

**U.S. SENATE  
COMMITTEE ON ENERGY AND NATURAL RESOURCES**

**Water Resources Issues in the Klamath Basin  
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**Dean S. Brockbank,  
PacifiCorp Energy  
Vice President and General Counsel**

My name is Dean Brockbank, and I serve as PacifiCorp Energy's vice president and general counsel.

Thank you for the opportunity to appear before the Committee today and present the views of PacifiCorp on an issue of importance to our customers, the Klamath Basin and the region.

I also applaud the committee for its interest in seeking solutions to the complex natural resource issues and conflicts that have unfortunately been a part of living and doing business in the Klamath Basin for more than a century. Like many before you today – Basin tribes, farmers, agencies, and other stakeholders – PacifiCorp has been embroiled in the resource-related conflicts and litigation that have marked the Klamath Basin, an important part of the company's service territory.

PacifiCorp is a regulated utility that generates and provides electricity to 1.8 million customers in portions of six Western states, including nearly 600,000 in Oregon and Northern California.

The company also owns and operates the Klamath Hydroelectric Project (Project) dams on the Klamath River that would be removed under the Klamath Hydroelectric Settlement Agreement, or KHSA, which the company signed in 2010 along with more than 40 parties that include federal agencies, the states of Oregon and California, Tribes, irrigators, commercial fishing interests and several environmental groups.

The Klamath Hydroelectric Project is a 169 megawatt hydroelectric facility on the Klamath River in southern Oregon and northern California. It consists of eight developments including seven powerhouses, five mainstem dams on the Klamath River (Iron Gate, Copco No. 1, Copco No. 2, J.C. Boyle, and Keno), as well as two small diversion dams on Spring Creek and Fall Creek, tributaries to the Klamath River. The Project as currently licensed includes the East Side and West Side generating facilities, which use water diverted by the Link River Dam, a facility owned by the Bureau of Reclamation that regulates the elevation and releases of water from Upper Klamath Lake and which is not included in the Project. The Project also includes Keno Dam, which has no hydroelectric generation facilities, but which serves to regulate water levels in Keno Reservoir as required by the

Project license and for the benefit of Klamath irrigators and in support of the Bureau of Reclamation's Klamath Project. The Company operates all eight developments under one FERC license (FERC Project No. 2082). The Project is partially located on federal lands administered by the Bureau of Land Management and the Bureau of Reclamation. The first hydroelectric development, Fall Creek, was completed in 1903 and Iron Gate, the last hydroelectric development, was completed in 1962. Keno Dam was completed in 1968. A map of the Project is included as an exhibit with my testimony.

In 2000, PacifiCorp began the process of seeking a new long-term federal license for the company's Klamath Hydroelectric Project. The 50-year license for the project expired in 2006 and it was the proceedings around relicensing the dams that led state and federal agencies, Tribes, irrigators, commercial fishermen, environmental interests and other basin stakeholders to eventually negotiate and release for public comment the Klamath Basin Restoration Agreement, or KBRA in January 2008. The KBRA seeks to resolve the water allocation issues that have so divided the various communities and interests in the Klamath Basin. The KBRA also seeks to restore fish habitat, achieve much-needed water quality improvements in the Upper Klamath Basin, and support local communities and economies by providing more certainty regarding water allocation, addressing power cost issues

for basin irrigators, and implementing other programs to assist basin communities in better managing and restoring the limited resources within the basin.

Although the company did not participate in the negotiation of the KBRA, the policy preference of the federal resource agencies and the states of Oregon and California was made clear during the relicensing process and with the release of the KBRA – which called for an agreement with PacifiCorp that would result in the removal of the Company’s hydroelectric project. This state and federal policy view - shared by many basin stakeholders, though certainly not all – has been that removal of the Company’s hydroelectric dams is a key component to their efforts to resolve the broader resource-based conflicts that are beyond the scope of the Company’s relicensing process.

PacifiCorp is not in the business of removing dams. In fact, the company continues to value hydropower, including the Klamath Project, as a carbon-free and highly flexible power source that helps meet electricity demand in peak hours and assists with the integration of variable renewable energy resources. However, at the time of the release of the draft KBRA in 2008, the relicensing process had advanced to the point where the improvements to the facilities that would be necessary to secure another 40- to 50-year license to operate the dams under current laws and regulations were largely known.

