

KLAMATH BASIN COORDINATING COUNCIL

Fourth Annual Report

Klamath Basin Agreements

July 2014



The Klamath Basin Coordinating Council has prepared this Fourth Annual Report on the accomplishments implementing the Klamath Basin Agreements.

Photograph of Wood River courtesy of Bill Nicholson

Fourth Annual Report Implementing the Klamath Basin Settlement Agreements

Prepared by the Klamath Basin Coordinating Council

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Summary

This is the Fourth Annual Report from the Klamath Basin Coordinating Council (KBCC) on the accomplishments in implementing the Klamath Basin Restoration Agreement (Restoration Agreement or KBRA) and the Klamath Hydroelectric Settlement Agreement (Hydroelectric Settlement or KHSA), referred to in this report, collectively, as the Klamath Basin Agreements. The report was prepared by the non-federal members of the KBCC.

The KBRA and KHSA were signed on February 18, 2010 and the KBRA was amended on December 29, 2012. These agreements provide a comprehensive solution for water, fishery, and power issues in the Klamath Basin. There are currently 45 Parties to the KHSA and 42 Parties to the KBRA, representing Federal agencies, California and Oregon, three Indian tribes, two counties, irrigators, and conservation and fishing groups¹.

The Upper Klamath Basin Comprehensive Agreement was signed on April 18, 2014. There are sixteen parties to the Upper Basin Agreement, including the United States Department of the Interior, the State of Oregon, the Klamath Tribes, and a broad coalition of Upper Klamath Basin irrigators².

The major achievements in the last year are related to the work of the Klamath Basin Task Force, the completion of the Upper Klamath Basin Comprehensive Agreement, and the introduction of Federal legislation to implement the three Klamath Basin agreements; the three agreements are referred to in this report and in the legislation as the Klamath Basin Settlements. Parties to the KBRA and KHSA participated actively in the Task Force and several are parties to the Upper Basin Agreement.

The parties to the Klamath Basin Settlements have made good progress on implementing many of the activities that do not require Federal legislation. Those accomplishments are described in this report. Full implementation of a number of the Klamath Basin Settlements programs has been delayed because certain proposed activities are not currently authorized under existing law and funding has not been available.

On May 21, 2014, Senators Wyden, Merkley, Feinstein and Boxer introduced S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014. Enactment of the legislation would provide the authority needed to fully implement the Klamath Basin Settlements.

¹The Department of the Interior and National Oceanic and Atmospheric Administration signed the KHSA; the federal agency parties are not signatories to the KBRA. The KBRA includes provisions that these agencies will become parties when Federal authorizing legislation is enacted. PacifiCorp signed the KHSA; it is not a party to the KBRA.

² As with the KBRA, Federal agencies will become parties to the Upper Basin Agreement only after Federal authorizing legislation has been enacted.

This section summarized the status of implementing the Klamath Basin Settlements; the sections following the summary provide more detailed status reports on each of the programs.

Summary of Klamath Basin Restoration Agreement Accomplishments

- The Upper Klamath Basin Comprehensive Agreement was signed in April 2014; it addresses the plan called for in Section 16 of the KBRA.
- The KBCC is currently working on reductions to the Federal costs to implement the agreements based on the recommendations of the Klamath Basin Task Force.
- The Klamath Water and Power Agency completed the On-Project Plan to align water supply and demand on the Klamath Reclamation Project and Reclamation is conducting the necessary environmental review of the plan. Implementation will require passage of the Federal legislation.
- The parties have completed work on the Klamath Drought Plan to provide additional tools to address low-water years; implementation will require passage of the Federal legislation.
- The Fishery Managers have agreed on an outline and approach to develop the Klamath Basin Fisheries Restoration and Monitoring Plan. The Fish Managers will begin work on the Plan in 2014.
- Reclamation has completed studies of the potential for additional water storage in the Klamath Basin.
- The Parties completed a review of the KBRA and all parties approved amendments to the agreement in 2012.

Summary of Klamath Hydroelectric Settlement Agreement Accomplishments

- The Department of the Interior has issued the Klamath Dam Removal Overview Report in 2013
- The Department of the Interior released a final Environmental Impact Statement for a Secretarial Determination in 2013. The California Department of Fish and Wildlife has completed the draft Environmental Impact Report. These environmental reports were developed in coordination under the provisions of the Hydroelectric Settlement.
- The public utility commissions in California and Oregon have approved the collection of funds to pay for decommissioning of the four hydroelectric dams that could be removed under the KHSA. As of June 30, 2014, the combined

balance of the Oregon and California dam removal trust accounts was \$75.1 million.

- The interim measures to improve environmental conditions within the Klamath Hydroelectric Project to benefit aquatic habitat and listed species, improve water quality, and improve hatchery operations are being implemented on the schedule called for in the Hydroelectric Settlement.

Klamath Basin Water Recovery and Economic Restoration Act of 2014

Senators Wyden, Merkley, Feinstein and Boxer introduced S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014, on May 21, 2014. The legislation would provide the authority to fully implement the three Klamath Settlements.

The Senate Energy and Natural Resources Committee held a hearing on the legislation on June 3, 2014. The hearing focused on the Upper Basin Agreement. The Committee also held a hearing on June 20, 2013 to receive testimony on water resource issues in the Klamath River Basin. For more detail on the legislation, please see section 1.2.

Klamath Basin Task Force

Senators Wyden and Merkley, Congressman Walden, and Governor Kitzhaber convened the Klamath Basin Task Force in July of 2013 to 1) develop a comprehensive settlement of water management issues in the upper Klamath Basin; 2) address outstanding power issues for the Klamath Basin Project and the Upper Basin irrigators; and 3) recommend ways to reduce the federal costs of implementing the KBRA.

The Parties to the Klamath Basin Agreements and other organizations worked during 2013 to address these issues and make recommendations to the congressional delegation and governors. Those activities are described in sections 1.3, 1.4, 3.8, and 3.9 of this report.

Upper Klamath Basin Comprehensive Agreement

Upper Klamath Basin irrigators, the Klamath Tribes, and officials from Oregon and several Federal agencies began meeting in the summer of 2013 and signed an Agreement in Principle on December 5, 2013. These parties signed a final Upper Klamath Basin Comprehensive Agreement on April 18, 2014. The agreement includes:

- A Water Use Program that will increase inflows into Upper Klamath Lake by at least 30,000 acre feet by reducing water use in key reaches of the tributaries above the lake, while also providing a stable, sustainable basis for the continuation of irrigated agriculture;
- A Riparian Program designed to permanently improve and protect riparian conditions; and

- An Economic Development Program designed to create economic opportunities for the Klamath Tribes and its members, and including increased opportunities for the exercise of Tribal cultural rights.
- The parties are implementing the transition programs in the agreement.

The Task Force recommendations and a summary of the Upper Basin Agreement are described in sections 1.3 and 3.8 of this report.

Another Drought Year

The Klamath Basin is experiencing another severe drought and communities and fisheries throughout the basin are likely to suffer serious impacts. Federal and state agencies are providing assistance under existing programs; see section 3 of this report.

Implementation of the Klamath Basin Settlements would have provided additional tools to deal with a drought year:

- Full implementation of the water assurances would have provided more certainty for irrigators, wildlife refuges, and fisheries.
- Full implementation of the water assurances would have changed winter management and thus provided an allocation of water to the Lower Klamath National Wildlife Refuge. This Refuge has not received any water deliveries since November 2013.
- Full implementation of the Water Use Program would have provided funding to irrigators for voluntary water use reductions in the upper basin and provided additional water for Upper Klamath Lake and its tributaries and the Klamath River.
- The KBRA Drought Plan would have provided additional resources to reduce water use and assist irrigators.
- KBRA On-Project Plan also would have provided further tools to align Klamath Reclamation Project demand with available supplies of water.
- KBRA Power for Water Management Program would have provided assistance to lower the electricity costs for pumping, thus allowing for greater efficiency and reuse of water.
- The KBRA overall would have provided more flexibility to manage the available water.
- The fishery programs would have lowered the pressure on fish and wildlife in the basin and provided more resilience to address a drought.

This annual report describes the accomplishments since the agreements were signed.

Copies and summaries of the three settlements and all the documents described in this report are available at: www.klamathcouncil.org.

Klamath Basin Restoration Agreement

The KBRA 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 actions taken during the past four years to implement the KBRA are summarized below.

