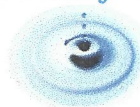


Siskiyou County Water Users



March 12, 2020

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

David E. Capka, P.E.
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, N.E. Routing Code PJ-13
Washington, DC. 20426

Re: License Transfer (FERC Nos. P2082-062; P-14803-000) Status Report
SCWUA MOTION TO DISMISS FILED WITH FERC APRIL 24, 2018 (COPY ATTACHED)

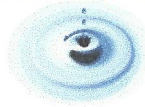
Dear Secretary Bose and Director Capka,

The Siskiyou County Water Users Assoc. representing a substantial number of citizens of Siskiyou County (California) and Klamath County (Oregon) filed a Motion to Dismiss these proceedings nearly two years ago on the ground that the applicants were not authorized to present it to FERC, having failed to obtain the approval of the Klamath Compact and or Congress. In both counties the public, in the case of Measure G in Siskiyou County, and in a public survey in Klamath County conducted by a reputable newspaper, indicated vast support (approx. 80%) for keeping the Hydro Electric facilities in place. These dams have a valued place in the general community both for the clean hydro power they produce as well as providing recreational opportunities, fire- fighting capability and a process which assists in providing clean water and the ability to carry out court mandated water flow requirements to protect the Salmon. This is in addition to the irrigation needs in the upper basin.

Petitioner timely moved to intervene in these dockets and filed substantial comments opposing dam removal. Petitioner after intensive investigation and carefully analyzing the complex history of the development of the Klamath River Compact (71 Stat. 497-508) and demonstrated that the Amended Settlement Agreement (2016) constituted an agreement between the States of California and Oregon the implementation of which is barred by Federal Law U.S. Constitution **Art. I, Sect. 10, Clause 3**, commonly known as the U.S. Constitution Compact Clause. The Klamath River as a designated "Wild and Scenic River" and a navigable river is a valuable Federal Asset to be protected by the Federal Government. The proposed project by PacifiCorp and the Klamath River Renewal Commission to destroy these electrical production facilities, spilling millions of tons of sediment into a pristine river with undetermined consequences, is an affront to Congress and the thousands of people living along the River as well as the environmentally challenged species which will be destroyed in the process.

The parties PacifiCorp and KRRC parties to the Amended KHSA are now urging the FERC to move irresponsibly in order to approve license transfer immediately, evading a thorough and proper analysis

Siskiyou County Water Users



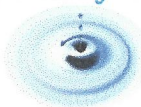
of the scientific issues involved in the removal and an insufficient plan as well as inadequate measures being taken to protect the public or evaluate the outcome of dam removal. We encourage the FERC to not allow itself to be goaded into inappropriate action in regards to these valuable assets. The regional population directly impacted by Dam removal is adamantly opposed to the removal. We are joined in this opposition by numerous organizations as well as local County governments including but not limited to Siskiyou County, California and Jefferson County in Oregon.

Rather, we urge FERC to rule upon our Motion to Dismiss, disposition of which is long overdue and which should be revised before permitting the applicants to commence the process of destruction. Once the first stone is removed the damage will be beyond repair and there will be no process by which the damage to local communities can be undone.

Thank you in advance for your consideration in this matter.

Respectively Submitted
Siskiyou County Water Users Assoc.
Richard Marshall
Richard Marshall
President
Cc: Attachments

Siskiyou County Water Users



JACKSON COUNTY
Oregon

Board of Commissioners

Rick Dyer (541) 774-6118
Bob Strosser (541) 774-6119
Colleen Roberts (541) 774-6117
Fax: (541) 774-6705

10 South Oakdale, Room 214
Medford, Oregon 97501

April 27, 2018

Chairman Kevin J. McIntyre
Federal Energy Regulatory Commission
888 First St., NE
Washington, DC 20426

Re: Project Nos. 2082-062 and 14803-000

Dear Chairman McIntyre,

The Jackson County Board of Commissioners respectfully request that the Federal Energy Regulatory Commission (FERC) take no action that would allow the removal of the four dams listed in the Klamath Hydroelectric Project No. 2082-062. The preservation of these dams is vitally important to multiple neighboring counties and their citizens, including Jackson County, Klamath County, and Siskiyou County. All of these counties were at one time (1955) duly appointed as participants and negotiators to the Klamath River Basin Compact. Siskiyou and Klamath Counties have met numerous times to stand united against dam removals and worked to develop alternative solutions (e.g. www.co.siskiyou.ca.us/sites/default/files/minutes/20140505_BOS_minutes.pdf). Jackson County also encourages the FERC Commissioners to explore all potential alternatives to the removal of the dams.

There is significant objection to the dam removals by both the local citizens and elected officials alike in Southern Oregon and Northern California. Although, we have not taken a straw poll or vote in Jackson County, many citizens have shared their concern and their objection to the removal of these dams. The voters in Klamath County resoundingly voiced their objection to removing the dams in 2016. Ballot Measure 18-107 stirred a significant 72 percent objection to this proposal. Working together as duly elected officials, both here and in Washington DC, toward common, achievable goals always serves the local citizens best.

