



# State Water Resources Control Board



## Executive Office

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Environmental Protection

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Arnold Schwarzenegger  
Governor

**AUG 22 2008**

VIA ELECTRONIC AND FIRST CLASS MAIL

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PacifiCorp Energy  
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Dear Mr. Scott:

**REQUEST FOR RESUBMISSION OF WATER QUALITY CERTIFICATION APPLICATION FOR THE KLAMATH HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION (FERC) NO. 2082**

On July 11, 2008, PacifiCorp withdrew its application to the State Water Resources Control Board (State Water Board) for water quality certification for the Klamath Hydroelectric Project. The withdrawal letter stated that the action was intended to facilitate settlement negotiations, and that the company intended to resubmit its application soon. Subsequent discussions with PacifiCorp staff and counsel, as well as with California Resources Agency, indicated that these parties felt they were very close to reaching an agreement in principle, and that they anticipated the agreement would be acceptable to the larger settlement group.

As you have discussed with staff, the State Water Board does not wish to interfere with parties reaching a negotiated settlement regarding Klamath Hydroelectric Project relicensing. However, the State Water Board is also concerned about delays in the relicensing process, and about ongoing water quality impacts that the project as it currently operates has on the beneficial uses of the Klamath River. It is imperative to move ahead with the water quality certification process, including preparation of environmental documentation meeting the requirements of the California Environmental Quality Act (CEQA), as soon as reasonably possible, so that water quality can be satisfactorily addressed and the relicensing process can move ahead. This need is underscored by indications that the river's water quality and ability to support healthy fisheries is declining: there is substantial evidence to indicate an increase in fish disease on the river, an increase in the toxic blue-green algae *Microcystis aeruginosa*, and an overall decline in fish populations.

Without California's water quality certification, the Federal Energy Regulatory Commission (FERC) cannot issue either a new license for continued long-term operation of the hydroelectric project under the mandatory conditions, or a license or surrender order for dam decommissioning, as either scenario results in a discharge to state waters. Therefore, delays in water quality certification will delay implementation of mitigation measures or of dam removal. It has been over a month since PacifiCorp withdrew its request for water quality certification, but

*California Environmental Protection Agency*

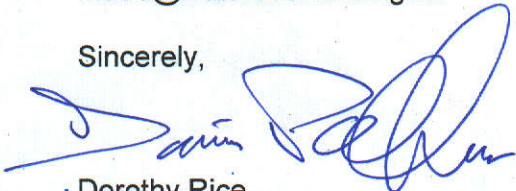
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the settling parties have not yet released an agreement to the State Water Board. According to a letter sent by the Karuk Tribe to FERC on July 28, 2008, the larger settlement group has also not seen a draft agreement, at least as of that date.

**If no settlement has been reached by September 30, 2008, the State Water Board requests that you re-file an application by that date.** The State Water Board believes that this timeline provides sufficient time to reach agreement on any outstanding settlement issues that are close to resolution, and may in fact provide an impetus to resolve them. Setting a deadline for resubmittal also avoids undue delay if, in fact, settlement is not imminent. It is worth noting that the next step in the water quality certification process is preparation of a CEQA document, which the State Water Board believes will be necessary regardless of the outcome of negotiations, and therefore should not interfere with them unduly.

If you would like to discuss the resubmission further, please feel free to contact Jennifer Watts, at (916) 341-5397, [jwatts@waterboards.ca.gov](mailto:jwatts@waterboards.ca.gov), or Marianna Aue, at (916) 327-4440, [maue@waterboards.ca.gov](mailto:maue@waterboards.ca.gov).

Sincerely,

  
Dorothy Rice  
Executive Director

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FERC No. 2082 Service List