

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
MARCH 17, 2009**

ITEM 14

SUBJECT

CONSIDERATION OF A RESOLUTION TO ALLOCATE \$2 MILLION FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA) TO THE STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD) IN SUPPORT OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE FOR THE KLAMATH HYDROELECTRIC PROJECT (KHP) SECTION 401 WATER QUALITY CERTIFICATION

DISCUSSION

The State Water Board requests funding of \$2 million to complete CEQA compliance for the Clean Water Act Section 401 water quality certification of KHP.

PacifiCorp Energy (PacifiCorp) owns and operates KHP which consists of eight facilities located within southeastern Oregon and northeastern California. KHP is licensed by the Federal Energy Regulatory Commission (FERC) and is currently undergoing relicensing with FERC. PacifiCorp has applied to the State Water Board for a Clean Water Act Section 401 water quality certification as part of the FERC relicensing process.

The State Water Board is obligated to conduct a timely review of applications for water quality certification, including any review under CEQA. As a requirement of CEQA, it is necessary for the State Water Board to certify an Environmental Impact Report (EIR). CEQA requires completion of environmental review documents within one year of the issuance of a notice of preparation which in this case was issued by the State Water Board on September 30, 2008.

An EIR is necessary for the State Water Board to complete its water quality certification for the KHP. The certification will ensure that the KHP is operated in compliance with Clean Water Act provisions that protect water quality and beneficial uses in the Klamath River.

PacifiCorp, the United States, the State of Oregon, and the State of California Resources Agency executed an Agreement in Principle (AIP) describing a decision-making framework and timeline for the possible removal of PacifiCorp's dams on the Klamath River on November 13, 2008. The AIP states, "Imposition or incurrence by PacifiCorp of significant costs for a Clean Water Act certification, including review pursuant to CEQA, during the time that PacifiCorp is devoting resources to this Agreement in Principle and the Final Agreement shall give PacifiCorp a Right of Withdrawal from this Agreement in Principle." If PacifiCorp is required to continue funding the CEQA document, it could interfere with further settlement negotiations under the AIP.

The requested CAA funds in the amount of \$2 million will be made available for the Executive Director or her designee to hire a consultant to prepare the EIR for certification for the KHP.

The requested allocation is consistent with the purposes of Water Code section 13442. Water Code section 13442 provides that the State Water Board may order monies to be paid from the CAA to a public agency with authority to cleanup or abate the effects of a waste in order “to assist it in cleaning up the waste or abating its effects on the waters of the state.”

POLICY ISSUE

Should the State Water Board:

Approve the \$2 million from the CAA to DWR to complete CEQA compliance for the Clean Water Act Section 401 water quality certification of KHP?

FISCAL IMPACT

As of March 1, 2009, the latest data available, the uncommitted CAA balance is estimated to be no less than \$4 million.

REGIONAL WATER BOARD IMPACT

No.

STAFF RECOMMENDATION

That the State Water Board should:

Approve the \$2 million from the CAA to DWR to complete CEQA compliance for the Clean Water Act Section 401 water quality certification of KHP.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

ALLOCATE \$2 MILLION FROM THE CLEANUP AND ABATEMENT ACCOUNT (CAA)
TO THE STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
IN SUPPORT OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
COMPLIANCE FOR THE KLAMATH HYDROELECTIC PROJECT (KHP)
SECTION 401 WATER QUALITY CERTIFICATION

WHEREAS:

1. The State Water Board requests funding of \$2 million to complete CEQA compliance for the Clean Water Act Section 401 water quality certification of KHP.
2. KHP, owned by PacifiCorp Energy (PacifiCorp), is licensed by the Federal Energy Regulatory Commission (FERC) and is currently undergoing relicensing. PacifiCorp has applied to the State Water Board for a Clean Water Act Section 401 water quality certification as part of the FERC relicensing process.
3. The State Water Board is obligated to conduct timely review of applications for water quality certification, including any review under CEQA. As a requirement of CEQA, it is necessary for the State Water Board to certify an Environmental Impact Report. CEQA requires completion of environmental review documents within one year of the issuance of a notice of preparation which in this case was issued by the State Water Board on September 30, 2008. Requiring PacifiCorp to continue funding the CEQA document could interfere with further settlement negotiations under the Agreement in Principle executed by PacifiCorp, the United States, the State of Oregon, and the State of California Resources Agency.
4. Funding will be made available for the Executive Director or her designee to hire a consultant to prepare an EIR for the KHP.
5. The requested allocation is consistent with the purposes of Water Code section 13442. Water Code section 13442 provides that the State Water Board may order monies to be paid from the CAA to a public agency with authority to cleanup or abate the effects of a waste in order "to assist it in cleaning up the waste or abating its effects on the waters of the state."

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves funding of \$2 million from the CAA to complete CEQA compliance for Clean Water Act Section 401 water quality certification for KHP; and

D R A F T

2. The funds approved today will be available until June 30, 2012. Any unexpended funds, as of June 30, 2012, shall revert to CAA, unless the Deputy Director or Assistant Deputy Director of the Division of Financial Assistance authorizes an extension.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on March 17, 2009.

Jeanine Townsend
Clerk to the Board