

**COUNTY OF SISKIYOU
STAFF REPORT**

MEETING DATE: December 6, 2022

TO: Siskiyou County Board of Supervisors

FROM: Elizabeth Nielsen, Deputy County Administrator

SUBJECT: Lower Klamath Hydroelectric Decommissioning Project - Update

I. INTRODUCTION

The Klamath River Renewal Corporation (“KRRC”), along with the states of California and Oregon, (“Project Proponents”) have been participating in proceedings before the Federal Energy Regulatory Commission (“FERC”) to take ownership of four PacifiCorp dams comprising the Lower Klamath Project (P-14803), three of which lie in Siskiyou County— Copco No. 1 & No. 2, and Iron Gate, and propose to remove the lower Klamath Dams.

On November, 17, 2022, FERC issued its order approving the surrender of the license for, and removal of the facilities of, the Lower Klamath Project subject to terms and conditions that are discussed in more depth below. In FERC’s order, FERC stated that after “balancing the[] environmental benefits with the issues raised by opponents of dam removal, [FERC] find[s] that license surrender, decommissioning, and removal of the project developments are in the public interest.” (Order at p. 29). Additionally, FERC stated that the Project’s funding was sufficient at \$450 million. (Order at p. 30).

Staff is providing this report regarding FERC’s decision for the benefit of Board members and interested members of the public.

II. HISTORICAL BACKGROUND

In the early 2000s, PacifiCorp began proceedings before FERC to relicense its operation of its Klamath River facilities. In 2007, FERC issued a Final Environmental Impact Statement that included mitigation measures requiring the installation of new fish passage facilities or the consideration of dam removal. Thereafter, PacifiCorp engaged with federal, state and local governments, tribal entities, and various stakeholders, and, in 2010, executed the Klamath Hydroelectric Settlement Agreement (2010 KHSA), which established a process for facilities removal outside of the Federal Power Act. This framework for dam removal was dependent on Congressional legislation, which legislation was never passed.

In early 2016, some parties to the 2010 KHSA entered into the Amended KHSA, which did not rely on congressional approval for dam removal, rather PacifiCorp would apply to FERC to transfer ownership of J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate to a Dam Removal Entity (“DRE”), which would thereafter surrender and decommission the facilities.

In September 2016, KRRC, acting as the DRE, filed two applications with FERC, one application filed jointly with PacifiCorp to transfer ownership of the four Lower Klamath River dams to KRRC and the second, to decommission and remove the dams. In June 2018, KRRC submitted to FERC its Definite Plan for dam removal. The County intervened in FERC’s proceedings in opposition to the transfer application.

In December 2018, the State Water Resources Control Board (State Board) issued a draft Environmental Impact Report (EIR) for dam removal in California, and issued the Final Environmental Impact Report for dam removal in April 2020. Later, In July 2020, FERC issued a ruling on the Project, approving the transfer of the four Lower Klamath River dams to KRRC, provided that PacifiCorp remained as co-licensee.

In response to FERC’s ruling, and to release PacifiCorp from having to remain as a co-licensee, in November 2020, Governor Newsom and Oregon Governor Kate Brown entered a Memorandum of Agreement to sign on as co-licensees with KRRC for the transfer of the dams, and to provide additional resources and support to advance dam removal. On June 17, 2021, FERC approved the joint license transfer application of KRRC and the states, and Siskiyou County petitioned FERC for rehearing on the order, which petition FERC denied.

In February 2021, KRRC submitted a supplemental Amended License Surrender Application to FERC detailing KRRC’s plans for dam removal, and the County intervened in opposition to the surrender application. In March 2022, FERC released its Draft EIS, and in August 2022, FERC released the Final EIS for the Project.

On November 17, 2022 FERC voted unanimously to issue an Order Modifying and Approving Surrender License and Removal of Project Facilities Order for the Lower Klamath Project. The Order allows the dams private operator to surrender its operating license and allows for KRRC and its contractors to proceed with dam removal (Attachment 1).

III. DISCUSSION

a. The County’s Advocacy in the FERC Proceedings:

The County, through its Consultants and outside legal representation, have filed written comments in the FERC proceedings on numerous documents related to the Project, including KRRC’s Definite Plan, the Draft EIR and the Draft and Final EIS (Attachments 2, 3, 4, and 5, respectively). The County’s comments have focused on the following topics:

- Fire Suppression;
- Socioeconomics and Environmental Justice;
- Aquatic resources and threatened and endangered species;
- Geology and Soils;
- Cultural Resources;
- Recreation;
- Water Supply/Groundwater;
- Local permitting;
- Mitigation;
- The Local Impact Mitigation Fund;
- Financing for the Project.

As part of FERC's Order, the Commission addressed many of the comments previously provided by Siskiyou County. (See Attachment 6, Summary and Outline of FERC Surrender Order.) FERC did not make compliance with local land use and zoning laws or permitting a required condition of its Order, but encouraged KRRC to endeavor to comply with local ordinances and permits. However, to the extent that local laws or permitting requirements make compliance with FERC's Order impossible or unduly difficult, FERC concluded that such local requirements are preempted.

