

**KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT  
KLAMATH BASIN RESTORATION AGREEMENT**

**FREQUENTLY ASKED QUESTIONS**

**November 2, 2009**

The Yurok, Klamath, and Karuk Tribes, Klamath Water Users Association (representing Klamath Reclamation Project irrigators), States of Oregon and California, and conservation groups respond to questions about the intent and effect of the Klamath Basin Restoration Agreement. PacifiCorp responds to those questions pertaining to the Klamath Hydroelectric Settlement Agreement.

This document is organized as follows. We respond first to questions about both agreements; and then to questions about the role of Congress in the Parties' proposed restoration of the Klamath Basin, the Klamath Hydroelectric Settlement Agreement ("Hydro Settlement"), and the Klamath Basin Restoration Agreement ("Basin Restoration Agreement").

**I.  
OVERVIEW**

**1. What is the overall purpose of the two agreements?**

The Parties have multiple goals, all of which revolve around restoration of the natural resources of the Klamath Basin while sustaining the people and communities of the Basin. The goals include: ending the Klamath water wars; allocating water resources so that farming, tribal, recreational, wildlife, and commercial ocean interests are protected; restoring the fisheries of the Basin; providing affordable, renewable power for agricultural communities; improving habitat and water quality; and avoiding further degradation of Basin resources. Both agreements are essential to achievement of the Parties' goals.

**2. What is the status of the two agreements?**

Both agreements have been crafted by negotiators for participating Basin stakeholders and released for public review and comment. Updates and conforming changes to the Basin Restoration Agreement, first released over 20 months ago, are underway (for example, to bring it into line with the timetable for targeted dam removal in the Hydro Agreement). Following public review, the negotiators will return to the table for final changes.

**3. Who is involved in finalizing the agreements and when will they be final?**

The negotiators for all settling parties are actively working to solicit and evaluate public input, and make the final, detailed changes to the public drafts. The parties expect both Agreements to be signed in January, 2010.

**4. How will the public be involved in review of the final draft Agreements before signature?**

Stakeholders are evaluating the agreements in accordance with their internal policies and practices; in many instances, tribes, counties, and the states, as examples, and members of the public are involved in that review. In addition, the Parties have released the agreements broadly through the media and are soliciting responses from the public. In California, local governments operate pursuant to the Brown Act, which requires public boards to conduct business in public. The Parties have solicited input from the elected representatives of the public, those in tribal and local government, the state legislatures and Congress.

**5. What obligations do parties to the Basin Restoration Agreement and Hydro Agreement have to support each of their elements?**

The Parties intend that the two agreements will be approved and will be implemented in concert. The Agreements generally do require all signatories to support their provisions and to refrain from any action that does not further the "cooperative efforts" of their goals, but the precise form of that support is left to the "discretion of each Party." No negotiating Party is required to sign either agreement.

**6. What is the linkage between the Hydro Settlement and the Basin Restoration Agreement?**

The measures contemplated by the two interdependent agreements, working in concert, are needed to accomplish Basin restoration. Removal of the dams is one of the most important, but not the only action necessary to restore the Klamath Basin. Other important restoration activities are provided within the framework of the KBRA. Accordingly, parties to the Hydro Agreement are also expected to sign the KBRA.

**7. How will the public be involved in the implementation of the Agreements?**

Both Agreements are intended to work within the existing legal framework of applicable environmental and other law. Consequently, programs and decisions under the Agreements will be subject to both (in California) California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) review, and in Oregon to any applicable state law review. These environmental review statutory obligations include extensive public input. In addition, Siskiyou County, California, has been expressly designated as a Cooperating Agency for NEPA in the Hydro Agreement itself. Moreover, in the Hydro Agreement, the provisions set out the issues and processes to be used in formulating the Secretarial Determination, as well as the science process to be followed in order to assure the use of the best information available. Siskiyou, as well as Humboldt and Klamath Counties have been invited to all of the meetings where these issues have been discussed and have been given extensive opportunities for participation in drafting the final language.

