



Talking Waters

Siskiyou County Water Users Association

“SAVE THE DAMS SAVE THE SALMON”

347 North Main Street, Yreka CA 96097

Issue 10

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Officers: **President:** Richard Marshall richard@marshall-ranch.com 468-4204 ; **Treasurer/Secretary** Kathy Bergeron bergeron@inreach.com 459-5266 **Board Members:** Rex Cozzalio, Jerry Bacigalupi, Louise Gliatto, Sam Jackson, Richard Marshall, Kathy Bergeron, Charlie Blackburn, Leo Bergeron **Oregon:** Joe Watkins

Consultants: Bob Rice, Susan Miller, Tim Hofseth, ATTY. James Buchal o **Emeritus Member:** Mark Baird

The Board of Directors and its officers serve as volunteers with no remuneration.

MAJOR ISSUES

- I. **FERC**—PacifiCorp has together with KRRC filed with the FERC to split the dams retained by PacifiCorp from the dams intended to be destroyed into two licenses. This would allow decisions to be made on the dams to be removed *without a full* NEPA EIR/ EIS prior to transferring the license to KRRC. Thereafter presumably KRRC would be free to destroy the hydro facilities as they have no intention nor are they qualified to operate the dams.

The KRRC recently hired Dave Muerer, formerly assistant to Senator Ted Gaines, to be their mouthpiece in promoting the destruction of the hydro facilities in accordance with the flawed Amended KHSA. Mr. Muerer is only the second employee for the KRRC. The KRRC has hired a Canadian Corporation AECON as the engineering consultant to carry out the process of destruction. AECON is currently being acquired, according to their information site, by a Chinese Conglomerate CCCCI. An important unanswered issue is the ability of KRRC to actually obtain insurance to cover potential damage to the environment. Because of the size of the potential damage, perhaps in the billions of dollars, it would take a substantial consortium of insurance companies to cover the damages.

This past week however, in an obviously major mistake, PacifiCorp filed a Request to FERC to Stop the transfer as it would result in a substantial loss of funds to restructure at this time without having approval of KRRC by FERC. As part of the PacifiCorp request they apparently accuse the FERC of not acting in good faith with the FERC's own guidelines as they made the change without according to PacifiCorp requesting permission from PacifiCorp. Reading between the lines it looks like PacifiCorp feels free to tell the FERC how to run its business. Everyone should take note of this infringement by PacifiCorp on the FERC authority which supposedly represents the public in this matter.

You may recall from the last installment that PacifiCorp filed a Petition with the commission to simultaneously transfer the dams and license to the Klamath River Renewal Corp (KRRC) and also filed with the CPUC (Public Utilities Commission) to transfer the trust assets (surcharge) funds of approx. \$200 Million plus another \$250 Million from the California Prop 1 (water bond funds) to the KRRC a non profit 501 c3 California Corporation instituted for the express purpose of taking over and destroying the four hydro electric facilities, thereby removing carbon free, clean energy production facilities, flood control, and water storage, and fish hatchery facility, to presumably raise the production of Salmon for the Pacific Coast Fisherman.

The PacifiCorp organization apparently has no regard for

the ratepayers or the County of Siskiyou or Klamath County or others who have all indicated in local voting that they are adamantly opposed to the removal of these dams. Warren Buffet owner of the PacifiCorp facilities has substantial financial interests in Mid West energy which will benefit by the removal of the Klamath Dams.

Siskiyou Water Users has filed its objection with the FERC on this issue bringing to the attention of the FERC the public position of Siskiyou County against the Dam Destruction process, the scientific manipulation of data by the DOI, the dangers inherent in the proposed largest dam removal in history, the inappropriateness of turning over the PacifiCorp assets as well as the \$450 Million dollars of tax payer and ratepayer funds to the KRRC, a political group with no assets and no experience. The agreement (KHSA) proposes to absolve PacifiCorp, the States of Oregon and California and numerous Oregon and California and NGO groups, tribes etc. of liability for what could be an ecological disaster to the Klamath of enormous consequences.

