

**Klamath Basin Restoration Agreement/Klamath Hydroelectric Settlement Agreement
“Benefits and Commitments”**

Federal Government—Federal Taxpayers		
Obligations Given	Benefits Received	Risks of Doing Nothing
<ul style="list-style-type: none"> • Will use best efforts to complete environmental review and issue determination by March 31, 2012. • Support “Interim Measures” for flexibility in managing fishery impacts of the hydropower project prior to dam removal. • Acquire power contract with BPA to serve all eligible loads within BPA’s authorized geographic area. • Fish agencies will cooperate with PacifiCorp in providing ESA protection through an Interim Protection Plan. • Commit to (i) work more closely with stakeholders to rationalize resource management, particularly water; (ii) become a party to the KBRA and pursue its goals; (iii) better coordination among agencies managing resources. • Support appropriations for comprehensive strategy for basin issues and settlements. 	<ul style="list-style-type: none"> • United States can reconcile conflicting commitments to Indian tribes, settlers/homesteaders, environmental laws. • Clearer or more comprehensive management direction; management accepted by stakeholders; litigation and community conflict minimized. • More efficient and cost-effective use of restoration resources. • Agencies no longer subject to conflicting demands of stakeholders and conflicting missions on the ground. • Agencies are able to plan and implement long-term solutions, rather than always being in reactive, band-aid mode. • Water supply problems for Klamath Irrigation Project and Klamath National Wildlife Refuges are minimized. • Release of certain claims by Indian tribes for federal resource mismanagement. 	<ul style="list-style-type: none"> • \$600M annual economy of the Klamath Basin remains constantly under threat; agricultural economy in disabbling turmoil; fishing economy in terminal decline. • Frequent federal relief packages required; <i>ad hoc</i> appropriation of tens of millions of dollars. • Constant community strife sometimes escalating to violence. • Incessant litigation precluding rational resource management agencies must use band-aids instead of long-term solutions. • Continuing fishery decline, concomitant risks of ESA listings and complications. • Federal agencies remain ground-zero for stakeholder complaints, anger, and law enforcement challenges. • Federal liability for abrogation of Tribal Treaties remains.

State and Local Governments

Obligations Given	Benefits Received	Risks Of Doing Nothing
<ul style="list-style-type: none"> • Oregon and California authorize and manage funding for costs of dam removal. • Oregon uses lottery funds to offset indirect costs of dam removal. • Oregon modifies its fish management policies to accommodate return of anadromous fish to Upper Klamath Basin. • States commit to increased coordination of fishery management with federal agencies and stakeholders. 	<ul style="list-style-type: none"> • Oregon gets anadromous fish back; increased recreational fishing economy; advances state-wide salmon management plans. • Coastal fisheries in both states no longer subject to closures due to weak-stock Klamath River fisheries; coastal economies stabilized and improved. • Better coordination and cooperation with federal resource management agencies. • Relief from prolonged relicensing procedures, water quality permitting, fishery protection, power rate proceedings, etc., for these dams. • Offsets for negative impact on county tax bases. 	<ul style="list-style-type: none"> • Local economies continue decline; revenue bases compromised. • Unemployment persists; no traction for remedies at local level. • State-wide salmon plans frustrated. • Coastal fishing communities continue to experience disastrous years and job losses. • Agricultural communities continue to face unmanageable uncertainties and job losses. • Risks of renewed litigation.

Indian Tribes		
Obligations Given	Benefits Received	Risks Of Doing Nothing
<ul style="list-style-type: none"> • Forbear exercise of senior water rights that may interfere with specified agricultural diversions. • Support for “Interim Measures” for management of hydro project and mitigation for water quality problems pending dam removal. • Settle 40 years of water rights litigation over Basin water uses. • Assist in developing “regulatory assurances” to benefit water diverters as anadromous species are reintroduced. • Release certain claims against the U.S. for resource mismanagement under treaties and related federal promises. 	<ul style="list-style-type: none"> • Revitalized fisheries resulting from dam removal and reliably funded, long-term habitat restoration. • Revitalized fisheries mean restored spiritual, economic and physical well-being. • Greater participation in resource management decisions; tribal agencies better funded to enable participation. • Klamath Tribes reacquire a portion of their homeland lost to Termination; forest related jobs for Indians and non-Indians. • Litigation burdens alleviated; costly and contentious dam relicensing proceedings avoided. • Community strife much reduced; anger directed at Indians dissipated. 	<ul style="list-style-type: none"> • Continued fishery declines, probably to extinction; tribal economies even worse than currently, with no solutions in sight. • Loss of livelihoods, cultural identity, spiritual well-being, financial foundations. • Historical resource conflicts will multiply and intensify. • Continued costly and contentious litigation. • Inability to work toward resource restoration. • Tribal unemployment continues to be extraordinarily high. • Continued violation by United States of its treaty and other promises; increased federal liabilities for abrogation of Treaty obligations.

