

February 28, 2020

VIA ELECTRONIC FILING

David E. Capka, P.E.
Office of Energy Projects
Director, Division of Dam Safety & Inspections
Federal Energy Regulatory Commission
888 First Street, N.E., Routing Code: PJ-13
Washington, D.C. 20426

Kimberly D. Bose
Secretary, Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Supplemental Response to Independent Board of Consultants'
Recommendations; FERC Nos. P-2082-062; P-14803-000; NATDAM-
OR00559, CA00323, CA00234, CA00325**

Dear Director Capka and Secretary Bose:

The Klamath River Renewal Corporation respectfully submits further information regarding its fiscal capacity for the purpose of license transfer.¹ This supplements its July 29, 2019 filing² and is responsive to the Board of Consultants' recommendations as well as the Commission's February 4, 2020 guidance.³ This augments an extensive record that establishes that the Renewal Corporation has the legal, technical, and fiscal capacity to become the licensee for the Lower Klamath Project, and that this license transfer is in the public interest. The Renewal Corporation respectfully requests that the

¹ This information is filed in support of the "Joint Application for Approval of License Amendment and License Transfer," FERC Accession no. 20160923-5367.

² In the July 29, 2019 filing, the Renewal Corporation fully responded to the BOC's "Letter Report: Board of Consultants Mtg. No. 1" (November 28, 2018) and its "Letter Report: Supplement to Board of Consultants Mtg. No. 1" ("Supplemental Report") (July 29, 2019).

³ Letter to Mark Sturtevant, PacifiCorp, and Michael Carrier, Renewal Corporation (February 4, 2020), "Supplement to Independent Board of Consultants Meeting Report No. 1 for the Klamath Project No. 2082 and the Lower Klamath Project No. 14803," FERC Accession no. 20200204-3001.

David E. Capka, P.E.
Kimberly D. Bose
February 28, 2020
Page 2

Commission approve the license transfer as soon as possible and start the license surrender proceeding.⁴

The Renewal Corporation has the capacity to complete the Project proposed by the Klamath Hydroelectric Settlement Agreement (“KHSA”). As reported in the July 29, 2019 filing, it has a progressive-design-build contract with Kiewit, which will perform the dam removal work. It has developed a contract with Resource Environmental Solutions LLC (“RES”) for habitat restoration and mitigation measures. It has a Guaranteed Maximum Price (“GMP”) for all such work, based on 60% design specifications from Kiewit and RES. Its contingency and operating reserves are robust and have been updated to reflect the GMP. It has updated its comprehensive insurance program, and its contractors will secure performance and surety bonds and provide parent company guarantees. The Renewal Corporation has developed a Local Impact Mitigation Fund to address potential property damages not otherwise covered by the insurance program and related measures. Held to heightened scrutiny, the Renewal Corporation has fully established that it has the capacity, including resiliency, to assume and discharge its obligations as licensee of the Lower Klamath Project.

On February 13 and 25, 2020, the Renewal Corporation held informal meetings with the Board of Consultants (“BOC”) to review the information attached to this filing. The BOC will hold a formal meeting on March 4, 2020 pursuant to the Commission’s February 4, 2020 guidance.

As stated in its July 29, 2019 filing, the Renewal Corporation accepted the recommendations in the BOC’s Supplemental Report. It now reports on its implementation of these recommendations. It will respond to the BOC’s further report following the March 4 formal meeting.

Recommendation 1: The BOC recommends that the contingency be re-assessed once the final GMP is identified, LTC terms, conditions and costs are established, and assignment/mitigation strategies for the remaining risks are addressed.

⁴ “Application for Surrender of License for Major Project and Removal of Project Works” (Sept. 23, 2016), FERC Accession no. 20160923-5370

David E. Capka, P.E.
Kimberly D. Bose
February 28, 2020
Page 3

The BOC previously found that the Renewal Corporation's updated cost estimate⁵ for the Project⁶ was "consistent with industry standards" and that the "[c]osts and contingencies appear to be reasonable and have a high likelihood of being adequate given the PDB [progressive-design-build] contracting model, the choice of a proven, competent contractor and proposed Risk Management Plan."⁷ It recommended re-assessment of the contingency reserve in February 2020, on the basis of the GMP and other commercial instruments that the Renewal Corporation intended to develop by this month.

