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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

TRACEY LISKEY, SUSAN LISKEY, ED
BAIR, and GREG CARLETON,

Petitioners,

v.

KLAMATH COUNTY BOARD OF
COMMISSIONERS,

Respondents.

Case No.

**PETITION FOR DIFFERENT
BALLOT TITLE**

Petitioners allege:

1.

Petitioners are electors of Klamath County.

2.

Respondent is the governing body of Klamath County.

3.

On or about August 16, 2016, Respondent filed a ballot title with the County Clerk. A true and accurate copy of ballot title is attached as Exhibit 1.

4.

Petitioners are dissatisfied with the ballot title. The ballot title is insufficient, not concise, or unfair for the following reasons:

a. The caption does not reasonably identify the subject of the ballot as required by ORS 250.035(1)(a) because:

(i) The subject of the measure is not and cannot be simply "dam removal"

1 because the removal of dams is occurring only in the context of the Klamath Hydroelectric
2 Settlement Agreement (“KHSA”), a specific agreement with specific terms that PacifiCorp has
3 entered with the states of Oregon and California, the United States, certain tribes, and other
4 parties, and which the Oregon Public Utility Commission has approved.

5 (ii) The caption refers only to the removal of “dam[s]” on the Klamath River,
6 when, according to the question and summary, the measure applies only to four hydroelectric
7 dams, and there are more dams on the Klamath River than the four hydroelectric dams.

8 b. The question does not plainly phrase the chief purpose of the ballot as required by
9 ORS 250.035(1)(b) because the purpose of the ballot cannot be limited to seeking public opinion
10 on a single term in an integrated agreement the terms of which are inextricably interconnected.

11 c. The summary does not adequately summarize the ballot and its major effect as
12 required by ORS 250.035(1)(c) for the same reasons that the question does not plainly phrase the
13 chief purpose of the ballot. In addition:

14 (i) The summary is inaccurate in the following respects:

15 (a) “Pacific Corp” is not the name of the entity that owns and operates
16 certain dams on the Klamath River in southern Oregon and northern California; the name of the
17 entity is PacifiCorp.

18 (b) PacifiCorp did not build the dams; PacifiCorp was formed as an
19 entity in 1984, more than 20 years after the most recent hydroelectric dam on the Klamath River
20 was commissioned.

21 (c) PacifiCorp is not “proposing to remove the dams.” PacifiCorp has
22 entered into an agreement that obliges PacifiCorp to convey the dams to a third party, and that
23 third party has agreed to remove the dams only under the specified terms of the KHSA. In
24 addition, dam removal cannot occur without the approval of the Federal Energy Regulatory
25 Commission and federal and state permitting agencies. The summary is factually incorrect
26 because PacifiCorp does not make the determination of whether to remove the dams within the

1 KHSA, and absent the KHSA there is no proposal that would result in the removal of dams.

2 (d) PacifiCorp is not conveying the dams to a third party or declining
3 to relicense the dams because of the “expense of upgrading the dams to relicense them.”

4 PacifiCorp entered into the KHSA because the outcomes in the agreements present less risk to
5 PacifiCorp’s customers compared to the uncapped costs and risks of relicensing the dams the
6 KHSA covers—a decision with which the Oregon Public Utility Commission agreed.

7 (ii) The summary is not fair because the clause “[r]ather than go through the
8 expense of upgrading the dams” is not neutral; instead, the clause conveys a value judgment and
9 inaccurately portrays the motivations of PacifiCorp and the other KHSA signatories.

10 (iii) The summary is insufficient and unfair because the summary:

11 (a) States dams are “due for relicensing.” “Due for” indicates an
12 action required or necessary to be done. FERC is holding the relicensing of the Klamath Project
13 in abeyance pending implementation of the KHSA. During that time period, the project will be
14 operated pursuant to annual licenses issued by FERC. So under present circumstances, the
15 statement is inaccurate and unfairly slanted to achieve a result.

16 (b) Ascribes motives for decisions, such as that PacifiCorp “and
17 others” would prefer to remove dams “than go through the expense of upgrading the dams.”
18 Ascribing motives to individuals and organizations other than the Board cannot be achieved
19 completely or accurately, and, therefore, sufficiently or fairly, because different individuals and
20 organizations had different motives for entering into the KHSA.