Electric Customers and PacifiCorp

Obligations Given	Benefits Received	Risks Of Doing Nothing
<ul style="list-style-type: none"> • Forego another operating license; forego return on investment in continued Klamath dam operations. • Undertake and fund well over \$25M in “Interim Measures” to protect fisheries, anticipate effects of dam removal, etc. • Support customer funding of up to \$200M in surcharges to pay for removal. • Obtain PUC approval of dam removal surcharges, and transfer of dams and related property. • Transfer Keno facility to Interior; transfer certain project lands to states. • Transfer certain in-stream water rights after dam removal under terms of KHSA • Transfer hatchery facilities to California while continuing funding hatchery operations for 8 more years; fund study to inform hatchery operations post-dams. • Assistance in delivery of federal power to eligible customers. 	<ul style="list-style-type: none"> • Ratepayer’s exposure to costs of dam removal is capped at \$200M. • PacifiCorp protected from liability related in any way to dam removal by another entity. • Hydroelectric Project protected from ESA liability through Interim Operations measures and interim protection. • Avoids expense of relicensing, installation of fishways, fish passage structures, water quality compliance (estimated to be at least \$4000M). • Customers benefit from generation until decommissioning; increased interim generation at J.C. Boyle plant. 	<ul style="list-style-type: none"> • Customers face uncapped expenses of relicensing, including fishway construction, water quality compliance, and litigation, which would exceed the capped costs of decommissioning and removal. • Potential for decades of relicensing litigation; more costs accruing to customers and investors. • Risks the costs of relicensing, could make the project less cost-effective.

Water Users (Farmers and Ranchers)		
Obligations Given	Benefits Received	Risks Of Doing Nothing
<ul style="list-style-type: none"> • Cap allowable Klamath Irrigation Project diversions, decreasing water diversions in drier years. • Develop and implement a program to accommodate reduced water diversions. • Support change in Klamath Reclamation Project purposes to include fish & wildlife and refuges. • Assure firm water supply to National Wildlife Refuges. • Support diversion of a portion of future net federal lease lands revenues to Refuge purposes. • Support wildlife programs on public and private land. • Settle challenges against tribal water rights claims. 	<ul style="list-style-type: none"> • Increased certainty and predictability of water deliveries to Klamath Irrigation Project: <ul style="list-style-type: none"> ◦ enhanced ability to plan for each year's ag operations ◦ avoid need to litigate over water supply ◦ Ag lenders better able to provide a role in annual farm operations ◦ focus on farming instead of litigating • “Regulatory assurances” so reintroduced species do not impair water deliveries. • Support and funding accommodation of reduced, capped water deliveries. • Link River and Keno Dams will continue operation to support and facilitate water deliveries to agriculture. • Affordable power from renewables and federal power for agricultural water management. 	<ul style="list-style-type: none"> • More people in the agricultural community will go out of business: <ul style="list-style-type: none"> ◦ lack of water means no income ◦ uncertainty of deliveries makes lenders unable to finance farming-related businesses ◦ attempts at planning annual or future operations are frustrated ◦ electric irrigation power rates climb • Shrinkage of agricultural community means more difficulty finding support services—fertilizer, mechanics, distributors, etc. • ESA problems may escalate. • Agricultural electricity costs skyrocket. • Demise of a way of life that has been important to the Upper Basin for generations. • Community unrest compromises future, without redeeming benefits.

Fishermen and Conservationists		
Obligations Given	Benefits Received	Risks Of Doing Nothing
<ul style="list-style-type: none"> • Accept and support “Interim Measures” to protect fisheries while dam removal is pending. • Support regulatory assurances to provide greater reliability of agricultural water diversions. • Support funding for Klamath Irrigation Project mechanisms to accommodate capped water availability. • Support measures to provide affordable power for agricultural water users. • To use agreements’ alternative dispute resolution methods in lieu of Court litigation whenever possible. 	<ul style="list-style-type: none"> • Potential for revitalized fisheries resulting from dam removal and reliably funded, long-term habitat restoration. • Reduced risk of fishery closures for coastal fishermen, thus improving and stabilizing coastal fishing economies and expanding fishing industry job base. • Reintroduction of anadromous fish to their historic range, increasing conditions to support higher populations of salmonids. • Water quality improvements throughout the Basin. • Capped agricultural water diversions; greater and more certain water supplies for fish and refuges. • Greater participation in resource management decisions. • Reduced risk of fish pathogens and parasite outbreaks due to improved water quality and flows. • Focus on restoration not litigation. 	<ul style="list-style-type: none"> • Increased coastal fishery closures: <ul style="list-style-type: none"> ◦ Fishing community bankruptcies ◦ Coastal economies continue decline ◦ Displaced workers and families ◦ Loss of fish industry infrastructure. • Continued demands for federal financial disaster relief packages will occur. • Continued Basin water quality declines. • Continued contraction of an important coastal way of life pursued for generations. • Prolonged, expensive, divisive litigation instead of focus on restoration and progress. • Risk of more ESA listings, risk of worsening water quality almost certainly results in more litigation.



