

175 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

PacifiCorp	Project Nos. 2082-062
	14803-000
Klamath River Renewal Corporation	14803-004
State of Oregon	
State of California	

ORDER APPROVING TRANSFER OF LICENSE

(Issued June 17, 2021)

1. On March 15, 2018, the Commission approved a request filed by PacifiCorp, licensee for the Klamath Project No. 2082, and the Klamath River Renewal Corporation (Renewal Corporation) to administratively remove four developments from the Klamath Project and place them into a new license for the Lower Klamath Project No. 14803.¹ On January 13, 2021, PacifiCorp (transferor), together with the Renewal Corporation and the States of Oregon and California (collectively, transferees), filed an application to transfer the license for the Lower Klamath Hydroelectric Project from the transferor to the transferees. For the reasons discussed below, we approve the transfer.

I. Background

2. Prior to our March 15 Amendment Order, the 169-megawatt Klamath Project, located primarily on the Klamath River in Klamath County, Oregon, and Siskiyou County, California, included eight developments (from upstream to downstream): East Side, West Side, Keno, J.C. Boyle, Copco No. 1, Copco No. 2, Fall Creek, and Iron Gate. The project included federal lands administered by the U.S. Bureau of Reclamation (Reclamation) and U.S. Bureau of Land Management (BLM). The original license for the project was issued on January 28, 1954,² and expired on

¹ *PacifiCorp*, 162 FERC ¶ 61,236, at PP 71-72 (2018) (March 15 Amendment Order).

² *The Cal. Or. Power Co.*, 13 FPC 1. On June 16, 1961, the license was transferred to Pacific Power and Light Company (25 FPC 1154 (1961)) and then to

Project Nos. 2082-062, *et al.*

- 2 -

February 28, 2006. The project has been operating under an annual license since that time.³

3. PacifiCorp filed an application to relicense the Klamath Project in 2004. In 2007, Commission staff issued a final Environmental Impact Statement (EIS) for the application analyzing various alternatives, including decommissioning and removing the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, but ultimately recommending issuing a new license that included those four developments with staff-recommended mitigation and mandatory conditions from the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and Reclamation.⁴ However, PacifiCorp determined that implementing those conditions (specifically, complying with mandatory fishway prescriptions) would mean operating the project at a net loss.⁵ Thereafter, PacifiCorp entered into negotiations with a number of resource agencies, tribes, and other entities to evaluate alternatives to relicensing the project.

4. In February 2010, PacifiCorp and 47 other parties, including the States of Oregon and California and the U.S. Department of the Interior (Interior), executed the Klamath Hydroelectric Settlement Agreement (Settlement Agreement), which provided for decommissioning and removing the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments, contingent on the passage of federal legislation and approval by the Secretary of the Interior. However, the necessary legislation was never passed.

5. Subsequently, in April 2016, the States of Oregon and California, Interior, PacifiCorp, NMFS, the Yurok Tribe, and the Karuk Tribe executed the Amended Klamath Hydroelectric Settlement Agreement (Amended Settlement Agreement). The Amended Settlement Agreement set forth a process by which PacifiCorp would request Commission approval to transfer the four lower developments (with a total of 163 megawatts) to the Renewal Corporation, which would then seek

PacifiCorp on November 23, 1988 (45 FERC ¶ 62,146 (1988)). The original license order was for the construction and operation of the Big Bend No. 2 development, also known as the J.C. Boyle development. Later orders incorporated the other project developments into the license.

³ See 16 U.S.C. § 808(a)(1).

⁴ The staff alternative recommended issuing a new license for the Fall Creek development, decommissioning the East Side and West Side developments, and removing the Keno development from the project license because it is not necessary for power generation.

⁵ See *PacifiCorp*, Klamath Hydroelectric Project Agreement in Principle, at 5 (filed Nov. 24, 2008).

