



ATTORNEYS AT LAW

18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
T 949.833.7800

Paul S. Weiland
D 949.477.7644
pweiland@nossaman.com

Admitted only in California, Massachusetts

Refer To File # 290380-0001

VIA FERC ONLINE AND U.S. MAIL

April 18, 2024

Debbie-Anne Reese
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Willie L. Phillips
Acting Chairman
OEP Division of Hydropower Administration & Compliance
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Lower Klamath Project

Dear Secretary Reese and Chair Phillips:

We are writing on behalf of Siskiyou County (County) to provide comments and requests regarding the Lower Klamath Project (Project) (Project Numbers 14803-1 and 2082-063).¹ Throughout the implementation of the Project, the County has been in communication with the Klamath River Renewal Corporation (KRRRC) and their contractors as well as with the California Department of Fish and Wildlife (CDFW), one of the co-licensees of the Project. To ensure local permitting regulations are complied with consistent with FERC's "good neighbor policy" (FERC License Surrender Order for Project Numbers 14803-1 and 2082-063, November 17, 2022), the County entered into a Memorandum of Agreement with PacifiCorp to fund the role of a County Project Manager (County PM) for the Project.²

Historically, the Siskiyou County Board of Supervisors (Board) was opposed to the Project, and the Board has been vocal about the potential impacts and unintended consequences of removing the four Lower Klamath River Dams. The County must protect the health and welfare of County citizens,

¹ Nossaman, LLP is representing the County of Siskiyou as Intervenors in PacifiCorp and Klamath River Renewal Corporation's November 17, 2020 Amended Application for Surrender of License for Major Project and Removal of Project Works and Request for Expedited Review (Project Nos. 2082-063 and 14803-001).

² FERC License Surrender Order for Project Numbers 14803-1 and 2082-063 (November 17, 2022) [hereinafter "Surrender Order"].

economies, wildlife,³ and the environment. In this vein, since FERC's Final Order approving the Project, the County has been acting in good faith recognizing that successful implementation of the Project, which includes adhering to the FERC Order and associated permits and requirements, is in the best interest of the County, its people, and the improvement of fisheries species (which is a major factor driving removal of the four dams). The County PM and staff have been working diligently to receive prompt Project activity information from the co-licensees and to bring forth County and public concerns regarding these activities.

To facilitate public engagement and communication related to the Project, the Board has been holding special board meetings. These meetings began in early 2023 and will continue throughout the life of the Project. The purpose of these meetings is to provide the public and the Board with Project updates, allow the public and residents the opportunity to articulate their observations and concerns regarding specific project-related issues and provide time for co-licensees to present Project activities, to answer Board and public questions, and to address concerns. During their January 23, 2024 and February 13, 2024 special meetings, the Board directed the County to engage in informal communication with FERC regarding the public and County's Project concerns and unresolved issues.

During their March 26, 2024 special meeting, the Board determined that, as an intervenor to the FERC proceedings, a formal letter to FERC was necessary. The topics outlined below are those that have been repeatedly brought to the attention of the Project proponents but have gone largely unaddressed.

I. The Klamath Mitigation Fund

Concerns about the Klamath Mitigation Fund (KMF) have been raised since early 2023 by both the public and the Board. On numerous occasions, the County has requested that the KMF Administrators attend special Board meetings or other public meetings to discuss the KMF and listen and respond to public concerns. To date, the Administrators have refused to participate in any public-facing meetings, or answer any questions posed by the County on behalf of their constituents.

Most recently, many residents, predominantly those located in Copco and downriver of Iron Gate communities, have serious concerns about their groundwater wells related to water quality and production. Communication about access to the KMF, what the KMF will fund, and other relevant information has been confusing to residents. For example, in April 2023, the KMF hosted a series of informational webinars regarding the fund. These webinars were not interactive and required residents to submit questions beforehand, resulting in pre-orchestrated, non-substantial responses from the Fund Administrators (it should also be noted that the KMF does not have a phone number which requires communication only through email or hard copy mail). It was announced during the groundwater wells sessions that if well owners experienced a loss in productivity of their wells, then the KMF would provide up to \$5,000 of compensation funds to that property owner(s). The costs to establish a new well, or to drill an existing well deeper will cost residents substantially more than the \$5,000 offered. When the County reached out to the KMF Administrators about these issues, the County received a response stating that the KMF did "not have time to engage in meetings and conversations with ineligible parties."

³ For example, the loss of 830,000 hatchery Chinook salmon and deer in the muddy areas of the former reservoirs were concerning events that may have been prevented with additional forethought and planning.

Unfortunately, the KMF has been less than forthcoming when eligible parties contact the KMF with similar concerns.

The KMF also requires residents to sign legal documents waiving their rights to litigation or further compensation, which has resulted in many potentially eligible parties not signing up for the KMF during the opt-in period in 2023. Impacts from dam removal will go far beyond 2023, and residents are not able to waive their constitutional rights to litigation or to accept a relatively small amount of compensation for issues that could cost them a significant out-of-pocket sum of money.