The Renewal Corporation has completed the following work products responsive to this recommendation.

Attachment	Author	Title
A	Kiewit ⁸	60% Design ⁹
B	Kiewit	GMP Report
C	RES ¹⁰	GMP Report
D	KRRC	Project Funding Summary
E	McMillen Jacobs ¹¹	Assurance regarding GMP, including qualifications as Owner's Technical Representative
F	Kiewit	Assurance regarding GMP; Amendment to Project Agreement
G	RES	Assurance regarding GMP

⁵ As stated in Appendix K of the July 29, 2019 filing.

⁶ This filing uses the term "Project" to refer to "Facilities Removal" pursuant to the KHSA.

⁷ Supplemental Report at 5.

⁸ Kiewit Infrastructure West Co. is the progressive-design-build (PDB) contractor for construction work. Its qualifications are stated in Attachment C to the July 29, 2019 filing.

⁹ The 60% Design is Critical Energy Infrastructure Information and was included in the data package provided to the BOC and FERC in advance of the BOC's March 4, 2020 meeting. An index to the 60% Design is provided at Attachment A.

¹⁰ RES, d.b.a. HGS LLC in California, is the Renewal Corporation's contractor for habitat mitigation and restoration work. Its qualifications are stated in Attachment I to the July 29, 2019 filing. Since that filing, the Renewal Corporation, Kiewit and RES have decided to move the habitat work from Kiewit's contract, into a separate contract attached hereto as Appendix H.

¹¹ McMillen Jacobs LLC is the Owner's Technical Representative as of December 2019. Its qualifications are included in Attachment E to this filing.

H	KRRC and RES	Habitat Restoration, Maintenance, and Liability Transfer Agreement (“RES Contract”)
I	RES	Local Impact Mitigation Fund ¹²
J	AECOM	Updated Risk Register (Retired)
K	AECOM	Updated Risk Register (KRRC-Owned)

The Renewal Corporation now has a GMP for the work to implement the KHSA. Kiewit and RES developed the GMP for construction and habitat restoration work, respectively. The combined GMP is \$276,869,497.

The GMP is based on 60% design specifications for engineered work and is based on the cost-estimation procedures that these contractors use for complex projects. The GMP reflects market validation via bids from materials suppliers and nearly 100 potential subcontractors, including many local and tribal businesses. The GMP is consistent with AECOM’s prior cost-estimation rounds in the record. Further, Kiewit, RES, and McMillen Jacobs have provided assurances that the GMP is implementable and covers contingencies that may arise in the course of finalizing technical specifications and implementation thereafter.

The RES Contract covers all habitat mitigation and restoration measures expected in the license surrender and other permit terms for the Project. The contract specifies the all-in cost for RES (as the Renewal Corporation’s assignee) to design, implement, and maintain such measures in compliance with such terms, including any reopeners. The cost includes indemnification of PacifiCorp and the States with respect to such measures. The Renewal Corporation and RES have substantially completed negotiation of the contract, in consultation with PacifiCorp and the States.

Renewal Corporation has developed a Local Impact Mitigation Fund (“LIMF”) to ensure its capacity to physically mitigate property damages and otherwise address claims filed under state laws reserved by Federal Power Act section 10(c). Such potential damages may include reduction in well production adjacent to reservoir sites, slope instability adjacent to Copco Reservoir, and increase in downstream flooding stage on private

¹² A non-redacted version of Attachment I is being concurrently filed as Privileged Information pursuant to 18 C.F.R. § 388.112 because the document contains proprietary business information.

properties. The LIMF is based on exhaustive technical analysis of potential physical impacts to such properties. Its capitalization is conservative, reflecting Project-specific conditions as well as a survey of experiences (claims made, adjudicated, and settled) at other large dam removals.

