers and a depreciation schedule for the facilities that provides for removal in 2020. The OPUC order is available at <http://apps.puc.state.or.us/orders/2010ords/10-364.pdf>. The Oregon customer surcharge of \$172 million over ten years will provide approximately \$184 million in funding for dam removal in 2020.

On February 22, 2011 the California Public Utilities Commission (CPUC) issued a proposed decision affirming surcharges for PacifiCorp's California customers and a depreciation schedule that provides for a removal of the facilities in 2020. The proposed decision is available at <http://docs.cpuc.ca.gov/EFILE/PD/131033.PDF>. The CPUC is expected to issue a final order on the California surcharge filing in April 2011.

401 Abeyance - On March 19, 2010, PacifiCorp requested, pursuant to Section 6.5 of the KHSA and on behalf of the Parties except ODEQ, to the California State Water Resources Control Board (SWRCB) and the Oregon Department of Environmental Quality (DEQ) that permitting and environmental review for PacifiCorp's licensing activities be held in abeyance during the Interim Period. This request was subsequently granted by DEQ on March 29, 2010 and the SWRCB passed a resolution granting the abeyance, with conditions, on May 18, 2010. On September 16, 2010, PacifiCorp filed a request to the SWRCB to amend its abeyance resolution to accommodate the fact that federal legislation was not introduced in Congress by June 18, 2010. A number of parties to the KHSA wrote the SWRCB to express support for this request and the abeyance resolution was amended on October 5, 2010 to incorporate a May 17, 2011 milestone for enacting federal legislation.

Local Community Power – Pursuant to Section 5.3, Interior and PacifiCorp have discussed the need to identify eligible loads that may qualify for federal power. When Interior has identified these loads, PacifiCorp and Interior plan to identify necessary information about those loads to inform planning on the potential delivery of federal power to serve eligible loads.

Keno Transfer - Pursuant to KHSA Section 7.5.2, PacifiCorp and the Bureau of

Reclamation (Reclamation) have conducted conference calls and shared information on the potential transfer of the Keno development. PacifiCorp has cooperated with Reclamation in completing a Safety of Dams Inspection of the Keno development, as well as transferring project drawings and information necessary for the Department of the Interior to complete the Keno facility study process described in Section 7.5.1. Reclamation is continuing its studies of Keno facility transfer and PacifiCorp and Reclamation are discussing the framework for a transfer agreement for the Keno facility. PacifiCorp and Reclamation expect to have an agreement in principle for Keno transfer by June 1, 2011.

Lease of State-Owned Beds and Banks - Pursuant to Section 2.5, PacifiCorp submitted special use applications to the Oregon Department of State Lands on April 16, 2010 for leases authorizing occupancy of submerged and submersible lands occupied by J.C. Boyle and Keno dams. PacifiCorp and the State of Oregon are currently finalizing lease terms for these lands.

Interim Measures Implementation

Interim Measure No. 1 – Interim Measures Implementation Committee

Parties to the KHSA have designated their representatives to the Interim Measures Implementation Committee (IMIC) and the IMIC has been meeting quarterly since the KHSA was signed. The IMIC met three times in 2010 and conducted its first meeting of 2011 on February 10, 2011 in Portland. The next IMIC meeting is scheduled to be conducted in May, 2011.

Interim Conservation Plan Measures (Interim Measures Nos. 2-5)

PacifiCorp has been implementing Interim Conservation Plan (ICP) measures to benefit listed species (Lost River and shortnose suckers and coho salmon) since the Interim Conservation Plan was developed in November 2008. Pursuant to Section 6.2 of the KHSA, PacifiCorp has engaged in technical discussions with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) regarding applications for incidental take permits under Section 10 of the Endangered Species Act (ESA) through Habitat Conservation Plans to cover interim operations of the Project prior to potential dam removal. PacifiCorp has also met with and briefed the Klamath, Karuk, Yurok, and Hoopa Tribes on the development and implementation of ICP measures and has requested comments from the Tribes on early drafts of the Habitat Conservation Plans. PacifiCorp filed a Habitat Conservation Plan for Coho Salmon and related Section 10 application materials with NMFS on February 14, 2011, and expects to transmit a final application to the USFWS in the near future.