Both communities (Copco and below Iron Gate) are identified as being Environmental Justice communities as defined by the State of California and the co-licensees acknowledge as such in the environmental documents for dam removal.⁴ As noted in the FERC order and in the Final EIS, adverse effects to environmental justice communities would be considered less than significant only if targeted and effective public outreach and communication were to occur, and only if there was sufficient participation in the KMF.⁵ For example, the Final EIS states: “The effects of reservoir drawdown on slope stability, particularly around Copco No. 1 Reservoir, would be short term, significant, and adverse, but KRRC proposes to mitigate the effects through communication with landowners and establishment of a mitigation fund to remediate effects on private property. With the implementation of KRRC’s monitoring and mitigation measures (including the local impacts mitigation fund) as part of the Reservoir Drawdown and Diversion Plan (KRRC, 2021e), potential effects of slope instability for landowners would be minimized or mitigated. The efficacy of this proposal relies on appropriate communication with the affected landowners, including environmental justice communities.”⁶

While FERC placed no qualifiers on mitigation, including mitigation funding or claim limits, management of the KMF has been performed in a manner that does not make residents whole from the impacts of dam removal. The management of the KMF has placed an undue burden on community members who should not be responsible for engaging in communication with the KMF and who should not be responsible for the burden of proof of impacts resulting from dam removal activities. Impacts from dam removal reach far beyond flooding, slope stabilization, and groundwater wells. We have been informed by landowners along the river that irrigation pumps are impacted by sediment-laden water, however, these landowners have no other choice at this time but to address the issue themselves. In addition, residents are concerned about health impacts to themselves or loved ones resulting from potential air quality issues and water quality issues.

FERC also recognized in its License Surrender Order⁷ that communication with local residents was an unaddressed issue: “Staff also observed that several mitigation measures intended to address adverse effects on private land related to groundwater well production, sediment deposits, and slope stability would require landowners to notify the co-licensees of property impacts following dam removal, but that

⁴ FEDERAL ENERGY REGULATORY COMMISSION, Final Environmental Impact Statement For Hydropower License Surrender and Decommissioning 3-560 (Aug. 2022) [hereinafter “FEIS”].

⁵ See *id.* at 3-537.

⁶ FEIS at Section 3.13.4.1

⁷ FERC Order at D.102

the associated management plans did not include a public outreach component.”⁸ This observation prompted FERC to recommend “revisions to the Sediment Deposit Remediation Plan, Water Supply Management Plan, Slope Stability Monitoring Plan, and any other plan that requires landowners to contact the co-licensees for mitigation services, to include a required public outreach component that specifically addresses communication with environmental justice communities.”⁹

Despite this request from FERC, KRRC did not update all of these plans, particularly the Sediment Deposit Remediation Plan, and the Water Supply Management Plan. In addition, in the Reservoir Drawdown and Diversion Plan (December 2022), Appendix B *California Slope Stability and Monitoring Plan*, there is mention of outreach to landowners, but not to the environmental justice community as a whole.¹⁰ Within Appendix B, Section 5.1.3 addresses the “Local Impact Mitigation Fund” (“LIMF”; now known as the KMF). Within that section, KRRC states that “The LIMF will include procedures and standards for determining the nature and scope of any impacts, as well as stipulated payments to property owners. Developing this methodology will involve proactive participation and input from key stakeholders. The methodology will be made available for public comment before being finalized.”¹¹ To the County’s knowledge, the methodology was never made available for public comment.

Currently, the KMF is “not addressing impacts until after reservoir drawdown is complete. When it reopens, the Fund will review claims associated with any structures in the rim stability eligibility category with demonstrated physical damage as well as claims submitted by property owners in the groundwater wells eligibility category who previously filed notice of their intent to monitor their groundwater wells for impacts.”¹² This statement makes no mention of flooding impacts for those downstream residents identified by the FEIS as being potentially impacted after dam removal, or for those who may be within a newly established 100-year floodplain following dam removal. It is the County’s understanding that the new 100-year floodplain will not be established by FEMA until after dam removal and restoration occurs. This is because sediment deposition after removal “may also result in streambed aggradation that would result in changes to the 100-year floodplain in the first 8 miles downstream from the Irongate Dam Site.”¹³ In addition, grading work conducted during restoration of the reservoirs and the Klamath River may alter the floodplain. Therefore, the new floodplain will not be established until mid-to-late 2025. This means that there are likely to be structures within the FEMA-established floodplain that will become eligible for funding. In April 2023, the County asked the KMF to extend the deadline until after FEMA established the new floodplain map. The KMF did not respond to the request.

⁸ Order Modifying and Approving Surrender of License and Removal of Project Facilities, Project Nos. 2028-063, 14803-001, 181 FERC 61,122 at 43 (Nov. 17, 2022).

⁹ *Id.*

¹⁰ See KLAMATH RIVER RENEWAL CORPORATION, *Lower Klamath Project FERC Project No. 14803, Reservoir Drawdown and Diversion Plan*, Appendix B, *California Slope Stability and Monitoring Plan* (Dec. 2022), https://klamathrenewal.org/wp-content/uploads/2022/12/20221202-5208_RDDP-Dec-2022-PUBLIC-FERC-14803.pdf.

¹¹ *Id.* at 11.

¹² See *Klamath Mitigation Fund*, <https://klamathmitigation.org/> (last accessed Apr. 9, 2024).

¹³ FEIS at 3-542.

Since 2023, the County and residents have been asking KRRC and the KMF for information regarding the KMF's funds and how they are administered. Neither party has disclosed the availability of funds, nor the number of applicants enrolled in the fund. It is the County's understanding that enrollment in the KMF is low. Recently, the County was informed by the KRRC that any leftover funds in the KMF will go back into the Project to be available for Project expenditures. We want to be clear: residents are hesitant to participate with the KMF at this time for the following reasons:

- Lack of trust in KRRC and the KMF.
- Non-effective communication from the KMF Administrators.
- Arbitrary and confusing deadlines for people to sign up, which all passed in 2023 despite impacts to be realized far beyond 2023.
- The requirement that participants sign non-disclosure agreements and waive their constitutional right to litigation.

