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Summary of FERC Surrender License Order for Lower Klamath Project

On November, 17, 2022, the Federal Energy Regulatory Commission (“FERC”) issued the Order Modifying and Approving Surrender of License and Removal of Project Facilities (“Order”), which approved the surrender application for the Lower Klamath Project (“Project”) subject to terms and conditions discussed below. In the 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.” (p.29). Additionally, FERC stated that the Project’s funding was sufficient at \$450 million. (p.30).

I. Timeline

The following are a list of timeline considerations in light of the Order. The dam removal is will take twenty months, and the subsequent restoration will take at least five years. Pre-drawdown activities will occur from March to December 2023, drawdown activities and most of the Project removal would occur from January to December 2024, and post-drawdown activities, primarily comprising of reservoir area restoration, would occur in 2025. (p.9). The Order highlighted a few other pertinent deadlines as follows:

- Renewal Corporation and states have 30 days following the order to accept license transfer and co-licensee status and file transfer of title to properties. (p.54).
- The Reservoir Drawdown and Diversion Plan shall be provided to the applicable state agency within six months of the issuance of the surrender order (p.89).
- The Reservoir Area Management Plan (Restoration Plan) shall be issued to the appropriate agency 6 months before the start of the construction. (p.109).
- The filing of Decommissioning Design Documents and Board of Consultant’s review of design documents are due at least 60 days prior to start of construction. (p.56).
- The Final Decommissioning Report must be filed within 30 days of completion with Secretary of the Commission. (p.57).
- The Dam removal must be initiated no later than 5 years following the issuance of license surrender order (p.119).

II. Conditions and Modifications Relevant to Siskiyou County

Air Quality Advisory and Response Procedures – The Renewal Corporation should work with the Siskiyou County Air Pollution Control District to establish air quality advisory and response procedures when project activities are expected to exceed air quality standards or thresholds of significance. (p.31).

Erosion and Sediment Control Plan Requirements – In response to the County’s requests, FERC is requiring the Renewal Corporation to develop a California Erosion and Sediment Control Plan. The plan must be filed at least 90 days before the removal activities and must contain best management practices to minimize pollution from sediment erosion caused by removal. (p.31 & 57).

California Water Quality Monitoring Plans – In response to the County’s request, FERC approved the Renewal Corporation’s modifications to its Water Quality Monitoring and Management Plan to include the periodic estimation of suspended sediment loads at several monitoring stations and will require real-time remedial actions. (p.31-32). The

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future quality monitoring locations are set out in the appendix and lists 10 required locations (p.83).

Drinking Water Management Plan – The Drinking Water Management Plan is approved with the additional requirement that co-licensees provide a new replacement pipe for the City of Yreka’s waterline to the Daggett Road Bridge and engage in public outreach regarding the plan (p.59). The licensee must communicate with the City of Yreka to provide an uninterrupted water supply during the waterline replacement and necessary water outages shall be no more than 12 hours. (p.102).

Road Surface Improvements and Project Boundary - While most of the work will occur within the project boundary, there will be “road surface improvements and bridge strengthening work [that] would occur outside the boundary.” (p.9). It discusses again that most of the buildings and structures will be removed except those that will be buried and left in place. (p.10 & 55).

California Slope Stability Monitoring Program – FERC modified the Drawdown and Diversion plan with the requirement to provide funding to move or repair damaged structures or purchase affected properties. (p.32-33 & 58).

California Sediment Deposit Remediation Plan – Consistent with the County’s request, FERC modified the plan to include a five year sediment deposit monitoring requirement for parcels with current/potential residential or agricultural use. The affected property owner must notify the Renewal Corporation of sediment deposit related to project for remediation. (p.33-34 & 58).s

- Timeline - the licensee shall assess and remediate all visibly obvious sediment deposits along the Klamath River by December of the second full calendar year following drawdown completion. The property owner must notify Renewal Corporation of existence of sediment and then sediment will then be tested. If arsenic concentration is less than measured local background concentrations, no additional actions are needed. (p.91). (*feels like they remediation requirement is narrow with the testing policy).

Environmental Justice Concerns – Three of four environmental justice communities are in Siskiyou County. The community impacts include sediment deposition on private property, noise, groundwater well productivity, fire management, county tax revenues. The Commission concludes that even with the modifications, there will still be a disproportionately high and adverse impact on the environmental justice communities. (p.43 & 47).

Groundwater Well Production Impacts – Consistent with County recommendations, the Commission is requiring the addition of a public outreach component to communicate with environmental justice communities relating well monitoring programs. This requirement modifies the Construction Management, Sediment Deposit Remediation, Water Supply Management, and Slope Stability Monitoring Plans. (p.43-44 & 58).

Recreational Facility Impact – The Recreation Facilities Management Plan is approved with the conditions that Renewal Corporation consult with recreation association and place signs informing of the recreational area closures. The Commission still concludes there will still be a significant impact on recreation opportunities. (p.44, 61 & 116).

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Residential Groundwater Supply Well Impacts – The Renewal Corporation proposes to implement measures in the California Water Supply Management Plan to mitigate impacts on groundwater supplies including, restoration, monitoring, and public outreach. (p.47). In addition, the California Water Board imposes Condition 15 which requires the Renewal Corporation to (a) contact all landowners within 1,000 feet of the CA reservoirs to inquire about their groundwater wells; (b) monitor groundwater levels at no less than 10 locations within 1,000 of reservoirs for two months before drawdown and then continue after the drawdown on the monthly basis, and (c) continue monthly monitoring and submit an annual groundwater report to CWB for at least 2 years after drawdown. (p.47-48 & 112).

Effects of Shoreline Property Values – Commission states the impact of the project on property values is unclear and makes no determination on the matter. (p.49).

Effects on Tax Revenue Loss – Despite the County’s concerns, the reduction of tax revenues to the government is not a reason to deny the surrender application. (p.49).

Wildfire Suppression – The Fire Management Plan is approved with the modifications proposed in the FEIS relating to the placement of dry hydrants, coordination with CA Department of Forestry and Fire Protection, and public outreach. (p.50, 59 & 113).

Local Land Use and Zoning Requirements – In response to the County’s concerns about the Renewal Corporation’s failure to comply with zoning and land use requirements, the Commission states the FPA preempts all state and local law concerning hydroelectric licensing and federal preemption applies to the license surrender. It reiterates that it prefers the Renewal Corporation to be a good citizen but that it is preempted from complying with local regulations that are unduly difficult or impossible to comply with. (p.52).

- Condition 23 - states that the licensee is “particularly encouraged” to consult with local agencies regarding siting and local condition as this will “result in plans that are better conceived” and require less modification. (p.120).
- Condition 35 - states “[t]his certification shall not be construed as a replacement or substitution for any necessary federal, state, and local Project approvals” and the licensee is responsible for compliance with local laws prior to Project. (p.122).

City of Yreka’s Water Rights – The Commission states there will be no effect on the City’s continued use of its water rights with no changes to the Fall Creek hydroelectric facility. (p.53).