Project Nos. 2082-062, *et al.*

- 3 -

Commission approval to decommission and remove the developments under the Commission's license surrender procedures.⁶

6. On May 6, 2016, PacifiCorp requested that the Commission hold the relicensing proceeding for the Klamath Project in abeyance, in accordance with the Amended Settlement Agreement. On June 16, 2016, the Commission granted PacifiCorp's motion.⁷

7. On September 23, 2016, PacifiCorp and the Renewal Corporation filed an amendment and transfer application with the Commission to: (1) amend the Klamath Project license to administratively remove the four developments to be decommissioned and place those developments into a new license that would become the Lower Klamath Project; and (2) transfer the license for the Lower Klamath Project from PacifiCorp to the Renewal Corporation. On the same day, the Renewal Corporation filed an application to surrender the Lower Klamath Project license and remove the four developments.⁸

8. On October 5, 2017, Commission staff requested additional information on the amendment and transfer application regarding the Renewal Corporation's legal, technical, and financial capacity to accept the new license and to decommission and remove the developments, if authorized. Additionally, given the magnitude of the proposed dam removals, the potential for safety issues, and questions about the adequacy of funding, cost estimates, insurance, and bonding, staff required the Renewal Corporation and PacifiCorp to convene an independent Board of Consultants (the Board) to review and assess all aspects of the proposed dam removal.⁹

9. On March 15, 2018, the Commission approved the proposed amendment to administratively separate the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate

⁶ 18 C.F.R. §§ 6.1-6.2 (2021).

⁷ *PacifiCorp*, 155 FERC ¶ 61,271 (2016). The abeyance remains in effect until the Commission acts on the surrender application.

⁸ Because only a licensee may file an application to surrender a license, which the Renewal Corporation was not at the time, the Commission considered the September 23, 2016 surrender application to be filed by both PacifiCorp and the Renewal Corporation.

⁹ Letter from David Capka, FERC, to Mark Sturtevant, PacifiCorp, and Michael Carrier, Renewal Corporation (issued October 5, 2017).

developments and created the Lower Klamath Project.¹⁰ At the same time, the Commission deferred consideration of the proposed transfer, stating that it needed more information about the Renewal Corporation's financial capabilities to accept transfer of the license and carry out project decommissioning.¹¹ The March 15 Amendment Order required that the Renewal Corporation provide the Commission with the results of an independent review of much of this additional information, which the Commission noted could be performed by the Board.¹²

10. PacifiCorp subsequently filed a request to stay the effectiveness of the amendment order until such time as the Commission acts on the transfer application, explaining that implementing the amendment would cost an estimated \$3.1 million. On June 21, 2018, the Commission granted the stay.¹³ In that same order, the Commission noted that PacifiCorp could defer its decision on whether to accept the amended licenses until the Commission acts on the transfer application.¹⁴

11. On July 16, 2020, the Commission approved a partial transfer of the Lower Klamath Project from PacifiCorp to the Renewal Corporation, contingent on PacifiCorp remaining on as a co-licensee.¹⁵ The Commission found that if it were to ultimately approve the surrender application, it would not be in the public interest for the entirety of the surrender and decommissioning efforts to rest with the Renewal Corporation given "the magnitude of the proposed decommissioning, the uncertainties attendant on final design and project execution, and the potential impacts of dam removal on public safety and the environment."¹⁶ Although the Commission was generally satisfied that the Renewal Corporation has capacity to carry out its proposed decommissioning, the Commission determined it was appropriate to require PacifiCorp to remain on as a co-

¹⁰ March 15 Amendment Order, 162 FERC ¶ 61,236. The other four developments (East Side, West Side, Keno, and Fall Creek) remain in the original Klamath Project No. 2082 license.

¹¹ *Id.* PP 71-72. The March 15 Amendment Order included an appendix, which listed all the additional information the Commission would require before acting on the September 23, 2016 transfer application.

¹² *Id.* PP 61, 72 and Appendix.

¹³ *PacifiCorp*, 163 FERC ¶ 61,208 (2018).

¹⁴ *Id.* n.7.

¹⁵ *PacifiCorp*, 172 FERC ¶ 61,062 (2020) (July 16 Partial Transfer Order).

