



COUNTY OF SISKIYOU

Board of Supervisors

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October 19, 2011

VIA FAX AND US MAIL

Honorable Ken Salazar
Secretary of the Interior
U. S. Department of Interior
1849 C Street NW
Washington, DC 20240

Charlton H. Bonham, Director
California Department of Fish and Game
1416 Ninth Street, 12th floor
Sacramento, CA 95814
Director@dfg.ca.gov

Re: DESTRUCTION OF KLAMATH RIVER DAMS--- SISKIYOU COUNTY URGES
THE DEPARTMENTS TO ENGAGE IN COORDINATION WITH THE COUNTY
SUPERVISORS AT ONCE

*This letter mailed by surface mail and electronic delivery, and **presented directly to personnel conducting public comment meeting in Yreka on October 20, 2011.***

Dear Secretary Salazar and Director Bonham:

Your agencies have violated very specific and clear federal law.

Mr. Secretary, you are obligated to coordinate with Siskiyou County and to use every practicable means to reach consistency of policy between your Department and the County. You have failed to do so.

Jim Cook
District 1

Ed Valenzuela
District 2

Michael Kobseff
District 3

Grace Bennett
District 4

Marcia H. Armstrong
District 5

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Mr. Director, your agency is required to do the same as a result of its involvement in a major federal action as partner to the Department of the Interior.

The Board of Supervisors for Siskiyou County insist that your Departments schedule a coordination meeting with the Board as soon as possible. It is critical that the meeting be scheduled NO LATER THAN NOVEMBER 8, 2011. FAILURE TO SO SCHEDULE A MEETING WILL BE SPECIFIC EVIDENCE THAT YOU REFUSE TO COORDINATE TO REMEDY THE PRIOR VIOLATIONS OF LAW AND TO COORDINATE FORWARD AS THE LAW REQUIRES.

It will be evidence of good faith if your personnel will work with our Chairman, Jim Cook, during the public comment meeting to schedule a coordination meeting with the Board.

The urgency of scheduling results from your Departments' total failure to engage in the good faith coordination process that is mandated by federal statutes, regulations and Executive Orders.

It will waste time for all of us to contend that you are exempt from the coordination requirements because the County may have attended the non-public meetings revolving around the Klamath River Settlements. No federal statute, regulation or Executive Order grants you such exemption.

The current phase of the planning aimed at dam destruction requires coordination which is a continuing responsibility throughout a NEPA process and the management action process.

The fact that your Departments are holding public comment meetings in our County seat without scheduling a coordination meeting gives credence to a conclusion that your Departments have no intention of obeying the law. If true, it will be an unfortunate decision.

We will not go quietly. We cannot do so because of the severe adverse impact destruction of the dams will have on the majority of our citizens. Many resources will be wasted as a result of our being forced to utilize all available political, administrative and perhaps judicial means to secure compliance with the law.

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I. SISKIYOU COUNTY'S COORDINATION STATEMENT SUBMITTED ALONG WITH PUBLIC COMMENT

As a coordinating local government, Siskiyou County submits coordination statements rather than public comments. But it submits such statements additionally in and during the public comment meetings. The coordinating statement contains three elements of comment: an insistence that the time period for public comments be extended for the benefit of citizens who do not share the benefit of your obligation to coordinate with local government, a statement of the failure to coordinate the EIS/EIR development thus rendering it invalid, and a statement as to three critical requirements missing in the current EIS/EIR.

A. AN EXTENSION OF TIME IS NEEDED SO THAT CITIZENS CAN PROVIDE THE "MEANINGFUL" COMMENTS TO WHICH PRESIDENT OBAMA REFERRED IN HIS EXECUTIVE ORDER OF JANUARY 18, 2011

You seek comments from members of the public who have had time only to give this convoluted planning document a scant glance. The thousands of pages that your paid staffs put together over a period of years, you expect members of the public to review and analyze on their own unpaid time within a few short weeks.

