

Lessons learned from the Klamath River Basin settlement agreements



It has already been thoroughly reported that on February 18, 2010, more than 30 parties met in Salem, Ore., to sign two agreements concerning the future of the Klamath River Basin. At the signing ceremony, Secretary of Interior Ken Salazar called these agreements part of “the largest river and salmon restoration effort in U.S. history.” The purpose of this article is not to add to the chorus of voices clamoring for river and salmon restoration; rather, the purpose is to try to shed some light on how the two Klamath River Basin agreements were even possible in the first place.

By way of background, the Klamath Basin Hydroelectric Agreement (KBHA) provides that

PacifiCorp (or some other dam removal entity) shall remove four of its dams on the Klamath River by approximately 2020. In the Klamath Basin Restoration Agreement (KBRA), various local stakeholders (other than PacifiCorp) agreed to a package of programs intended to restore fisheries and bring long-term balance and stability to other environmental and economic issues affecting the region. Less difficult problems within our region and our industry have certainly met with less successful results.

While we claim no credit for these historic agreements, attorneys from Cable Huston were privileged to advise the Klamath Water Users Association and Klamath Water and Power

Association in connection with negotiating, drafting, and editing certain renewable power provisions contained in the KBRA. In the context of this experience, we feel that there are a few general lessons to be learned from the KBHA and the KBRA that may be applied to other water, power, and environmental disputes in the region.

♣ **Include all relevant stakeholders.**

One of the remarkable things about the KBRA and KBHA is the breadth of interests they represent. The agreements were negotiated by tribal leaders, environmental groups, federal and state resource agencies, irrigators, commercial fisherman, recreational interest groups, and PacifiCorp. While the final documents may not have received unanimous approval within the negotiating group, the support was diverse enough to convey a very real sense of legitimacy. It is this sense of legitimacy that is needed to give the agreements momentum through the implementation phase.

♣ **Find an effective facilitator.** The fact that all of the diverse interest groups were able to not only meet, but to also negotiate the KBRA and KBHA, is a testament to the effectiveness of facilitator Ed Sheets. This is a name that may be familiar to NWPPA members because Sheets was formerly the executive director of the Northwest Power Planning Council. From our perspective, he did a masterful job in not only bringing the stakeholders together, but getting them to discuss in a productive manner their divergent needs and visions for the Klamath River Basin.

♣ **Involve principals, and not just attorneys.** One of the key aspects of the negotiations overseen by Sheets was the inclusion of principals in the day-to-day negotiations. While we will be the first to extol the value of good legal representation, the simple fact is that lawyers are sometimes more interested in putting on a good show for their clients than they are in reaching a compromise. We think that one of the strengths of negotiating process in this case was that it was led by principals in consultation with legal counsel, rather than vice versa.

♣ **Be realistic about alternatives.** The parties to the KBRA and KBHA were able to reach accord

in part because they were all realistic about their alternatives. PacifiCorp's lead negotiator commented that "[a]t this junction, PacifiCorp believes that this Hydropower Agreement is in the best interest of customers, as opposed to the alternative of relicensing." In particular, the parties signing the agreements all seemed to recognize that endlessly litigating conflicting theories of legal or moral entitlement was unlikely to produce a better outcome.

♣ **Do not treat negotiations as a zero-sum game.** From our perspective, both the KBHA and KBRA reflect a creative approach

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to resolving the parties' various needs and concerns with simply slicing the proverbial pie. The agreements are not simply about who pays for dam removal, although they do not neglect to address that difficult issue. To state just one example, the agreements are also about seizing an opportunity to replace foregone power production with new renewable power supply options that will, in turn, contribute further to the regional economy.

♣ **Be willing to use legislation as part of the solution.** For many protracted conflicts involving

water and power, an aging legal framework is being stretched to or beyond its intended limits. One of the things that made the KBRA and KBHA possible was the willingness of the parties to support federal and state legislation as part of the settlement process. This does not mean rewriting applicable laws from whole-cloth. Instead, it means using targeted legislation as a tool in which to expand the range of otherwise possible settlement outcomes.

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“historic.” We agree. They are historic not only for their direct significance to the Klamath River Basin, but also as an example of how diverse interest groups can work together to resolve seemingly irresolvable disputes over water and power. California Governor Arnold Schwarzenegger was quoted as saying, “I hope the rest of the country looks at this as a model.” We do, too, starting right here in our own backyard. **NWPPA**

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