KLAMATH BASIN RESTORATION AGREEMENT:
“ON-PROJECT PLAN”

Section 15.2 of the Klamath Basin Restoration Agreement (KBRA) contains commitments to develop, implement, and administer an “On-Project Plan” (Plan) in the Klamath Reclamation Project (Project). The purpose of the Plan is to align water supply and demand in areas of the Project in light of permanent limitations on water diversion and water delivery obligations for National Wildlife Refuge purposes that will arise under the KBRA. (Section 15.2.1.) It is central in the KBRA parties’ agreement “to achieve peace on the river.” (Section 21.3.1.B.i.)

Under the KBRA, after certain events have occurred, there will be permanent limitations established on the amount of water from the Klamath River system diverted from locations that serve Project lands. (Section 15.3.1.A and Appendix E-1.) At the same time, new commitments will arise for irrigation districts in the Project to deliver water to National Wildlife Refuges—most particularly Lower Klamath National Wildlife Refuge—for refuge purposes. (Section 15.1.2.C.) The diversion limitations are expressed on a sliding scale basis, with more Klamath water able to be diverted in wetter years, and less in drier years. (KBRA Appendix E-1, pp. E.25-E.26.)

The limitations on diversion permanently free up water that can be managed for fisheries purposes. But, and when coupled with refuge delivery commitments, the result will be that availability of Klamath water in areas it has historically served will be insufficient to meet irrigation demand in a number of years, with the deficiency ranging up to about 100,000 acre-feet.

The Plan will address this shortage in order that irrigators in the Project can “live with” the diversion limitations. The Klamath Water and Power Agency (KWAPA), a joint power or intergovernmental agency comprised of Project irrigation districts, is charged with developing and implementing the Plan, and thereafter will administer the Plan on an annual basis in response to the given year’s hydrologic conditions. The KBRA provides that KWAPA is to consider, in the development of the Plan, conservation easements, forbearance agreements, conjunctive use programs, efficiency measures, groundwater substitution, and other measures. (Section 15.2.3.) It also provides agreed terms to limit any effect of groundwater use under the Plan on springs considered important for fisheries. (Section 15.2.4.)

After the Plan has been developed and approved, KWAPA will “implement” the Plan, over a period of about ten years, and based on adequacy of funding. By way of example, the KBRA parties express that, “implementation may include, for example, completion of measures to enhance water management and efficiency, or entering a long-term or permanent agreement with a landowner which would afford KWAPA the right to direct the landowner to forebear from use of water from Upper Klamath Lake or the Klamath River in specified future circumstances.” (Section 15.2.2.B.ii.)



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When the Plan implementation has occurred, KWAPA will administer the Plan annually, employing the tools that have been developed in the implementation phase. The parties state that, “plan administration might include, for example, directing a landowner to refrain from use of water from Upper Klamath Lake and the Klamath River in a given year, pursuant to a contract entered as part of plan implementation.” (Section 15.2.2.B.iii.)

In some recent past years, there have been water “banks” or similar programs that involve use of tools in the Project similar to those expected to occur under the On-Project Plan. However, those programs have been conducted on an annual basis, with recurrent funding needs. The Plan envisioned under the KBRA is based on “up-front” funding and implementation to achieve long-term reduction in demand for Klamath water. Additionally, the KBRA envisions an interim program of water leasing while Plan implementation is in progress, and coordination among these programs. (Sections 20.4.3, 20.4.5.A.)

Finally, the diversion limitations under the KBRA that the Plan will address are, in turn, the basis for resolution of disputes related to water use. The three tribes who are parties to the KBRA, and the United States as trustee for Klamath Basin tribes, agree not to assert senior water rights to further limit diversions for the Project, and they and other parties agree to support regulatory approvals for Project water use (such as under the Endangered Species Act) as limited under the KBRA. (Sections 15.3.3-15.3.9, 21.3.1.B.)



***Water Settlements
Between Basin Tribes and Klamath Reclamation Project***

**Key Elements of the
Klamath Basin Restoration Agreement**

Summary

The Klamath Basin Restoration Agreement (KBRA) is structured to settle water rights issues between three tribes in the Klamath Basin and the Klamath Reclamation Project (Project). In essence, water users in the Project agree to limit, to a specified amount, the quantity of Klamath water diverted from Upper Klamath Lake and the Klamath River from the Project's points of diversion identified in Appendix E-1 of the KBRA. The KBRA also provides for funding of a program so that Project water users will be able to "live within" the agreed quantity. (Section 15.2 and Appendix B-2.) The Klamath Tribes, Yurok Tribe, and Karuk Tribe (collectively, Party Tribes), and the United States as the trustee for Klamath Basin tribes, would agree not to assert tribal rights so as to interfere with this agreed Klamath Project use of water, making it assured as far as water rights of the Party Tribes and trust obligations of the federal government are concerned. In the Klamath Basin Water Rights Adjudication, where claims of the Klamath Tribes are being litigated, the KBRA terms are implemented through documents filed with the state.

