

# Klamath Basin Coordinating Council Protocols

Adopted on October 7, 2010

## 1. Purpose

The Klamath Basin Coordinating Council (KBCC) is the coordinating body for all Parties to the Klamath Basin Restoration Agreement (Restoration Agreement). Its purpose is to coordinate continued collaboration, cooperation, and consultation among Parties and others in the implementation of the Restoration Agreement, including related provisions of the Klamath Hydroelectric Settlement Agreement. The purposes, roles, and responsibilities for the KBCC are described in more detail in Appendix D-1, subsections I and II, of the Restoration Agreement.

The KBCC provides general oversight and administration, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Restoration Agreement. The KBCC makes decisions to implement certain provisions as specified in the Restoration Agreement. The KBCC also serves as the forum for public involvement in implementation of the Restoration Agreement.

The KBCC does not provide advice or recommendations to Federal Agency Parties. Under the Restoration Agreement, any advice or recommendations to Federal Agency Parties would be made by the Klamath Basin Advisory Council (KBAC) as described in Appendix D-1, subsections I and III, of the Restoration Agreement. The operation of the KBAC will be subject to the requirements of the Federal Advisory Committee Act.

## 2. Definitions

Terms used in these protocols shall have the same definitions as provided in the Restoration Agreement. We restate the definitions of certain terms used extensively in these protocols. Further, these protocols add three new defined terms: Consensus Matters, Non-Voting Matters, and Voting Matters.

**Consensus Matters** shall mean: those matters where the Restoration Agreement requires Consensus.

**Non-Voting Matters** shall mean: those matters that arise in the course of coordination and oversight that do not require a vote, such as reviewing progress in implementation of the Agreement.

**Notice** shall mean: written notice pursuant to the requirements and procedures of Restoration Agreement Section 7.1.

**Parties** shall mean: the signatories of this Agreement from among the entities listed in the Restoration Agreement Section 1.1.1 and, with respect to Federal Agency Parties, as

provided in Section 1.1.2. Additional entities may become Parties after the Effective Date as provided in Section 1.1.3, 7.2.2, 37, and 38 of the Restoration Agreement.

**Parties Related to Klamath Reclamation Project** shall mean: Tulelake Irrigation District, Klamath Irrigation District, Klamath Drainage District, Klamath Basin Improvement District, Ady District Improvement Company, Enterprise Irrigation District, Malin Irrigation District, Midland District Improvement Company, Pioneer District Improvement Company, Shasta View Irrigation District, Sunnyside Irrigation District, Don Johnston & Son, Bradley S. Luscombe, Randolph Walthall and Jane Walthall as trustees under declaration of trust dated 1995, and Inter-County Property Company which acquired title as Inter-County Title Company, Reames Golf and Country Club, Winema Hunting Lodge, Inc., Van Brimmer Ditch Company, Collins Products, LLC, Plevna District Improvement Company and Klamath Water and Power Agency.

**Voting Matters** are: those matters where the Restoration Agreement requires a vote but not Consensus.

### **3. Organization**

#### **3.1. Membership Generally**

All Parties to the Restoration Agreement are members of the KBCC.

#### **3.2. Representation for Voting Matters**

While all Parties may participate in KBCC meetings, only designated representatives of the Parties shall be voting members, as specified in Table 1 below, for any voting matters. Designated representatives shall seek the individual views of their member Parties to ensure effective representation in voting matters.

**Table 1. Party Membership and Representation for the KBCC**

<b>Parties</b>	<b>Representation</b>	<b>Constituent Entities</b>
Department of the Interior	1	FWS, BLM, BOR, BIA
Department of Agriculture	1	USFS
Department of Commerce	1	NOAA/NMFS
State of Oregon	1	ODEQ, ODFW, OWRD
State of California	1	CDFG
Klamath Tribes	1	
Yurok Tribe	1	
Karuk Tribe	1	
Klamath County	1	
Humboldt County	1	
Parties related to Klamath Reclamation Project	2	
Off-Project Representative	1	
Conservation /Restoration Groups	2	
Commercial Fishing Industry	1	
<b>Total</b>	<b>16</b>	

### **3.3. Designation of Representatives for Voting Matters**

Each Party will designate its representative pursuant to its own rules for this purpose, although the KBCC will develop a procedure to address the circumstance where a Party is not able to select its representative.

Each Party on the KBCC will provide to the Facilitator written notification of its designated representative to the KBCC. Each Party may also designate an alternate representative. The Facilitator will maintain a record of representatives and any alternates.

#### **3.3.1. Klamath Reclamation Project**

One representative for the Parties Related to the Klamath Reclamation Project will be an employee or agent of Klamath Water and Power Agency (KWAPA), and another will be an employee or agent of Klamath Water Users Association (KWUA), which may alternately designate a Party related to the Klamath Reclamation Project. Such designation may be changed by a majority of the Parties Related to the Klamath Reclamation Project as defined in Section 2 above.

