

August 8, 2011

Mr. Charles Hoppin, Chair
Mr. Tom Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-011



Re: Water Quality Certification for Klamath Hydroelectric Project (FERC P- 2082)

Dear Mr. Hoppin and Mr. Howard:

American Rivers, California Trout, Institute for Fisheries Resources, Northern California Council of Federation of Fly Fishers, Pacific Coast Federation of Fishermen's Associations, and Trout Unlimited respectfully request that the State Water Board amend Resolution Nos. 2010-0024 and 2010-0049 to delete the condition which requires enactment of federal legislation by May 17, 2011 as the basis for a continuing stay of the certification proceeding.

PacifiCorp made this same request on June 13, 2011, and the Natural Resources Agency supported it on July 22, 2011. We support the explanations which they offered. We underscore a few key points.

First, the Klamath Hydroelectric Settlement Agreement (KHSA) requires enactment of federal authorizing legislation as a basis for the Secretarial Determination whether to proceed with dam removal. *See* KHSA § 3.3.4.A. While it provides that the Interior Secretary make "best efforts" to complete that determination by March 2012 (*id.*), the agreement does not require that determination, or the associated introduction or enactment of authorizing legislation, by any specific date.

Second, PacifiCorp and the other parties continue to implement the agreement in a proactive and expeditious manner. For example, PacifiCorp sought and has now received authorizations from the Oregon and California Public Utility Commissions to recover customer surcharges designed to raise \$200 million, for the purpose of dam removal pursuant to the agreement. Additionally, the Interior Department and Natural Resources Agency are on track to publish this fall a draft environmental document which, when final, will be a basis for the Secretarial Determination and the State's decision whether to concur in that determination.

Third, the resolutions authorize the State Water Board to resume the certification proceeding if the Executive Director finds, for any reason, that removal of the California dams is unlikely to proceed in a reasonably timely manner. *See* Resolution 2010-024, ¶ 3, bullet 9. The Executive Director may properly consider the status of legislation, along with other variables in the implementation of the agreement, under that condition, even if the State Water Board removes the specific deadline for the legislation.

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Fourth, PacifiCorp is implementing interim measures under the KHSA to protect water quality, fisheries, and public trust resources, as documented in its June 13th letter. These measures substantially exceed its obligations under its existing license. The public will receive such benefits as long as the agreement (and associated stay of this proceeding) are in effect. Under the scenario where the agreement terminates and this proceeding resumes, PacifiCorp would implement its existing license obligations, and the benefits of these interim measures would be foregone, until the new license issues and survives judicial review.

Fifth, the KHSA and your resolutions – supported by PacifiCorp, the Natural Resources Agency, and other KHSA parties – expressly and unambiguously provide that the State Water Board retains all of its authority under the Clean Water Act and the Porter-Cologne Act to issue, deny, or condition certification as the basis of a new license, in the event the agreement terminates.

Lastly, the KHSA parties do not have the capacity to effectively implement that agreement while also proceeding on a parallel track in water quality certification and relicensing proceedings. Successful implementation of the KHSA requires a huge commitment of resources, given the complexity, scale, and novelty of the proposed dam removal. That is a basic reason why the KHSA specifically provides for a stay of the certification and relicensing proceedings. That choice is necessary today, as it was in February 2010 when the KHSA was signed.

Please contact us if you have any questions.

Respectfully submitted,

Steve Rothert
California Regional Director
American Rivers

Curtis Knight
Conservation Director
California Trout

Glen Spain
Pacific Northwest Director
Institute for Fisheries Resources
Pacific Coast Federation of Fishermen's Associations

Mark Rockwell
Vice-President, Conservation
North California Council, Federation of Fly Fishers

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Petey Brucker
President
Salmon River Restoration Council

Chuck Bonham
California Director
Trout Unlimited

Cc: FERC service list