

# Watermarks Series

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Part 4 of 4

## Watermarks

*A Herald and News special report: Part 4*

It's historic. It's weighty and complex. It's far-reaching and its effects could be profound for everyone up and down the Klamath River Basin.

The 256-page Klamath Basin Restoration Agreement was released to the public in mid-January after more than two years of negotiating by 26 stakeholder groups representing the interests of agricultural, tribal, fishing, and environmental groups, and relevant government agencies. Groups are now in the process of vetting the proposal, and negotiations are under way with Pacifi-Corp over dam removal.

In the meantime, the Herald and News organized a roundtable discussion of the agreement in late February.

Panelists, pro and con, took questions from and discussed the proposal with a variety of community members — most of whom are interested but not directly involved in the issues.

Much of the content for this special section was gathered from that dialogue. Other questions were submitted by roundtable members and onlookers and followed up on by Herald and News staff members.

## Questions & Answers About the Agreement

**Q: Have any similar agreements been made elsewhere? How are they working?**

A: Bud Ullman, Klamath Tribes legal counsel, said that while some Klamath Basin Restoration Agreement provisions are unique, there are other, similar agreements. Nearly all of the ideas and provisions in the Klamath agreement can be found in settlements, cooperative agreements or intergovernmental arrangements from one place or another. There are a dozen Indian water rights settlements already on the books. Probably the most similar recent arrangement is a settlement of the Nez Perce Tribe's water rights and related matters in the Snake River Basin of Idaho. That settlement seems to be working well, Ullman said. PacifiCorp spokesman Toby Freeman said the company has seen other federally funded projects. "But I'm not familiar with a dam removal project like in this

proposed agreement. What's being proposed on the Klamath is unprecedented." Greg Addington, executive director for the Klamath Water Users Association, said there are various types of water agreements throughout the American West, with some more successful than others. "A central challenge for all is adequacy of funding," he said.

**Q: How well would the Klamath agreement hold up under legal challenges from disaffected parties?**

A: Troy Fletcher of the Yurok Tribe said no one can say whether or not others not involved in drafting the agreement — tribes, environmentalists, etc. — might bring suit. But the agreement binds settlement groups together and makes them responsible for its future, making lawsuits less likely and hopefully less successful. "I can't tell you someone won't sue, but I can tell you we're in it for the long haul," he said. Paul Simmons, executive director and attorney for the Klamath Water Users Association, said the agreement was written with considerable effort to ensure it complies with applicable law, and he and others are prepared to defend it. "The one thing we have experience with in the Klamath Basin is litigation," Addington said.

**Q: The Upper Basin focus for the agreement is mostly on irrigation, power and environmental issues. What are the most important issues down river?**

A: For Siskiyou County Commissioner Jim Cook, the answer is salmon. "We think that release of sediment could kill the river for a number of years," he said, referring to unknowns about toxins in the sediment. "Also, the loss of property values, the loss of river productivity, loss of 'green' non-emission power and the cost of power (passed on to consumers/rate payers from cost of dam removal)." Addington said down-river issues include species abundance and health, water quality and quantity, habitat restoration and improvement, sustainable rural communities, and lifestyle and economic improvement. Troy Fletcher said that by improving water quality, salmon populations will increase and that tribal people and others will be able to use the river, which he said becomes polluted in late summer.

**Q: What impact do the recent votes by Siskiyou County commissioners to oppose the agreement and dam removal have on the process?**

A: Stakeholders who support the agreement said they don't think the Siskiyou supervisors' decisions will kill the settlement but are unsure what the impact will be. "I think it's really unfortunate and premature on their part," said Jeff Mitchell, Klamath Tribal Council member. Mitchell said an agreement with PacifiCorp has yet to be reached regarding the utility's four dams on the Klamath River, three of which are in Siskiyou County. Should PacifiCorp agree to remove the dams, he said he is not sure where that would leave Siskiyou County and its residents. Supervisor Jim Cook said he and the other supervisors could support aspects of the agreement being implemented and want to continue working toward an agreement. Supervisors simply couldn't support the prospect of dam removal. "We need to be more proactive with the various groups who are trying to solve water and fish issues, but without dam removal," he said.

**Q: Why wasn't the earlier "basic framework" agreement adopted?**

A: The settlement framework did serve as the outline for developing the actual agreement, Addington said. "There are apparent differences in perspective regarding what the framework did or did not mean," he said. "(Klamath Water Users Association) and others also had disagreements with various other parties as to how the framework should be implemented. There was nearly a year of negotiation between the framework and the proposed (agreement). "Nothing is easy. For the most part, I think the settlement group achieved the terms laid out in the framework. There are terms related to the Klamath Project that we argued should come out better. If it was as simple as adopting the framework, we would have been done over a year ago."

**Q: When the document was released in January, some supporters said it needed to be ratified quickly. How important is speed?**

A: Greg Addington, executive director of Klamath Water Users Association, said although government needs time to review and to receive public comment and dam removal negotiations with PacifiCorp are ongoing, stakeholders should still push the agreement forward as far and as quickly as possible. Bill Ganong, an attorney with Klamath Irrigation District, also said that moving forward would benefit on-Project irrigators. The water adjudication process will start soon and elements of the agreement could defray future legal costs.

**Q: What's meant by Endangered Species Act "assurances?" The Klamath Tribes attorney noted that a benefit is that the agreement brings "the ESA under control." What does that mean?**

A: Some people think the agreement should make the ESA go away, said Bud Ullman, Tribes attorney. "This is not possible, so the agreement provides assurances that are intended to minimize the adverse effects of the ESA on agricultural water supplies while simultaneously improving conditions for endangered fish."

That can be done, he said, by taking advantage of present ESA provisions. "The Klamath Basin is not the first place to complain about the impacts of the ESA, and the law has been amended over the years to provide relief, if certain steps are taken." The Klamath Basin has been slow to take those steps because parties have been fighting.

So far almost all activity here has been under Section 7 of the ESA, Ullman said, in which federal actions are subjected to biological opinions — regulation is based upon whether federal actions are likely to jeopardize the continued existence of the species.

The "assurances" relate to Section 10, he said, which allows for incidental taking of endangered and threatened species. Under that section, a habitat conservation plan (for on-Project) or a "general conservation plan" (for off-Project) would be developed and implemented.

“... The idea is that landowners who enroll ... would agree to manage their land in a certain way that would contribute to recovery, and in return they would be covered under an incidental-take permit that would insulate them from legal action if they take protected fish, as long as the take is within the bounds allowed ...” The plans would be developed collaboratively by landowners, Tribes and agencies.

**Q: Is there any way to compensate landowners around the dams for lost property value?**

A: Siskiyou County Commissioner Jim Cook said, “no.” But Ullman said that is contemplated in the provisions dealing with counties. “Interestingly, under present conditions the reservoirs are filled with highly toxic algae that cannot help but drive those property values down,” he said. “Nonetheless, the agreement provides that Siskiyou County, for example, will get \$20 million to compensate for economic effects of dam removal. After dam removal, these properties will be on or near a salmon-producing river with beautiful views, and we expect that property values will be substantial.” Cook and other Siskiyou supervisors, including chairman Bill Overman and Marcia Armstrong, repeatedly expressed concerns the agreement provides no guarantee for the \$20 million, only that a request for funds will be made.

**Q: How much federal and state resolve would there be to uphold the agreement? What are the legislative elements that would support the settlement?**

A: State officials and federal lawmakers have said they are glad to see a solution to the Klamath Basin’s issues come from those living in the region. They caution that it could be months before any legislation and that lawmakers need time to review the 256-page document.

The price of the settlement, \$1 billion with about \$400 million of it coming from new sources, shouldn’t be an issue, said U.S. Rep. Greg Walden, R-Ore. The federal government has funded projects of similar magnitude and cost, such as revitalization of the Florida Everglades.

The appearance of opposition to the agreement also didn’t surprise the congressman and likely won’t surprise other federal lawmakers.

“Agreements that are this extensive and this detailed generally don’t make everybody happy,” he said.

But questions about portions of the agreement — effects on the areas above Upper Klamath Lake, water storage needs and costs of dam removal on the Klamath River — still need to be addressed, he said.