There should be no reason to redistribute funds available specifically to provide mitigation to the impacted communities and residents to other Project costs, and the KMF and KRRC should make every effort to make whole those impacted by dam removal for a period of up to 10 years following dam removal.

Requests:

The County makes the following requests of FERC related to the KMF:

- FERC requires that KRRC update plans, as detailed in the Surrender Order, to include proper and effective outreach and communication with local communities and environmental justice communities. This would include requiring KMF to communicate publicly with these parties.
- Require the KMF to reopen immediately, allow community members to continue to file claims as further Project impacts are realized (which may require the KMF to remain open for up to 10 years following dam removal), and require the Fund Administrators to continually address impacts.
- Require KMF to make payments on claims in an amount to make filers whole from the impacts of dam removal and not include a cap for funding (i.e. maximum of \$5,000 for a well).
- Require that any remaining funding in the KMF be used for community impact mitigation. For example, those who paid to test their groundwater wells should be reimbursed.
- Require KRRC to assess other outstanding project impacts (i.e. impacts to irrigation pumps that have been impacted by sediment-laden Klamath River water and impacts to residents health resulting from potential air quality issues and water quality issues, among others) and include coverage of these impacts in the KMF.
- Require that KRRC or the KMF provide the source of funding for the KMF, the amount of original funding, and the funding expended (with Personal Identifiable Information redacted) thus far.

II. Communication and Public Engagement

As stated in the previous section, meaningful and effective communication is key for local communities, and is essential to implement FERC's good neighbor policy. While we have continually requested this from KRRC their public engagement and communication has continued to be untimely and less than adequate. For example, the County and the public have requested on numerous occasions that any disruptive construction activities (such as night construction, helicopter usage, blasting, etc.) be announced publicly well in advance of activities commencement. Blasting activities began in March at Copco 1 dam (including nighttime blasting), however, there was no prior notification from KRRC. Letters that were sent to some residents did not arrive in mailboxes until the day blasting, or several days after blasting began. The letters did not specify the dates or approximate timing for blasting activities. No other attempts at communicating the blasting schedule have been made by KRRC, either on their website, through social media accounts, or through direct contact with residents, and public concerns continue to be communicated to the County. In addition, on April 11, 2024, KRRC sent an email to the County (Attachment 1) stating that they will no longer participate in the internal bi-weekly meetings with County staff and that they are reconsidering their participation in the Board's special board meetings. KRRC cites the "perpetuation of inaccurate information about the project" as a reason for declining to participate in internal meetings, and potentially declining to participate in Board meetings, yet provides no evidence of misinformation that the County has shared. KRRC's unwillingness to participate in these meetings will undoubtedly further complicate accurate information sharing.

Unfortunately, letter writing has been the preferred method of communication from KRRC, with little to no efforts to meaningfully engage with the public. The most public engagement performed by KRRC has been participating in County meetings that the Board or staff have hosted. The communities impacted by the Project are older, low-income, and in some cases disabled. Some have PO boxes, limited cell service, no access to the internet, and others are not year-round residents. Therefore, many residents are not receiving Project communication promptly. To properly communicate Project activities, and potential impacts, and to engage with these communities in a meaningful way, varied methods of communication, and concerted efforts at communication should be occurring. These should include hosting regular informational sessions with residents, making phone calls as necessary, posting in community flyers, frequent updates on social media, and regular written communication.

Due to the shortcomings in communication from KRRC, the County, which has an obligation to its constituents, has been filling the gap in communication. The County has been hosting public meetings where the community members can engage with each other, regulators, KRRC (in some instances), etc. They have also been making public announcements, creating publicly available memos to address community concerns, sending email blasts, etc., all regarding a non-County project. In addition, the lack of transparent project documentation (such as water quality reports, wildlife reports, etc.) on the KRRC website, is creating challenges for the public who want to review this information. Based on informal communications with FERC, the County understands that FERC has established the Office of Public Participation (OPP) whose mission it is to support meaningful public engagement and participation in FERC proceedings. The County is reaching out to the OPP to request assistance with public engagement on the Project. However, it is the responsibility of the KRRC to ensure that meaningful and effective public engagement is occurring.

Requests:

The County makes the following requests of FERC related to KRRC’s communication and outreach:

- Require KRRC to host open in-person monthly public meetings.
- Require KRRC to host bi-weekly or weekly online “office hours” where KRRC answers questions from residents.
- Require KRRC to provide project updates to the public promptly and via multiple platforms; including social media, posting on their website, emailing residents, etc.
- Require KRRC to update their website with relevant and timely project information, including project reports and other project-related documents/communications.

III. Public Safety

Public safety is of the utmost concern and priority for the County. Project-related traffic along Copco Road has caused great concern for the County and the public. Project-related traffic has been observed frequently exceeding posted speed limits and performing unsafe maneuvers along the road. The principal of the local school has provided public comment that the school bus has been ran off the road several times. The County has communicated these issues to KRRC several times, however, unsafe driving by Project-related traffic still occurs.

As project-related traffic continues, so does the deterioration of Copco Road (Attachment 2). The County and KRRC have entered into an MOU, but, unfortunately, funding commitments made by KRRC to maintain Copco Road have been expended. Currently, the County Public Works department is spending approximately \$20,000 per month to address critical maintenance issues. However, these repairs are not preventing the road from continuing to deteriorate because of significant wear from Project-related traffic. The County is coordinating with the State to identify options to fully repair Copco Road after dam removal is complete, and if needed, and when appropriate, we would appreciate any support from FERC.

