



The Klamath Solution:

Certainty *for* Farmers and Electricity Consumers

BY DEAN S. BROCKBANK

Collaboration, not litigation, worked to reach a settlement in the Klamath Basin.

PacifiCorp has provided electricity to customers in the Klamath Basin for nearly 100 years. This Southern Oregon and Northern California community is one of the more than 200 rural communities we now serve.

Through our Northwest operating utility, Pacific Power and through our Intermountain West operating utility, Rocky Mountain Power we provide over a billion kilowatt hours of electricity per year to more than 23,000 irrigation customers in six Western states. The largest share of those irrigation customers is in Oregon. Of those, Pacific Power serves more than 3,200 irrigation customers in the Klamath Basin. Our role as a partner in these rural communities is just as important to us as running an efficient business and delivering safe, reasonably priced power.

Over the past two decades, many of the Klamath Basin's stakeholders including PacifiCorp have found themselves in a courtroom fighting over natural resource issues. In short, at issue in the Klamath Basin is a familiar controversy found throughout the Western United States, which stems from a lack of the most precious of natural resources—water. Fundamentally, these controversies, wherever they occur follow roughly the same script, with the names, rivers and specific players changing from community to community.

The generic plot line goes something like this: farmers and ranchers primarily want to ensure that sufficient, cost-effective water is available for their crops and livestock. Sometimes, like here, a power company is involved. The power company wants to run water through turbines to generate clean, cost-effective electricity to the communities it serves. Federal regulators are charged with enforcing the various resource-related laws, such as the Clean Water Act and the Endangered Species Act, and state regulators are enforcing the state corollaries to those statutes. Enforcement

of these laws often conflicts with the goals and interests of the farmers, ranchers and industry. Environmental organizations and other groups such as Native American Tribes want to keep the water in the river for the fish and to keep the environment as close to its natural landscape as possible. Recreationalists have different interests depending on their respective activities. All of these interests are represented zealously, working to achieve their preferred outcomes. When all of these players do not get what they want, controversy ensues and they typically end up in a courtroom.

The Klamath Basin water wars have been no different. Although certain parties may have won small battles over the decades, this has been a war that nobody could ever win. In fact, for years all of us have been missing an opportunity for mutually beneficial outcomes. So as a stakeholder group, we tried something new—working together in collaboration.

Although the Federal Energy Regulatory Commission has jurisdiction over and grants licenses for hydroelectric facilities, state and federal resource agencies play a key role in the development of a license. As a result of this decades-old Klamath Basin controversy, our effort to relicense our Klamath Hydroelectric Project has faced ever-growing opposition from the federal and state resource agencies in both California and Oregon. Given the strong public policy direction from the governments, we elected to move from a litigation stance to one of collaboration. But first and foremost we needed to reach a good business deal for our customers.

In the wake of various government agencies advocating for dam removal—and the rising costs associated with relicensing the dams, not to mention the risks of the numerous unknown costs of litigation to environmental mitigation—we recently negotiated a settlement agreement on behalf of our customers with the governors from Oregon

and California and the Secretary of the Interior.

Within the framework of these negotiations, we established a potential transfer process for the dams that ensures our customers will not be saddled with unknown risks and liabilities associated with dam removal. The Secretary of the Interior himself will make the determination in 2012 on whether to order transfer of the dams to a third party, most likely the federal government. The Secretary's decision will be based on independent scientific review and will determine if the benefits of removal outweigh the risks.

If the Secretary determines that it is in the public interest to remove the dams, then PacifiCorp and its customers will be protected from liabilities and lawsuits associated with dam removal. Moreover, in collaboration with the Oregon legislature, we achieved a cost cap for our customers on how much they would be required to contribute to the process should removal occur. The State of Oregon passed a law that directs us to set aside a less-than 2% surcharge for Oregon customers. Weighing all of the risks and unknown costs, this surcharge is a better option than the costs our customers would normally bear if we continued down the traditional path of relicensing the Klamath dams and incurred the costs of nearly \$400 million in fish ladders alone, not to mention other environmental mitigation and increased costs for power, due to likely reduced water flows.

The agreement also ensures that our Oregon and California customers continue to benefit from the low-cost, carbon-free electricity from the Klamath dams for at least the next decade. Finally the agreement also establishes a mechanism to save a portion of their rates to fund possible dam removal while we identify clean, reasonably priced replacement power.

Just because we signed a settlement agreement does not mean that we are done solving this problem. Several key milestones must still be achieved for this settlement. First, we must get Congressional approval for the Klamath settlement and the State of California must pass a proposed water bond to cover its agreed upon \$250 million commitment—both of these objectives will be challenging, but achievable.

So we are a long way from completion, but without collaboration and listening to a lot of different voices along the way, our customers would not be looking at a very fair deal that protects their interests and wallets -- in the wake of an unprecedented and historic dam removal determination. The Klamath settlement represents compromise on all fronts; it represents collaboration and coordination; talking instead of suing; trying to solve problems by working with those with whom you disagree. Is this settlement an optimal solution for any single party or interest? No. However, it represents a solution that all participants can live with; it represents a solution crafted by the parties themselves for themselves rather than imposed by a judge. That alone should motivate others to pursue collaboration over litigation. ■

About the Author

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