**II.**  
**CONGRESSIONAL AUTHORIZATIONS**

**8. What Congressional authorizations are needed to implement these agreements?**

This will be the largest river restoration project in the history of the United States. It is a complex Basin, geographically and politically. The Parties will seek legislation to assist in assuring that the restoration projects will be implemented in compliance with applicable law, and with due regard for impacts of removal on affected communities.

Among other things, the Parties will propose legislation that will authorize the Secretary of the Interior to evaluate and to confirm or reject dam removal as the preferred means of restoring the fisheries and promoting the public interest; authorize the Secretary to perform removal or identify another entity capable of doing so; protect PacifiCorp from liability arising from removal which will be conducted by others; and increase the levels of federal funding to jump-start basin restoration efforts in coordination with state funding for dam removal.

**9. Is this package of agreements simply too expensive, given the state of the federal deficit and PAYGO requirements?**

This proposed settlement reflects the least expensive realistic and practical solution, in part by “re-channeling” existing annual federal expenditures. In addition, the dam removal piece of the restoration is funded by the States and PacifiCorp customers except for the initial “due diligence” and environmental studies by the Secretary of the Interior.

The Basin Restoration Agreement’s costs (\$986 million over ten years) are intended to restore one of the premier fisheries on the West Coast yielding jobs and improved circumstances for fishery dependent Tribes and communities, stabilize local agricultural communities, and avoid conflicts and crises that cost the federal treasury on a recurring basis. The deal, in fact, offers a prudent, cost-saving opportunity for the U.S. Treasury when compared to the status quo.

- In the most recent three fiscal years, the United States spent on average \$86 million per year on programs in the Klamath Basin. (The figures include expenditures by the Departments of Interior, Agriculture and Commerce.)
- It is estimated that in the period 2003 through 2008, the United States spent over \$500 million in the basin for existing programs and disaster relief (e.g., ocean commercial fishing bans).
- The KBRA would reprogram existing funds. It projects new funding in the range of \$47 million per year (at the high end, and \$18 million at the low end) over the first five years.

- The settlements avoid litigation among the United States, States, and settling Tribes and communities, saving millions in litigation costs.
- The combined dam removal and restoration agreements provide Congress the opportunity to leverage a state cost-share of \$450 million for dam removal.

The settlements give Congress the opportunity to put federal dollars into basin solutions, a prudent, cost-saving opportunity for the U.S. Treasury when compared to the status quo.

### **III. HYDROELECTRIC SETTLEMENT**

#### **Process and Schedule for Dam Removal**

**10. What is the process leading forward from a signed Hydro Settlement to actual dam removal?**

A variety of activities on different tracks are intended to converge with dam removal in 2020:

- environmental review leading up to the Secretarial Determination;
- ongoing habitat and fishery restoration projects under the Basin Restoration Agreement;
- funding from utility customers;
- the Secretary's determination of costs of removal, a detailed plan of removal, decision confirming or rejecting dam removal, identification of a dam removal entity;
- if the determination is affirmative, further environmental review on the plan of removal;
- securing all necessary permits to remove;
- decommissioning of the hydroelectric facilities;
- and then removal itself. (Removal includes mitigation of the sites.)

**11. Why does the Settlement require a Secretarial Determination?**

The settlement Parties concluded on the basis of existing information, that dam removal was both prudent and necessary to restoration of the Basin's natural resources. But the Parties also concluded that a complete, public, and reliable scientific and engineering review should occur prior to commencement of a restoration project of this size and complexity. Consequently, before the dams may be removed, the Secretary of Interior must undertake the review and upon its completion, make numerous findings; the Secretary must consider both the health of the fishery and the public interest generally, including specifically impacts to local communities. The Secretary must take into account environmental and economic impacts, costs and other matters under various options including those calling for dam retention and dam removal.

**12. Who will perform actual dam removal?**

The Hydro Agreement provides that in March, 2012, the Secretary of the Interior will designate the dam removal entity (DRE), which may be a federal entity. But the Agreement contemplates the possibility that a non-federal entity would perform the removal. In the event the Secretary determines a non-federal entity should serve in this capacity, that entity must meet the criteria set forth in the Hydro Agreement, including proof of financial solvency. Both states must also agree to the use of that non-federal entity.

