Proposed Upper Klamath Basin Comprehensive Agreement
- An Overview -

The Klamath Tribes have reached a landmark water settlement that will, if approved, protect our long and hard-fought time-immemorial in-stream water rights while also providing conditional limited water use for irrigators who are junior water rights holders in the Upper Klamath Basin.

The Proposed Upper Klamath Basin Comprehensive Agreement (UKBCA) is the product of eight months of intense negotiations involving the Klamath Tribes Negotiation Team, Upper Klamath Basin irrigators, the State of Oregon and the United States. The UKBCA was finalized on March 4, and received the unanimous support of the Klamath Tribal Council on March 5, 2014.

If approved, Senator Ron Wyden has committed to introduce legislation that would include the UKBCA, the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydro Settlement Agreement (KHSA). General Council members voted to approve the KBRA and KHSA in 2010 and 2012. Senator Jeff Merkley, and Governor John Kitzhaber have already expressed their support for the UKBCA, and would support the legislation. Before the UKBCA becomes final it provides that, following enactment of the federal authorizing legislation, the Klamath Tribes have notified the Secretary of the Interior of our willingness to proceed with this agreement. This provision in the UKBCA is consistent with the following motion passed by the Klamath Tribes General Council on November 16, 2013: “I move that the AIP and Final agreement shall contain language that will allow the Klamath Tribes to withdraw from the Agreement and exercise our full senior water right if legislation is introduced or passed that the Tribes feel substantially differs from what the General Council has approved in the Final Agreement.”

Background

The Klamath Tribes have been engaged in the Klamath Basin Adjudication since 1976. Our former water attorney, Bud Ullman along with the Native American Rights Fund, provided outstanding representation for the Tribes, securing a March 7, 2013 Final Order of Determination (FOD) that recognized our time-immemorial senior in-stream water right at or near the amounts claimed within the reservation boundaries, but denied the Tribes’ claims to water outside of the former reservation boundary. Issuance of the FOD completed the administrative phase of the Adjudication. Per federal and state law, the next step in the process is to re-hear the matter in Klamath County
During the first meeting of the Water Subgroup of the Task Force, Richard Whitman (the Klamath, Modoc, and Yahooklin Band of Snake Indians) called for the creation of a Klamath Basin Task Force comprised of the various parties to find the common ground and complete the Section 16 work as called for in the KBRa. Kitzhaber, calling for the creation of a Klamath Basin Task Force comprised of the various parties.

Before the issuance of the FOD, the first successful agreements in the course of these negotiations were the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA), which was negotiated by the original Klamath Tribes Negotiating Team (Joe Hobbs, Jeff Mitchell, Will Hatcher, Larry Dunsmoor and Bud Ullman), the Karuk Tribe, the Yurok Tribe, Project Irrigators, the state of Oregon, the State of California, the United States and approximately twenty other parties. The Klamath Tribes General Council, by referendum vote, approved the KBRA and KHSA in 2010, and the amendments in 2012. Key elements of these agreements include:

- Removal of the lower four dams on the Klamath River, including the Iron Gate, Copco 1, Copco 2 and J.C. Boyle dams.
- $102.3 million in funding to the Klamath Tribes for (1) the acquisition of 90,000 acres of former reservation land known as the Mazama Forest, (2) aquatics and uplands management, (3) economic development studies, and (4) the implementation of specific ecosystem restoration and monitoring project.
- Predictability for Klamath Reclamation Project farmers, while also decreasing and capping their water use.

Senator Jeff Merkley introduced legislation in 2011 to authorize the KBRA and KHSA, without success. At that time, the Upper Basin irrigator community and others strongly opposed both agreements.
Vivian Kimbol and Tribal Council members Anna Bennett and Kathy Hill, in addition to Chairman Gentry, Jeff Mitchell, and Larry Dunsmoor and—at that time—Bud Ullman) proposed the following:

1. Support for and enactment of the KBRA and KHSA.
2. Permanent improvement of in-stream flows protected by senior in-stream water rights.
3. Resolution of adjudication claims and contests.
4. Restored, functional aquatic ecosystems.
5. Restored abundance of Treaty resources, and opportunities for harvest.
6. Support for land return, and for restoring forest health.

The KTNT believes that the UKBCA meets and exceeds these goals.