The Renewal Corporation has updated the Risk Register that was included in the Risk Management Plan (July 2019).¹³ Many risks, which could have arisen before development of the 60% design specifications, have been eliminated or otherwise retired consistent with industry practice. These “retired risks” are identified in Attachment J. The evaluation of individual remaining risks has been updated to reflect the development of those design specifications, RES Contract including LTC terms, and LIMF.

The Renewal Corporation has updated the Project budget on the basis of these developments. The updated budget is \$450,750,000, including the GMP, permitting fees, insurance, contingency and operating reserves, and all other administrative items. This compares with the budget of \$449,500,000 included in the July 29, 2019 filing. The updated budget now includes accrued interest on funds held by the Renewal Corporation.

The contingency reserve for Project implementation totals more than \$50 million. It consists of amounts that Kiewit and RES included in the GMP, as well as \$35.1 million retained by the Renewal Corporation as owner.¹⁴ Kiewit and McMillen Jacobs (among the largest companies involved in water resources construction) and RES (an industry leader for environmental restoration) have provided assurances that this contingency reserve is conservative to address uncontrollable circumstances that may arise in implementation. These assurances and the underlying contracts help confirm the Renewal Corporation’s fiscal capacity to discharge its obligations as licensee of the Lower Klamath Project.

Recommendation 2: The BOC recommends that the BOC reviews future iterations of the Project Insurance Program and PDB contract insurance requirements.

¹³ This plan is Appendix B in July 29, 2019 filing.

¹⁴ The owner-retained contingency for post-GMP events is equal to the recommendation in Appendix E of the July 29, 2019 filing.

The BOC previously found that "...the types of insurance policies and bonds identified in the Risk Management Plan and the anticipated insured limits of liability are appropriate for a project of this type, size, and duration."¹⁵ Aon has updated the Risk and Insurance Due Diligence Report (July 2019)¹⁶ based on developments in the insurance market. Specifically, it recommends that Kiewit and RES, respectively, use their corporate insurance programs, with dedicated policy limits for this project. It further recommends that the Renewal Corporation obtain an Owner's Interest Policy to address any events following license transfer and before the commencement of project work. The Consolidated Insurance Program will continue to cover insurable events with 99.5% confidence, including PacifiCorp and the States of California and Oregon ("States") as Additional Insureds. The costs of this insurance program are included in the Project budget which is Attachment D hereto.

In July 2019, the Renewal Corporation updated the Risk Management Plan in conjunction with the amended Estimate of Project Costs. It used a Monte Carlo analysis involving 50,000 scenarios to estimate risk significance and exposure.¹⁷

There is heightened regional concern about wildfire risks, following the 2018-9 wildfires in Northern California. The Renewal Corporation engaged REAX Engineering to perform supplemental modeling of such risks related to this Project, including the impacts of removing reservoirs and establishing riverine access for fire-control helicopters and trucks. REAX has extensive experience in modeling such risks throughout the west. It advises PacifiCorp, as well as other utilities and large landowners, with respect to such risks. In its preliminary report, REAX finds that the Project will not increase existing wildfire risks relative to the status quo, based on probabilistic modeling that incorporates a robust data set on local conditions.

The Renewal Corporation provides the following work products responsive to this recommendation.

¹⁵ Supplemental Report at 6.

¹⁶ Attachment B, Sub-attachment B, to the July 29, 2019 filing.

¹⁷ Attachment B, Chapter 1 "Plan Objectives and Background," to July 29, 2019 filing.

Attachment	Author	Title
L	Aon ¹⁸	Revised Risk and Insurance Due Diligence Report
M	REAX	Quantitative Wildfire Risk Analysis of the Klamath River Renewal Project – Preliminary Assessment

Recommendation 3: The BOC recommends that the Risk Register be updated monthly.