**13. How will the affected counties (Siskiyou and Humbolt Counties in California, and Klamath County in Oregon) be involved in the review process leading up to the Secretarial Determination?**

Each County is eligible to be cooperating agency. Siskiyou County's demand that its costs as a cooperating agency be paid by the United States or other Parties was rejected as not reasonable.

**14. Will the Secretary consult with the Counties before naming a DRE?**

All Parties will be consulted.

**15. When will the dams be removed under the Hydro Settlement?**

The Hydro Agreement states that 2020 is the target date for facilities removal (restoration of a free-flowing river). This is the earliest date identified by the Parties for completing necessary environmental review, planning, and funding of removal.

**16. Will the DRE address economic damages of dam removal?**

The dam removal fund provided by customers and California includes funds for mitigation. In addition, California provides funding up to the amount of \$20 million for mitigation of adverse impacts, if any, in Siskiyou County.

- 17. Given the fact that PacifiCorp agreed in 1999 to remove the tiny Condit dam in Washington State and that project has gone nowhere in ten years, how realistic is it to assume that the Klamath dams can be removed by 2020?**

The Parties to this Settlement have tried to apply lessons learned in past dam removal circumstances to improve the odds that the Klamath Facilities can be removed on budget and on time. Here, the parties constructed a reasonable schedule that takes into account impacts upon customers and the natural resources in the interim prior to removal, allows sufficient time for collection of dam removal monies, and accommodates necessary environmental studies, permitting, and resolution of litigation.

- 18. Is the proposed dam removal process too lengthy, thus creating risk to fisheries prior to removal?**

The target date for dam removal is carefully determined. The measures to protect fish pending removal of the dams are the product of careful analysis by a team of fisheries scientists.

The target date for removal, 2020, is selected to meet several requirements:

- The necessity of raising funds from customers at a rate which is reasonable and not excessive.
- The necessity of securing California bond funds in the event that costs of removal exceed ratepayer contributions.
- The need to confirm that dam removal will in fact restore fisheries and be in the public interest, a task assigned to the Secretary of the Interior.
- Compliance with applicable statutory obligations (NEPA and CEQA) to conclude environmental review before undertaking a major project such as this.
- The time required for acquisition of necessary permits.
- The need to identify sources of replacement power which comply with applicable law, including renewable energy portfolio obligations.

The target date represents a balancing of interests among PacifiCorp customers, Basin communities directly impacted by dam removal construction activities, and protection of natural resources pending, during, and after removal. The target date provides greater certainty that removal will occur, and at a time significantly earlier than might occur under any other scenario, including continued litigation of the FERC relicensing application.

Interim measures to protect fish, which have been criticized as “minimal,” include the following:

- Establishment of an “implementation committee” including stakeholders and fishery scientists to oversee the process pending removal;
- Payment by PacifiCorp of \$510,000 annually to a Klamath restoration fund and coho enhancement fund. Payments will commence in 2009 and continue until the dams are decommissioned.
- PacifiCorp will implement turbine venting in 2009 to improve water quality downstream of Iron Gate Dam.
- PacifiCorp, in consultation with NMFS and California Department of Fish and Game, will fund a Hatchery and Genetics Management Plan for the Iron Gate Hatchery.
- PacifiCorp, Reclamation, Federal agencies, States and Tribes will evaluate flow variability regimes to benefit salmon.
- PacifiCorp has provided \$500,000 in funding to study fish disease downstream of Iron Gate Dam.
- PacifiCorp will provide annually until J.C. Boyle Dam is decommissioned, \$150,000 per year for gravel placement or habitat enhancement projects in the Klamath River above Copco Reservoir.
- PacifiCorp will remove the J.C. Boyle Bypass rock barrier to provide upstream passage for salmon, steelhead, lamprey and trout.
- PacifiCorp will fund continued operation of the J.C. Boyle powerhouse gage to insure real-time reporting of River flows.
- PacifiCorp will provide \$100,000 to convene a basin-wide technical conference on water quality.
- PacifiCorp will spend up to \$250,000 per year until dam removal, on studies or pilot projects intended to improve water quality. If in 2012 the Secretary confirms that the dams should be removed, the company will provide \$5.4 million for implementation of the identified water quality improvement projects, and \$560,000 per year for project operation.