Interim Measure No. 2 – California Klamath Restoration Fund/Coho Enhancement Fund

On February 15, 2011, PacifiCorp made its third payment of \$510,000 into the Coho Enhancement Fund, which is being administered by the National Fish and Wildlife

Foundation. Monies available from the Coho Enhancement Fund will be used to implement habitat enhancement projects that meet the goals and objectives outlined in PacifiCorp's Habitat Conservation Plan for Coho Salmon recently filed with NMFS. Projects implemented under the Coho Enhancement Fund have included project recommended by the California Department of Fish and Game (CDFG) and NMFS. Projects selected and implemented under the Coho Enhancement Fund in 2009 included the following:

2009 Coho Enhancement Fund Projects

Seiad Creek Channel Reconstruction - Phase 1
Seiad Creek Off-Channel Pond Habitat Construction
Scott River Diversion Improvements: Shackelford, French and Etna Creeks
Scott River - Denny Ditch Fish Screen Installation

Projects selected for funding under the Coho Enhancement Fund in 2010 included the following:

2010 Coho Enhancement Fund Projects

Shasta River Coho Habitat Protection
Grenada Irrigation District – Huseman Relocation Instream Phase
Improving Streamflow for Coho Salmon in the Scott River
Seiad Creek Channel Restoration – Phase II
Middle Klamath Restoration Implementation Planning
Middle Klamath Coho Rearing Habitat Enhancement Project

Interim Measure No. 3 – Iron Gate Turbine Venting

Passive venting of the Iron Gate turbine was successfully tested at the Iron Gate powerhouse in the fall of 2008. Based upon this initial testing, a blower system was installed in 2009 to determine if forced air introduction into the Iron Gate turbine draft tube would result in additional dissolved oxygen (DO) improvement in tailrace discharges. This initial system was tested inconclusively prior to its failure shortly after it became operational. PacifiCorp installed a new blower system at the Iron Gate powerhouse in January 2010. This blower system was successfully tested after initial installation. Based upon dissolved oxygen monitoring below the Iron Gate powerhouse indicating DO levels were dropping below 85 percent saturation, the blower system was engaged on June 30, 2010. PacifiCorp conducted additional testing this fall and monitored DO improvement resulting from the operation of this blower system. Additional testing in 2011 will evaluate different modes of operation of the turbine venting system to determine optimum system operation on an ongoing basis.

Interim Measure No. 4 – Hatchery and Genetics Management Plan

After consultation with CDFG and NMFS, PacifiCorp retained a consultant in early 2010 to assist in the development of a Hatchery and Genetics Management Plan (HGMP) for Iron Gate Hatchery. This consultant has worked with CDFG and PacifiCorp to develop an HGMP for review and approval by NMFS. PacifiCorp provided a draft HGMP to NMFS in mid-July and subsequently presented and discussed the draft HGMP to NMFS

and basin Tribes and requested comments on the draft HGMP. CDFG and PacifiCorp submitted a final HGMP with a Section 10 application to NMFS on September 16, 2010 for its review and approval. This application was amended on March 17, 2011 to incorporate recent revisions to the HGMP. The HGMP was prepared to meet applicable regulatory requirements and to address the recommendations of the Hatchery Scientific Review Group. PacifiCorp is funding, and CDFG is implementing, a number of early actions called for in the HGMP such as genetic analysis for broodstock management and bird netting on coho raceways to reduce predation.

Interim Measure No. 5 – Iron Gate Flow Variability

Specific procedures for implementing flow variability at Iron Gate dam are still under development, although NMFS has developed a recommended Fall Flow Variability Plan for Iron Gate Dam to assist in the implementation of variable flows at Iron Gate. Consistent with Term and Condition 2A of Reclamation's March 2010 Biological Opinion, a technical group including NMFS, Reclamation, PacifiCorp, USFWS, states, and tribes, has been meeting to recommend changes to flows during the November through February time period and the delivery of variable flows at Iron Gate Dam. In response to a recommendation from the technical workgroup, and following agreements and clarifications between PacifiCorp, Reclamation, and NMFS regarding flow variability and coverage under the Endangered Species Act of PacifiCorp's actions necessary to implement flow variability, a planned pulse flow event began on February 9, 2011. The pulse flow event resulted in flows below Iron Gate dam in excess of 5,000 cfs and was planned to use no more than the 18,600 acre-feet of water made available for the flow variability program as a result of lower Klamath River flows during October 2010. During the flow event, monitoring was conducted by several basin entities to assess the potential effectiveness of the flow event in improving habitat conditions in the Klamath River.