The KBRA would not result in granting any tribal water rights to any tribe or affect the ability of any opponent of tribal claims other than Project water users to contest any claims of the Party Tribes. The KBRA only deals with: whether or to what extent the Klamath Tribes can make a call against, or demand water from, the Klamath Project based on the Klamath Tribes' rights in Upper Klamath Lake and the Klamath River, whatever those rights may be; and whether the Yurok or Karuk Tribe, or the United States as trustee for Basin tribes, based on water rights or federal trust obligations, can demand the Project use less water than what is agreed upon. In both cases, the answer is no. No one else is affected.

There are, in the meantime, various interim protections for the Project. Until the water users have implemented their on-project plan described in section 15.2 of the KBRA (anticipated to be roughly 2022), the Party Tribes would not be able to assert a demand based on tribal water rights against any water use in the Klamath Project. There are also various provisions that ensure that, if the agreement is not implemented, Klamath Project irrigators and the Party Tribes can simply return to their positions that exist today and assert their arguments against one another.

Background

The State of Oregon is currently conducting an adjudication of water rights that will determine the nature and extent of water rights of the Klamath Tribes to have water remain in streams and lakes. The administrative phase of this proceeding concluded in March of 2013 with the Oregon Water Resources Department's (OWRD) issuance of the "Findings of Fact and Order of Determination." Parties have the

opportunity to file exceptions in Klamath County Circuit Court, where further litigation would occur before the issuance of a court decree. In the meantime, however, the state will regulate water rights based on the FFOD unless that order has been stayed.

In 1983, the United States Court of Appeals for the Ninth Circuit, in the *Adair* case, ruled that the Klamath Tribes have water rights for fisheries purposes with the priority of “time immemorial.” The U.S. Supreme Court declined any further review in the case. The federal court further stated that the actual scope and quantification of the Klamath Tribes’ rights would be decided in the state Adjudication.

In the Adjudication, the Klamath Tribes, and United States as its trustee, filed various claims for instream flows including: for tributaries of Upper Klamath Lake (including Wood and Sprague Rivers); for water to maintain Upper Klamath Lake elevations; and for flows in the Klamath River from Link River Dam to the Oregon – California border. Various irrigation interests contested these claims because approval of the claims could have major adverse consequences for irrigators. Klamath Project irrigators contested only the claims for Upper Klamath Lake and the Klamath River. A number of irrigators in the Upper Klamath Lake watershed also contested those same claims, as well as the claims for water in the tributaries of Upper Klamath Lake.

The FFOD issued by OWRD recognizes substantial “instream” water rights for the Klamath Tribes in Upper Klamath Lake and its tributaries. The costs of opposing these claims have been and will continue to be very significant for a number of years including through the subsequent court processes, and the outcomes are uncertain for all involved.

There is no adjudication process in progress related to water rights of tribes on the lower Klamath River. Federal courts have held that the Yurok and Hoopa Valley Tribes have federal reserved fishing rights on the Klamath River. The tribes assert water rights for those fisheries as well as trust obligations of the Bureau of Reclamation to provide flows. The Solicitor of the Department of the Interior has issued opinions which conclude that the tribes in fact hold water rights for Klamath River flows, with 19th-century priority. The nature and scope of any such rights is of course a matter of debate.

Description of Water Settlements in KBRA

The KBRA deals with tribal water rights issues in multiple sub-sections of section 15.3.

One provision that is central to permanent resolution of the water rights issues involving the Party Tribes and United States as trustee for Basin tribes is section 15.3.4.A. In essence, other parts of the KBRA provide interim assurances that the Party Tribes will not demand water from the Klamath Project that interferes with diversion of the agreed water use for the Project. This specific assurance becomes permanent if certain conditions, delineated in section 15.3.4.A, occur. The Secretary of the Interior would be obliged to publish a finding if those conditions occur. This general approach is common in recent Indian water rights settlements.

With respect to the Klamath Tribes, the mechanics of the KBRA are as follows. First, the Project water users conditionally withdraw contests against the Klamath Tribes’ claims for water in Upper Klamath Lake and the Klamath River. The Klamath Tribes conditionally agree not to assert rights against the Project that would interfere with the agreed water use for the Project. Both of these commitments will become permanent if the specified conditions in section 15.3.4.A are met.