¹⁶ *Id.* P 45.

licensee because as a co-licensee, PacifiCorp could provide legal and technical support, as well as further assurance that there would be sufficient funding to carry out decommissioning.¹⁷ In its order, the Commission acknowledged that it was not the intent of the parties to the Amended Settlement Agreement for PacifiCorp to remain on as a co-licensee.¹⁸

12. Following the Commission's July 16 Partial Transfer Order, PacifiCorp, the Renewal Corporation, the States of Oregon and California, the Karuk Tribe, and the Yurok Tribe began discussions on developing a mutually agreeable path forward for implementing the Amended Settlement Agreement.¹⁹ These discussions resulted in the parties entering into a Memorandum of Agreement (MOA) on November 16, 2020.²⁰ Among other things, the MOA provides that PacifiCorp and the Renewal Corporation would not accept their status as co-licensees under the July 16 Partial Transfer Order, and that instead PacifiCorp, the Renewal Corporation, and the States of Oregon and California would prepare a new license transfer application, whereby PacifiCorp would request to transfer the Lower Klamath Project license to the Renewal Corporation and the States as co-licensees.²¹

13. Pursuant to the MOA, PacifiCorp and the Renewal Corporation filed an amended surrender application on November 17, 2020,²² and PacifiCorp, the Renewal Corporation, and the States filed a new transfer application on January 13, 2021.

II. January 13, 2021 Transfer Application

14. As noted above, in the January 13, 2021 transfer application, the applicants propose for PacifiCorp to transfer the Lower Klamath Project license to the Renewal Corporation and the States of Oregon and California as co-licensees. The applicants state that their filing is based on and builds off the Commission's conclusions from its July 16 Partial Transfer Order regarding the Renewal Corporation's capacity to carry out decommissioning and its qualifications to be a co-licensee for the Lower Klamath

¹⁷ *Id.* P 71.

¹⁸ *Id.* P 45.

¹⁹ January 13, 2021 Transfer Application at 14.

²⁰ *Id.* at 15.

²¹ *Id.* at Ex. 7 (providing MOA).

²² The Commission issued public notice of the amended surrender application on December 16, 2020 in Dockets Nos. P-14803-001 and P-2082-063.

Project Nos. 2082-062, *et al.*

- 6 -

Project. They assert that adding the States as co-licensees with the Renewal Corporation should address the concerns identified by the Commission in the July 16 Partial Transfer Order.

15. If the transfer is approved, the applicants request that the Commission provide the Renewal Corporation and the States an extended period of time, until 30 days following any Commission order approving surrender, to accept license transfer and co-licensee status; thus, PacifiCorp would remain the sole licensee while the Commission considers the surrender application.²³ If surrender is approved and the transfer becomes effective, PacifiCorp would continue to operate and maintain the project until electric operations cease and the project powerhouses are physically disconnected from the grid.²⁴

16. The applicants explain that under their current proposal, if transfer and surrender are both approved, decommissioning efforts would not rest solely with the Renewal Corporation. The States, as co-licensees, would provide additional experience related to large public infrastructure projects, including experience overseeing dam removal and operating projects subject to the Commission's jurisdiction.

17. Although the applicants state that they do not believe decommissioning efforts would cost more than the \$450 million provided for in the Amended Settlement Agreement,²⁵ PacifiCorp and the States, pursuant to the MOA, have committed to creating an additional \$45 million contingency fund. Further, any cost overruns beyond the amount of the contingency fund would be shared equally by PacifiCorp and the States.

III. Public Notice, Interventions, and Comments

18. On February 17, 2021, the Commission issued public notice of the license transfer application, establishing March 19, 2021, as the deadline for filing comments, interventions, and protests. NMFS, U.S. Department of Agriculture (on behalf of U.S. Forest Service), California State Water Resources Control Board, Interior (on behalf of FWS, Reclamation, Bureau of Indian Affairs, BLM, and National Park Service), and

²³ PacifiCorp notes it would continue to be responsible for annual charges until the Renewal Corporation and the States become co-licensees.

²⁴ See January 13, 2021 Transfer Application at Ex. 6 (providing 2017 Operation and Maintenance Agreement entered into between PacifiCorp and the Renewal Corporation).

²⁵ The \$450 million consists of: (1) \$184,000,000 from an Oregon Customer Surcharge; (2) \$16,000,000 from a California Customer Surcharge; and (3) \$250,000,000 from a California Bond Measure. Amended Settlement Agreement at 4.1.