1. General Provisions

1.1 The Klamath Basin Coordinating Council

A key feature of the KBRA is a commitment by the parties to cooperate fully in its implementation. The KBRA Parties established the Klamath Basin Coordinating Council (KBCC) in 2010 to facilitate coordination, cooperation, collaboration, and accountability by the KBRA Parties and to ensure that the commitments in the KBRA are carried out effectively. However, the KBRA does not create any new governmental entities, nor does it supersede, change or modify any existing governments' legal authorities (see KBRA Section 2).

The KBCC provides for general implementation oversight, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the KBRA. It also serves as the primary forum for informing the public and for public involvement (See KBRA Appendix D).

The KBCC held its first organizational meeting in July, 2010 in Redding California. The KBCC has held eleven meetings since the Agreements were signed. These meetings have rotated between Klamath Falls and Ashland/Medford areas of Oregon, the Arcata and Eureka areas in California, and Redding, California. A listing of the meetings and all of the materials from the meetings are posted on the website.

The KBCC has adopted internal operating protocols and a communications plan. All KBCC meetings are open to the public. The KBCC agendas provide public comment periods at each meeting for people to make general comments or to comment on specific issues before the KBCC.

The KBCC has also formed the Interim Klamath Basin Advisory Council and the Interim Technical Advisory Team pursuant to KBRA Appendix D. The Department of the Interior is reviewing charters for these entities under the Federal Advisory Committee Act.

1.2 Federal Legislation

Senators Wyden, Merkley, Feinstein and Boxer introduced S. 2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014, on May 21, 2014. If enacted, S. 2379 will provide all federal authorizations necessary for full implementation of the Klamath Basin Settlements.

The Energy and Natural Resources Committee staff has prepared this summary of the legislation:

The bill authorizes, executes and implements the three Klamath agreements including the most recent Upper Basin Agreement, the KBRA, and the KHSA (collectively the “Settlements”).

In addition, Section 4 of S. 2379 updates the authorized purposes of the Klamath Reclamation Project to include irrigation, reclamation, flood control, municipal uses, industrial uses, power, and fish and wildlife purposes, including serving the National Wildlife Refuges.

Section 5 authorizes the resolution and settlement of water rights for the Klamath Tribes in the Klamath Basin Adjudication as established in the Upper Basin Agreement and KBRA. The Party tribes to the Agreements agree to relinquish certain claims regarding their water as long as the terms of the Agreements are met by the other parties to the Agreements.

Section 6 amends the Klamath Basin Water Supply Enhancement Act of 2000 to implement the water, power and ecosystem restoration programs agreed upon in the Settlements. This includes a water program to help irrigators align water supply and demand and reduce water consumption by the irrigators, a program to limit the total cost of power to irrigators by delivering Federal power and assisting in the development of a local renewable power program, and various programs to restore the ecosystems in the Klamath Basin in order to support recovery of endangered fish species.

Section 7 establishes a fund, as agreed upon in the Upper Basin Agreement, to provide for improved economic development for the Klamath tribes.

Section 8 sets out the terms for the removal of four dam facilities on the Klamath River. The Secretary of the Interior is to make a determination on whether to proceed with removal based on whether it would advance salmon fisheries

restoration and is in the public interest, including potential impacts on local communities and the federally recognized tribes. That determination must comply with NEPA and only happens when certain conditions stipulated in the KHSA have been met. The language further provides that neither PacifiCorp nor any other entity contributing funds to pay for facilities removal will be liable for any damages resulting from facilities removal.

Section 9 authorizes the Secretaries to enter into appropriate agreements with State, tribal and local governments and private individuals in order to implement the Act and the Settlements. It also establishes accounts to manage appropriated and non-Federal funds for the implementation of the Settlements. It also requires that the President's budget include requests for amounts necessary to carry out the Settlements as well as an annual report to Congress on the state of implementation of the Settlements.

The Senate Energy and Natural Resources Committee held a hearing on the legislation on June 3, 2014. The hearing focused on the Upper Basin Agreement. Testimony from the hearing and an archive of the webcast are available at:

<http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=8d5191fa-0a81-465d-bb3c-80f4fc4c9982>

The Committee also held a hearing on June 20, 2013 to receive testimony on water resource issues in the Klamath River Basin. A list of the hearing witnesses, copies of the testimony, and a webcast of the hearing are available at:

<http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=2140d7f0-ca76-4a7e-99b3-cd053c3ec9ac>

1.3 Klamath Basin Task Force

On July 3, 2013, Senators Wyden and Merkley, Congressman Walden, and Governor Kitzhaber initiated the formation of the Klamath Basin Task Force “to resolve the water, power and other resource management issues in the Klamath River Basin...” The letter to the Task Force participants states in part:

The current crises in the Basin require immediate attention, leadership, and constructive efforts of us all. Although the Basin has faced many of these challenges for some time, it is clear that now is the time to move for a comprehensive and lasting solution that protects the vast natural resources of the basin, while also providing the stability and certainty needed for the region's economy to continue to thrive.

It is our expectation that the task for will work to address three tasks:

1. Develop a settlement of water management issues in the upper Klamath Basin that results in:

- At least 30,000 acre feet of increased water inflows into Upper Klamath Lake through a voluntary program to idle water usage;
 - Permanent resolution and protection of significant riparian areas in the Wood, Sprague, and Williamson basins, as well as other tributaries to Upper Klamath Lake, sufficient to produce the water quality and habitat improvement needed for fisheries; and
 - Regulatory assurances for water and land uses in the Upper Basin, both in terms of a negotiated settlement of the exercise of state water rights, and federal Endangered Species Act (ESA) and Clean Water Act (CWA) compliance.
2. Work to address outstanding power issues for the Klamath Basin Project and the Upper Basin irrigators:
 - It is crucial that an affordable and certain power supply is attained for both on project and off project irrigators.
 3. Work to reduce the Federal Costs:
 - We want the task force to review specific ideas for reducing the costs to the federal government of the overall package of Klamath Basin measures. This will require input from both Upper and Lower Basin participants.

The outcomes we seek are sustainable fisheries and a sustainable level of farming and ranching in the Upper Basin, as well as power rate arrangements needed to maintain the on-project and off-project farming and ranching operations and support the ranching and farming families that are key to the area's economy.

The Task Force established four workgroups and held public five meetings in Klamath Falls, Medford, and Ashland, Oregon. The Task Force completed its work in December 2013. The results are summarized in sections 1.4, 3.8, and 3.9 of this report.

All Task Force materials have been posted on the Oregon Governor's Natural Resource Office website. For more information on the Task Force please see:

<http://www.oregon.gov/gov/GNRO/Pages/index.aspx>

1.4 Reducing the Federal Cost to Implement the KBRA

Reducing Federal Costs

The Klamath Basin Task Force focused on two efforts: 1) recommendations to the congressional delegation on the new authorizations for appropriations that would be needed to implement the Klamath agreements; and 2) identification of additional opportunities to reduce the Federal costs of implementing the Klamath agreements.

Authorizations for Appropriations

After consultation with congressional staffs and others, the Task Force recommended that the Federal legislation should focus on the new authorities that are needed to implement the Klamath agreements. The Federal agencies identified existing laws that authorize most of the programs and activities in the Klamath agreements. The Federal agencies also identified Klamath programs that require new authority. Although legislation is required to authorize certain actions under the KHSA, potential dam removal would be funded from non-federal sources.

Based on information provided by the Federal agencies, the programs that require new authorizations for Federal appropriations are the On-Project Plan, remedy for ground water impacts associated with On-Project Plan, development and implementation of the Water Use Retirement Program, the Interim Power Sustainability Program, the Energy Efficiency and Renewable Resources Program, authority for Reclamation to serve Off-Project irrigators with the Federal Power Program, authority for Reclamation to include Off-Project irrigators in the Renewable Power and Engineering Plan, the Klamath Restoration Agreement Drought Fund, the Off-Project Reliance Program, and the Off-Project portion of the Interim Flow and Lake Level Program. The cost of currently unauthorized activities totals approximately \$250 million over fifteen years in 2014 dollars, based on current estimates.

Reducing Federal Costs

The Task Force also reviewed all of the Klamath programs to identify cost reductions and alternative funding that could reduce the need for new Federal funding. The Task Force began by reviewing the cost reductions adopted by the KBCC in 2011. In that effort, the KBCC reduced the cost estimate for implementing the KBRA from \$970 million to \$799 million for 2012 through 2026; this was an 18 percent reduction from the cost estimates in the 2010 KBRA. The 2011 revisions lowered the ten-year cost estimate for implementing the KBRA to \$647 million; this was a 33 percent reduction for this ten-year period compared to the 2010 KBRA Appendix C-2. The 2011 review also identified \$550 million in matching funds from the states of California and Oregon and customers of PacifiCorp. These non-federally funded activities are in addition to the cost estimates for Federal funding of the KBRA. A copy of a report on those cost reductions and non-federal funding is on the KBCC website. The cost reductions and additional funding to reduce Federal funding in 2013 were in addition to those made in 2011.