#### **3.3.2. New Parties**

The KBCC will determine appropriate representation for any additional entities that may become Parties after the Effective Date as provided in Section 7.2.2 of the Restoration Agreement.

### **3.4. Delegation for Purpose of Non-Voting and Consensus Matters**

With respect to any matter on which the Restoration Agreement provides for consensus of all Parties, any Party may delegate to another Party the authority to act on its behalf. Any such delegation shall be in writing and will remain in effect according to its terms or until revoked.

### **3.5. Committees**

The KBCC may establish committees as it deems appropriate to address specific issues on a standing or *ad hoc* basis, and to assist in the implementation of the Restoration Agreement, including the separate but related Hydroelectric Settlement. Each such committee will provide advice or recommendations to the KBCC. Each such committee may establish its own operating protocols.

## **4. Roles and Responsibilities**

### **4.1. Coordination and Oversight**

The Restoration Agreement establishes the following roles and responsibilities for the KBCC:

- tracking and reporting progress in implementation;
- providing approvals as specified in the Restoration Agreement;
- facilitating the resolution of disputes among or between the Parties,
- promoting collaboration and coordination among Parties and other entities in the Klamath Basin;
- assisting in the prioritization of programs and projects;
- seeking grants and other funding;
- reporting program expenditures;
- establishing protocols and procedures;
- developing an annual workplan.

#### **4.2. Dispute Resolution**

The KBCC is the forum to facilitate dispute resolution in implementation of the Restoration Agreement, pursuant to the procedures and requirements specified in Section 6 of the Restoration Agreement.

#### **4.3. Public Participation**

The KBCC will encourage public participation in the implementation of the Restoration Agreement. It will hear and consider public comments at plenary or committee meetings, as provided in Section 6 of these protocols.

#### **4.4. Coordination with other Resource Management Processes**

The KBCC will coordinate the implementation of the Restoration Agreement with regulatory actions, such as Biological Opinions and Recovery Plans under the Endangered Species Act, and with other watershed groups within the entire Klamath River Basin (e.g., Trinity River Working Group, Upper Klamath Basin Working Group, and resource conservation districts). The KBCC will promote basin-wide solutions and approaches.

#### **4.5. Reservation of Authorities**

As provided in Section 2.2 of the Restoration Agreement, these protocols are not intended, and will not be construed, to modify or waive any legal right, obligation, or authority of any Party. The KBCC does not have governmental power; nor does its existence or activities modify the authorities under Applicable Law of any federal, state, tribal, or local government.

## **5. Operations.**

### **5.1. Procedures for Voting Matters**

The KBCC or Facilitator will develop a decision memorandum and a schedule for any decision that requires Voting. The Facilitator will provide Notice, including these materials, to all Parties at least seven calendar days prior to the meeting when the Voting Matter will be discussed.

A quorum will be a majority of the designated representatives.

Only designated representatives will vote on those matters which the Restoration Agreement specifies for this procedure, although all Parties may participate in the discussion.

Except for matters under Section 15.3.8.B. of the Restoration Agreement, a decision in a Voting Matter requires the support of  $\frac{3}{4}$  of the KBCC representatives who comprised the quorum.

The KBCC does not provide advice or recommendations to Federal Agency Parties. Under the Restoration Agreement, any advice or recommendations to Federal Agency Parties would be made by the Klamath Basin Advisory Council (KBAC) as described in Appendix D-1, subsections I and III, of the Restoration Agreement. The operation of the KBAC will be subject to the requirements of the Federal Advisory Committee Act.

With respect to matters under Section 15.3.8.B of the Restoration Agreement, the decision process is described in Section 15.3.8.B and Appendix D-1, Section II.D on pages D.5 and D.6 of the Restoration Agreement.

Parties that do not support a vote may prepare a minority report. All reports shall become part of the record.

### **5.2. Procedures for Consensus Matters**

Certain actions under the Restoration Agreement, including amendments under Section 7.2 and the addition of a New Party under Section 7.2.2, require the Consensus in written form of all Parties.

The KBCC or Facilitator will develop a decision memorandum and a schedule for any decision that requires Consensus.

For amendments of the Restoration Agreement under Section 7.2 and the addition of a New Party under Section 7.2.2, the Facilitator will provide Notice, including the decision memorandum, to all Parties at least 14 calendar days prior to the meeting when the Consensus Matter will be discussed. A consensus of all the

Parties exists for these matters if all Parties submit a written approval to the Facilitator by the deadline established in the decision memorandum.

### **5.3. Procedures for Time-Sensitive Actions**

If a time-sensitive issue arises that requires action by the KBCC under the Voting Matter or Consensus Matter procedure on a schedule that does not allow the normal Agenda review schedule, Notice, or other process provisions in this Protocol, the Facilitator shall provide at least 72 hours notice when scheduling a conference call or meeting to address the time-sensitive issue.