Oregon Gov. Ted Kulongoski and Greg Hurner, a representative of the California government in settlement talks, are initially supportive of the agreement. State legislators are more negative.

**Q: Is there a feasible way to guarantee irrigators' power rates? Would it be a subsidy? How would the cost be covered?**

A: The agreement calls for subsidizing power rates for irrigation by using about \$40 million to invest in alternative energy sources and other ventures. Revenue from those investments would offset rising energy costs. While not guaranteed, proponents have a goal of subsidizing power in the region to a 3-cent stable rate. There also would be dedication of power from the Bonneville Power Administration on the Columbia River. But Edward Bartell, president of the Klamath Off-Project Water Users, said the agreement doesn't provide any assurances that a stable 3-cent power rate would be reached. He said a prior framework would have provided \$250 million for power assurances, an amount he deemed sufficient. Bartell said a larger amount of money by possibly tying funding to dam removal in some way.

PacifiCorp's Toby Freeman said that beyond a subsidy or some other method of offsetting the cost of power, PacifiCorp couldn't guarantee a specific power rate for irrigators indefinitely.

A study was conducted to see if irrigation activity in the Klamath Basin benefited hydroelectric generation in the utility's dams. No evidence of a benefit was found, making any special rate unlikely.

**Q: Are there really any meaningful power protections provided in the settlement?**

A: "Primarily it provides capital for improved conservation and efficiency as well as development of renewable power generation," Addington said. Irrigators would remain customers of PacifiCorp, and there would be studies to determine where best to invest the settlement funding to offset power rates. Capital from the settlement could be leveraged with state and federal tax incentives, green tags — a tradable commodity, which represents one megawatt of power generated from a renewable energy resource — and business energy tax credits to provide a return to irrigators to offset the increased power rates, he said. "It isn't perfect, but allows irrigators to become more sophisticated about power and renewable energy and position themselves for success," Addington said. "There are two keys to ensuring protections: Federal legislation authorizing federal power for certain loads in the Klamath Project, and funding. In the absence of these things, the water users would need to pursue other alternatives." Dave Solem, manager for Klamath Irrigation District, agreed. "I believe the agreement will result in reasonable net power costs for irrigation," he said. At present, irrigation power rates in Oregon are increasing 50 percent per year and will reach standard tariff rates in just a few more years, he said.

**Q: Much is made of the greater certainty for water supplies. If water has only been shut off a couple times, isn't that pretty stable? Or are there lots of close calls and short supplies?**

A: Since the listing of species under the Endangered Species Act — suckers in the late 1980s and coho salmon in 1997 — the Klamath Project experienced shortages three times, Addington said. People are most familiar with the 2001 shortage, but water also was curtailed in 1992 and 1994.

Smaller irrigation districts hardest, Addington said, because the cutoffs were unannounced and came late in the growing season. Eastside irrigators also experienced significant shortages. And close calls have kept farmers in a state of uncertainty since the new millennium, he said. “Last summer, on three separate occasions, the Project was threatened with a mid-season shutdown to meet minimum end-of-month lake levels,” Addington said. “This uncertainty goes beyond making for an obviously stressful situation. It makes farm planning, operations and financing very difficult. It also affects the ability of farmers to find stable markets for their product.”

Addington added that politics plays a large role in the federally controlled Project lands, and a new presidential administration means more uncertainty on the horizon.

“It is preferable to manage a quantified supply, even if it is not a full supply in some years, than it is to react to the latest water shortage crisis,” said Dave Solem, manager for the Klamath Irrigation District.

**Q: Will groundwater users be subject to the agreement?**

A: Addington said the agreement wouldn't create any new law regarding groundwater; it also won't change state law regarding use or regulation of surface and groundwater.

The agreement supports ongoing research and monitoring of groundwater conducted by the U.S. Geological Service, which include groundwater-surface water interactions. There also are contractual promises relating to groundwater use for the on-Project water plan, Addington said, but those groundwater promises wouldn't affect other parties.

“The statement that has frequently been referred to as creating a ‘tie’ between surface water and groundwater is a statement in a memorandum from the USGS describing general groundwater principles as well as past and planned groundwater investigations,” Addington said.

Becky Hyde, an off-Project rancher who supports the settlement, said the agreement provides funds for additional study of groundwater-surface water interaction.

Parties could use the results in disputes over groundwater permits, Hyde said.

Nothing in the agreement language requires anyone in the off-Project area to provide groundwater to meet any obligations in the agreement, Hyde said. It simply states that the parties agree to support developing a groundwater model.

The study could go forward without the agreement. In the context of the agreement, “support” does not mean giving up any groundwater.

**SEE:** To view the memorandum Addington mentioned above, see Appendix-E, pg. E-39, of the Klamath Basin Restoration Agreement.

**Q: What concessions are on-Project farmers and ranchers making? For what in return? How about off-Project farmers and ranchers?**

A: Andréa Rabe, off-Project rancher and member of the Resource Conservancy, said her group had agreed to a 30,000-acre-feet buyout of Upper Basin water, using 2001 as a base year. In return, Resource Conservancy was granted water delivery assurances for Upper Basin irrigators and equal access to affordable power. While such a large buyout would be a blow to the local agricultural economy, Rabe said, the landowners were willing to do it in order to settle longstanding disputes. “The accumulative effect of this 30,000-acre-feet buyout was particularly troubling, since the federal government and The Nature Conservancy have already idled 98,000 acres of productive irrigated lands in the Upper Basin,” she said.

The group didn’t feel the concession was rewarded in the Klamath Basin Restoration Agreement, so they oppose settlement.

Dave Solem, manager for Klamath Irrigation District, said on-Project irrigators didn’t enter the process to “make concessions,” but to address the local issues: Affordable power, water certainty and reliability, and a pathway to fair and reasonable ESA compliance.

“We believe the agreement deals with our issues in an acceptable manner. In return, we agree to support other parties’ issues.”

Off-Project irrigator Becky Hyde said those irrigators who choose to sign on will be committing to conserving 30,000 acre-feet of water to put in-stream and fish habitat conservation along the river.

“We may be able to put significant water in stream without having to simply dry up agriculture land — if we use creative means,” she said. “We may be able to conserve water while maintaining significant production. That is certainly my goal.”

In return for those concessions, Hyde said landowners would have a clear idea of where the tribal cap on water would be — something that already exists between Project irrigators and the Tribes, as well as on her family ranch.

“This cap will basically show how much water the Tribes are requesting in-stream for fish, and let irrigators know how much will be available for irrigation,” she said. “We want to establish certainty, and to find compensation through the agreement to address liabilities some landowners will have in relation to the adjudication.”

In addition, Hyde said, landowners who participate in the agreement, would have access to funds and support to develop protections from the ESA, as well as have access to the power program to offset hikes from the 1956 contract. “What hasn’t been talked about much is how this agreement means that you are on the inside, with several Basin tribes, others in the agricultural community and moderate environmentalists instead of on the outside trying to address complex issues,” she said.

**Q: Even with the agreement, there would be years when the allocation doesn’t provide enough water. What happens to farmers then?**

A: Once there is an allocation in the spring, it can’t be reduced, Solem said. The on-Project water plan would be developed to help manage the allocation through the irrigation season.

Conservation to reduce the amount of water required has a good foothold in the Project and would continue, he said.

“In wetter years, the allocation will meet the irrigation requirements,” Solem said. “In drier years when the allocation is less than demand, we will use groundwater to increase supplies and an assortment of land management practices to reduce demand.” Solem said the agreement includes funding to implement an on-Project plan and he believes farmers and ranchers can develop one and make it work.

**Q: Could an agreement have a direct effect on the power bills of city residents and retailers and industry? How about shareholders? Is PacifiCorp looking out for ratepayers, or for stockholders, or both?**

A: PacifiCorp spokesman Toby Freeman said it should be understood that theirs is a heavily regulated utility. “That means we’ve got a whole bunch of folks looking over our shoulders,” he said. “Every decision we make, every dollar we spend, is regulated. Every decision we make is based on what’s best for our customers.” He said that every dollar the utility spends is passed along to customers. “As we look at our options in the relicensing process, we are only going to enter into an agreement if it is beneficial for our customers.”