Project Nos. 2082-062, *et al.*

- 7 -

Public Utility Commission of Oregon filed timely notices of intervention.²⁶ Timely, unopposed motions to intervene were filed by: Christopher Morgan; Jerry Bacigalupi; Loy and John Beardsmore; Copco Lake Fire Protection District; Chrissie Reynolds; Klamath Water Users Association; Hoopa Valley Tribe; Martha Guevara and Joseph Guevara; Del Norte County, California; County of Humboldt, California; Karuk Tribe; County of Siskiyou, California; Siskiyou County Water Users Association; Yurok Tribe; American Rivers, California Trout, Northern California Council of Fly Fishers International, Salmon River Restoration Council, Sustainable Northwest, and Trout Unlimited (jointly); City of Yreka, California; and American Whitewater.²⁷ Rex Cozzalio and Lynda King-Clegg filed late motions to intervene, which were granted by Secretary's Notices.²⁸

19. Several intervenors and commenters, including the Hoopa Valley Tribe,²⁹ the Yurok Tribe, the Karuk Tribe, Whale and Dolphin Conservation, and American Rivers, support the transfer application and request prompt Commission action on both the transfer and surrender applications.

20. American Whitewater supports the transfer application, but notes that PacifiCorp currently provides "timely notification of project operations through a public website and a contact for a recreation planner who is responsive to questions that emerge during summer white water season."³⁰ American Whitewater states that it is important that this information continue to be provided.

²⁶ Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, these agencies became parties to the proceeding upon the timely filing of their notices of intervention. 18 C.F.R. § 385.214(a)(2) (2021).

²⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1).

²⁸ April 29, 2021 and May 25, 2021 Notices Granting Late Intervention.

²⁹ The Hoopa Valley Tribe notes that it does oppose transfer of ownership of the Iron Gate Hatchery to the California Department of Fish and Wildlife, as provided for in the Amended Settlement Agreement, in the event surrender is approved.

³⁰ American Whitewater's March 19, 2021 Motion to Intervene at 4. To the extent PacifiCorp provides this information as a courtesy to recreational users and not through any requirement of the existing license, we note that our approval of the transfer is not conditioned on any new license requirements. Otherwise, PacifiCorp, until the transfer is effective, and the Renewal Corporation and the States, once transfer is effective and until decommissioning commences if approved, must continue to comply with the existing

21. Other intervenors and commenters, including homeowners on Copco Lake, the County of Siskiyou, California, and Siskiyou County Water Users Association, oppose the transfer application. These individuals and entities allege that Siskiyou County residents will bear the brunt of impacts associated with surrender, if approved, and that the January 13, 2021 transfer application does not adequately address the concerns raised in the Commission's July 16 Partial Transfer Order. Relatedly, they claim that neither the Renewal Corporation nor the States of Oregon and California have sufficient experience or funding to undertake the proposed decommissioning.

22. The Klamath Water Users Association, which supports the Amended Settlement Agreement, comments that the MOA is inconsistent with, and perhaps in violation of, the Amended Settlement Agreement because the MOA provides for additional funding beyond the \$450 million.³¹ Other commenters, like the City of Yreka, California and Del Norte County, California, take no position on the transfer application, but state that they would like to see their interests protected in any future surrender order.

23. Many of the comments, both in support of and in opposition to the transfer application, concern impacts associated with decommissioning and removal of the Lower Klamath Project (e.g., impacts to water quality, salmon, tribal communities, recreation, water storage for irrigation and fighting fires, water rights, homes and private wells, and electricity costs). Such comments are beyond the scope of this order, which considers only whether the license for the Lower Klamath Project should be transferred to the Renewal Corporation and the States. We acknowledge that these are important issues, which will be considered in the surrender proceeding. The decision as to whether, and under what conditions, to authorize decommissioning and removal will occur in that proceeding.

IV. Discussion

A. Compliance with the National Environmental Policy Act

24. Several commenters allege that the Commission should not act on the transfer application until after the Commission analyzes the surrender proposal pursuant to the National Environmental Policy Act (NEPA).³² They claim that to approve the transfer

terms of the license for the Lower Klamath Project.

³¹ The Amended Settlement Agreement and MOA were both filed for informational purposes only; neither was filed for Commission approval.

