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Refer To File # 290380-0004

VIA FERC ONLINE

August 18, 2021

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

Re: Comment on the Notice of Intent to Prepare the Lower Klamath Project
Environmental Impact Statement

Dear Secretary Bose:

We are writing on behalf of Siskiyou County ("County") to express our significant concerns regarding the Notice of Intent ("NOI") to Prepare an Environmental Impact Statement ("EIS") for the Proposed Lower Klamath Project Surrender and Removal ("Project") published by the Federal Energy Regulatory Commission ("FERC") on behalf of the Klamath River Renewal Corporation ("KRRRC") and PacifiCorp in the Federal Register on June 24, 2021 (Docket Nos. 14803-001 and 2082-063). Detailed concerns regarding the NOI and EIS are included in SWCA's "Comments Regarding the Notice of Intent to Prepare the Lower Klamath Project Environmental Impact Statement/SWCA Project No. 54921," attached hereto as Attachment I. Additionally, the County incorporates its comments submitted to the U.S. Army Corps of Engineers ("Corps") on July 8, 2021, regarding KRRRC and PacifiCorp's application for a permit under section 404 of the Clean Water Act, attached hereto as Attachment II.

As FERC is aware, KRRRC and PacifiCorp have submitted applications to FERC for hydropower license transfer and surrender to decommission and remove four lower Klamath River dams—three of which are located within Siskiyou County. On multiple occasions, the County has expressed its concerns regarding the potential impacts of dam removal on imperiled species, water quality, and the overall health of the Klamath River ecosystem, as well as other environmental and societal impacts, including air quality, climate change, cultural resources, hazardous materials, and traffic impacts, in addition to socioeconomic impacts on the local community. See, e.g., *PacifiCorp*, 162 FERC ¶ 61,236 at ¶ 28 (Mar. 15, 2018). The County has a strong vested interest in ensuring that the EIS considers the Project's entire range of consequences on the County and its residents.

As set forth in SWCA's technical comments (Attachment I), the Project's environmental review documentation, as required under the National Environmental Policy Act, remains inadequate. Below is a brief summary of the County's concerns regarding the NOI and Project documentation, as further detailed in Attachment I.

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- The NOI does not indicate which alternatives will be analyzed in the EIS; the County requests analysis of a “Phased Approach Alternative” that would provide for removal of the dams one at a time and a Federal takeover approach that would provide for the Federal government to take over the lower Klamath Project, retain the facilities, and improve fish passage while reducing environmental impacts associated with removal.
- The NOI’s statement describing the purpose and need for the Project is improperly narrow, essentially precluding any alternative that has the potential to reduce the significant environmental impacts as compared to the KRRC’s and PacifiCorp’s dam removal vision. “NEPA prohibits the agency from drawing an ‘unreasonably narrow’ purpose and need statement so as to exclude otherwise feasible alternatives for the sake of satisfying the wants and wishes of a proponent.” J. Matthew Haws, *Analysis paralysis: rethinking the court’s role in evaluating EIS reasonable alternatives*, 2012 U. Ill. L. Rev. 537, 559 (2012) (citing multiple cases).
- The Project documentation relies on outdated technical studies and surveys.
- Proposed mitigation measures for fire suppression should be more detailed and specific.
- Project impacts on property values should be discussed in terms of environmental justice, and related mitigation measures should be considered. FERC should also ensure that the Project aligns with federal environmental justice policies.
- Additional surveys and analysis regarding impacts to the federally endangered Lost River sucker and shortnose sucker should be completed and the results reported in the EIS in order to avoid jeopardizing the continued existence of those species.
- The EIS should include an evaluation of the potential negative impacts related to suspended sediments and a professional engineering analysis of rim stability.
- The EIS should include a determination by the California and Oregon State Historic Preservation Offices regarding the Klamath River Hydroelectric Project District’s eligibility for listing in the National Register of Historic Places.
- The permanent loss of reservoir-based recreation activities caused by dam removal should be considered a significant impact requiring mitigation.
- The Project documentation does not address how proposed new recreational facilities will be maintained.
- The EIS should explain with more specificity the conclusion that the Project would mitigate all potential groundwater supply impairments post-drawdown.

