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August 10, 2011

RECEIVED
08-11-11
SWRCB Clerk

VIA OVERNIGHT MAIL
AND FAX (916) 341-5620

California State Water Resources
Control Board
1001 I Street
Sacramento, CA 95814

Re: Item 10 – August 16, 2011 Meeting concerning
Klamath Hydroelectric Project – 401 Water Quality Certification Application

Dear Board Members:

This letter is submitted by the County of Siskiyou in opposition to any continuance of the Board's prior resolutions holding in abeyance the process of PacifiCorp's KHP water quality certification application. As the County has commented in the past, the only thing standing in the way of allowing the Project to become fully licensed is the 401 Water Quality Certification process which the County believes has been inappropriately delayed by the State Water Board in an effort to facilitate a precommitment to the removal of the Klamath dams even before the environmental work and CEQA review has been completed.

Provided with this letter is a copy of the July 12, 2011 correspondence to the Honorable Ken Salazar, Secretary of the Interior, from the Siskiyou County Board of Supervisors. As identified in the letter, it is clear from essential portions of the environmental review

undertaken that the proposed actions of the KHSA and KBRA are insufficient to justify removal of the dams.

The County has previously objected to the continued delays in relicensing the facility occasioned by what it believes are the commitment of the State Water Resources Control Board to implement TMDLs and other water quality measures which will mandate the removal of dams without any scientific justification.

The item before you on the continuance of the processing of PacifiCorp's 401 Water Quality Certification Application specifically mentions the Secretarial Determination which, based upon the Department's own scientific reviews, does not have a likelihood of advancing salmon restoration. These reports further conclusively demonstrate that the efforts envisioned under the KBRA and KHSA will not result in the water quality improvements hoped for by the flawed TMDL, nor those necessary for salmon restoration. As the scientific panels review demonstrates, there is not sufficient funding or organization to permit these efforts to be successful. The review of the scientific information by the Expert Panels retained by the U.S. Fish and Wildlife Service also highlight the inadequate nature of the opportunity these experts were given to review the underlying information and the inadequacy of that information, calling into question the legal viability of any CEQA review produced as a result of that process.

The report before you on the question of a continuance expresses optimism that the State Water Board's information needs under CEQA may be met in part by these studies. If in fact these studies have been determined to be inadequate; which they have, then there is no basis for the continuance.

As the County has indicated in the past, the TMDLs that the State Water Board intends to impose on PacifiCorp and others are not backed by adequate science or review and are fundamentally flawed. It appears that there is an effort to purposefully impose biased standards to inflate the environmental costs to comply with the newly adopted and flawed environmental regulations advanced by the State Water Board, to create an artificial valuation that the retention of the dams and hydroelectric facilities would be more costly than their removal.

Because there is no scientific or other justification for further delaying the process, no continuance should be granted and the 401 certification should proceed.

Very truly yours,

OFFICE OF SISKIYOU COUNTY COUNSEL
THOMAS P. GUARINO, COUNTY COUNSEL

THOMAS P. GUARINO
County Counsel

TPG:rh

Encl.: Letter to Secretary Ken Salazar dated July 12, 2011 from the Siskiyou County Board of Supervisors

cc: Siskiyou County Board of Supervisors
PacifiCorp

COUNTY OF SISKIYOU

Board of Supervisors

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July 12, 2011

The Honorable Ken Salazar
Secretary of the Interior
U. S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Continued Billion Dollar Funding of KBRA and KHSA
Breaks Promise to County of Siskiyou

Dear Secretary Salazar:

This letter is to request that you direct the cessation of activities related to the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA). This request is made in light of the fact that the recent Expert Panel Reports on Chinook Salmon and Coho and Steelhead Salmon conclusively shows that there is little likelihood of success and substantial scientific data gaps which demonstrate that moving forward in the current manner would not result in the speculated restoration of these species. To continue to spend millions, tax ratepayers over $400 Million, and seek funding in excess of a Billion Dollars on a program that lacks the science to support success is incomprehensible in this economic environment.

Your representatives have on numerous occasions expressed your commitment and promise to do a "robust" and complete scientific analysis before any Secretarial Determination. To move forward as currently proposed is not honoring this promise.

What has been validated by these reports is the County of Siskiyou's concerns with the underlying science being utilized. The County's insistence that President Obama's Standards for Scientific Integrity be utilized in reviewing the underlying science has been shown to be prudent. The federal government's own experts have expressed concerns that the science is not in place to support a conclusion that removal of the hydroelectric facilities would result in the restoration of the species at issue. What is clear from these

Jim Cook	Ed Valenzuela	Michael Kobseff	Grace Bennett	Marcia H. Armstrong
District 1	*District 2*	*District 3*	*District 4*	*District 5*

reports is that somewhere in the neighborhood of a forty percent (40%) reduction in agricultural land use would have to be achieved just to address one aspect of water quality concerns in the Klamath Basin. The destruction of productive agriculture in Siskiyou County would remove the significant remaining economic sector of this County. The federal government, through its flawed forestry programs, has devastated the timber industry in this County, and in the very near future seeks to abandon its commitment to replace those lost revenues from that industry. The federal government, in concert with the state government, has banned mining in the County. Siskiyou County has been identified as one of the most stressed counties in the United States, with unemployment in excess of 18 percent. Even as we write this letter, the Department of the Interior continues to expend millions of dollars to fund and support the efforts on the KBRA, KHSA, and KBCC to remove perfectly good hydroelectric facilities based upon what your own Expert Panels indicate is, at best, speculation.

