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Klamath Hydroelectric Project Relicensing Release of Notice of Preparation Frequently Asked Questions

Background

The Klamath Hydroelectric Project (KHP) is undergoing relicensing by the Federal Energy Regulatory Commission (FERC). The KHP is owned and operated by PacifiCorp and is located in northern California and southern Oregon. As part of the FERC relicensing, PacifiCorp must apply for water quality certifications from the California State Water Resources Control Board (State Water Board) and the Oregon Department of Environmental Quality. As part of its water quality certification process the State Water Board must comply with the California Environmental Quality Act (CEQA). The State Water Board is releasing a [Notice of Preparation](#) to initiate the CEQA process. The State Water Board will prepare an environmental impact report (EIR) or a supplemental EIR to support consideration of PacifiCorp's application for certification under Clean Water Act (CWA) section 401, for modifications to and continued operation of the KHP.

Concurrent with the FERC relicensing process, three settlement agreements have been developed that propose considerable changes to the KHP and other interests in the Klamath River Basin. Substantial new information has been developed under these settlement agreements and related processes, including development of an environmental review document evaluating dam removal impacts, data collection on water quality and fisheries health, and studies that relate to the KHP. On August 15, 2014, the State Water Board received an updated certification application from PacifiCorp. This new information, along with other available information will be used to inform the State Water Board's CEQA document and water quality certification for the KHP.

What are the avenues for determining the future operation or removal of the KHP?

The two main paths forward at this time, FERC KHP relicensing and Klamath Settlement Agreements, are further outlined below.

- *FERC Relicensing.* The FERC relicensing process is the standard process that applicants pursue for relicensing of hydropower projects every 30 to 50 years. In this process, FERC may issue PacifiCorp a license that would include conditions requiring PacifiCorp to make modifications to the KHP. Modifications could include a wide variety





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of measures such as: infrastructure modification (e.g., volitional fish passage facilities); new operational requirements; environmental enhancement measures; or full/partial KHP facility removal. Any conditions the State Water Board requires in a water quality certification decision would become part of PacifiCorp's new FERC license.

- *Klamath Settlement Agreements.* There are three separate agreements: 1) Klamath Hydroelectric Settlement Agreement; 2) Klamath Basin Restoration Agreement; and 3) Upper Klamath Basin Comprehensive Agreement. The Settlement Agreements provide a framework for removal of four KHP dams while addressing water supply and providing water quality improvement measures in the Upper Klamath Basin, among other issues. Implementation of the Settlement Agreements currently requires federal legislation. Since 2011, several attempts have been made to pass federal legislation. Most recently, on January 8, 2015, Senator Ron Wyden of Oregon introduced Senate Bill 133, *The Klamath Basin Water Recovery and Economic Restoration Act of 2015*. The legislation would halt the FERC process, and moot the current water quality certification application.

What is the relationship between the State Water Board's water quality certification and the Settlement Agreements?

The State Water Board is not a signatory to the Settlement Agreements¹ and maintains its independent authority to condition PacifiCorp's KHP to ensure the protection of beneficial uses and water quality. The State Water Board has received a water quality certification application from PacifiCorp for the continued operation of the KHP. Should the Settlement Agreements be enacted, and the KHP removed from the FERC process, the current water quality certification application before the State Water Board would be obsolete. While the State Water Board is not a party to the Settlement Agreements, the State Water Board supports efforts to improve water quality and environmental resources in the Klamath River watershed whether such improvements be achieved through a water quality certification issued by the State Water Board for the KHP under the FERC relicensing process, the Settlement Agreements or other efforts.

What is the State Water Board's role in the FERC relicensing of the KHP?

The State Water Board is responsible for: (1) the water quality certification for the portions of the KHP in California; and (2) development of the environmental document for the KHP in compliance with CEQA. Each of these roles is further described below.

¹ Settlement Agreements collectively refer to: 1) Klamath Hydroelectric Settlement Agreement; 2) Klamath Basin Restoration Agreement; and, 3) Upper Klamath Basin Comprehensive Agreement.