³² *See, e.g.,* Rex Cozzalio's February 16, 2021 Comments at 4.

prior to performing a NEPA review would be prejudging the surrender application because the transferees intend to remove the project.³³

25. We disagree. The Commission's regulations provide that license transfers are categorically excluded from NEPA's requirement to prepare an environmental analysis.³⁴ Further, although the commenters are correct that the transferees' intent is to remove the project, that does not mean that our decision to transfer the license to the Renewal Corporation and the States is tantamount to our approval of the proposed surrender. At this time, the Commission has all the information it needs to act on the transfer application. Because the transfer will result in no additional environmental impacts and is merely an administrative action, there are no environmental effects for the Commission to analyze under NEPA related to the transfer application. The Commission will comply with NEPA and fully consider environmental impacts associated with the proposed decommissioning and removal before making a decision on the surrender application.

26. Moreover, with regard to our action on the transfer application preceding subsequent NEPA analysis on the surrender, we note that the applicants request expeditious action on the transfer application, in advance of any decision on the surrender application (and of any NEPA analysis on the surrender), so that they can move forward with property conveyance arrangements, including proceedings before state public utility commissions. The applicants note that prompt action on the transfer application will allow the Renewal Corporation and the States to position themselves such that they can "promptly commence dam removal activities" should surrender ultimately be approved.³⁵ We note that any action taken by the parties in furtherance of surrender prior to approval from the Commission is done at the parties' own risk that the surrender may not ultimately be approved or may be approved with significant modification.

27. Accordingly, we find that action on the transfer application can appropriately precede completion of the NEPA review associated with the surrender application.

³³ *See id.*

³⁴ 18 C.F.R. § 380.4(a)(8) (2021).

³⁵ January 13, 2021 Transfer Application at 29.

B. Review of Transfer Application

28. Section 8 of the FPA,³⁶ which governs license transfers, does not articulate a standard for approving a transfer application.³⁷ However, the Commission has held that a transfer may be approved on a showing that the transferee is qualified to hold the license and operate the project, and that a transfer is in the public interest.³⁸ Section 9.2 of the Commission's regulations requires applicants to "set forth in appropriate detail the qualifications of the transferee to hold such license and to operate the property under license."³⁹

29. As explained in the Commission's July 16 Partial Transfer Order, transferring a project to a newly-formed entity for the sole purpose of decommissioning and dam removal, as is the case with the Renewal Corporation, raises unique public interest concerns, specifically whether the transferee will have the legal, technical, and financial capacity to safely remove project facilities and adequately restore project lands. If a project is transferred to an entity that lacks the financial and operational capacity to complete these measures, and if the Commission can no longer hold the former licensee liable, the responsibility to decommission a project or restore project lands may fall to federal or state authorities. To prevent this, Commission staff applies more scrutiny to transfer applications where the transferee intends to surrender and decommission the project.⁴⁰

30. In the July 16 Partial Transfer Order, the Commission determined that the Renewal Corporation was qualified to be a co-licensee for the Lower Klamath Project, but that it would not be in the public interest for the Renewal Corporation to be the sole licensee should surrender be approved.⁴¹ Specifically, the Commission found that

³⁶ 16 U.S.C. § 801; *see also* 18 C.F.R. §§ 9.1-9.3 (2021).

³⁷ *See Potosi Generating Station, Inc.*, 100 FERC ¶ 61,115 (2002).

³⁸ *See* 18 C.F.R. § 9.3; *see also* *Confederated Salish and Kootenai Tribes Energy Keepers, Inc.*, 153 FERC ¶ 61,217 (2015); *Gallia Hydro Partners*, 110 FERC ¶ 61,237 (2005); *Wisconsin v. FERC*, 104 F.3d 462 (D.C. Cir. 1997).

³⁹ 18 C.F.R. § 9.2.

⁴⁰ *See* Policy Statement on *Project Decommissioning at Relicensing*, 60 Fed. Reg. 339, 346 (Jan. 4, 1995); *see also* FERC Stats. & Regs. ¶ 31,011, 31,232-33 (1994); (cross-referenced at 69 FERC ¶ 61,336); *Fraser Papers Inc.*, 87 FERC ¶ 61,177, *order on reh'g*, 89 FERC ¶ 61,286 (1999).