As we are all aware, the economic situation in the State of California and unemployment in the State of California and the United States are such that continued spending on such a speculative endeavor is an irresponsible expenditure of the taxpayer monies. Pacific Power has increased power rates to provide a fund to remove dams and increased power rates for other reasons, while your Department and others in the federal government expended millions on this particular endeavor, including most recently renting a room for the Klamath Basin Coordinating Committee under the KBRA in Ashland, Oregon, so that they could meet to move forward with implementing aspects of the KBRA before federal legislation has even been passed authorizing your support. We believe that such actions are unconscionable.

Provided with this correspondence are two bullet point lists of specific references to your Expert Panels identifying many of the flaws and deficiencies in not only the KBRA, but also the underlying science upon which your desire to remove these hydroelectric facilities is based. Continued support of efforts to remove this clean source of renewable energy is not merited.

Accordingly, the Board of Supervisors of Siskiyou County respectfully demands that you immediately order the cessation of activities by the federal participants in support of the KBRA and KHSA.

Very truly yours,

Jim Cook, Chair
Siskiyou County Board of Supervisors

Attachments: Board report--KBCC Meeting June 17, 2011 Ashland Oregon dated June 20, 2011
Bullet point lists--Chinook Salmon Report and Coho/Steelhead Report

cc: Senator Barbara Boxer
Senator Dianne Feinstein
Congressman Wally Herger
Congressman Tom McClintock
Congressman Jeff Denham
Governor Jerry Brown

EXCERPTS FROM KLAMATH RIVER EXPERT PANEL FINAL REPORT: SCIENTIFIC ASSESSMENT OF TWO DAM REMOVAL ALTERNATIVES ON CHINOOK SALMON OF JUNE 13, 2011

The comments below are from the report produced by the Atkins Company. This report was prepared by Dr. Daniel Goodman, Dr. Mike Harvey, Dr. Robert Hughes, Dr. Wim Kimmerer, Dr. Kenneth Rose, and Dr. Greg Ruggerone, who are all experts retained by the United States Fish and Wildlife Service to give expert opinions.

- "The principal uncertainties fall into four classes: The wide range in variability in salmon runs in near-pristine systems, lack of detail and specificity about KBRA, uncertainty about an institutional framework for implementing the KBRA in an adaptive fashion, and outstanding ecological uncertainties in the Klamath system that appear not to have been resolved by the available studies to date." (Page i)

- It appears the Panel was given insufficient time for its task. "The scope of the Panel's task was a week of reading before a one week workshop consisting of two days of presentations and four days of writing and editing which was followed by about one month of e-mail correspondence, further reading and editing. The Panel was provided nearly 800 documents and web-links which would have taken many months of full-time work to read, digest and synthesize. The effort by the Panel was considerably greater than budgeted time, which was less than two weeks." (Page 5)

- "The Panel did not have the time or resources to examine original data or re-do analyses, even when such actions seemed straightforward and appropriate for the assigned task." (Page 5)

- In discussing the potential for increase in Chinook Salmon, the Panel stated: ". . . the nature of the uncertainties precludes attaching a probability to the prediction by the methods and information available to the Panel." (Page 7)

- In commenting about the necessity for further investigations, the Panel stated: " . . . The large uncertainties about the prospects for improving water quality have been acknowledged by a call for substantial funding for further investigations." (Page 10)

- The Expert Panel expressed its concern that "the"magnitude of the proposed solutions may not match the scope and extent of the water quality problem." (Page 10)

- The Expert Panel had concerns that the TMDLs would not be sufficient, stating: "It appears that the TMDLs may be insufficient to provide water quality conditions conductive to fish passage in all years." (Page 10)

- The Panel also had "serious reservations that the required waste load allocations will be achieved." (Page 12)

- "Although several aspects of the Proposed Action could lead to a reduction in disease-related mortality, uncertainty about these aspects is very high." (Page 13)

- In reviewing the KBRA's proposed actions for nutrient control, the Panel commented that to do so would "require . . . . about 78 percent of the area of the UKL or about 40 percent of the area of irrigated agriculture in the UKL Basin. **This does not seem like a feasible level of effort for KBRA."** (Page 11, emphasis added)

- "Control of high temperatures in UKL and KR also seems infeasible." (Page 11)

- The Experts also identified that the "UKL and KR will remain warm with June-September temperatures . . . meeting the proposed water quality criteria, but not protective of salmon." (Page 11)

- The Panel also notes that it is "concerned by what may be an **unrealistically optimistic** view of the prospects for remediation of hyper-eutrophication, echoing the conclusions of the NRC (2004)." (Page 12)

- It appears that the Panel also believes that an additional dam, the Keno dam and reservoir, need to be removed, which is not something contemplated by the KBRA or the KHSA. (Page 12)

- "Although several aspects of the proposed action could lead to a reduction in disease-related mortality, uncertainty about these aspects is very high." (Page 13)

- In addressing disease-related mortality in Chinook Salmon, the Panel indicated that the proposed action creates a risk of "simply moving the problem." (Page 13)

- The Panel indicates that the "fraction of Chinook Salmon that may successfully complete the portion of their life cycle in the upper basin is a key uncertainty." (Page 15) Further studies are recommended.