Interim Measure No. 6 – Fish Disease Relationship and Control Studies

PacifiCorp provided funding of \$500,000 to the National Fish and Wildlife Foundation, the administrator of this fund, in 2009. In cooperation with NMFS, research projects have been selected to investigate the effects of scour on the polychaete that is the intermediate host for *C. shasta*. Other work being funded under this measure includes water quality monitoring and polychaete habitat monitoring. Some of the results from the first year of monitoring were discussed at the annual Fish Disease workshop in Fortuna, CA on March 22, 2011.

Non-ICP Interim Measures

Interim Measure No. 7 – J.C. Boyle Gravel Placement and/or Habitat Enhancement

The IMIC formed a subgroup with local knowledge to assist PacifiCorp with implementation of this measure. With the input of the IMIC subgroup, PacifiCorp retained a consultant to assist with implementation of this measure and a site visit occurred on December 16, 2010. The consultant, PacifiCorp and the IMIC subgroup met to discuss permitting requirements and select gravel augmentation sites. Environmental analysis and permitting preparations are underway and a draft gravel augmentation plan

was released to the IMIC for review on March 10, 2011.

Interim Measure No. 8 – J.C. Boyle Bypass Barrier Removal

PacifiCorp consulted with the IMIC during the May 13, 2010 meeting to begin the scoping and planning for removal of the sidecast rock barrier. PacifiCorp has discussed the means and methods for removal of the barrier with contractors to develop a conceptual plan for implementation following Concurrence with the Secretarial Determination. Because of the similarities in work scope and location between this measure and Interim Measure 7, the IMIC determined that environmental review and permitting for these measures should proceed in tandem. Thus, permitting and environmental review of this measure is being handled in conjunction with Interim Measure 7.

Interim Measure No. 9 – J.C. Boyle Powerhouse Gage

PacifiCorp is continuing to provide the U.S. Geological Survey with funding for the operation of the existing gage below the J.C. Boyle powerhouse (USGS Gage No. 11510700). This gage data is available at http://waterdata.usgs.gov/usa/nwis/uv?site_no=11510700.

Interim Measure No. 10 – Water Quality Conference

PacifiCorp, the Oregon Department of Environmental Quality (DEQ), and the North Coast Regional Water Quality Control Board (NCRWQCB) have been collaborating on the purpose and scope of the workshop and a steering committee has been formed to oversee the workshop. The NCRWQCB has been soliciting additional funding for this workshop which may increase its effectiveness. The water quality workshop is planned to occur in 2011.

Interim Measure No. 11 – Interim Water Quality Improvements

PacifiCorp, in consultation with the IMIC, has developed study plans for pre-Secretarial Determination studies and pilot projects as outlined in this interim measure. Work to be conducted under this interim measure prior to the Secretarial Determination will include 1) continued development of a water quality accounting and tracking framework, 2) evaluation of treatment provided by wetlands, 3) testing of an intake cover for water quality control at Iron Gate reservoir, 4) pilot testing of environmentally-safe algaecide on Copco reservoir water, 5) evaluation of J.C. Boyle reservoir dissolved oxygen improvement technologies, and 6) evaluation of organic matter removal from Keno reservoir and the Upper Klamath River. These studies and pilot projects are underway and will inform the selection and implementation of water quality improvement projects following an affirmative Secretarial Determination, should that occur.

Interim Measure No. 12 – J.C. Boyle Bypass Reach and Spencer Creek Gaging

PacifiCorp completed installation of the J.C. Boyle bypass reach gage in mid-August and the gage is functional and logging data. PacifiCorp recently conducted field work to develop a rating for this gage during high flows in the Klamath River. For the Spencer Creek gage, PacifiCorp is in discussions with the Oregon Water Resources Department about contributing ongoing funding for the maintenance and telemetry of data from this

existing gage and for migrating J.C. Boyle bypass gage data to the OWRD website. Gaging data for the Spencer Creek gage is available at the following website:

http://apps2.wrd.state.or.us/apps/sw/hydro_near_real_time/display_hydro_graph.aspx?station_nbr=11510000

Interim Measure 13 – Flow Releases and Ramp Rates

PacifiCorp is maintaining flow releases and ramp rates consistent with the existing FERC license and the requirements of applicable biological opinions as contemplated by this interim measure.