The Task Force started by adjusting all of the KBRA costs to 2014 dollars. This increased the total 2011 estimates from \$647 million to \$750 million for 2015 through 2024. The Task Force focused on ten years of costs because this is the time frame used by the Congressional Budget Office.

The Federal agencies have identified \$51 million in Federal expenditures that have been made that have the effect of carrying out elements of the Klamath agreements under existing authorities and another \$10 million estimated for Fiscal Year 2014. The Federal

agencies have also identified ongoing base program funding for actions specified in the Klamath agreements and made estimates that anticipate future funding would be at similar levels to historical base funding; those estimates total \$107 million over ten years (the ongoing base funding estimates do not include 2013 program reductions and sequestration). The Task Force identified additional reductions in the Fisheries Reintroduction Program totaling \$5 million. Together, these changes reduce the total new Federal funding required by \$173 million.

The Task Force has also identified several new sources of funding for the Klamath agreements that could reduce the amount needed to be appropriated to carry out the Klamath programs. These include additional funds from the states, Federal off-budget funds, and private foundation funding. Replacing Federal funding with these other sources will require further work by the KBCC.

The first new source of funding was from the State of California. If the proposed California Water Bond passes and not all of the funding in the bond for the Klamath Basin is required for dam removal costs, the California Natural Resources Agency supports use of up to \$50 million of those funds for restoration projects on the California side of the border. The second new source of funding is the State of Oregon. Oregon has committed an additional \$12 million from the Oregon Watershed Enhancement Board for restoration work in Oregon through a Strategic Investment Program commitment. In addition, private foundation funding is expected to total on the order of \$10 million. Together, these additional sources total approximately \$72 million. Finally, Federal off-budget funds from the Reclamation Water Rights Settlement Fund, totaling approximately \$50 million, have been identified by Reclamation. Due to the priority for use of the funds in the act that established the fund and the currently anticipated demands upon the fund, the availability of annual increments of the \$50 million is not expected to begin before FY 2025 (*i.e.*, may not be available within the first ten years).

In summary, cost reductions made in 2011 reduced the ten-year total spending for Klamath restoration to \$750 million. The additional recommended cost reductions, spending already incurred or anticipated as part of base programs, together with additional funding described above will reduce the amount of new Federal funding required to implement the Klamath agreements to \$505 million in 2014 dollars; this is an additional reduction of \$245 million, or 33 percent. The funds from the Reclamation Water Rights Settlement Fund would reduce other Federal costs after 2025.

The Task Force recommendations did not propose to alter the bargained-for benefits in the KBRA, including amendments adopted in 2012 that provide for additional reviews for changes that affect the Fisheries or Water Management Programs, and that clarify the roles of the tribes and other fish managers in implementing the Fisheries Program. The Task Force recommended that the KBCC incorporate these changes in a revision to the cost estimates to implement the Klamath agreements. In addition, it is recognized that the KBCC will continue to refine cost estimates on an ongoing basis, as provided in the KBRA. This may result in a degree of adjustment, up or down, in estimates of costs needed to complete any individual element, based on increased knowledge.

The KBCC reviewed the Task Force recommendations at its April 2014 meeting and discussed several changes in the schedule of funding and several issues that needed additional attention. The KBCC is expected to address these issues at its next meeting.

1.5 Monitoring implementation of Klamath Basin Restoration Agreement

The KBCC has developed a process to track implementation of all near-term commitments in the KBRA. The facilitator prepares a status report on all these actions and it is reviewed at each KBCC meeting. Copies of these reports are posted on the website. The status of the implementation of these actions is summarized in this report. The KBCC also reviews the status of the implementation of the KHSAs at each meeting.

1.6 Public Information and Involvement Plan

The KBCC was established to “promote continued collaboration, cooperation, coordination, and consultation among Parties and others as elements of the KBRA are implemented. The KBCC will provide for general oversight and administration, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Agreement...The KBCC will serve as the primary forum for public involvement in implementation of the Agreement.” (KBRA Appendix D-1, page D.3)

The KBCC has independent obligations under the KBRA not only to encourage public involvement in KBRA implementation, but also to keep the public informed about KBRA activities.

Many of the actions contemplated by the KBRA are also actions by federal or state agencies. Additional public input to such actions will be managed by the relevant agencies pursuant to applicable laws which mandate public participation in the decision making process such as the National Environmental Policy Act or California Environmental Quality Act. However, the KBCC serves as an information clearing house so that members of the public have a one-stop access point to what could otherwise be scattered information on these related agency processes.

The KBCC has also established communication objectives, developed tools for meeting these objectives, and defined the scope of its communications responsibilities. That scope, however, relates to official KBCC communications, and does not limit the communications efforts of any of its member Parties.

The KBRA commits the Parties to operate in a publicly transparent manner, actively solicit public input, and consider public input in decision making. To facilitate this, the KBCC provides public notice of upcoming meetings through general notices to local media outlets, emails to individuals requesting information, and on the KBCC website

that lists meetings, meeting materials, and official documents. Each KBCC meeting provides an opportunity for general public comment and comment on any agenda item.

2. Fisheries Program

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.

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.

2.1 Fisheries Restoration and Monitoring Program

Under Sections 10.1 and 12 of the KBRA, the Klamath Fish Managers are working to prepare a Fisheries Restoration Plan and a Monitoring Plan. This section describes the progress to date.

Fish Managers have been meeting since July 2010 to work on the Fisheries Restoration and Monitoring Plan. The Fish Managers prepared a draft *KBRA Phase I Fisheries Restoration and Monitoring Plan: Proposed Outline and Approach* on November 29, 2010 and made a presentation to the KBCC on December 15, 2010 and sought comments from KBCC members.

The *KBRA Phase I Fisheries Restoration and Monitoring Plan: Proposed Outline and Approach* was finalized on February 4, 2011 and was the culmination of a series of meetings among Fish Managers. The purpose of the document was to outline the initial steps and general approach toward achieving the KBRA directive to develop a monitoring plan and a restoration plan. The document expressed the group's general consensus to integrate the restoration and monitoring plans into a single "Phase I Fisheries Restoration and Monitoring Plan" using a multiple-scale approach and to base restoration and monitoring actions on basin-scale ecological goals. Integrating the plans in this manner ensures that science is connected with decision making, that Fish Managers make good use of existing knowledge, and that goals and objectives are defined early so as to serve as the basis for prioritization of methods and actions.

In 2014, the Fish Managers will begin work to develop the Phase I Fisheries Restoration and Monitoring Plan. The Fish Managers expect this effort will include the following:

1. Develop a scope of work to develop detailed costs for preparing the draft Phase I Fisheries Restoration and Monitoring Plan and continue to work on funding.
2. Develop a synthesis of existing scientific studies, restoration planning efforts, and monitoring activities to inform the process and to reduce duplication of effort. This activity would also serve as the basis for the introduction and background sections of the Phase I Restoration and Monitoring Plan and potentially populate a metadata library for use by program partners.
3. Collectively, define goals and objectives consistent with KBRA associated with restoration and monitoring (instream, riparian and upland) so as to directly benefit existing fish resources and significantly contribute to protecting and preparing habitats for use by anadromous fish.
4. Identify and develop an initial prioritization of restoration actions based on defined goals so as to directly benefit existing fish resources and significantly contribute to protecting and preparing habitats for use by anadromous fish. Develop government cost estimates for tasks based on this prioritization that can be used to refine initial cost estimates provided in KBRA Appendix C-2.
5. Develop adaptive monitoring processes to evaluate restoration effectiveness, fish population status and trends, and environmental water quality/quantity as described in the KBRA.

These steps are proposed to allow for objective prioritization of tasks using a process-driven approach that can then be compared and used to modify the tasks listed in the budget justification details, where appropriate. It should be noted that each of the activities listed above will draw from existing information and incorporate existing programs, where practical, to avoid redundancy and improve cost effectiveness.