### **5.4. Procedures for Administrative Matters**

If a Voting Matter arises during a meeting of the KBCC, a vote may be taken at that meeting if the matter is administrative in nature. A vote of the KBCC will be taken to as to whether the matter is administrative. Any action on any such matter will be subject to reconsideration at the next KBCC meeting at the request of any Party.

### **5.5. Procedures for Non-Voting Matters**

#### **5.5.1. Generally**

The KBCC or Facilitator will provide Notice at least seven days prior to the meeting when a Non-Voting Matter will be discussed.

#### **5.5.2. Involving Hydroelectric Settlement**

The KBCC may consider how to coordinate implementation of the Restoration Agreement and the Hydroelectric Settlement. Any discussion of the implementation of the Hydroelectric Settlement will be a Non-Voting Matter. The KBCC will provide Notice to PacifiCorp, which may participate in any such discussion.

### **5.6. No Advice to Federal Agencies**

Actions and reviews by the KBCC under Sections 5.1 through 5.5 do not provide advice or recommendations to Federal Agency Parties. Under the Restoration Agreement, any advice or recommendations to Federal Agency Parties would be made by the Klamath Basin Advisory Council (KBAC) as described in Appendix D-1, subsections I and III, of the Restoration Agreement. The operation of the KBAC will be subject to the requirements of the Federal Advisory Committee Act.

### **5.7. Facilitation**

The KBCC agrees to use facilitation. Subject to the availability of funding, the facilitator will be independent of the Parties.

#### **5.7.1. Facilitator's Tasks**

The Facilitator will actively manage the effort in a neutral and fair manner. The Facilitator will develop draft agendas, chair discussions, enforce the protocols, provide process oversight, help to resolve disputes, and otherwise work to build consensus. The Facilitator will handle meeting logistics, meeting notes and follow-up on action items.

#### **5.7.2. Process Management**

The Facilitator is responsible for overseeing the development and implementation of the workplan. If actions in the Restoration Agreement miss a deadline, the Facilitator will work with the Parties to get back on schedule. If these efforts are not successful, the Facilitator will seek assistance from the KBCC.

### **5.8. Meetings**

#### **5.8.1. Agendas**

The Facilitator will distribute a draft written agenda at least a week prior to a meeting of the KBCC. After consultation with KBCC representatives, the Facilitator will finalize the agenda at least three business days in advance of such a meeting. Each agenda will identify items for discussion and decision, materials for consideration, and any other relevant information. KBCC Representatives may request a time certain for an agenda item to accommodate schedules.

#### **5.8.2. Schedule**

The Facilitator will notice and schedule KBCC meetings three weeks in advance. The scheduling of meeting will attempt to accommodate participation of all KBCC Representatives for Voting Matters and otherwise for all KBCC members.

The KBCC shall hold periodic or episodic meetings of all Parties on Non-Voting Matters such as coordination and oversight matters that do not require a vote, including reviewing the progress of implementation of the Agreement.

#### **5.8.3. Record Keeping**

A record of all meetings will be kept to concisely identify all topics of

discussion, decisions reached, matters carried over, action items, and schedule. The Facilitator will prepare and keep the written record of all KBCC meetings and post it on the website.

**5.9. Initial Adoption and Amendment to the Protocols.**

Initial adoption and any subsequent amendment of these protocols will be a Voting Matter. These protocols are subordinate to the Restoration Agreement, including Appendix D, and may not constitute or affect an amendment to that agreement.

**6. Public Involvement**

**6.1. Public Information**

The KBCC shall maintain a list of interested parties and will notify the distribution list via email regarding future meetings, pending decisions, and information and reports prepared by the KBCC. It will provide notices to local papers regarding KBCC meetings. The KBCC shall also maintain a website to provide information to the public.

**6.2. Public Comment at KBCC Meetings**

The KBCC will provide an opportunity for public comment by anyone attending a meeting. Public comment will be scheduled: 1) at the beginning of the meeting for general comments and requests to comment as part of specific agenda items, 2) prior to KBCC action on Voting Matters and Consensus Matters, and 3) at the end of each meeting. The facilitator may limit the amount of time allotted overall or for each speaker, as the Facilitator determines to be reasonably necessary.

**6.3. Public Comment on KBCC Plans**

The Restoration Agreement includes public review and comment in the development of several plans. In those cases the KBCC will develop a schedule to provide for public review and comment prior to a decision.

**7. Funding**

As provided in Section 5.3 of the Restoration Agreement, the Non-Federal Parties will support authorizations and appropriations in the amount estimated in Appendix C-2 of the Restoration Agreement to fund the coordination and oversight functions of the KBCC, including facilitation, for the first ten years after the Effective Date.

These Protocols were adopted by the Klamath Basin Coordinating Council on October 7, 2010 in Klamath Falls, Oregon.