Further we have raised the issue of the legitimacy of Oregon and California entering into an agreement in apparent disregard of the US Constitution, Article I Clause 3 which holds that two states to enter into an agreement of this nature need to be approved by Congress. This very concept resulted in the formation of the Klamath Compact to govern the use of the Klamath River waters.

II **CPUC** — As mentioned previously the CPUC has been Petitioned by PacifiCorp to accept the amended KHSA agreement which authorizes the formation of the KRRC and allows the transfer of the facilities and the Trust Funds to KRRC. They have been joined by the DOI and the Secretary of Commerce and California Dept. of Natural Resources in pushing the CPUC to accept the Petition. Meanwhile both the Siskiyou Water Users and the County of Siskiyou County Counsel have independently submitted challenges to the CPUC. In an Administrative Law Judge decision the CPUC has evidenced its concerns regarding the capability of the KRRC.

III. **EPA — Where is the EPA**

One of the issues that should be of great concern is the lack of EPA involvement in this process. If the



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hydro facilities are destroyed per the KHSA, severe ecological damage will result to endangered species both above and below the Dams. Yet the EPA is noticeably absent in the process of evaluating this potential manmade disaster. The reports coming out of the Elwha Dam and Condit Dams are now showing just what can happen to the water quality, the fish and the flow of the river not to mention the amount of debris left in the river as a result. The Elwha was many hundreds of times smaller in size and the concomitant release of sediments and debris into the water.

The destruction of the Klamath Hydro Facilities will be the largest removal project in the history of the United States yet the project has not yet received the proper EIR study of the seven reaches of the River. Because of this evident effort to not look at the full amount of damage that will result, we at SCWUA remind everyone that ***this is not about the fish or the water; this is about politics and money. Historical records show that the Coho Salmon was planted in the 1890's and has been replanted several times since. It is not native to the Klamath River.***

IV. **COPCO** — Siskiyou County Citizens living in and around the COPCO Lake area have been affected by the proposed removal of Klamath Dams for some time but recently this came to a head with the letter sent to many of them by KRRC regarding the taking of a portion of their property rights namely their view and resultant substantial loss of property value. Many of these citizens have a substantial part of their retirement funds tied up in the properties. SCWUA conducted a meeting in COPCO with the support of the community association to review the letter from KRRC and share information regarding the inappropriate if not unlawful letter from KRRC. KRRC has no status at this point as the FERC has not reviewed and or agreed to put KRRC in the position of taking over from PacifiCorp who remains to this date the party in the chain of title of the dams and who is liable for any and all damages resulting from the removal of the hydro facilities.

It was recommended that the association on behalf of the group retain the services of a qualified attorney to file an

inverse condemnation and damage suit against KRRC and PacifiCorp for their part in damaging the property values of the COPCO citizens without compensation being offered.

Presidents Message

SCWUA has retained the services of attorney James Buchal of Portland Oregon to file our Motion to Dismiss on the FERC in the matter of the request by PacifiCorp and KRRC to transfer the license to the hydroelectric dams. Our motion filed April 24, 2018 takes two positions both directed at the validity of FERC to continue the license transfer process based on the Amended KHSA Agreement. The first challenge is based on the US Constitution Article I Sect. 10 clause 3 which prevents two states entering into an agreement (compact) without obtaining Congressional approval. The second challenge is that the Klamath Compact Commission has not reviewed and approved the Amended KHSA and that the removal of the Hydro facilities as well as water quality and use of water for irrigation purposes is not in keeping with the water priorities outlined in the Compact. In fact the Commission has not had an official meeting for more than 8 years. The Compact is a Federal Statute and is "the law of the River". It came into being in 1957 after considerable negotiations between Oregon and California and was passed by both legislatures and by Congress.

The County of Siskiyou has also just filed with FERC a Request for Clarification or Order for FERC to prepare a EIR /EIS under NEPA rules to evaluate the entire proposed plan **prior to making any decision regarding the request of PacifiCorp and KRRC.**

Legal issues are never simple and will require considerable funding from many sources including those of you reading this newsletter. We need to have all committed individuals become members per the membership form attached and make a contribution to the economic well being of Siskiyou County and the adjoining Counties who will benefit by keeping the dams in place producing clean carbon free energy. Help SCWUA by donating today!! The form is included with this newsletter.