The Parties are confident that these measures, in concert with the restoration activities in the Basin Restoration Agreement, will protect fish until the dams are removed. The Federal Energy Regulatory Commission (FERC) has also refused to order the utility

company to provide additional interim protection measures: 125 FERC ¶ 61,196 (November 20, 2008) and 126 FERC ¶ 61,236 (March 19, 2009).

### Renewable Energy

**19. What is the basis for removing non-carbon producing sources of energy?**

Hydroelectric power is renewable and does not emit carbon, but in some instances the dams themselves create serious adverse environmental impacts with catastrophic consequences for those who depend upon a healthy river, lake and ocean. In the Klamath Basin, it is necessary to consider the trade-off between the amount of energy produced as compared with the damage the dams cause to habitat and salmon viability; the adverse impact to native cultures; the collapse of the commercial ocean fishing industry; the adverse impacts to water quality in the lake, reservoirs and river; and the economic harm to Basin communities. The Klamath Basin cannot be restored with the dams in place, but potentially more efficient alternative energy sources of various kinds can be identified.

**20. What assurance is there that new generation will be as clean as the hydro energy being lost?**

This question revolves around the definition of "clean." It is clear that the diverse group of basin stakeholders view the dams as a detriment to the environment, notwithstanding the fact that the Facilities do not emit carbon. All resources have negative impacts on the environment and PacifiCorp tries to choose a portfolio of resources that mitigates and balances those risks.

### Cost of Dam Removal

**21. What will it cost to remove the dams under the Hydro Settlement?**

The precise cost is not known at this time. The Secretary of the Interior will determine that cost in 2012. The parties have reviewed various cost assessments done to date; some are in the range of \$80 to \$120 million. Given the size, scope and complexity of the project, and to account for the real potential of unexpected costs, the parties chose \$450 million as an estimate and will secure funding from customers and California bonds in that amount.

**22. What happens if the cost of dam removal exceeds the amounts raised in Oregon and California?**

The Agreement provides that the Parties will have the opportunity to identify new or additional sources of funding. If they fail to secure those funds, the Agreement will terminate and the project will return to the FERC relicensing process. This question will be answered by the Secretary of the Interior in 2012.

**23. How will mitigation measures made necessary by dam removal be funded?**

Dam removal will be funded by both a customer surcharge and by a portion of the proposed California Water Bond. CEQA requires mitigation of adverse impacts, if any, from projects of this type. The Hydro Agreement authorizes the use of funds from both the customer surcharge and the water bond, for mitigation purposes. In addition, both a draft water bond and the language in the Basin Restoration Agreement contemplate funds being available specifically for Siskiyou County of up to \$20 million to address proven adverse impacts.

**Rate Impacts of Dam Removal**

**24. Does PacifiCorp expect to make a return on the surcharge for dam removal?**

No. In fact, customers will earn interest on the surcharge funds from the time they are received into the trust accounts until they are spent. These earnings will reduce the costs to customers. PacifiCorp has agreed to forego a return to shareholders that it would have received if it invested \$350 million in fish ladders under relicensing.

**25. Can Congressional committees review the company's financial assumptions on deciding to opt for dam removal?**

Yes, however, that information should be kept confidential to protect PacifiCorp's customers if implementation of the Settlement does not go as planned. The information will be reviewed in detail by the California and Oregon Public Utility Commissions under protective orders as part of the decision to move forward. In addition, the Company will provide input into the Secretarial Determination related to his determination as to whether to move forward with dam removal.

**26. Why is federal power part of the agreement?**

Both the Hydro Agreement and the Basin Restoration Agreement include provisions to address the power needs of irrigators currently receiving power from the PacifiCorp's facilities. The Hydro Agreement contemplates that PacifiCorp would deliver federally-generated power, marketed by BPA, to certain irrigation loads that formerly received power under special contracts with PacifiCorp.

**27. Will PacifiCorp make a return on the BPA power for eligible loads?**

No. The Hydro Agreement contemplates that PacifiCorp would deliver federally-generated power, marketed by BPA, to certain irrigation loads that formerly received power under special contracts with PacifiCorp. It is currently anticipated that BPA will sell power to the Bureau of Reclamation. PacifiCorp will transmit this power under applicable Open Access Transmission tariffs approved by FERC and deliver the power under distribution tariffs subject to state-approved tariffs.