## **QUESTIONS ABOUT THE DAMS**

**Q: What concessions would PacifiCorp be willing to make on negotiations to remove dams? For what in return?**

A: “We’ve been consistently clear with folks we’re not philosophically opposed to dam removal, but it’s got to be in the best interest of our customers,” Freeman said. “We’re going to look at a comprehensive package and see how it compares to other options available to us.”

**Q: How, exactly, would dam removal work? Do they blow them up? How do they remove them? What’s the time frame?**

A: Removal is usually a combination of excavation and explosives, said George Robison, dam safety coordinator for the Oregon Water Resources Department. He said a series of small explosions would be used to “soften” the dam so excavation could occur. “Even an earth-filled dam would be highly compacted and very hard,” Robison said. The actual removal process would take months, he said. Given the long lead time necessary for physical removal to begin, Robison said even dam-removal supporters believe it couldn’t be accomplished on the Klamath River before 2015.

**Q: What’s the value of the power that’s lost?**

A: The current value of the power generated by the dams is worth about 6 to 7 cents per kilowatthour on the open market, said Toby Freeman, PacifiCorp spokesman. The Klamath dams produce 450 million kilowatthours of power a year, yielding a current market value of \$27 million to \$31.5 million. Freeman said he expects the value of emissions-free hydroelectric power to increase in coming years.

**Q: What percentage of PacifiCorp hydropower is from the Klamath River? What percentage of PacifiCorp’s power is hydropower?**

A: Currently, 11 percent of Pacifi-Corp’s power generating capability comes from hydroelectric power plants. Of that, 15 percent of the utility’s hydroelectric power comes from the four Klamath River dams.

**Q: PacifiCorp says the dams generate enough electricity to power 70,000 homes. Are they actually powering 70,000 homes, or is that just an example? What is the power being used for?**

A: Freeman said it’s an example. “(We’re taking the megawatt hours generated) and translating that into terms the public can relate to. “Technically speaking, the generation from this project goes directly into the grid. This project is one piece of our larger generating portfolio. We serve almost 1.7 million customers in six Western states.”

**Q: Do the dams provide any actual flood control?**

A: Freeman said the dams provide very little flood control.

**Q: What is the comparison of cost for keeping the dams vs. destroying the dams? What's the cost of building fish ladders and dealing with future issues and meeting standards for re-licensing? Some have said that it would be more cost efficient if PacifiCorp took the dams out.**

A: An exact cost of dam removal is not known, though estimates from government and other groups to remove the four dams range from \$80 million to more than \$120 million. PacifiCorp has not stood by any of these estimates to date.

Part of the difficulty in figuring the cost of dam removal comes from potential consequences, Freeman said. He pointed to the unknown cost of dredging the silt built up behind the dams. Environmental issues could also arise, leading to cleanup and even litigation costs.

If the dams remain in place, the Federal Energy Regulatory Commission would require PacifiCorp to install ladders to allow fish passage. That would cost an estimated \$300 million. The company also would have to comply with water quality regulations in California and Oregon, which could spur further costs.

**Q: How would removal be paid for? Would PacifiCorp be expected to foot the bill, or would we expect money from Congress to cover the costs?**

A: No portion of the agreement allocates funds for dam removal and agreement proponents have said that the cost would fall entirely to Pacifi-Corp. Tom Towslee, spokesman for U.S. Sen. Ron Wyden, D-Ore., said it is possible that federal money could go toward dam removal efforts, but there is no guarantee. Towslee said he was not aware of any effort to propose the concept to federal lawmakers. Doing so would require broad community support and a feasible plan for carrying it out.

**Q: What specifically did the federal government and Copco (the power company**

A: Freeman said that questions of dam removal and not re-licensing a hydroelectric project were never envisioned when the dams were constructed. Re-licensing was necessary but there was a foregone conclusion that the dams would continue to operate and provide power to surrounding communities.

**Q: PacifiCorp owns the dams and the land they sit on, but what happens if the Federal Energy Regulatory Commission (FERC) refused to grant it or anyone else a new license?**

A: Freeman said he didn't know what would happen if PacifiCorp's re-licensing efforts were denied — there is no precedent.

Celeste Miller with the Federal Energy Regulatory Commission said there is a process for decommissioning, which occurs whenever a dam will no longer operate, either because the license holder decides to not renew or a re-licensing request is denied.

Decommissioning can lead to dam removal, but not always. Miller said the process depends on environmental concerns, local input and other factors specific to each case.

The Edwards Dam in Maine was removed in the 1990s after its owner decided to not renew its license. Other decommissioned dams are still in place because no need was found to remove them.

**Q: Has PacifiCorp replaced and/or retired any other plants?**

A: PacifiCorp has retired one other hydroelectric dam, a small project in Utah called American Fort. Freeman said that plant generated 1.5 megawatts, enough power for about 1,000 homes.

**Q: When the dams were originally licensed, was there the possibility that, when it was time for re-licensing, the license could go to someone other than the original holder? Was there a process or formula for putting a value on the dams for when Copco became owned by PacifiCorp?**

A: Freeman declined to answer this question. He said he was uncomfortable discussing FERC policy because he is not an energy lawyer. Celeste Miller with FERC also declined to answer, saying it was “a loaded question” and that giving a “yes” or “no” answer could be misleading because of the number of factors that play into such a situation.

**Q: What happens to the river when the dams are gone? Does it change rapidly?**

A: Larry Dunsmoor, research biologist for the Klamath Tribes, said dam removal would result in some short-term depositing of sand below dams. However, the process would create richer, more complex habitat over a period of years by introducing gravel on the river bottom, he said. Gravel is important because it provides spawning areas, and it provides conditions conducive for aquatic organisms. Dam removal also would lead to cooler water because the river would not pool up in deep reservoirs behind the dams, according to Dunsmoor. “Removal of dams would restore a much more natural thermal regime,” he said. “That’s the most profound change that would occur.” Dunsmoor said the Klamath River’s warm water has caused Chinook runs to be delayed two to three weeks each fall. “It’s not good to have runs delayed,” he said. “It has overall effects on fish.” Also, he said dam removal would likely eliminate the cause of toxic algae blooms that occur in the summer. Those toxic blooms can kill animals, and were responsible for the closure of downstream portions of the river last summer.

However, PacifiCorp spokesman Toby Freeman said the utility’s research does not indicate the dams are substantially impacting downstream water temperature. Instead, the dams may act as purifying agents, he said. That’s because dams act as filters for organic

material contained in water coming out of Upper Klamath Lake, Freeman said. That material collects in pools behind the dam and accumulates along the river bottom. “Our reservoirs seem to be functioning as settling ponds,” Freeman said.

**Q: Could sediment release destroy habitat?**

A: There’s a total of 20 million cubic yards of sediment behind the four dams that would be removed, and the effect depends on how dam removal is done, Freeman said. “If you do not do any dredging and that material is simply allowed to be naturally distributed downstream, that is going to have at the very least a short-term impact on downstream habitat,” Freeman said. “Nobody has really done the work necessary to know what the impact would be. It would take field work and computer modeling.”

But Dunsmoor said the sediment currently backed up behind the dams mostly consists of silts and clays that would settle on the flood plain or on the edges of the river where willows and other plants would grow.

He added it is unlikely that all the sediment behind dams would be deposited down river. “One of the focuses of a removal effort would be getting in there as quickly as possible and stabilizing sediment that is off-channel,” he said.

## **QUESTIONS ABOUT THE NEGOTIATIONS**

**Q: How could PacifiCorp not be included in the negotiations? Didn’t they initiate the talks as part of their re-licensing efforts? How can they claim to have been broadsided by the proposal to remove dams?**

A: PacifiCorp did initiate conversations with stakeholders along the Klamath River about the utility’s dam re-licensing efforts, said PacifiCorp spokesman Toby Freeman. But issues between the stakeholders began to hamper meetings, so PacifiCorp excused itself to allow those issues to be resolved, leading to the Klamath Basin Restoration Agreement meetings. Stakeholders continued to meet with PacifiCorp, but with decreasing frequency, and provided only general information. PacifiCorp was aware that dam removal was being talked about, but was not aware of the scope until seeing the final 256-page document shortly before it was released Jan. 15. Others contend that PacifiCorp was more aware of what the stakeholders were developing. Steve Kandra, board member with Klamath Water Users Association, said the utility had knowledge, through meetings with the stakeholders, about what would eventually be proposed. “It is no surprise to PacifiCorp what we are bringing to them,” he said.