⁴¹ July 16 Partial Transfer Order, 172 FERC ¶ 61,062 at PP 71-72.

requiring PacifiCorp to remain on as a co-licensee would provide additional legal and technical expertise, as well as assurance that there would be sufficient funding to carry out decommissioning, if approved.⁴² Lastly, the Commission stated that it would not be appropriate for PacifiCorp to relieve itself of all liability associated with the proposed decommissioning.⁴³

31. Because the Renewal Corporation, along with the States of Oregon and California intends to decommission and remove the Lower Klamath Project, we have applied more than usual scrutiny to this transfer application. Upon review, we find that the applicants' January 13, 2021 transfer proposal for the States of Oregon and California to become co-licensees with the Renewal Corporation allays the concerns expressed in the Commission's July 16 Partial Transfer Order. We continue to find that the Renewal Corporation has the ability, financially and otherwise, to undertake dam removal and is qualified to be a co-licensee.⁴⁴ Having the States as co-licensees would provide additional legal and technical expertise, as well as further assurance there would be sufficient funding to carry out the surrender proposal if approved. Moreover, PacifiCorp has committed to providing additional funding, if necessary, through the contingency fund and partially covering any cost overruns, thus not fully relieving itself of liability associated with the proposal.

32. Some commenters allege that the proposed funding, even with inclusion of the States as co-licensees, is insufficient to cover the costs associated with decommissioning.⁴⁵ Others claim that the contingency funds agreed to by the States may not ultimately get approved by the state legislatures⁴⁶ or express concern with PacifiCorp

⁴² *Id.* P 71.

⁴³ *Id.*

⁴⁴ *See id.*

⁴⁵ *E.g.*, Loy and John Beardsmore's March 15, 2021 Comments at 1-2.

⁴⁶ *E.g.*, County of Siskiyou, California's March 18, 2021 Motion to Intervene at 10-11. The MOA includes the following stipulation:

The Implementing Agreement Parties understand and agree that the States' actions described in this Implementing Agreement are contingent upon and subject to receipt of legislative appropriations or other expenditure authority specific to and sufficient to allow the States, in the exercise of their reasonable administrative discretion, to carry out their obligations described herein. State law, future legislative actions, and budget limitations may constrain the States in carrying out these actions and nothing in this Implementing Agreement is intended or shall be construed

committing to additional funding, which could result in PacifiCorp customers contributing more toward removal.⁴⁷ We continue to find, based on the Board's prior review, that the \$450 million provided for in the Amended Settlement Agreement should be sufficient.⁴⁸ However, the commitment by the States and PacifiCorp to provide a contingency fund and to cover any costs overruns provides further funding assurance.⁴⁹

33. The County of Siskiyou, California claims that the Renewal Corporation is a "shell corporation," created only to shield PacifiCorp and the States of Oregon and California from liability associated with dam removal.⁵⁰ Relatedly, the County claims that PacifiCorp should be required to remain on as a co-licensee due to PacifiCorp's "knowledge, competence, and safety track record."⁵¹

34. As part of the January 13, 2021 transfer application, the States of Oregon and California have agreed to be co-licensees with the Renewal Corporation; thus, the States will not be shielded from liability. Additionally, the States and PacifiCorp have committed to providing additional funding toward removal, if necessary. With the States as co-licensees, we do not believe the public interest requires that PacifiCorp remain a co-licensee. Nor do we find that the Renewal Corporation is merely a "shell corporation." The Renewal Corporation is a California non-profit corporation in good standing,⁵² its articles of incorporation explicitly provide for implementation of the Amended Settlement Agreement,⁵³ and its bylaws describe the day-to-day management

to require the obligation, appropriation, or expenditure of any funds by the States except as otherwise permitted by applicable law.

MOA at 5.

⁴⁷ *See, e.g.*, Klamath Water Users Association's February 25, 2021 Motion to Intervene at 5.

⁴⁸ July 16 Partial Transfer Order, 172 FERC ¶ 61,062 at PP 48-55 and 71.

⁴⁹ We also note that, as co-licensees, the States will be required to comply with any Commission orders.

⁵⁰ County of Siskiyou, California's March 18, 2021 Motion to Intervene at 10.

⁵¹ *Id.* at 14.

⁵² January 13, 2021 Transfer Application at Ex. 5.