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As briefly mentioned above, and as further discussed in Attachment I, the NOI's statement describing the purpose and need of the Project is too narrow to allow FERC to consider a reasonable and appropriate range of alternatives. The purpose and need stated in the NOI is "to surrender the project license and remove the project features to achieve a free-flowing condition and volitional fish passage, site remediation, and restoration." This statement is even more narrow than the Project purpose described by the Corps in the Public Notice regarding KRRC and PacifiCorp's section 404 permit application. For the same reasons described in the County's letter to the Corps (Attachment II), the NOI's even more narrowly stated Project purpose is unlawful. Even if KRRC and FERC opted against pursuing a sensible project objective such as "to provide for near-term and long-term benefits for communities in the Klamath region and to protect sensitive wildlife native to that region along with the ecosystem that supports such wildlife" or "to contribute to the sustainable management of the Klamath region including sensitive wildlife native to that region along with the ecosystem that supports such wildlife," a more appropriate and still narrowly-tailored objective would be "to contribute to the conservation of sensitive fish species native to the Klamath River."

For the foregoing reasons, and as further discussed in detail in Attachment I, the County requests that FERC analyze the full range of the Project's impacts in the EIS and address the County's unresolved concerns. Please do not hesitate to contact us with questions.

Very truly yours,



Paul S. Weiland
Nossaman LLP

Attachments

ATTACHMENT I



INTRODUCTION

SWCA Environmental Consultants (SWCA) has reviewed the Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the Proposed Lower Klamath Project Surrender and Removal. The NOI for the Lower Klamath Project (Docket Nos. 14803-001 and 2082-063) was published by the Federal Energy Regulatory Commission (FERC) on behalf of the Klamath River Renewal Corporation and PacifiCorp (applicants) in the Federal Register on June 24, 2021.

Included below are comments on issue areas that have been raised by the County previously and that we believe should be adequately analyzed by FERC in the EIS.

PRIOR COMMENTING OPPORTUNITIES

Prior to the publication of the NOI and start of the FERC National Environmental Policy Act (NEPA) process, the County provided comments on numerous documents related to the project. Comment letters prepared by the County to address deficiencies in the project, impact analysis, and mitigation measures include the following:

- Draft Definite Plan for the Lower Klamath Project (“Definite Plan”) (dated October 16, 2018)
- Draft Environmental Impact Report (EIR) for the Lower Klamath Project Relicense Project (dated February 26, 2019)
- Draft Recreation Plan for the Lower Klamath Project (dated October 4, 2019)
- FERC Supplemental Surrender Application for the Lower Klamath Project (dated June 3, 2021)

The previous comment letters have been attached for the NEPA administrative record. For the most part, prior comments have yet to be adequately addressed by the applicants or lead agencies.

ALTERNATIVES

The NOI does not give an indication of the alternatives that will be analyzed in the NEPA document. The County suggests including a “Phased Approach” alternative. The Phased Approach Alternative would include the removal of the dams one at a time. After the initial dam is removed (presumed to be Copco Dam) and the health of the environment is able to be adequately monitored and determined to meet a certain biological threshold, the second upstream dam could be removed, and so on. This would provide a more scientifically driven approach to dam removal and ensure that sensitive environmental resources are protected from unproven, potentially catastrophic action related to simultaneous removal of all dams.

In addition, the proposed action, as described in the original Klamath Facilities Final Environmental Impact Statement/Environmental Impact Report prepared by the U.S. Department of the Interior and California Department of Fish and Game in December 2012 required federal legislation to execute the project (Vol I. page 1-3 of the Final EIR/EIS). Federal legislation was a requirement of the Klamath Hydroelectric Settlement Agreement. The proposed action in the FERC EIS should consider federal legislation as the ultimate approval for the project given the scale of the dam removal and potential environmental impacts on a regional scale.

FERC should also consider a “Federal Takeover” alternative. The Federal Takeover alternative would include continued operation of the dams by the federal government (presumed to be the Bureau of Reclamation). The Federal Takeover alternative would reduce environmental impacts as compared to the proposed action by providing for the continued generation of clean energy, successful fish passage, and retention of other reservoir benefits including wildfire fighting capacity, eliminating impacts to suckers, and eliminating impacts to adjacent residential uses.