**Q: If dam removal can’t be negotiated to fruition by all the parties, is there no other way to carry on with other major parts of the agreement?**

A: Proponents said that final ratification is contingent upon an acceptable agreement being reached with PacifiCorp. Stakeholders such as the Klamath, Karuk and Yurok

tribes and a few environmental groups have indicated that dam removal is the only acceptable course. “(Without dam removal,) I think all the parties would have to sit down and discuss next steps,” said Jeff Mitchell, Klamath Tribal Council member.

Greg Addington, executive director of Klamath Water Users Association, said he could see portions of the agreement moving forward without dam removal, but doing so would require further discussions.

Portions of the agreement would go into effect. Fish and wildlife officials point to an inevitable reintroduction of salmon to the Upper Basin because PacifiCorp would have to install fish ladders if dams aren’t removed. Without the agreement, that reintroduction wouldn’t include regulatory protections for irrigators.

**Q: Was it necessary for the stakeholders group to keep all facets of the agreement private until the very end? Why was there no public participation? Or is that what’s happening now? If so, does that mean there could be some amending to the agreement because of public dialogue?**

A: Bud Ullman, Klamath Tribes attorney, said it would have been unworkable to open the negotiations. He said some additional work is anticipated — Section 16 to resolve off-Project issues is an example, he said.

“Major areas that we believe cannot be substantially changed without upsetting the delicately balanced agreement include provisions related to water, power, regulatory assurances, county and Tribal programs, and fisheries restoration,” Ullman said.

Klamath Water Users Association President Luther Horsley said it’s possible some elements could have been discussed publicly.

“At the very beginning it was PacifiCorp that required a confidentiality agreement in order to participate,” he said. “There are good reasons for confidentiality. Parties need to be able to openly discuss possible terms without fear that it will be used against them in public or in litigation. “Many of the issues being discussed were, or are, subject to ongoing litigation. These could not be openly discussed.” Another reason that confidentiality made sense was because the agreement developed in parts, and it would have been more difficult if pieces surfaced independently of the complete package. Horsley believes there could be amendments to the document because of expanded public dialogue. “Nothing is done until it is done,” he said. “The goal is to achieve the broadest support that is possible.”

**Q: Did the off-Project contingent represented by Edward Bartell decide not to stay at the table, or were they voted off? Why, in either case? Was the Bartell group involved up until the end, or did it quit the talks some time ago? Bartell said they were targeted. Is that true?**

A: Edward Bartell, of the Klamath Off-Project Water Users, said the group remains at the table to this day. He said his side didn't have enough votes to prevail when the stakeholders changed from a consensus-based to a majority-vote group.

"The rest of the settlement group decided to target upper Basin irrigators' interests, rather than continuing with an equitable agreement," Bartell said. "The proposed settlement agreement utilized upper Basin water to satisfy the rest of the parties' desire for water."

Luther Horsley of the Klamath Water Users Association disagreed. Off-Project users had the same opportunity that everyone else at the table had, he said. Horsley said it's not in the best interest of the settlement's success to consider any group expendable. "I don't believe that happened," he said.

He agreed that Bartell and the Off-Project Water Users Association have been at the table for the entire process. He said the group was never voted off.

"They were there in the beginning and Edward (Bartell) was in attendance at the last meeting held in Ashland on March 5-7, 2008," Horsley said. "Other board members from the KOPWU also attended various group meetings, as did an attorney representing KOPWU."

**Q: It seems logical that proponents would prefer not having the public relations problem of off-Project users being left out. That would seem to indicate a failing in the process by the negotiators. What could off-Project negotiators have done to come away with an acceptable deal?**

A: Ullman said off-Project negotiators could have done what all the other parties to the agreement did: Respected the legitimate needs of other negotiating parties, instead of insisting that the parties' needs be subordinated to the off-Project positions.

Also, they could have taken a problemsolving approach in which they worked with others to find outcomes that work for everyone, rather than viewing others' needs as a problem incompatible with off-Project interests, Ullman said. And they could have acknowledged the need to change the way matters are dealt with in the Basin, rather than resisting outcomes that bring change. They could have kept their constituency involved in the process.

Finally, Ullman said, they could have expanded their view that only parties to the Klamath Basin Adjudication (i.e. contestants) have a stake in the water negotiations, recognizing that a wide spectrum of water users (contestants, claimants, and permit and certificate holders) have a lot at stake in the outcome, and taken steps to adequately represent those concerns.

But Andréa Rabe, Resource Conservancy Board member and off-Project rancher in the Sprague River Valley, countered that the Resource Conservancy was denied a vote or a seat at the negotiating table.

The purpose of Klamath Off-Project Water Users, which had a seat at the table, was to defend the off-Project power contract, not to litigate water matters. So Klamath Off-Project Water Users requested a seat at the table for the Resource Conservancy, which represents Upper Basin irrigation interests. The request was denied. Rabe said it should be clear that the Resource Conservancy does not place any blame on the Klamath Off-Project Water Users for their performance during negotiations. Klamath Off-Project Water Users successfully negotiated a settlement framework that contained broad protections for irrigators outside the Klamath Project. Unfortunately, she said, the other settlement parties determined that they could go after water outside the Project.

**Q: Is it true that there were other off-Project parties that tried to be involved in the negotiations, but weren't allowed? Was that group marginalized to make the rest of the agreement work?**

A: Luther Horsley, president of the Klamath Water Users Association, said he remembers Roger Nicholson and other people from the off-Project area attending several meetings of the full stakeholders group. The most recent was late last summer when the Resource Conservancy asked for a seat at the table, Horsley said.

The Resource Conservancy, led by Nicholson, is a nonprofit group representing upper Basin irrigators. They are not part of the Klamath Project, but also are separate from the Off-Project Water Users Association headed by Bartell. Nicholson said the Resource Conservancy represents “the majority of Upper Basin irrigators and all but a handful of instream flow contestants.”

“The overall negotiations at that point were advanced and it was becoming clear some of the positions people were going to take,” Horsley said. “At about the same time, there was a request from at least one other organization.

“It was part of the group’s operating protocols that addition of new members required consensus.”

Horsley said a vote was not taken about admitting a new group. “It was pretty evident that a majority of the parties were not interested in expanding the group.”

He said it’s important to realize that most of the negotiations did not occur in a big room with all parties present. Instead, he said most issues were addressed initially by workgroups of interested parties and their results were then considered by the large group.

“There were considerable discussions outside the large group meetings with Mr. Bartell and Mr. Nicholson — presumably representing the Resource Conservancy — and the Klamath Tribes, Department of Interior, and KWUA,” Horsley said. “Had any resolutions been reached in those negotiations, those resolutions certainly would have been brought into the large group.”

Bartell said the Resource Conservancy requested a seat at the table, but they were not allowed to join the talks.

He added that many Resource Conservancy members are not members of the Klamath Off-Project Water Users because they divert water by gravity rather than by using power.

“Ultimately, all off-Project power users and irrigators were marginalized when the settlement group moved from consensus-based to majority vote,” Bartell said. “Of the 26 parties, agriculture only has two votes with the remaining parties consisting of environmental groups, Indian Tribes, and other government representatives.”

He said settlement parties made a determination that off-Project power users and irrigators did not have enough “political clout” to influence the agreement. “Therefore, they targeted Upper Basin water to meet other parties’ water desires without providing the requisite assurances,” Bartell said. Ullman said Bartell is wrong in stating that the settlement group ever required consensus as a condition of decision-making. “Consensus was an aspiration,” Ullman said, “but was never an agreed-upon requirement of the process because strict consensus would give everyone, including downstream interests that are profoundly anti-agriculture, veto power.”

**Q: Is there a problem with legality from the standpoint of government agencies being involved in closed-door negotiations?**

Paul Simmons, a Sacramento-based attorney who represents the Klamath Water Users Association, said he isn’t aware of any concerns with government agencies being involved in the settlement talks.

“Federal agencies regularly are involved in negotiations of all sorts,” he said.

State Rep. Bill Garrard and state Sen. Doug Whitsett, both R-Klamath Falls, raised concerns regarding the legality of the Oregon Water Resources Department participating in the settlement talks.