The Klamath Fish Managers are comprised of: the California Department of Fish and Wildlife, the Karuk Tribe, the Klamath Tribes, the Yurok Tribe, the National Marine Fisheries Service, the Oregon Department of Fish and Wildlife, the U.S. Bureau of Land Management, the U.S. Fish and Wildlife Service, and the U.S. Forest Service.

2.2 Fisheries Reintroduction Plan

Oregon Plan

The Oregon Fish and Wildlife Commission adopted an amendment to the Klamath River Basin Fish Management Plan on July 18, 2008. The 2008 Amendment (OAR 635-500-3890 *et seq.*) provides policy direction for the Oregon Department of Fish and Wildlife's (ODFW) participation in the implementation of this section of the KBRA. (See KBRA Section 11.3)

General Policy: Oregon's Wildlife Policy (ORS 496.012) recognizes that the Oregon Fish and Wildlife Commission represents "the public interest of the State of Oregon" and further will implement the goal "to develop and manage the lands and waters of the state in a manner that will enhance the production and public enjoyment of wildlife." By statutory definition, wildlife includes fish. Nothing in the KBRA modifies or abrogates the Oregon Fish and Wildlife Commission's statutory responsibilities.

Amended Klamath Policy: Oregon's goal is to re-establish in Oregon self-sustaining, naturally-produced populations of chinook, steelhead, coho, and lamprey that were historically present in the Upper Klamath Basin, into historic habitats currently vacant of anadromy.

The 2008 Amendment to the Klamath River Basin Fish Management Plan (1997) directs ODFW to develop a Reintroduction Implementation Plan and an Anadromous Fish Conservation Plan for the Oregon portions of the Klamath River Basin. The Reintroduction Implementation Plan corresponds with the Phase I Plan described in KBRA Section 11.2 and 11.3.1. The Anadromous Fish Conservation Plan corresponds with the Phase II Plan described in KBRA Section 11.3.2.

The 2008 Amendment to the Klamath River Basin Fish Management Plan (1997) provides policies that direct ODFW to: develop a Reintroduction Implementation Plan prior to release of any chinook above Upper Klamath Lake; monitor the volitional re-colonization of the Oregon portion of the Klamath River and tributaries by chinook salmon, steelhead, coho salmon, and Pacific lamprey, and not release anadromous fish into the Oregon portion of the Klamath River and tributaries below Upper Klamath Lake unless re-colonization is proceeding too slowly according to criteria developed in the Reintroduction Plan; and develop a Reintroduction Implementation Plan prior to release of any chinook above Upper Klamath Lake.

Under KBRA Section 11.3, ODFW and Klamath Tribes, in collaboration with other tribes and Fish Managers will initiate plan development when funding is available, but no later than State Concurrence of an Affirmative Declaration by the Secretary of the Interior under KHSA Section 3.3. In preparing the plan, these agencies will seek input from interested KBRA Parties and others with technical expertise. The schedule calls for completing the Phase I Plan within 12 months.

California Plan

The California Department of Fish and Wildlife (CDFW), in collaboration with other Fish Managers will initiate the California Reintroduction Plan when State Concurrence of an Affirmative Declaration by Secretary of Interior under KHSA Section 3.3 is complete. CDFW will seek input from other Parties and public and complete the plan within 24 months. (See KBRA Section 11.4)

3. Water Resources

The KBRA contains a number of measures to provide water supply reliability. The KBRA also includes a number of actions to increase the amount of water to improve instream flows in the Klamath River and tributaries, maintain the elevation of Upper Klamath Lake, and provide specific allocations and delivery obligations for water for the Lower Klamath and Tule Lake National Wildlife Refuges.

3.1 File validation actions

The KBRA called for the Klamath Reclamation Project water entities to file actions seeking validation or confirmation of the KBRA. Those actions are complete.

3.2 Collaboration to Benefit Agriculture and Wildlife Refuges.

The U.S. Fish and Wildlife Service (FWS) and Klamath Project Water Users have agreed to work on interim actions under KBRA Section 15.1.2.J to resolve outstanding issues related to water rights for the Refuges. Other provisions will be implemented on a schedule that will allow implementation when the diversion limits in Appendix E-1 become effective. (See KBRA Section 15.1.2.C)

3.3 On-Project Plan

The Klamath Water and Power Agency (KWAPA) has completed development of the On Project Plan (OPP) provided under section 15.2 of the KBRA. KWAPA is coordinating with the U.S. Bureau of Reclamation (Reclamation) in the preparation of a joint Environmental Impact Statement / Environmental Impact Report (EIS/EIR) to support Reclamation and KWAPA's consideration of formal approval of the plan. The environmental review process is scheduled to conclude in August of 2015. Assuming the necessary approvals and enactment of federal authorizing legislation, KWAPA will then commence implementation and ultimate administration of the OPP as provided in the KBRA.

Background: Under the KBRA, once certain events have occurred, there will be a permanent limitation on the amount of water that can be diverted at the "Settlement Points of Diversion" from the Klamath system for use in the Klamath Project. The limitation on diversion is expressed on a sliding scale that is a function of the hydrology in a given year. Also, firm water delivery commitments for the National Wildlife Refuges that can receive water through Klamath Project facilities will occur; particularly with regard to the Lower Klamath National Wildlife Refuge, this represents a change in current circumstances—the refuges currently have no formal allocation of water other than contractual delivery commitments for their agricultural lands.

Section 15.2 of the KBRA requires KWAPA to develop the OPP, the purpose of which is to align water supply and demand in the "On Project Plan Area" (OPPA) in light of the diversion limitations, the refuge delivery commitments, and other factors. The area

comprising the OPPA is essentially the area of agricultural lands that use Klamath River water. The KBRA identifies three “phases” for the OPP, consisting of: development and adoption; implementation of the adopted plan; and year-to-year administration after the plan has been implemented.

OPP Development Process and Proposed Approach: KWAPA has worked over the past three years to develop the OPP. It conducted an open process to select a consultant team. The KWAPA Board of Directors established an OPP Advisory Committee (OPPAC), which guided and responded to work conducted by KWAPA staff and consultants. That committee met twelve times, in noticed meetings open to the public. KWAPA also conducted outreach in six advertised public meetings and by distribution of a newsletter.

The OPP was developed through a series of seven technical memorandums. Technical Memorandum 1 included goals and objectives for OPP that the KWAPA Board of Directors approved, as follows:

- Meet commitments specified in the KBRA.
- Maintain long term sustainability of Klamath Reclamation Project agriculture.
- Minimize reductions in irrigated agriculture in the OPPA and avoid any uncompensated reduction in irrigated agriculture.
- Ensure equitable treatment among districts, avoid impacts on district operations, and seek opportunities for improved water management operations within and across districts.
- Develop fair, equitable, and transparent strategies for aligning water supply and demand.
- Consider cost effectiveness of alternatives to the overall Klamath Basin economy and minimize third party impacts.
- Avoid “Adverse Impacts” on groundwater as a result of OPP implementation or administration, as specified in KBRA Sections 15.2.1.A and 15.2.4.A.
- Use groundwater in a long-term and sustainable manner, and address all relevant in-basin groundwater management objectives, including identifying and addressing potential impacts on areas directly adjacent to the OPPA.

Issues addressed in the OPP technical analysis include: a conservative assessment of the frequency and magnitude of the water supply “gap” that the OPP needs to address (i.e., the difference between demand and supply assuming operation consistent with the KBRA diversion limitations); and a screening of alternative means to align supply and demand. The seventh and final technical memorandum, relying on the foundation of the first six,

contains the specific action plan proposed to accomplish the purposes of the OPP. In some years there will be no gap (demand will be met using available Klamath supplies), in some years the gap will be very significant, and some years will be in between.

Ultimately, the proposed approach is to accomplish the alignment of supply and demand (close the gap) through some efficiency projects and through long-term agreements with landowners. The conservation and efficiency projects (which will include some already-realized actions and two potential recirculation projects) are regarded as the most desirable means to align supply and demand.

The more heavily relied upon tool would be long-term (probably perpetual) agreements with landowners, under which the landowner would agree not to use surface water in some future years. For example, in a given year, based on the applicable KBRA diversion limitations that dictate available Klamath diversions in that year, KWAPA would, if necessary, “call” on lands where it had previously made long-term agreements, and the landowners on those lands would not irrigate with surface water in that year. Many of these agreements would be made with landowners who have wells or access to groundwater. In those instances, when called, the landowner would be free to use groundwater consistent with state law.