**Goal 1. Support for and enactment of the KBRA and KHSA.**

The UKBCA contains the following in Section 6.2 of the UKBCA:

“The Parties, other than the United States, agree mutually to timely promote, support, strive, and use Best Efforts to obtain funding and authorizations necessary to implement the KBRA and this Agreement. The Parties, other than the United States, also agree that they will not oppose authorization and implementation of the KBRA or the KHSA including any legislation required to authorize and implement those agreements.”

**Goal 2. Permanent improvement of in-stream flows protected by senior in-stream water rights.**

The UKBCA includes the following:

- An average inflow increase of 30,000 acre feet per year into Upper Klamath Lake from the Upper Klamath Basin each year, based on the reduced net consumptive use of irrigation water from retirement of irrigation water rights and other measures.
- Use of Call Thresholds for the purposes of Tribal calls for water rights regulation within the Off-Project Area, representing a flow regime that reflects the 30,000 acre feet inflow increase into Upper Klamath Lake distributed among the 6 Water Use Program (WUP) Regions upstream of the Lake. Failure to meet these instream flows will result in an increase in Call Thresholds, which will reduce the water available to irrigators in the Off-Project Area.
- Use of the full amount of our time immemorial water rights to ensure full compliance with commitments made by Off-Project Area irrigators.
- Off-Project Area Irrigators will retire water rights on up to 18,000 acres of irrigated land to permanently reduce irrigation diversions from streams in the Off-Project Area.
- Wells used by Off-Project Area irrigators will be subject to regulation in response to a Tribal call on instream flows. Protocols for this regulation were negotiated by the Parties, and the Oregon Water Resources Department will propose these protocols as a policy to be implemented in the Upper Klamath Basin. The protocols increase the likelihood of regulating those wells having the greatest impact on instream flows.

**Goal 3. Resolution of adjudication claims and contests.**

Section 1 of the UKBCA at 1.1 states:

“The Adjudication Parties agree that they will withdraw any exceptions, responses to exceptions, and/or replies to responses to exceptions that they have filed concerning the Provisionally Settled Tribal Water Right Claims within thirty (30) days after the date of the publication of the Affirmative Notice… that makes this Agreement permanent.”

In layman terms, this means that if the Agreement is approved, legislation is successful and all of the contingencies of the Agreement are satisfied, the parties will withdraw their exceptions and a Final Decree will be issued affirming the Klamath Tribes’ time-immemorial water right at the level in the FOD.

**Goal 4. Restored, functional aquatic ecosystems.**

Section 4 of the UKBCA is focused on the Riparian Program. Following are some excerpts about that program:

4.2.1 “The overarching, long-term outcome of the Riparian Program is to re-establish and/or maintain the full expression of successional dynamics of the riparian plant community within riparian Management Corridors, thereby improving and maintaining water quality and fish habitat.”

4.2.2 states the outcome described in 4.2.1 will be “achieved in part by… attaining and maintaining Proper Functional Conditions as specified in each Riparian Management Agreement.”

4.2.4 reflects the fact that enough Riparian Landowners will be enrolled “in Riparian Management Agreements covering at least 80 percent of the length of the Riparian Management Corridors…” (in some circumstances, this could dip to as low as 77%).

Overall, the Tribes have estimated that Upper Basin Irrigators will enter into permanent riparian management agreements on approximately 223 miles of rivers and streams in the Off-Project Area. These permanent management agreements will be attached to their property deeds.

**Goal 5. Restored abundance of Treaty resources, and opportunities for harvest.**

The increase in instream flows, coupled with permanent riparian agreements, will (as noted at 4.2.1) improve and maintain water quality and fish habitat.

Additionally, the UKBCA provides for access and opportunities to harvest fish at four new sites (in addition to current sites) on the Wood River, Williamson River, Sycan River and Sprague River. As
noted in Section 6, the State agrees to work with the Klamath Tribes to locate each site and agree on how each site will be managed and maintained.

Goal 6. Support for land return, and for restoring forest health.

The UKBCA includes support for the KBRA-based acquisition of the Mazama Forest, as well as $45 million for economic development.