They point to a state statute that allows state agencies to negotiate water rights with tribes, but that they must do so in public meetings and allow public comment.

The department and the Oregon attorney general’s office are looking into the issue.

## **Questions & answers About the Economics**

**Q: What tests were applied to make sure there is a return on investment, or that the agreement is cost effective?**

A: Klamath County Commissioner John Elliott said that, for the county's share, it was a simple tax loss calculation of irrigated versus nonirrigated land and a suggested cost for an economic development study. Aside from that, Elliott said he wasn't sure how a cost-benefit analysis of environmental improvements and community stability could be measured.

You have to look at the costs of not doing anything, he said, which would include litigation and water uncertainty.

There hasn't been a government study, said Matt Baun, public affairs specialist for U.S. Fish and Wildlife Services.

"Many of the tribes look at the potential to restore their native cultures and traditions, two elements that are highly valued but do not come with price tags," he said.

The status quo isn't working for the federal government either, he said, adding that the cost in disaster relief payments to the Basin has reached more than \$100 million since 2001.

"Some years, the fishing industry suffers, some years the farmers suffer," he said. "The restoration agreement attempts to find permanent solutions Basin-wide so we can end the cycle of crisis after crisis."

David Diamond, assistant to the regional director of Fish and Wildlife Services, represented the Department of Interior during the negotiations. He agreed with Baun.

Diamond said that in contrast to money spent in the agreement, which would benefit water, fish and the various communities, without an agreement, taxpayers could continue footing relief packages and compensation which wouldn't do anything to improve or solve the situation.

**Q: How much does Klamath and Tulelake area agriculture add to the Basin economy annually? What's at stake?**

A: From its headwaters to its mouth, the Klamath River Basin had a value of \$10 billion in 2002, one study shows, with \$2.7 billion from natural resources, like agriculture, wood products and fishing. The economic study was published in a 2004 book, "Endangered and Threatened Fisheries of the Klamath River Basin" by the National Research Council. Pablo Arroyave, Bureau of Reclamation's Klamath Project manager, said that the project's gross sales for 2007 were \$200 million. That number includes both sides of the Oregon and California border. The Tulelake Irrigation District reported a crop value of \$71.3 million for lands served by the district in 2007. Countywide, the Klamath Basin Research and Extension Center reported sales receipts in 2007 at \$298 million. In addition to gross sales, center director Willie Riggs said agricultural sales have a multiplying effect of two, meaning every time \$1 is generated from agriculture in

Klamath County, another \$1 is generated in total local business sales. With the multiplier, the size of agriculture in Klamath County grows to \$600 million.

**Q: What are the ramifications of the agreement for the general public?**

A: Greg Williams, retired regional vice president for Northwest Farm Credit Services, said the water cutoff in 2001 can give a general idea of what can happen to farmers and businessmen.

“The loss of income did not create an immediate ‘trickle down’ effect but rather a ‘flood effect’ upon the Klamath Basin business community as farmers stopped buying supplies, equipment, fuel, pickups and all other goods, except the basic necessities,” he said.

Also, farm workers found themselves suddenly unemployed, losing spending power that was also felt by local merchants. Many workers left the Basin to work elsewhere, which left empty homes for sale or rent and caused a drop in school enrollment.

If land moves from irrigated status to dryland, values would drop sharply, creating a domino effect of lower tax revenue to pay for schools and government, he said.

“Loss of income relates to a loss of services that impact all members of the community.”

Williams also said the issue of water split the Basin into an “us against them mentality,” dividing collective energy that could be used for other problems.

“Basically, the agreement will help to break down community barriers, stabilize the value of assets and assure viability of the Klamath Basin business community,” Williams said.

Klamath County Commissioner John Elliott said the water crisis reached farther than just irrigated farm acres — south suburb residences, playing fields and school grounds also were left high and dry in 2001.

The agreement, he said, provides a conflict resolution format, not found outside of the courts or governmental bodies — a model he believes can be used for collaboration.

In addition, Elliott said the land acquisition by the Klamath Tribes should result in a growth of timber-related opportunities for the larger community.

Annual uncertainties in water allocations will hit the community just as hard as the past reduction in the local timber industry, Elliott said.

“It affects a banker’s decision to allocate funds to the producer’s operating line. The producer, in turn, is reluctant to buy equipment or negotiate long-term contracts for his operation.”

That, in turn, clouds the rest of the community.

“Whether a person paints houses, supplies the paint or hires the painter, the decision to do so is dependent upon the economy,” Elliott said. “And if that is uncertain, most of us put off the expense and the economy continues to stagnate.”

## Questions & Answers About Fish

### **Q: Who would benefit from the return of salmon?**

A: Oregon Department of Fish and Wildlife District Fish Biologist Roger Smith said the benefits of salmon and other anadromous (able to migrate from salt to fresh water) fish returning to the Klamath River run the gamut of the ecosystem, fish to people. The department’s study on coldwater fishing found recreational trout fishing contributed as much as \$8 million. But some area species, such as the bull trout, which evolved with salmon, are now listed as threatened, which makes the fishery’s recreational use tenuous. The return of salmon is as important for the tribes as others, not only for commercial and recreational fishing, but for other reasons. Salmon carcasses provide a much-needed link in the food chain for other species harvested recreationally, for instance.

Larry Dunsmoor, research biologist for the Klamath Tribes, said the return of salmon is good for anyone who likes fish and rivers. “People who like to fish will, at some point, see a thriving steelhead and Chinook salmon fishery south of Keno,” he said.

Beyond the return of migratory species, which is fairly certain with dam removal, Dunsmoor said, the dam removal could help to encourage a resident trout fishery between Keno and the J.C. Boyle Reservoir. That fishery is already outstanding, he said, but passage problems created by the dam diminish the fishing.

Dunsmoor focused his comments on the improvements to fisheries below Keno because those were the most certain for rapid improvements. He was also optimistic about the

return of coho salmon above the lake. It would just take more time for those fisheries to return.

Chuck Bonham, Trout Unlimited legal counsel, said returning salmon to their historical habitat in the upper Basin would improve the overall health of the species. Healthy fisheries would mean fewer regulatory restrictions, he said.

Salmon in Klamath Falls would create business growth in tourism and recreation. “After salmon return and become healthy again, imagine sportsmen and women traveling from around the country to match their rods and skills against these legendary fish in a majestic setting.

“Of course, there is no question returning salmon would benefit coastal fishing communities and economies in California and Oregon.”

**Q: What does the science say on the issue of whether anadromous fish came up into the Upper Klamath Basin? Some say salmon never got this far; some concede they may have gone as far as Keno; others say farther. What should we expect “normal” to be like?**

A: “The information is overwhelming, and this matter does not deserve to be called an ‘issue’ simply because some people refuse to acknowledge the well-documented history,” said Klamath Tribes attorney Bud Ullman. He said salmon historically ran up at least the Sprague and Williamson rivers. Photographs, Indian and non-Indian histories, anthropological and ethno-historical work, and other sources all reach that conclusion, he said. There is a good compilation of the available relevant information published in the scientific journal “Fisheries,” April 2005, Vol. 30, No. 4.

The agreement is very flexible in the species, timing and location of restored fisheries because such things are very difficult to predict with specificity, he said.

Siskiyou County Commissioner Jim Cook said he has not seen any reports of salmon in the upper Basin. “I have heard some agency people say that there was but I don’t know where they got their information.”

Phil Detrich, field supervisor for the U.S. Fish and Wildlife Service, said there is some controversy, but also said there is evidence salmon were found in the Sprague River and that initial studies indicate the potential exists for successful salmon introduction.

Irma Lagonmarsino from the National Marine Fisheries Service in Arcata, Calif., said there is convincing evidence salmon traveled upstream to Upper Klamath Lake.

**Q: If the Iron Gate hatchery, which supplies a large percentage of salmon to the Klamath River, is eliminated, isn’t it likely there would be a decrease in salmon?**

A: Phil Detrich, field supervisor for the U.S. Fish and Wildlife Service, said studies indicate the dams and reservoirs worsen water quality, so dam removal could improve water quality, which will benefit salmon. Habitat improvement along Upper Klamath Lake could also help. Troy Fletcher, who formerly served as the Yurok Tribe's fisheries director and is a former tribal executive director, is serving as a policy analyst. He said Yuroks have a history of experience on the Klamath, and he believes "we have a good handle on flows that are necessary" for fish-related issues. Fletcher said declines in fish populations are well documented and something he's seen in his lifetime.