**28. How will the availability of BPA power change PacifiCorp's obligation to serve?**

If the irrigation customers leave PacifiCorp's system, PacifiCorp will no longer plan to meet the generation needs of this set of customers and would no longer have an obligation to serve under State Law. However, PacifiCorp has agreed to work in good faith to find a way to provide generation service to this group of irrigation customers if circumstances change, provided that doing so does not economically harm other customers.

**29. Does PacifiCorp receive cost recovery for the expenses of the relicensing? Does PacifiCorp receive cost recovery for the expenses of the settlement process? Does cost recovery include any kind of "profit" or just reimbursement of expenses, e.g. legal fees?**

Yes, both Oregon and California have agreed to allow PacifiCorp to recover the costs of relicensing and settlement over the remaining 10 years of the project, as long as the Commissions find the costs to be prudent. By spreading the costs over 10 years, the rate impact to customers is mitigated. PacifiCorp is reimbursed for the time value of money by allowing it to earn a return on the balance that customers have not yet paid. This practice is consistent with industry standards for ratemaking.

**30. Will all six states have to approve a replacement power option under the Multistate Protocol, or just the states being served by that replacement power?**

Under the Revised Protocol, all states will incur a share of the costs of replacement power. The decision as to what resource will be used to replace the project's power will be made under the company's integrated resource planning process - a process that occurs every two years with significant six-state input. The agreement allows the Company ten years to plan for the replacement power, which will allow it to consider all factors.

**31. Will new generation shift costs of implementation to customers outside the Klamath region?**

No.

**Alternatives to Hydro Settlement**

**32. If these agreements fail, will Tribes, or environmental organizations, or governmental entities/agencies simply resort to litigation to force PacifiCorp, the states, or Interior to remove the dams anyway?**

Avoiding litigation has been one of the driving forces moving the Parties toward Settlement. But if the settlement terminates, the Parties are committed to return to the FERC relicensing proceeding, the record of which is mostly completed. The States of Oregon and California would process PacifiCorp's applications for necessary state permits and approvals (e.g., Clean Water Act 401 certification). The Parties would pursue their respective interests in the course of the FERC relicensing process and attendant court review and appeals.

**33. What can be done to pursue the goals of these agreements in the absence of federal legislation?**

The Parties concluded that focused federal legislation was necessary. The settlements and legislation are the only means which would provide a reasonable degree of certainty that the Parties could achieve their goals of dam removal, natural resource restoration, and preservation of healthy Basin communities. The Parties concluded early in discussions that other approaches would not (i) address PacifiCorp's need for liability protection arising from dam removal, (ii) remove uncertainties before FERC in these unique circumstances, or (iii) ensure the necessary support from a broad range of stakeholders. Other approaches also would not bring the \$450 million contribution from the States of Oregon and California.

**34. Why should supporters of dam removal not involved in these negotiations wait for implementation of this agreement?**

The settlements are the best chance for dam removal. The settlement provides greater certainty that dam removal will happen, and will happen more quickly, than any other option available to those who support dam removal. Litigation in the FERC relicensing process to compel dam removal would take, under educated estimates, between 20 and 30 years to conclude. Litigation would be enormously expensive for all participants. The outcome of litigation is, by definition, uncertain. Further, both the dam removal and the Basin restoration agreements in tandem address habitat and other resource issues in a holistic way (instead of focusing on dam removal alone), providing greater assurance that fisheries restoration will succeed.

In addition, PacifiCorp's promise for early implementation of an adaptive management plan and a series of interim measures to immediately benefit aquatic habitat; remove stream barriers; improve water quality; change ramp rates and flows; increase hatchery support; fund road maintenance on federal lands and protect cultural resources, would have been delayed for years under normal FERC relicensing.

