

# Siskiyou County Water Users



Dated November 27, 2018, Yreka, CA.

## **Press Release, Writ of Mandamus**

### **Siskiyou County Water Users Assoc. (SCWUA)**

On April 24, 2018, SCWUA filed the motion to dismiss the FERC proceedings to transfer the Klamath River dams to the Klamath River Renewal Corporation (KRRC), demonstrating that the Klamath River Compact protect the Klamath River and the prescribed uses of the River including the hydro- electric facilities constructed there as a matter of federal law. FERC never ruled on the motion, and continues to take steps to facilitate dam removal.

For this reason, on November 21, 2018, SCWUA filed a Petition for Writ of Mandamus in the U.S. Court of Appeals for the D.C. Circuit, asking the Court to compel FERC to rule on SCWUA's previously submitted motion.

It is our opinion that the parties to the **Amended Klamath Hydroelectric Service Agreement** and the States of Oregon, California and the other signatory parties to the Amended Agreement including PacifiCorp and the Klamath River Renewal Corporation are attempting to evade Federal law (PL 85-222), by seeking to transfer the dams to a third party KRRC for purposes of destruction of the hydroelectric facilities and the reservoirs behind them. This amended agreement was entered into on April 6, 2016. We also contend KRRC is not financially or professional equipped to handle a project of this magnitude.

The Amended KHSAs agreement was not submitted to the FERC for approval nor has Congress enacted any legislation to approve the process or amend the existing "Law of the River", the Klamath River Compact. The Compact was entered into in 1957 after many years of *intensive* and *substantive* negotiations between all parties for the purpose of managing the waters of the Klamath River, a federal asset. The Compact was entered into pursuant to the **US Constitution Article 1 Section 10 clause 3**, commonly referred to as the "Compact Clause". In fact the Legislatures of both Oregon and California had adopted the Compact which was then approved by Congress and enacted into law by the then President of the United States, Dwight David Eisenhower. The Compact language and existence was supported at the time by several different legal opinions all of which held that the issues of the Klamath River were compelling enough to require the Compact Clause of the

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Constitution to be fully engaged. One of those opinions was drafted by then California Attorney, General Edmund G. Brown.

Article IV of the Compact states as follows:

*“It shall be the objective of each state, in the formulation and execution of plans for the distribution and use of the waters of the Klamath River Basin, to provide for the most efficient use of the available power head and its economic integration with the distribution and use of water and the lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.”*

In an earlier form the original KHSA agreement was unable to garner public or Congressional support. The public responded to the earlier version with an emphatic vote to retain the dams. Known locally as Measure G, it garnered nearly 80% of those who voted. More recently, the public in Klamath County indicated in a poll that nearly 75% of the public favored keep the hydroelectric facilities.

For the above reasons and others, we adamantly feel compelled to demand that the FERC rule on our motion to dismiss. A ruling on this threshold issue should be the **very first action** by the FERC, rather than continuing to move forward on the application submitted to it by PacifiCorp and KRRC, because a decision upholding Compact authority necessarily requires dismissal of the action before FERC.

Our attorney James Buchal of Murphy and Buchal located in Portland, Oregon, has filed our action together with nearly 200 pages of supporting documents.

Submitted by:

*The Board of Siskiyou County Water Users Assoc.*

Richard Marshall, President