



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOV 13 2008

The Honorable Theodore R. Kulongoski
Governor of Oregon
Salem, Oregon 97301-6827

Dear Governor Kulongoski:

This expresses my deepest appreciation for the years of leadership and commitment by you and your representatives in resolving the many complex and difficult issues in the Klamath Basin. Our hard work together has produced a framework for a long-term solution, and I write today as the chair of the Federal Klamath Working Group to confirm the agreement of the Administration on a path forward that includes a study on removing four Klamath Basin hydropower facilities; an Agreement in Principle (AIP) describing the agreed material terms for facilities removal; a final agreement on facilities removal; and support for the proposed Klamath Basin Restoration Agreement (KBRA) subject to the firm principles stated below.

Together we have set the stage for a final decision by 2012, through the framework of the AIP, on facilities removal and on the principles for a long-term conservation program. The policy for a permanent solution to the contentious matters that once divided the good people of California and Oregon is becoming a reality. We can now work together to study and address the complex economic and natural resource issues in the Klamath River Basin.

We must together acknowledge the tremendous effort undertaken by the Tribes, as well as the Klamath Water Users Association and representatives of the conservation community, in negotiating and supporting these efforts. We appreciate the openness of PacifiCorp to the diverse views of the Basin communities. This achievement was many years in the making and could not have been achieved without tremendous compromise and collaboration by all of the parties to the discussions.

Based upon the Agreement in Principle the United States, California, Oregon, and PacifiCorp will begin the process to complete the necessary studies and fund-raising by the States and the company to address the potential removal of the J.C. Boyle, Copco 1 and Copco 2, and Iron Gate hydropower facilities in parallel with the KBRA provisions for reliable water supply and continuing low cost power for the needs of agriculture while benefitting species listed under the Endangered Species Act. We are immediately commencing an engineering study and pursuant to the terms of the AIP will seek legislation authorizing a feasibility study. Commencing the engineering study will allow

us to immediately start analyzing the removal of the dams while also providing the basis for the more detailed feasibility study that, once authorization is obtained, will be completed by 2012. The engineering study by the United States will provide detailed information necessary for a final decision on facilities removal and full implementation of the conservation program described by the KBRA. Under the AIP, the Secretary of the Interior will complete the feasibility study and make a determination by 2012 to proceed with facilities removal if the expected benefits of facilities removal exceed its costs, and if the total cost of removal does not exceed the \$450 million State cost cap (unless modified by specific subsequent agreement).

The proposed KBRA would potentially dedicate about \$1 billion to fundamental and necessary restoration in the Upper and Lower Klamath Basins and provide a long-term strategy to ensure compliance with the ESA for the foreseeable future. The innovations embodied in the proposed KBRA are designed to restore and sustain natural production of fish species throughout the Klamath Basin, establish reliable water and power supplies, and contribute to the public welfare and sustainability of all Klamath Basin communities to help address water use conflicts in the Basin. All should note that PacifiCorp, the owner and operator of the facilities, was not a party to the development of the proposed KBRA, which is why we sought a separate facilities removal agreement outside of the KBRA process. This Administration acknowledges that the KBRA parties consider facilities removal necessary for the overall success of the Basin conservation effort and recognizes the Final Agreement contemplated by this process cannot proceed absent the KBRA.

This Administration does not support expenditure of public funds for the removal of the PacifiCorp facilities. The Federal Government will support facilities removal by funding an engineering study to determine the benefits and detriments of removing the facilities, including the national benefits and costs of this effort, as well as securing Administration and Congressional support for appropriate limits of liability for PacifiCorp for unforeseen consequences associated with facilities removal. Although the material terms of facilities removal have been agreed to in the hydropower AIP, the process contemplates several additional deliverables including a Final Agreement with PacifiCorp, the States of California, Oregon, and the United States, as well as an act of Congress that must embody the material terms and fundamental protection sought by all the parties should a decision be made by 2012 to proceed down a path to facilities removal.

We are well aware of the enthusiasm by some with a stake in the proposed KBRA to proceed, with all due speed and diligence, to remove the four PacifiCorp facilities in the Klamath Basin. However, the engineering study is a necessary first step to both inform a decision on facilities removal and the long-term conservation effort. Pending completion of the study and the decision whether to proceed with the proposed facilities removal and conservation program, conservation efforts will continue subject to the respective priorities and decisions of Federal, State, local, Tribal, and private entities – including any necessary arrangements between PacifiCorp and FERC on interim facilities operations addressing appropriate protection of natural resources.

The Administration's support for the conservation program of the KBRA requires compliance with several firm principles. First, as facilities removal and the conservation program are inextricably linked, a clear distinction must be drawn between river restoration associated with facilities removal, including environmental compliance, the handling of potentially hazardous sediment, and water treatment, and projects undertaken as part of a continuing conservation program. Accordingly, the appropriate roles and responsibilities for the Federal, State, Tribal and local governments, as well as for PacifiCorp and other private entities including landowners, must be clearly identified and agreed upon.

Second, replacement power to compensate for the removal of hydropower facilities must be studied and secured by non-Federal parties, as well as the means and methods to allow the Bureau of Reclamation to continue to operate the project within the requirements of the ESA while water users are protected from any future adverse hydrological conditions that threaten to replicate the disaster that befell the Klamath Basin in 2001 and 2002.

Third, consistent with the Administration's policies for such regional environmental restoration efforts, any future Federal funding for the KBRA must be matched with non-Federal funds for all fish, water, land, and wildlife conservation activities. Of course, the Federal Government is mindful of its trust responsibilities, and any Federal support for the long-term conservation program outlined in the KBRA must be considered in the context of the annual budget and appropriations process and within a specific maximum authorized amount for a 10-year period. In addition, the KBRA must identify and provide for monitoring the environmental improvements these funds are expected to achieve to ensure future Federal and non-Federal decision makers can judge progress and costs and adjust effort and spending accordingly.

The remarkable effort by you and your representatives ultimately brought us to the historic moment we recognize today. The great spirit of community and collaboration in the Klamath Basin must and will continue after this Administration leaves office, and we are confident that the debate about listed species versus human needs will now become a relic of the past.

I deeply appreciate your leadership and value our friendship as we announce this historic path forward.

Sincerely,

DIRK KEMPTHORNE