

December 6, 2022 Staff Presentation Notes to Siskiyou County Board of Supervisors – Lower Klamath Decommissioning Project - Update

- In light of recent developments related to the Lower Klamath Decommissioning Project, County staff is providing this update to the Board, the public, and other interested parties. This update is broken up into several sections, similar to the staff report provided as part of this agenda item.
1. Introduction and Historical Background:
 - Siskiyou County is home to three of the four lower Klamath River dams that regional power provider, PacifiCorp, and the Klamath River Renewal Corporation (KRRC), are requesting that the Federal Energy Regulatory Commission (FERC) transfer to KRRC for removal and decommissioning.
 - o In the early 2000s, PacifiCorp began proceedings before FERC to relicense its operation of its Klamath River facilities. In 2007, FERC issued a Final Environmental Impact Statement that included mitigation measures requiring the installation of new fish passage facilities or the consideration of dam removal. In 2010, PacifiCorp, in coordination with other interested parties, executed the Klamath Hydroelectric Settlement Agreement, which established a process for facilities removal outside of the Federal Power Act. This framework for dam removal was dependent on Congressional legislation, which legislation was never passed.
 - o In early 2016, some parties to the 2010 KHSAs entered into the Amended KHSAs, which did not rely on congressional approval for dam removal, and in September 2016, KRRC filed two applications with FERC, one application filed jointly with PacifiCorp to transfer ownership of the four Lower Klamath River dams to KRRC and the second, to decommission and remove the dams.
 - o In July 2020, FERC issued a ruling on the Project, approving the transfer of the four Lower Klamath River dams to KRRC, provided that PacifiCorp remained as co-licensee. In November 2020, Governor Newsom and Oregon Governor Kate Brown, announced an agreement to provide additional resources and support to advance dam removal and entered a Memorandum of Agreement to sign on as co-licensees with KRRC for the transfer of the dams.
 - o Since this time the State has issued the Final EIR and FERC has issued the Final EIS on the project.
 - o The County, through its Consultants and outside legal representation, has provided written comments on numerous documents related to the Project, including KRRC's Definite Plan, Environmental Impact Report, and the Environmental Impact Statement.
 - o On November 17, 2022, FERC voted unanimously to issue an Order Modifying and Approving Surrender License and Removal of Project Facilities Order for the Lower Klamath Project. This order, through the Federal Power Act, also serves as the Record of Decision for the Final EIS.
 - o The Order allows the dams' private operator to surrender its operating license and allows for KRRC and its contractors to proceed with dam removal.
 2. County Advocacy in the FERC Proceedings:
 - The County has taken certain actions to mitigate impacts related to the Project and to protect County constituents and property.

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- In 2021, the County entered into a Memorandum of Understanding with KRRC related to roads and bridges that will be utilized by the Project Proponents and their contractors during dam removal.
 - To address protection for irrigators in the Klamath Watershed, staff and outside counsel are meeting with the State, including the Secretary of the Department of Natural Resources and the Director of Fish and Wildlife.
 - On November 30th, the California Department of Fish and Wildlife announced the availability of new grant funding. \$10 million has been dedicated to the Scott River and its tributaries, and \$10 million has been dedicated to the Shasta River and its tributaries. Staff is currently working with the Department on a date to have the Director of Fish and Wildlife make a presentation to the Board during one of their Board meetings.
 - The County is working with the State and PacifiCorp to finalize a Memorandum of Understanding for PacifiCorp to fund a contracted Project Manager to perform project management activities related to the Project. This would include assistance in the issuance and administration of county permits, organizing and planning various coordination, drafting of required documents, preparing reports, organizing and evaluating the Project information, and coordination regarding the Local Impact Mitigation Fund, among other activities. County staff will be bringing this MOU to the Board on December 13th.
 - County staff is currently working with KRRC and the State regarding local permitting and licensing for the project that falls under the County's jurisdiction. FERC did not make local permitting a required condition of their Order, but encouraged KRRC to endeavor to comply with local ordinances and permits. However, to the extent that local permitting requirements make compliance with FERC's Order impossible or unduly difficult, FERC concluded that such requirements are preempted.
3. Appeal and Litigation Questions:
- Members of the public have inquired about appeal and litigation process against the project.
 - Persons and entities in opposition to the project now have the opportunity to review the order and assess whether there is any value in exhausting their administrative remedies before FERC, for the County's part it has already expended over one million dollars in opposition efforts against this project.
 - Members of the public have also inquired about County litigation against the project. The County's outside counsel has estimated that should the County seek to mount a NEPA challenge to FERC's decision in court, the County's legal costs could range from approximately \$550,000 to upwards of \$1 million dollars depending on how the litigation proceeds. As an additional consideration, a favorable ruling in such high-cost litigation may delay the project, but it would not likely stop the Project, rather FERC may need to merely remedy a procedural issue.
4. Continued Dialogue and Transparency:

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- The County will continue to explore various options to try to address any harms that may result from this Project and will bring an MOU to the Board on December 13th for the Project Manager contracted position. The County will also continue to track the decommissioning process and will keep County constituents and the Board apprised of any progress.
- The County has recently developed an email address for members of the public to submit any questions, comments, and concerns. This email address is lkinfo@co.siskiyou.ca.us
- The County will also be developing a webpage on the County's website where members of the public can keep up to date regarding the County's activities related to the Project
- Lastly, the Board of Supervisors will be holding monthly special meetings specific to the Project. The scheduled dates for these meetings are included on Attachment 8 of the staff report, and will be added to the webpage that will be created.