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**PACIFIC COAST FEDERATION
of FISHERMEN'S ASSOCIATIONS**



W.F. "Zeke" Grader, Jr.
Executive Director
Glen H. Spain
Northwest Regional Director
Vivian Helliwell
Watershed Conservation Director
In Memoriam:
Nathaniel S. Bingham
Harold C. Christensen

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29 June 2012

Mr. Charles Hoppin, Board Chair
Mr. Tom Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-011

Via Email to:
commentletters@waterboards.ca.gov

Re: Water Quality Certification Abeyance Continuation for
Klamath Hydroelectric Project (FERC License No. P-2082)
For: 17 July 2012 Meeting Agenda Item

Dear Mr. Hoppin and Mr. Howard:

On behalf of the working men and women of the California fishing industry, the Pacific Coast Federation of Fishermen's Associations (PCFFA) respectfully requests that the State Water Board continue to hold the PacifiCorp 401 Certification process for Klamath dam relicensing in abeyance while we and the other Parties to the Klamath Hydropower Settlement Agreement (KHSA) continue to pursue the KHSA Settlement path of dam removal. The current one year abeyance expired on 30 April, and the Board must act on a resolution to extend the abeyance by July 29, 2012. We urge you to extend that abeyance.

There are many very good reasons to extend this Relicensing 401 Certification abeyance while the Parties are pursuing the KHSA, signed on 18 February, 2010. These reasons include at least the following:

- (1) PacifiCorp – in accordance with the KHSA – is simply no longer pursuing FERC relicensing, but is instead pursuing a Settlement course that will, once fully implemented and after an affirmative Secretarial Determination on dam removal provided for by the

KHSA, lead to Klamath Hydropower Project dam removal in both California and Oregon, not to relicensing. The current 401 Certification Application is for full FERC dam relicensing, not dam removal – a pathway that the KHSA now makes irrelevant and redundant. Such a 401 Certification process aims only toward full FERC relicensing – an outcome none of the signatory Parties to the KHSA are now pursuing.

- (2) PacifiCorp and the other parties continue to implement the KHSA in a proactive and expeditious manner. The Klamath Basin Coordination Council (KBCC) has been actively working to implement a number of Settlement provisions of the parallel Klamath Basin Restoration Agreement (KBRA), many of which require no additional Congressional authorization.¹ As another example, PacifiCorp sought (and has now received) formal authorizations from both the Oregon and California Public Utility Commissions (PUCs) to recover monthly customer surcharges designed to raise \$200 million for the purpose of dam removal by 2020, pursuant to the KHSA agreement. Those funds are now being collected. At the present time those PUC-supervised Klamath Dam Removal Trust Funds are on track and contain approximately \$35 million, and this amount is growing by approximately \$1 million/month, including earning interest.
- (3) Additionally, after many months of technical and engineering studies, and two separate rounds of scientific peer review, as well as many public comments, the U.S. Interior Department and California Natural Resources Agency are on track to complete their final environmental analyses under both NEPA and CEQA, which will be a major basis for the Secretarial Determination on dam removal, and ultimately for the State's decision whether to concur in that determination, both key elements of the KHSA. This includes the publication of a Secretarial Determination Overview Report (SDOR) which has been subject to a third level of scientific peer review, and which will be released this fall as a summary of the best information to date on the likely impacts of dam removal in the Klamath.
- (4) Lifting the abeyance would simply force the Parties to the Settlement to resume a long series of highly contentious but now largely irrelevant legal proceedings before the SWQCB and the state and federal Courts. The shifted resources and wasted time this would involve would only hamper their progress toward dam removal pursuant to the already negotiated and signed KHSA. The KHSA parties do not have the capacity to effectively implement that Agreement while at the same time also proceeding on a parallel track in water quality certification and relicensing proceedings. Successful implementation of the KHSA requires a huge commitment of resources, given the complexity, scale, and novelty of the proposed dam removal. That is a basic reason why the KHSA specifically provides for a stay of the 401 Certification and relicensing proceedings while dam removal is being pursued. That abeyance is as necessary today as it was in February 2010 when the KHSA was first signed.

¹ See Klamath Basin Coordinating Council (KBCC) Second Annual Report (30 March 2012) located at: <http://216.119.96.156/Klamath/2012/2ndAnnualReport.pdf> .

- (5) PacifiCorp is already implementing a number of “interim measures” under the KHSA to protect water quality, fisheries, and public trust resources, as documented in its most recent KHSA Implementation Status Report dated 22 Feb. 2012).² These interim protective measures substantially exceed its obligations under its existing FERC license. The public will receive such interim mitigation benefits as long as the KHSA (and associated stay of this proceeding) are in effect. But under a scenario where the KHSA terminates and the FERC relicensing proceeding resumes, PacifiCorp would only be required to implement its existing 1957 FERC license obligations. The benefits of these interim mitigation measures would then be foregone until the new FERC license issues and survives every level of both state and federal judicial review – which, frankly, could well be much farther in the future than the KHSA dam removal target date of 2020.
- (6) The KHSA and your past resolutions – supported by PacifiCorp, the Natural Resources Agency, and other KHSA parties, including PCFFA – expressly and unambiguously provide that the State Water Board retains all of its authority under the Clean Water Act and the Porter-Cologne Act to issue, deny, or condition 401 Certification as the basis of a new license, in the event the KHSA terminates. The Board will continue to receive periodic progress reports and briefings on this matter at least annually, and more frequently if desired.
- (7) The Oregon Department of Environmental Quality (ODEQ), which issues the water quality certification for the Klamath Hydroelectric Project in the State of Oregon, has already committed to hold its 401 certification in abeyance without condition or qualification until a Secretarial Determination under the KHSA can be made.