Thanking you in advance!!

Richard Marshall

Chairman Siskiyou Water Users.

REMEMBER: THERE IS NO PROVABLE HABITAT FOR THE COHO

SALMON ABOVE THE DAMS! IT IS NOT INDIGENOUS TO THE AREA.

Membership Application (enclosed)

Dues per year based on June 30 Fiscal Year

Associate Members: \$25.00

Gold Circle Members: \$1,500.00

Property Owner: \$50.00

Ranch Member 100AC or less: \$100.00

Ranch Members (100 AC or more): \$300.00

Send in application form in envelope provided. Thank you

Questions contact Kathy Bergeron, Treasurer 530-842-4400

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SCWUA ACCOMPLISHMENTS

2016-2017-2018

MAIN GOAL:

EDUCATE AND TAKE DEFINITIVE ACTION IN REGARD TO RETENTION OF THE KLAMATH DAMS. IF THE DAMS ARE DESTROYED THE TAKING OF WATER FROM THE SHASTA AND SCOTT RIVERS WILL BE NEXT. BEST DEFENCE THEREFOR FOR SISKIYOU COUNTY IS TO RETAIN THE DAMS AND TO RECOMMEND STEPS FOR CREATION OF A SISKIYOU EFFORT TO DEVELOP MORE SOURCES OF WATER.

2016 - 2017

CPUC

- FILED PETITION WITH CPUC REGARDING THE AMENDED KHSA QUESTIONING ITS LEGALITY, AND CHALLENGING AUTHORITY AND CAPABILITY OF KRRC TO CARRY OUT ITS MISSION. THE MATTER IS BEFORE THE JUDGE. WE ENCOURAGED THE COUNTY BOS TO FILE ALSO WHICH THEY DID AND A DECISION THAT WAS SUPPOSED TO BE A FOREGONE CONCLUSION BACK IN MARCH HAS BEEN DELAYED SIGNIFICANTLY. IMPORTANT BECAUSE THE CPUC HAS TO AUTHORIZE THE RELEASE OF APPROX \$450 MM IN FUNDS FROM CALIFORNIA IN ORDER FOR KRRC TO JUSTIFY TO THE FEDERAL ENERGY COMMISSION THAT IT IS CAPABLE AND PREPARED TO CARRY OUT THE AMENDED AGREEMENTS. AS PART OF OUR PETITION WE ARGUED THAT KRRC WAS NOT PREPARED TO FULFILL ITS MISSION. WE ALSO HAVE ARGUED THAT PACIFICORP SHOULD NEVER BE RELEASED FROM ITS LIABILITY FOR BIO REMEDIATION DAMAGES WHICH THEY ARE TRYING TO DO THROUGH THE AMENDED KHSA. WE POINTED OUT THAT ONLY APPROX 40% OF THE ORIGINAL SIGNERS OF THE KHSA HAD SIGNED THE AMENDED KHSA AND THAT WITHOUT THE KBRA THE EIR EIS IS OUT OF DATE AND INEFFECTIVE.
- SCWUA IS ALSO LISTED AS A PARTY IN THE CURRENT CPUC ANALYSIS AND ACTION REGARDING PACIFICORP RATES AND LACK OF REVIEW OF SAME BY CPUC THIS FURTHER INCLUDES THE BALANCE BETWEEN PRODUCING ASSETS BY PACIFICORP
- SCWUA ALSO FILED A FOIA ON COMMISSIONER RANDOLPH OF THE CPUC WHO WE FEEL HAS AN OBVIOUS CONFLICT OF INTEREST REGARDING DAM REMOVAL AND THEREFOR SHOULD NOT BE THE OVERSIGHT ON THE CPUC ALJ DECIDING THE ISSUE OF THE AMENDED KHSA
- SCWUA HAS ALSO FILED A FOIA WITH THE DEPT OF NATURAL RESOURCES WHERE RANDOLPH WAS GENERAL COUNSEL.

