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January 29, 2016

State Water Resources Control Board  
Division of Water Rights  
Water Quality Certification Program  
Attention: Mr. Parker Thaler  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Re: Notice of Preparation of EIR for Water Quality Certification for the  
Klamath Hydroelectric Project**

Dear Mr. Thaler:

The County of Siskiyou and the Siskiyou County Flood Control and Water Conservation District submit these comments to the State Water Resources Control Board ("State Board") in response to the Notice of Preparation of an environmental impact report ("EIR") in support of the water quality certification for the Klamath Hydroelectric Project (FERC Project #2082).

**Waiver of 401 Authority**

As a preliminary matter, we note that the very authority of the State Board to undertake this process is in dispute and is currently the subject of litigation in the Circuit Court of Appeals for the District of Columbia. In a lawsuit filed by the Hoopa Valley Tribe, which is supported by both the Yurok Tribe and the County of Siskiyou, the argument has been presented that the Governor's signature on the Klamath Hydroelectric Settlement Agreement reflects a willing refusal to act on water quality certification within one year as required by the Clean Water Act. Such a refusal to act results in California's waiver of water quality certification authority under Section 401 of the Clean Water Act.

Further action on preparation of an EIR is premature prior to resolution of this significant legal issue. The State Board has reported that it has entered into an MOU with PacifiCorp and has identified a contractor (AECOM Technical Services) to work on preparation of the EIR under the direction of the State Board. We presume that PacifiCorp will be paying for the services of AECOM, based on the State Board's past practice of transferring the cost of a consultant to the licensee. These costs can be expected to be passed on to ratepayers on top of the Klamath surcharge that has already been approved by the Public Utilities Commission.

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As acknowledged by the State Board, passage of legislation authorizing the Klamath settlement agreements<sup>1</sup> would render moot these proceedings. So too would a decision from the D.C. Court of Appeals agreeing that State Board authority has been waived. In the case of the Klamath surcharge, the PUC dismissed concerns from the Division of Ratepayer Advocates and others that the prospect of Congressional action was too uncertain to justify imposing a surcharge on ratepayers. The PUC's rationale was that "something" would happen on the Klamath River that would require money, and the proceeds of the surcharge could be used for whatever that may be. That is not the case for preparation of an EIR. If the court determines that 401 authority has been waived, the time and money that have been spent will be of no value, and yet the ratepayers will be stuck with the cost.

The State had originally agreed to hold these proceedings in abeyance for 14 years following the original expiration of PacifiCorp's FERC license. Now, in the face of a lawsuit challenging the ability of the State Board to do what it has done, there appears to be a renewed commitment to demonstrate action in processing the water quality certification for the Klamath Hydroelectric Project. Given the extended amount of time that has already elapsed with the State's active support and encouragement, the State Board should defer further work on an EIR until the legal question over its authority is resolved, which will potentially avoid unnecessary costs for ratepayers.

Regardless of the pending litigation, since the State Board has initiated preparation of the EIR and issued attendant deadlines, Siskiyou County offers the following comments in response to the Notice of Preparation.

**Klamath Compact and Interstate Water Quality**

An issue that has been raised repeatedly by commenters on this process is the poor quality of Klamath River water entering California from Oregon and the beneficial effects of project facilities and agricultural water use on water quality. In 1956, representatives of California and Oregon negotiated the Klamath River Basin Compact ("Compact"), which was later codified by the Legislatures of both states and ultimately ratified by the United States Congress. (See California Water Code sections 5900-5901.) Article VII of the Compact specifically addresses "pollution control," and grants various authorities and responsibilities to the Klamath Compact Commission and the State Board.

Now that the attempt for Congress to specifically authorize the Klamath Hydroelectric Settlement Agreement and the Klamath Basin Restoration Agreement has apparently been abandoned, how will the State Board reconcile the Compact and its obligations and grants of authority with the other federal and state laws that still stand, particularly the Federal Water Pollution Control Act, the Federal Power Act, and the Endangered Species Act?