In Section 2, parties to the UKBCA commit to ongoing support for the acquisition of 90,000 acres of former reservation land commonly known as the Mazama Forest. It also provides for the establishment of a Tribal economic development fund in the amount of $40 million and five annual payments of $1 million to be paid to the Tribes during the UKBCA Transition Period beginning in 2014. The Tribe will have the option of utilizing these funds for additional land purchases, the development of the Giiwas property to create forest-based jobs, expansion of Tribal work and jobs under the existing Master Stewardship Agreement, agreements under the Tribal Forest Protection Act that would increase the role of the Tribes in the management of Forest Service lands, and other economic development activities including the creation of Tribal employment opportunities.

The Klamath Tribal Council and KTNT encourage you to review the UKBCA at either the Klamath Tribes website (www.klamathtribes.org) or at the State of Oregon website http://www.oregon.gov/gov/GNRO/Pages/index.aspx.

The KTNT has done our very best to develop a settlement package that will meet the needs of Tribal members and this homeland that has sustained our people for millennia. We believe that the Agreement is a strong outcome for the Klamath Tribes, and recommend approval. It is now in the hands of the Tribal membership to decide whether to proceed with this Agreement.
Attention All Klamath Tribal Members!
Final work on the KBRA/AIP is finished. Final section is now known as the UKBCA.

A Referendum Ballot will be sent this month to our tribal membership, so you can vote!

The Water Team and Klamath Tribal Council urge you to vote Yes!

Community Meetings are now set for your information. Please attend these meetings if you can.

For more information contact:
Tribal Government at 541-783-2219 x100 x102 x185 x170 x147

The following meetings will provide information:

The Klamath Tribes negotiating team will be hosting community meetings with the Klamath Tribal Membership to go over the final Water Settlement Agreement:

1. Tuesday March 18th in Portland at the Doubletree (Lloyd center) 6-8pm
2. Wednesday March 19th in Eugene at the UofO Longhouse 6-8pm
3. Thursday March 20th in Klamath Falls at Klamath Tribal Health 6-8pm
4. Friday March 21st in Chiloquin at Tribal Administration auditorium 6-8 pm

All information can be found on the Tribal Website Home page:
www.klamathtribes.org
or

NOTICE: THE TRIBAL ENROLLMENT I.D. MACHINE WILL BE ON-SITE FOR TRIBAL I.D.'s
Ho Winna ... "A Time of Change"

naanok k'ans naat sat'wawYa naat ciiwapk dicew'aa
“We help each other; We will live good.”

Klamath Tribal Council Approves Referendum:
Schedules Community Meetings for Proposed
Upper Klamath Basin Comprehensive Agreement

- Chiloquin, OR - The Klamath Tribal Council has voted to support the Proposed Upper Klamath Basin Comprehensive Agreement, and will now move forward with a General Council referendum for Tribal member approval or disapproval. The Proposed Agreement is the product of eight months of intensive negotiations initiated by Senator Ron Wyden, Senator Jeff Merkley, Congressman Greg Walden and Governor John Kitzhaber in July 2013. Parties involved in the negotiations included the Klamath Tribes Negotiation Team (KTNT), Upper Klamath Basin Irrigators (including Tribal allottees), the State of Oregon and the United States.

Three key elements in the Proposed Agreement are:
- A Water Use Program that will increase stream flows in the tributaries above Upper Klamath Lake -- adding at least 30,000 acre feet annually to inflows to the lake, while creating a stable, predictable setting for agriculture to continue in the Upper Klamath Basin;
- A Riparian Program that will restore and maintain riparian areas to a fully functioning condition that will restore and sustain fisheries;
- An Economic Development Fund for the Klamath Tribes; and
- At least four public access sites (one each on the Wood, Williamson, Sycan and Sprague) at which Tribal members can exercise Tribal Treaty fishing rights.

On learning of Tribal Council’s support and decision to move forward with the referendum, Tribal Chairman Don Gentry said, “I am very pleased with the Klamath Tribal Council’s support of the Proposed Agreement. If approved, we will see an increase in water flows, improved habitat for current and future fish populations, and economic opportunities for our Tribe and Tribal members. It will help us restore our homeland and honor the Treaty our ancestors signed 150 years ago.”

