

# Hoopa Steps Up Pressure on Feds Over Klamath Dams

HANK SIMS / YESTERDAY @ 11:44 A.M. / [KLAMATH](#)

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The Klamath Settlement Agreement is currently stalled out in Congress, and with it the hope of finding a relatively painless way of removing the fish-killing hydroelectric dams on the middle stretch of that sick river. The hope always was that by getting (most) all of the parties to the table and having them sign off on a new management regime for the vast watershed's limited resources, the perpetual fighting would cease and everyone would walk away equally happy — or equitably miserable, anyway.

But there were always skeptics, and House Republican intransigence on the issue has proven those skeptics more correct each day. Late last week the Hoopa Valley Tribe — one of the principal naysayers — took steps to try to force a key federal agency out of its pro-settlement stance, demanding tough federal action on the hydropower dams *now*. If it is successful, it will effectively kill the settlement once and for all.

Is this a good thing? In his petition to the Federal Energy Regulatory Commission, the agency that regulates the hydropower dams, Hoopa Valley attorney Thomas Schlosser certainly makes the case.

Background: The hydropower dams are currently operating under a 50-year-old FERC license that actually expired in 2006; the commission has put relicensing proceedings on indefinite hold, awaiting federal action on the settlement agreement. Meanwhile, federal agencies are now in a position to demand that with or without an agreement the dams' owner — Warren Buffett's PacifiCorp — must bring the dams up to date with modern environmental regulation, which would include fish passage around the dams. It would likely cost just as much or more to build fish ladders as it would to take out the dams completely.

So Hoopa's move is to fight PacifiCorp rather than bargain with it. This would scuttle the \$1 billion dam-removal subsidy that the company would have enjoyed if the agreement were consummated, but Hoopa argues that governmental foot-dragging means that the deal is already well behind schedule, that the \$1 billion required to seal it is likely not forthcoming, and in the meanwhile state and federal agencies are shirking their duty to exercise their regulatory and licensing powers.

The conventional wisdom, in recent years, has been that FERC has never ordered the removal of a dam, and that settlement was therefore the best way forward. Schlosser, the Hoopa Valley Tribe's attorney, told the *Lost Coast Outpost* this morning that this is

more or less bunk. It may be true that the commission has never out-and-out told an operator to pull out its dams, he said, but in many cases operators have decided that the terms and conditions FERC places on new licenses are more costly than the dams are worth. Such would be the case here.

PacifiCorp is profiting nicely from the current stalemate in Congress, Schlosser argued. Trapped in the never-never land between settlement and no settlement, federal agencies are letting the company operate without a new license and without undertaking any of the environmental remediation that the river requires. “The river and the fishery are suffering, and PacifiCorp is making money they’re not entitled to,” he said. “FERC ought to do something about this.”

Read the Hoopa Valley Tribe’s [full petition to the FERC here](#). Press release follows:

The Hoopa Valley Tribe announced that they have asked the Federal Energy Regulatory Commission (“FERC”) to proceed with licensing PacifiCorp’s Klamath Hydroelectric Project. “PacifiCorp’s license to operate these fish-blocking dams expired six years ago” said Hoopa Valley Tribal Council Chairman Leonard E. Masten, Jr., “so it is past time to get this Project into compliance with the laws protecting our fisheries and water quality.”

The Hoopa Valley Tribe filed a Petition for a Declaratory Order asking that FERC find that the license applicant has failed to diligently pursue relicensing and dismiss its application. Alternatively, the Tribe requested that FERC rule that the State Water Resource Control Board and the Oregon Department of Environmental Quality have failed to act on applications for water quality certifications timely and thus have waived their certification authority. In that situation, FERC must issue a new license including mandatory fish passage conditions which were upheld in 2007.

“FERC should use its authority and not let side deals divert us from the goal of fishable, drinkable water,” said Chairman Masten. “This Petition is about achieving fish passage either with dam removal or without it. Despite the aspirations of the Klamath Hydroelectric Settlement Agreement (“KHSa”), that planning process is not cleaning up our water. Instead, it blocks fish unless Congress passes dangerous and expensive legislation, which is going nowhere.”

The Tribe has made many requests that the State Water Resources Control Board proceed, but the Board’s work remains “in abeyance.” In 2010, the Hoopa Valley Tribal Council wrote to Congressional members concerning draft legislation for the Klamath, pointing to more than a dozen changes in the Bill needed to prevent interference with river restoration activities, cut wasteful subsidies, and prevent the termination of first-priority Indian water rights. Congress took no action on the Tribe’s recommendations or on the legislation regarding the KHSa. “Now is the time for FERC to step in, halt this politically motivated process initiated by politicians since voted out of office, and act to protect our water quality and fisheries,” said Chairman Masten.