Before drawdown activities commenced in January 2024, the County requested that KRRC provide information regarding public safety. Specifically, during multiple Emergency Action Plan meetings hosted by KRRC, the County suggested that public announcements be made via social media, through in-person meetings, on KRRC’s website, etc. Specifically, it is important to communicate that an Emergency Action Plan (EAP) has been completed and that KRRC’s contractors are working with emergency personnel and organizations at the federal, state, and local levels to ensure residents safety. Prior to the drawdown, KRRC rejected the County’s request for public communication; according to KRRC there was no risk to local communities resulting from the drawdown.

KRRC’s messaging regarding public safety has focused (through one letter on December 15, 2023) on “no trespassing” notices for properties now owned by the co-licensees, and informing communities that any concerns during drawdown will be communicated to property owners, and those impacted will have access to KMF funding. This statement was made specifically about potential slope failure and reservoir rim stability issues. It did not address safety concerns for those residents living downstream of Iron Gate Dam. In addition, the December 15th letter also states “The Renewal Corporation is committed to ensuring public safety and providing updated information to residents during the reservoir drawdown and *dam removal processes* [emphasis added]. Local public notices will be posted on the Renewal

Corporation website throughout the project at klamathrenewal.org/local-public-notice.” There is no information or update regarding public safety and information for residents on the KRRC “Public Notices” page related to safety. During the March 26, 2024 special Board meeting, the Board requested that KRRC coordinate with the Siskiyou County Office of Emergency Services to push real-time blasting notices through the County’s 211 and/or Code Red notification systems, however, KRRC did not commit to do such.

As part of the License Surrender Order, KRRC developed the *Lower Klamath Project, Health and Safety Plan* (H&S Plan) (December 2022), which is posted on the KRRC website.¹⁴ However, the H&S Plan does not include a Public Safety Plan. Appendix C of the H&S Plan entitled “Public Safety Plan” states: “The Public Safety Plan will be submitted as part of the dam safety submittal package prior to implementation of the Proposed Action.”¹⁵ As referenced in the *2024 Drawdown Period EAP* for the Lower Klamath Project for both Copco No 1 Dam and Iron Gate Dam, KRRC has prepared a Public Safety Plan that is “designed to address public safety issues specific to the Drawdown Period”.¹⁶ The County does not have access to this document, as it was not included as part of the EAP, nor is it available on KRRC’s website. In addition, the County has searched the FERC eLibrary for a Public Safety Plan that was submitted for docket numbers P-2082 and P-14803 from 2020 to 2024 and was unable to locate the document. As noted in the *Communication and Public Engagement* section of this letter, all documents and activities that may impact residents and the public must be made readily available to the public.

Notifications to the County about potential public safety issues are delayed or nonexistent. For example, on January 19, 2024, Project staff observed the failure of a 45-foot section of the low-level outlet tunnel vent pipe at Iron Gate. According to KRRC, in a letter to KRRC from FERC¹⁷, a section of Iron Gate’s vent pipe broke and the anchors holding the infrastructure in place failed between January 11 and January 14. The infrastructure was released into the Klamath River downstream and was in the river for at least five days before being removed by KRRC’s contractors. This failed infrastructure posed a threat to public safety, as it could have moved downstream to private residents, harmed recreators, or been lodged into the Klamath River Country Estates footbridge. According to the EAP (2023) this incident is classified as a Level 0 for outlet system failure, and as such “requires notification of affected groups or subject matter experts as needed.”¹⁸ No notifications to the County were made. The County was not made aware of this potential safety issue until after the FERC response on March 11, 2024 to KRRC’s letter which was submitted to FERC on February 26, 2023 (which was classified as Critical Energy Infrastructure Information and unavailable for public review). The County inquired about this incident and the lack of public safety notifications. KRRC responded verbally that this incident did not classify as a safety issue and the EAP specifically did not address this type of infrastructure release, and therefore they did not need to inform the County.

¹⁴ Klamath River Renewal Corporation, *Lower Klamath Project FERC Project No. 14804 Health and Safety Plan* (Feb. 2021), https://klamathrenewal.org/wp-content/uploads/2022/12/20221202-5208_HSP-Dec-2022-FERC-14803.pdf.

¹⁵ *Id.* at 120.

¹⁶ Klamath River Renewal Corporation, *2024 Drawdown Period EAP* 51, 79 (2023).

¹⁷ KRRC’s February 26, 2024 letter to FERC was classified as Critical Energy Infrastructure Information and is therefore unavailable for public review.

¹⁸ See Klamath River Renewal Corporation, *2024 Drawdown Period EAP* (2023).

Another aspect of public safety is the availability of water sources during wildfire events. Drawdown has eliminated the use of the reservoirs, which were extensively used by planes, helicopters, and water tenders. Sediment has filled many of the deep pools along the rivers that could be used for drafting by helicopters and water tenders. To alleviate the impacts of the lost reservoirs and deep pools, KRRC is required¹⁹ to provide three access points along the river with dry hydrant drafting pipes and develop four dip sites (two each within the footprints of Iron Gate and Copco Lakes) at certain locations within the river. According to CalFIRE, as of the date of this letter, KRRC has constructed one access point below Iron Gate Dam. However, sediment deposits may have hampered access to water by firefighting equipment. An access point at Fall Creek has been identified, but either has not been constructed or has only been partially constructed, meaning that additional work is needed. The third access point has not been constructed but has been identified to be placed somewhere within the Copco Lake footprint. In addition, KRRC has not provided information that identifies where deep pools are still available for dipping, or if not available, has not constructed dip sites. This is significantly concerning to the County as it approaches fire season, given the many catastrophic wildfires in Siskiyou County over the years.

