

## Attachment 5



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Refer To File # 290380.0004

October 21, 2022

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Lower Klamath Project Final Environmental Impact Statement

Dear Secretary Bose,

Siskiyou County (County) and their technical consultants, SWCA Environmental Consultants, have reviewed the Final Environmental Impact Statement (FEIS) for Hydropower License Surrender and Decommissioning for the Proposed Klamath Hydroelectric and Lower Klamath Project (Project). FERC issued the FEIS for the Project (Docket Nos. P-14803-001 and P-2082-063) with respect to the license surrender application of the Klamath River Renewal Corporation (KRRC) and PacifiCorp (applicants) on August 26, 2022. Included as Attachment A are the County's concerns and comments regarding the Project's FEIS.

Very truly yours,

A handwritten signature in black ink that reads 'Paul S. Weiland'.

Paul S. Weiland  
Nossaman LLP

PSW:

Attachment

## Lower Klamath Project Final Environmental Impact Statement

**ATTACHMENT A****COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Siskiyou County (County) reviewed FERC's responses to the comments submitted on the Draft EIS for the proposed Klamath Hydroelectric and Lower Klamath Project (Project). FERC either acknowledged or addressed all of the County's comments. However, the County still has the following concerns regarding the Project's EIS.

1. FERC relies heavily on "recommendations" to KRRC, as well as assumptions that KRRC will "do the right thing" when it comes to these recommendations and other types of promises it has made throughout the process. This puts the onus on the County and other regulatory agencies to police KRRC's compliance with FERC's recommendations. In some cases, the recommendations are outside the County's permit responsibilities (i.e. communication with EJ communities) and will be difficult for the County to enforce. This also puts additional financial burden on the County and those other agencies that may want or need to monitor KRRC.
  - a. For example, FERC's response to County concerns over KRRC's communication with EJ communities regarding sediment and contaminants and the County's recommendation that KRRC monitor downstream properties during the drawdown was, "We continue to find quality communication between KRRC and affected environmental justice communities is paramount to ensuring effective mitigation strategies are implemented."
  - b. For example, FERC's response to County concerns over KRRC's lack of adaptive management plan for sediment deposition and transport resulting from the Project was, in "the final EIS, we recommend revising the Oregon Water Quality Management Plan and California Water Quality Monitoring Plan to include periodic estimation of suspended sediment loads pursuant to Oregon DEQ WQC condition 2.e and adaptive management measures for sediment loads."
  - c. For example, FERC's response to County concerns over the Erosion and Sediment Control Plan lacking consultation with any California state agencies was, "We concur that the Erosion and Sediment Control Plan does not document consultation with any California state agencies during its development. In the final EIS, we recommend that KRRC develop, in consultation with appropriate agencies and Tribes in California, a California subplan to its Erosion and Sediment Control Plan."
2. In addition, because the California State Water Board's Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) was prepared much earlier than FERC's National Environmental Policy Act (NEPA) EIS, and not jointly (as stated in various provisions of the CEQA Guidelines and NEPA's implementing regulations), the opportunity to include FERC's project "recommendations" as binding mitigation measures in the EIR was not possible. Since NEPA requires only the consideration of mitigation and does not mandate the form or adoption of any mitigation, FERC's recommendations may be ignored by KRRC during project implementation unless they are imposed as conditions of a future FERC order.
3. There is no central place in the FEIS or in the appendices to find all the recommendations and mitigation measures. It is extremely difficult for the reader to be able to see exactly how impacts will be mitigated throughout the project. In all the different resource areas, the County requests that an easily accessible table, or other document be created for stakeholders and the public to utilize, that outlines all of FERC's orders and required mitigation measures (such as Table ES-1 in the California State Water Board's EIR).

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