"The quality of the water is deteriorating because of the dams," and he believes salmon populations will increase with water quality improvements.

Ullman said the hatchery operation will most likely be moved. Details regarding the location and size of the hatchery have yet to be determined. The new hatchery will likely be operated in a manner that lessens the impacts of hatchery fish on wild fish.

"Remember that with dam removal, extensive habitat areas will be re-opened to salmon, and conditions in the Klamath River will improve, so salmon production should increase."

## **Questions & answers About off Project users**

### **Q: Why are some off-Project folks opposed and some for the settlement?**

A: Some off-Project water users support the agreement because they see it as a resolution to continuing disputes over water between themselves and the Klamath Tribes. Jim and Caren Gould of Sprague River said they would consider signing the Klamath Basin Restoration Agreement. It could mean financial compensation for retiring water rights, allowing a rancher or farmer to do so, and cut legal costs needed to protect a claim. Off-Project water users opposed to the agreement, such as Edward Bartell, president of Klamath Off-Project Water Users, and Roger Nicholson of the Resource Conservancy, list a number of concerns. They say the agreement grants the Tribes a substantial water right that would threaten theirs; would tie surface and groundwater supplies to in-stream flows, putting groundwater users at risk and that there are no assurances for stable power rates or protections from the Endangered Species Act.

### **Q: Wouldn't protection for off-Project irrigators create more public support? Why, then, not work it out right now for everyone?**

A: Bud Ullman, attorney representing the Klamath Tribes, said the maximum possible provisions for both power rates and Endangered Species Act protections are in the settlement. The missing component for the off-Project irrigators is a water settlement, and that is to be resolved by further negotiations under Section 16 of the agreement, he said. "Right now the agreement works for the vast majority of parties who did the hard work and tried to find solutions," Ullman said. "Those groups who did not do that are now

standing outside the agreement trying to either kill it or force major changes.

“Working it out right now is exactly what the Tribes and others are doing, and have been trying to do throughout the negotiation process. It is easier said than done because it has proven quite difficult to find negotiating partners who truly represent the relevant interests, who are willing to communicate effectively with their constituencies, and who are willing to set aside their litigation positions and engage in needs-based negotiations.”

Greg Addington, executive director of the Klamath Water Users Association, said it’s desirable to resolve any outstanding issues quickly, if possible.

“Ultimately, it is necessary to anyone considering support to be able to conclude that a settlement is, on balance, in their interest,” Addington said. “However, we believe that the passage of time is detrimental to success of the agreement, particularly those pieces that are important to the Upper Basin and Klamath County.”

**Q: Off-Project users, according to Edward Bartell, have already reduced thousands of acre-feet of water usage. Yet the agreement doesn’t recognize that and wants another 30,000 acre-feet. Why?**

A: The Klamath Basin Restoration Agreement does not specifically restate all that has happened before, said Greg Addington of the Klamath Water Users Association. It includes terms for settlement based on today’s circumstances. “Given the land and water base at the time of negotiations, tribal, environmental and agency personnel determined that an additional 30,000 acre-feet in tributaries to Upper Klamath Lake as well as the on-Project permanent diversion limitation — over 100,000 acre feet in the drier years — would be necessary for agreement with those interests,” he said.

Addington said the Klamath Water Users and all other parties must decide whether the restoration agreement is preferable to alternatives.

“The (restoration agreement) will result in reduced water availability in the Klamath Project, which the districts have to somehow make work out for individual landowners,” he said.

**Q: It’s surmised that retiring a substantial number of contestant water rights would effectively lower the critical mass for irrigators, making it impossible for them to afford group-supported litigation in the future. Response?**

A: Edward Bartell of the off-Project users said the settlement document advocates a large buyout where the remaining contestants live. “This would clearly reduce the critical mass of remaining contestants,” he said. “The adjudication is a complaint-driven process, so a lack of credible defense greatly increases the likelihood that the claims will be granted. “The Klamath Tribes have filed for more water than physically exists during most years, with a priority date prior to all other users. If these claims were granted as filed, there

would be a permanent end to surface irrigation and the additional loss of tens of thousands of acres of family farms.”

Bud Ullman, attorney for the Klamath Tribes, emphasized the retirement proposal is voluntary and if contestants think its effects are bad, they may choose not to participate.

“It is more likely that junior water users, not necessarily contestants, will participate in the retirement program because the junior users are at risk of having their water use preempted by senior agricultural users, not just by the Tribes,” he said.

Ullman said that nothing in the proposed agreement forecloses the contestants’ right to litigate.

He said it is true that irrigation practices “have grown up without regard to the Tribes’ water rights so that to the extent the Tribes’ substantial water rights are recognized in the adjudication, the net effect on irrigation diversions can be serious. That is why betting the ranch on the outcome of the adjudication is so ill-advised.”

Addington said each person must decide from a personal and financial standpoint what is best for him or her. He agreed with Ullman that, if contestants feel the settlement is a bad thing, there is nothing that forces their participation. “It is more than likely that the adjudicator’s ‘order of determination,’ which the state will use to begin regulating water rights on, will be produced within a couple of years,” Addington said. “Assuming no off-Project settlement, it seems likely the order of determination will happen before significant voluntary purchase of any water rights under the proposed Klamath Basin Restoration Agreement.”

**Q: How many off-Project users are there? Who represents whom?**

A: Bartell said it is difficult to determine the total number of off-Project users because there is no strict accounting. There are about 700 Pacific Power meters serving off-Project customers and more than 100,000 total irrigated agricultural acres outside the Klamath Project. “A substantial portion of the Klamath Off-Project Water Users (power group) members are not part of the Resource Conservancy,” Bartell said, adding the latter group represents irrigators outside the Klamath Project in adjudication.

“We represent a large number of people on power-related issues who are in the Lost River drainage which is not part of the Klamath adjudication,” he said. “Similarly, the Resource Conservancy has members who do not use power so they are not members of the Klamath-Off Project Water Users Inc. Resource Conservancy also represents irrigators in the Upper Klamath Basin who are not in the geographical area of Pacific Power coverage.”

Greg Addington, executive director of the Klamath Water Users Association, says there are about 1,200 family farms and ranches in his association, although the districts deliver water to several thousand customers — many of which are small acreages.

“The irrigated acreage receiving water from the Klamath River is approximately 170,000,” Addington said. “Total acres in the Klamath Project are close to 200,000.”

The east side of the Project is irrigated from the Lost River and Clear Lake system, he said.

**Q: Can you explain what the lawsuit filed against PacifiCorp by the Klamath Off-Project Water Users is all about?**

A: “Klamath Off-Project Water Users have a contract for power delivery at a fixed rate from Pacific Power,” said Edward Bartell. “This contract does not have an expiration date. Pacific Power terminated this contract, (and) Klamath Off-Project Water Users have filed suit for breach of contract, based on the termination.” Toby Freeman of Pacific Power declined to comment, saying the company has a strict policy preventing discussion of pending litigation.

**Q: Are the allegations of the off-Project users stated accurately, that the proposals they have received would allow them water use only four to seven years within a 70-year-period?**

A: The Resource Conservancy Board has used a graph illustrating May in-flow stream levels for the Williamson River at the Highway 97 bridge from 1926 to 1997. As seen in the graph, the Williamson River only had enough water to satisfy the Tribal in-stream flow demands during a few years, said Andrea Rabe, an off-Project rancher and member of the Resource Conservancy. “

These years were probably extreme runoff type years,” she said. “In these extreme runoff events, soils are saturated and irrigators are not irrigating anyway.”

Even if it were assumed that the average flow for the years in question was half of what the Tribes have demanded (2,250 cubic feet per second), it would take tens of thousands of acres of irrigation water shut-downs to satisfy the other 2,250 cubic feet per second (cfs) flow demand, she said.

To further illustrate this, Rabe said average irrigation needs are in the range of 1 cfs per 80 acres. If 2,250 cfs added water was necessary to fulfill the Tribal needs of 4,500 cfs on the average year, then 80 acres x 2,250 cfs would have to be idled. Doing the math, 80 acres multiplied by 2,250 cfs equates to 180,000 acres.

