

PROGRESS REPORT to SWRCB ON DEVELOPMENT OF

Interim Conditions and Water Quality and Fisheries Measures and Progress towards a Final Hydropower Agreement

SWRCB Meeting, February 17, 2009

On November 13, 2008, the United States Department of Interior, the States of California and Oregon, and PacifiCorp executed an Agreement in Principle (AIP) describing the framework for an approach to remove several of PacifiCorp's dams on the Klamath River. Since that time, parties in support of the AIP have been actively engaged in developing the Final Hydropower Agreement (Final Agreement), expected to be signed by June 30, 2009. The AIP provides for, and the Final Agreement will contain, measures which will be implemented before dam removal to protect water quality in the Klamath. Some of these Interim Measures are now being implemented, and others will be implemented after the Final Agreement. This document describes the commitments that have been made and offers details on the steps to achieve full implementation of all measures the agreement envisions. The AIP and Final Agreement are premised on dam removal, and the parties and stakeholders who share this vision do not waive or compromise any position or rights if this premise fails.

Parties in support of the AIP are actively working to define strategies towards implementation of the water quality measures and other interim conditions under the assumption of dam removal. These strategies include:

- Finding a common path forward through cooperatively initiating key elements of the AIP,
- Pursuing necessary technical action and review in support of signing a Final Agreement in mid-2009,
- Defining a long-term framework to assure the technical support is available and structured effectively to carry out the commitments in the Final Agreement, and
- Assuring that these goals are accomplished consistent with the core principles of: robust and independent scientific review, transparency, avoiding delay, and achieving full regulatory compliance.

It is anticipated that the Final Agreement and the Interim Measures contained in it will support a comprehensive approach to addressing water quality issues in the Klamath basin. Parties are working together to define the appropriate approach. It is the intent of the parties that the Final Agreement will contain Interim Measures as described in the AIP which, when implemented and along with removal, will ensure compliance with all laws applicable to the hydroelectric project, including without limitation load allocations that may be assigned to the project through the Klamath River Total Maximum Daily

Load (TMDL) process and other requirements of the Clean Water Act, the Endangered Species Act (ESA), etc.

Water Quality and Fisheries Commitments in the AIP

The following Interim Measures are commitments under the AIP. PacifiCorp will implement them in 2009. The summary below includes a description of the current status of each measure, and next steps in the process to finalize these actions.

Water Quality Monitoring (Interim Measure No. 12)

Interim Measure 12 in the AIP, titled “Water Quality Monitoring”, states that PacifiCorp will fund \$500,000 annually for water quality monitoring including on-going Blue-green Algae (BGA) and BGA toxin monitoring. A draft plan was developed in December 2008 and was shared widely among diverse stakeholders. A revised plan is due out shortly in preparation for the upcoming field season.

Nutrient Reduction Measures (Interim Measure No. 11)

Interim Measure No. 11 of the AIP, titled “Nutrient Reduction Measures”, indicates that, upon signing the AIP, PacifiCorp will implement studies related to nutrient reduction measures with consideration for projects in Oregon and California. In January 2009, a document titled “Draft Recommendations for AIP Interim Measure 11: Nutrient Reduction Measures in the Klamath River” was distributed to settlement parties for technical consideration. It is anticipated that 2009 study efforts will focus on methodologies such as: 1) Wetlands Feasibility; 2) Aeration-Oxygenation Systems; and 3) Reservoir Circulation.

Water Quality Technical Conference (Interim Measure No. 22)

Interim Measure No. 22 of the AIP, titled “Water Quality Technical Conference”, indicates that PacifiCorp will provide immediate one-time funding of \$100,000 to convene a basin-wide conference on water quality. In a document dated January 16, 2009, parties provided a draft plan with recommendations for planning and scheduling the conference intended to focus on Nutrient Enrichment and Nutrient Reduction Strategies. A committee established by the signatories to the Final Agreement will use the \$100,000 provided by PacifiCorp to convene a group of scientists and technical experts to inform them on the development of future monitoring plans and nutrient management strategies that will be presented to the signatories for adoption by Dec. 31, 2009.