⁵³ *Id.* at Ex. 3.

responsibilities of the Renewal Corporation as licensee.⁵⁴ Additionally, the Renewal Corporation has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee.⁵⁵

35. Some commenters question whether the States are qualified to be co-licensees and allege that the States do not have the experience, expertise, or ability to undertake decommissioning if it is approved.⁵⁶ Specifically, these commenters point to a major incident that occurred at the California Department of Water Resources' (California DWR) Oroville Dam, which is part of the Feather River Hydroelectric Project No. 2100.⁵⁷ In February 2017, the main spillway of the Oroville dam failed and use of the emergency spillway resulted in extensive erosion to the area immediately downstream. The commenters claim that the failure was a result of "gross mismanagement" and that there were large cost overruns associated with the rebuild.⁵⁸

36. Actions by one California agency have no bearing on the issues here, in a case involving the States of California and Oregon, the Renewal Corporation, and a number of other parties. In any case, following the Oroville dam incident, California DWR worked closely with Commission staff, complied with Commission directives, and bore the extensive costs associated with the required remediation.

37. Unlike the Renewal Corporation, the States are not entities newly formed for the purpose of decommissioning and removal. The States have agreed to accept all the terms and conditions of the license and to be bound by the license as if they were the original licensee.⁵⁹ Additionally, the States have experience overseeing large infrastructure projects, including dam removal.⁶⁰ The commenters do not demonstrate that the States lack the legal, technical, or financial resources to serve as co-licensees here.

⁵⁴ *Id.* at Ex. 4.

⁵⁵ *Id.* at 23.

⁵⁶ *See, e.g.*, Chrissie Reynold's February 25, 2021 Motion to Intervene at 25.

⁵⁷ *E.g.*, Rex Cozzalio's February 16, 2021 Comments at 3.

⁵⁸ *Id.*

⁵⁹ January 13, 2021 Transfer Application at 18, 20, and 23.

⁶⁰ *Id.* at 18-21.

38. Based on the above, we find that the Renewal Corporation and the States of California and Oregon are qualified to be co-licensees for the Lower Klamath Project, and that a transfer to these entities is in the public interest.

39. Some commenters request that, should we approve the transfer, we include certain mitigation measures as conditions of the transfer. For example, Loy and John Beardsmore request that we put in place conditions regarding compensation for homeowners around Copco Lake.⁶¹ Additionally, the City of Yreka, California requests that any Commission action in this proceeding “expressly ensure that [the City’s] water rights are preserved, and require the applicants to take appropriate action to mitigate any impacts on the City.”⁶²

40. The mere transfer of the license will not alter the project’s environmental impacts, or the determination of what mitigation measures may be warranted if the surrender is approved. It is therefore unnecessary and premature to include such measures as conditions of this transfer. We have previously explained that the imposition of new environmental conditions in a transfer proceeding is inappropriate.⁶³ To the extent the requested measures are related to the proposed surrender, we will consider them in the surrender proceeding.

C. Administrative Matters

41. Approval of this transfer is contingent on the transfer of title to properties under the license and delivery of all license instruments. The Commission’s practice is to require transferees to file this information within 60 days of issuance of a transfer order.

42. The applicants request that we allow them an extended period of time, until no more than 30 days following any Commission order approving the surrender, to accept transfer and file the instruments of conveyance. They state that allowing this additional time will “ensure that the transfer and surrender are carried out as contemplated by the Commission and that the intended transferees knowingly assume the obligations of the order approving surrender.”⁶⁴ We find that allowing additional time in this case is reasonable and we will allow the applicants until 30 days following a Commission order

⁶¹ Loy and John Beardsmore’s February 19, 2021 Motion to Intervene at 2.

⁶² City of Yreka, California’s March 19, 2021 Motion to Intervene at 6.

⁶³ *Pac. Gas & Elec. Co.*, 87 FERC ¶ 61,022 (1999).

⁶⁴ January 13, 2021 Transfer Application at 30.

on the surrender application to accept their co-licensee status and file the instruments of conveyance.⁶⁵

43. On June 21, 2018, the Commission stayed the effectiveness of its March 15 Amendment Order until such time as it acted on the transfer application. In the July 16 Partial Transfer Order, the Commission lifted that stay and established that the effective date for the license amendment would be the effective date of the partial transfer. PacifiCorp and the Renewal Corporation did not accept their status as co-licensees and the partial transfer was never effective. The applicants now request that we re-establish the effective date of the amendment to be the date we approve the current transfer application.⁶⁶

