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Decommissioning the Dams is Not Enough

A Golden Opportunity for Justice on the Klamath

by FELICE PACE

Klamath, California

The future of the Klamath River and the fate of the 20 year effort to restore its salmon fisheries are now in the hands of negotiators meeting to hammer out a deal on relicensing the Klamath's power dams. The details of those negotiations are confidential but the Klamath Water Users Association—which represents irrigators in the federal Klamath Project has announced publicly that it wants the Federal Energy Regulatory Commission (which must decide on the terms of a new license) and PacifiCorp/Scottish Power (owner of the dams) to include a power subsidy in any new license to operate the Klamath dams. The Water Users Association also claims that the 1957 Klamath Compact legislation enacted by the federal government, Oregon and California—promises irrigators a power subsidy.

When the Klamath Fisheries Restoration Task Force sunsets along with the Klamath Act in 2006, the Klamath River Compact Commission charged with implementing the Klamath River Basin Compact—will once again be the Klamath's only basin-wide government entity. But the Klamath Compact—established by federal and state legislation—does not acknowledge the Basin's federally recognized tribes and the Compact's Commission has no seats for them. Nor does the Compact explicitly mandate restoration of aquatic ecosystems. Furthermore, the legislation's language can be interpreted as committing the Commission to agriculture as the pre-eminent use for Klamath River water.

Because they and the needs of the River's ecosystems have been excluded, Klamath River tribes and their allies have rejected the Klamath Compact and its Commission. It is now time for that position to be reexamined. If negotiations concerning PacifiCorp/Scottish Power's application for a license to operate Klamath River dams move to broader issues like power subsidies and river flows, the tribes, fishermen, conservationists and others who want the Klamath restored should make reforming the Compact part of that broader discussion.

PacifiCorp/Scottish Power, the Bush Administration and Upper Basin irrigators want concessions from the tribes and states which hold key cards in dam relicensing as they do on water issues. But if concessions are made how far should they go and what will tribes, states, conservation groups and the people they represent get in return?

There must be no compromise on water quality. Whatever the configuration of dams, reservoirs, diversions, flows and fish ladders which emerges as a negotiated compromise, compliance with water quality standards within a reasonable time-frame must be a key feature. Unless we fix Klamath River water quality the salmon are doomed.

But there is plenty of room for compromise. Upper Basin irrigators and the Bureau of Reclamation want a power subsidy and irrigators claim a right to one based on negotiations that made possible the first Klamath River hydro-power developments. While the right to a subsidy is questionable, tribes and other interests should consider agreeing to a modest power subsidy for the Upper Basin if the irrigators, Bureau of Reclamation, Bush Administration, Oregon and California commit to enacting legislation for a new, balanced Klamath River Compact. A new Compact could be in place just as the Klamath Act and the license for the dams sunset in 2006.

In other words, tribes, fishermen, conservationists and their allies should raise the bar in negotiations with PacifiCorp/Scottish Power, the Bush Administration and the irrigators. Decommissioning some Klamath River dams is not enough tribes already have a right to that based on the treaties, reserved fishing rights, the Clean Water Act and the National Historic Preservation Act. A new, balanced and just Klamath River Compact ought to be the price for any concessions given

to the Bush Administration and irrigators.

A new Compact would clearly state in law that the water resources of the entire Klamath River Basin are to be managed in a balanced way to preserve and, where necessary, restore all beneficial uses of water, including aquatic ecosystems as a whole.

The Klamath River became an issue on the national stage just as a book on Delphus Carpenter—the man who led the movement that resulted in the great western river compacts of the early 20th century—was being printed. Those historic river compacts were supposed to bring "comity" to western river management. Where they have failed it is because they ignored tribal rights and the needs of fish and other river species.

It would be fitting if a new round of western river compacts were to emerge on the Klamath. The Klamath's was the last of the West's great river compacts. Like the other compacts it ignored tribal rights and downplayed the needs of fish. It is now within the grasp of the tribes and their allies to secure commitments to a new state-federal-tribal compact that recognizes and honors all interests and which explicitly embraces restoration of one of the West's great rivers. But tribes, fishermen and conservationists must recognize the historic opportunity at hand and seize it. They should bring a proposal for a new Klamath River Compact to the table. Now is the time!