In the meantime, there are also additional assurances by the Klamath Tribes that apply whether or not the permanent commitments occur. First, beginning on the effective date of the KBRA, the Klamath Tribes

agree not to assert any tribal demands against any use of water in the Klamath Project. This commitment would remain in effect until the water users have completed the steps to implement the “on-project plan” which is to be developed to live with the agreed water quantity for diversion. Second, there are terms that address the potential that the conditions of section 15.3.4.A may not be met; i.e., that address what happens if certain conditions do not occur. In this circumstance, the Klamath Tribes could not make a water right call against the Klamath Project until after the Project water users have had the opportunity to litigate their contests against the Klamath Tribes’ claims in Klamath County Circuit Court. In other words, there will either be a final settlement or the parties will revert to their current positions, but in the meantime, tribal claims could not be asserted against the Project.

Sections 15.3.2, 15.3.3, and 15.3.9 of the KBRA contain the specific terms for implementing these commitments. In addition, documents appropriate to implement these commitments were filed with the State in the Klamath Basin Adjudication with respect to claims pending in that proceeding. (See Section 15.3.2.B.i-ii.) The FFOD incorporates these limitations on the Klamath Tribes ability to assert the recognized instream water rights in a manner that would adversely affect the availability of water for irrigation in the Klamath Reclamation Project.

The terms of the KBRA will not, and legally could not, affect the rights of any other party who contested the tribal claims in the Adjudication. Those parties had the ability to present evidence and argument of any kind against those claims in the administrative phase of the Adjudication, OWRD has issued an order that is currently enforceable (the FFOD); the court will ultimately decide what the Klamath Tribes’ water rights are. The Project water users will not participate in the court process concerning the Klamath Tribes claims, or need to, unless the KBRA is not implemented.

The settlement with other Party Tribes is similar, while recognizing that there is no pending adjudication to determine the water rights of tribes on the lower river. Project water users agree that the rights of downstream Party Tribes have not been determined or quantified, which is factually true. But also, the Party Tribes on the lower river and the United States as trustee for Basin tribes agree not to assert whatever water rights they have against the Klamath Project, with the interim and permanent commitments structured similarly to those of the Klamath Tribes. (Sections 15.3.6.A, 15.3.7.A, 15.3.8.B, and 15.3.9.) The Project water users agree not to challenge assertions of rights by these same Parties that are consistent with their commitments to limit their demands against the Project. (Section 15.3.C.)

A final piece of the settlement in this regard would be that each Party Tribe agrees to waive any claims it has against the United States associated with the Klamath Project. These waivers also are contingent on the realization of certain events. Those events include the same events that must occur for final settlement between the tribes and Project irrigators, as well as additional contingencies. (Sections 15.3.5, 15.3.6.B, and 15.3.7.B.)

As with the majority of water settlements concerning tribal rights, enacted federal legislation will ensure all of these commitments are effective.

Finally, the Hoopa Valley Tribe is not a party to the KBRA. The described mutual commitments do not apply as related to that tribe or its assertions of its rights.

Note: Klamath Water Users Association has prepared this document for general informational purposes. It is not a formal legal analysis or legal advice. Entities that desire legal advice concerning the KBRA should consult with their counsel.

APPENDIX D



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Power Costs to Irrigation Districts in the Klamath Basin Reclamation Project

Tulelake Irrigation District
 37 Pumping Plants
 67 Pump Units

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
D Plant (kwh)	5,346,000	10,030,200	9,219,700	6,889,200	2,643,200	6,700,000	5,554,000	6,048,000	7,145,600	9,793,000	3,052,000	3,476,000	2,448,000	924,000	2,186,000	
All Other Pumps (kwh)	4,533,346	4,024,519	3,060,492	3,107,853	4,038,712	4,246,882	3,915,117	4,734,371	3,645,256	4,241,920	4,483,935	4,060,030	3,893,500	1,458,400	3,576,277	
Total (kwh)	12,839,540	14,177,719	14,279,692	11,307,053	3,681,942	11,047,682	9,479,917	10,782,871	10,790,856	14,025,036	7,547,535	8,540,890	6,328,500	2,383,205	5,733,021	
D Plant Power Cost	\$32,822	\$39,571	\$16,234	\$26,896	\$10,385	\$26,713	\$41,826	\$24,300	\$28,128	\$116,899	\$143,139	\$126,682	\$65,772	\$93,676	\$211,105	
All Other Pumps Cost	\$16,869	\$16,181	\$19,772	\$15,859	\$4,103	\$28,666	\$15,357	\$19,023	\$14,491	\$91,622	\$152,166	\$251,561	\$173,184	\$160,692	\$414,547	
Total Power Cost	\$49,690	\$55,852	\$36,007	\$42,658	\$14,488	\$43,179	\$37,183	\$43,383	\$42,620	\$208,521	\$295,155	\$447,943	\$488,955	\$254,368	\$625,897	
Power Cost/kwh	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	\$0.004	\$0.016	\$0.039	\$0.052	\$0.077	\$0.107	\$0.109	
										Percent Increase per Year	400%	244%	134%	147%	138%	102%
										Percent Increase as Compared to Period Prior to 2006	400%	978%	1310%	1932%	2668%	2729%