FERC required that KRRC develop, in consultation with appropriate California agencies and Tribes, a California Erosion and Sediment Control Plan, and file the plan for Commission approval at least 90 days before starting removal activities. FERC also approved KRRC's modifications to its Water Quality Monitoring and Management Plan to include periodic estimation of suspended sediment loads at several monitoring stations and require real-time remedial actions, i.e., adaptive management, depending on real-time turbidity monitoring.

FERC, through its Order, also encouraged KRRC to coordinate with the Siskiyou County Air Pollution Control District for construction activities in Siskiyou County, as part of best management practices during construction to alert the community in anticipation of poor air quality events.

FERC noted in its order public opposition to dam removal, and public concern that dam removal would adversely affect private wells, reduce property values and tax revenue, adversely affect water storage for fighting fires, remove a source of renewable power, affect local roadways and traffic, and eliminate jobs, among others. FERC also noted public argument that the dams have not caused declines in anadromous fisheries nor have they adversely affected water quality; and that dam removal will adversely affect the salmon fishery, release toxic sediment downstream, expose Tribal burial grounds and artifacts, increase flooding, reduce downstream flows, and affect lake recreation. However, FERC found as part of its order that these issues were fully addressed in the final EIS; for

example, studies have shown that reservoir sediments have generally low concentrations of contaminants and are not acutely toxic.

b. The County's Actions (outside of the FERC Proceedings) to Mitigate Impacts Related to the Project:

In addition to its oppositional advocacy in the FERC proceedings, the County took certain actions to protect County constituents and property in the event FERC approved license surrender and decommissioning. In 2021, the County entered into a Memorandum of Understanding with KRRC related to roads and bridges that will be utilized by the Project Proponents and their contractors during dam removal (Attachment 7). The MOU expressly acknowledges that the County continues to oppose dam removal; however, should FERC approve the project, the MOU aims to mitigate harms to the County's road system and to reimburse the County for certain staff costs.

To address protection for irrigators along the Shasta and Scott Rivers, staff and in-house counsel are meeting with the State, including the Secretary of the Department of Natural Resources and the Director of Fish and Wildlife. County staff is also working with KRRC and the State regarding local permitting and licensing for the project that falls under the County's jurisdiction and is not unduly burdensome to the project.

More recently, the County has been working productively with the State and PacifiCorp to develop something akin to voluntary mitigation in the form of PacifiCorp donating funds for additional contracted County staffing to address the various permitting and other local government tasks that will arise during the decommissioning project. A Statement of Work and establishment of a budget is being prepared and the County anticipates it will soon be advertising for an experienced multi-disciplinary firm with expertise and practical experience in project planning, environmental mitigation, engineering, building inspection, public interface, and general project coordination. The intent of this effort is to mitigate local permitting and processing burdens associated with the project and to provide the County with the funds necessary to hire its own project manager who will coordinate various activities, including but not limited to, local permitting and communication, related to the project.

It is anticipated that the Project Manager would also coordinate with the State and KRRC regarding the Local Impact Mitigation Fund related to the Project. Funding and disbursement details related to the Local Impact Mitigation Fund have not been announced by Project proponents. From the County's understanding, the Local Impact Mitigation Fund is intended to cover direct impacts to residents related to the removal of the four Lower Klamath River dams.

c. Appeal and Litigation Questions:

Members of the public have inquired about the County's appeal and litigation options following FERC's approval of dam decommissioning. While persons and entities in opposition to the project now have the opportunity to review the order and assess whether there is any value in exhausting their administrative remedies before FERC, for the County's part it has already expended over one million dollars in opposition efforts against this project.

In addition to countless hours of staff time, the County has expended approximately \$675,000 on legal advocacy services associated with the FERC proceedings, including on the filing of a rehearing petition, multiple motions, and comments and responses to the Project Proponents' documents. Further, the County has expended approximately \$270,000 on technical consultants to support these legal efforts. The County's outside counsel has estimated that should the County seek to mount a NEPA challenge to FERC's decision in court, the County's legal costs could range from approximately \$550,000 to upwards of \$1 million dollars depending on how the litigation proceeds. As an additional consideration, a favorable ruling in such high-cost litigation may delay the project, but it would not likely stop the Project, rather FERC may need to merely remedy a procedural issue.

d. Continued Public Dialog and Transparency:

In the interest of providing increased opportunities for public dialog and information sharing as KRRC and the states carry out FERC's order, the Board will be holding a series of monthly special meetings beginning in January 2023 that will be dedicated solely to the topic of the decommissioning project. A schedule of these future special meetings is attached hereto as Attachment 8.

CONCLUSION

The County has and will continue to explore various and alternate options to try to mitigate any harms that may result from this Project, and will bring a draft MOU to the Board on December 13th for a Project Manager position. Following consideration and approval of the MOU, staff will bring an additional item to the Board during a future meeting to contract with a consulting firm to provide the project management services to the County. The County will also continue to track the decommissioning process and will keep County constituents and the Board apprised of any progress.