A central goal of the OPP relates to maximizing agricultural production. Thus, agreements that KWAPA expect to lead to use of groundwater are preferred over agreements that will require idling of farmland. However, based on current information, the proposed OPP assumes groundwater use is not likely sustainable at a level that would completely close the gap in all years. Thus, KWAPA anticipated that there will be contracts with parties who do not have a groundwater alternative, and the effect of the call would simply be land idling.

Some lands within the OPPA, and particularly the “lease lands,” are within National Wildlife Refuges. Under the proposed approach, KWAPA would have the ability to call on these lands in a given year, up to the same percentage of private land that has been called in that year. The Refuge Manager must approve the OPP as it relates to these lands, and KWAPA has coordinated closely with refuge staff in preparing the OPP.

The proposed plan also includes improved measurement and monitoring, and considerably more detail than the general discussion above. Additional information, including all the technical memoranda, is available on the KWAPA website: <http://kwapa.org/programs#OPP>.

Status: The KWAPA Board of Directors has approved the developed OPP as the proposed action to be carried forward for environmental review and formal approval. Under the KBRA, Reclamation must approve the OPP. An EIS will be prepared under the National Environmental Policy Act (NEPA) to support the approval (and the Refuge Manager’s approval as necessary, related to refuge lands in the OPPA). An EIR will be prepared in accordance with the California Environmental Quality Act (CEQA) to support KWAPA’s consideration of formal approval and ultimate implementation and

administration. Work toward the joint EIS/EIR has begun, and KWAPA's schedule provides for consideration of formal approvals in July and August of 2015.

Actual implementation of the approved OPP would be expected to commence as soon as Federal authorizing legislation has been enacted and the initial funding for implementation becomes available.

3.4 Groundwater Technical Investigations

USGS, in cooperation with OWRD, completed the groundwater studies pursuant to the workplan in Appendix E-2. (See KBRA Section 15.2.4.B).

KWAPA has met and communicated with OWRD and other interested Parties regarding the development of On-Project Plan and groundwater use under the Plan and taken all the actions required under KBRA Section 15.2.4.B.iv with respect to coordination with other Parties related to the avoidance of "Adverse Impacts" to groundwater (as defined in the KBRA) that could result from the On-Project Plan.

3.5 D Pumping Plant Costs

Reclamation, TID, and LKNWR have reviewed cost allocation in KBRA Section 15.4.2.A. These parties agreed to maintain the allocation stated in this section.

3.6 Klamath Reclamation Project operations

The Secretary of the Interior is working with Project contractorsto establish a process to analyze the Klamath Reclamation Project costs (KBRA Section 15.4.7).

3.7 Klamath Basin Adjudication Process

On March 7, 2013, the Oregon Water Resources Department (OWRD) delivered a Final Order of Determination to the Klamath County Circuit Court. With this delivery, OWRD completed the administrative phase of the Klamath River Basin Adjudication.

The Final Order of Determination in the Klamath River Basin Adjudication represents the culmination of 38 years of work to determine the validity of 730 claims to the use of surface water in the Klamath River Basin. Since 1975, the OWRD systematically reviewed and determined these claims. It also received and resolved 5,660 contests to these claims.

During this phase, administrative law judges from Oregon's Office of Administrative Hearings issued proposed orders for certain contested claims, making recommendations about the validity of those claims. With the OWRD's issuance of the Final Order of

Determination, the administrative phase of the Klamath River Basin Adjudication was complete.

The most senior determined claims in the Klamath River Basin Adjudication are claims held by the United States in trust for the Klamath Tribes. These claims carry a priority date of “time immemorial.” The tribal claims were recognized for certain reaches of the major tributaries to Upper Klamath Lake, and for Upper Klamath Lake itself.

During the second phase of the Klamath River Basin Adjudication claimants or contestants who dispute the OWRD’s determinations will have an opportunity to file exceptions with the Klamath County Circuit Court. The Court will review those exceptions, and issue a water rights decree, either affirming or modifying the Final Order of Determination. (Technical corrections were included in an “amended and corrected” Order of Determination filed with the Court in early 2014.)

Oregon follows the “prior appropriation” doctrine of water use, like most western states. When there is not enough water to satisfy all the water rights, water users with senior priority dates will receive water, while water users with relatively junior rights will not. Simply stated, water users who are “first in time” are “first in right.”

The completion of the Final Order of Determination meant that the recognized claims are provisionally a part of Oregon’s “first in time, first in right” prior appropriation system. Water users with recognized claims could make calls for regulation of junior water users if doing so will result in additional water being available to the senior user.

Low snow pack and rainfall in the winter and spring of 2013 led to low stream flows later in the year. In May, Governor Kitzhaber issued a drought declaration for Klamath County. In early June, the Klamath Project, the United States, and the Klamath Tribes all requested that water rights be regulated to meet senior water rights for the Klamath Reclamation Project and for the Klamath Tribes.

The Klamath Reclamation Project continued to receive water during the irrigation season in part because of the agreements contained in the KBRA between the Project water users and the Klamath Tribes. While water delivery to the Project was reduced as a result of the drought, owing to a combination of factors overall agricultural production was not significantly affected.

In the upper Klamath basin (above Upper Klamath Lake), however, surface water uses were shut down beginning in June in order to satisfy senior water rights. As a result, agricultural production in the upper Klamath basin was reduced significantly.

Water supply conditions in 2014 are worse than 2013. There are shortages in the Klamath Reclamation Project and National Wildlife Refuges. These parties have also again made calls for enforcement of water right priorities. The Klamath Tribes and United States Bureau of Indian Affairs have also made calls, although on a more limited

basis, based on the Off-Project Water Settlement “transition period” terms discussed below.

3.8 Off-Project Water Settlement

Section 16 of the KBRA called for an Off-Project Water Settlement between off-project irrigators and the Klamath Tribes and provided a framework supported by the KBRA Parties; however, there was not much progress on such a settlement until 2013. This section describes the work conducted as part of the Klamath Basin Task Force and the Upper Klamath Basin Comprehensive Agreement that was signed on April 18, 2014. The description of the Off-Project Water Settlement below relies on the summary prepared by the parties to that settlement, some of whom are KBRA/KBCC parties.

Klamath Basin Task Force

The Klamath Basin Task Force convened by Senators Wyden and Merkley, Congressman Walden, and Governor Kitzhaber was asked to develop a settlement of water management issues in the upper Klamath Basin that results in:

- At least 30,000 acre feet of increased water inflows into Upper Klamath Lake through a voluntary program to idle water usage;
- Permanent resolution and protection of significant riparian areas in the Wood, Sprague, and Williamson basins, as well as other tributaries to Upper Klamath Lake, sufficient to produce the water quality and habitat improvement needed for fisheries; and
- Regulatory assurances for water and land uses in the Upper Basin, both in terms of a negotiated settlement of the exercise of state water rights, and federal Endangered Species Act (ESA) and Clean Water Act (CWA) compliance.

Upper Klamath Basin Comprehensive Agreement

Upper Basin irrigators, the Klamath Tribes, and officials from Oregon and several Federal agencies began meeting in the summer of 2013 and signed an Agreement in Principle on December 5, 2013. These parties signed a final Upper Klamath Basin Comprehensive Agreement on April 18, 2014. The agreement includes:

- A Water Use Program that will increase inflows into Upper Klamath Lake by at least 30,000 acre feet by reducing water use in key reaches of the tributaries above the lake, while also providing a stable, sustainable basis for the continuation of irrigated agriculture;
- A Riparian Program designed to permanently improve and protect riparian conditions; and

- An Economic Development Program designed to create economic opportunities for the Klamath Tribes and its members, and including increased opportunities for the exercise of Tribal cultural rights.

Water Use Program (WUP): The WUP does two things. First, it permanently increases the flows into Upper Klamath Lake by 30,000 acre-feet by decreasing the net consumptive use of water. Participation in the WUP is voluntary. The agreement includes limits on how much land may be retired from irrigation (18,000 acres) in order to share the effects of the program fairly among the areas of the Upper Basin. The WUP will reduce water use through permanent water right retirement and also through other ongoing measures that will reduce net consumptive use of water in a predictable, quantifiable manner. These measures may include:

- Water right leasing, including split season leasing;
- Water conservation and efficiency measures;
- Agreements to rotate water use among water right holders;
- Management of water to meet flows during low flow periods;
- Upland management (including juniper removal, crop rotations, improved soil conditions and management).

The second thing the WUP does is to use performance standards that vary with water conditions to determine when water uses above Upper Klamath Lake will be regulated to protect Tribal water rights. The standards are designed to distribute the increase in flows into the lake on an equitable basis among the basins, and to provide for riparian restoration and healthy fisheries throughout the Off-Project Area.

