

Summary

Draft Klamath Hydroelectric Settlement Agreement

September 30, 2009

Summary and Status

Klamath River Basin organizations have developed a draft Klamath Hydroelectric Settlement Agreement and sent it to their organizations for review prior to making decisions whether to sign it.

The Hydroelectric Settlement lays out the process for additional studies, environmental review, and a decision by the Secretary of the Interior regarding whether 1) removal of the lower four dams on the Klamath River that are owned by PacifiCorp 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 Hydroelectric Settlement includes provisions for the interim operation of the dams and the process to transfer, decommission, and remove the dams.

For over two years the Klamath Negotiation Group, representing 28 federal, state, tribal, county, irrigation, conservation, fishing organizations and PacifiCorp, has been working to develop a comprehensive solution for the Klamath Basin. All of the parties agreed to public release of the draft Hydroelectric Settlement to inform the public and, where appropriate, to enable public review before the organizations take final action.

Most of these organizations are also negotiating the Klamath Basin Restoration Agreement; that process began in 2007. A draft of that agreement was released to the public in January of 2008; final completion of the Restoration Agreement depended on the completion of the Hydroelectric Settlement and the two agreements will be signed concurrently.

The Klamath Negotiation Group organizations are listed at the end of this summary. Key provisions of the Hydroelectric Settlement are summarized below; for a copy please go to: www.doi.gov. All of the documents related to the Klamath Restoration Initiative are available at: <http://www.edsheets.com/Klamathdocs.html>.

Scope of the Agreement

Introduction: This section includes recitals that provide background for the agreement; including the United States' obligations as trustee to Indian tribes. The Introduction lists the parties, the purpose of the Hydroelectric Settlement, compliance with legal responsibilities, reservations and other protections.

Implementation of the Settlement: This section describes the duty to support the Settlement, including the legislation needed to implement parts of Settlement. It describes the regulatory approvals needed and the obligations of the parties to implement and defend the Settlement.

Studies, Environmental Review and Secretarial Determination: This section describes the process to develop additional studies and complete the environmental reviews necessary for the Secretary of the Interior to make a determination whether dam removal should proceed. It also includes the standards for the determination and the conditions that have to be in place prior to the determination.

Costs: This section describes the source and management of funding for dam removal and the cost recovery of PacifiCorp's remaining investment in the dams, costs of interim measures and replacement power.

Local Community Power: This section includes provisions between PacifiCorp and other parties regarding power development, distribution of power, and other related provisions.

Interim Operations: This section describes the operations of the dams prior to dam removal. It also describes the relationship to the Federal Energy Regulatory Commission relicensing process.

Dam Removal Entity, Transfer, Decommissioning, and Removal: This section describes the capabilities and responsibilities of a Dam Removal Entity (DRE), provisions for a definite plan, schedule for dam removal, the process for transfer, decommissioning, and removal of the dams, and other related provisions.

General Provisions: This section describes the operational details of the Hydroelectric Settlement including the process for amendments, dispute resolution, severability, termination, and governing law.

Studies, Environmental Review, and Secretarial Determination

Studies: 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, including but not limited to environmental impact studies, EPA Act proceedings, and other pertinent material;
- 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, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions. The four dams are J.C. Boyle, Iron Gate, Copco 1, and Copco 2.

These studies will be conducted in coordination with the parties to the Hydroelectric Settlement and the public. The environmental review will address the requirements of the National Environmental Policy Act, the California Environmental Quality Act, and Oregon environmental review procedures.

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.
- 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 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 proposal 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 excess costs over the limits in the Settlement.
- 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 Settlement, the states of California and Oregon concur, and the designated DRE has committed to perform facilities removal within the cost cap.
- An agreement to transfer Keno Dam from PacifiCorp to the Department of the Interior.

Affirmative Determination: In the event of an affirmative determination, the Secretary will also decide whether the Department of the Interior will serve as the Dam Removal Entity. 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: (i) significant impacts identified in its environmental review can be avoided or mitigated as provided under state law; and (ii) facilities removal will be completed within the state cost cap. If the Secretary selects a non-federal Dam Removal Entity, 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.

Funding sources: No more than \$200 million of the costs would come from customer contributions on a pro rata basis, with the initial surcharge set to collect \$172 million (\$158 million from PacifiCorp's Oregon customers and \$14 million from PacifiCorp's California customers). Oregon has passed the law necessary to authorize the collection of the Oregon share. The customer cost cap contributions are designed so they would not increase general rates by more than two percent. In addition, \$250 million would come from the sale of bonds in California. The United States 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 consumers. If one or more of the dams are not removed, any remaining funds would be returned to consumers.

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 definite plan.

Permits: The DRE will use the definite plan in applications for any applicable federal, state, and local permits for facilities removal.

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 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 the 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 parties agreed to provisions to mitigate impacts to the city's water supply system.

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.

Keno: If the Secretary makes an affirmative determination, PacifiCorp and Interior would enter into an agreement to transfer Keno Dam and related facilities to Interior. 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.

Legislation: Implementation of the Hydroelectric Settlement would require legislation. Proposed state legislation is included in the draft Hydroelectric Settlement. The parties are developing a proposal for Federal legislation to recommend to the Administration and Congress. Under the proposed Federal legislation, the four dams would continue to operate under annual Federal Energy Regulatory Commission 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.

Organizations in the Klamath Negotiation Group

United States

National Marine Fisheries Service
Department of the Interior

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

Hoopa Valley Tribe
Karuk Tribe
Klamath Tribes
Yurok Tribe

Counties

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

Irrigators

Klamath Water Users Association
Klamath Water and Power Authority
Upper Klamath Water Users Association

Non-Governmental Organizations

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