

# Summary of the Klamath Basin Settlement Agreements

## Summary

Representatives of more than 50 organizations, including Federal agencies, California and Oregon, Indian tribes, counties, irrigators and conservation and fishing groups have developed a comprehensive solution for the Klamath Basin. On February 18, 2010, 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.

The Klamath settlement organizations are listed at the end of this summary. Most of these organizations signed the agreements on February 18<sup>th</sup>; however, organizations that need more time to complete their decision process can sign the agreement within 60 days of the signing date. After the 60 day period, organizations that have 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: <http://www.edsheets.com/Klamathdocs.html>.

## 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 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 in Klamath and Siskiyou Counties.

**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 rate 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 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 includes the authorization for federal agencies to implement the two agreements and specific authorities that require Congressional action. Under the proposed federal legislation, 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**

Del Norte County, California

Humboldt County, California

Klamath County, Oregon

Siskiyou County, California

**Parties Related to Klamath Reclamation Project**

Ady District Improvement Company  
Collins Products, LLC  
Enterprise Irrigation District  
Don Johnston & Son  
Inter-County Properties Co, which acquired title as Inter-County Title Company  
Klamath Irrigation District  
Klamath Drainage District  
Klamath Basin Improvement District  
Klamath Water Users Association  
Klamath Water and Power Agency  
Bradley S. Luscombe  
Malin Irrigation District  
Midland District Improvement Company  
Pine Grove Irrigation District  
Pioneer District Improvement Company  
Plevna District Improvement Company  
Poe Valley Improvement District  
Reames Golf and Country Club  
Shasta View Irrigation District  
Sunnyside Irrigation District  
Tulelake Irrigation District  
Van Brimmer Ditch Company  
Randolph and Jane Walthall 1995 Trust  
Westside Improvement District #4  
Winema Hunting Lodge, Inc.

**Upper Klamath Irrigators**

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