Shasta View Irrigation District Power Costs

Year	Total	Acre	4416.5
2005	\$30,124.63	\$6.82	
2006	\$49,696.79	\$11.25	
2007	\$68,674.27	\$15.55	
2008	\$101,531.09	\$22.98	
2009	\$130,869.45	\$29.63	
2010	NO Pumping		
2011	\$228,315.69	\$51.70	
2012	\$308,019.33	\$69.75	

APPENDIX E

Agriculture/Irrigation Power Rate Comparison

Company Name	Yearly cost per kWh	Based On:
PacifiCorp - California	\$0.1540	1) 100 HP pump irrigating Alfalfa
PacifiCorp - Oregon	\$0.0928	in the Klamath Project area.
Clear Water Power Co.	\$0.0902	2) This rate includes energy,
Portland General Electric Co.	\$0.0886	distribution and demand charges
Avista Utilities - Idaho	\$0.0819	only.
Ferry County PUD	\$0.0790	
PacifiCorp - Idaho	\$0.0783	
Lewis County PUD	\$0.0778	
Northwestern Energy	\$0.0755	
PacifiCorp - Washington	\$0.0740	
PacifiCorp - Utah	\$0.0734	
Umatilla Electric	\$0.0717	
Avista Utilities - Washington	\$0.0709	
Puget Sound Energy	\$0.0636	
Idaho Power Co.	\$0.0620	
Klickitat PUD	\$0.0606	
Central Electric Co-Op	\$0.0606	
Grays Harbor PUD	\$0.0601	
Kootenai Electric Co-Op	\$0.0600	
Missoula Electric - Montana	\$0.0594	
Missoula Electric - Idaho	\$0.0581	
Idaho County Light & Power Co-Op	\$0.0567	
Surprise Valley Electrification Corp.	\$0.0558	
Ravalli Electric Co-Op	\$0.0541	
Pend Oreille County PUD	\$0.0530	
MidState Electric	\$0.0516	
Douglas County PUD	\$0.0509	
Oregon Trail Electric	\$0.0505	
Benton PUD	\$0.0498	
Franklin PUD	\$0.0482	
Inland Power	\$0.0478	
Fall River Rural Electric Co-Op	\$0.0472	
PacifiCorp - Wyoming West	\$0.0433	
Okanogan Public Utility District	\$0.0412	
Richland Energy Services	\$0.0401	
PacifiCorp - Wyoming East	\$0.0399	
Columbia Basin Electric Co-op	\$0.0356	
Grant County PUD	\$0.0314	
Chelan County Public Utility District	\$0.0233	



Klamath River Basin Agreement: Power for Water Management Program

Summary

Stabilizing power costs is an important component of the Klamath Basin Restoration Agreement (KBRA). The KBRA programs include the Power for Water Management Program, which also relates conservation elements of the KBRA. This document provides background and a program summary, particularly as related to the Klamath Reclamation Project. The KBRA power program also addresses similar interests of irrigators in the Upper Klamath Basin who operate outside the Klamath Reclamation Project (Off-Project irrigators).

Background

The Bureau of Reclamation's Klamath Reclamation Project is unique and has had a longstanding relationship with PacifiCorp's Hydroelectric Project. Early plans for the Klamath Reclamation Project contemplated the development of power by the Bureau of Reclamation for use in the Klamath Reclamation Project. In 1917, PacifiCorp's predecessor entered an agreement by which it constructed Link River Dam and agreed to sell power at low cost to irrigators and Reclamation in lieu of Reclamation developing power on the river. In the 1950s, when PacifiCorp's predecessor sought a Federal Energy Regulatory Commission (FERC) license for PacifiCorp's hydroelectric project including the planned J.C. Boyle facility, Reclamation initially voiced objection that the license would preclude development of low-cost federal power to benefit the Klamath Reclamation Project. This concern was resolved through a license term requiring extension of the 1917 contract including its power terms, for at least the term of the FERC license. (PacifiCorp's predecessor entered a similar contract to provide low-cost power to Off-Project irrigators in Oregon.) The long relationship was reflected and codified in the Klamath River Basin Compact enacted by California and Oregon, and ratified by Congress, in 1957, which provides that it is the objective of the states, in connection with the development of hydroelectric resources on the Klamath River "to secure . . . the lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells."

The FERC license issued to PacifiCorp in the 1950s has expired, but is automatically renewed for one-year terms pursuant to the Federal Power Act. The historic power contract is not part of the annual renewals. In the meantime, the FERC relicensing process has been affected by settlement agreements that have been developed including the KBRA and companion Klamath Hydroelectric Settlement Agreement (KHSA).

In other Reclamation Projects, low costs "reserved" or "project use" power is made available for certain loads. Also, many irrigators in the PacifiCorp Northwest have access to Bonneville Power Administration (BPA) power or similar alternatives through PUDs or similar entities. These types of arrangements were neither necessary nor pursued in the history of the Klamath Reclamation Project due to the long-standing relationship with the hydroelectric project.