Water Quality and Fisheries Measures Related to the Interim Conservation Plan (ICP) and Beneficial Uses

In addition to the items above, PacifiCorp is collaborating with the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (together, the “Services”), and the California Department of Fish and Game (CDFG) to implement numerous other water quality and fisheries-related Interim Measures as described in the Interim Conservation

Plan (ICP). The ICP was specifically developed to minimize and mitigate potential Project-related impacts on Endangered Species Act-listed suckers in the upper basin and coho salmon below Iron Gate Dam for the interim period prior to implementing a comprehensive agreement to reestablish fish passage at Iron Gate dam. PacifiCorp and the Services are presently working to elaborate on conservation measures contained in the ICP, including the process by which ICP conservation measures will be implemented. Conservation measures contained in the ICP include:

- 1) Implementing seasonal restrictions of Eastside and Westside operations,
- 2) Creating a sucker enhancement fund,
- 3) Implementing turbine venting at Iron Gate dam,
- 4) Funding of fish disease research,
- 5) Funding CDFG's development and implementation of a hatchery genetics management plan at Iron Gate Hatchery,
- 6) Implementing flow variability below Iron Gate dam, and
- 7) Establishing a \$500,000-per-year coho enhancement fund.

These conservation measures developed by PacifiCorp in discussions with the Services and CDFG are intended to improve fishery and water quality conditions in the Klamath River (*i.e.*, beneficial uses), and as such will further address actions and measures that may be assigned to the hydro project in the TMDL process.

Additional Water Quality and Fisheries Commitments in the Final Agreement

The measures identified above, including the measures identified in the ICP, are ongoing commitments triggered by the signing of the AIP. Additional commitments are anticipated as negotiations (consistent with the AIP) on the Final Hydropower Agreement conclude. Additional measures considered under the AIP, anticipated to begin following the Final Agreement, are included as attachment A.

Process and Policy Considerations

Technical process considerations of AIP implementation regarding water quality include identifying roles and responsibilities of parties within and external to the AIP; defining funding needs and developing appropriate funding approaches; providing a mechanism for monitoring data review, defining reporting protocols, and modifying programs as necessary (e.g., adaptive management); implementing management and coordination of program elements; and other related matters.

Policy considerations regarding implementation of the AIP and Interim Measures include ensuring the studies identified in the AIP sufficiently address local, state and Federal regulatory requirements. The scope of actions identified in the AIP is sufficiently broad to encompass such requirements. To ensure compatibility among the AIP and regulatory

activities, the parties will work closely with regulatory agencies and implement an adaptive management strategy in regard to Interim Measure activities.

Timing

Implementation of several AIP Interim Measures will occur in 2009. Because time is of the essence regarding many of these studies, parties understand the need to implement initial studies in 2009 with the understanding that modifications to the program may be made in 2010 and beyond. Thus, an active element of the AIP planning in 2009 will consider desired approaches and activities for future years, and appropriate processes for implementing and carrying out those activities in future years.

A workshop to develop a governance structure for implementing water quality monitoring and fisheries programs has been proposed. The concept proposed would establish a committee of basin interests, including the AIP signatories, which would be responsible for implementing and funding the Interim Measures in 2010 and beyond, and making management decisions and recommendations associated with Interim Measures implementation. Specific direction and timelines will be developed for convening the committee and making management decisions.

Defining an Independent Science Process Consistent with the Final Agreement

The parties agree that the Final Agreement will address and specify the elements of an objective, transparent, independent, and scientific process to advise the United States in making its determination whether to pursue removal of the Facilities. The Final Agreement will specify funding and contracting procedures for the science process.

Link between Klamath Basin Restoration Agreement and AIP

The Klamath Basin Restoration Agreement (KBRA) is intended to provide a watershed-wide approach to improving fisheries through targeted improvements in water quality, habitat, and other environmental enhancements in the Klamath Basin. While recognizing that the Final Agreement and KBRA are indivisible processes and agreements, there is an interest to resolving Klamath Basin issues with a unified approach that reflects the broad public interest in improving water quality and fisheries in the Klamath Basin. Towards that end, the parties will ensure that necessary environmental review and settlement process activities associated with the Final Agreement fully consider the KBRA and occur in tandem with KBRA implementation to the extent practicable. Implementation of Interim Measures and the Klamath Agreement will be consistent with this principle.