



United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240

IN REPLY REFER TO:

FEB 07 2011

Mr. Dean S. Brockbank
Vice President and General Counsel PacifiCorp Energy
1407 West North Temple, Suite 320
Salt Lake City, Utah 84116

Subject: PacifiCorp's January 11, 2011 Notice of Initiation of Dispute Resolution

Dear Mr. Brockbank:

Over the past three weeks a joint federal team from the Bureau of Reclamation, the National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service, has engaged in a series of meetings and discussions with your team to address points raised by PacifiCorp in its January 11, 2011 Notice of Initiation of Dispute Resolution (Notice) under the Klamath Hydroelectric Settlement Agreement (KHSA). While I respectfully disagree that a violation of the KHSA has occurred, I acknowledge better communication with PacifiCorp is needed regarding the lake and river operations that are part of the biological opinions concerning Klamath Project operations. Our goal continues to be facilitating a strong partnership that benefits all interests to the extent possible, including operation of PacifiCorp's facilities on the Klamath River. Accordingly, I have directed my staff to continue working with the Federal team to address your concerns.

To that end, I believe the dialogue the federal team commenced prior to the issuance of your Notice, and has continued in earnest over the past three weeks, has resulted in an exchange of information and ideas regarding river operations that are of immeasurable benefit to both of our interests. The outcome of this frank exchange has resulted in an agreement between the parties by which PacifiCorp will implement a variable flow operation for the Klamath River in the month of February, 2011, that will provide positive benefits to both the downstream fishery and the fishery in Upper Klamath Lake that are required by our Endangered Species Act obligations and are consistent with our trust responsibilities to the Klamath Basin Tribes. In addition to these benefits, the variable flow operation will also potentially ease constraints for delivery of water later this year to Klamath Project contractors and wildlife refuges and allow for PacifiCorp to optimize power generation to the greatest extent practical consistent with our legal and contractual obligations.

Based on these discussions, PacifiCorp and the federal team have reached preliminary agreement on the following terms:

- (1) That the close coordination, communication, and exchange of technical concepts and ideas that has occurred over the past three weeks between PacifiCorp, Reclamation and NMFS regarding river operations, and how our operations affect PacifiCorp's interests, will continue into the future and Reclamation will coordinate with PacifiCorp regarding development and implementation of any future operational changes that occur as a result of meeting Reclamation's legal obligations and requirements.
- (2) The federal team will work with PacifiCorp to determine PacifiCorp's cost in implementing flow variability prior to issuance of an Incidental Take Permit to PacifiCorp by NMFS. As part of this process, we will dispatch a team of federal economists and engineers to meet with PacifiCorp staff to ensure a common understanding of how this information has been developed. We will support PacifiCorp's recovery of lost generation consistent with the terms of the KHSA in effect as of the date of this letter with the understanding that the United States will not be responsible for PacifiCorp's lost generation as a result of flow variability.
- (3) Consistent with past practice PacifiCorp will work with Reclamation to operate Link River Dam consistent with Reclamation's Klamath Project operations to achieve specified elevations in Upper Klamath Lake and flows in the Klamath River at Iron Gate Dam to meet Reclamation's legal obligations.
- (4) NMFS, Reclamation, and PacifiCorp have reached an understanding regarding PacifiCorp's early implementation of flow variability under the KHSA contingent upon resolving certain issues that fall under the jurisdiction of NMFS, and there will be similar correspondence between NMFS and PacifiCorp addressing those issues.
- (5) It is my further understanding that having memorialized these accords in this correspondence, PacifiCorp will withdraw its Notice and implement Reclamation's proposed February 2011 operations plan, including, specifically, the flow variability component of the plan.

I am appreciative of your leadership and willingness to work with the federal team to resolve PacifiCorp's concerns within the framework of the KHSA. Our resolution today only reinforces that the settlement we crafted along with numerous other federal, state, tribal, local, private, and individual interests, was indeed developed to address the types of issues that occur when there are limited water supplies coupled with many competing demands for the use of these limited supplies. The KHSA's dispute resolution provisions have allowed us to develop solutions that

reflect the requirements placed on the United States to meet our legal and contractual obligations while also taking into account the very interests PacifiCorp relied upon in executing the KHSA. As a result, I believe the KHSA and the relationship between the United States and PacifiCorp has only gotten stronger as we move forward together in implementing this settlement.

Please continue to work with Mr. Jason Phillips of my staff on issues related to Reclamation's project operations and Mr. John Bezdek of the Department on those issues related to the conduct of the KHSA.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Connor", with a long horizontal flourish extending to the right.

Michael L. Connor
Commissioner