- *Water Quality Certification.* The State Water Board is the agency in California that is responsible for acting on applications for water quality certifications for hydropower projects under section 401 of the federal CWA. As part of the FERC relicensing the State Water Board must issue, deny, or waive water quality certification for PacifiCorp's KHP. Conditions of any water quality certification issued by the State Water Board for the KHP would become conditions of the FERC license. The purpose of a water quality certification is to protect the waters of the United States by ensuring waste discharged to waters from a proposed activity meet water quality standards and other appropriate requirements. Conditions in a water quality certification become mandatory conditions of a federal license or permit for the project.
- *CEQA.* The State Water Board is the CEQA lead agency for the KHP. The State Water Board will prepare an EIR for the KHP. As background, [CEQA](#) is a statute that requires state and local agencies to identify the significant environmental impacts of a project and to avoid or mitigate impacts, if feasible. The State Water Board must prepare a CEQA document that adequately analyzes the environmental impacts associated with the KHP.

What is the Federal Energy Regulatory Commission's (FERC) role in the relicensing of the KHP?

FERC is the federal agency with jurisdiction over hydropower licensing. FERC issues licenses for the construction of new hydropower projects or the continued operation of existing hydropower projects. FERC licenses are issued for a term of 30 to 50 years. PacifiCorp's KHP license expired in 2006, and PacifiCorp is currently pursuing a new license from FERC. Since 2006, PacifiCorp has operated the KHP under annual licenses issued by FERC. To continue operating the KHP, PacifiCorp needs a new license from FERC.

What is the Klamath Hydroelectric Project (KHP)?

The KHP is a hydroelectric project that is owned and operated by PacifiCorp, a private utility company that is located in and provides electricity to southern Oregon and northern California. The KHP consists of eight facilities: East Side, West Side, Keno, and J.C. Boyle in south-eastern Oregon, and Copco No. 1, Copco No. 2, Iron Gate, and Fall Creek in north-eastern California. All facilities are located on the mainstem Klamath River with the exception of Fall Creek which is located on Fall Creek, a tributary to the Klamath River. Additional information can be found on the State Water Board's KHP webpage:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/klamath_ferc2082.shtml



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What are some of the water quality issues involved with the KHP?

KHP facilities contribute to poor water quality by altering river flow and increasing water residence time. Portions of the Klamath River affected by the KHP are listed on the 2012 CWA Section 303(d) List of Impaired Water Bodies for organic enrichment/low dissolved oxygen, temperature, mercury, microcystin (a liver toxin produced by blue-green algae), nutrients, aluminum, and sediment.

Poor water quality affects many uses of the Klamath River including tribal uses (e.g., ceremonies and subsistence fish harvesting), recreation, and environmental resources (e.g., salmon migration and spawning).

What is the purpose of the Notice of Preparation and how does the [2008 KHP Notice of Preparation](#) relate to this [2015 KHP Notice of Preparation](#)?

The Notice of Preparation provides notification to interested parties regarding the start of the CEQA process for the KHP, including information on scoping meetings. The scoping meetings provide interested parties with an opportunity to provide the State Water Board with written or oral comments concerning the range of alternatives, potential significant effects, and mitigation measures that should be analyzed in the environmental document. At the scoping meetings, the State Water Board will provide information on the KHP and the water quality certification process.

The State Water Board issued a Notice of Preparation of an EIR for the KHP in September 2008 and held a series of scoping meetings in October and November 2008. Since issuance of the 2008 Notice of Preparation, several settlement agreements have been developed that propose considerable changes to the KHP and other interests in the Klamath River Basin. Substantial new information has been developed under the Settlement Agreements and related processes, including development of an environmental review document evaluating dam removal impacts, data collection on water quality and fisheries health, and studies that relate to the KHP. On August 15, 2014, the State Water Board received an updated certification application from PacifiCorp. In light of this new information, the State Water Board is issuing a new Notice of Preparation for the KHP. The State Water Board is seeking comments from trustee agencies, responsible agencies, and other interested persons concerning the scope and content of the environmental information to be included in the EIR. Comments submitted in response to the prior 2008 Notice of Preparation will be considered.





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How do I stay informed about the State Water Board's KHP water quality certification and CEQA process?

If you would like to receive future announcements about KHP related matters, please provide your email address to Mr. Parker Thaler. Alternatively, you may request to be placed on the State Water Board's hard copy mailing list. Requests to be placed on the KHP's electronic or hard copy mailing list should be sent to Mr. Parker Thaler by email at:

parker.thaler@waterboards.ca.gov or by phone at: (916) 341-5321

If you would like to receive additional information related to the Division of Water Rights Water Quality Certification Program, please [subscribe](#) to the State Water Board's "Water Rights Water Quality Certification" email list under "Water Rights" online at:

http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml

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