PURPOSE AND NEED

The purpose and need stated in the NOI for the proposed action is to surrender the project license and remove the project features to achieve a free-flowing condition and volitional fish passage, site remediation, and restoration. This purpose and need statement is unnecessarily narrow and points to the single solution of dam removal. The previous EIR/EIS prepared in 2012 and the Klamath Hydrologic Settlement Agreement noted that the project would only proceed if the removal of the four dam facilities would advance restoration salmonid populations of the Klamath Basin. The purpose and need should be expanded to include some scientific consensus that dam removal would be beneficial. This broadening of the purpose and need statement would allow for more consideration of the Phased Approach Alternative discussed above.

RELIANCE ON OUTDATED TECHNICAL STUDIES AND SURVEYS

As we noted throughout our comments on the Draft EIR, the technical studies and surveys that have been relied upon are generally more than a decade old, and are sometimes much older. For example, the Lost River and shortnose sucker surveys that were relied upon for findings in the EIR are from sampling completed in 1998 and 1999.¹ To be considered an accurate assessment of impacts from the proposed action, FERC should be mobilizing new surveys for the EIS.

ENVIRONMENTAL RESOURCES

FIRE SUPPRESSION

The NOI identified fire suppression as an expected impact, and the Definite Plan has outlined a Fire Management Plan as part of the proposed project. As the County has mentioned in past comments, wildfire suppression is critically important for the health and safety of the community and environment. Mitigation for fire suppression in the EIS should be detailed and specific. The Definite Plan states that aerial analysis shows deep pools with conditions suitable for helicopter filling near the three reservoirs. However, it should be noted that helicopters may not be able to fill their water tanks in the vicinity of the post-drawdown reservoirs due to the canyons that will develop around the rim of the existing reservoirs and downstream. Helicopters require relatively wide, flat topography in order to draft water safely. It is also possible that many of the existing pools will fill with silt and sediment released during dam removal. Under this scenario, it is possible to imagine an increase in travel time and firefighting limitations during dam removal.

The mitigation proposed in the Definite Plan includes dry hydrants as water supply infrastructure for post-removal firefighting. In addition to dry hydrants, mitigation in the EIS should also include other permanent sources of water that can be used for aircraft firefighting activities. This is especially critical due to the possibility that river conditions will be inadequate for water tank filling post-drawdown, as noted above. The EIS should improve on the Definite Plan and identify permanent water sources (such as dip tanks) that will be strategically placed along the Klamath River corridor to support aircraft firefighting activities. The permanent water sources could be filled with Klamath River water extracted via the proposed dry hydrants. Given the devastating wildfires that have occurred and will likely continue to occur throughout the project area, every precaution should be taken to mitigate fire risk.

¹ Perkins, D.J., J. Kann, and G. Scopettone. 2000. *The Role of Poor Water Quality and Fish Kills in the Decline of Endangered Lost River and Shortnose Suckers in the Upper Klamath Lake*. Final Report. Prepared by U.S. Geological Survey, Biological Resources Division for Bureau of Reclamation, Klamath Falls Project Office, Klamath Falls, Oregon.



SOCIOECONOMICS AND ENVIRONMENTAL JUSTICE

The NOI notes expected impacts on property values due to dam removal. Although this is true and certainly an impact that should be explored, the EIS should also explicitly address these effects as impacts to environmental justice communities. Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and associated mitigation measures for impacts to socioeconomic and environmental justice communities should be considered. Mitigation measures that may be relevant to environmental justice impacts include the recruitment of local labor, fair financial compensation for impacts to property values, training and development, and school funding, among others.

FERC should also ensure that the project meets the policies of EO 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government. The intent of EO 13985 is to advance equity across the federal government and ensure that underserved communities benefit from the programs and policies that are enacted.