As stated above, the Renewal Corporation has updated the Risk Register to reflect 60% design specifications and the GMP. It will continue to review and update the register on a monthly basis, copying the BOC as changes are made.

The BOC previously found that LTC structure and LIMF were “in early stages,”¹⁹ and that further development of these liability protection mechanisms will affect the Risk Register. Consistent with that finding, the Renewal Corporation has now updated the Risk Register to reflect the maturation of the LTC structure (as reflected in the RES Contract) and the LIMF (including detailed technical and legal analysis of risk exposure associated with property damages).

The BOC previously found that the Renewal Corporation will retain risks associated with Uncontrollable Circumstances, work scope changes, and inaccuracies in reliance documents.²⁰ The GMP, Updated Risk Register, and RES Contract address each of these factors, strengthening the approach to retained risks in the July 29, 2019 filing. For example, the RES Contract defines Uncontrollable Circumstances very narrowly, so that the price for habitat mitigation and restoration will not change as a result of permit reopener (which is otherwise typically treated as an Uncontrollable Circumstance).

Recommendation 4: The BOC recommends that the Renewal Corporation continue to work with PacifiCorp and the States to define the scope, level and term of indemnification that is currently set forth in the KHSA Appendix L.

¹⁸ Aon Risk Insurance Services West, Inc. is the Renewal Corporation’s insurance advisor. Its qualifications are stated in Attachment H to the July 29, 2019 filing.

¹⁹ Supplemental Report at 7.

²⁰ Supplemental Report at 7.

The Renewal Corporation has worked extensively with PacifiCorp and the States to develop the RES Contract and LIMF which implement KHSA Appendix L Part IV. The contract is included in this submission at Attachment H.

Recommendation 5: The BOC recommends that further refining of “Plan B” continue.

The BOC uses the term, Plan B, to describe the actions to be taken by the Renewal Corporation in the event of a cost overrun relative to the \$450 million in committed funds for Project implementation. As noted above, the Renewal Corporation has focused on ensuring the sufficiency of its Plan A to complete license surrender.

As stated in its July 29, 2019 filing, Plan A consists of an integrated package. The elements are: (1) \$450 million in committed funding; (2) use of PDB contract form to assure accountability in construction and related work; (3) engagement of best-in-industry Project team; (4) requirement of GMP before the Renewal Corporation’s acceptance of license transfer; (5) insurance, bond, and indemnity program that provides many hundreds of millions of dollars of risk protection; (6) a Project cost estimate at the industry standard P(80) level; and (7) cash and contingency reserves that exceed the industry standard P(80) level. These measures, which were in place in July 2019, remain in place today. The risk of cost overrun is substantially less today, relative to July 29, 2019, as a result of the GMP and 60% design specifications.

Plan B also consists of an integrated package. The elements are: (1) value engineering to address any cost overrun that may occur during Project implementation; (2) consideration of scope reduction as supported by the signatory parties pursuant to KHSA sections 7.2.1.A(5) and 8.7; and (3) joint effort by KHSA parties to secure third-party funding as appropriate to supplement that capacity.²¹ The Renewal Corporation reasonably expects to secure additional funds if necessary, taking into consideration the strength of the Project team and the active support of the States and other KHSA parties for completion of the Project. Before the Renewal Corporation accepts license transfer, PacifiCorp and the States will confirm their satisfaction that Plan A and Plan B sufficiently mitigate risks related to fiscal capacity.

²¹ KHSA section 7.3.8.B; see June 24, 2017 AIR Response, item 10; December 4, 2017 AIR Response, item 3; June 28, 2018 AIR Response, Item 3(c).

Conclusion

This filing augments an already extensive record on the Renewal Corporation's financial, legal, and technical capacity. That record includes the Renewal Corporation's initial application, responses to Additional Information Requests from Commission Staff,²² responses to information requested in the License Amendment Order,²³ responses to BOC Report No.1,²⁴ and the July 29, 2019 filing responsive to the BOC's Supplemental Report.

