



## COUNTY OF HUMBOLDT

AGENDA ITEM NO.

**C-5**

For the meeting of: November 15, 2016

Date: November 10, 2016  
To: Board of Supervisors  
From: Supervisor Ryan Sundberg and Supervisor Mark Lovelace  
Subject: Ratify the Chair's signature on Amendment Number 1 to the Amended Klamath Hydroelectric Settlement Agreement

RECOMMENDATION(S): That the Board of Supervisors ratify the Chair's signature on Amendment 1 to the Amended KHSA.

SOURCE OF FUNDING: N/A

DISCUSSION: On February 18, 2010, the County of Humboldt became a signatory party to the Klamath Hydroelectric Settlement Agreement (KHSA) and the Klamath Basin Restoration Act (KBRA). Both of these agreements were to be enacted through the approval of Federal legislation. Though authorizing legislation was introduced, it failed to advance through Congress and, on December 31, 2015, these agreements expired.

The four primary parties to the KHSA (the Department of the Interior, the State of Oregon, the State of California, and dam owner PacifiCorp; collectively "the four parties") determined that the framework provided by the KHSA could still be enacted without the accompanying KBRA. On April 6<sup>th</sup>, the four parties signed an amended KHSA which could be implemented through the existing administrative process governed by the Federal Energy Regulatory Commission (FERC) without the need for Federal authorizing legislation and using only existing non-Federal funding. Humboldt County became a signatory to the Amended KHSA on May 31, 2016.

Prepared by \_\_\_\_\_ Supervisor Mark Lovelace

Signature \_\_\_\_\_

Signature \_\_\_\_\_

**REVIEW:**

Auditor \_\_\_\_\_ County Counsel \_\_\_\_\_ Personnel \_\_\_\_\_ Risk Manager \_\_\_\_\_ Other \_\_\_\_\_

**TYPE OF ITEM:**

\_\_\_\_ Consent  
\_\_\_\_ Departmental  
\_\_\_\_ Public Hearing  
XX Other Board Initiated (20 minutes)

**PREVIOUS ACTION/REFERRAL:**

Board Order No. \_\_\_\_\_

Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**

Upon motion of Supervisor Fennell Seconded by Supervisor Bass

Ayes Fennell, Bass, Lovelace, Sundberg, Bohn  
Nays \_\_\_\_\_  
Abstain \_\_\_\_\_  
Absent \_\_\_\_\_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: November 15, 2016

By: Kathy Hayes  
Kathy Hayes, Clerk of the Board

The Amended KHSA anticipated the establishment of a new, non-profit dam removal entity (DRE) called the Klamath River Renewal Corporation (KRRC) that would carry out the work to remove the four PacifiCorp dams on the Klamath River. At the time the Amended KHSA was developed in early 2016, the KRRC had just been formed. As a result, the Amended KHSA had certain funds being disbursed to the Oregon Department of Fish and Wildlife (ODFW) as an intermediary. With the completion of the efforts to fully operationalize the KRRC, the four parties now request that the signatories to the Amended KHSA approve a change to the agreement to authorize that portion of the funding for dam removal that is coming from PacifiCorp customer surcharges to be disbursed directly from the trust accounts established by the Oregon and California PUCs to the Klamath River Renewal Corporation. Such disbursements will occur as provided in agreements between the KRRC and the PUCs, and pursuant to joint trustee instructions from the PUCs.

Having been a signatory to the original KHSA and KBRA, and having contributed to the process of revising and amending the KHSA, it is recommended that the Board of Supervisors ratify the Chair's signature on Amendment 1, approving these minor changes.

FINANCIAL IMPACT: N/A

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS: Amendment 1 to the Amended Klamath Hydroelectric Settlement Agreement



**AMENDMENT NO. 1 TO KLAMATH HYDROELECTRIC SETTLEMENT  
AGREEMENT DATED FEBRUARY 18, 2010, AND  
AS AMENDED APRIL 6, 2016**

This Amendment No.1 amends the Klamath Hydroelectric Settlement Agreement February 18, 2010, and as Amended April 6, 2016. The Parties making this amendment are the signatories to the Settlement at the time of the effective date of this Amendment No. 1.

This Amendment No. 1 becomes effective on the date this Amendment has been fully executed by every Party.

**RECITALS**

WHEREAS, Section 8.4 of the Settlement provides for amendment to the Settlement in writing by the Parties in existence at the time of the amendment; and

WHEREAS, it is the intent of the Parties to amend Section 3.2 and Section 4.12 as described below;

NOW THEREFORE, the Parties agree as follows.

**AGREEMENT**

1. The mutual exchange of promises herein constitutes adequate consideration for this Amendment No. 1.
2. Except as expressly altered in this Amendment No. 1, all terms, provisions and obligations under the Settlement remain in full force and effect.
3. Section 3.2 is hereby amended as follows (new language is underscored and bold; deleted language indicated by brackets in italics):

Section 3.2      Secretarial Designation

The Secretary, through execution **of Amendment No. 1** [*the Settlement*], agrees that **the DRE** [*Oregon Department of Fish and Wildlife*] will act as the entity with authority under ORS 757.738(3) to request transfer of funds held in the appropriate trust account established under ORS 757.738. **The** [*to hold transferred funds, and to disburse transferred funds to the DRE*] **DRE**, its assigns, or successors, **shall expend funds** [*in accordance with a funding agreement as specified in Section 4.12.2,*] in the amounts necessary **and as consistent with the Settlement** to pay "the costs of removing the Klamath River dams" as that phrase is used in ORS 757.736(11).