Requests:

The County makes the following requests of FERC related to public safety:

- Require that KRRC posts the Project's Public Safety Plan on their website for public review.
- Require that KRRC, and their contractors abide by all posted traffic signage, including speed limit signs.
- Require KRRC to provide more public communication and information related to public safety.
- Require KRRC to notify the County promptly any potential Project-related issues that could impact public safety. This would require that KRRC follow the EAP, and any requests for information from the County's Office of Emergency Services or the Sheriff's Department.
- Require that KRRC coordinate with the Siskiyou County Office of Emergency Services to push real-time blasting notices through the County's 211 and/or Code Red notification systems.
- FERC provide assurance to the County and public that failure of the Iron Gate tunnel poses no current or future risk to the public.
- Require KRRC to immediately construct and/or complete the three firefighting access points along the river and place dry hydrant drafting pipes as required by their agreement with CAL FIRE.
- Require KRRC to immediately identify adequate deep pools within the river to be used as dip sites, and if these sites are not available, immediately require KRRC to construct four dip sites (two each within the footprints of Iron Gate and Copco Lakes), as required by their agreement with CalFIRE.

¹⁹ Memorandum of Understanding Between California Department of Forestry and Fire Protection and Klamath River Renewal Corporation (page 2)

IV. Large-Scale Fencing

In January 2024, the County was made aware of a proposal by Trout Unlimited in coordination with KRRC and Resource Environmental Solutions (RES, KRRC's restoration contractor) to install a permanent large-scale (nearly 50-mile long) fence around both Copco and Iron Gate reservoirs. Trout Unlimited reached out to the County's Public Works Department inquiring about an encroachment permit, as the proposed fence would intersect with County rights-of-way. KRRC and CDFW informed the County that the fence is indeed related to the Project and would be funded through a state grant or other funding source, not through the Project's funds. The County was also informed that the fence's purpose would be to stop ungulates from disturbing the planting and revegetation efforts within the reservoir footprints. The County expressed its concerns to both KRRC and CDFW that analysis of a large-scale fence as part of the Project did not occur through either the National Environmental Policy Act (NEPA) or through the California Environmental Policy Act (CEQA).

In both environmental documents (the Environmental Impact Study [EIS] – NEPA and the Environmental Impact Report [EIR] – CEQA) the only fencing that was analyzed as part of the Project was temporary in nature (removed after project implementation) and for contractor safety (i.e., placing fences around the project trailers and equipment), archaeological site treatment measures as a result of cultural resource monitoring, reservoir-independent wetland protection (a 20-foot buffer fence), small-scale wildlife construction entrapment protection, and small-scale fencing around riparian areas only. As stated in the FEIS, KRRC plans to “strategically place fencing around high-priority tributary restoration areas to prevent livestock grazing” (FEIS 2.1.2.11). In addition, the FEIS notes that the Reservoir Area Management Plan (RAMP 2022) “includes strategic use of temporary fencing to exclude livestock at priority tributary restoration sites to prevent browsing of newly planted vegetation. While fencing is constrained by construction access, flooding, and cost-effectiveness, exclusion zones would be created around each of the proposed restoration areas rather than protecting individual plants with tubes. Fencing of stream crossing areas would be minimized” (FEIS 2.1.2.11). The final RAMP confirms this statement, as any fencing related to ungulate management is specific to high priority tributary work areas and is classified as temporary. Temporary fencing is also noted as being an adaptive management practice for exclusion of deer, but only if KRRC “observes unacceptable levels of herbivory by deer” (RAMP 5.3.2.2.1).

It is the County's position that because the fencing project is connected to the Project, it is viewed through NEPA as a “connected action”, which are those that are so closely related to the proposed project such that they should be discussed in the same NEPA document.²⁰ In this case, the large-scale permanent fence is considered a connected action through NEPA because the fencing project is “interdependent parts of a larger action and depend on the larger action for their justification.”²¹ The fencing project would not be occurring if not for the larger dam removal project. Similarly, CEQA requires that the “whole of the action” be analyzed and the CEQA guidelines define a project under CEQA as “the whole of the action” that may result either directly or indirectly in physical changes to the environment. In addition, CEQA requires the analysis of a project through the lens of cumulative effects.²²

²⁰ 40 C.F.R. § 1508.25(a).

²¹ 40 C.F.R. § 1508.25(a)(1).

²² Cal. Code Regs., tit. 14, §§ 15378, 15355.

Requests:

The County makes the following requests to FERC related to the large-scale, permanent fencing:

- Require that KRRC, RES, and Trout Unlimited follow the necessary NEPA and CEQA analysis and documentation and obtain required permitting if large-scale fencing occurs or other actions outside of the FERC Order are to occur.
- Require that the fencing project consider public access and require KRRC to engage with the public and County departments (including County Administration, Planning, and Ag. Commissioner’s Office) about the Project.
- If the fence is installed, require KRRC to provide alternative watering facilities for wildlife and livestock.

V. Lakeview Bridge

Through coordination with KRRC and their contractors the County has learned that the Lakeview Bridge that has been recently constructed below Iron Gate is a temporary structure and is slated for removal at the end of the Project. However, the California Traffic Management Plan states that there will be a new permanent bridge installed adjacent to the existing Lakeview Bridge to provide construction access. Specifically, in multiple places throughout the California Traffic Management Plan (CTMP), it is noted that “PacifiCorp is installing a new permanent bridge adjacent to the existing Lakeview Bridge to provide construction access.”²³

Requests:

The County requests that FERC require that KRRC leave the newly constructed Lakeview Bridge in place after the Project is finalized, making this a permanent structure.