The WUP is carried out by a “Landowner Entity” made up of irrigator representatives from each of the major basins above the lake who are participating in the program. The WUP is overseen by a “Joint Management Entity” directed by the Klamath Tribes, the Landowner Entity, and state and federal representatives. The Landowner Entity will take the lead in negotiating agreements with willing irrigators to reduce water use. The agreements will be implemented following approval by the JME. Funding for the agreements will come in a variety of sources, including the KBRA.

Groundwater: The agreement includes details on how groundwater wells will be regulated in years when stream flows are not met. These details are designed to provide predictability to water users, while recognizing the role of groundwater in the hydrology of the Upper Basin.

Riparian Program: The Riparian Program will re-establish and/or maintain a healthy and sustainable riparian plant community that will improve and maintain water quality

and fish habit. The program is designed to maintain viable ranching operations, including irrigation infrastructure compatible with riparian restoration. As with the water program, the Riparian Program will be carried out through agreements between the Landowner Entity and willing landowners. Landowners who enter into riparian agreements will be compensated for managing riparian areas in ways that improve conditions through tools such as flash grazing, fencing, reseeding, vegetation management, and other restoration actions. To meet the program requirements, broad participation from landowners with irrigated riparian lands is needed. At least eighty percent of the land area along streams that is irrigated and zoned for agriculture must be enrolled in the program in order for the performance standards to be met.

Economic Development: The agreement establishes a Tribal Economic Development Fund and reflects the Klamath Tribes' commitment to restore their homeland and build a viable Tribal economy.

Transition Period: Success of this agreement depends on acceptance by a wide number of landowners, as well as the Klamath Tribes and other governmental bodies. Recognizing that it will take time to fully develop and implement the Water Use Program and the Riparian Program, the parties have designed a five-year Transition Period. During this time, the Landowner Entity will be negotiating agreements with landowners and the Klamath Tribes will be implementing the Economic Development Program. If interim performance standards for both the Riparian Program and the Water Use Program are met, water regulation will be based on flow levels that vary based on stream flow conditions and compliance with the agreement.

Funding and Authorization: A key element of program success (for all of the program elements) is continued funding for the Economic Development Program, Water Use Agreements, and the Riparian Management Agreements. The agreement will not become permanent until long-term funding is provided to fully implement these programs. That funding, and other elements of the agreement, will require Federal legislation, including legislation and appropriations implementing the KBRA and the KHSA. This agreement implements several foundational elements of the KBRA.

Other Elements of the Agreement

Regulatory Assurances: The agreement also provides an efficient way for irrigators to comply with the Endangered Species Act. Participation is voluntary.

Klamath Basin Adjudication: The agreement resolves many of the contests remaining in the Klamath Basin Water Rights Adjudication. By avoiding further litigation, the agreement increases predictability and reduces costs to all of the parties.

2014 Drought Program and Initial Funding for Water Use Reduction: On February 14, 2014, Governor Kitzhaber declared a drought emergency in Klamath County. The drought declaration authorizes the Oregon Water Resources Commission to declare a preference for human use and livestock water, and provides additional flexibility in

temporary changes of water rights. The Oregon Watershed Enhancement Board and the U.S. Fish and Wildlife Service have committed initial funding for Water Use Agreements reducing the demand for water in the Upper Basin. Additional short term funding is being sought from other sources.

Parties to the Upper Basin Agreement have started implementation in the following areas:

- FWS, NRCS, and the Oregon Watershed Enhancement Board have provided funds to begin implementing the transition provisions of the Upper Basin Agreement and the parties are working to meet the transition targets in the agreement.
- Oregon, USGS, and the Klamath Tribes are working on the siting and installation of gauging stations to measure stream flow at the various significant instream flow (SIF) locations.
- Oregon has provided information on water right transfers and leasing since the baseline year of 2001 and is preparing to receive and process instream lease and transfer applications as part of the agreement.
- Oregon and USGS are working on groundwater uses and their relationship to surface water.

3.9 Power for Water Management Program

After the expiration of long-term, fixed-price contracts that provided lower-cost power to On-Project and Off-Project irrigators, the costs of electricity to pump water in the Upper Klamath Basin to farms, the wildlife refuges, and the Klamath River have increased significantly and are affecting the viability of irrigated agriculture operations. The KBRA Power for Water Management Program identifies various elements including an interim program, federal power delivery, and efficiency and renewable energy development. These various elements are expected to limit power costs in order to reach the power cost target for eligible on and off-project power users of “at or below the average cost for similarly situated irrigation and drainage projects in the surrounding area.”

Some actions can be taken without new Federal legislation. The Klamath Basin Task Force’s Federal Power Delivery Workgroup is working on the delivery of Federal power to the Bureau of Reclamation to reduce pumping costs on the Klamath Reclamation Project. Purchase of Bonneville Power Administration electricity could reduce the electricity costs for large irrigation loads in Oregon by 0.77 cents to 1.06 cents per kilowatt-hour—current rates are about 10 cents per kilowatt hours so this represents a potential savings of between 7 to 10 percent. The savings maybe similar for the delivery of Western Area Power Administration/market power to Reclamation Project loads in California. These potential savings are less than the estimates made during the

development of the KBRA and would only benefit about half the irrigators that the KBRA Power for Water Management Program is intended to address. There are also a number of uncertainties associated with the estimates, including a possible transition charge, and these savings are within the margin of error.

Investigative work has occurred related to other elements of the program. Reclamation is in the early stages of a multi-year, broad review of ways for irrigators to increase the efficiency of their power use while investigating opportunities for renewable energy generation that may further offset power consumption and related costs. Reclamation is working on the Klamath Comprehensive Agricultural Power Plan (CAPP) and awarded a contract for the plan to CDM Smith Inc. (See KBRA Section 17.7.2) The Klamath Water and Power Agency (KWAPA) and the Upper Klamath Water Users Association (UKWUA) have formed the Management Entity known as the Klamath Basin Power Alliance or KBPA and developed operating protocols and guidelines.

Legislation is needed for the Bureau of Reclamation to provide Federal power to Off-Project irrigators. Federal Legislation is also needed to authorize implementation of other elements in the KBRA including the interim program and efficiency and renewable resources development that may be identified in the CAPP in to provide long-term affordable power.

The limits and uncertainties associated with the Federal Power Program reinforce that passage of Federal legislation is essential to meet the power cost targets in the KBRA for both On and Off-Project irrigators.

3.10 Williamson River Delta

The Nature Conservancy (TNC) completed the breaching of the levies in November 2007 to restore approximately 28,800 acre-feet (gross) of lake storage capacity when Upper Klamath Lake elevations are between 4143.3 and 4136.0 feet. Funding was provided by Reclamation, PacifiCorp, Natural Resource Conservation Service and the U.S. Fish and Wildlife Service (FWS). The KBRA Parties have agreed to support efforts to monitor the effects on fish populations and water quality associated with this restoration project. (See KBRA Section 18.2.1)

3.11 Agency Lake and Barnes Ranch

To achieve water management outcomes consistent with the KBRA, the diked and drained areas of Agency Lake and Barnes Ranches that once were part of Agency Lake may be operated as pumped storage within existing dikes subject to KBRA Section 18.2.2.D, with the goal of reconnecting to Agency Lake by breaching existing dikes.

Reclamation and FWS completed a transfer of the lands, including the related data and documentation. (See KBRA Section 18.2.2.B). FWS is working to complete a study on options identified in KBRA Section 18.2.2.C.

3.12 Wood River Wetland

To achieve water management outcomes consistent with the KBRA, the Parties' ultimate goal is to reconnect Wood River Wetland to Agency Lake when physical and biotic conditions are sufficient to provide the wetland restoration benefits for which the property was acquired.

BLM currently manages the Wood River Wetland to restore wetlands adjacent to Agency Lake. In furtherance of the KBRA and the ultimate goal, BLM, in collaboration with the KBAC and TAT is preparing a study that evaluates options for enhancing water management flexibility in providing benefits for water storage, fish, wildlife, and wetlands habitat. This study will consider options including, among others, whether diked and drained areas of Wood River Wetland that once comprised Agency Lake should be operated as pumped storage within existing dikes, or fully reconnected to Agency Lake by breaching dikes. Either option would result in a total water volume of approximately 16,000 acre-feet of gross storage between elevations 4143.3 and 4136.0 feet.