Present in our memory is last year's destructive fire season in Southern Oregon that adversely affected the health, safety, and welfare of residents and the economic viability of the entire Rogue Valley, as well as California's nationally-observed disastrous wildfires. That experience brings into focus the potential of future fire seasons endangering the health, safety, and welfare of our citizens again. We believe that these dams create a Beneficial Use Asset to fight catastrophic wildfire in the high desert areas of Southern Oregon and Northern California.

Siskiyou County Water Users




Chairman Kevin J. McIntyre
Federal Energy Regulatory Commission
April 27, 2018
Page -2-


We request that FERC take no action that would allow these dams to be removed.

Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS



Rick Dyer, Chair



Bob Strosser, Commissioner



Colleen Roberts, Commissioner

:dh/tmf

cc: Senator Ron Wyden (by email)
Senator Jeff Merkley (by email)
Representative Greg Walden (by email)
Klamath County Chair Derrick DeGroot (by email)
Klamath County Commissioner Kelley Minty Morris (by email)
Klamath County Chair Commissioner Donnie Boyd (by email)
Siskiyou County Chair Ray Haupt (by email)
Siskiyou County Supervisor Brandon Criss (by email)
Siskiyou County Supervisor Ed Valenzuela (by email)
Siskiyou County Supervisor Michael Kobseff (by email)
Siskiyou County Supervisor Lisa Nixon (by email)

I:\BoC\Correspondence\Correspondence_2018\2018_04_27_FERC_Dam_Removal.docx

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of the Application of:)	
)	Project No. 2082-062
PACIFICORP)	(Klamath Project)
_____)	
)	Project No. 14803-000
KLAMATH RIVER)	(Lower Klamath Project)
RENEWAL CORPORATION)	
_____)	
)	
Klamath Hydroelectric Project, in)	
Southern Oregon/Northern)	
California – Amendment and)	
Partial Transfer of License)	
_____)	

MOTION TO DISMISS

Pursuant to Rule 214 of the Federal Energy Regulatory Commission’s (“FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.214, Siskiyou County Water Users Association (“SCWUA”), hereby moves to dismiss the application for transfer filed by PacifiCorp and the Klamath River Renewal Corporation (“KRRC”), on the ground that Congress has not consented to the transfer, and that an arguable mechanism of the expression of such consent, the Klamath River Compact (the “Compact”), has not been invoked. Absent Congressional consent, the KRRC is not qualified to receive the license. Put another way, it would be unconstitutional and a violation of federal law for FERC to

approve the transfer, as it would constitute FERC facilitating an evasion of the jurisdiction of the Compact.

This motion is supported by the Declaration of Richard Marshall and Bob Rice, filed herewith.

Argument

The Constitution provides: "No State shall, without the Consent of Congress... enter into any Agreement or Compact with another State." U.S. Const. Art. I, § 1, cl. 3. This provision is known as the Compact Clause. On August 30, 1957, though Public Law 85-222, Congress gave its consent to the Compact, which is reproduced in the bill and the Statutes at Large (71 Stat. 497-508.¹)

The Compact has extremely broad purposes, including:

“To facilitate and promote the orderly, integrated, and comprehensive development, use, conservation and control [of the waters resources of the Klamath Basin] for various purposes, including, among others, . . . the use of water for industrial purposes and hydroelectric production”. (71 Stat. 497.)

It establishes “prescribed relationships between beneficial uses of water” and provides for certain “preferential rights”. (*Id.*) Pertinent to this motion, Article IV declares that:

“It shall be the objective of each state, in the formulation and execution of plans for the distribution and use of the waters of the Klamath River Basin, to provide for the most efficient use of available power head and its economic integration with the distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.”

As the Supreme Court has explained, “where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms

¹ Available at <https://www.gpo.gov/fdsys/pkg/STATUTE-71/pdf/STATUTE-71-Pg497.pdf> (accessed 4/16/18).

the States' agreement into federal law under the Compact Clause.” *Cuyler v. Adams*, 449 U.S. 433, 441 (1981). There is no question that the Compact addresses subjects, such as water resource development, that are plainly appropriate for congressional legislation. The Compact is therefore federal law that must be addressed in this proceeding.

As FERC’s order of March 15, 2018 recognizes, the multiparty Klamath River Hydroelectric Settlement Agreement reached in November 2008 required Congressional legislation to implement, which was not obtained. The April 6, 2016 Amended Klamath River Hydroelectric Settlement Agreement (“Amended Settlement Agreement”) has been filed with, but not approved by FERC. It purports to provide for transfer of the license to the KRRC, but it too has not been approved by Congress. The Amended Settlement Agreement, by its terms, constitutes an agreement between California, Oregon and other parties, the implementation of which is barred by federal law. Federal law does not allow the Amended Settlement Agreement parties to evade the requirement for Congressional consent for the momentous and ill-considered policies they advocate.