**Conflicts of Interest and Predetermined Outcomes**

The State Board is potentially placing its good reputation and credibility in jeopardy by engaging in a process that has been tainted in recent years by political intervention and

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<sup>1</sup> We also note that the Klamath Basin Restoration Agreement terminated on December 31, 2015, and notice of intent to terminate has been given to the parties to the Klamath Hydroelectric Settlement Agreement, with a session scheduled for February 3 in Sacramento for a mandatory meet-and-confer.

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influence on scientific decisions and predetermined outcomes with respect to the Klamath River. Millions of dollars and thousands of hours were invested by the federal government to create studies and reports purportedly in support of the determination by the Secretary of the Interior as to whether dam removal was in the public interest and should move forward. Unfortunately, this entire effort was tainted by former Secretary Ken Salazar, who proclaimed to a group of collected stakeholders – prior to much of the scientific analysis or generation of reports – that dam removal would not fail.

In the aftermath of criticism during the administration of George W. Bush that scientific decisions -- particularly at Interior -- had been corrupted through undue political intervention, the Obama Administration went to great lengths to adopt and publicize policies related to scientific integrity. Unfortunately, these policies quickly fell victim to political expediency. The most glaring example was the firing of Dr. Paul Houser, the Scientific Integrity Officer of the Bureau of Reclamation, who had started to ask awkward questions about things that were happening in the Interior Department related to the Klamath River. His superior at the time was a political appointee and former Washington D.C. lobbyist for Trout Unlimited, one of the signatories to the dam removal “agreements.” Under the new policies proclaiming to safeguard scientific integrity, a formal complaint was filed over this firing. However, the complaint was dismissed in such a blatant manner that its handling was criticized even by environmental organizations that were sympathetic to the Interior Department’s goals. (See attached article entitled *Interior Denies Spinning Klamath Science*.)

Siskiyou County itself submitted a complaint on scientific integrity in the report that was compiled in support of the Interior Secretary’s determination to proceed with dam removal (copy attached). After more than a year of review, the Interior Department issued a response stating that each and every allegation was determined to be “not warranted.” We were unsurprised due to Interior’s abysmal track record in responding to these kind of complaints.

Given the politicization of the Klamath River issues and the demonstrated desire of the Obama Administration and both Governors Brown to support dam removal as desired by certain interests, it is our hope and expectation that the State Board will consider water quality certification based on the best science and the most pragmatic and certain solutions for the Klamath River. In this regard, it is unfortunate that board member Steven Moore has already taken a position in support of dam removal and publicly proclaimed that such an action is a legacy to leave to our children. Based on this demonstration of bias, we request that Mr. Moore recuse himself from consideration of this water quality certification and ask that the other members of the State Board commit to approach this issue with dispassionate objectivity.

**Reliance Upon the EIS for the KHSA**

The Notice of Preparation for the EIR references two environmental impact statements (“EIS”) related to the Klamath Hydroelectric Project. The first EIS was completed by FERC in 2007 for the issuance of a new license for the Klamath project. The second EIS was a joint EIS/EIR prepared by the Department of the Interior and the California Department of Fish and Game in support of the agreements to facilitate dam removal. Siskiyou County, and many others, have substantial concerns about this EIS/EIR and

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submitted extensive comments in that regard. This second environmental review has never been completed, with no Record of Decision issued from Interior and no Notice of Determination from what is now the Department of Fish and Wildlife, either of which would subject the documents to judicial review and scrutiny. Given the procedural and legal status of this document, as well as the controversy that has surrounded Interior's handling of this process and the track record and credibility of the Department of Fish Wildlife in Siskiyou County, the State Board should not and cannot rely upon the information presented in the EIS/EIR and supporting documents.

It should also be recognized that the EIS/EIR was prepared in the context of supporting the Klamath Hydroelectric Settlement Agreement and the Klamath Basin Restoration Agreement in anticipation of Congressional authorization of those two agreements. Congressional authorization has not been obtained and, as noted above, one of those agreements has already come to an end by its own terms, while the termination process is currently proceeding under the other. The abandoned status of the two agreements is another factor reinforcing the invalidity of the EIS/EIR and precluding the State Board from relying on the document or supporting materials.