SPECIES PROTECTED UNDER THE ENDANGERED SPECIES ACT

Lost River and Shortnose Suckers

Previous analysis for the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*) species conducted during the EIR has concluded that dam removal would only impact “sink” populations in the reservoirs downstream of Keno Dam. This was done without adequate justification (e.g., genetics, current population structure, etc.). For instance, the sucker populations downstream of Keno Dam should be denoted as metapopulations that have broken off from the main populations upstream to form new groups in the lower river, thus expanding the range of the endangered populations. This is a natural phenomena in populations that are not closed and individuals can freely immigrate or emigrate from the main population. As noted above, surveys were completed in 1998 and 1999 and do not reflect existing conditions. Conditions in the reservoirs, including increased water temperature, have changed because ongoing drought is having an unknown effect on the species. In addition, the EIR (page 3-335) states that because the Lost River and shortnose suckers impacted by the project are located in reservoirs downstream of Keno Dam, they do not represent “take” under the Endangered Species Act (ESA) because this would be outside of their historic range. Regardless of the historic range of the species, the presence of a federally listed endangered species should ensure that it receives full protection under the ESA. By labeling the population as a “sink” without appropriate scientific data and disregarding the existing extent of the species, the lead federal agency and U.S. Fish and Wildlife Service (USFWS) would potentially be violating the ESA. As such, additional surveys and analysis should be provided in the EIS to make a determination of the status of the sucker species and whether or not Lost River and shortnose suckers are genetically linked to those in Keno Reservoir and upper Klamath Lake. Furthermore, the USFWS states both species have low resiliency. Disregarding Lost River and shortnose suckers downstream of Upper Klamath Lake on the basis of hybridization and categorization of these as a “sink” population reduces resiliency of these species and their ability to rebound after catastrophic events. Therefore, the USFWS should update information on the degree of hybridization in these species downstream of Upper Klamath Lake prior to establishing them as a “sink” population.

SEDIMENT-RELATED IMPACTS

The EIR (page 3-99) and Definite Plan (Appendix I, page 31) analyses rely on the assumption that suspended sediment will be quickly flushed downstream. The duration of high suspended sediment concentrations depends on how much reservoir sediment is initially flushed from each reservoir and the water year conditions that are exhibited during the dam removal year. Adverse impacts from downstream sedimentation could last for weeks, or they could persist for months, even years. Therefore, the suspended sediments analysis in the EIS should also assess the worst-case scenario and possible negative impacts to salmonids (Steelhead, Chinook, and Coho salmon) and other riverine and estuarine species.



The Definite Plan (Appendix E) alludes to rim instability issues around the reservoir; however, limited data and analysis have been initiated. Given the potential impacts to residences and infrastructure around the reservoirs from landslides and rim instability, the EIS should include a professional engineering analysis of rim stability and apply any necessary mitigation measures. Rim instability could also have implications for aquatic impacts and suspended sediment in the water column.

CULTURAL RESOURCES

The Definite Plan (Appendix L) and EIR (page 3-805) state that the Klamath River Hydroelectric Project District (District) is eligible for listing in the National Register of Historic Places (NRHP) for its association with the industrial and economic development of southern Oregon and northern California but that the California and Oregon State Historic Preservation Offices (SHPOs) have not concurred with this eligibility recommendation. Given the potential detrimental impacts to the NRHP-eligible District, concurrence from the SHPOs and the ultimate status of the District should be ascertained during the Section 106 of the National Historic Preservation Act process, and the results should be provided in the EIS.

RECREATION

The removal of the Copco No. 1 and Iron Gate reservoirs will eliminate popular reservoir-based recreational opportunities for area residents and visitors. The EIR (page 3-1007) notes the permanent loss of reservoir-based recreation activities such as flat-water fishing, power boating, water skiing, lake swimming, and tubing. However, the EIR concluded that due to the existing facilities in the area (26 to 46 miles away), there would be no significant impact or loss of rare or unique recreational facilities. The permanent loss of two popular and distinctive recreation destinations should almost certainly be considered a significant impact requiring mitigation. It should be noted that the other lakes and reservoirs in the region that are listed in the EIR as being replacement reservoir-based recreation facilities are located in Oregon. Reaching these facilities would require passing through Siskiyou Summit, which is notably challenging with a trailer.

As we have noted in our comments on the Definite Plan and EIR, the proposed project includes the addition of several new river-based recreation opportunities, including river access points, campsites, day use amenities, and trails. The Definite Plan and EIR do not sufficiently identify how these facilities will be maintained.

WATER SUPPLY/GROUNDWATER

The EIR (page 3-664) states that the project could impact groundwater resources and wells post-drawdown; however, the Groundwater Well Management Plan (Appendix N of the Definite Plan) will mitigate all potential for supply impairments. The EIS should expand upon this conclusion and be specific with respect to impacts and mitigation measures for community water supplies. The City of Yreka and communities of Hornbrook, Copco Village, and Beswick, among many others, rely on groundwater and surface water supply from the Klamath River. The EIS should demonstrate how adequate supply would still be available, given the storage and groundwater recharge that the reservoirs currently provide and that would be lost with dam removal.