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# Karuk Tribe

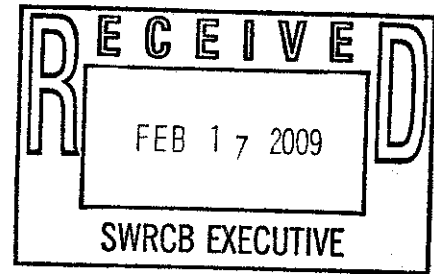


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February 13, 2009

State of California  
Water Resources Control Board  
Attn: Jennifer Watts  
PO Box 2000  
Sacramento CA 95812-2000



**RE: 60-day Extension of 401 Scoping Comment Deadline for the Klamath Hydroelectric Project from February 23, 2009**

Dear Board Members:

The Karuk Tribe is writing to support an extension of the 401 scoping comment period for the Klamath Hydropower Project. Our support is based on the substantial progress made on reaching a final Dam Removal Agreement since the signing of the Klamath Hydropower Agreement in Principle by PacifiCorp, California, Oregon, and the United States on November 13, 2008.

**The Karuk Tribe has vested interest in the regulation of water quality on the Klamath River**

The Karuk Tribe of California, a federally recognized Indian Tribe, occupies some 1,400,000 acres of land located in Siskiyou and Humboldt Counties of northern California. According to oral tradition and archaeological evidence, ancestors of the current Karuk people were among the earliest inhabitants of aboriginal California. Approximately 90 miles of Klamath River is within Karuk Ancestral Territory.

Karuk people have historically subsisted and sustained themselves on the bounty of the river and the surrounding forests. This tradition continues today, however the river no longer provides an adequate supply of fish. Today, the Karuk fishery is limited to a single site at Ishi Pishi Falls near the Klamath and Salmon River confluence.

Dams, diversions, poor logging practices, and mining operations have had a devastating cumulative impact on the Klamath River fishery. These factors have led to a loss of run

diversity and the overall abundance of salmon and other species. Today, the Karuk Tribe harvests, on average, fewer than 300 fish a year. This fails to meet Tribal subsistence or ceremonial needs.

In addition, the massive blooms of the toxic algae *Microcystis aeruginosa* in Iron Gate and Copco Reservoirs have devastating cultural impacts on the Karuk Tribe. As documented in numerous filings with the regional and state water boards, the Federal Energy Regulatory Commission, and in various court proceedings, this pollution affects Tribal members' health as well as negatively impacting religious and cultural ceremonies.

For these and other reasons, the Karuk Tribe has a vested interest in the outcome of the Clean Water Act Section 401 permitting process.

**The Karuk Tribe Supports the California State Water Resources Control Board's Independent Regulatory Authority**

The Karuk Tribe Water Quality Department and Natural Resources Department is proud of its good working relationship with the Regional and State Water Boards. The Karuk Tribe strongly supports the Board's bold steps in exerting its regulatory authority to protect water quality. The Karuk Tribe believes that compliance with all existing state and federal clean water laws must be a fundamental feature of any future agreements regarding removal of Klamath River dams.

Consistent with this view, we want to note that our analysis of the Klamath Basin Hydropower Agreement in Principle signed November 13, 2008 leads us to the conclusion that the agreement does not propose to waive any water quality regulations or existing state or federal clean water laws.

**Rationale for Extension of the CEQA Scoping comment deadline related to the Clean Water Act Section 401 permit process**

The Tribe appreciates the extraordinary nature of our request to extend the deadline for CEQA scoping comments on the 401 permitting process of PacifiCorp's application for a 401 water quality permit. We respectfully request the Board consider several outstanding circumstances in considering our request:

- A large and diverse group of stakeholders are in the process of developing a basin-wide plan to address water quality, fisheries, and other problems affecting our communities. These stakeholders include the three federally recognized Indian Tribes that harvest Klamath River fish, irrigators on and off the federally operated Klamath Irrigation Project, commercial and sport fishing organizations, conservation groups, local, state, and federal governments and agencies.
- There is an established timeline for producing a final work product – June 2009.

- Material progress is being made in reaching a final agreement as exemplified by the recently submitted document entitled "Progress Report to SWRCB on Development of Interim Conditions and Water Quality and Fisheries Measures and Progress towards a Final Hydropower Agreement, SWRCB Meeting, February 17, 2009."
- There is no prejudice to the Board or interests of other parties to the 401 certification process.

### **Spectacular Water Quality Treatment Plan**

The Karuk Tribe is currently collaborating with other parties to the Hydropower Negotiations to develop what we term a 'Spectacular Water Quality Plan.' The goal is for stakeholders, in collaboration with appropriate agencies and regulatory bodies, to develop a comprehensive, basin-wide strategy for addressing water quality issues in the Klamath Basin. The 'Spectacular Water Quality Treatment Plan' approach has the following advantages:

- A watershed scale approach avoids a series of piecemeal solutions that to date have not solved water quality issues
- Seeks to take advantage of and coordinate water quality provisions that will be found in a final dam removal agreement as well as the more comprehensive Klamath Basin Restoration Agreement
- Seeks permanent solutions to longstanding problems
- Supplements the 'minimal needs' approach provided by ESA mandated single species management
- Will offer a consolidated water quality plan intended to comply with the TMDL's developed by the regional board

### **Dam Removal**

It is the position of the Karuk Tribe and many fisheries experts that we cannot achieve the restoration of the Klamath fishery or meet clean water standards without removing the lower four Klamath River dams. Past precedent tells us that the most successful strategy for achieving dam removal is through a negotiated settlement with the dam owner.

We, and others, struggled for years to establish a working relationship with PacifiCorp that would enable good faith negotiations on a dam removal settlement agreement. Finally, that relationship exists today. Currently the Karuk Tribe, other parties to the settlement talks, and PacifiCorp are supporting legislation in Oregon that would create a \$200 million fund from PacifiCorp ratepayers to apply to dam removal costs. The fact that PacifiCorp is aggressively supporting this legislation is evidence that the company is

indeed interested in contributing to basin-wide solutions to our complex resource problems.

**Conclusion**

The Karuk Tribe appreciates the Water Board's efforts to act in the best interest of Klamath River water quality. We appreciate the patience the Board has shown to date regarding Klamath Settlement talks. We humbly urge the Board to remain patient and continue delay the deadline for CEQA scoping comments until July 15, 2009 when we can present a draft settlement agreement. We support a requirement to provide additional progress reports in the interim as deemed necessary by the Board. We also believe the Board should retain the right to resume the 401 process immediately if dam removal negotiations fail for any reason.

We appreciate you taking the time to consider our request.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Tucker', written over a horizontal line.

S. Craig Tucker, Ph.D.  
Klamath Coordinator