Congressional approval of the Compact created federal law that now requires decisionmaking by a specific entity, the Klamath River Compact Commission (the “Compact Commission”). *See also James v. Dravo Contracting Co.*, 302 U.S. 134, 148(1937) (“It can hardly be doubted that in giving consent [to a compact] Congress may impose conditions”). Unless and until Congress passes legislation endorsing Klamath River dam removal, its consent can only be obtained, if at all, through lawful decisionmaking through the specific procedures required of the Compact.

Specifically, the Compact Commission includes a representative of the United States who serves as chairman of the Commission. (71 Stat. 502.) It is the Compact

Commission's responsibility, though public meetings, to "administer this compact". (*Id.*) The Commission's exercise of powers is conditioned on the ability of "any interested party [to] have the opportunity to present his views on the proposed action" before Commission action, after "reasonable" advance notice of the action. (*Id.* at 505.)

Decisionmaking by the compact entity is thus nothing like the negotiation of a settlement agreement without such opportunity for public comment. The Supreme Court has confirmed that the requirement of decisionmaking by a compact entity involves a different sort of "political accountability;"

"An interstate compact, by its very nature, shifts a part of a authority to another state or states, or to the agency the several states jointly create to run the compact. Such an agency under the control of special interests or gubernatorially appointed representatives is two or more steps removed from popular control, or even of control by a local government."

Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 42 (1994) (quoting M. Ridgeway, *Interstate Compacts: A Question of Federalism* 300 (1971)). Whether or not the Compact Commission could approve the Amended Settlement Agreement,² federal law as set forth in P.L. 88-222 requires at least that the Compact Commission exercise its authority on that question before decisions concerning the Klamath River Basin within the purview of the Compact Commission may proceed.

Congress has expressly declined to endorse the dam removal plan, which is directly contrary to the Congressional interest in "efficient use of the available power head" adopted in P.L. 88-222. Congressional consent to the Amended Settlement

² It is SCWUA's view that (1) Article IV of the Compact would require express Congressional approval for any dam removal on the Klamath River, because dam removal is so inimical to the Compact's purposes as adopted by Congress; and (2) the actions of certain federal agencies in requiring uneconomic, arbitrary and capricious fish passage measures violated federal law.

Agreement cannot be obtained as a matter of federal law, without Compact Commission review of the anti-development efforts represented by that Amended Settlement Agreement, including approval of the KRRC as the entity to engage in that wasteful and destructive effort.

As set forth in the accompanying Declaration of Richard Marshall and Bob Rice, the Compact Commission has never taken any action with respect to the Amended Settlement Agreement, dam removal, or the KRRC. Rather, the States of California and Oregon (along with other parties) have evaded the requirements of P.L. 88-222 for public decisionmaking by the Compact, and have instead entered into the Amended Settlement Agreement, which removes the most significant resource development decisions in the Klamath River Basin from Compact control.

Pursuant to 18 C.F.R. § 9.2, each application for approval of transfer must “set forth in appropriate detail the qualifications of the transferee to hold such license . . .”. Unless the Compact Commission takes action, neither KRRC nor any other entity can possibly qualify as the transferee of any license.³ For FERC to take action in furtherance of the Amended Settlement Agreement before the requisite Congressional consent would violate P.L. 88-222 and the Compact Clause.

Put another way, for FERC to award the license to the KRRC, when the Compact Commission has not considered the joint state action represented by the KRRC, would invade the jurisdiction of the Compact Commission. *Cf. American Bankers Ass'n v. SEC*, 804 F.2d 739, 755 (D.C. Cir. 1986). At the least, as a matter of comity, FERC should

³ Section 3 of the KRRC Articles of Incorporation also states that the Board of Directors shall not engage in any activities that are unlawful under applicable Federal and or State laws. Action by KRRC absent Compact approval is unlawful as a matter of federal law.

defer action unless and until the Compact Commission acts to approve or authorize the Amended Settlement Agreement and plans of KRRC.

Conclusion

For the foregoing reasons, FERC should dismiss the transfer proceedings.

Dated: April 24, 2017.

Respectfully submitted,

/s/ James L. Buchal

James L. Buchal, CA Bar No. 258128

Murphy & Buchal LLP

3425 SE Yamhill Street, Suite 100

Portland, OR 97214

Phone: 503-227-1011

Fax: 503-319-8200

E-mail: jbuchal@mbllp.com

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Oregon. I am over 18 years of age and not a party to this action. My business address is 3425 S.E. Yamhill Street, Suite 100, Portland, OR 97214.

I certify that on April 24, 2018, the foregoing Motion to Dismiss will be electronically mailed to all parties enrolled to receive such notice. I further certify that I transmitted by First Class mail the foregoing Motion to Dismiss to those parties not enrolled for such electronic service as reflected on the Service List for the above captioned matters.

/s/ Carole Caldwell
Carole A. Caldwell