FERC

- SCWUA HAS FILED IN THE CASE OF THE FERC (FEDERAL ENERGY AND REGULATORY COMMISSION) REVIEW OF THE PACIFICORP AND KRRC JOINT REQUEST BEFORE THE COMMISSION TO ASSIGN THE LICENSE AND DAMS TO KRRC AND THEN TO ACCEPT THE REQUEST OF KRRC TO CANCEL THE LICENSE AND TO REMOVE THE DAMS. WE HAVE APPRISED THE FERC OF THE ISSUES SURROUNDING FORMATION OF KRRC AND QUESTIONED THE LEGALITY OF THE AMENDED KHSA. IN ADDITION WE HAVE QUESTIONED THE DOI EIR/EIS AS BEING BOTH OUT OF DATE AND POOR SCIENTIFIC JUSTIFICATION. WE HAVE NOTED FOR THE COMMISSION THAT PACIFICORP IS SEEKING TO ESCAPE POTENTIAL BIO REMEDIATION DAMAGES AND ECO SYSTEM DAMAGES. THAT SHOULD NOT BE ALLOWED TO HAPPEN. THE COUNTY OF SISKIYOU HAS ALSO FILED COMPLAINTS WITH THE COMMISSION. AS A RESULT OF OUR EFFORTS THE FERC HAS RECENTLY (END OF JUNE) REQUESTED PACIFICORP AND KRRC TO FILE ADDITIONAL CLARIFYING DOCUMENTS. SCWUA WILL BE RESPONDING TO ADDITIONAL INQUIRES ON THIS MATTER AND STAYING ON TOP OF THE CONTINUATION OF FERC ACTIVITIES.
- SCWUA WILL BE SUPPORTING EFFORTS TO ENSURE THAT THE EIR EIS USED BY FERC IN ANALYSIS IS A FULL NEPA DOCUMENT COVERING ALL REACHES OF THE RIVER. THIS WILL INCLUDE EFFORT TO BRING EPA INTO THE PICTURE WITH REGARD TO POTENTIAL SUPER FUND SITE CAUSED BY DAM REMOVAL AND ITS IMPACT ON THE LOWER REACHES OF THE KLAMATH WITH SPECIAL EMPHASIS ON SISKIYOU COUNTY DAMAGE.
- SCWUA WILL BE CONDUCTING EFFORTS TO MAKE CERTAIN THAT THE PACIFIC DECADELY OSCILLATION IS CONSIDERED IN THE ANALYSIS OF SALMON PRODUCTION VOLUMES.
- SCWUA IS PLANNING ON ATTENDING THE FUTURE HEARINGS CONDUCTED BY THE FERC IN THE PROCESS SO WE CAN SPEAK IN PERSON.
- SCWUA FILLED AS AND ACCEPTED AS INTERVENOR IN THE FERC PROJECT 2082

BOARD OF SUPERVISORS

- SCWUA HAS HAD THE OPPORTUNITY TO PLAY AN INFLUENTIAL ROLE IN THE BOARD ANALYZING VARIOUS ISSUES SURROUNDING THE ISSUE OF PROTECTING THE KLAMATH DAMS. IN PARTICULAR WE HAVE BEEN ABLE TO SUPPLY IMPORTANT AND TIMELY RESEARCH AND ASSIST IN GIVING DIRECTION TO THE LEGAL EFFORTS
- SCWUA HAS BEEN INSTRUMENTAL IN PROVIDING DOCUMENTATION REGARDING THE VALUE OF THE LATHROP PAPERS AND THEIR ROLE IN THE DEVELOPMENT OF THE KLAMATH COMPACT INCLUDING ANALYSIS OF VARIOUS IMPORTANT IMPACTS CONCERNING THE EARLY ANALYSIS OF THE SUPPLY OF WATER AND THE ROLE OF BULLETIN 83.
- SCWUA HAS UNCOVERED THE BASIC DOCUMENTS SURROUNDING THE GRANT OF 60,000 ACRE FEET THROUGH THE KLAMATH COMPACT.
- SCWUA HAS PROVIDED SUBSTANTIVE INFORMATION TO THE BOARD IN THEIR CONSIDERATION OF THE ROLE AND IMPORTANCE OF THE PDO.
- SCWUA HAS DEVELOPED AND INVESTIGATED THE ISSUES SURROUNDING THE FRANCHISE AGREEMENT WITH PACIFICORP. WE HAVE UNCOVERED THE POTENTIAL OF AN ADDITIONAL SOURCE OF FUNDING IN THAT EFFORT.
- SCWUA JOINED THE BOARD IN SUPPORTING AND ENCOURAGING THE NEW HEAD OF DOI, RYAN ZINKE TO MAKE A PERSONAL TRIP TO MEET WITH THE SISKIYOU BOARD AND CITIZENS IN REGARD TO THE RETENTION OF THE KLAMATH DAMS.
- SCWUA HAS CONDUCTED ANALYSIS AND LOCATIONAL AWARENESS OF THE ROLE OF ANCIENT REEFS IN THE KLAMATH RIVER BED.
- SCWUA HAS REVIEWED AND ENTERED INTO DISCUSSIONS WITH THE YUOK TRIBE IN EVALUATING THE REPORTS THAT THEY PREPARED AND DELIVERED TO THE BOARD. WE ALSO DELIVERED AN IN DEPTH STUDY OF THE YUOK CLAIMS TO THE BOS.