On top of these procedural issues, the State Board should not place itself in the position of having to defend analyses and studies when the very agencies by which they were prepared or commissioned have not been willing to defend them or subject them to judicial scrutiny. Some of the most glaring examples of vulnerabilities include:

- Invalid and inapplicable assumptions used for sediment modeling.
- Ignoring connected actions in an attempt to limit the analysis of the proposed action and generate an artificially-inflated estimate of positive effects.
- Artificially constraining the area of analysis to exclude the Trinity River, the Klamath River estuary, and the Pacific Ocean.
- Discounting the findings of "expert" fish panels that were charged with reviewing the likely impacts and long-term outcomes of dam removal.
- The document was greatly narrowed prior to public processes by a select group of "stakeholders" that demanded dam removal to the exclusion of any other mitigation for fish passage, which precluded the legally-required "hard look" at feasible and reasonable alternatives such as those that are currently in effect elsewhere in the Northwest.

**Range of Alternatives**

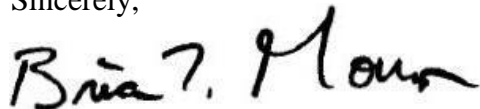
The alternatives identified in the Notice of Preparation reflect those that were put forth in the 2007 EIS issued by FERC. That list is needlessly over-inclusive for the EIR, while missing basic options that should be taken into consideration. Given many of the Klamath stakeholders' renewed interest in returning to the FERC relicensing process, the State Board should certainly analyze the FERC Staff Alternative with Mandatory Conditions. Given the financial resources that have been made available for a Klamath River solution, including \$250 million from the California Water Bond and another \$200 million from PacifiCorp ratepayers, a number of potential protection, mitigation, and enhancement measures have a financial viability that did not exist in 2007.

**Conclusion**

Nearly four years ago, then-Chairman of the State Board Charlie Hoppin raised a very good question: *How do you get cold, clear water from warm, polluted water?* The Hoopa Valley Tribe was the only party to offer an answer: *Take out Keno; take out Link.* The reality is that this answer is no answer. This proposed solution would entail elimination of the Klamath Irrigation Project, which has never been seriously proposed or considered. The companion issue involves Trinity River flows and the diversion of much of that river by the Central Valley Project, the elimination of which has also never been seriously proposed or considered. Even if the four, lower dams on the mainstem of the Klamath River are removed, the Klamath system and its natural hydrograph will remain highly modified and manipulated by the Bureau of Reclamation both above and below the facilities that are now being targeted for removal.

We keep hearing examples of successful dam removal projects in other places, such as the Elwha River on the Olympic Peninsula: the dam is breached and in short order flora and fauna return to thrive in a state of nature. Such is not the case with what has been proposed for partial dam removal on the Klamath, which proponents themselves acknowledge is an “experiment.” Siskiyou County has given concerns with the dam removal proposal for a number of reasons, including direct financial impacts, detrimental environmental impacts, and redirected impacts that threaten to fall on property owners and water users in the Scott and Shasta Valleys. There are less costly, less risky, and less extreme options that should be implemented before diving into the most extreme, uncertain, and costly option of partial dam removal.

Sincerely,

A handwritten signature in black ink that reads "Brian L. Morris". The signature is written in a cursive, slightly slanted style.

Brian L. Morris  
Siskiyou County Counsel

From [YubaNet.com](http://YubaNet.com)

CA

## Interior Denies Spinning Klamath Science

Author: Public Employees for Environmental Responsibility (PEER)

Published on Mar 25, 2013 - 1:51:39 PM

Washington, DC March 25, 2013 - The U.S. Interior Department has rejected a complaint from one of its own Scientific Integrity Officers that it presented distorted summaries of studies on the effects of a still-pending decision to remove dams in the Klamath River. Interior's review confirmed the substance of the complaint but concluded that blatant inaccuracies and critical omissions did not constitute scientific misconduct, according to a response posted today by Public Employees for Environmental Responsibility (PEER).

Dr. Paul Houser, a hydrometeorologist, took leave from his university position to become a Science Advisor to the U.S. Bureau of Reclamation and to serve as its Scientific Integrity Officer. In September 2011, he was asked to look over a draft press release and a summary of analyses on expected effects of removing four dams from the Klamath. The release described only positive aspects, omitting a number of major contingencies, uncertainties and possible negative effects. He elevated these concerns to the Secretary's office. Although Reclamation's technical staff seconded his objections and the release was ultimately changed, two weeks later he was put on probationary status and the Department took numerous related retaliatory actions. In February 2012, his position was terminated. Dr. Houser then filed a complaint that the actions against him violated the core tenets of the Interior Scientific Integrity Policy that he was formerly administering.

