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SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JAN 13 2012

Ms. Elizabeth Vasquez
MP150 – Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Mr. Gordon Leppig
California Department of Fish and Game
619 Second Street
Eureka, CA 95501

Dear Ms. Vasquez and Mr. Leppig:

ADDITIONAL COMMENTS ON *KLAMATH FACILITIES REMOVAL PUBLIC DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT (DEIS/DEIR)*

Upon further review of the DEIS/DEIR for the Klamath Facilities Removal, State Clearinghouse No. 2010062060, State Water Resources Control Board (State Water Board) staff has additional comments to the Water Resources section of the document. The State Water Board is a responsible agency for purposes of review under the California Environmental Quality Act, and is the agency charged with administering water rights in California, among other responsibilities. While these comments are outside of the extended comment period provided, State Water Board staff is submitting them because they may provide additional helpful information and clarifications.

Clarifications of Water Rights Law

Section 3.8.2.2 generally condenses a complex field into material that is relevant to the environmental review in a well thought-out and accessible manner. However, there are a few clarifications that would make the overview more accurate. A description of the clarifications and suggested text to implement them follows:

- Because California administers not only riparian and appropriative water rights, but also pueblo rights, the first sentence of the section should state that: "States administer water resources within their boundaries *mainly* in accordance with . . ."
- Because appropriative rights acquired without a permit prior to the 1914 effective date of the Water Commission Act are still valid, the last sentence of the second paragraph in the section should read: "In California, . . . appropriative rights may be acquired *after 1914* only by permit."
- Because some appropriative water rights do carry a higher priority than some riparian rights (as between an appropriative right and a riparian right, priority is determined by whether the priority date for the appropriative right is before or after the patent date for the land that is the place of use for the riparian right), the second sentence in the last paragraph on page 3.8-2 should read: "*In general, Riparian* rights continue to have higher priority in California . . ."

- Because the State of California is not the only entity that can initiate a comprehensive adjudication, and because such an adjudication is not the only means to quantify a federal reserved right, the third sentence in the last paragraph on page 3.8-2 should be amended to read: "An adjudication may be initiated to determine relative rights to use water from a specific source, but *no one* California has ~~not~~ initiated a comprehensive Klamath Basin Adjudication which includes all federal reserved water rights, *or any other proceeding to quantify such rights in California.*" A similar change should be made in the reference to an adjudication in the last sentence of the Hoopa Valley and Yurok Tribes section of the Indian Tribes section on page 3.8-12.
- Because California water rights law depends on case law and statutes as well as regulations, and because the section refers to water rights law, the first full paragraph on page 3.8-3 should read: "California's water *rights* law is contained in *case law, the California Water Code, and the California Code of Regulations, Title 23.*"
- To clarify that the ongoing Klamath Basin Adjudication does not address all rights on the river, the first title on page 3.8-3 should read: "*Upper Klamath Basin Adjudication*" and the first sentence of that section should read: "If an appropriation of water was initiated . . . , *an Oregon* water user may have a "vested" water right."
- Additionally, in section 3.8.3.2, in the Indian Tribes section, starting on page 3.8-11, the emphasis on fishing rights and concomitant water rights could be read to indicate that such rights are the only potential federal reserved rights for the tribes. Federal reserved rights may cover other uses, as well, and we recommend clarifying this in the text.

Supplemental Information and Corrections on Water Rights

- The DEIS/DEIR notes on page 3.8-10 that the City of Yreka's municipal water right on Fall Creek is less than the face value of the permit, but does not provide information on current use. According to the City of Yreka's annual reports to the State Water Board, the highest amount of annual use for City of Yreka has been 1020.41 million gallons, reported in 2004. The maximum rate of diversion reported in 2010 (the first year for which such information was requested) was 10.1 cfs. It may also be relevant to the study that the right has a 15 cfs bypass requirement.
- Page 3.8-10 also references a California Department of Fish and Game (CDFG) water right on Fall Creek, under the heading "Municipal Water Rights City of Yreka." It is unclear why the hatchery right is included under that heading.
- The discussion of the CDFG water right on page 3.8-10 should note that the right is non-consumptive.
- Because state-filed water rights were not filed by the State Water Board and because it is helpful to note that they are not active, the last full sentence in the last paragraph on page 3.8-10 should read: "Ten appropriative water rights are a state filings *which have not yet been assigned or developed*; these state filings *all have priority dates* ~~were all filed~~ in 1956 ~~by the SWRCB.~~" For the same reason, the second sentence in the Shasta Valley Irrigators section on page 3-8.11 should read:

"Application A016958 for a state filing was submitted in 1956 on behalf of the SWRCB."

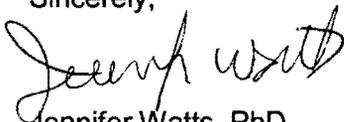
- Section 3.8.4.2, page 3.8-16 has two typos. The italicized text describing the potential impact should read: "Dam removal could cause ~~be affected by the~~ changes in water supply compared to the No Action/No Project Alternative." In the paragraph under that heading, the second sentence states that PacifiCorp holds two appropriate water rights in the affected reach. PacifiCorp has only one in that reach.

Requests for Additional Clarification

- In section 3.8.4.2, it would be helpful to further clarify significance criteria number one. Given the larger context discussed in the previous sections, State Water Board staff understands the reference to "existing" water rights or adjudication claims to refer to water currently being used to serve water rights, in addition to water which the water right holders have put the state on notice that they intend to develop (either through filing an application or by filing a statement of use for an inactive right). However, the phrase could also be understood as referring only to water actually being used. It is unclear if the phrase applies to the unquantified or unevaluated federal reserved rights discussed.
- Section 3.8.4.3, pages 3.8-14 through 3.8-16, provides and analyzes data that show projected flow changes on the lower river with Project implementation, including the combined flow impacts of dam removal and Klamath Basin Restoration Agreement (KBRA) implementation. Because the effects analysis for other alternatives relies on this information, the flow information for the impacts of dam removal and of KBRA implementation should be separated. Alternative 5, for example, includes some dam removal but no implementation of the KBRA. This specific request for clarification is within the broad scope of the State Water Board's request for clarification of the KBRA elements in the water supply section in our prior comment letter. State Water Board staff wish to request this specific type of analysis within that broader request for clarification.

Thank you for the opportunity to comment on the DEIS/DEIR. If you have questions regarding this letter, please contact Jennifer Watts at (916) 341-5397 or by email at: jwatts@waterboards.ca.gov. Written correspondences or inquiries should be addressed to: State Water Resources Control Board, Division of Water Rights, Attn: Jennifer Watts, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Jennifer Watts, PhD
Environmental Scientist
Water Quality Certification Unit

cc: See next page.

Ms. Elizabeth Vasquez
Mr. Gordon Leppig

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cc: Ms. Catherine Kuhlman **[via email only]**
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