If Klamath Tribes General Council members and irrigator constituents approve the Proposed Agreement, subsequent legislation would also include the Klamath Basin Restoration Agreement (KBRA) and Klamath Hydroelectric Settlement Agreement (KHISA), which General Council members voted to support in 2010 and 2012. Key aspects of those agreements include:

- Removal of the lower four dams on the Klamath River (Iron Gate, Copco 1, Copco 2, and JC Boyle);
- Recovery of 90,000 acres of former Klamath Tribes Reservation Lands (commonly known as Mazama Forest);
- Decreased and capped water use by the Klamath Reclamation Project in the Lower Basin;
- A drought plan to help manage resources during extreme droughts; and
- Significant funding for Tribal fisheries habitat restoration and monitoring programs.

The Klamath Tribal Council and KTNT have scheduled the following series of community meetings to discuss more details of the Proposed Agreement:

- Portland: March 18, 6-8 p.m. Double Tree Inn, Lloyd Center
- Eugene: March 19, 6-8 p.m. University of Oregon Longhouse
- Klamath Falls: March 20, 6-8 p.m., Klamath Tribes Health & Family Services
- Chiloquin: March 21, 6-8 p.m., Klamath Tribal Administration

Klamath Tribes Negotiation Team Members include Chairman Don Gentry, Vice-Chair Vivian Kimbol, Tribal Council members Anna Bennett and Kathy Hill, Tribal member Jeff Mitchell and Natural Resources Water Management Liaison Larry Dunsurme. Tribal Council Members Shawn Jackson and Taylor Tupper serve as KTNT alternates. Native American Rights Fund (NARF) attorney David Gover has worked alongside the KTNT throughout the negotiations, with additional support provided by NARF attorney Sue Now.

As of March 5, the full Agreement, as well as a summary of the Agreement, will be available on the Klamath Tribes website (www.klamathtribes.org), and on the State of Oregon website (http://www.oregon.gov/gov/GNRO/Pages/index.aspx).

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**Klamath Tribal Council attends Governance Workshop March 12-14, 2014 Portland, Oregon Bureau of Indian Affairs Offices**

In March, six Klamath Tribal Council members attended a free workshop/training presented by the Bureau of Indian Affairs in Oregon. Items covered in the intense 3 day training included but was not limited to the following:

- Fiscal Management Policy
- Treasurer's Plan of Operations
- Budgeting and Reporting
- Executive Management Policy
- Advisory Committee Code
- Trustee Code
- Governance Structure
- Strategic Planning/Restructure Process
- Comprehensive Planning/Implementation
- Organizational Charts and Scenarios
- Corporation Structures and Codes
- Operations, Summary, Conclusion, Follow-up

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**Historic Agreement Reached on Upper Klamath Basin Water**

The Klamath Tribes, the U.S. Department of the Interior, Governor Kitzhaber, Senator Wyden, Senator Merkley, and Upper Klamath Basin irrigators announce proposed agreement on water and natural resource management issues.

(Charles Falls, OR) – The Klamath Tribes, the U.S. Department of the Interior, Oregon Governor John Kitzhaber, Oregon Senator Ron Wyden, and Oregon Senator Jeff Merkley, and Upper Klamath Basin irrigators announced today that they have completed negotiations on the Upper Klamath Basin Comprehensive Agreement. The proposed Agreement will go to the Klamath Tribes’ General Council for approval and to irrigators for their endorsement.

For more than eight months, negotiators have been working daily to develop solutions to water and natural resource management issues in the Upper Klamath Basin.

“This agreement is nothing short of historic,” said Governor Kitzhaber. “On one of the more complex issues facing the state, people committed their time, energy, and expertise to come up with solutions that support a stable agricultural economy and healthy fisheries and riparian areas. Creating this kind of success through patient and deliberate collaboration shows us that when we work together, we can find a win in every conflict, and I send my thanks to the many people who created a way forward for the Basin.”

Senator Wyden praised the collaborative effort. “I am pleased that the parties have been able to reach a proposed final agreement through the Klamath Basin task force process that was established following the Senate hearing last summer,” said Senator Wyden. “The charge of the task force was to build on the good work of the KBRA and KBWA to resolve water rights in the Upper Klamath Basin. That’s exactly what happened. I look forward to final ratification by the parties and to working with the Governor, Senator Merkley, and my colleagues in Congress to pass legislation that makes this agreement a reality.”