On January 18, 2011, President Obama issued an Executive Order called "IMPROVING REGULATION AND REGULATORY REVIEW". He said that the federal agencies must make sure that the public has a "meaningful opportunity to comment", within a time period of "at least 60 days." You have provided the bare minimum of 60 days allowed by your Chief Executive's Order. But, it is as clear to you as it is to us that no member of the public has a "meaningful opportunity to comment" on this document within a mere 60 days from issuance.

On behalf of Siskiyou County, the Board of Supervisors requests and urges that an extension of time for comments be granted. We formally request that the comment period be extended for an additional 60 days in order to satisfy both the letter and the spirit of the Presidential Executive Order.

Our request for extension of time fits within the guidelines set by the Council on Environmental Quality for oversight of this NEPA process. In 40 Code of Federal Regulations 1501.8 all agencies are directed to consider several elements in

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determining what is adequate time for comment periods. Those elements include the following:

1. Degree to which the action is controversial;
2. Potential for environmental harm;
3. Size of the proposed action;
4. Number of persons and agencies involved.

Each of those elements apply to the destruction of the dams. Each of them support our insistence on an extension of time so that our citizens can provide the "meaningful" comments that the President of the United States ordered.

B. THE FEDERAL-LOCAL COORDINATION PROCESS MANDATED BY FEDERAL STATUTES AND EXECUTIVE ORDERS HAS BEEN VIOLATED RESULTING IN DEFICIENCY IN THE EIS/EIR.

The EIS/EIR demonstrates that the requirements of coordination have been ignored. As a result the document is fatally flawed. The law requires the document, and the underlying study, to have been the product of coordinated development. Such coordinated participation in development did not occur.

If the Departments act promptly to engage in coordination as to the document, the violation may be remedied. If they do not do so, the EIS/EIR will not stand up under judicial scrutiny.

Several levels of emphasis on coordination are in existence.

First, as to the statutory coordination established by Congress in 43 USC 1712, the Board expects you to comply with the following requirements of "coordination" as spelled out in the law:

1. You must coordinate all your planning, policy and management actions from development through completion, with Siskiyou County. To do this, in compliance with the specific requirements of 43 USC 1712, you must:
 - a. Provide prior and early notice of planning activities and development of such activities to local government, so that they can participate in the development.

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YOU DID NOT PROVIDE SUCH NOTICE TO SISKIYOU COUNTY.
YOU DID NOT ASK SISKIYOU TO PARTICIPATE IN ACTUAL DEVELOPMENT.

- b. Assure local governments that you will give consideration to their plan or policy regarding destruction of the dams and other management issues for the public lands

YOU DID NOT GIVE SUCH ASSURANCE TO SISKIYOU COUNTY.
YOU HAVE GIVEN NO EVIDENCE OF EVEN CONSIDERING SISKIYOU'S POSITION.

- c. Engage in resolving inconsistencies between federal and local plans.

YOU DID NOT SO ENGAGE WITH SISKIYOU COUNTY.

YOU HAVE MADE NO ATTEMPT TO ENGAGE SISKIYOU COUNTY TO RESOLVE THE FUNDAMENTAL INCONSISTENCY BETWEEN A FEDERALLY FAVORED DESTRUCTION OF THE DAMS AND THE SISKIYOU POSITION THAT DESTRUCTION OF THE DAMS WILL RESULT IN SEVERE ADVERSE IMPACTS ON THE CITIZENS OF SISKIYOU COUNTY.

Second, the National Environmental Policy Act requires that planning on major federal projects must be done in coordination with local governments.

The Act declares that it "is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans"

In order to carry out that policy, the Act provides that all agencies must exercise the "continuing responsibility. . .to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions and resources."

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THE EIS/EIR AGENCIES HAVE FAILED TO COOPERATE WITH SISKIYOU COUNTY AND "USE ALL PRACTICABLE MEANS" TO COORDINATE THE FEDERAL PLAN WITH SISKIYOU COUNTY'S PLANS AND RESOURCES.

