



# Oregon

Kate Brown, Governor

November 3, 2017

## **DELIVERY VIA ELECTRONIC FILING**

The Honorable Kimberly D. Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**RE: COMMENTS OF STATE OF OREGON IN SUPPORT OF APPROVAL  
OF JOINT APPLICATION FOR LICENSE AMENDMENT AND  
LICENSE TRANSFER FOR  
THE LOWER KLAMATH PROJECT (P-2082-062; P-14803-000)**

Dear Madam Secretary:

The State of Oregon, by and through its Departments of Environmental Quality, Fish and Wildlife, and Water Resources, writes to express its support for Federal Energy Regulatory Commission (Commission) approval of the Joint Application for License Amendment and License Transfer for the Lower Klamath Project from PacifiCorp to the Klamath River Renewal Corporation (KRRC). The Commission's approval will advance restoration of salmonid fisheries and address water management, water quality, and economic issues in the region in a manner that will end a century of conflicts in the Klamath Basin.

Oregon is a party to the Klamath Hydroelectric Settlement Agreement, as amended April 6, 2016 and November 30, 2016 (KHSA) and we encourage FERC to recognize that the license transfer is in the public interest. The Oregon Public Utilities Commission (OPUC) has determined that it is in the best interest of PacifiCorp customers to proceed with the removal of these facilities, and the Oregon legislature also has found that removal is in the public interest. Further, our agencies participated in the development of the original KHSA, and we each reaffirmed our support for the KHSA and the financial, social, and ecological benefits of the project by signing the amended agreement in 2016. We continue to strongly support the transfer of these facilities to the KRRC as a crucial move in a larger effort to attain long-term sustainability for tribes, fisheries, and agricultural water users throughout the Klamath Basin.

We note that the Commission has recently requested that KRRC verify the accuracy of cost estimates for dam removal activities as well as the sufficiency of insurance requirements set forth in the KHSA. The State of Oregon recognizes that the Commission has a duty to ensure that license transfer is in the public interest, and we support your efforts to protect our citizenry from potential adverse effects of dam removal. Significantly though, pursuant to the KHSA Oregon has played a concomitant role in assessing the sufficiency of funding and risk protection for this complex

requirements set forth in the KHSA. The State of Oregon recognizes that the Commission has a duty to ensure that license transfer is in the public interest, and we support your efforts to protect our citizenry from potential adverse effects of dam removal. Significantly though, pursuant to the KHSA Oregon has played a concomitant role in assessing the sufficiency of funding and risk protection for this complex undertaking. Specifically, the KRRC cannot move forward with its surrender efforts until the States are "assured that sufficient funding is available to carry out Facilities Removal," see KHSA, at § 7.1.4.D, and that KRRC has obtained the assistance of a nationally established insurance advisor to design and implement sufficient insurance protection. *See id.* at § 7.1.4.B and Appendix L. Thus, we request that the Commission remain cognizant that substantial due diligence was exercised in both 2010 and 2016 to determine whether the identified financial resources will be sufficient, and that Oregon will continue to carry out its important oversight role in the surrender proceeding.

The Oregon Department of Fish and Wildlife (ODFW), in conjunction with the Klamath Tribes, is currently in the process of preparing an anadromous reintroduction implementation plan for anadromous fish into the Oregon portions of the Klamath River and its tributaries and ODFW sees removal of PacifiCorp's four mainstem Klamath dams as a major step in the restoration of both resident and anadromous fish in the Klamath Basin. Accordingly, ODFW has been actively working with PacifiCorp and KRRC consultants to facilitate the necessary information to support fish habitat in the Klamath River should the Commission approve removal of the J.C. Boyle, Copco 1, Copco 2, and Iron Gate dams.

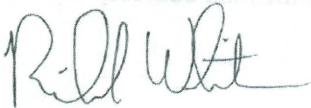
The Oregon Department of Environmental Quality (ODEQ) has received an application for water quality certification for the proposed license surrender and associated dam removal work. ODEQ is coordinating closely with the State of California in its review of the water quality effects of such removal. The Klamath River is water quality limited for nutrients. ODEQ recently completed a Total Maximum Daily Load (TMDL) for the Klamath basin, Upper Klamath and Lost River Subbasins TMDL, and associated Water Quality Management Plans. Based on TMDL analysis, the operation of the facility is altering the hydrology of the Klamath River with resulting decreases to levels of dissolved oxygen and increases to water temperature in the pools upstream of both Keno dam and J.C. Boyle dam in the Klamath River. Surrender of the license and removal of J.C. Boyle would eliminate impacts from J.C. Boyle. A TMDL implementation plan would be required for continued operation of Keno dam by the Bureau of Reclamation.

The Klamath River between the J.C. Boyle powerhouse and the Oregon – California border has been designated a State Scenic Waterway under Oregon Revised Statute 390.826. The Oregon Water Resources Commission is charged with setting the flow levels to protect the scenic values. Recreation, fish and wildlife uses are considered the best and highest uses of waters within a scenic waterway. Removal of J.C. Boyle dam will greatly reduce the daily fluctuation in rate of flow within this designated waterway. Reducing daily flow fluctuations will enhance scenic values by improving the free-flowing character of the river making it safer for recreation activities such as swimming, boating, and fishing.

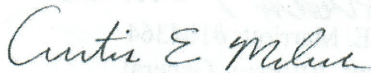
Additionally, the KRRC has hired Dr. Mark Bransom to serve as their executive director and he brings many years of experience in planning, engineering, and construction contracting on water resources and environmental management. KRRC has also procured professional services to complete appropriate environmental and engineering assessments, and related due diligence for the subsequent dam removals. The KRRC is meeting regularly and is conducting outreach and engagement with communities in the basin. Federal executive branch officials including the Acting Director of the Bureau of Reclamation have attended KRRC board meetings and consulted with the KRRC staff on the project. In short, KRRC has proven since its inception that it has the legal, technical, and financial capacity to hold the Project license throughout the planning, removal, and mitigation stages.

We urge the Commission to act expeditiously to approve transfer of the Lower Klamath Project to the KRRC, because approval of license transfer serves the public interest due to the considerable benefits that will accrue to state citizenry, Indian tribes, fishing communities, ecological resources, PacifiCorp electricity customers, and public health.

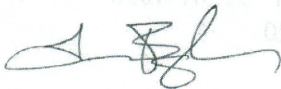
Respectfully submitted,



Richard Whitman  
Director  
Oregon Department of Environmental Quality



Curt Melcher  
Director  
Oregon Department of Fish and Wildlife

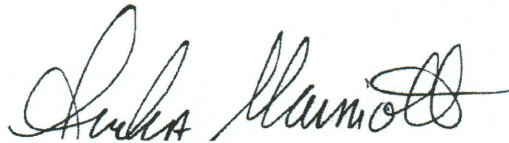


Tom Byler  
Director  
Oregon Department of Water Resources

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing COMMENTS OF STATE OF OREGON IN SUPPORT OF APPROVAL OF JOINT APPLICATION FOR LICENSE AMENDMENT AND LICENSE TRANSFER FOR THE LOWER KLAMATH PROJECT (P-2082-062 ; P-14803-000) upon the Joint Applicants, PacifiCorp and the Klamath River Renewal Corporation, and to those listed on the official service list in this proceeding as of November 1, 2017, by electronic mail and for those parties without an electronic mail address, by U.S. mail, first class postage prepaid.

Date: November 3, 2017



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