“People have been fighting over water in the Klamath Basin for decades, but this historic agreement is a vision for sharing water in a manner that benefits everyone,” said Senator Merkley.

“Congratulations and thank you to the Klamath Tribes and the ranching and farming community in the Upper Klamath Basin for putting in the enormous time and effort to negotiate this settlement. This is a moment that can be celebrated by all of us who care about Southern Oregon’s economic and social vitality.”

“I congratulate the Upper Klamath Basin community and the Klamath Tribes for their work to settle one of the most complex and difficult water disputes in the West,” said Department of the Interior Secretary Sally Jewell. “The settlement unifies the Upper Klamath Basin by providing for a sustainable irrigation economy and protecting jobs while also restoring the streams of the active homeland of the Klamath Tribes in a manner that recognizes their senior water rights. I look forward to working with partners of the basin to enact legislation that makes this agreement and related agreements in the lower basin a reality.”

The Comprehensive Upper Basin Agreement includes three key elements:

- A Water Use Program that will increase stream flows in the tributaries above Upper Klamath Lake – adding at least 30,000 acre feet annually to inflows to the lake, while creating a stable, predictable setting for agriculture to continue in the Upper Klamath Basin;
- A Riparian Program that will improve and protect riparian conditions in order to help restore fisheries;
- An Economic Development Program for the Klamath Tribes.

Funding for restoration projects in the Agreement will come largely through the Klamath Basin Restoration Agreement (KBRA), signed in 2010. The overall cost of the Upper Basin settlement agreement and the Klamath Agreements of 2010 is approximately $545 million, a significant reduction from the original cost of the Klamath Agreements, which was estimated to cost $1 billion.

The new Agreement also resolves water rights disputes that were not addressed in the KBRA. The most senior water rights above Upper Klamath Lake are held by the Klamath Tribes. Full exercise of those rights would preclude irrigation in many years. Under the proposed Agreement, the Klamath Tribes conditionally agree to share in times of shortages, limiting regulation to specified in-stream flows, and allowing some water for water rights holders with rights junior to the Klamath Tribes. In exchange, the Tribes will receive active landowner involvement in riparian restoration, resolution of ongoing water litigation, and economic development funding to create employment opportunities and aid in the exercise of tribal cultural rights.

Don Gentry, Chairman of Klamath Tribes, said, “I am very pleased with the Klamath Tribal Council’s support of the Proposed Agreement. If approved, we will see an increase in water flows, improved habitat for current and future fish populations, and economic opportunities for our Tribe and Tribal members. It will help us restore our homeland and honor the Treaty our ancestors signed 150 years ago.”

Cattle rancher Roger Nicholson said the benefits will be felt across the region. “Settlement will allow the social and economic healing of the agricultural and Tribal community, and once again establish a united community.”

Becky Hyde, rancher and board member of the Upper Klamath Basin Water Users, said, “We look forward to sharing the agreement’s details with our neighbors in the upper basin and the broader community. For the first time in decades, there is a light at the end of the tunnel.”
Goodwill Vouchers Available 2014

The Klamath Tribes Community Services department has been approved to participate in the Goodwill Voucher Program for 2014. Each year the Southern Oregon Goodwill Industries sets their budget based on the number of agencies requesting assistance.

Vouchers may be exchanged at the Southern Oregon Goodwill store in Klamath Falls for merchandise, clothing or household items and are limited to a maximum dollar amount. New goods are excluded from the voucher program and are limited to one piece of furniture.

The Klamath Tribes Community Services Department adheres to the following guidelines in issuing vouchers:

- Vouchers will be available to any individual or family during the year. One person in the family must be an enrolled member of a federally recognized tribe in the United States.
- Applicant must meet the current income guidelines, which is 60% of the Oregon Median Income Guidelines.
- Head of household must sign the voucher at the time of issue.
- Applicants will only be eligible to receive $25.00, plus $5.00 for each additional household member up to the maximum amount allowed.
- Voucher must be used by the expiration date or it will be void.
- Only one item of furniture may be purchased on a voucher.
- One voucher is allowed per year per household.

The Goodwill vouchers will be available beginning JAN. 21, 2014, at the Klamath Tribes Administration Office, Community Services Department, 501 Chiloquin Blvd., in Chiloquin Oregon. 541-783-2219