

# Klamath dams: Hoopa Tribe files petition with FERC

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Yreka, Calif. —

As uncertainty mounts over congressional approval of the Klamath River dam removal agreements, the Hoopa Valley Tribe recently filed a petition with the Federal Energy Regulatory Commission (FERC) requesting that the agency reassert its authority in the dam removal process. Specifically, the petition filed on May 25 asks FERC to declare that PacifiCorp has failed to diligently pursue re-licensing of the Klamath Project. It also asks that the agency dismiss PacifiCorp's re-license application and direct them to file a plan for decommissioning of the dams.

"The time has come for the commission to re-assert its jurisdiction over the project and require PacifiCorp to either comply with current applicable law in a new license, or alternatively decommission the project," the petition states.

PacifiCorp's FERC license for the dams officially expired in 2006.

According to the Hoopa petition, the necessary analysis and prescriptions for mitigation were completed by FERC in 2007. Before FERC can process a relicensing application for PacifiCorp and issue a new license, the company must receive a Clean Water Act section 401 certification for the dams. Since the dams' license expired, PacifiCorp has annually submitted and subsequently withdrawn its application for 401 certification, thereby prompting the issuance of a temporary one-year operating license from the Department of Water Resources.

This has allowed the dams to continue to operate under the terms of its 1956 license in the meantime.

The tribe calls this process a "purely technical charade designed to circumvent FERC authority."

If FERC were to satisfy the petitions requests and require decommissioning through the agency's protocols instead of through the settlement agreements, PacifiCorp may be responsible for the cost of dam removal.

The current plan for dam removal via the settlement agreements allows PacifiCorp to charge its ratepayers surcharges that will be combined with state and federal money to finance the removal.

"FERC should use its authority and not let side deals divert us from the goal of fishable, drinkable water," said Hoopa Tribal Chairman Leonard Masten, Jr. "This Petition is about achieving fish. FERC will require volitional upstream and downstream fish passage. Dam removal is the cheapest way to achieve it."

Is the deal dead?

"It's not the Tribe's objective to kill the agreements," said Tom Schlosser, attorney for the Hoopa Tribe. "We think the agreements are already dead."

He said the tribe believes it is time to move on with the process and enforce the state and federal laws that apply, instead of ignoring them under the assumption that the agreements will go through at some point in the future.

The tribe had initially signed the "framework agreement" – a preliminary version of the settlement agreements – but chose not to sign on to the final version, largely because of provisions that would subordinate the tribe's federally protected water right.

"The legislation would take away the government's duty to preserve that water right," Schlosser said. "We have scientists who reviewed the agreement and calculated how much water would trickle down to us and it wouldn't even be enough to satisfy the flow requirements of the Endangered Species Act." Schlosser added that FERC has never officially approved the process by which PacifiCorp has obtained its annual temporary CWA 401 certification.

"They haven't actually addressed it," he said. "They just endure it."

Haley Hutt, Hoopa Tribal councilwoman, told the Daily News, "The bill is dead and this is an opportunity for us to move forward. It's a positive opportunity to achieve what we all want. We all want the dams out. We all want clean, fishable, drinkable water and this is the best way to achieve that."

One option at a time

PacifiCorp said the current process of postponing the relicensing process “makes perfect sense when you assume the dams will be removed in 2020, as the agreement calls for.”

Bob Gravely, communications and public affairs officer for PacifiCorp, told the Daily News, “we won’t simultaneously collect millions in dam removal surcharges from customers and spend millions of additional dollars to implement a dam removal agreement and then, at the same time, spend millions more to upgrade the same dams that are slated for removal.”

He also addressed the argument that the legislation will never pass so the deal should be scrapped.

“Keep in mind the legislation was only introduced in November,” Gravely said. “It was never practical to expect that any agreement of this scope would fly through Congress, let alone a gridlocked Congress like this one in a presidential election year. So their call to pull the plug now is premature.”

Gravely also addressed concerns that nothing is happening to improve river conditions during the interim period while the government considers dam removal.

He said PacifiCorp is currently spending several million dollars annually to support habitat restoration, water quality studies, fish disease studies and hatchery improvement projects as well as changes to their operations aimed at improving interim river conditions for salmon.