The Commission is applying "heightened scrutiny" to this license transfer application, as the purpose is license surrender²⁵ involving complex deconstruction, mitigation, and restoration work. The Renewal Corporation embraces that heightened scrutiny.

The Commission uses a structured approach to manage risks for the purpose of dam safety and related license operations.²⁶ Similarly, a license transfer is not risk-free. Here, the Renewal Corporation has demonstrated its capacity to manage all material risks associated with Project implementation, through insurance, bonds, indemnification, and other mechanisms. These mechanisms aggregate to a structured approach that is significantly more robust than any previously considered in a license transfer proceeding. PacifiCorp and the States have asked that the Commission approve the license transfer application, as current licensee and future regulators and landowners, respectively.²⁷

In its February 4, 2020 letter, the Commission called upon the BOC to evaluate this supplemental information and provide "any further recommendations to the Commission in order to fully inform the Commission's decision on the Renewal Corporation's transfer application." The BOC will meet on March 4, 2020 and will prepare a report by mid-March. The Renewal Corporation will respond to any further recommendations at that time.

²² FERC Accession nos. 20170623-5103 and 20171204-5131. In addition, the Renewal Corporation filed information on March 1, 2017. FERC accession no. 20170301-5273

²³ FERC Accession nos. 20180629-5017 and 20180629-5018.

²⁴ FERC Accession no. 20181213-5050.

²⁵ 162 FERC ¶ 61,236 at para 51.

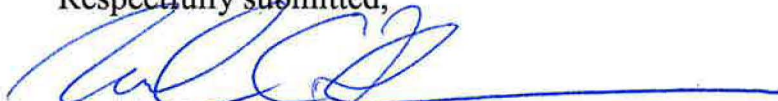
²⁶ "Risk Informed Decision Making," <https://www.ferc.gov/industries/hydropower/safety/guidelines/ridm.asp>.

²⁷ FERC accession nos. 20190801-5026, 20190805-5097,

David E. Capka, P.E.
Kimberly D. Bose
February 28, 2020
Page 10

The Renewal Corporation respectfully requests that the Commission take final action and approve the license transfer application by April 2020. Thank you for your consideration.

Respectfully submitted,



Markham A. Quehrn
Laura G. Zagar
Perkins Coie LLP

Attorneys for Klamath River
Renewal Corporation

cc: Lower Klamath Project Independent Board of Consultants
Douglas Johnson, (D2SI) Portland Regional Engineer
Service Lists (FERC Nos. 2082-062 and 14803-000)

Attachments

- A. Kiewit, 60% Design
- B. Kiewit, GMP Report
- C. RES, GMP Report
- D. KRRC, Project Funding Summary
- E. McMillen Jacobs, Assurance regarding GMP, including qualifications as Owner's Technical Representative
- F. Kiewit, Assurance regarding GMP and Amendment to Project Agreement
- G. RES, Assurance regarding GMP
- H. KRRC and RES, Habitat Restoration, Maintenance, and Liability Transfer Agreement
- I. RES, Local Impact Mitigation Fund
- J. AECOM, Updated Risk Register (Retired)
- K. AECOM and Aon, Updated Risk Register (KRRC-Owned)
- L. Aon, Revised Risk and Insurance Due Diligence Report
- M. REAX, Quantitative Wildfire Risk Analysis of the Klamath River Renewal Project – Preliminary Assessment

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of February 2020, I have served the public filing of Klamath River Renewal Corporation's Supplemental Response to Independent Board of Consultants' Recommendations; FERC Nos. P-2082-062; P-14803-000); NATDAM-OR00559, CA00323, CA00234, CA00325 via email containing a link thereto, or via U.S.P.S. if no email address was available, upon each person designated on the official service list compiled by the Secretary in these proceedings.

/s/ Ivy Carr

Ivy Carr

Legal Practice Assistant

Perkins Coie LLP

10885 NE 4th Street, Suite 700

Bellevue, WA 98004-5579

(425) 635-1400

ICarr@perkinscoie.com