- Apparently even the Panel Experts contemplate a positive Secretarial Determination but then go on to recommend "appropriate investigation in the approximately 8 years prior to dam removal." (Page 15) This statement is evidence of how the political objective has permeated the science.

- In the Draft Report issued May 2, 2011, at page 25, the section on Dam Removal was entitled: "Condition 10. Dam removal must not kill more than one brood and must not have a substantial multi-year adverse impact on mainstream Chinook salmon."

  In the Final Report at page 20, the section on Dam Removal states: "Factor 9. Dam removal does not have a substantial multi-year adverse impact on mainstream Chinook salmon."

  When the substance of the section is examined, at pages 20-21, in the Final Report, the information remains essentially the same and the Panel notes such things that it is "likely to take more than a decade for bed fining caused by dam removal to be reversed" and that "sand storage and transport may degrade some spawning gravels in the mainstem for several years," and that the degree to which the persistent sands will reduce Chinook salmon spawning success is "unknown." There is a specific discussion about the effects on returning broods and a notation that if more than one consecutive run or brood is lost, there could be significant effects on the survival of the run. The County has seen other studies that predict a total destruction of several runs.

- In commenting on the Proposed Action, the Panel indicated: "As pointed out elsewhere in this Report, uncertainty about the likely outcomes of the proposed action is **large** and not all the individual elements are likely to be effective." (Page 21)

- "The Proposed Action is an experiment in that many of the outcomes are difficult to predict, particularly those of greatest interest to stakeholders . . . however, as it is described, the Proposed Action lacks a clear program for scientific governance and therefore is not set up in an experimental adaptive framework." (Page 22) The County of Siskiyou has raised the issue of this being an experiment on many occasions with an unpredictable outcome.

- In commenting on the approach of the Proposed Action, the Panel Experts noted their considerable experience working with large rehabilitation programs, commenting that those that have taken the type of approach proposed have been ineffective. "It is no surprise that many of the actions taken under these

programs have, in fact, been ineffective and program adjustment has been slow." (Page 22)

- "The description of AM in the KBRA reflects this **watered-down version** in which the scientific activities are seen as external to the rehabilitation, and the KBRA as written has no provisions for the feedback necessary for adaptation of the program." (Page 22) It should be noted that in the attached comments on the recent KBCC meeting, it is clear that even the inadequate funding under the KBRA is going to be reduced in order to get a more politically palatable proposal.

- The Panel commented that the current biological opinion may require more water for suckers than is offered under the KBRA. (Page 26)

- The Panel also commented that the uncertainty about the biological opinions complicated the comparison of the amount of water available in the system between the Proposed Action and Current Conditions. (Page 26)

- Addressing questions raised about the feasability of the current Biological Opinion Reasonable and Prudent Alternatives under various climate scenarios, the Panel had concerns that the Biological Opinion Reasonable and Prudent Alternatives could constitute a different interpretation of what "current conditions" were and thus, in turn, lead to different interpretations of the KBRA's proposed implementation and different conclusions about the probable magnitude of any benefit of the Proposed Action. (Page 26)

- The Expert Panel identified that the analysis of the likely composition of the KBRA was insufficient to determine if the KBRA could "adequately address the listed factors" and expressed "strong reservations" that the KBRA could achieve its stated goals. (Page 26-27)

- The Panel also identified that the Keno and Link Dams, Trinity and Dwinnell Dams, as well as water diversions from the Klamath, Trinity, and Salmon Rivers, farming and drainage of the Tulelake and Lower Klamath National Wildlife Refuges, and proposed increases in water pumping, are all limiting factors on the possibility of success of any restoration activity. None of these issues are contemplated by the KBRA or KHSA. (Page 27)

- The Panel noted its encouragement with respect to the "framework" for life cycle population modeling, noting that there is a "long way to go" to have a calibrated and functioning model. They further recommend that such efforts be continued "regardless of whether the modeling is sufficiently completed in time to inform the Secretarial decision." They then go on to identify the approximately 14 specific

items should be included in the modeling. (Pages 29-30) Siskiyou County has on several occasions raised the issues of deficiency in the modeling and, in fact, the Secretarial Determination prior to valid and complete monitoring is not the commitment that was made to the County. Commitments were made that "robust" and sufficient scientific studies would be done prior to the Secretarial Determination.

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EXCERPTS FROM KLAMATH RIVER EXPERT PANEL FINAL REPORT: SCIENTIFIC ASSESSMENT OF TWO DAM REMOVAL ALTERNATIVES ON COHO SALMON AND STEELHEAD OF APRIL 25, 2011

This Final Report was prepared by the same panel of experts as the Chinook Report and issued by the Atkins Company. The funding source is the United States Fish and Wildlife Service.

- The Panel noted that it "faced a difficult challenge." The Panel commented that it was presented with an enormous amount of material and funded to meet for only five days. The Panel noted that such limited time "exacts a cost in limiting the depth of the review." It also limited the ability of the Panel to "follow a trail of scientific evidence back to its source in the original data and to resolve conflicting sources of information." The Panel cautioned that its review is "based on a careful review of the material and group discussion", but that its statements were"no substitute for further scientific investigation." The Panel specifically recommended that its statements "not be used in lieu of doing the necessary and feasible data collection, analysis and modeling that is recommended . . . . " (Page i) These comments validate the concerns of Siskiyou County about the process being utilized to create a review for the Secretarial Determination. The County has been repeatedly promised that a "robust" review would be undertaken and it is apparent that the Panel was not provided the ability to conduct the level of scientific review that would comport with President Obama's Statement on Scientific Integrity.

