



# Oregon

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May 9, 2006

Office of Environmental Policy & Compliance  
U.S. Department of Interior  
1849 C Street, NW  
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Washington, DC 20240

BY FEDERAL EXPRESS

Re: Klamath Hydroelectric Project, FERC Project No. 2082:  
Notice of Intervention and Response

Pursuant to Sections 4(e) and 18 of the Federal Power Act, as amended by the Energy Policy Act of 2005, and 43 C.F.R. Subtitle A Part 45, the State of Oregon files the enclosed notice of intervention and response regarding the hearing requested by PacifiCorp with respect to preliminary Federal Power Act Section 4(e) conditions and Section 18 prescriptions submitted by the U.S. Fish and Wildlife Service and the Bureau of Land Management in the Federal Energy Regulatory Commission proceeding for the relicensing of the Klamath Hydroelectric Project.

This filing is made by the State of Oregon through its Hydroelectric Application Review Team.

Sincerely,

Mary S. Grainey, P.E., C.W.R.E.  
Hydroelectric Program Coordinator

Enclosures

OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE  
UNITED STATES DEPARTMENT OF INTERIOR

PacifiCorp  
Application for New License

Klamath Hydroelectric Project  
FERC Project No. 2082  
Hearing Docket No. \_\_\_\_\_

STATE OF OREGON  
INTERVENTION AND RESPONSE

Pursuant to U.S. Department of Interior regulations, 43 C.F.R. § 45.22(b)(1), the State of Oregon, by and through its Hydroelectric Application Review Team (“HART”)<sup>1</sup>, intervenes in the hearing requested by PacifiCorp disputing certain factual issues regarding the preliminary Section 18 prescriptions and Section 4(e) conditions submitted by the U.S. Fish and Wildlife Service (“USFW”) and the Bureau of Land Management (“BLM”), respectively, and dated March 27, 2006, in the Federal Energy Regulatory Commission (“FERC”) proceeding for relicensing of the Klamath Hydropower Project (“Project”).

The State of Oregon is a party to the FERC licensing proceeding, and is filing this notice of intervention within 15 days of the date of service of PacifiCorp’s request for hearing.

A. USFW and BLM Are Correct Regarding Disputed Facts

The State of Oregon intervenes in support of USFW and BLM, regarding the following issues as numbered and described in PacifiCorp’s request for hearing<sup>2</sup>:

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<sup>1</sup> The state HART for the Klamath Project, established in accordance with ORS 543A.400, consists of the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Water Resources Department, Oregon Parks and Recreation Department, Oregon Public Utility Commission, and Oregon Department of Energy.

<sup>2</sup> The fact that the State of Oregon does not intervene to specifically respond to other issues asserted by PacifiCorp does not mean that the state agrees with PacifiCorp’s position regarding those issues, or that the State of Oregon Intervention and Response  
GENQ0601

Filed with USFW

*"No. 2 Whether reintroduction of anadromous fish to areas within and above the Project entails significant uncertainties because: (1) the availability of stocks suitable to Upper Basin conditions is questionable; (2) there is risk of introducing pathogens to resident fish now inhabiting the Upper Basin; (3) water quality and habitat conditions in the Upper Basin are poor; (4) the ecological integrity of the Upper Basin has been compromised; and (5) it is likely that steelhead will residualize if reintroduced, resulting in adverse effects to resident trout populations.*

*No. 3 Whether life history needs of resident trout populations within the Project are met by existing conditions.*

*No. 4 Whether data demonstrate that entrainment at Project facilities is adversely affecting resident fish populations.*

*No. 6 Whether 58 miles of habitat suitable for use by anadromous fish exists within the Project.*

*No. 10 Whether ladders and screens at each Project dam are essential for reintroducing anadromous fish into their historic habitat above the Project area and achieving robust fish populations.*

*No. 11 Whether any risks associated with collecting and sorting fish for collection and transport around the Project as proposed by PacifiCorp in its Alternative would be incurred to the same or similar extent under the Services' ladder-and-screen proposal.*

*No. 12 Whether collecting anadromous fish and transporting them around the Project would result in survival rates comparable to allowing fish to migrate through the Project via the "volitional" passage prescribed by the Services."*

Filed with BLM

*"No. 1 Whether the State of Oregon is the exclusive owner of a 25-mile segment of the bed and banks of the Klamath River between approximately RM 209.2 and RM 233, including the J.C. Boyle bypassed reach and that portion of the J.C. Boyle peaking reach located within the State of Oregon.*

*No. 6 ...[W]hether, after PacifiCorp installs a new bypass valve at the J.C. Boyle powerhouse as proposed in the license application, there will be a need to conduct additional and sustained mitigation in the J.C. Boyle bypassed reach.*

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state does not support any USFW preliminary Section 18 prescription or BLM preliminary Section 4(e) condition related to those issues.