To help review the complaint Interior hired a consultant firm; the firm convened a three-member panel and produced a report in August that was only released last week. The panel concluded that the complaint was factually correct but did not amount to misconduct for some very curious reasons. For example â€

Â· Instances of "false precision" (where a summary has a finding that does not exist in the studies it purports to summarize) are dismissed because they are "not inconsistent" with the underlying studies;

Â· Repeated inaccuracies â€ all slanted in one direction â€ in these short documents are excused by a panel finding that it is "normal practice" for press releases to exhibit hyperbole or falsities; and

Â· Explicit efforts to prevent these concerns from being put into writing were discounted because the panel found them "not sufficiently unusual" to be "automatically alarmed" by them.

"By blessing abuse as â€standard practice' this review stood Interior's scientific integrity policy on its head," said Dr. Paul Houser, who also filed a whistleblower retaliation complaint which has since been resolved. "I feel like I fell through the looking glass into a world propelled by circular reasoning."

Although the panel interviewed no witnesses, did not question Dr. Houser nor did any kind of actual investigation, it made findings about motives and intent of several of the actors inside Interior. Rather than conduct its own inquiry, Interior's Scientific Integrity Officer, Dr. Suzette Kimball, accepted the panel's conclusions as "definitive" and formally declared the complaint to be "Not Warranted." Her ruling came in a January 29, 2013 letter which did not include a copy of the report on which it was based.

"It is becoming obvious that Interior's scientific integrity process suffers from a glaring lack of integrity," stated PEER Executive Director Jeff Ruch, noting that no scientific misconduct complaints filed under Interior's integrity rules have been found to have merit. "These rules were created at the behest of President Obama to root out rampant political manipulation of science yet in more than two years Interior has managed not to find a single instance of it."

[Read Dr. Houser's rebuttal](#)

[Revisit the original complaint](#)

[See the consultant report](#)

[View Interior's adoption of the report](#)

[Look at Interior's dismissal of every scientific misconduct complaint](#)

[See resolution of Dr. Houser's whistleblower retaliation complaint](#)

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# COUNTY OF SISKIYOU

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## Board of Supervisors

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**Via U.S. Mail and Facsimile: (202) 219-2100**

April 2, 2013

Fay Iudicello  
Director, Office of the Executive Secretariat and Regulatory Affairs  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

**Re: Klamath River Secretarial Determination  
Complaint Regarding Scientific and Scholarly Integrity**

Dear Ms. Iudicello:

Pursuant to Section 3.8 of Part 305 of the Interior Department's Departmental Manual, the County of Siskiyou and the Siskiyou County Flood Control and Water Conservation District hereby submit a formal complaint regarding the scientific and scholarly integrity surrounding the materials that were transmitted to Secretary Salazar on February 1, 2013, to purportedly inform the Secretarial Determination as to whether the lower four dams on the Klamath River should be removed.

The Klamath Hydroelectric Settlement Agreement ("KHSA") promised that the Secretarial Determination would be made only after thorough review and careful scientific scrutiny. Section 3 of the KHSA requires the Secretary to review existing studies and data, undertake new "appropriate" studies, and comply with the National Environmental Policy Act ("NEPA"), among other things. Since this review began, more than 200 studies, reports, and other documents have been presented to the public on the [klamathrestoration.gov](http://klamathrestoration.gov) website. All of this information was supposedly synthesized and summarized in the *Klamath Dam Removal Overview Report for the Secretary of the Interior: An Assessment of Science and Technical Information* ("Overview Report").

Despite the tremendous amount of time and taxpayer money that has been devoted to this process, the Overview Report and underlying materials are completely overshadowed and tainted by Secretary Salazar's publicly-announced, predetermined

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Brandon Criss  
*District 1*

Ed Valenzuela  
*District 2*

Michael Kobseff  
*District 3*

Grace Bennett  
*District 4*

Marcia H. Armstrong  
*District 5*

outcome: **dam removal will not fail!** Staff from the Interior Department and its subsidiary agencies received clear direction as to where they needed to end up. Lest there be any doubt, others need only look to the examples of the Bureau of Reclamation's removal of its scientific integrity officer or the decision to terminate the science unit in the Klamath Area Office.