The plumbing of the Klamath Project is also unique; low cost power is a part of its infrastructure. A significant portion of the power goes to recirculate water (achieving

efficiencies), to provide water to national wildlife refuges, to pump water back into the Klamath River for use by fish, and to operate pressurized sprinkler systems that use less water than flood irrigation. These pumping operations are essential for water efficiency and successful pursuit of other components of the Power for Water Management Program. Already, Klamath Reclamation Project irrigators faced with considerable power cost increases have considered or in some cases undertaken changes in practices that reduce historic water efficiencies. Dramatically increased power costs also threaten the viability of some operations.

Program Summary

Section 17 of the KBRA, complemented by Section 5 of the KHSA, states the Power for Water Management Program as related to the Klamath Reclamation Project and Off-Project agriculture. The Program consists of three elements developed around a delivered power cost target “at or below the average cost for similarly situated Reclamation irrigation and drainage projects in the surrounding area.” The composition and cost of those programs are interrelated.

First, for the short-term, funding is provided to stabilize total power costs as other components of the program are brought on line. The Parties support the Interim Power Sustainability program as part of the KBRA. Funding was estimated at \$7.69 million for 2008-2010; the estimate has not been updated to present conditions.

Second, power generated at other Bureau of Reclamation facilities would address the program objectives in part. Power can, for example, be marketed by the BPA to serve eligible loads in the upper Klamath Basin in Oregon. Under the KBRA and KHSA, Reclamation commits to acquire a contract consistent with applicable law and standards of service to serve eligible loads, PacifiCorp agrees to cooperate in delivery of power to the loads, and all parties support this undertaking. The KBRA provides for funding of \$1 million over four years for technical work and analysis necessary for contracting and development of transmission and delivery arrangements. The availability of some federally generated power should incrementally assist in meeting low power cost objectives, and would be supplemented by the renewables element of the overall Power for Water Management Program, which is discussed below.

Third, funding would be provided for energy efficient/conservation and renewable generation opportunities and investment. The activities to be pursued could include installation of efficiency measures, such as additional improvements in water pumping and piping efficiency, solar photovoltaic development and net metering programs, investment in renewable generation on a broader scale, and other practices. Settlement parties, with expert assistance provided by the State of Oregon and the Bureau of Reclamation, worked diligently to evaluate alternatives that would leverage expenditures through tax credits and available regulatory programs. The cost of this element in the program in the KBRA, including engineering and planning costs, is approximately \$41.5 million over fiscal years 2013 through 2016. The KBRA also contemplates the potential development of joint projects with the Klamath Tribes and irrigators under the umbrella of the renewable energy element. As with other elements, the benefits and objectives of this element are designed to serve both irrigation interests inside the Klamath Reclamation Project and the Off-Project area in the Upper Klamath Basin.



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Klamath Basin Restoration Agreement: Lease Lands in the Klamath Reclamation Project

Summary

The Klamath Basin Restoration Agreement (KBRA) addresses the “lease lands” within the Klamath Reclamation Project. These lands exemplify co-existence of agriculture and wildlife in the Klamath Reclamation Project, both functionally and historically. The lands are: part of the traditional “reclamation” project authorized in 1905; within national wildlife refuges; and within irrigation district boundaries.

This productive farmland has been leased to growers for generations. Unlike other public land developed under the Reclamation Project, the lease lands were not homesteaded, and thus provide expansive open space as well as substantial benefit for wildlife. This unique arrangement is addressed in Section 15.4.3 of the KBRA, in which the non-federal parties: (i) recognize the unique history and circumstances of the lease lands, (ii) recognize practices such as “walking wetlands” and others that enhance waterfowl management while maximizing “lease revenues” and optimizing agricultural use, (iii) seek to further the beneficial partnerships that have developed between growers and wildlife refuges. These Parties express their support for continued lease land farming managed as described in (ii).

Background

At its inception, the Klamath Reclamation Project was a partnership between Oregon and California and the United States. In 1905, the two states ceded then-submerged land to the United States for the purpose of reclamation and irrigation. Shortly thereafter, the Secretary of the Interior authorized the Project and work began.



As land was uncovered and irrigation systems were being developed, the Bureau of Reclamation began leasing land for agriculture; over 50,000 acres were leased in the Tule Lake portion of the Project in the 1920s. Through time, “lease lands” were then homesteaded. The homesteaders remain a source of pride in the area; most homesteads were awarded to veterans of the two world wars, who took over lease lands on a permanent basis through complying with homestead laws, and building the communities that exist today.