That kind of acreage, Rabe said, doesn’t exist in the Sprague River and Lower Williamson River drainages.

Off-Project rancher and agreement supporter Becky Hyde had not heard those statements, but said that if the Tribal instream claims succeeded and there wasn’t a settlement, reallocation of water from agriculture to in-stream would occur, but the exact amount was unknown.

“The (agreement) doesn’t make a re-allocation any more likely, and instead it offers a way to avoid, or at least make that scenario highly unlikely,” Hyde said. “If you have junior water rights on your ranch, which is the case for example on some of our rights on

some of our land in Beatty — your level of risk of not having water certainly goes up with enforcement of a full tribal water right.

“And (the agreement) provides a way to possibly access some compensation for junior dates, instead of just losing the water entirely. More reasons to work toward settling these issues for the best long-term outcomes possible.”

## **Questions & answers About the Tribes**

### **Q: What concessions did the Tribes make? For what in return?**

A: Tribal attorney Bud Ullman said they agreed to modify parts of their water rights and how they would exercise those rights. “We also agreed not to pursue possible litigation against other parties under a variety of legal theories and laws,” he said. “We agreed to support cheap power for Basin agriculture; we agreed to stabilize agricultural water supplies in order to stabilize agricultural livelihoods; we agreed to work with others to reduce the adverse impacts of the ESA on agricultural water supplies. “We agreed to all these things even though the great disparity between the Tribes’ livelihoods and those of other parties will remain for a long time.” The Tribes stand to gain what’s necessary to restore fisheries and improve stream and lake health. The Tribes would receive help from agencies in resource management along with economic assistance, including the Mazama Forest project. “Also,” he said, “we put a high value on our expectation of a greatly reduced level of friction and strife among Basin communities.”

### **Q: Tribal leadership changes frequently. How do other parties know that future councils and presidents won’t cause the agreement to be voided or changed dramatically?**

A: “We first have to note the painful irony of asking if the Tribes will simply renege on the deal later,” Ullman said, “kind of like what has happened to so many tribes who signed treaties with the U.S. “The Klamath Tribes have kept their treaty commitments even in the face of profound abrogations by our treaty partners. To take just two examples, where are our salmon? When will we again be able to fish for c’waam (suckers)?” He said the same question is relevant to other parties to the agreement that have regular elections and changes in leadership, including irrigation districts, counties, states and the United States. Mitigating all that is the fact the agreement would be secured in federal, tribal, and state law — a contract binding on all parties. Elected bodies would not be able to void or dramatically change the agreement.

Jim Cook, Siskiyou County supervisor, whose district includes the Tulelake Basin, three of the four dams proposed for removal, Copco Lake and two Indian tribes, was less optimistic. He was unsure whether future tribal leaders would honor commitments made in the current agreement.

**Q: When did the purchase of the 90,000 acres of forest enter into the settlement process?**

A: The purchase was discussed early in the summer of 2007, Ullman said. When the Tribal Program section of the agreement was first addressed by the settlement group in August, the purchase was included in that section.

**Q: What's so important about the land deal? Why should other stakeholders have to subsidize the purchase, or is it a value for value thing?**

A: "The premise of the question is objectionable and reveals a bias to the extent it suggests that only the Tribes will receive such benefits when, in fact, other parties will receive vastly greater benefits including hundreds of millions of dollars which are, to take the questions' view, 'subsidized by other stakeholders,' " Ullman said. He said the Klamath Tribes would be last in line to realize the benefit of most of the provisions of the agreement. It would immediately move toward stabilizing Project water supplies; and lower river tribes and non-Indian salmon fisheries would see improved salmon runs long before the Klamaths have the return of a harvestable fishery.

"The only way to provide the Klamaths with comparable value is through economic opportunities like the Mazama Forest, which will benefit not only the Klamath Tribes, but the whole Basin community."

**Q: How is ownership of the land by the Tribes related to water restoration?**

A: In addition to the above, Ullman said, a guiding principle of the agreement is sustainable communities throughout the Basin. That economically connects land and water concerns for the Tribes, just as power and Endangered Species Act assurances connect to economics and water for the agricultural community.

**Q: Edward Bartell seems to be saying the agreement would give the Tribes an upper hand in management of in-stream flow, water claims, etc. He worries that the "sovereign nation" status allows them to disregard the agreement. Is that possible?**

A: Bill Ganong, attorney for, and Dave Solem, manager of the Klamath Irrigation District, and Ullman said the Tribes couldn't disregard the agreement based on their status as a sovereign nation. It would be difficult for future tribal leaders to overrule a legal contract. The Tribes do not want to end agriculture in the Basin, and leaders from both sides want to foster a better relationship, Ullman said. "We would not settle if the Tribes could come back and say the deal's off," Solem said.

**Q: Why do off-Project irrigators object to the Tribes taking money to buy land that's on the market and instead want Tribes to take money for general economic development that could include purchasing land? Why does the Tribe object to**

### **doing it the other way? Same end, isn't it? Why is it an issue?**

A: A group of on- and off-Project irrigators presented a petition to the Klamath County Board of Commissioners in early February that would change the agreement language to say funds for purchasing the 90,000-plus acres of the Mazama Tree Farm would instead be used for “economic development,” which includes purchasing land.

John Wells, an irrigator who signed the petition, said the language change was made to broaden use of the money and make the issue of the Tribes buying land with tax money less volatile.

Andrea Rabe, an off-Project irrigator who signed the petition, also said the language change was suggested to quell concerns about the Tribes receiving tax money to purchase land.

Even with the change, use of the money would be decided by the Tribes and could include purchasing land, she said. When asked what difference it would make to change the language in that case, she only said it was to quell concerns about the Tribes receiving money for land.

Jeff Mitchell, Klamath Tribal Council member, said the Tribes are not interested in changing the language for providing funds to purchase the land in central Klamath County.

The Tribes presented the matter in that way to the other stakeholders and it should remain that way in the agreement, he said. Mitchell added that even if the language were changed there would be still be criticism that the Tribes should not receive aid to establish a land base.

“We don't see any reason to take it out,” he said.

Q: What is the condition of the land in question? It was said that it was “in serious need of tending.” What's that mean? How will it be tended and to what purpose, and are the Tribes equipped?

A: The Mazama Forest is in a variety of structural conditions ranging from open stands with little or no regeneration to dense, overstocked stands, and everything in between, Ullman said. Most of the forest is “grossly overstocked” with advanced regeneration of saplings and poles.

Stand tending refers to thinning trees that are not of commercial size to produce lumber. “The Tribes have developed a state-of-the-art forest management plan, with the help of nationally recognized forest scientists,” Ullman said. He said thinning would reduce overall stand densities to increase growth rates for remaining trees. It also would reduce inter-tree competition, which in turn reduces the risk of bark beetle infestation. Thinning also reduces the risk of stand-replacing fires by spacing trees at wider intervals and

removing unneeded slash. It also provides feedstock for value-added business projects such as biomass, bundled firewood, and posts and poles.

**Q: Would there be a loss of accessible private timberlands for hunting?**

A: Ullman said that, just as any private landowner or land manager would do, the Klamath Tribes would deliberate on the matter and formulate policy as appropriate, taking into consideration historic and future uses of the area, fire danger and other concerns.

## **Questions & answers - Miscellaneous questions**

**Q: What about other river systems, such as the Trinity? Why were they not included in the settlement?**

A: Siskiyou County Commissioner Jim Cook said he suspects stakeholders limited the discussion to just the Klamath River to placate tribal members. He said including other river systems might have created complications because some tribes, such as the Hoopas, have concerns with rivers other than the Klamath. "I am glad they didn't try to force a Basin-wide solution."

Greg Addington of the Klamath Water Users Association said the Trinity "has its own somewhat unique legal history and circumstances" and its own restoration program.

Klamath Tribes attorney Bud Ullman said the Trinity is the subject of a separate settlement based on a "Record of Decision" stemming from lengthy federal, state and tribal research and negotiation.

"The Trinity has a unique history and setting, both legally and physically, and its own processes for dealing with the issues addressed in the Klamath Basin Restoration Agreement," he said. "The Trinity Settlement resolved issues between irrigators in the Central Valley of California who divert water out of the Trinity Basin into the Central Valley, and the tribes and Feds (and others)."

