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Refer To File # 290380-0004

**VIA EMAIL**

July 8, 2021

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Re: Klamath River Dam Removal Project, 2003-27985

To Whom It May Concern:

We are outside counsel to Siskiyou County, and we are writing with respect to the application submitted by the Klamath River Renewal Corporation for a permit under section 404 of the Clean Water Act for “the placement of approximately 212,000 cubic yards of fill (permanent and/or temporary) within 20 acres of jurisdictional waters in the Klamath River.” San Francisco District Public Notice, Klamath River Dam Removal Project p. 1 (June 7, 2021) (hereinafter “Public Notice”). The County has significant, unaddressed concerns regarding the adverse impacts of the proposed Klamath River Dam Removal Project (Project) on waters of the United States and other biotic and abiotic components of the Klamath River and its watershed. The County intends to provide more detailed comments on the Draft Environmental Impact Statement for the proposed Project when it is made available by the Federal Energy Regulatory Commission (FERC) and the Corps. In the meantime, we respectfully request that the U.S. Army Corps of Engineers (Corps) consider the following critical comments on the Renewal Corporation’s application.

First, the Corps must assure that the project description is detailed enough to facilitate all required analyses and evaluations, that the project fulfills an independent purpose and need, and that the project satisfied a public interest review. The project purposes set forth by the applicant and described by the Corps in the Public Notice (“to provide volitional fish passage on the mainstem Klamath River” and “to remove dam associated infrastructure along approximately 41 miles of main stem Klamath River to restore volitional fish passage”) are too narrow to allow the Corps to consider a reasonable and appropriate range of alternatives consistent with its obligations under section 404(b)(1), 33 U.S.C. § 1344(b)(1). Even if the Renewal Corporation and the Corps 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.”

If the Renewal Corporation and Corps stick with the parochial project description described in the Public Notice, the outcome is pre-determined because no option other than dam removal fulfills that objective. But this singular focus on volitional fish passage (i) disregards the certain, adverse, near-term effects on salmon, steelhead, and other fish native to the Klamath River that will be caused by dam removal and (ii) is based on the false premises that long-term benefits for salmon and steelhead are certain or near certain (for contrary views see the reports of independent experts, Daniel Goodman et al., *Scientific Assessment of Two Dam Removal Alternatives on Chinook Salmon* (2011); Thomas Dunne et al., *Scientific Assessment of Two Dam Removal Alternatives on Coho Salmon and Steelhead* (2011)) and that passage upstream was precluded historically by one or more natural barriers.<sup>1</sup>

Second, the Corps must assure that the project design demonstrates, as a first priority, that impacts to waters of the United States are avoided and minimized to the maximum extent practicable before mitigation is considered and evaluated. *Memorandum of Agreement Between The Department of the Army and The Environmental Protection Agency on the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines* (1990). The Renewal Corporation has almost certainly underestimated the quantity of jurisdictional waters that will be impacted by the proposed Project. The Renewal Corporation and Corps should plainly disclose the method used to estimate the upstream impacts associated with loss of riparian, wetland, and open water areas and downstream impacts associated with fill of riparian, wetland, and open water areas stemming from massive quantities of sediment, including model selection and model results. Neither the Public Notice nor the Supplemental Project Description available on the Corps website ([https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/publicnotices/NWP-2020-25\\_figures.pdf](https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/publicnotices/NWP-2020-25_figures.pdf)) include maps that display the impact areas and mitigation or tables that quantify the impacts and mitigation by type. And, to our knowledge, the Renewal Corporation has not made available its jurisdictional delineation for the proposed Project either as an attachment to the Definite Plan submitted to FERC or on its public website.

Third, the Corps must not issue a permit for a discharge of dredged or fill material “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” 40 C.F.R. § 230.10(a). The alternative that survives this analysis is the least environmentally damaging practicable alternative (LEDPA). For purposes of determining the LEDPA, an alternative is “practicable” if “it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” *Id.* § 230.10(a)(2); *see also id.* § 230.3(l). As explained above, if the Corps allows the Renewal Corporation to push ahead with an unduly narrow project purpose then the

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<sup>1</sup> The two reports authored by panels of independent scientific reviewers represented the best available scientific information regarding the effects of dam removal on the lower Klamath River on coho and chinook salmon at the time they were finalized in 2011. But those reports are a decade old at this point and the Renewal Corporation has to date refused to work with interested stakeholders to impanel similarly qualified expert panels to assess the effects of dam removal on the two salmonids based on contemporary scientific information. As a consequence, the reports remain the most authoritative analyses of the subject matter and call into question predictions made by the Renewal Corporation and its allies.

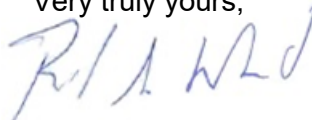
alternatives analysis and identification of a LEDPA are unlikely to fulfill the spirit and letter of section 404, 33 U.S.C. 1344, and its implementing regulations including 40 C.F.R. pt. 230.

Fourth, the Public Notice includes a section on “other local approvals,” Public Notice, p. 5, but fails to identify County permitting requirements applicable to the proposed Project, for example, if the Renewal Corporation intends to establish one or more solid waste disposal sites within the County or construct temporary or permanent structures including residential, commercial, and/or residential structures on site. The Corps should require the Renewal Corporation to disclose a comprehensive list of approvals applicable to the proposed Project rather than engaging in selective disclosure.

Finally, the Corps should be aware of the devastating effects that the proposed Project will have on the critically endangered Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*). These species, which are protected under the Endangered Species Act, are present in the lower Klamath reservoirs and are not expected to survive in riverine conditions. Unfortunately, while the County has consistently and publicly urged the Renewal Corporation and the State of California to conduct rigorous monitoring for the species in the reservoirs to determine the age structure and status of the populations, to our knowledge minimal surveying has been completed. In addition, the Renewal Corporation’s plan to address the extirpation of the species in the reservoirs – to harvest and relocate them – will result on losses during the harvest and relocation process and is characterized by a lack of specificity including regarding the availability of water bodies capable of supporting the suckers over time. The Biological Assessment for the proposed Project indicates that only 100 suckers can be translocated to the Klamath National Fish Hatchery and the remaining fish (up to 3000) would be translocated to Tule Lake even while recognizing that the lake is maintained by agricultural return flow and is as a consequence poor quality habitat in addition to the fact that the lake is periodically drawn down. Klamath River Renewal Corporation, Lower Klamath Project Biological Assessment (March 2021).

We urge the Corps to give careful consideration to these comments and act consistent with its obligations under the Clean Water Act and its implementing regulations, as well as section 7(a)(1) and 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(1), (2).

Very truly yours,



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