VI. Outdated Plans

As noted throughout this letter, many of the Project plans are outdated or lack the correct information. For example, the County and the Sheriff’s Office asked KRRC’s contractors during a meeting on January 10, 2024 to update the CTMP, as there have been many changes to construction haul routes, and the plan contains outdated and inaccurate information. When the CTMP was finalized in 2022, the Project planned that “[c]onstruction access to Iron Gate Development [would] be taken through Ager Beswick Road and Lakeview Road and a network of private roads.”²⁴ However, construction access as noted was dependent on the approval of Iron Gate Estates, who in 2023 did not allow for construction traffic to utilize their roadways. The County and the public are unable to accurately understand Project changes as the Project plans continue to remain outdated.

²³ KRRC’s CTMP, Appendix B, Section 3.1.3 and 3.5.3.

²⁴ Klamath River Renewal Corporation, Lower Klamath Project FERC Project No. 14803 California Traffic Management Plan 10 (Feb. 2021), <https://www.klamathrenewal.org/wp-content/uploads/2021/02/EX-B-Construction-Mngmnt-Plan-Feb2021.pdf>.

With the lack of public communication and information sharing by KRRC, the burden of tracking Project updates and changes has largely been borne by the County. In one instance, KRRC did not inform the County or the public that they were changing the scope and timing for assisted sediment removal at high-priority tributaries. The County was first notified of this change by CDFW, and the public was made aware by the KRRC on March 18, 2024 via social media, days after the original deadline of March 15, 2024. Due to the nature of this Project in rural Siskiyou County, the heightened sense of awareness regarding construction activities, it is critical to have current and correct plans for public review.

Requests:

The County makes the following requests to FERC related to Outdated Plans:

- Require KRRC to review plans associated with the Project and update any outdated plans and/or documents.
- Require KRRC to publicly post any changes to the Project's planned activities and schedule within 48 hours of these changes and notify the affected communities and the County of such.

VII. CEII Designation

It is the County's understanding that the Critical Energy/Electric Infrastructure Information (CEII) designation through FERC is to protect critical electric infrastructure that is classified as national security information. We understand that there may be instances where information related to the Lower Klamath Project may need to be CEII protected, however, generation at any of the facilities concluded by January 2024. However, there are still submittals from KRRC which are being processed as CEII. This designation, particularly on Project plans or reports that may be important to the County and the public for informational purposes and public safety (i.e. safety incident reports, requests for FERC authorization, or Project activity changes), makes it extremely difficult for proper and timely information sharing. Due to the lack of effective public communication by KRRC, many impacted community members are relying on FERC's eLibrary for Project information. If submittals, or sections of submittals, from KRRC are designated CEII, and the information is redacted, then the public is unable to review important Project information.

Requests:

- Require KRRC only to use the CEII designation on portions of Project submittals that include national security information.
- The County requests that FERC put the County in contact with the FERC Project Manager, or FERC Project team responsible for ensuring that the co-licensees are complying with the FERC Order and associated requirements and permits. We are also curious if there are any FERC personnel on-site at the Project location, and if not, we request that FERC personnel visit the Project area and meet with the County.

On March 26, 2024, the Board adopted resolution 24-51 (Attachment 3) which makes the following requests from the State of California:

- The State perform continuous air quality monitoring on Project location throughout the duration of the Project.
- The State perform monthly Klamath River water quality testing throughout the duration of the Project for the same constituents and the same locations that the County Environmental Health Department completed.
- The State perform monthly residential groundwater well testing throughout the duration of the Project for the same constituents.

We would be grateful for any assistance that FERC can provide in getting these requests met. We appreciate FERC's attention to the issues described above, and we look forward to your response. Given the timeline for full dam removal and associated activities, we would greatly appreciate a response within 30 days of FERC's receipt of our requests. If you have any questions or require further information or clarification regarding the County's concerns, please reach out to Elizabeth Nielsen, Siskiyou County Deputy County Administrator at enielsen@co.siskiyou.ca.us or (530) 842-8012.

Very truly yours,



Paul S. Weiland
Nossaman LLP

PSW:art

Attachments

cc: Congressman Doug LaMalfa
Senator Brian Dahle
Assemblywoman Megan Dahle

Attachment 1

From: [Mark Bransom](#)
To: [Elizabeth Nielsen](#); [Ali Kutzer](#); [Chelsea Murphy](#);
Cc: [Ren Brownell](#)
Subject: KRRC - County Meetings
Sent: 4/11/2024 9:59:33 AM

Good morning,

After recent events, and internal discussion, KRRC is electing to no longer attend the County's proposed bi-weekly Public Information & Permits meetings.

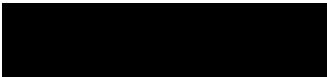
Permitting issues are rarely discussed, and the County's recent water quality memo and the County's recent actions have made it clear to us that there is not a shared interest in relaying timely and accurate information to Klamath River communities. It does not behoove any of us to dedicate time to these meetings on a regular basis, when the outcome is the perpetuation of inaccurate information about the project.

If you have questions about the project, please reach out to Ren and me via email, and we will respond to your questions in a timely matter. We are also willing to meet with the County as needed if an agenda is provided in advance.

The Renewal Corporation is also reconsidering our participation in the Board's monthly Special Meetings on dam removal. Elizabeth, when you have some time, I would like to have a conversation with you about this issue, to see if we can determine whether or not our participation can be more efficient and productive for all concerned.