- The Panel noted that "missing from the information provided to the Panel are a detailed plan of implementation of the KBRA; an integrated view of how two alternatives might affect specific life stages of each species; and stage-specific or life-cycle models." (Page i)

- With respect to Coho Salmon, the Panel indicated that "the difference between the Proposed Action and Current Conditions is expected to be small." (Page ii)

- The Panel noted that the questions posed to it were "not answerable in quantitative terms." The Panel was concerned that it was provided with qualitative information but asked to respond to questions requiring quantitative answers. The Panel further identified six obstacles to drawing "convincing conclusions" between the two alternatives, including insufficient specificity of the KBRA, uncertainties about fish passage through Keno Reservoir and Upper Klamath Lake, hatchery effects, disease, water demand responses to the KBRA,

and the limited understanding about Coho and Steelhead abundances, migration patterns, and factors affecting survival at each life stage. The Panel noted that it "**guardedly gave partial answers**" to the questions, with "some misgivings" because of a potential for misinterpretation of the Panel's responses. The Panel again noted that its "opinion" should not be used as a "substitute for scientific analysis of solid data." (Page iii) Siskiyou County was promised the necessary science would be done.

- The Panel had several similar comments about much of the underlying effort in the Coho Salmon and Steelhead Report as it did in the Chinook Salmon Report, which will not be repeated in this list. However, the following are a few notable excerpts.

  - "The Panel could not confirm the statements about potential habitat which are at odds with the field surveys from 40 years ago by Fortune et al (1966), who reported that only a small portion of accessible streams of suitable spawning and rearable habitat for salmonids." (Page 23) This comment was made in response that there would be somewhere between 60-235 miles of potential habitat in the Upper Basin.

  - In reviewing the quantity of water delivered from Upper Klamath Lake and the Klamath River for the Klamath Irrigation Project, the Panel noted that it "understands that the planning of such limitations is still at the conceptual stage with neither the sellers nor their locations identified." (Page 26) In short, they do not know where they are going to get the water.

  - The Panel also commented that the amounts of money that were envisioned in the ICP Interim Plan for gravel augmentation were sufficient to provide only several thousand cubic yards of gravel per year, which was a relatively small amount compared to the river's transport capacity and the extent of the valley floor. (Page 29)

  - In addressing the extent of new habitat for Coho and Steelhead upstream of the Upper Klamath Lake, the Panel noted that "it was not yet clear" from the planning for KBRA what proportion of the potential is likely to be realized. (Page 29)

  - The Panel noted that the net effects of temperature changes on Coho and Steelhead under the Proposed Action is not known. (Page 30) In reviewing the modeling utilized to simulate flows and temperature, the Panel noted that the calibration and validation were conducted separately for the two models, that the reported validation error for the flow model

appeared to be on the order of one percent of the monthly means, but that the analysis did not seem to include an error rate at the level of daily flow values that were transmitted to the temperature model and that the analysis did not report a validation of the integrated system in which the errors of the flow model propagated through the temperature model. The Panel further observed that the Report was all internal to selected years with the dams in place so that it "did not address reliability of prediction with dams removed." The Panel further noted that the future scenario did not address transient climate change, scenarios of demand for water or KBRA actions that might affect the water budget or temperature of inflows over the next 50 years. The Panel stated that for those reasons, the model prediction of an 18 day "phase shift" in the annual thermograph is **not a sure thing** and probably should not be taken literally. (Pages 30-31)

- The Panel noted that the Proposed Action would "require more detailed information about the movement patterns of the fish and more detailed (and reliable) predictions of location-by-location and hour-by-hour thermal exposure of affected fish." (Page 32) This issue with respect to the modeling and information about water temperature and the actual activities of the fish has been an issue raised by Siskiyou County on many occasions. As the Panel noted, fish do not directly experience mean temperatures, they experience the hour-by-hour temperatures each day. Concern is that there are circumstances that while the mean daily temperature for a period in the fall could be decreased by dam removal, the highest temperatures experienced by fish could increase. (Page 31-32)

- Often the issue has been raised that human settlement in the Basin has increased nutrient loading to Upper Klamath Lake. The Panel noted that in its review of the information, it was shown that "the lake was eutrophic before European settlement, presumably as a result of high levels of nutrients naturally occurring in the watershed. (Page 33)

- In addressing measures proposed in the KBRA dealing with hypereutrophication and blooms, the Panel noted that such measures were "inadequately described for quantitative evaluation by the Panel" and pointed out that the "appropriate studies necessary to determine the magnitude and cost" and most important, the "likely effectiveness of this group of actions have not been done." The Panel specifically stated: ". . . **it would be premature to conclude that any problems caused by these blooms, including low dissolved oxygen, will be substantially**

reduced by KBRA." (Pages 33-34)

- The Panel noted in commenting on the Proposed Action and adult and juvenile movement and migration of Coho Salmon that both the positive and negative effects associated with the Proposed Action prevent the Panel from determining the net beneficial effects. (Page 34)

- In its discussion of adult Coho Salmon, the Panel indicated that the data suggested that a relatively small portion of natural spawning Coho Salmon would occur in the mainstem and that only a small proportion of total spawners and embryos would be directly influenced by dam removal under the Proposed Action. (Page 34)

