



Oregon

Kate Brown, Governor

Water Resources Department
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June 18, 2020

Nathan Rietmann
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Dear Mr. Rietmann,

The Department asked me to provide their response to your email of June 10, 2020 in which you assert, based on your observations of the “Teacup Diagram” that diversion of stored water from Upper Klamath Lake (UKL) has “dramatically spiked and is currently depriving KID and other water right holders in the Klamath Project of at least 500 cfs of stored water that they desperately need and are entitled to use under their water rights.” We address your concerns as follows.

Assertion that releases of water are currently depriving KID of water to which it is entitled

Based on your June 10th assertion that apparent releases of stored water are “currently depriving KID” of water they may use under their determined claim, staff from Watermaster District 17 measured the flows at the bridge on Lakeshore Drive, approximately 200 feet upstream of the A Canal at 1:00 p.m. on June 10, 2020. The measurements indicated that 2,575 cubic feet per second (cfs) was flowing and that there was more than sufficient water at the A-Canal headgate to meet the KID’s 1,150 cfs claim. The water is available for KID should they seek to divert it. On the basis of the measurements taken on June 10, we do not believe that releases of water from the Link River Dam are depriving KID of water they are allowed to divert under their water rights.

Assertion of unlawful use of water for recreation

In your email you also assert that water is being released from UKL “for the purpose of filling PacifiCorp reservoirs so they will be at high levels for recreation in advance of the 4th of July weekend.” You go on to assert in your June 10, 2020 email that neither the Bureau of Reclamation (Reclamation), nor anyone else “has a secondary right in UKL entitling them to divert stored water for the purpose of recreation”, and argue that the releases are, therefore, an unlawful water use.

The Department, in receipt of your complaint of unlawful water use, has proceeded to investigate it as it does all complaints of unlawful water use. *See* OAR 690-250-0050. Toward that end, the Department has reviewed PacifiCorp’s water rights and hydroelectric licenses (both state and federal) and has interviewed representatives from Reclamation and PacifiCorp. Both of these entities have answered the Department’s questions and have provided extensive documentation as requested by the Department. These documents are available on the Department’s webpage at: <https://www.oregon.gov/owrd/programs/regulation/KlamathRegulation/Pages/default.aspx>

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With regard to your assertion that PacifiCorp is releasing water for the purpose of filling reservoirs for the fourth of July weekend, this does not appear to be borne out by the Department's investigation. Instead we have learned that water was released pursuant to an informal "water borrowing" agreement between PacifiCorp and Reclamation. This agreement is articulated in a letter Reclamation to PacifiCorp dated March 17, 2020 and a letter from PacifiCorp to Reclamation dated March 18, 2020. These letters are available at the Department's website at the web address provided above. Below is a brief summary of how we understand the agreement operates based on a letter we received from PacifiCorp dated June 17, 2020 (also available on the website).

As you are aware, PacifiCorp owns and operates the "Klamath Hydroelectric Project" which comprises the East Side and West Side developments on the Link River; Keno Dam; Fall Creek development on Fall Creek, a tributary to the Klamath River; J.C. Boyle dam, Copco No. 1, Copco No. 2, and Iron Gate dam. Iron Gate, Copco No. 1, Copco No. 2 and Fall Creek are located in California. East Side, West Side, Keno and J.C. Boyle are all located in Oregon. PacifiCorp operates the entire Klamath Hydroelectric Project pursuant to Federal Energy Regulatory Commission (FERC) License #2082 and also holds a state license HE 180 for project operations in Oregon.

During this dry water year we have learned that PacifiCorp entered into an informal "water borrowing" agreement with Reclamation to loan Reclamation water. PacifiCorp provided the water from Copco and Iron Gate reservoirs to help Reclamation manage its irrigation deliveries to the Klamath Irrigation Project and to meet its Endangered Species Act (ESA) obligations both in Upper Klamath Lake and in the Klamath River downstream of Iron Gate Dam. Specifically, in March of this year, Reclamation required water to meet ESA flows below Iron Gate Dam and so borrowed water from PacifiCorp which PacifiCorp subsequently delivered to the Klamath River downstream of Iron Gate Dam. The "borrowed" water was used by Reclamation to benefit Coho Salmon downstream of Iron Gate Dam, while allowing Reclamation to also preserve UKL elevations for endangered sucker fish.

When PacifiCorp released the "borrowed" water from its reservoirs this decreased the elevation in its Project reservoirs and resulted in less efficient power generation caused by lower head pressure. As a consequence, the agreement contemplated that Reclamation would return the "borrowed" water as quickly as possible – and in this case was able to return the borrowed water in June. This is the "spike" that you observed with alarm; but as the watermaster confirmed, the release of water from the Link River Dam did not result in a reduction of water currently available to KID. Insofar as you assert that KID might need this water later so it shouldn't be released now, we are aware of no authority that precludes Reclamation from releasing water that may, at some point in the irrigation season be utilized by those holding rights to use stored or natural flow. Any water that was released through the Link River Dam on June 9, 2020 was in excess of those needs of the KID on June 10th as verified by the watermaster's measurements on that date. See ORS 540.045(3).

With regard to your assertion that water is being released for recreational uses without a water right, the Department has examined PacifiCorp's FERC License 2082 and does not believe that this is the case. As noted above, the Klamath Project generates power from facilities that are located on navigable, public waterways and so holds a license from FERC (FERC License No. 2082). The terms of FERC License No. 2082 authorizes the generation of power from public navigable waters but also requires public access to the public waterways that PacifiCorp uses for power generation.

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For example, Article 62 requires “[s]o far is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters * * * for navigation and recreational purposes* **.” In sum, PacifiCorp does not use water for recreational purposes, it provides the public recreational access to public navigable waters it uses for the generation of power. Based on our review, it does not appear that PacifiCorp is engaging in unlawful use of water for recreation.

Please be assured that the Water Resources Department is mindful of the difficulties that this dry year presents and takes the concerns of KID and all other water users in the Klamath Basin extremely seriously. We have tried to respond to your concerns as soon as possible – being mindful that all investigations must be conducted carefully and thoroughly.

The documents that we have referred to in this letter and which we relied on in our investigation are as follows and are available on the website as we have indicated:

1. FERC License No. 2082
2. Letter from John Sample to Tom Paul, dated June 17, 2020
3. Letter from US Bureau of Reclamation dated June 15, 2020
4. Letter from PacifiCorp to US Bureau of Reclamation dated March 18, 2020
5. Letter from US Bureau of Reclamation dated March 17, 2020
6. Email from Jared Bottcher to Tom Paul dated June 12, 2020 (Spreadsheet June Augmentation Flow Schedule)
7. Email complaint from KID dated June 10, 2020
8. HE 180

Sincerely,

Thomas J. Paul
Special Assistant to the Director

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John Sample