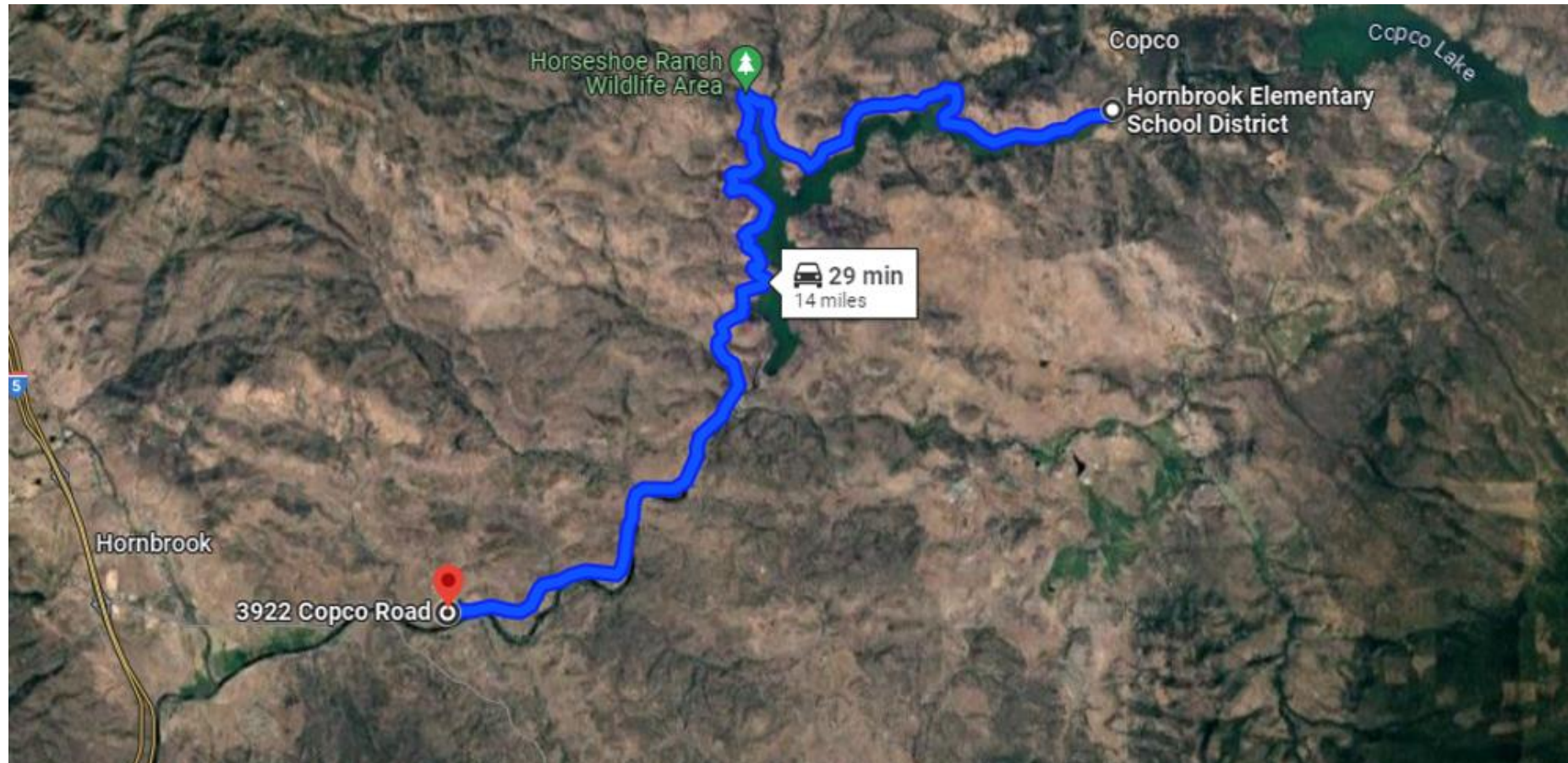
Mark

Mark Bransom
Chief Executive Officer
Klamath River Renewal Corporation



Attachment 2

The following photos were taken along Copco Road from Mile Post (MP) 3.6 to MP 17.5 (the entire range depicted in blue, below), and document impacts to the Road in 2023 and early 2024 during Lower Klamath Dams Decommissioning activities.



Copco Road at MP 3.6

February 7, 2023



February 1, 2024



Copco Road at MP 4

February 7, 2023



February 1, 2024



Copco Road at MP 10.3

February 7, 2023



February 1, 2024



Copco Road at MP 10.7

February 7, 2023

February 1, 2024



Copco Road at MP 10.8

February 7, 2023



February 1, 2024



Copco Road at MP 12

February 7, 2023



February 1, 2024



Copco Road at MP 12.2

February 7, 2023



February 1, 2024



Copco Road at MP 13.1

February 7, 2023



February 1, 2024



Copco Road at MP 13.6

February 7, 2023



February 1, 2024



Copco Road at MP 14.5

February 7, 2023

February 1, 2024



Copco Road at MP 15.8

February 7, 2023



February 1, 2024



Copco Road at MP 17.3

February 7, 2023



February 1, 2024



Copco Road at MP 17.5

February 7, 2023



February 1, 2024



Attachment 3

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
SISKIYOU PROCLAIMING A LOCAL EMERGENCY AND REQUESTING THAT THE
GOVERNOR PROCLAIM A STATE OF EMERGENCY
(Impacts Resulting from Lower Klamath Dam Removal)**

WHEREAS, the Siskiyou County Board of Supervisors recognizes that conditions exist that impact the people, wildlife and fisheries, and environment throughout the Klamath Watershed resulting from the removal of JC Boyle, Iron Gate, Copco 1 and Copco 2 dams (Lower Klamath Dams), and;

WHEREAS, the drawdown of the three reservoirs along the Klamath River in preparation of dam removal began in January 2024, following the Federal Energy Regulatory Commission's (FERC) approval of the Lower Klamath Dams Decommissioning Project (Project), and;