Third, as to the requirements of the Council on Environmental Quality for coordination of all NEPA projects with local government, the Board expects you to:

1. Coordinate with the County by:
 - a. Meeting and coordinating positions in order to "emphasiz[e] interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document." 40 CFR 1501.6

THE AGENCIES HAVE NOT MET AND COORDINATED POSITIONS WITH SISKIYOU COUNTY; RATHER THE AGENCIES AND COUNTY ARE NOW LOCKED INTO A PROCESS BY WHICH ADVERSARY COMMENTS MUST BE SUBMITTED.

- b. Meeting and coordinating positions in order to "Eliminat[e] duplication with State and local procedures by providing for joint preparation Section 1506.2"

SISKIYOU COUNTY HAS NOT BEEN AFFORDED THE OPPORTUNITY TO JOINTLY DEVELOP THE EIS/EIR.

- c. Cooperate with the County "to the fullest extent possible to reduce duplication" and conflict between federal and local objectives.

THERE HAS BEEN NO "FULLEST EXTENT POSSIBLE" EFFORT BY THE FEDERAL AGENCIES TO RESOLVE THE FUNDAMENTAL CONFLICT WITH SISKIYOU COUNTY

- d. Assure that the EIS/EIR document includes full description of conflicts between federal and local position and of the efforts made by the federal agency to resolve the conflicts and reach consistency.

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THE DOCUMENT FAILS TO IDENTIFY THE FUNDAMENTAL CONFLICT BETWEEN THE FEDERAL AGENCIES AND SISKIYOU COUNTY AND EFFORTS MADE BY THE AGENCIES TO RESOLVE THE CONFLICT. IN POINT OF FACT, THERE HAS BEEN NO SUCH EFFORT AT RESOLUTION.

C. THE EIS/EIR FAILS TO SATISFY AND COMPLY WITH PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT.

It is not reasonable to insist that the County or citizens submit their comments this soon after release of the document. The County is conducting an analysis of the document and the process leading to it, but no such analysis can reasonably and fully be created within a 60 day period.

However, there are certain elements of the EIS/EIR that leap from the pages evidencing deficiency in the document and in the process leading to its development.

The Council on Environmental Quality requires that the environmental documents contain full discussion of "any adverse environmental effects which cannot be avoided should the proposal be implemented". 40 CFR 1508.6

The current version of the EIS/EIR does not fully discuss the adversity to be suffered by the environment---human and natural. It has been proven that in the Rogue River, where two dams were destroyed, the river environment has been damaged by the heavy metals in the silt that was washed down once the dams were removed.

Included in the requirements for analysis of environmental adversity, the CEQ directs that the document contain an analysis of how the irretrievability of the proposed action affects the considerations of alternatives. Destruction of the dams is an irretrievable action---and the EIS/EIR does not discuss the impact of this element of irretrievability on the human environment.

40 CFR 1508.7 requires discussion of the cumulative impact of the proposed action on the environment. The section defines the term as "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions. . ."

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The EIS/EIR ignores the incremental impact of destruction when related to the damage claimed to the environment, such impact when related to arrival of heavy metals as they hit the coastal waters, such impact when related to potential flooding, and when related to potential damage to wildlife species living in what will be the flood plain.

The EIS/EIR is deficient in that it does not fully discuss and analyze the impact of destruction on the elements of the human environment, as required by 40 CFR 1508.8. CEQ requires that the document discuss the impact of the proposal on ecological, aesthetic, historic, cultural, economic, social and health elements of the human inhabitants of the communities affected by the destruction. The document fails to adequately consider these elements either separately, together collectively, or incrementally as elements of cumulative impact.

The EIS/EIR is deficient because it does not discuss and analyze in meaningful and understandable terms the fundamental conflict between the proposed destruction and the Siskiyou County objection to the destruction.

When the County's coordination report in opposition to destruction of the dams is completed, it will greatly expand on these deficiencies and also fully discuss all deficiencies in the document. The basic comments as to these few, but serious, deficiencies ought to make it clear that at the very least, the Departments should begin immediately to prepare a supplemental environmental study.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jim Cook", written over a horizontal line.

Jim Cook, Chair
Siskiyou County Board of Supervisors