



# COUNTY OF SISKIYOU

## Board of Supervisors

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7/17/12 Bd. Mtg. Item 11  
Klamath Hydroelectric Project

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July 10, 2012

Mr. Charles R. Hoppin  
Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: Section 401 Water Quality Certification for the Klamath Hydroelectric Project

Dear Chairman Hoppin:

The agenda for the July 17 meeting of the State Water Resources Control Board (State Board) includes consideration of a resolution regarding Clean Water Act section 401 water quality certification for the Klamath Hydroelectric Project (Project 2082).

PacifiCorp, the licensee for Project 2082, first filed its application for 401 certification in March of 2006. In May 2010, following execution of the Klamath Hydroelectric Settlement Agreement (KHSA), the State Board adopted a resolution to hold the 401 process in abeyance, pending implementation of the KHSA. As a result of the failure of the Klamath settlement parties to even come close to the timetables set forth in the KHSA, the State Board has twice amended its abeyance resolution to extend the State Board's deadlines for meeting milestones and fulfilling conditions of the KHSA.

The current abeyance resolution will expire at the end of July, and the Klamath settlement parties have requested an additional extension to March 31, 2013. In contrast, the Sierra Club and other interested parties have urged the State Board to resume work on water quality certification. However, at this point in the Klamath relicensing, we believe that neither option is available to the State Board. There has already been a six-year delay in processing the 401 application, and the State of California is now a party to the KHSA, which provides for the deferral of water quality certification until at least the year 2020. By formally entering into the KHSA, the State of California has issued a *de facto* refusal to act on the water quality certification within a one-year time period and has therefore triggered the waiver provision of section 401(a) (33 U.S.C. 1341(a)).

With respect to 401 certification, the KHSA is a clear attempt by the settlement parties to contract around the requirements of federal law and, in the overall scheme of the Klamath settlement, is certainly not the only area where federal law has been bent or

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State Water Resources Control Board  
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broken. To achieve redress, Siskiyou County has joined with the Hoopa Valley Tribe to advance the relicensing of Project 2082 through the normal and legal processes under the Federal Power Act and the authority of the Federal Energy Regulatory Commission (FERC). Review is currently pending before FERC under docket number 2082-058.

While hydroelectric project relicensing without water quality certification by the State Board is certainly not unprecedented, we realize the Board may be resistant to acknowledging the 401 waiver unilaterally. If the Board does seek to continue to assert 401 authority, it should do so with skepticism toward the prospects for the KHSA and with an eye toward restoring accountability and proper process. Nearly four years after an "agreement in principle" and more than two years after execution of the KHSA itself, here is only a partial list of the holes that have opened in the Klamath settlement:

- Failure to enact federal authorizing legislation
- Failure of the Secretary of the Interior to make a determination on dam removal by March 31, 2012
- Failure to secure California bond funding (first with deferral of the water bond from the 2010 election to November 2012, and now with further delay until at least 2014)
- Failure of PacifiCorp to be able to collect the full California ratepayer contribution

Perhaps the greatest hurdle will be securing the support of Congress. To date, the only action by Congress related to the KHSA has been a vote in the House of Representatives to deny funding for implementation.

We hope the State Board will take the cleanest approach to the Klamath situation and simply acknowledge the 401 waiver. Short of doing so, we would urge the Board to scrutinize the status of the KHSA and the prospects that it can ever really be implemented, as well as to weigh fully the precedent of perpetuating indefinite deferral of any requirement for water quality certification.

Sincerely,



Grace Bennett  
Chair, Board of Supervisors

cc: Greg Norton, President, Regional Council of Rural Counties  
Mike McGowan, President, California State Association of Counties