

Swan Lake Pumped Storage Project Assessment Threats, Status, and Opportunities to Intervene

Description and Status: Rubber-stamped Greenwash With No Economic Viability

The planned Swan Lake North Pumped Storage Facility is being promoted as a green energy project to generate and store energy for peak usage hours. However, a closer look at the project description makes it difficult to see how it could be called green under any recognized definition of the word.

Planned for ceded lands of the Klamath Tribes approximately 11 miles northeast of Klamath Falls, this massive hydro project spans more than 2000 acres: 711 acres of BLM-managed public land; 19 acres of Bureau of Reclamation-managed public lands; and 1,310 acres of state, county, and private lands. It would include: a 64-acre concrete, asphalt, and geomembrane upper reservoir (2,568 acre-feet capacity), 60-acre lower reservoir (2,581 acre-feet capacity), spillways, embankments, and powerhouse, connected by a high-pressure steel penstock and three low-pressure penstocks, and includes a 32.8 mile-long, 230-kilovolt transmission line, substation, and miles of service roads. The existing Swan Lake, and Swan Lake Rim, would be severely harmed, and possibly even dewatered, by the project.

The Project was first proposed by EDF Renewable Development, Rye Development and National Grid (AKA Swan Lake North Hydro LLC) in 2012, but both it and the Goldendale 'closed' loop hydro project to the north were acquired by the Dutch-owned Energy Fund Management Company, Copenhagen Infrastructure Partners (CIP) in 2020. It received a 50-year license from FERC in 2019, and the Bureau of Land Management issued a Final Environmental Impact Statement and Record of Decision approving the transmission power line right of way in 2020. The Oregon Department of Water Resources initiated a public process for a groundwater pumping permit (HE 617) in 2019. Strong concerns were raised during this process about the impacts of this level of groundwater withdrawals, and whether such a right could even legally be on offer in this location, but responses from ODWR engineers were dismissive in the extreme. It was indicated that a proposed final order would be prepared shortly after the close of the 2020 comment period, but as of 9/29/23, it is still listed as pending. Currently, the project is in the 'pre-construction' phase, awaiting final approval from FERC to commence.

Tribal Cultural Impacts: Historical harm, access, and threat to women

The project area lies within the traditional territory of the Klamath Tribes in an area used since time immemorial by the Klamath and Modoc people. It is just south of the Klamath Indian Reservation that was created by the 1864 treaty. The Swan Lake Rim and Grizzly Butte are of great spiritual and cultural importance and held as sacred areas. Swan Lake North Hydro LLC proposes to construct the upper reservoir for the project on the Swan Lake Rim where ethnographic studies and cultural resource reports describe traditional Tribal ceremonies and identify a large number of cultural rock stack features that are eligible for listing in the National Register of Historic Properties. There are also a large number of stacked rock cultural features on Grizzly Butte where the lower reservoir would be. According to X, there are over 200 identified sites that would be impacted by the project.

In addition to harming ancestral lands and impairing Tribal people's ability to engage in cultural and spiritual practices in this important place, the project also threatens the safety of Indigenous women and girls through the virtually foregone creation of 'man-camps.' Many laborers will be required to build these massive facilities, and despite corporate promises for local and Indigenous hiring, these workers are usually mostly itinerant men and have a terrible history of violence against rural Indigenous women.

Environmental Impacts: Water and Wildlife

The federal and state environmental analyses required to approve the plan acknowledged significant environmental impacts, but went ahead and approved it anyway based largely on highly questionable

mitigation measures and false water accounting. The greatest concerns center around the impact of such massive groundwater withdrawals on the aquifer and interconnected surface waters. In addition to these likely harms (and their effect on the Klamath Tribes' treaty water rights), the region is a critical migration corridor for deer and elk and a popular hunting ground. Its extensive open-water and wet-meadow complexes are extremely important for migratory ducks, geese (cacklers and white-fronts), swans, and cranes. Heavy construction, high-power transmission lines, and new permanent roads and other infrastructure threaten them all. Native plants of cultural importance to Tribes would also be harmed, and noxious weeds are expected to proliferate due to construction and new roads.

Assessment of Assessments and Next Steps

The BLM, FERC, and OWRD analyses and responses to comments failed to seriously entertain or evaluate these and other Tribal and environmental concerns. Unfortunately, the comment and challenge period for most of these processes have passed. However, some possible opportunities for challenge remain. Most of them center around groundwater pumping and water rights, including:

- Tribal Water Rights: Such wasteful and unregulated groundwater use undermines the Klamath Tribes' right to enough water instream and in Upper Klamath Lake for C'waam, Koptu & the return of salmon after dam removal.
- Groundwater withdrawal permit: OWRD has not yet issued its final order on the permit application (HE 617) needed to fill the reservoirs and maintain their levels. Several experts believe that the agency does not have the authority to transfer the 3,001 AF of water purportedly obtained from "Edgewood Wells" forbearance of three irrigation water rights for a surface reservoir right.
- The owners state that under the forbearance agreement the project will result in zero new water appropriation for reservoir fill or maintenance but this is provably false. On average, about half of an irrigation right is actually used. While the math may work on paper, it doesn't in real life.

Proposed Swan Lake - Klamath Tribes Settlement Agreement

In 2021, Klamath tribal members rejected the settlement offer from Swan Lake North Hydro LLC. Now, with construction poised to begin over the Tribes' objections, Tribal members are being asked once again to vote on the proposal. Settlement concessions include: 1. Ceremonial access dates and time must be 'mutually acceptable,' i.e. Swan Lake LLC can say no; 2. Release of Swan Lake LLC liability for injury or death of Tribal members within the project area or resulting from the project; 3. All efforts to employ Klamath Tribes members are caveated with 'try,' 'in good faith,' etc.; 4. **The Klamath Tribes not only withdraw opposition but also agree to make no statements adverse to the project for the duration of the agreement and RELINQUISH all prior, current, and future rights that may be connected to 'permitting, licensing, development, operations, and maintenance of the Project.'** All settlement negotiations and documents are privileged information and not to be made publicly available. And finally, Article 9.1, Miscellaneous, includes a **"Limited Waiver of Sovereign Immunity."**

Precedent: First and Likely Not the Last

Rye Development has at least five other pumped storage projects at earlier stages of development. Swan Lake appears to be the closest to beginning construction. Since 2014, 67 new pumped-storage projects have been proposed in the US. Only three have been permitted, and none have begun construction. In addition to environmental and cultural concerns, economists say the numbers just don't pan out - the power required to pump the water uphill to 'store' the energy is massive.

How to stop it this project & protect fish from wasteful GW use

1. Compel OR Water Resources Department to deny the groundwater pumping application.
2. Klamath Tribes assert that it violates their right to water for fish.

3. Oregon Tribes ask Oregon to protect Tribal beneficial uses of instream flows via the OR groundwater rulemaking process that is happening right now. Public comment process starts in November!