- The Stillwater Sciences (2010) suggested mainstem flows following dam removal would be greater during the adult Coho migration period and lower flows during October through December. The Panel noted that the potentially lower flows "during the fall under the Proposed Action alternative may reduce the ability of Coho to migrate through the mainstem in order to reach spawning areas in tributaries . . . ." In reviewing the KBRA Proposed Actions, the Panel noted that it "**is not possible to fully evaluate the effectiveness** of these potential actions at this time because the degree to which these factors currently reduce reproductive success of Coho Salmon is unknown." (Page 35)

- In looking at issues of water temperature after dam removal and adult Coho migration, the Panel was **unable to estimate** to what extent cooler water would enhance migration and spawning success of Coho Salmon. (Pages 35-36)

- The Panel examined habitat restoration and the KBRA, as well as ongoing non-KBRA restoration activities. In commenting on the KBRA, the Panel stated: "**The KBRA is a list of possible actions without sufficient detail to estimate quantitatively their effects on habitat** and the data and modeling needed to quantify the response of Steelhead to these changes in habitat are lacking." The Panel noted that the specific locations, implementation details, and combined effects of the KBRA would be major factors in determining effectiveness with respect to Steelhead reproduction, survival and growth. The Panel noted that the lack of detail with respect to the KBRA is the uncertainty about the differences in water quality that would be achieved through the two alternatives. (Pages 48-49)

- In reviewing the ecosystem function and the issue of whether the alternatives differ in the extent of the natural ecosystem function with respect to physical habitat and food, the Panel indicated that the information available was "insufficient to answer the question." (Page 49)

- The Panel indicated that additional information was necessary to determine the ability of the food base to support additional fish and that this matter needed to be addressed. (Page 51)

- The Panel reviewed the issue of the two alternatives and the incident and impact of disease with respect to Coho and Steelhead Salmon. One of the consequences identified "is that dam removal under the Proposed Action can possibly spread infection upstream of the dams because the removal of dams would allow range expansion of Chinook, coho and steelhead." It was also uncertain about the different strains of *C. shasta* and **the potential for high infection rates for salmon that could spread throughout the system.** (Pages 53-54)

- In the section of the Report titled "Notes on Modeling and Uncertainty", the Panel observed that "there is no coho population dynamics model under active consideration at present, though one was developed for this project and then removed from Panel consideration due to review issues. There is no steelhead model for this system that we are aware of. The NMFS, so far, has assessed "viability" of salmon populations in the Klamath with a qualitative scheme called VSP, which is not an explicit population model and does not contain formal representation of population dynamics." (Page 66)

- The Panel observed that it "did not see mention of useful water temperature data predating construction of the four lower dams." The Panel further observed that the issues related to calibration in the models presented a basic difficulty calibrating and validating the modeling of the Proposed Action scenario because the exact river conditions without the dams is unknown. (Page 67)

- The Panel noted that "higher resolution modeling of critical areas during important biological time periods under low flow conditions with climate change is feasible and would provide useful information on possible fish responses into the future." (Page 67)

- The Panel indicated that it would have been useful to have models on the steelhead and coho life cycle and that it was "**frustrated**" that the **life**

cycle model for coho, which had been provided initially to the Panel, **had been withdrawn** just before the Panel meeting. (Page 68)

- The Panel included a section entitled "Caveats and recommendations." The Panel stated: "The task of the coho and steelhead Panel occurs at a very early stage in the decade-long process of evaluation, planning, decision-making, and design leading up to a potential 2020 initiation of dam removal. Nevertheless, the decision whether to commit to that schedule is slated to be made fairly soon (the Secretarial Decision 2012). The Panel has been asked to make a scientific assessment of the impact of two strategies for river management (Current Conditions versus the Proposed Action) on coho and steelhead populations of the Klamath River Basin.

  The questions posed to the Panel are very wide-ranging, overlapping, and not amenable to simple or exact answers. Providing such answers would require years of field investigations, which the agencies have not yet had the resources to conduct. The Panel members have been able to respond only through qualitative estimates based on evaluation of the fragmentary, conflicting evidence provided and their own scientific understanding and experience in other river systems." (Page 69)

  This is exactly the issue that the County of Siskiyou has raised throughout the process--insufficient resources and insufficient information to reach any conclusion with respect to the merits of dam removal.

- The Panel has identified six specific obstacles that would "facilitate a more effective design of the KBRA." The obstacles they identified were as follows:

  (1) Insufficient specificity in the current substances of the KBRA and the decision rules for its implementation.
  (2) Serious uncertainty about fish passage and colonization.
  (3) Serious uncertainty about the effects of hatchery fish introgression.
  (4) Uncertainty about the potential to control mortality of coho due to parasites in the Klamath River mainstem.
  (5) Uncertainty about how land owners will accommodate to KBRA.
  (6) Lack of comprehensive understanding of the natural-origin salmon stocks of interest. (Pages 70-71)

- The Panel's characterization of the Secretarial Determination is particularly telling and supportive of the County of Siskiyou's concerns that this matter should not move forward. The Panel stated: "A decision to proceed with the projects should be understood as a decision to pursue a hypothesis of increased fish production, for which there is evidentiary support for qualitative responses, but whose quantitative outcome is largely unknown." The question is why should millions and possibly billions of dollars be spent to pursue a hypothesis based on such inadequate information. Rather, the information should be gathered first to determine whether the alternative is in fact viable.