The lease lands that exist today have been included in various official acts and statutes beginning as early as 1908. In the early days, intense hunting pressure to bird populations occurred on lands that had been ceded for reclamation development. Under executive orders beginning

in 1908 for the Lower Klamath Area, and 1928 for the Tule Lake area, protected areas or “bird refuges” were established. The orders made the delineated refuge areas subject to irrigation development under the 1902 Reclamation Act. Irrigation development meanwhile continued in the Project, including further infrastructure for all leased lands, and homesteading of a considerable area that had been lease lands.

Over time, issues arose related to homesteading of the areas comprising the current lease lands. In the 1930s, a statute was passed mandating completion of homesteading of lease lands in the Lower Klamath Lake area; this statute was later repealed, and a permanent preclusion of homesteading on then-remaining lease lands was established under the Kuchel Act in 1964. In the late 1950s and early 1960s, there had been a substantial public debate about whether the remaining lease lands should be homesteaded versus remaining as lease lands. In general, many local interests favored homesteading as the final step in full development of the Project. Others favored continued leasing and preclusion of homesteading, which would minimize disturbance to waterfowl using the lease lands. A law enacted in 1956 mandated continued leasing pending a final decision on the question of whether the remaining lease lands would be homesteaded.

Congress resolved the matter in 1964 in the Kuchel Act (Public Law 88-567). This law contained terms addressing all of the lands within four wildlife refuges, including the two that include the lease lands. The Kuchel Act generally provided all lands within the four refuges were to be “administered for the major purpose of waterfowl management but with full consideration to the optimum agricultural use that is consistent therewith.” The Kuchel Act disallowed homesteading of the lease lands within Tule Lake and Lower Klamath Refuges, to “stabilize ownership” of land within the Klamath Project and “preserve intact the necessary existing habitat for migratory waterfowl.” In this regard, it further stated:



The Secretary shall, consistent with proper waterfowl management, continue the present pattern of leasing the [lease lands]... Leases for these lands shall be at a price or prices designed to obtain the maximum lease revenues. The leases shall provide for the growing of grain, forage, and soil-building crops, except that not more than 25 per centum of the total leased lands may be planted to row crops. All other reserved public lands included in section 2 of this Act [16 USCS § 6951] shall continue to be managed by the Secretary for waterfowl purposes, including the growing of agricultural crops by direct planting and sharecrop agreements with local cooperators where necessary. (U.S. Code, title 16, § 695n.)

In Tule Lake National Wildlife Refuge, lease lands comprise approximately 16,000 of the total 39,000 acres within the refuge boundary. In Lower Klamath National Wildlife Refuge, the lease lands comprise approximately 7,000 acres of the total 53,000 acres within the refuge boundary. The lease lands are approximately 25 percent of the irrigated lands within the boundaries of both Tulelake Irrigation District and Klamath Drainage District.

Lease Lands Today

Lease lands continue to be leased for agricultural production, as they were before and at the time of the Kuchel Act. The Bureau of Reclamation conducts the leasing program, subject to administrative authority of the Fish and Wildlife Service. Tulelake Irrigation District and Klamath Drainage District provide water delivery. The lease lands are highly productive. Agricultural production on the lease lands generates crop values of approximately \$15 million per year. As required by the Kuchel Act, local counties receive 25 percent of the net “lease revenues” (rent) paid to the federal government by the growers. Under the KBRA, the Parties support the Fish and Wildlife Service receiving 20 percent of the net lease revenues, to be used for wildlife management purposes. This will require a change in law.



The lease lands provide food and habitat for migratory waterfowl and other wildlife. Also, irrigation practices on the lease lands within Klamath Drainage District provide open water during winter making the lands very attractive to waterfowl and eagles. Strict integrated pest management practices are applicable to farming on the leases lands. The leasing program also provides incentives for growers to pursue organic farming practices and other practices. The high level of stewardship practiced by growers also helps to control invasive species.



In recent years, collaboration between growers and wildlife managers has led to the highly successful “walking wetlands” program. Walking wetlands provide a rotation of new highly productive areas for waterfowl and shore birds. Land that has been flooded is eventually returned to agricultural production with increased crop benefits.

In addition to the walking wetlands, other partnerships have developed. On Tule Lake National Wildlife Refuge, large water and wetland areas known as Tule Lake or Sumps 1A and 1B, which comprise approximately 13,000 acres, experienced declines in wetlands productivity due to maintenance of relatively stable water elevations. In partnership with Tulelake Irrigation

District, the Fish and Wildlife Service has instituted a program under which infrastructure was installed and can be operated to drain and refill Sump 1B. This has resulted in creation of high quality habitat. On Lower Klamath National Wildlife Refuge, lessees have initiated modifications to traditional farming methods to enhance fall wildlife use and hunting. Adjacent landowners are also providing hundreds of acres for walking wetlands, which benefit waterfowl and other species.

The KBRA includes the non-federal parties' specific statement of support for lease land farming practices as described, and preserves the legal responsibilities of federal agencies with respect to land management.



For more information visit www.kwua.org or www.fws.gov/klamathbasinrefuges