3.13 Future Storage

Reclamation has completed the *Initial Alternatives Information Report Upper Klamath Basin Offstream Storage Investigations Oregon and California*. (See KBRA Section 18.3.1). A copy of the Upper Klamath Basin Off-Stream Storage report is available at: [http://www.usbr.gov/mp/kbao/projects/Upper Klamath Basin Offstream Storage Investigation.pdf](http://www.usbr.gov/mp/kbao/projects/Upper_Klamath_Basin_Offstream_Storage_Investigation.pdf)

3.14 Develop Drought Plan

The KBRA includes a number of programs related to water diversion and use, and improvements for fish habitat and passage. The Parties to the Agreement recognized that additional measures would be needed in certain low-water years and committed to developing a Drought Plan under Section 19.2 of the Agreement. The Drought Plan's purpose and use is limited exclusively to implementation of the applicable terms of the KBRA.

In the instances of Drought and Extreme Drought, the Parties intended that water and resource management actions be taken such that no Klamath Basin interest would bear an unreasonable portion of burdens imposed or the risk of loss or injury.

The Klamath Basin experienced extremely low-water conditions this year. Full implementation of the water resource measures in the KBRA, including the Drought Plan would have provided coordinated and effective plans and operations to make water available for fishery resources and wildlife refuges and provide greater certainty for irrigators.

The Drought Plan was developed by the Drought Plan Lead Entity identified in the KBRA. The Lead Entity is comprised of: Klamath Tribes, Karuk Tribe, Yurok Tribe, Upper Klamath Water Users Association, the Klamath Water and Power Agency, the Klamath Basin National Wildlife Refuges, Oregon Water Resources Department, California Department of Fish and Wildlife, and Trout Unlimited, as the representative of the conservation and non-tribal fishing Parties to the KBRA.

The Drought Plan Lead Entity completed a final plan on July 11, 2011. That plan is currently being reviewed by the Department of the Interior for approval and funding; this review will also include environmental and any other procedures required by law. No funding is available to implement the Drought Plan. A summary and copy of the Drought Plan are available on the KBCC website.

3.15 Climate Change Assessment

The KBRA Parties will determine how long-term climate change may affect the fisheries and communities of the Klamath Basin. The parties would then re-convene to negotiate any supplemental terms to the KBRA which may be necessary to address changes in the climate in order to achieve the parties' goal of maintaining sustainable fisheries and communities.

The Oregon Water Resources Department (OWRD) and California Department of Fish and Wildlife (CDFW), in coordination with Water Managers and Fish Managers are co-lead parties for this assessment. These agencies initiated the assessment process in February, 2012. OWRD and CDFW are currently reviewing existing and planned climate change studies to determine whether they will be adequate for the assessment called for in KBRA Section 19.4. OWRD and CDFW then plan to develop a process and schedule for the assessment and meet with the KBCC to seek comments. OWRD and CDFW expect to coordinate the assessment with the work being conducted by Reclamation under the Secure Water Act.

Since Congress passed the Secure Water Act, Reclamation has been working toward completing two phases of the Act. The first phase is the West Wide Climate Risk Assessment which broadly looks at the risks to water supplies, power and the ecosystem throughout Reclamations facilities in the west but with emphasis on eight critical basins including the Klamath. The second phase is being referred to as the Basin Studies, which will look at the entire Klamath River water shed from the headwaters to Upper Klamath Lake to the estuary.

3.16 Interim Flow and Lake Level Program

Under this program, the Secretary of the Interior would plan and implement, or provide for, a water leasing and purchase program under KBRA Section 20.4 to provide additional flows and maintain lake levels for fish species until the other water programs

are fully implemented. The Parties understand that Reclamation must have new or additional authority in order to fully administer the Interim Flow and Lake Level program provided in the KBRA.

4. Regulatory Assurances

The KBRA includes commitments by the parties to take every reasonable and legally-permissible step consistent with environmental laws and regulations 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.

The KBRA also 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.

4.1 Fish Entrainment Alleviation

Reclamation will evaluate methods, locations, and potential need to construct facilities to prevent fish entrainment at key upper basin water diversion points (KBRA Section 21.1.3.A). Reclamation will work with its Denver engineering office to develop strategies. This program would be implemented prior to the removal of PacifiCorp's hydroelectric dams, if there is an affirmative Secretarial Determination under the KHSA, so reintroduced salmon and other aquatic species are not entrained in Klamath Reclamation Project diversions.

4.2 California Laws

CDFW will evaluate the necessity for incidental take coverage following concurrence with an affirmative Secretarial Determination, by the Governor of California. Within 90 days of such concurrence, CDFW will advise the KHSA Parties of its determination and recommend specific procedures for obtaining any necessary coverage.

CDFW will also evaluate the necessity for revisions to existing Fish and Game Code sections 5515(b) and 3511(b). Within sixty days following concurrence by the Governor of California with an affirmative Secretarial Determination, CDFW will provide the parties with draft legislation proposing any necessary modifications to these referenced statutes. (See KBRA Section 24)

4.3 Oregon Laws

ODFW will determine schedules for any environmental reviews in coordination with potential facilities removal.(See KBRA Section 25)

5. Counties Program

Under the KBRA, the non-federal parties will seek funding for a Klamath County Program that would identify projects for economic development associated with the restoration of the Klamath River and reintroduction of anadromous fisheries into Klamath County and the headwaters of the Klamath River in Lake County, Oregon. (See KBRA Sections 27.2 and 27.3.1). On May 8, 2012, Klamath County requested an extension of the schedule to develop and adopt.

The KBRA non-federal parties will support funding for mitigation for property tax impacts associated with the KBRA. (See KBRA Section 27.3.2).

On March 12, 2013 the Klamath County Board of Commissioners passed a resolution to withdraw from participation in the KBRA and KHSA.

6. Tribal Program

6.1 Tribal Participation in Fisheries and Other Programs

The non-federal parties support funding for the KBRA signatory tribes to build the capability to participate in the implementation of the fisheries and conservation management programs (See KBRA Section 32). Funding is not yet available for these activities.

6.2 Economic Revitalization

The non-federal parties support acquisition of funding by the Klamath Tribes to implement the Mazama Forest Project. (See KBRA Section 33.2) Support of this component is consistent with KBRA goals to provide economic stability of Klamath Basin communities. The Parties recognize that restoration of Treaty fisheries, important to the Klamath Tribes' economic stability and culture, will take decades to achieve. Implementation of the Mazama Forest Project will help provide economic stability to the Klamath Tribes and Klamath Basin residents in the interim, and into the future, while fisheries restoration occurs.

The non-federal parties also support funding for the Klamath Tribes, Karuk Tribe, and Yurok Tribe to develop plans to promote economic development. Each tribe will develop plans to promote long-term, sustainable growth and development. These plans will enable the Tribes to establish long term, sustainable economic growth and development within their communities, and to plan long term economic revitalization projects and strategies advancing efforts to provide a sustainable and achievable approach to lifting

tribal communities out of generational poverty. Funding is not yet available for these activities.

6.3 Klamath Tribes' Interim Fishing Site

The Klamath Tribes had an interim fishery in 2012. CDFW, the Klamath Tribes and relevant Federal agencies of have developed a process for joint petition to California Fish and Wildlife Commission for an interim fishing site. (See KBRA Section 34).

Klamath Hydroelectric Settlement Agreement

The KHSA 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.

7. Studies, Environmental Review, and Secretarial Determination

Under the Hydroelectric Settlement, the Secretary of the Interior, in cooperation with the Secretary of Commerce and other Federal agencies, will determine whether 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 effects on affected local communities and tribes. The KHSA calls on the Secretary to use best efforts to complete this determination by March 31, 2012.

On February 27, 2012, the former Secretary of the Interior Ken Salazar announced that he would not make a decision by March 31, 2012 on potential removal of the dams because Congress had not yet enacted legislation necessary to authorize a Secretarial Determination under the terms of the KHSA. Interior also provided notice under Sections 3.2.5.D and 3.3.4 of the KHSA that the schedule for the environmental reviews and Secretarial Determination would be delayed.

In a press release, Secretary Salazar said: “The Department of the Interior, working with our partners at NOAA and the U.S. Forest Service, has upheld our commitments in these agreements that are so important to strengthening the health and prosperity of those that depend on the Klamath River for their way of life. I am proud of the work of our team of experts who have completed more than 50 new studies and reports that are providing significant new information on the potential effects of Klamath River dam removal as part of a transparent, science-based process.”