- Final observation by the Panel involved the effective use of peer review. This is something that the County of Siskiyou has advocated for throughout the process. The Panel noted that several times during its briefing, they had heard that a report had been "peer reviewed." The Panel noted that there were several definitions of "peer review" and that they vary greatly in rigor. The Panel noted that "an essential element of peer review is the response to the reviews and the subsequent changes that were made." The Panel noted that peer review should include the disclosure of review comments, the responses to the comments and a subsequent evaluation of the adequacy of the responses by an impartial intermediary. (Page 73) Siskiyou County has noted repeatedly throughout the process that much of the information furnished to the Panel Experts did not meet the level of peer review that they described, nor the level of peer review in the opinion of the County that would be consistent with President Obama's Statement on Scientific Integrity.

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June 20, 2011

MEMO TO: MEMBERS OF THE BOARD OF SUPERVISORS

FROM: OFFICE OF SISKIYOU COUNTY COUNSEL
THOMAS P. GUARINO, COUNTY COUNSEL

RE: KBCC MEETING ON JUNE 17, 2011
ASHLAND, OREGON

This memorandum is to briefly update and memorialize for the Board's information the information obtained at this KBCC meeting. The meeting was held at the Ashland Springs Hotel in a room reserved by National Marine Fisheries. I attended this meeting and observed the process and spoke during the "general public" time during the meeting.

Provided with this memo is a copy of Agenda Item 6(a) from the meeting which discusses intended revisions to the Klamath Basin Restoration Agreement (KBRA). Notable in these revisions is the fact that the KBCC is undertaking to restructure the budget for the KBRA to make it more politically palatable when legislation is introduced. Overall, the KBCC has revised the estimates from the approximately $1.2 Billion in costs to be $798.5 Million for the years 2012 - 2026. These revised costs now include $53 Million per year for federal funding for the KBRA and $61 Million per year in non-federal funding for the KBRA and KHSA. However, it appears that part of this reduction is achieved through the utilization of funding outside of the KBRA which they are identifying as federal "base funding." The intent is to use approximately $262 Million of

existing federal funding to move projects forward that are connected to the KBRA.

According to the discussions undertaken by the KBCC, the federal government is apparently doing a legal analysis on implementing certain aspects of the KBRA under existing authority. Apparently there is an item to be generated and placed on Mr. Sheets' website at edsheets.com regarding the implementation report.

Taken together, it appears that the federal government is looking to move forward with aspects of the KBRA with or without Secretarial approval.

Another issue of interest to the Board of Supervisors has been how the process works without the formation of FACA Committees. Apparently two committees are in the process of being chartered and the charters have been distributed to the KBCC members for their review and comment. It is unclear whether these were publicly provided at the KBCC meetings or otherwise made available, but it does appear that they can or should be considered public documents. Accordingly, the request was made of the attorney who was present on behalf of the Solicitor's Office for a copy of the two charters. She reported to the KBCC that both charters are currently in the Division of General Law where the FACA experts are reviewing the charters. There is apparently some question on the mechanics of how these committees are to work as ordinarily it would be unusual for the office of the Secretary of the Interior to be the host of the FACA committee. Rather, they would be assigned to one of the bureaus of the agency. The attorney indicated that there is apparently a "good relationship" between the person doing the FACA review and the General Services Administration, who will ultimately review and approve the committees. It was represented that this relationship should aid in moving the reports forward in an expeditious manner.

One of the concerns that comes to mind from reviewing the reductions in funding for the KBRA is the fact that the Fish Panels, including the report on the Coho Salmon and Steelhead, as well as the report on the Chinook Salmon, indicate skepticism that the KBRA will be effective to achieve its goals.[1] It is therefore unclear how reducing funding in the KBRA is going to address the concerns that there is insufficient funding as it is to provide for the studies necessary for a competent NEPA/CEQA document and to then mitigate the harms of the proposed dam removal.

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[1] "The panel has strong reservations that the KBRA will be implemented with sufficient effectiveness to achieve its stated goals." Draft Report, May 2, 2011, Klamath River Expert Panel Chinook Salmon at pg. 28. See also by way of example the Final Report of April 25, 2011, Klamath River Expert Panel Coho/Steelhead at pg. 29 discussing the insufficiency of the amounts of money envisioned in the ICP Interim Plan for Gravel. See also page 48, "The KBRA is a list of possible actions without sufficient detail to estimate quantitatively their effects on habitat, and the data and the modeling needed to quantify the response of Steelhead to these changes in habitat are lacking."

It also appears but is unclear from the materials made available that the State of California may also be looking to redirect some existing funding in an attempt to undertake some of the proposals under the KBRA before the final environmental work is completed. It further appears that certain schedules and appendixes to the KBRA are under review and revision with the primary intent of reducing those dollars that will need to be identified as attributable to the KBRA in any proposed legislation. In addition to the funding in any proposed legislation, there also appear to be considerable funds (at least $262 Million of federal funds) that are either going to be redirected or utilized to accomplish provisions of the KBRA before federal participation is legislatively approved.

As the representative for the Siskiyou County Board of Supervisors and the Siskiyou County Flood Control and Water Conservation District, a specific request was made for a response to the correspondence that has been sent inquiring how certain activities are being undertaken, including the fact that no entity has worked with the County or the Flood Control and Water Conservation District on the proposed Drought Plan. After the request was made, no response was received from the Committee while I was in attendance.