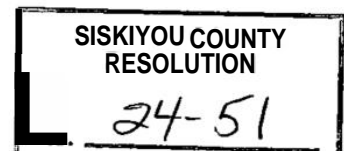
WHEREAS, the increased turbidity and sediment transport occurring during the drawdown phase of the Project has resulted in public and environmental health concerns related to heavy metals and other undesirable water quality constituents, and;

WHEREAS, while the Klamath River Renewal Corporation (KRRRC) is responsible for water quality sampling as part of the project's permit conditions, the constituents monitored and analyzed by KRRRC are for the protection of the aquatic environment, and not to monitor the effects of the Project on human health, and;

WHEREAS, at the direction of the Board, the Environmental Health Division collected water samples from the Klamath River on January 31 and February 5, 2024, to analyze organic and inorganic constituents, and laboratory results from these collections compare the heavy metal concentrations from the County's sampling efforts to the Environmental Project Agency's (EPAs) drinking water standards and the North Coast Regional Water Quality Control Board's beneficial use standards, and;

WHEREAS, results of the County's sampling (*Attachment A, starting at page 10*) demonstrate that, levels of arsenic and lead exceeded the EPA's primary drinking water standard at 4 of the 6 sample locations, and that these levels are also higher than the pre-project, or baseline sampling results, and levels of aluminum and iron at all 6 sample locations exceeded the EPA's secondary drinking water standards, and the County's sample results show much higher aluminum levels than the baseline, and;

WHEREAS, while there are baseline concentrations of heavy metals within the Klamath River system (both in the sediments and water column) the County's sample results indicate that there are higher than baseline concentrations of arsenic, lead, and aluminum, and that the levels of arsenic, aluminum, chromium, and nickel are elevated above the State's beneficial use standards, and;



WHEREAS, primary drinking water standards are legally enforceable standards that apply to public drinking water systems and protect public health by limiting the levels of contaminants in drinking water, and the secondary drinking water standards are non-enforceable guidelines that regulate contaminants that may cause cosmetic effects (such as skin or tooth discoloration) or aesthetic effects (i.e., taste, odor, or color) in drinking water, and;

WHEREAS, heavy metals suspended in the water column can pose health risks to humans through various exposure pathways (i.e., bioavailability), and understanding the recent water quality results, and how the elevated levels of arsenic, lead, aluminum and iron can be bioavailable to humans, it is crucial to assess public safety and health implications of the Klamath River during drawdown and as sediments are released from the reservoirs, and;

WHEREAS, in the case of heavy metal concentrations suspended in the Klamath River water, the bioavailability of these analytes to humans may occur through dermal contact, and ingestion, and therefore it is not safe to consume the Klamath River surface water, and it is advisable to stay out of the Klamath River, and;

WHEREAS, the increased sediment has resulted in considerable damage to the economic and ecological capital within Siskiyou County, inundating an already compromised watershed that has been impacted by multiple years of toxic wildfire debris run-off, and;

WHEREAS, although unintended, the current impact on the protected watershed will undoubtedly increase the lasting potential of impacts upon the residents, endangered species, and the environment, and brings into question the State's responsibility under the *Porter-Cologne Act § 13392.5. Monitoring and surveillance* and *§ 13392.6. Sediment quality objectives workplan*, and;

WHEREAS, the County is also concerned about air quality impacts to the public resulting from Project-related activities and sediments that may become airborne as the reservoir areas continue to dry out, and;

WHEREAS, the County is requesting that the State perform continuous air quality monitoring on Project location throughout the duration of the project, and;

WHEREAS, the County is requesting that the State perform monthly Klamath River water quality testing throughout the duration of the project for the same constituents and at the same locations that the County Environmental Health Department completed, and;

WHEREAS, the County is requesting that the State perform monthly residential groundwater well testing throughout the duration of the Project for the same constituents.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency now exists throughout Siskiyou County as a result of impacts to Klamath River water quality and potential impacts to air quality related to Lower Klamath Dam Removal activities and;

BE IT RESOLVED that the Siskiyou County Board of Supervisors hereby Proclaims and Orders that during the existence of this local emergency, the powers, functions, and duties of the Director of Emergency Services and the emergency organizations of this county shall be those prescribed by state law, ordinances and resolutions of this county approved by the Board of Supervisors, and by the Siskiyou Operational Emergency Area Operations Plan, as approved by the Board of Supervisors, and;

BE IT FURTHER RESOLVED that a copy of this declaration shall be forwarded to the Secretary of the Governor's Office of Emergency Services (Cal OES) with a request that the Secretary of Cal OES confirm a Secretaries concurrence, and;

BE IT FURTHER RESOLVED that a copy of this declaration shall be forwarded to the Governor of California with a request that he proclaim the County of Siskiyou to be in a state of emergency and make available any Federal or State assistance for the recovery from this disaster, and;

BE IT FURTHER RESOLVED that this declaration be brought back to the Board at least once every 60 days for review, and revisions as needed until the Board terminates the local emergency.

PASSED AND ADOPTED by the Siskiyou County Board of Supervisors on March 26, 2024, by the following vote:

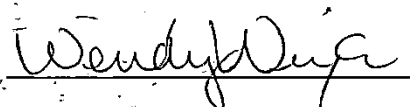
AYES: Supervisors Haupt, Criss, Ogren and Kobseff
NOES: Supervisor Valenzuela
ABSENT: None
ABSTAIN: None



Michael N. Kobseff, Chair
Siskiyou County Board of

Supervisors

ATTEST:
LAURA BYNUM,
COUNTY CLERK

By 
Deputy