

**Outline of Objections to the
Klamath Basin Restoration and Hydroelectric Settlement Agreements**

January 20, 2010

Major defects in the current drafts of the Klamath Basin Reclamation Agreement (KBRA) and Klamath Hydroelectric Settlement Agreement (KHSA) include:

1. The water balance, guaranteeing diversion of 330,000 acre-feet for irrigators, has no scientific basis and will, in 40% of water years, leave too little water in the Klamath River to meet the current Coho Salmon BiOp flow requirements. There are no guaranteed flows for fish. Sec. 15.1.1.B and App. E-5.
2. Under the KBRA, Parties (including federal parties) to the agreement will support regulatory assurances, thereby undermining the administration of the Endangered Species Act, without providing minimum flow protections for fish. Sec. 3.1.2.
3. The “goals” of the agreement (KBRA) have no meaningful restoration objectives, and does not establish target salmon run sizes. The imbalance of the agreement is highlighted by the explicit goal of reliable water supplies for agriculture, while containing no parallel goal of water supply for fisheries. Sec. 1.3.
4. The KBRA attempts to lock in commercial agriculture on Tule Lake and Lower Klamath National Wildlife refuges by requiring non-federal party support of this harmful practice for 50 years. If commercial agriculture were phased out, these National Wildlife Refuges could provide increased wildlife habitat and an adequate and reliable source of water for the refuges. Sec. 1.6 and 15.4.3.A.
5. The KBRA locks in a drought year response that reduces Lower Klamath National Wildlife Refuge’s already low dry year allocation of 48,000 acre-feet to 24,000 acre-feet and possibly lower. (A prior biological opinion indicated a minimum of 32,000 acre-feet are necessary to support the waterfowl food base of nearly 1,000 bald eagles that overwinter in the basin.) Sec. 15.1.2.F.i.b.
6. The KBRA requires Indian Tribes to waive claims of violation of trust water and fishing rights regardless of the success of restoration. The agreement attempts to subordinate the federally recognized rights of the Hoopa Valley Tribe without their consent. Sec. 15.3.9.
7. \$970 million federal appropriations are called for in the KBRA. None of these funds will be used for dam removal. \$92.5 million are provided for irrigators to develop their own Water Plan and nearly \$50 million are allotted for power or pumping related subsidies. App. C-2, Sec. 17.5-7, 15.2, 14.3.1.
8. Neither the KBRA nor the KHSA requires removal of any dam. The KHSA creates a process to determine whether or not dam removal is in the public interest. A finding that dam removal is not in the public interest will halt potential dam removal. A finding in favor of dam removal would require duplicative NEPA and CEQA studies, delaying dam removal for 10 or more years. KHSA Sec. 3.3.1 and 7.3.1.
9. The KHSA requires signatory parties to also sign the KBRA, linking the documents. KHSA Sec. 2.2.
10. The KHSA prohibits the Secretary from electing to remove the Klamath dams until, among other things, a dam removal entity (DRE) is secured and the States and Congress pass legislation to fund removal. KHSA Sec. 3.3.4.
11. The KHSA lists eight events that will terminate the dam removal planning process and restart FERC relicensing/dam removal proceedings. These include the States right to veto dam removal if they do not concur in both the Secretarial Determination and the choice of a DRE, or legislation or any regulatory approval conditions that are “materially inconsistent” with the KHSA. KHSA Sec. 8.11.1, 8.11.1.C.
12. The KHSA minimizes PacifiCorp’s required operational changes until at least 2021, strips FERC of jurisdiction while the agreement remains in place, and also protects the utility from compliance with any other meaningful measures to improve water quality. KHSA Sec. 6.1.1 and 6.3.4.A.
13. The KHSA halts State water quality certification proceedings, the only remaining step before FERC would force dam removal. KHSA Sec. 6.5.
14. The KHSA demands up to \$27 million in extra payments to PacifiCorp if dam removal begins before 2021. KHSA Sec. 7.3.3.