In addition to the other materials provided, the KBCC was given a report from PacifiCorp regarding the Klamath Hydroelectric Settlement Agreement (KHSA) and implementation efforts. This is a published document and apparently also appears on-line. In the printed version issued at the meeting, both Siskiyou County and Del Norte County were listed as signatories to the KHSA. PacifiCorp's representative, immediately upon being advised, removed or indicated that he was undertaking efforts to remove Siskiyou County from the on-line version, although Siskiyou County remains identified in the printed version. It was pointed out to the KBCC that it would be inappropriate for them to make such representations.

My last observation from the meeting is that there was a representation that the KBCC is not providing any advice to the federal government at this time. It appears that this is out of concern over the FACA issue. However, federal agencies were present and participated in supplying information on the ongoing proceedings and exchanging information and it appears as if the individual members of the KBRA/KBCC are participating in advising the Department of the Interior and providing advice and influence on the processes for the Secretarial Determination.

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Klamath Basin Restoration Agreement Cost Estimates

This document provides an overview of the cost estimates for the Klamath Basin Restoration Agreement. It describes recent updates to the original costs estimates and the basis for those changes.

The Klamath Agreements

The Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA) (collectively "The Klamath Agreements") address myriad issues and actions planned to restore one of most economically important rivers of the West Coast. The Klamath River provides for a significant farm economy in southern Oregon and northern California, and makes the United States' west coast commercial salmon industry viable. The Klamath River basin has significant potential for aquatic habitat restoration and improvements for salmonid fisheries. Together, The Klamath Agreements address the aquatic habitat and fisheries issues over time and provide more immediate certainty and predictability for water deliveries to the Klamath Reclamation Project and other farmers and ranchers. In addition:

- The Klamath Agreements provide for the resolution of decades-old conflicts over water allocation, restoration of the fisheries in the Klamath River and Upper Klamath Lake, improvement of water quality, a reliable water supply for irrigators and communities, economic stability, and restoration of Tribal economies and resources.

- With the execution of The Klamath Agreements on February 18, 2010, the representatives of over 40 organizations including the States of Oregon and California, counties, three Tribes, Basin irrigators, and conservation groups agreed to this comprehensive solution, to stop fighting, and to solve water crises in the Klamath Basin through future collaboration and cooperation.

- The Klamath Agreements will guide the parties' cooperative efforts to restore the basin, its fishery, and secure its economic future.

Federal Nexus

The Federal government has a significant interest in the Klamath River Basin, including: the protection and restoration of fish species listed under the Endangered Species Act (ESA); improving aquatic habitat and water quality for salmonid and resident fish populations important to Native American tribes; and restoring the economic viability of the commercial and sport fishing industries. The Klamath Basin historically supported one of the most abundant salmon fisheries in the nation, with an estimated pre-development run size of up to a million salmon per year. As a result of multiple stressors, these fisheries have declined steeply in the Klamath Basin. Fall-run Chinook salmon are now estimated to be 14 percent of their highest historic estimated abundance; and coho salmon abundance is at an estimated 2 percent. Two species of suckers that

reside in and around Upper Klamath Lake are listed as endangered under the ESA and coho salmon in the Klamath River are listed as threatened.

The U.S. Department of the Interior's (Interior) Bureau of Reclamation (Reclamation) manages the Klamath Reclamation Project (authorized in 1905) that diverts water from the Klamath River for irrigated agriculture. Interior's U.S. Fish and Wildlife Service (FWS) manages six National Wildlife Refuges in the Klamath Basin that depend on diversions of water from the Klamath River. The U.S. Department of Agriculture's U.S. Forest Service and Interior's Bureau of Land Management (BLM) manage other public and Federal lands along the Klamath River and on tributaries to the river. The United States has trust obligations for the Federally-recognized tribes that use the river. The Yurok, Karuk, and Klamath Tribes are parties to the KBRA as well as KHSA. The U.S. Department of Commerce's NOAA Fisheries Service manages the west coast commercial salmon fishery under the Magnuson-Stevens Fishery Conservation and Management Act which relies on healthy Chinook stocks from the Klamath River.

The Non-Federal Parties to the KBRA estimate that agricultural production in the Upper Klamath Basin contributes $600 million per year in farm-gate and other commercial revenues. Farming is one of the leading sustainable businesses within this region and is relied upon for household income, property and other taxes, and 4,500 jobs. Salmon fisheries reliant on fish from the Klamath River result in more than $150 million per year in economic benefits in Oregon and California. In addition, six National Wildlife Refuges provide habitat for most of the migratory waterfowl on the Pacific Flyway. Representatives of Interior, including the Secretary's office, the Solicitor's office, the Bureau of Indian Affairs, BLM, Reclamation, and FWS, the NOAA Fisheries Service and the Forest Service worked with 44 State, Tribal, irrigation, commercial fishing, conservation organizations and business entities to develop the Klamath Agreements.

Implementation of The Klamath Agreements would generate significant economic benefits in the four counties in the Basin. The KBRA Non-Federal Parties estimate that these measures would provide an estimated 707 jobs in Oregon, increase business revenues by $40 million per year, and increase personal income by $29 million per year. In California, these measures would provide 465 jobs, increase business revenues by $30 million per year, and increase personal income by $24 million per year. In addition, improved Klamath salmon runs would support an additional 4,300 jobs in the ocean fishing industry.