What is most surprising is the blatant manner in which the Secretarial Predetermination is reflected in the Overview Report. Virtually no effort is made to conceal the fact that the laborious undertakings of the multi-agency Technical Management Team ("TMT") were no more than an elaborate charade. The Overview Report is replete with examples of bias, distortion, and circumvention of legal, scientific, and scholarly standards, including the following examples:

1. **False Choices Under the Dams-In Scenario.** The Overview Report compares two scenarios described as the "dams in" and the "dams out" alternatives. However, a false choice is presented by defining the dams-in scenario as indefinite operation under annual FERC licenses without implementation of any of the protection, mitigation, and enhancement measures that have already been prescribed for a new license. This false choice makes the dams-out scenario seem far better by comparison than it actually is and is an over-arching example of the bias that runs throughout the Overview Report.
2. **Adaptive Management vs. Inflexible Management.** The dams-out scenario makes great fanfare about its "commitment to 'adaptive management.'" In stark contrast, the dams-in scenario is constrained to a locked-in, minimalist approach. Once again, a false choice is presented to shade the report toward dam removal.
3. **False Assumption of Status Quo Fish Populations with Dams In.** The Overview Report goes to great lengths to emphasize the uncertainty of trends in fish populations under a dams-in scenario. Based upon that uncertainty, the report then leaps to the assumption that the "current status" of "markedly declined" fish populations will continue into the future. The past year's record-level returns of Chinook salmon belie that erroneous assumption. The report ignores the reality of improving population trends resulting from TMDL implementation, fish flows, and basin-wide habitat enhancement efforts, including installation of fish screens on water diversions and the Five Counties Salmon Program implementing best management practices for road construction and maintenance.
4. **Disconnect with NEPA Process.** As required by Section 3 of the KHSA, NEPA review must be completed before the Secretarial Determination. However, it is now 18 months since the comment deadline on the draft environmental impact statement, and neither responses to comments nor the final EIS have been issued. Instead, the Overview Report has been presented as a separate, stand-alone document, when it should have incorporated and integrated the final EIS.



5. **Omission of Ocean Conditions from Analysis.** The Interior Department has taken the position that ocean conditions that affect salmon populations are beyond the scope of analysis for the determination regarding dam removal. The intentional omission of this predominant element further skews the equation in favor of dam removal. As evidenced by the record numbers of salmon that returned to the Klamath system last year, factors such as the Pacific decadal oscillation have a much greater influence on population trends than having the dams in or out.
6. **Nonuse Values and Net Economic Benefit.** The Overview Reports paints a picture of net economic benefit of between \$14 billion and \$84 billion with full facilities removal. However, the only reason a net benefit can be claimed is by including “nonuse values” that are claimed to be over \$98 billion dollars. Without these phantom benefits, the proposal for full facilities removal has negative economic results.
7. **Inflated Benefit Estimates.** While making passing reference to varied results from different studies, the Overview Report states that there will be an 81 percent increase in Chinook Salmon. In reality, the expert panel that reviewed Chinook provided a list of independent factors that would all have to be successfully addressed to achieve substantial gains in Chinook populations, including water quality, disease, colonization of the upper basin, harvest and escapement, hatchery influences, predation, climate change, fall flows, and dam removal impacts. This list does not even include ocean conditions which, as noted above, are a predominant factor.

The items listed above are just the most blatant examples of breaches of scientific and scholarly standards in the Overview Report. However, addressing these issues would be a first step toward bringing honest science to bear on any final decision on Klamath dam removal.

Sincerely,

A handwritten signature in blue ink that reads "Ed Valenzuela". The signature is written in a cursive, flowing style.

Ed Valenzuela  
Chair, Board of Supervisors

cc: The Honorable Dianne Feinstein  
The Honorable Doc Hastings  
The Honorable Doug LaMalfa  
The Honorable Ted Gaines

The Honorable Barbara Boxer  
The Honorable Tom McClintock  
The Honorable Jim Nielsen  
The Honorable Brian Dahle