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October 20, 2006

Fax No. 916-341-5550

To: Dorena Goding, Water Quality Assessment Unit, Div. of Water Quality, State Water Resources Control Board

From: Patrick Porgans & Associates, Inc., Sacramento, CA 95860 Ph. 916-543-0780 Fax 543-4490 email: porgansinc@sbcglobal.net

Re: **Comments/Recommendation for the Proposed 2006 Federal Clean Water Act Section 303(d) List of Water Quality Segments for California (Lower Klamath River - To List or Not to List as Sediment Impaired)**

Let this letter serve as notice that Porgans & Associates (P&A), Inc., and our client, New-Old Ways Wholistically Emerging, respectfully request that the State Water Resources Control Board (SWRCB) list the Lower Klamath River as sediment impaired in its 2004-2006 listings. (Please refer to enclosed map.) P&A has reviewed government correspondences/reports that indicate that there is some question as to whether the Lower Klamath River is to be listed as sediment impaired, This uncertainty maybe the result of concerns raised by the U.S. Environmental Protection Agency pertinent to Tribal waters.

Water Segment: Klamath River HU, Lower HA, Klamath Glen, HSA.

Pollutant: Sedimentation/Siltation

Decision: Do Not List¹

IV. Listing of Tribal Waters

The State proposed listing of the Lower Klamath River for sediments. This assessment appears to be based, at least in part, on data collected in Tribal waters. Federal regulations provide that State jurisdiction to make Section 303(d) listing decisions does not extend to waters within Indian Country, as defined in 18 U.S.C. Section 1151. EPA requests clarification that the proposed listing does not address portions of the Klamath River that are within Indian Country.²

In 1996-1998 both the SWRCB and the USEPA listed the Trinity River as sediment impaired. The Hoopa Reservation is within the area that had been listed. (Refer to Map of Lower Klamath River.) **That listing did not cause any controversy over jurisdictional issues, nor should the listing of the Lower Klamath River.** At the same time, the Trinity River listing provided area-wide protection throughout the hydrologic unit. Therefore, it stands to reason that the listing of the Lower Klamath River would be consistent with prior actions of the USEPA, SWRCB and the Regional Board.

It would be disconcerting if the SWRCB held to a position that it cannot list the Lower Klamath River because of the Tribal lands downstream of Weitchepec to the mouth of the Klamath, for one mile either side of the river. It is clear that the major sources of sediment loading that impacts the Lower Klamath River is from sources upstream from the lands/waters that are managed by the Tribe. Failure to list the Lower Klamath River for such a reason would appear to be inconsistent with the State's mandate and provisions contained in the Clean Water Act. Such an action and/or failure to act would place the waters of the State at great risk and further exacerbate the impacts on "trust resources" and other beneficial users/uses of water, within the State and downstream from the sources of sediment. Please enter this formal request into the hearing record, and advise P&A of your decision.

cc: Interested Parties

Fnl/lap1-2/p&a-nowwememotoswrcb303listings

¹ California Regional Water Quality Control Boards, Region 1, Fact Sheets Supporting "Do Not List" Recommendations, New or Revised Fact Sheets, September 2006, p. 32.] (Refer to Attachment 3.)

² Alexis Strauss, Director, Water Division, U.S. Environmental Protection Agency, R-IX, letter to Tam Doduc, Chair, California State Water Resources Control Board, January 27, 2006, p. 4.

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[Source: Alexis Strauss, Director, Water Division, U.S. Environmental Protection Agency, R-IX, letter to Tam Doduc, Chair, California State Water Resources Control Board, January 27, 2006, p. 4.]