Although the Company advanced and defended other means to restore fish passage to the upper basin through a trap and haul program, the agency terms and conditions for a new license required the installation of fish passage at each and every project facility. These facilities would require significant capital investment, and other conditions of a new license would mandate reduced river flows through the powerhouses, impacting the economics of the project.

Thus, the company realized that doing nothing regarding the dams was not an option. But despite the costs and impacts from the requirements of a new license, making those improvements so that the project could continue to serve our customers into the future remained the best available option.

The company is not for or against dam removal as a matter of policy. We have both removed and relicensed hydro projects in recent years. The company approaches these decisions on a case-by-case basis and in the case of Klamath – which to our knowledge would be the biggest dam removal project in the history of the world – the company simply concluded that it could not support a dam removal outcome absent a settlement agreement that would provide key protections to the Company and its customers from the unknown costs and risks of such an endeavor. And though PacifiCorp generally favors balanced settlement over costly and uncertain litigation to resolve complex issues such as the relicensing of the

Klamath project, the company also made it very clear that we could only support dam removal if it was a fair deal for our customers.

And as a state-regulated utility, we are obligated to evaluate and pursue the available alternative that presents the least cost and risk to our customers. With that in mind, the Company negotiated with the state and federal governments, and ultimately other Klamath Basin stakeholders, to develop the KHSA. What ultimately made certain the company's support for a settlement that would result in dam removal is the inclusion of terms in the agreement that ensured removing the dams and replacing the carbon-free power they provide would cost less and present less risk for our customers than relicensing. Those terms include:

- A customer cost cap of \$200 million that protects customers from uncertain and potentially escalating costs related to dam removal;
- The transfer of the dams and related project lands to a third party for removal;
- Liability protection for the Company and its customers should dam removal result in unintended consequences or create unforeseen problems; and
- The ability for our customers to continue to benefit from the low-cost power provided by the facilities until their planned removal in 2020.

The inclusion of these terms into the KHSA allowed the Company to conclude that the KHSA presented a better outcome for customers than continuing to relicense the project. The Company has presented its conclusion to the public utility commissions in both Oregon and California and they have agreed that the Company's decision to sign the KHSA is in the best interest of our electricity customers based upon these key terms. It is important here to note that neither PacifiCorp nor the public utility commissions have concluded that dam removal by itself is in the best interests of customers or a better alternative than relicensing. Rather, it is the KHSA – along with its protections for the Company and its customers – that represents the better alternative to relicensing.

Thus, the terms and protections of the KHSA allows the policy preference of the federal and state signatories, as well as the priority of the tribes, fishermen, and environmental stakeholders, to proceed and for dam removal to be a core component of their broader settlement - while also making certain that dam removal is the better outcome for customers as compared to relicensing.

*However, without* terms such as those in the KHSA, the company would not support removal of its dams and could not justify doing so as being in the best interest of customers, which is the top priority in our decision-making as a rate-regulated utility.

That's a point I want to emphasize – that absent the terms of the KHSA or a similar settlement that ensures a fair deal for our customers, the company would not pursue removal of our Klamath dams.

It is the company's hope and intent to be part of a broader settlement that will hopefully address the priorities of other stakeholders and our neighbors in the Basin. We cannot make decisions, however, that expose customers and the company to unacceptable cost and risk.

PacifiCorp's role in efforts to find solutions to Klamath Basin resource issues is primarily connected to the future and ongoing operation of our hydro project – which is how Klamath issues can affect customers in all of our six states. But before concluding I want to touch on a few other issues I know are of concern to the committee and PacifiCorp as well.

The company is well aware of the angst among the irrigation community in the Klamath Basin surrounding the increase in irrigation power rates that have occurred with the expiration of the special contract rates that were tied to our expired hydro license. The company knows that the transition to higher rates under retail tariffs that have been approved by the Oregon and California public utility commissions presents a challenge for many irrigation customers.

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The company is bound by statutes and regulations that do not permit special contracts, cost shifts between different classes of customers, and other restrictions regarding costs we are allowed to charge customers without the approval of our regulatory commissions – but we will continue to work with our customers in the Basin, federal agencies, members and staff of this committee and anyone else who can contribute to finding a way to alleviate the pressure of power costs on Klamath Basin irrigators.