**35. What will happen to these agreements if entities outside the Klamath Negotiation Group pursue other legal options?**

The Parties cannot prevent litigation, but great care has been taken to develop and present a reasonable and fair Settlement that can be successfully defended if challenged. The Parties are committed to defend the settlements. If the defense is unsuccessful, however, and the settlement is thwarted, resource conflicts in the Klamath Basin will return to the status quo.

**IV.**  
**BASIN RESTORATION AGREEMENT**

- 36. What has happened since the draft Basin Restoration Agreement was released in January 2008?**

The Basin Restoration Agreement supporters concluded that removal of the mainstem dams was an essential component of Basin restoration. Accordingly, the parties involved in the Basin Restoration Agreement turned their attention to negotiations with PacifiCorp in the context of the relicensing application pending before FERC. Those negotiations resulted in an Agreement in Principle, announced in November, 2008, to remove the four dams. The Agreement in Principle became the focus of intense discussions leading to a proposed final Hydro Agreement released to the public in September, 2009.

- 37. How will this agreement change the operations of the Klamath Reclamation Project?**

The Parties' intention is that the Reclamation Project will continue its operations with a greater degree of certainty of water deliveries, a reduction in actual diversions (especially in dry years), increased efficiency of operations, and access to affordable renewable sources of energy. For the first time ever, Lower Klamath National Wildlife Refuge would receive firm deliveries of water, through irrigation districts in the Project. The Project will support wildlife program on public and private farmland; and will support fishery restoration in the Basin.

**Endangered Species Act and Fish Conservation**

- 38. Does the Basin Restoration Agreement guarantee water for the Reclamation Project?**

No.

**There may be no guarantee, but will there be enough water for the natural resources?**

The parties do agree that the Project water diversions will be reduced from historical amounts, particularly in dry years; and that the amounts which may be diverted are capped for the future. The Basin Restoration Agreement acknowledges that circumstances of extreme drought may require further reduction in Klamath Reclamation Project diversions to protect the fisheries. The Endangered Species Act remains in effect and regulatory agencies and all parties remain obliged to comply with applicable law; ultimately, despite the parties' efforts, further reductions in Project diversions could be required.

There has been careful analysis by tribal, State, Federal and conservation group fisheries scientists, as well as a subsequent review by nationally renowned scientists. The assessment has taken into consideration the comprehensive package represented by the agreements, which includes reducing agricultural diversions, increasing water supply, removing dams, improving water quality, reintroducing fish, and restoring habitat, and concluded that the agreements will benefit the fisheries. The ESA Biological Opinions consider none of these things. Whatever views one has about flows in past or current Biological Opinions, comparing the Basin Restoration Agreement to the Biological Opinions is an apples-to-oranges comparison.

**39. How will the Basin Restoration Agreement comply with the Endangered Species Act's requirements for conservation of threatened salmon and endangered suckers?**

The Agreements do increase the amount of water for fish. The Agreements then protect that water for fish, by protecting it from future diversions – it is retained instream as “environmental water.” Both Agreements acknowledge that the Endangered Species Act remains in effect; Biological Opinions will continue to be issued for threatened salmon and suckers. The Agreements move away from a “regulation-only” approach in favor of a comprehensive program addressing needs of the resources. When Basin restoration projects have succeeded in producing conditions sufficient for naturally self-sustaining populations of fish, it is expected that these species will no longer require the protection of the ESA.

### Oregon Water Rights Adjudication

**40. How will the Basin Restoration Agreement affect the Oregon Water Rights Adjudication?**

Legal rights and positions of adjudication parties are unaffected unless the party specifically agrees otherwise. Parties who endorse the Basin Restoration Agreement will similarly resolve their disputes in the pending Adjudication. The pending claims and contests of those entities that are not party to the Agreement will be unaffected.

**41. How will Siskiyou County (or any other California agency) participate in the settlement of the Oregon Adjudication?**

As a California political subdivision, the County cannot participate in the Oregon General Adjudication in the Oregon State Courts and Administrative agencies. The Settlement provides that: “Each Party may, in a manner consistent with this Settlement, protect, defend, and discharge its interests and duties in any administrative, regulatory, legislative or judicial proceeding, including but not limited to the Secretarial Determination, FERC relicensing process, CWA 401 proceedings, or other proceedings related to potential Project relicensing, Decommissioning, or Facilities Removal.”