In short, nearly all the major hurdles in the way of full implementation of the KHSA have now been successfully overcome – with the one exception of final passage of Congressional authorizing legislation for the Secretarial Determination.

However, Congressional KHSA authorizing legislation has now been introduced in Congress as S. 1851 and H.R. 3398. And while enactment of this legislation has been temporarily delayed due to widespread gridlock in Congress, and the KHSA does eventually require enactment of federal authorizing legislation as the basis for the Secretarial Determination on dam removal (see KHSA § 3.3.4.A), that KHSA provision required only that the Interior Secretary make “best efforts” to complete that determination by March 31 2012, which he did -- and is still doing. The KHSA Agreement does not require that Secretarial Determination, nor enactment of authorizing legislation, by any specific date. And Congressional authorization is much more likely early in the next Congress.

Frankly, the Parties anticipated that such delays in Congressional authorization might well occur, especially during an election year. But since the major funding mechanism (PUC-supervised collection of the “customer contribution” of \$200 million by 2020) is already in place and on more or less on track toward collecting that \$200 million, none of these recent delays will in any way delay or postpone the ultimate dam removal schedule under the KHSA beyond 2020.

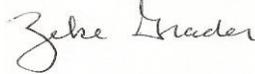
² Available at: http://216.119.96.156/Klamath/Klamath_Project_Implementation_Status2012-02-22.pdf .

PCFFA Letter Re: Klamath Settlement
29 June 2012

This fact is confirmed by letters from the Office of the U.S. Secretary of Interior, and from the California Natural Resources Agency enclosed as Attachments to this letter.

Please contact us if you have any questions. Please redistribute this letter to the Board and Staff as appropriate. Thanks.

Respectfully submitted,



William F. "Zeke" Grader, Jr.
PCFFA Executive Director

Attachments: USDOJ Letter 5/24/12 to PacifiCorp
CA Natural Resources Agency Letter 5/22/12 to PacifiCorp

Copies to: Members of the Water Board



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 24 2012

Ms. Andrea Kelly
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Re: Impact of Delay in Federal Legislation on 2020 Dam Removal Target Date

Dear Ms. Kelly:

It has come to my attention that outside parties involved in state regulatory ratemakings, excluding parties to the Klamath Hydroelectric Settlement Agreement (KHSA), have raised questions regarding the impact of any potential delay in the passage of federal legislation endorsing and approving the KHSA on the January 1, 2020 target date for Klamath Facilities Removal anticipated in the KHSA. The purpose of this letter is to provide the Department of the Interior's perspective on this matter.

The Department of the Interior believes that a delay in passage of federal legislation and issuance of a Secretarial Determination will not, at this time, impact the 2020 target date for dam removal. With a realization regarding the uncertain timing of Congressional authorization, the KHSA was specifically drafted so that a delay in necessary federal legislation does not impact the potential dam removal date. To achieve this, and to lessen impacts on PacifiCorp's customers, the KHSA called for the immediate enactment of dam removal surcharges on PacifiCorp's customers and contemplated the immediate adjustment of depreciation rates for the facilities to allow for their removal in 2020. This ensured that a 2020 dam removal date would have certainty for KHSA parties since the date was not tied to the achievement of particular milestones.

It is the Department of the Interior's view that PacifiCorp remains obligated to honor a 2020 dam removal date should the Secretary of the Interior, if authorized by Congress, determines to proceed with facilities removal.

Please do not hesitate to contact me should you have any questions.

Sincerely,

John Bezdek
Senior Advisor to the Chief of Staff



EDMUND G. BROWN JR., Governor
JOHN LAIRD, Secretary for Natural Resources

May 22, 2012

Ms. Andrea Kelly
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Re: Dam Removal Schedule and Timing of Klamath Settlement Milestones

Dear Ms. Kelly:

You have communicated that interested parties have concerns whether any delay in the passage of federal legislation and funding from the State of California may impact the dam removal date of 2020 that is provided for under the Klamath Hydroelectric Settlement Agreement (KHSA). In our discussions regarding implementation of the KHSA you have indicated that PacifiCorp does not view a delay in the passage of federal legislation or in final adoption of the California funding at this time as impacting the anticipated 2020 date for removal of the facilities. The Natural Resources Agency of the State of California holds the same view and believes that PacifiCorp, through the KHSA, remains contractually committed to transfer the Klamath dams to a dam removal entity in 2020.

The Resources Agency appreciates PacifiCorp's efforts in implementing the KHSA, which the state believes is in the best interests of all stakeholders as well as PacifiCorp customers. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Randolph', is written over a light blue horizontal line.

Liane Randolph
Deputy Secretary and General Counsel

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Baldwin Hills Conservancy • California Coastal Commission • California Coastal Conservancy • California Conservation Corps • California Tahoe Conservancy
Cochella Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Delta Stewardship Council • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Resources Recycling and Recovery • Department of Water Resources
Energy Resources, Conservation & Development Commission • Native American Heritage Commission • Sacramento-San Joaquin Delta Conservancy • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • Sierra Nevada Conservancy • State Lands Commission • Wildlife Conservation Board

