

Klamath Hydroelectric Settlement Agreement

Karuk Tribe Applauds While Hoopa Tribe Clamors

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An historical agreement has been put on the table, with many people applauding it as a step towards dam removal on the Klamath River. The Klamath Hydroelectric Settlement Agreement (KHSA) is being heralded as the biggest breakthrough in the movement for dam removal by some Tribes and conservation groups, but the Hoopa Valley Tribe doesn't look at it that way.

The Hoopa Tribe is adamant it could hinder their process of the Trinity Restoration Agreement (TRA). Klamath River Basin organizers have developed the KHSA to reflect what is needed for dam removal, and they are submitting it to all parties for further review.

The KHSA outlines the process for additional environmental studies and review of the basin to see how dam removal could possibly impact the area. The KHSA also needs the Secretary of Interior to make a decision regarding a) public interest, which includes, but is not limited to, consideration of potential impacts on affected local communities and Tribes; including provisions for the interim operations of the dams and the transfer, decommission, and removal of the four dams. b) whether removal of the four dams will advance restoration of the salmon fisheries of the Klamath Basin.

After the announcement was made, the Hoopa Valley Tribe released a statement regarding their stance on the proposal. In their statement, the Hoopa Valley Tribe said the dam deal will be at great

sacrifice.

The Hoopa Tribe states their most alarming problem with the KHSA is "the federal government's failure to address protections for the Trinity River, the most productive salmon producing tributary to the Klamath River."

During the negotiations period for the agreement, the Hoopa Valley Tribe was adamant on adding provisions that protect the TRA, but they were ignored.

"We've seen, with the 2002 fish kill, the lack of honor the government has for their promises," Hoopa Valley Tribe Self-Governance Officer, Daniel Jordan said. "They continue to undermine the science, which in turn, undermines the scope of trust responsibilities to the Tribe."

Karuk Tribe's Klamath Coordinator and spokesman, Craig Tucker, said this is one of the most important decisions, and many people will benefit from this deal, including Tribes. He said it is a road map for dam removal in 2020, but with 28 parties involved, it is not a guarantee all parties will sign, but he expects a large majority to.

Tucker said the KHSA will be signed concurrently with the Klamath Basin Restoration Agreement (KBRA), and then move into the legislative arena in congress to get them signed at the same time.

Hoopa Tribal Fisheries Director, Mike Orcutt, said that is what he thought they would try to do. He said this agreement will make it possible to put business needs over Tribal inherent rights.

"This is a test for the Obama Administration," Orcutt said. "They said they would use the best available science on all of their decisions, and they are not using the best available science on this deal."

The Hoopa Valley Tribe believes the KBRA is a water deal that undermines Tribal fishery-based

water rights and provides assurances for all parties except Tribes and fish. And they are not the only ones.

Hoopa Tribal Attorney Thomas Schlosser stated in a press release, "the proposed KBRA and KHSA threaten success of the Trinity River Restoration Program in several ways." He states, "the most adverse effect arises from the \$1 billion price tag for the KBRA, a cost that will divert funds from the already under funded Trinity restoration program."

Schlosser stated the second threat comes from the KBRA's guaranteed irrigation diversions of water from the Klamath Irrigation District Project in Oregon. The diversions of 330,000 to 385,000 acre-feet per year would trump the in-stream flows needed for fish and other aquatic organisms.

He said the fish would get only what is left over after the irrigators received their portion of the water. Schlosser said an analysis of those diversions that flow near Iron Gate Dam would frequently fail requirements of the National Marine Fisheries Services' Biological Opinion for protection of salmon in the Klamath River.

"Such low flows caused the fish die-off in 2002, adversely affecting Trinity River spring and fall Chinook populations," Schlosser said.

Schlosser stated that dam removal would take too long, and PacifiCorp will be able to operate without any licensing or oversight. He said some of the measures being proposed to help with fish restoration could in fact make it worse.

"Despite the concerns expressed by fisheries biologist, the PacifiCorp interim measures will not be re-examined for a number of years," Schlosser said. "Far longer if they just went through the FERC

re-licensing/decommissioning process.”