*No. 10 ...[W]hether a seasonal high flow (flushing flow) is feasible and necessary to achieve riparian conditions in the J.C. Boyle bypassed reach sufficient to support native wildlife populations.*

*No. 11 ...[W]hether Project operations as proposed in the license application adversely impact riparian resources and native wildlife populations in the J.C. Boyle peaking and bypassed reaches.*

*No. 12 ...[W]hether flushing flows and gravel augmentation are necessary to maintain spawning beds in the J.C. Boyle bypassed reach in a manner that mitigates for Project impacts and that is consistent with the capabilities of the affected reach.*

*No. 14 ...[W]hether providing a seasonal high flow (flushing flow) in the J.C. Boyle bypassed reach between February 1st and April 15th each year would adversely affect redband trout spawning.*

*No. 15 ...[W]hether increasing J.C. Boyle bypassed reach minimum flows as required by BLM would impair existing water quality by raising water temperature.*

*No. 16 ...[W]hether conditions in the J.C. Boyle project reaches including current and proposed Project operations are adequate to support a sustainable high-quality redband trout fishery.*

*No. 17 ...[W]hether BLM has established that BLM's two-inch-per-hour upramp restriction for the J.C. Boyle Project is necessary to protect fish populations in the J.C. Boyle reaches."*

Assuming, without conceding, that these PacifiCorp issues are (a) specific factual statements made or relied upon by USFW and BLM, and (b) are material, *see* 43 C.F.R. § 45.21(b)(2), the State of Oregon agrees with the information provided by USFW and BLM as rationale for their preliminary Section 18 prescriptions and Section 4(e) conditions dated March 27, 2006, and incorporates that information by reference in support of this response. 43 C.F.R. § 45.22(b)(1).

The state would further note, as to PacifiCorp's disputed issue No. 1 filed with the BLM, that: (a) the Oregon Department of State Lands has notified PacifiCorp and FERC of the State of Oregon's ownership of the beds and banks of the Klamath River from RM 208

to RM 233; (b) neither the Department of Interior nor FERC has jurisdiction to determine title to river beds and banks; and (c) PacifiCorp's issue pertains to a legal issue regarding the scope of BLM's Section 4(e) authority and not a fact within the purview of the requested hearing.

The state would also note, as to PacifiCorp's disputed issue No. 15 filed with the BLM, that the Project's impacts to water quality in the J.C. Boyle reaches ultimately will be subject to evaluation and findings by the Oregon Department of Environmental Quality pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341.

B. List of Witnesses and Exhibits

In accordance with 43 C.F.R. § 45.22(b)(1), the State of Oregon agrees with information relied upon by USFW and BLM, and, at this time, does not intend to submit any additional information or exhibits, or present witnesses at hearing. However, the State of Oregon reserves the right to amend its intervention to provide additional evidence at a later time as necessary and appropriate.

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C. Conclusion

For the reasons stated above, the State of Oregon submits that PacifiCorp's request for hearing regarding the USFW preliminary Section 18 prescriptions and BLM preliminary Section 4(e) conditions should be dismissed.

Respectfully submitted,



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UNITED STATES DEPARTMENT OF INTERIOR

PacifiCorp  
Application for New License

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NOTICE OF APPEARANCE  
BY  
STATE OF OREGON

Pursuant to 43 C.F.R. § 45.10(c), Kurt Burkholder appears in this proceeding on behalf of the State of Oregon.

I am a member in good standing of the State Bar of Oregon (Bar No. 80465).

Dated May 9, 2006.

Respectfully submitted,



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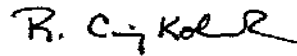
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UNITED STATES DEPARTMENT OF INTERIOR

PacifiCorp  
Application for New License

Klamath Hydroelectric Project  
FERC Project No. 2082

CERTIFICATE OF SERVICE

I certify that on May 9, 2006, I served the foregoing STATE OF OREGON INTERVENTION AND RESPONSE upon the Federal Energy Regulatory Commission and PacifiCorp via Federal Express Overnight Delivery to the individuals listed below, and to other license parties on the FERC Service List as listed below via regular mail.



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