These studies were conducted in coordination with the parties to the Hydroelectric Settlement and the public. The California Department of Fish and Wildlife and the State of Oregon will address applicable state laws prior to deciding whether to concur with any affirmative determination by the Secretary of the Interior.

7.1 Studies and Environmental Review

Federal agencies have finalized all the studies called for in the KHSA. Many of these studies were peer reviewed. Public meetings were held throughout the Klamath Basin to describe the studies and take public comment. The Federal Management Team also sought comment from the Klamath Hydroelectric Settlement Agreement Parties. The studies and reports are available on www.KlamathRestoration.gov.

7.2 Klamath Dam Removal Overview Report

On February 1, 2013, the Department of the Interior released the final *Klamath Dam Removal Overview Report for the Secretary of the Interior: An Assessment of Science and Technical Information* (Overview Report). A summary of the report was in the Third Annual Report. A copy of the executive summary and the full report are available at www.KlamathRestoration.gov.

7.3 Environmental Review Process

Environmental review under the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and other applicable laws has been coordinated by the Federal agencies and California to prepare a single, joint environmental document.

The NEPA and CEQA processes were led by the U.S. Department of the Interior (DOI) and the California Department of Fish and Wildlife (CDFW), respectively. The Bureau of Reclamation managed environmental compliance on behalf of the U.S. Department of Interior. Reclamation awarded a contract to CDM Federal Programs for preparation of both NEPA and CEQA environmental compliance documents, in addition to participating in the scientific studies track.

The State of Oregon, and more specifically the “Klamath Team” consisting of Oregon Water Resources, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality, will follow a distinct process for determining concurrence with an Affirmative Determination by the Secretary of the Interior (as defined pursuant to Executive Order No. 10-10 by the Governor of Oregon) should such a determination be made.

Both NEPA and CEQA require public involvement opportunities. The DOI and the CDFW conducted seven public scoping meetings in July of 2010. In addition, many state, local and tribal governments, as well as federal agencies, were invited to participate as cooperating agencies under NEPA. Cooperating agencies had opportunities to provide input on the Environmental Impact Statement/Environmental Impact Report prior to public review of these documents.

On September 21, 2011, the Department of the Interior and California Department of Fish and Wildlife released a draft Environmental Impact Statement/Environmental Impact Report for public comment. This draft analyzed in detail five alternatives, including the proposed action of full dam removal and implementation of KBRA. Over 4,000 individual public comments were received on the draft EIS/EIR, either in writing or during a series of six public hearings throughout the Basin in October 2011. These public comments, and responses to these public comments, are contained in Volume III of the final EIS. Many of the public comments resulted in clarifying or expanded language in the final EIS/EIR.

The final EIS was publicly released in April 2013 and is available at www.KlamathRestoration.gov; the final EIR has not been officially released.

8. Implementation of Other KHSA Provisions

The Hydroelectric Settlement includes detailed actions for the operation of the dams and mitigation activities prior to removal of the dams. The KBCC has reviewed the status of these actions at each of its meetings. PacifiCorp has prepared annual reports on the progress of implementing these measures; a copy of the 2013 Implementation Report is available at www.klamathcouncil.org.

PacifiCorp and the KHSA Parties have made good progress in implementing the interim measures called for in the KHSA. Progress includes:

- PacifiCorp has provided over \$3.0 million in funding for the Coho Enhancement Fund; the projects that are being implemented are described in the Implementation Report.
- In February 2012, the National Marine Fisheries Service approved PacifiCorp's Habitat Conservation Plan for Coho Salmon.
- In February 2014, the U.S. Fish and Wildlife Service approved PacifiCorp's Habitat Conservation Plan for Lost River and Shortnose Suckers.
- PacifiCorp is operating a new turbine venting blower resulting in increased dissolved oxygen below Iron Gate Dam.
- California Department of Fish and Wildlife and PacifiCorp developed a Hatchery and Genetic Management Plan for Iron Gate Hatchery in September 2010.
- PacifiCorp is implementing variable flow releases from Iron Gate dam.
- PacifiCorp is funding fish disease studies.

- PacifiCorp is funding gravel placement and habitat enhancement below J.C. Boyle Dam.
- KHSA Parties and water quality agencies have worked to convene a water quality conference.
- PacifiCorp in consultation with the Interim Measures Implementation Committee (IMIC) is implementing a series of water quality improvement studies and pilot projects.
- PacifiCorp installed gages for Spencer Creek and J.C. Boyle bypass reach.
- PacifiCorp is funding ongoing basin-wide water quality monitoring.
- PacifiCorp is continuing to fund the Iron Gate Hatchery at higher levels than under the FERC license.
- BLM is implementing projects with funding from PacifiCorp for cultural resources, road maintenance, and invasive weed management.

Dam Removal Surcharge Approval

As of June 30, 2014, the combined balance of the Oregon and California dam removal trust accounts was \$75.1 million.

Background: On March 18, 2010, PacifiCorp filed applications with the California and Oregon public utility commissions requesting authorization to begin collecting dam removal surcharges from customers in those states. Regulatory orders from both the California and Oregon public utility commissions approving the collection of dam removal surcharges have since been issued, consistent with the framework for the Customer Contribution towards dam removal costs established in Section 4.1.1 of the Klamath Hydroelectric Settlement Agreement (KHSA).

The Oregon customer surcharges, with accrued interest, are designed to provide approximately \$184 million in funding for dam removal in 2020. The California customer surcharges, with accrued interest, are designed to provide approximately \$16 million in funding for dam removal in 2020. The surcharges on Oregon customers have been collected since March 18, 2010 while the surcharges on California customers began in January 2012.

Habitat Conservation Plans

On February 23, 2012, the National Marine Fisheries Service (“NMFS”) issued a federal Endangered Species Act Incidental Take Permit to PacifiCorp Energy for the Company’s ongoing operations of its Klamath Hydroelectric Project (“Project”) under a Habitat Conservation Plan for Coho Salmon. On February 20, 2014, the U.S. Fish and Wildlife Service (USFWS) issued a federal Endangered Species Act Incidental Take Permit to PacifiCorp Energy for the Company’s ongoing operations of its Klamath Hydroelectric Project (“Project”) under a Habitat Conservation Plan to benefit Lost River and shortnose suckers.

The Habitat Conservation Plans and associated Incidental Take Permits (“Permits”) were under development for several years and were subject to environmental review and public comment. Issuance of the Permits by NMFS and USFWS authorizes potential incidental take of listed coho salmon and suckers that may occur as a result of ongoing Project operations on the basis that implementation of the Habitat Conservation Plans will meet applicable statutory and regulatory criteria, including that PacifiCorp will minimize and mitigate to the maximum extent practicable effects of such incidental take of listed coho salmon and suckers during the Permit term. The Permits authorize the incidental take for a 10-year period until establishment of anadromous fish passage is expected either through transfer and removal of Klamath Hydroelectric Project facilities under the terms of the Klamath Hydroelectric Settlement Agreement or through construction of volitional fish passage facilities required if transfer and removal of Project facilities do not occur.

Under the terms of the coho salmon Permit, PacifiCorp will fund projects to enhance coho conservation in the Klamath River below Iron Gate dam – the lowermost dam on the mainstem Klamath River, consistent with an interim conservation plan developed by PacifiCorp, in coordination with NMFS. PacifiCorp will work with NMFS, the California Department of Fish and Wildlife, and the National Fish and Wildlife Foundation to identify, select, and implement conservation projects that will benefit coho salmon in the Klamath River.

In addition to funding and implementing habitat conservation actions, PacifiCorp will work closely with the U.S. Bureau of Reclamation, NMFS, and other stakeholders to implement flow regimes in the Klamath River to benefit listed species. PacifiCorp will also implement turbine venting at Iron Gate Dam to enhance dissolved oxygen concentrations, fund fish disease studies, and retrieve large woody debris trapped at Project dams and release it to the river channel downstream of Iron Gate Dam.

Under the terms of the sucker Permit, PacifiCorp has discontinued routine operations at the East Side and West Side hydroelectric developments. PacifiCorp will also support activities to enhance the survival and recovery of listed sucker species by funding additional sucker recovery initiatives during the period extending from shut down of the East Side and West Side developments until the end of the Permit term. Recommendations for projects to be funded by the Sucker Conservation Fund will be provided by the Klamath Sucker Recovery Program. PacifiCorp also will extend its significant funding support of The Nature Conservancy’s Williamson River Delta Restoration project, which is one of the basin’s most important sucker recovery and habitat restoration actions.