44. We also grant this request. The effective date of the amendment will be the date of this order. PacifiCorp must file revised Exhibits K and L drawings for the Klamath Project and the Lower Klamath Project within 90 days of this order.⁶⁷

D. Dam Safety

45. As discussed above, the transfer will not be effective until the applicants file the instruments of conveyance, which must be provided within 30 days following a Commission order on the surrender application. Until the transfer is effective, PacifiCorp will remain the sole licensee and, therefore, will remain responsible for all dam safety operations, maintenance, and monitoring for the Lower Klamath Project. To ensure dam safety remains unaffected once the transfer is effective, we have included ordering paragraphs (F) through (H) to clarify that all dam safety responsibilities will fall to the

⁶⁵ Moreover, we agree with the applicants that this approach does not conflict with 18 C.F.R. § 4.32(j). As the Commission has stated previously, “[a]lthough [it has] adopted policies against conditional applications, lodging applications, and delaying the processing of filed applications pending future events, those policies were not adopted with the prospect of settlement agreements in mind.” *Ariz. Pub. Serv. Co.*, 97 FERC ¶ 61,315, at 62,451 (2001). Additionally, the transfer and surrender applications do not “involve the issue of wasting staff time in processing questionable applications, because the applicant is in fact seeking a delay in that processing.” *Id.* at 62,450. The record reflects that the applicants fully intend to transfer the project and that the Renewal Corporation and the States intend to decommission and remove the project, if surrender is approved.

⁶⁶ The applicants state that it is no longer necessary for the effective date of the amendment to coincide with the effective date of the transfer.

⁶⁷ See March 15 Amendment Order, 162 FERC ¶ 61,236 at ordering paras. (D) and (I).

Project Nos. 2082-062, *et al.*

- 16 -

Klamath River Renewal Corporation, the State of Oregon, and the State of California at that point.

V. Conclusion

46. For the reasons discussed above, we find that the Renewal Corporation and the States of Oregon and California are all qualified to be co-licensees for the Lower Klamath Project, and that a transfer from transferor to transferees is in the public interest.

The Commission orders:

(A) The transfer of the license for the Lower Klamath Project No. 14803 from PacifiCorp to the Klamath River Renewal Corporation, State of Oregon, and State of California, as co-licensees, is approved as modified by paragraphs (B) and (C) below.

(B) PacifiCorp must pay all annual charges that accrue up to the effective date of the transfer. The Klamath River Renewal Corporation, State of Oregon, and State of California will be jointly responsible for subsequent annual charges through the remaining term of the license and any extensions.

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under the license, transfer of all project files including all dam safety related documents, and delivery of all license instruments to the Klamath River Renewal Corporation, State of Oregon, and State of California, which must be subject to the terms and conditions of the license as though they were the original co-licensees; and (2) the Klamath River Renewal Corporation, State of Oregon, and State of California, as co-licensees, acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 30 days of the Commission's order on the application to surrender the Lower Klamath Project, the Klamath River Renewal Corporation, the State of Oregon, and the State of California, as co-licensees, must submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(D) The effective date of the Klamath Project No. 2082 license amendment (162 FERC ¶ 61,236 (2018)) is the date of this order.

(E) PacifiCorp must file revised Exhibits K and L for the Klamath Project and the Lower Klamath Project within 90 days of the date of this order.

(F) Once the transfer is effective, the Klamath River Renewal Corporation, the State of Oregon, and the State of California will be responsible for complying with all current and existing dam safety plans and schedules.

Project Nos. 2082-062, *et al.*

- 17 -

(G) Within 30 days of the transfer becoming effective, representatives from the Klamath River Renewal Corporation, the State of Oregon, and the State of California must contact the Division of Dam Safety and Inspections - Portland Regional Engineer to discuss whether there are any changes to dam safety personnel, existing dam safety issues, and general dam safety responsibilities associated with the transfer.

(H) Within 60 days of the transfer becoming effective, the Klamath River Renewal Corporation, the State of Oregon, and the State of California must file with the Commission updates to any dam safety documents as a result of the transfer including, but not limited to, the project's Emergency Action Plan.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Project Nos. 2082-062, *et al.*

- 18 -

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, _____ this ____ day of _____, 20____, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by _____ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____, 20____, a certified copy of the record of which is attached hereto.

By _____

Attest:

Secretary
(Executed in triplicate)

Document Content(s)

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