To that end, PacifiCorp and affected stakeholders have held recent discussions with the Klamath Basin irrigators, the Bureau of Reclamation, Bonneville Power Administration, and the Oregon Public Utility Commission staff on how to move this program forward. We believe that we can lay out a path forward to achieve the objective of the settlements of delivering federal power to Klamath Basin irrigators and are proceeding to develop an agreement in principle that would outline how such a program would work and be treated by the respective agencies with discrete authority over its federal and state components – Bonneville Power, Reclamation, Western Area Power Administration, and the state public utility commissions. We look forward to working with all interested stakeholders in the development of this agreement in principle and are committed to making the necessary regulatory filings to advance this program such that the program is ready to be implemented

when the federal legislation enacting the settlements - which is necessary for this program to be extended to all eligible Klamath Basin irrigators - has been enacted.

PacifiCorp alone can't solve the power cost issue, but we are willing to play a helpful role consistent with the rules and regulations we must follow as a rate-regulated utility.

### **PacifiCorp's Water Sharing Proposal**

The drought this year in the Klamath Basin is obviously also a great cause for concern for Basin farmers, ranchers, Tribes, fishermen and others.

While we obviously can't change the weather, the company has looked hard at creative ways to operate our hydroelectric project to assist with this developing crisis. To this end, the company has determined that a drawdown of water storage from our hydroelectric project could provide an additional 20,000 acre-feet of water supply in the Upper Klamath Basin by reducing withdrawals from Upper Klamath Lake necessary to achieve Reclamation's flow requirements below PacifiCorp's Iron Gate Dam – the furthest downstream facility on the Klamath River. While there is 85,000 acre-feet of available storage within our reservoirs, not all of that water volume can be immediately tapped without changes to the facilities or creating operational or water quality issues. However, we do believe that we can provide 20,000 acre feet of water on an immediate basis – while still

ensuring that Reclamation's minimum flow requirements below Iron Gate Dam are delivered consistent with the flows directed by the National Marine Fisheries Service in the recently-issued joint biological opinion for Reclamation's Project. Using the Company's reservoir storage to increase water supply availability during this year's drought situation could reduce the need for water shutoffs that may otherwise be required to attain desired Upper Klamath Lake levels. Alternatively, this water could be used to increase water supplies for thousands of acres of irrigated agriculture and pastureland, or for other beneficial uses including fish and wildlife purposes. Although this action would certainly help to ease the situation, it would not fill the entire gap of water shortfalls.

PacifiCorp and the Bureau of Reclamation have a long history of coordinating our operations on the Klamath River for the benefit of water users and electricity customers, while also complying with regulatory requirements. Given the dire conditions that are developing in the Klamath Basin, PacifiCorp believes it is prudent to immediately explore creative ways to alleviate the situation and lessen the impact on Klamath Basin communities – many of which are comprised of PacifiCorp's customers.

PacifiCorp has communicated this proposal to the Bureau of Reclamation and looks forward to further discussions with Reclamation, state and federal agencies,

Klamath Basin irrigators, and other stakeholders regarding how our hydroelectric project may provide a stop-gap water supply during this critical drought period.

### **KHSA Implementation**

PacifiCorp also will continue carrying out our many responsibilities under the KHSA and other voluntary actions to improve environmental conditions within the Klamath Basin. These efforts have been ongoing since the agreement was signed and don't require authorization by Congress or further action by the Secretary of the Interior. I've included with my testimony PacifiCorp's annual report on its implementation efforts pursuant to the KHSA. The report highlights the many activities that PacifiCorp is undertaking in collaboration with our settlement partners and state and federal agencies to implement our obligations under the KHSA and advance the settlement process.

Among these actions are approximately \$80 million the company has committed to spend to implement the KHSA and implement a series of interim measures to improve environmental conditions during the interim period prior to anticipated dam removal in 2020. These actions are focused on improving water quality within the hydroelectric project as well as in the Upper Klamath Basin, working with the California Department of Fish and Wildlife to update and improve the infrastructure and operations of the Company's Iron Gate Hatchery, and working

with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on actions to enhance fish habitat within the Klamath Basin to benefit and speed the recovery of threatened and endangered fish species. Working with these agencies and our many other partners in the settlement process is resulting in meaningful improvements that would not be occurring but for the collaboration and relationships that have been formed and strengthened over the past several years.

I would like to thank the committee once again for its attention to these important issues and I would be happy to answer any questions you may have.

Thank you.

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