## Tribal Interests

**42. Will the Basin Restoration Agreement or Hydro Settlement waive the Tribes' sovereign immunity?**

No. Section 1.6.7 of the Hydro Settlement provides: "Nothing in this Settlement is intended or shall be construed as a waiver of sovereign immunity by the United States, the State of Oregon, the State of California, or any other Public Agency Party [including Tribes]." The Basin Restoration Agreement contains similar provisions. The parties do expect that the critical commitments of the Basin Restoration Agreement will be binding and enforceable through the Agreement or authorizing legislation.

**43. Do the proposed Agreements terminate, or otherwise adversely affect the water rights of Indian tribes in the Basin?**

No.

The Klamath Tribes in Oregon have been engaged in a decades-long water quantification proceeding. The Agreement contemplates that the Klamath Tribes' water rights will be quantified in the adjudication, but resolved as between the Klamath Tribes and those parties that join in these settlements. All senior, unquantified water rights of the Yurok Tribe and Karuk Tribe are specifically retained and preserved in the agreements. In these Agreements, the three Tribes agree with Reclamation and Irrigation Project districts that diversions for agriculture will be reduced and capped, thereby exercising all senior water rights to a stipulated extent.

It would be impossible to "terminate" the water rights of a sovereign Indian tribe by contract when that tribe refused to sign the contract; there is no provision in the Basin Restoration Agreement (not section 15.3.7 or any other) which seeks such a draconian end. No party to these agreements has suggested that the water rights of any Basin stakeholder be terminated involuntarily.

**44. Do the agreements violate Tribal Trust obligations of the U.S. Government?**

No. On the contrary, the participating tribes and the U.S. Government strongly believe that the agreements are in furtherance of the Government's trust responsibility, since they take major steps to restore tribal sources of sustenance and culture.

The United States certainly has "charged itself with moral obligations of the highest responsibility and trust" in its dealings with Indian tribes. *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). It certainly has a trust obligation to protect the Basin Tribes' rights to harvest Klamath Chinook salmon. *Parravano v. Masten*, 70 F.3d 539 (9th Cir. 1995). These two agreements are an expression of the United States' willingness to comply with those duties. The agreements will remove Klamath dams which are impassable to fish (and thereby restore several hundred miles of historic habitat), reduce water diversions, increase the size of Upper Klamath Lake, improve

water quality, reintroduce fish to historic habitat, and restore lake and river habitat. In these Agreements the three tribes exercise senior water rights by entering this Agreement that protects fisheries, avoids litigation risk, avoids litigation expense, and limits diversions.

The United States has considered its trust responsibilities to the Hoopa Valley Tribe, has issued a Record of Decision (2001) reducing diversions from the Trinity River and providing for restoration of that River. The U.S. has committed to restoration of the Klamath River as well. The United States has fulfilled its obligations to the Hoopa Valley Tribe. *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981) (U.S. fulfilled trust obligation to both tribes which disagreed over Clean Air Act designation); *Hoopa Valley Tribe v. Christie*, 812 F.2d 1097 (9th Cir. 1987) (U.S. fulfilled trust obligation to both Hoopa Valley Tribe and other California Indian tribes even though Hoopa objected).

### Trinity River

45. **Do the Klamath Basin restoration and dam removal agreements address delivery of 50,000 acre feet of Trinity River water to Humboldt County?**

No.

The Klamath Basin agreements did not attempt to tinker with the long history of Congressional and other Federal actions in the Trinity River. More than 50 years ago, Congress authorized the diversion of Trinity River water to the Sacramento Valley to supply agricultural demands. In 2001, the Secretary of the Interior required increases in minimum stream flows in the Trinity and increased efforts to restore the natural resources of the Trinity. The Klamath Basin agreements are explicit in stating that the programs and funding for the Trinity River are separate from, and unaffected by the Klamath Basin restoration projects.

46. **Will the programs to restore the Klamath River “likely divert funds from the already underfunded Trinity restoration program”?**

This is a political question. The Klamath Basin agreements expressly affirm that the Trinity River restoration should be fully funded.

V.  
**FOR FURTHER INFORMATION**

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