Summary of Changes to KBRA Appendix C-2 (the cost estimates):

As of May 2011, the KBRA Non-Federal Parties have revised the estimated costs for these activities that were originally set forth in the 2010 KBRA. The revised total cost estimate for implementing the KBRA is $798.5 million for 2012 through 2026; this is an 18 percent reduction from the cost estimates in the 2010 KBRA. The revised estimated costs now average $53 million per year for Federal funding for the KBRA and $61 million per year through 2020 in non-federal funding of the KBRA and KHSA (addressing the removal of four dams on the Klamath River). The Parties believe that

once the KBRA and KHSA are fully implemented, the costs in the Basin will go down and the fish populations will rebuild to sustainable, harvestable levels.

In 2011, the Non-Federal Parties to The Klamath Agreements pursued such cost estimate revisions in part to update the preliminary estimates created in 2007, and in part based on the desire to ensure cost efficiencies, budget feasibility, and consistency with current circumstances.

KBRA Section 4.1.2.B provides a process to amend Appendix C-2, which contains budget estimates, based on changed circumstances:

> The KBAC or KBCC, as applicable, shall amend estimated funding in Appendix C-2 or any successor as appropriate if any event occurs that materially affects the cost, feasibility, or benefits of performance of an obligation under this Agreement, including adaptive management pursuant to Section 5.4.1.

The KBCC is the Klamath Basin Coordinating Council, formed by the parties to guide KBRA implementation. A broadly representative workgroup has been meeting since January to review the cost estimates made in 2007 and recommend changes in the schedule, funding reductions, and in some cases, the elimination of funding for some measures. The Revised Appendix C-2 has been approved by the KBCC.

The budget revisions are based on various factors. First, the KBRA Appendix C-2 line-by-line cost estimates no longer include all funding called for by KBRA, but only Federal funding through the Federal entities that would be Parties to the agreement if approved by Congress (*see* KBRA Section 1.1.2). As a result, items that were previously shown in Appendix C-2 that would be funded by states have been removed. This change does not, for example, change the state funding commitments to Counties that other parties will support. Similarly, items currently fully funded by Non-Party Federal agencies (such as the U.S. Environmental Protection Agency) are excluded in the revised Appendix C-2 on the assumption that this funding would continue. If funding changes in the future, the Non-Federal Parties may adjust Appendix C-2 again.

Second, the KBRA cost estimates have been revised to reflect a 15-year implementation plan (rather than the 10 years assumed in the original KBRA Appendix C-2). This change harmonizes the KBRA implementation with the companion KHSA and results in a more focused and realistic schedule for implementing habitat restoration.

Third, the Non-Federal Parties refined prior estimates to create a more focused and tighter budget. For example, a thorough cost estimate review produced changes in the assumptions about the quantity of aquatic habitat that would be restored and the costs of those actions and resulted in savings. This review also resulted in cost savings by removing overlaps between proposed KBRA programs and expenditures for interim measures in the KHSA that are being funded by PacifiCorp. Additional savings since the execution of KBRA in February 2010 were also identified.

Fourth, consistent with the terms of the KBRA and letters of support received from the Secretaries of the Interior, Agriculture, and NOAA, a limited number of existing authorities have been redirected or reprogrammed to enhance the efficiency of the existing Federal effort in the basin and resulted in savings.

The KBRA Parties are developing an extensive monitoring and evaluation program. The results of the monitoring information will be used to adaptively manage the implementation of the program. If changes in the program are needed or if there is new information that affects costs, feasibility, or benefits of actions under the KBRA, the KBCC would revise the agreement or amend the estimated funding in Appendix C-2 in the future.

2 Parties to the Klamath Settlement Agreement

The parties to the KHSA are listed below.

United States
National Marine Fisheries Service
The United States Forest Service
The United States Department of the Interior, including:
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Reclamation
- Fish and Wildlife Service

State of California
California Department of Fish and Game
California Natural Resources Agency

State of Oregon
Oregon Department of Environmental Quality
Oregon Department of Fish and Wildlife
Oregon Water Resources Department

PacifiCorp

Tribes
Karuk Tribe
Klamath Tribes
Yurok Tribe

Counties
Del Norte County, California
Humboldt County, California
Klamath County, Oregon
Siskiyou County, California

Parties Related to Klamath Reclamation Project
Ady District Improvement Company
Collins Products, LLC
Enterprise Irrigation District
Don Johnston & Son
Inter-County Properties Co, which acquired title as Inter-County Title Company
Klamath Irrigation District
Klamath Drainage District
Klamath Basin Improvement District
Klamath Water Users Association
Klamath Water and Power Agency
Bradley S. Luscombe
Malin Irrigation District
Midland District Improvement Company
Pine Grove Irrigation District
Pioneer District Improvement Company
Plevna District Improvement Company
Poe Valley Improvement District
Reames Golf and Country Club
Shasta View Irrigation District
Sunnyside Irrigation District
Tulelake Irrigation District
Van Brimmer Ditch Company
Randolph and Jane Walthall 1995 Trust
Westside Improvement District #4
Winema Hunting Lodge, Inc.

Upper Klamath Irrigators
Upper Klamath Water Users Association

Non-Governmental Organizations
American Rivers
California Trout
Institute for Fisheries Resources
Northern California/Nevada Council Federation of Fly Fishers
Pacific Coast Federation of Fishermen's Associations
Salmon River Restoration Council
Trout Unlimited