**Q: Why not a proposal for additional water storage? Could the lake be dredged to add storage? Could a deep-water reservoir be added to the Basin?**

A: Oregon State Sen. Doug Whitsett, R-Klamath Falls, said short water supplies in late summer are caused primarily by lack of water storage in the Upper Klamath River. Compounding the problem is earlier snowpack in the last few years. "The solution is to develop new deep-water storage such as the proposed Long Lake project, the Boundary Reservoir, or any number of other smaller potential storage locations," he said. He doesn't see dredging as a solution, he said, because natural levels of bedrock-derived phosphorus would keep releasing above-average levels of the element into the river and lake system. Pablo Arroyave, area manager for the U.S. Bureau of Reclamation's

Klamath Project, agreed. The Klamath Basin Restoration Agreement commits the BOR to complete its current offstream storage study by Sept. 30, 2011. Arroyave said the study is required before BOR can get congressional authority to construct such a project. Currently the off-stream storage study is looking at Long Lake as possible deep-water storage. He also didn't see dredging as a solution because the area that could be dredged would be unavailable to the Klamath Project — below the lower level of the gates at the Link River Dam — and the effort would just create “dead storage.” He added that sediment disposal would present a very big problem. “For example, adding just one acre-foot of storage capacity to the lake would lead to more than 100 semi-truck loads of material that would need to be disposed of — the lake holds about 485,000 acre-feet of water,” he said.

**Q: It seems that the agreement would settle some adjudication, but not all? Where's the line?**

A: Ullman said the resolution of issues between the Tribes and the Klamath Project is part of the agreement, but issues between the on-Project and off-Project, as well as between the Tribes and the off-Project parties haven't been resolved.

That reflects the uncompromising stance of those representing the off-Project in negotiations so far, he said, though that is changing as the Tribes begin negotiating with individuals and small groups that he said more accurately reflect off-Project interests.

The agreement allows future settlements and resolutions to be incorporated. Ullman also said that participants in the adjudication have the legal right to continue litigation if they choose not to settle.

Bill Ganong, legal counsel for the Klamath Irrigation District, said that to a large extent, the line is the north end of Upper Klamath Lake.

The agreement, he said, frees all water users in the Basin with a water right date of 1908 or earlier from the Tribal rights, if any, in Upper Klamath Lake and the Klamath River. However, he said those whose water right date falls after 1908 still have a reason to contest Tribal claims. All people with water rights for irrigation on the tributaries upstream of Upper Klamath Lake have a reason to contest the Tribal in-stream claims in those tributaries. The agreement's section 16 provides a process and forum for resolving disputes across that line, Ganong said. “The agreement encourages settlement by providing fair market value compensation to landowners who agree to transfer part or all of their water right in-stream,” he said. Many individual claims were resolved by stipulated agreement, aside from Tribal claims, he said, others with completed administrative hearing processes will be determined by a court order. “Following entry of the adjudicator's order each party will again weigh the costs, risk and time that will be required by the court process against the benefits, if any, of continuing the litigation,” Ganong said.

**Q: What is the history of the power rates for on- and off-Project users? What happened to make the rates jump up?**

A: Addington said the Klamath Project enjoyed a favorable power rate through contracts between Copco, PacifiCorp's predecessor, and Reclamation, first in 1917 and then in 1956. The 1956 contract renewal was required by the Federal Energy Regulatory Commission (FERC) for Copco's license and both contract and license were to last 50 years. The irrigation rate agreement with the off-Project also began in 1956. Both the agreements expired in 2006, said Toby Freeman, regional community manager with PacifiCorp. Addington said that since 2006, PacifiCorp operated under one-year licenses and argued to FERC that the irrigator contract should not similarly be renewed annually and FERC agreed.

Freeman said the Oregon Public Utilities Commission ruled in 2006 that the off-Project should also move to the standard irrigation rate and that no new contract was made because the special rate for the Klamath irrigators wasn't deemed to have a benefit for all PacifiCorp customers.

The Public Utility Commission upheld that.

In the relicensing proceedings, Addington said, the BOR submitted a condition to FERC that would require a new contract, which is opposed by PacifiCorp and many others.

"Generally speaking, it is PacifiCorp's view that the old contract expired and is irrelevant, and there is no benefit to PacifiCorp from the Klamath Project," Addington said. "High power rates would adversely affect water users and water use efficiency in the Klamath Project." (For more information about power from the KWUA, visit its Web site, [www.kwua.org/power/power.htm](http://www.kwua.org/power/power.htm).)

The current irrigation rates are rising to meet standard irrigation rates, which are now at about 8 cents per kilowatt hour in Oregon. Under the 1956 contract, the on-Project irrigators were paying 6.5 tenths of a cent per kilowatt hour and off-Project users were paying 7.5 tenths of a cent per kwh. Current tariffs in Oregon are \$0.02 on and off project. On the California side, tariff rates are \$0.06 on the Klamath Project lands. The Oregon standard rates are being phased in over a seven-year period, while the California rates will be in place after only four years.

**Q: Why not proceed with adjudication?**

A: Ullman said adjudication creates winners and losers based on priority date and quantified water rights. The winner-take-all process doesn't address the water availability problems, water security, water quality problems, habitat problems, or timing of water needs. "All these things must be dealt with if the current instability for all communities is to be remedied," he said.

The agreement also offers all involved a greater degree of control than if the matter were turned over to a judge, Ullman said.

Bill Ganong, Klamath Irrigation District's legal counsel, said even if irrigators were awarded their full water claims, Tribal claims will have priority, which may limit irrigator use to nil.

“The Klamath Basin Restoration Agreement provides specified amounts of water for irrigation in the Klamath Project that is free of the Tribal claims, he said. “In addition, the agreement provides financial compensation to irrigators who do not receive a full supply of water.

“The benefits of the agreement outweigh the time, cost and risk to Klamath Project Irrigators of continuing litigation in the adjudication”

Litigation, he said, is expensive and inefficient. The costs involved create large financial burdens for all involved.

“Many suits settle because one or more of the parties cannot afford to continue the battle,” Ganong said. “The costs of the Klamath River adjudication to the state of Oregon, the claimants and the contestants to this date is in the tens of millions of dollars, and this litigation has not started the court process that follows the pending administrative process.”

Adjudication has been pending for 30 years, and during that time some land owners involved have simply gone out of business because of money, retirement, job changes or death, he said.

Ganong expects that if the litigation route continues, it will last many more years and few if any of the original irrigators will be alive.

Claims are currently over the available water supply, Ganong said, adding that each year, environmental regulations place more limitations and demands on that shrinking supply. Climate change is another monster looming in the future. In adjudication, the water supply allocation and regulation will be determined by an adjudicator for the Oregon Department of Water Resources scheduled for 2011, Ganong said. With an order, the oldest rights will receive a full supply, while younger water rights will probably get none during summer months. The majority of water users will have to deal with whatever is available in a given year, he said. No compensation will be awarded through adjudication to those who get no water.

**Q: Is there an estimate on what's being spent on adjudication by all parties, and would the settlement make all that go away?**

A: A hard and fast estimate of exactly what has been spent by all parties involved in the adjudication litigation is not available; however, Ganong guessed the figure to be in the tens of millions.

The Klamath Project farmers have spent in excess of \$4.5 million, Ganong said, adding that he expected the U.S. had spent much more and that the state of Oregon also had a

huge investment as it has paid most costs for the administrative hearing process and field study of the irrigated land.

Ullman said the Tribes did not have a good estimate of what has been spent on the adjudication, but did say the expense has been “painful for all parties.”

Andréa Rabe, a Resource Conservancy board member and off-Project rancher in the Sprague River Valley, said adjudication expenses were in excess of \$1 million in the off-Project.

Becky Hyde had heard \$500,000, but that didn’t include litigation expenses for off-Project landowners litigating Tribal in-stream claims.

Hyde said farmers needed to seriously evaluate the situation and “determine how deep your pockets are” and consider what continued litigation means to the agricultural community financially.

“What’s nice about this settlement is that there is a choice — off-Project landowners who want to settle can, while others who prefer to litigate these issues are welcome to,” she said.