At the end of September a group of 57 Tribes from the Pacific Northwest, known as the Affiliated Tribes of Northwest Indians (ATNI), passed a resolution intended to protect Tribal water rights.

The Hoopa Tribe released in statement “the ATNI opposes any federal policy that could terminate impose consequences upon a Tribe that chooses to assert its water rights instead of settling on terms dictated by the federal government.”

“ATNI has lit the fuse on what is expected to be a national termination fight, if the Klamath legislation passes without addressing Hoopa’s concerns,” Jordan said.

Tucker said the agreement is about more than Hoopa’s concerns, it’s about the future of fisheries in the Klamath Basin. He said it took years for the sides in the negotiations to sit down and come together with a compromise, they all could consider.

Regarding the Hoopa Tribe’s stance on the KHSA, Tucker said the criteria of water rights claims are difficult to prove in the court room. He said he respects the Hoopa Tribe’s opinion and respects their work on the Trinity River, but if they were to load the KHSA with Trinity issues it would open up Westland’s Water District for a legal fight.

The Hoopa Tribal Fisheries Public Information Officer, Allie Hostler, said it is more than a fight to the Tribe, it is their right to protect the Trinity River. She said the agreement seems to benefit the dams’ owner, PacifiCorp, which she believes has compromised nothing to get the deal this far.

She said there was a reason the Hoopa Tribe backed away from the table, and it was because the proposals contained no pertinent information on what would happen with the TRA, and the Tribe’s right to the river.

Tucker said there are flaws in the agreement, but believes they got the best deal they could with so

many sides wanting to get what they wanted into the deal. He said he agrees with some of Hoopa’s concerns, but doesn’t feel this is the place to address them.

Tucker said they used the waiver of the Karuk Tribe’s fishing and water rights as a show of trust in getting the agreement for dam removal approved. He said there will be provisions that PacifiCorp will have to meet by 2012, and if they don’t meet those provisions, the Tribe will retain its water rights, and has the option for litigation against PacifiCorp for a breach of trust.

Hostler said this is just another stall tactic by PacifiCorp, because if they don’t meet those provisions, the Tribes will have to take them to court further delaying dam removal.

Hostler said since the provision falls on 2012, it is a presidential election cycle, and it could be come political fodder for respective candidates. She said with the fight over big-business, the agreement could come down to who runs for office for the republicans and their stance on big business.

Hostler said the bottom line is that no one has been working on water rights as long as the Hoopa Tribe.

“We have experience being promised things from the government, and having them come up short financially and with their trust responsibilities,” Hostler said.

In section 1.7 of the KHSA it states, “the parties intend that this settlement shall not adversely affect the Trinity River Restoration Program, and the Trinity River Restoration Program shall not affect this settlement. To reach the conclusion, the Karuk, Hoopa Valley, Yurok, and Klamath Tribes reaffirm and rely upon their view of the existing fishery restoration goals and principles for the Trinity River Restoration Program.”

Hostler said the Hoopa Tribe is concerned that the final amendment only holds the Tribes accountable for fishery restoration, not PacifiCorp or the federal government. She said Tribes are not the only ones holding the bag when it

comes to the future of fisheries and they shouldn’t be the only ones with goals for restoration.

The Hoopa Tribe had a proposal to be added, but it was never considered. It stated under federal law, the federal trust responsibilities for Indian Tribes, and state permits, the U.S. has an obligation to restore, maintain, preserve, and propagate the fishery resources of the Trinity River tributary to the Klamath River.

The proposal stated that nothing in the agreement shall be construed as affecting the obligations of the U.S. to Indian Tribes. And no party shall take, or permit any action, undertake any obligation, or provide for the expenditures of any funds that conflict with or in any way impairs that obligation.

Hostler said the proposal was to protect the Hoopa Tribe’s rights to funding for the Trinity River, but it never made the final cut.

“We are afraid this could be another let down for Tribal fisheries,” Hostler said.