4. Section 4.12 is hereby amended as follows (new language is underscored and bold; deleted language indicated by brackets in italics):

Section 4.12 Funding and Grant Agreements

4.12.1 On or around June 15, 2016, CNRA will enter into an agreement with the [*Oregon state agency*] **DRE** [*designated by the Secretary under Section 3.2*] pertaining to the use of funds from the Customer Contribution and California Bond Funding.

4.12.2. On or around June 15, 2016, **and as is necessary at any time thereafter,** the [*Oregon state agency*] **DRE** [*designated by the Secretary under Section 3.2*] will enter into **an** [*grant*] agreement with the [*DRE*] **Oregon PUC pertaining to the use of funds from the Customer Contribution in a manner** [*. The grant agreement will include conditions*] not inconsistent with the Settlement **and ORS 757.738(3).** [*pertaining to the use of the Oregon Klamath Trust Accounts.*]

5. Remaining Contract Provisions; Representations and Warranties. Except as expressly amended by this Amendment No.1, the Parties understand and agree that all other terms and conditions of the Settlement remain in full force and effect as of the effective date of this Amendment No. 1. The "Recitals" set forth above are incorporated by this reference into the body of the "Agreement" section of this Amendment No. 1. The Parties certify that the representations, warranties and certifications contained in the Settlement are true and correct as of the effective date of this Amendment No. 1 and with the same effect as though made at the time of this Amendment No. 1.

6. This Amendment No. 1 may be executed in any number of counterparts, and each executed counterpart has the same force and effect as if all signatory Parties had signed the same instrument. The signature pages of counterparts of this Amendment No. 1 may be compiled without impairing the legal effect of any signatures thereon.

**IN WITNESS THEREOF,**

the Parties, through their duly authorized representatives, have caused this Amendment No. 1 to be executed effective on the date set of the last signature set forth below.

[Signatures follow]

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**United States Department of the Interior**

\_\_\_\_\_  
Sally Jewell, Secretary of the Interior

\_\_\_\_\_  
Date

**United States Department of Commerce's National Marine Fisheries Service**

\_\_\_\_\_  
Dr. Kathryn D. Sullivan  
Under Secretary of Commerce for Oceans  
and Atmosphere

\_\_\_\_\_  
Date

**PacificCorp d/b/a/ Pacific Power**

\_\_\_\_\_  
Stefan A. Bird, President and CEO

\_\_\_\_\_  
Date

**State of California**

\_\_\_\_\_  
Edmund G. Brown, Jr., Governor

\_\_\_\_\_  
Date

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**State of Oregon**

\_\_\_\_\_  
Kate Brown, Governor

\_\_\_\_\_  
Date

**California Natural Resources Agency**

\_\_\_\_\_  
John Laird, Secretary

\_\_\_\_\_  
Date

**California Department of Fish and Wildlife**

\_\_\_\_\_  
Chuck Bonham, Director

\_\_\_\_\_  
Date

**Oregon Department of Environmental Quality**

\_\_\_\_\_  
Richard Whitman, Interim Director

\_\_\_\_\_  
Date

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**Oregon Department of Fish and Wildlife**

\_\_\_\_\_  
Curt Melcher, Director

\_\_\_\_\_  
Date

**Oregon Water Resources Department**

\_\_\_\_\_  
Thomas M. Byler, Director

\_\_\_\_\_  
Date

**Karuk Tribe**

\_\_\_\_\_  
Russel Attebery, Chairman

\_\_\_\_\_  
Date

**Yurok Tribe**

\_\_\_\_\_  
Thomas P. O'Rourke, Sr., Chairman

\_\_\_\_\_  
Date

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**Humboldt County, California**



\_\_\_\_\_  
Mark Lovelace, Chairman, Board of  
Supervisors

11/10/16

\_\_\_\_\_  
Date

**Klamath River Renewal Corporation**

\_\_\_\_\_  
Michael Carrier, President

\_\_\_\_\_  
Date

**American Rivers**

\_\_\_\_\_  
W. Robert Irvin, President

\_\_\_\_\_  
Date

**California Trout**

\_\_\_\_\_  
Curtis Knight, Executive Director

\_\_\_\_\_  
Date

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**Institute for Fisheries Resources**

\_\_\_\_\_  
Glen Spain, Northwest Regional Director

\_\_\_\_\_  
Date

**Northern California Council, Federation of Fly Fishers**

\_\_\_\_\_  
Lowell Ashbaugh

\_\_\_\_\_  
Date

**Pacific Coast Federation of Fishermen's Associations**

\_\_\_\_\_  
Glen Spain, Northwest Regional Director

\_\_\_\_\_  
Date

**Sustainable Northwest**

\_\_\_\_\_  
Greg Block, President

\_\_\_\_\_  
Date

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**Trout Unlimited**

\_\_\_\_\_  
Brian Johnson, California Director

\_\_\_\_\_  
Date