

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
OCTOBER 5, 2010**

ITEM 9

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION REGARDING FURTHER ABEYANCE IN PROCESSING THE SECTION 401 WATER QUALITY CERTIFICATION OF THE KLAMATH HYDROELECTRIC PROJECT

DISCUSSION

PacifiCorp owns and operates the Klamath Hydroelectric Project (KHP) which is located on the Klamath River and on Fall Creek, tributary to the Klamath River. The project operates under a license from the Federal Energy Regulatory Commission (FERC), Project No. 2082. That license has expired, and the facility is operating under annual licenses as it undergoes a relicensing process with FERC. Over the course of the FERC relicensing process, interested state, tribal and local government agencies, non-governmental organizations, PacifiCorp, and other stakeholders negotiated an agreement concerning the relicensing of the facilities that was expanded to address a host of other water-related issues in the Klamath River Basin. This has resulted in the signing of the Klamath Hydroelectric Settlement Agreement (KHSA), which addresses activities in both California and Oregon. The KHSA provides a framework for decision-making regarding removal of four KHP dams on the Klamath River mainstem, and a framework for removal, if a decision to remove the dams is reached. That framework includes, among other things, a need for congressional legislation to halt the FERC relicensing process and to implement other aspects of the agreement. Execution of the KHSA occurred on February 18, 2010.

The KHSA anticipates that PacifiCorp would request a stay of the 401 water quality certification process during the interim period, which they requested in a letter dated March 18, 2010. On May 18, 2010, the State Water Board adopted [Resolution 2010-0024](#) which holds in abeyance the processing of PacifiCorp's water quality certification application for the KHP. Resolution No. 2010-0024 also describes a set of occurrences, based primarily on goals in the KHSA, that would lift the abeyance if the goals had not been met within 90 days.

Among the set of occurrences that would trigger lifting the abeyance is that federal legislation implementing the KHSA is not introduced on or before June 18, 2010 (120 days after the effective date of the KHSA). As no federal legislation had been introduced, as of September 16, 2010 (90 days after June 18, 2010), the abeyance lifted. On that same date, PacifiCorp requested that the State Water Board modify Resolution No. 2010-0024 to remove the condition that federal legislation be introduced by a date certain. Klamath Water Users Association, a party to the KHSA, sent a letter in support of PacifiCorp's request to modify Resolution No. 2010-0024.

The proposed resolution amends the language of Resolution No. 2010-0024 to cause the abeyance to lift if federal legislation is not enacted by May 17, 2011, which is one year after the proposed timeline for introduction of legislation in the KHSA.

POLICY ISSUE

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT

None.

REGIONAL WATER BOARD IMPACT

None

STAFF RECOMMENDATION

Staff recommends adoption of the proposed resolution.

STAFF RECOMMENDATION:

The staff recommends that the State Water Board adopt the proposed resolution.

This effort is consistent with Goal 4 of the Water Board's Strategic Plan: to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

REGARDING FURTHER ABEYANCE IN PROCESSING THE SECTION 401 WATER QUALITY CERTIFICATION OF THE KLAMATH HYDROELECTRIC PROJECT

WHEREAS:

1. On May 18, 2010, the State Water Board adopted [Resolution 2010-0024](#), which holds in abeyance further processing of the water quality certification application of the Klamath Hydroelectric Project.
2. Resolution 2010-0024 contains certain deadlines which would cause the abeyance to lift unless the State Water Board acts to extend the deadlines.
3. One such deadline is that the abeyance will lift 90 days after June 18, 2010, if federal legislation contemplated in the Klamath Hydroelectric Settlement Agreement (KHSA) is not introduced into Congress by that date.
4. PacifiCorp and the Klamath Water Users Association (KWUA) have requested that the State Water Board extend the abeyance even though federal legislation has not yet been introduced.
5. PacifiCorp states that settlement parties have diligently pursued such draft legislation, but that none has been introduced because of congressional schedules and priorities in an election year, and it is unknown when such legislation will be introduced.
6. PacifiCorp and KWUA request that the federal legislation requirement in Resolution 2010-0024 be struck.
7. Other progress towards implementing the KHSA includes:
 - o The environmental review process under the California Environmental Quality Act and the National Environmental Protection Acts is moving forward according to the schedule contemplated in the KHSA.
 - o Interim measures have begun to be implemented.
 - o Approval of required rate changes by the Oregon Public Utilities Commission, based on the finding that dam removal under the settlement will be more cost-effective for rate-payers than renewing the Federal Energy Regulatory Commission license.
 - o PacifiCorp submitted an application for the required rate change to the California Public Utilities Commission in March 2010, and expects a decision in April 2011.
8. No events triggering dissolution of the KHSA have occurred.
9. The original date anticipated for introduction of the federal legislation was May 17, 2010 (90 days after enactment of the KHSA).
10. Federal legislation early in the KHSA process is important to the KHSA's implementation, as the legislation is anticipated to provide the necessary legal framework for a Secretarial Determination by April 30, 2012, and for subsequent events.

D R A F T

11. Federal legislation would also be required to stay the relicensing proceeding before the Federal Energy Regulatory Commission, which forms the impetus for the State Water Board's action under Clean Water Act section 401.

THEREFORE BE IT RESOLVED THAT:

The State Water Board will change Resolution 2010–0024, paragraph 3, first bullet, to a deadline for enactment of legislation, rather than introduction of legislation, and change the date from June 18, 2010 to May 17, 2011 (one year after the timeline anticipated in the KHSA).

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 Resources Control Board held on October 5, 2010.

Jeanine Townsend
Clerk to the Board