21 (c) The motive ascribed to PacifiCorp is inaccurate because it is not
22 limited to avoiding “the expense of upgrading the dams.” PacifiCorp has agreed to the terms of
23 the KHSA because, as the Oregon Public Utility Commission found, fulfillment of the KHSA
24 will cap costs and minimize risks for PacifiCorp’s electricity customers as compared to the
25 unknown and uncapped costs and risks of relicensing.

26 (d) Lists selected arguments the Board considers to be the arguments

1 of opponents and proponents of dam removal. The lists of arguments are incomplete, and by
2 listing some arguments and not others and listing arguments in a particular order, the summary
3 makes value judgments for voters about which arguments voters should consider when
4 evaluating the measure.

5 (e) Lists the opposition viewpoint before the proponent viewpoint, the
6 opposite of the traditional method for conveying information about a measure.

7 (f) Refers to diminishing property tax revenues without explaining
8 that diminished revenues, if they occur, will be the result of the removal of only one dam, not the
9 four dams to which the question refers.

10 (iv) The summary is insufficient because the summary does not inform voters
11 that, as a matter of law, the result of the vote will not control Respondent's future actions.

12 5.

13 This Court should certify a ballot title that reads:

14 **Caption:** Advisory Vote on Klamath Hydroelectric
15 Settlement Agreement.

16 **Question:** Do you support the Klamath Hydroelectric
17 Settlement Agreement?

18 **Summary:** PacifiCorp, a private company, owns and operates a
19 series of dams on the Klamath River; six are used to generate
20 electricity. Under the Klamath Hydroelectric Settlement
21 Agreement between PacifiCorp, the States of Oregon and
22 California, the United States, certain tribes, and other parties, four
23 of the dams may be transferred to a private entity, which would
24 remove them. Three of those dams are in Siskiyou County,
25 California, and one dam is in Klamath County, Oregon.

26 PacifiCorp determined and the Oregon Public Utility Commission
agreed that the settlement provides less cost and risk to its
electricity customers than the uncapped costs and risks of
relicensing the dams, including potential environmental upgrades.
The Federal Energy Regulatory Commission must approve the
transfer and removal plan. PacifiCorp will continue to operate the
dams for the benefit of its customers until they are removed.

1 A yes vote advises the Klamath County Commissioners to support
2 the Agreement. A no vote advises the Commissioners to oppose
3 the Agreement. The advisory vote does not require or preclude
4 any future action by the County.

5 WHEREFORE, Petitioners pray for a judgment as follows:

- 6 1. Declaring the ballot title to be insufficient, not concise, and unfair, and not
7 conforming to the requirements of ORS 250.035.
- 8 2. Certifying to the County Clerk a measure title that conforms to the requirements
9 of ORS 250.035 as set forth in paragraph 5 above.
- 10 3. Awarding Petitioners their costs and disbursements incurred herein.
- 11 4. Awarding any other relief the Court considers just and equitable.

12 DATED this 25th day of August, 2016.

13 DAVIS WRIGHT TREMAINE LLP

14 By 
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19 Attorneys for Petitioners Tracey Liskey, Susan
20 Liskey, Ed Bair, and Greg Carleton

NOTICE OF RECEIPT OF BALLOT TITLE

Notice is hereby given that the following Ballot Title has been filed with the County Clerk of Klamath County on August 16, 2016:

Caption (10):

Advisory vote regarding Klamath River Dam Removal

Question (20):

Are you in favor of removing the four hydroelectric dams on the Klamath River?

Summary (175):

Between 1903 and 1962, Pacific Corp built four hydroelectric dams on the Klamath River. Three dams are in Siskiyou County, California; one is in Klamath County. The dams are due for relicensing through the Federal Energy Regulatory Commission (FERC) process. Rather than go through the expense of upgrading the dams to relicense them, Pacific Corp and others are proposing to remove the dams.

Opponents of dam removal argue it will diminish property tax revenue to Klamath County tax districts, harm the environment by releasing sediment behind the dams, remove a fish hatchery, reduce electricity production, and result in no positive benefits.

Supporters of dam removal argue it will improve water quality, open up spawning habitat for fish, and improve the health of the watershed. They also argue that the dams are a private property matter and a business decision for Pacific Corp.

A no vote advises Klamath County Commissioners to oppose removal of the dams on the Klamath River. A yes vote advises Klamath County Commissioners to support removal of the dams on the Klamath River.

Per ORS 250.195 an elector who is dissatisfied with this ballot title may file a petition for review in the Klamath County Circuit Court no later than August 25, 2016, at 5:00 p.m.

Submitted by:
Linda Smith, Klamath County Clerk