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Federal energy commission turns down Hoopa Tribe's Klamath dams petition

Group will seek another hearing on dam decommissioning

Last month, the Federal Energy Regulatory Commission denied a petition from the Hoopa Tribe regarding PacifiCorp's dams on the Klamath River, but the effort is not quite over, according to tribe attorney Thomas Schlosser.

The tribe filed the petition asking the commission to issue a declaratory order finding that PacifiCorp has failed to pursue relicensing of its Klamath Hydroelectric Project and require that the company apply for decommissioning of the dams.

PacifiCorp was required to file for relicensing its dams through FERC by 2006, and the process requires the company to receive a water quality certification before relicensing can begin. According to FERC's overview of its decision, PacifiCorp has filed, withdrawn and refiled its application for certification eight times since 2006 as it waits for KHSA processes to be completed.

The tribe's request for a declaratory order runs counter to the Klamath Hydroelectric Settlement Agreement, which lays the groundwork for the potential removal of PacifiCorp's dams. The Hoopa Tribe, however, has long maintained that the dams would be removed more quickly through the FERC process, which stalled after numerous parties joined together to create the KHSA and its companion agreement, the Klamath Basin Restoration Agreement.

In 2012, the Hoopa Tribe filed its petition with FERC asking for PacifiCorp to be directed to file for decommissioning or, alternatively, to find that California and Oregon have waived water quality certification and issue a new license for the project. The new license would likely include staff recommendations for the construction of fish ladders, among other measures.

PacifiCorp responded with 16 other parties in opposition to the petition, while Siskiyou County filed an answer opposing decommissioning but asking that FERC issue a license.

Ultimately FERC sided with PacifiCorp, but the agency does express concern about the process and how it mixes with the KHSA.

"The Klamath Project is operating under the terms of the 1954 license, and, as a result, the many environmental benefits that could accrue under the new license have not occurred," FERC states.

While the agency agrees with the tribe on some the issues pertaining to the lack of a new license, it also notes that it could not move forward with a decommissioning because it would once again need a water quality certification due to the sediment that would be released during dam removal

"We agree with the Tribe that the circumstances of this case are far from ideal," FERC states. Schlosser argues, however, that the water quality certification at issue does not involve dam removal.

The agency explains that it could issue a license for the dams if it had a water quality certification as required by the Clean Water Act, but interim measures in the KHSA allow for the status quo while the groups await enacting legislation from California and the federal government.

FERC expresses doubt about the legislative process, stating its belief that "there is no apparent prospect of the federal legislation called for by the settlement being passed or of the necessary actions by the Secretary of the Interior taking place." Oregon Senator Ron Wyden has introduced the required legislation in May, but govtrack.us currently rates its chances of being enacted at 5 percent.

Ultimately, FERC notes that it has only one time required an entity to decommission a dam project, and states that while not the ideal situation, it believes that PacifiCorp and the parties to the Klamath agreements are committed to the processes in the KHSA.

Despite the denial of the petition, Schlosser stated Tuesday that the tribe will be petitioning for a rehearing before FERC at some future date.

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