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To: "Michael Lauffer" <MLauffer@waterboards.ca.gov>, <drice@waterboards.ca.gov>
CC: "Charles Hoppin" <CHoppin@waterboards.ca.gov>, "Arthur G. Baggett, Jr." Dean Brockbank; Tim Hemstreet
Date: 5/10/2010 3:51 PM
Subject: FW: MAY 18, 2010 SWRCB BOARD MEETING AGENDA (Item 5)

Michael and Dorothy - on behalf of PacifiCorp I want to thank you for the proposed SWRCB Resolution granting the Klamath Settlement Parties' request for abeyance in processing the CWA Section 401 water quality certification application of the Klamath Hydroelectric Project (item no. 5 on the SWRCB's May 18 agenda). The abeyance period will allow the parties to focus their collective efforts on the Determination process and other settlement implementation activities.

We would like to propose one minor modification to the Resolution. As currently proposed, paragraph 1 of the Resolution (p. 3) would require the automatic suspension of the abeyance period upon the occurrence of one or more of the ten enumerated conditions. Some of those conditions are subject to ambitious timelines controlled by others, and other conditions require subjective determinations by the Executive Director. While PacifiCorp expects that the settlement parties will strive to meet all applicable timelines and act diligently to implement the KHSA, the Resolution would result in the automatic suspension of the abeyance period for any missed timeline, even if reasonable and agreed to by the Settlement parties. This would require the settlement parties to reinstate the abeyance request process and with the number of settlement parties involved, this has proven to be a cumbersome and time consuming endeavor, as I am sure it is for the SWRCB as well. As such, we propose that the Resolution provide a more flexible process for suspending the 401 abeyance period should that be necessary in the future. Specifically, rather than require an automatic suspension of the abeyance period upon the occurrence of such conditions, we recommend that suspensions be triggered by a recommendation of the Executive Director, in her or his discretion, and approval by the SWRCB in a duly noticed public meeting (similar to the process in paragraph 2 (p. 4)). PacifiCorp proposes the following modification to the Resolution (or something similar):

"The State Water Board:

1. Will hold in abeyance PacifiCorp's application for water quality certification for the Klamath Hydroelectric Project until removal of the California mainstem facilities of the Project, unless, upon the occurrence of one or more of the following circumstances, the Executive Director recommends suspension of the abeyance period and the SWRCB approves the suspension during a public meeting after due notice to PacifiCorp and other parties to the KHSA,;...."

Thank you for your consideration of this request. I will follow up with Michael later this week to discuss this matter with him.

Best,

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