WATER BOARD SCOPING AND CLEAN WATER EIR EIS

- SCWUA PREPARED AND DELIVERED A SUBSTANTIAL AND DEFINITIVE ANALYSIS OF THE ISSUES WHICH HAD BEEN OVERLOOKED BY THE WATER BOARD IN THEIR EARLY SCOPING REPORT.
- SCWUA DELIVERED SEVERAL DISSERTATIONS AT THE PUBLIC HEARING CONDUCTED IN YREKA WITH SUPPORTING DOCUMENTS.
- SCWUA HAS CONTINUED IT'S MONITORING EFFORTS OF THE WATER BOARD ACTIVITY AND ARE AWAITING THE DRAFT REPORT FROM THE BOARD SO WE CAN PROFER OUR SUGGESTIONS IN THE PROCESS.
- SCWUA POINTED OUT THAT THE WATER QUALITY ON THE KLAMATH RIVER IS IMPAIRED BY THE INCOMING WATER FROM OREGON AND THAT THE DAMS ACTUALLY IMPROVE WATER QUALITY BY ALLOWING THE SEDIMENT TO DROP OUT IN THE RESERVOIRS. WE HAVE NO CONTROL OVER THE INCOMING OREGON WATER EXCEPT THROUGH THE AUSPICES OF THE KLAMATH COMPACT WHICH IS YET TO BE PROPERLY OPERATED BY THE COMPACT COMMISSION.

LEGAL ANALYSIS OF ISSUES OF THE KLAMATH COMPACT

- SCWUA RETAINED ATTORNEY LARRY KOGAN TO DEVELOP A SOPHISTICATED STRATEGY TO ANALYSE THE KLAMATH COMPACT CONSTITUTIONAL ROLE IN MANAGING THE KLAMATH RIVER. KOGAN AS PART OF HIS CONTRACT IDENTIFIED THE EFFORTS IN CONGRESS TO GO AROUND THE KLAMATH COMPACT AS PART OF THE OMNIBUS ENERGY BILL BY MURKOWSKI. THAT EFFORT DIED AT THE END OF 2016 BUT IS BEING REVIVED, WE BELIEVE, BY NEW SENATE BILL 1460 ATTACHED TO ANOTHER MURKOWSKI ENERGY BILL. HE FURTHER IDENTIFIED THE ISSUES SURROUNDING THE AMENDED KHSA AND THE LEGALITY OF TWO STATES ENTERING INTO A SEPARATE AGREEMENT INVOLVING A FEDERAL INTERSTATE ASSET I.E. THE KLAMATH RIVER (A NAVIGABLE WATERWAY) WHICH REQUIRES CONGRESSIONAL APPROVAL TO BE EFFECTIVE.
- SCWUA HAS NOW RETAINED JAMES BUCHAL LICENSED IN OREGON AND CALIFORNIA TO HANDLE OUR INTERVENOR ISSUES WITH FERC TO FIGHT THE PROPOSED KLAMATH DAM REMOVAL EFFORT BY PACIFICORP AND KRRC.