Interim Measure 14 – 3,000 cfs Power Generation

As contemplated by this interim measure and pursuant to the Water Rights Agreement between PacifiCorp and the State of Oregon contained in Exhibit 1 of the KHSA, the Oregon Water Resources Department issued a limited license to PacifiCorp on April 20, 2010 authorizing diversions to the J.C. Boyle powerhouse of up to 3,000 cfs. This limited license was renewed on March 9, 2011. During the August 18, 2010 meeting the IMIC discussed the framework of a protocol to quantify and manage any additional flows in the Klamath River made available through implementation of the KBRA and to coordinate the release of those flows with the operation of the J.C. Boyle facility. The protocol was reviewed and approved by the IMIC at the November 16, 2010 meeting and was subsequently discussed at the December Technical Coordinating Committee and Klamath Basin Coordinating Committee meetings in Redding, California.

Interim Measure No. 15 –Water Quality Monitoring

PacifiCorp has collaborated with NCRWQB, EPA, BOR, ODEQ, and the Karuk and Yurok tribes to develop a 2011 water quality plan that includes baseline and public health monitoring from Link River dam to the estuary. Monitoring began in February and will continue through December 2011. The baseline monitoring plan occurs on a monthly time step and public health monitoring is performed weekly during the algal bloom period. Monitoring entities include BOR, PacifiCorp, and the Karuk and Yurok tribes. Public health data is distributed every two weeks to inform regulatory entities on the need to post public health advisories. The 2011 monitoring plan includes a special study to compare periphyton species and algal biomass spatial and temporal trends in the Klamath River from June to October using a standard sampling method. PacifiCorp and the NCRWQCB have cooperated in posting the reservoirs in response to monitoring results to provide notice of public health risks when algal cell counts are above established guidelines. PacifiCorp is working with NCRWQCB and the larger Klamath Basin Monitoring Program (KBMP) to post the plans, data, and summary reports from this measure on the KBMP website.

Interim Measure No. 16 –Water Diversions

Implementation of this measure is not contemplated to occur until just prior to the reintroduction of anadromous fish above Copco reservoir as a result of potential dam removal.

Interim Measure No. 17 – Fall Creek Flow Releases

PacifiCorp adjusted instream flow releases in the Fall Creek bypass reach from 0.5 cubic feet per second (cfs) to 5 cfs on May 18, 2010. This flow release was required to be made within 90 days of the Effective Date, which was May 19, 2010. The additional instream flow release is being provided through an existing bypass culvert at the Fall Creek diversion dam. PacifiCorp's operations staff are continuing to monitor this flow release during the course of their routine visits to the Fall Creek diversion dam to ensure that the instream flow is maintained.

Interim Measure No. 18 – Hatchery Funding

PacifiCorp is now responsible under this interim measure for funding 100 percent of the operations and maintenance costs of Iron Gate Hatchery and is now funding these additional costs. PacifiCorp has also purchased a fish marking system for the Iron Gate Hatchery to continue 25 percent constant fractional marking of chinook salmon produced at the hatchery, which was begun in 2009. The hatchery marking trailer was delivered to the hatchery in December 2010 and will be used for the spring 2011 marking season. The increased marking percentage at Iron Gate hatchery is expected to provide better data on the contribution of the hatchery to basin salmon escapement, which should improve fisheries management.

Interim Measure No. 19 – Hatchery Production Continuity

PacifiCorp has begun the study to evaluate hatchery production options that do not rely on the current Iron Gate Hatchery water supply. PacifiCorp engineering and environmental staff are researching available water supply options in the area and historic records on hatchery water supply options considered at the time Iron Gate Hatchery was constructed. PacifiCorp has developed some preliminary alternatives for continued hatchery operations that should be evaluated with further engineering and economic study and is evaluating past work conducted during the relicensing process that evaluated hatchery operations. PacifiCorp anticipates hiring an engineering consultant to assist with further study and intends to have this consultant engaged in the near future when the outlines of the engineering study requirements are completed.

Interim Measure No. 20 – Hatchery Funding After Removal of Iron Gate Dam

No implementation actions have occurred for this interim measure given that this requirement begins only following potential removal of Iron Gate dam.

Interim Measure No. 21 – BLM Land Management Provisions

The Bureau of Land Management provided PacifiCorp with a proposed 2010 work plan on June 9, 2010 for work activities proposed to be performed under this interim measure. PacifiCorp has reviewed the work plan and had subsequent correspondence with BLM to clarify activities that will be performed and is preparing to transfer funds to support the proposed work activities.