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February 17, 2009

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

CC: Jennifer Watts
California Water Rights Division
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Klamath River Dam Removal Negotiations Progress Report

Dear California Water Board, staff and other concerned parties,

As you know, we are here this February 17, 2008 to hear a progress report from the parties attempting to negotiate an adequate final agreement by June to remove four Klamath River dams.

Klamath Riverkeeper attends the meeting with a keen interest in hearing and seeing on paper what progress the parties have to report.

While we are fundamentally uncomfortable with delaying federally required clean water certifications for a project that clearly does not demonstrate compliance with Clean Water Act standards, we wish to respect the hard work negotiating parties are putting in to craft a sufficiently strong and environmentally protective final settlement agreement to remove the dams.

Thus, the burden on dam removal negotiators here to deliver that report is to show enough progress to merit another extension of CEQA scoping for the Clean Water Act section 401 certifications on the Klamath Hydroelectric Project. In turn, the burden on you, members of the board, is to resume pending CEQA analysis, or, schedule a similar progress report meeting for April and set the bar for this promised progress in negotiations.

If the state board should decide to resume the CEQA process without further delay, Klamath Riverkeeper recommends that you deny PacifiCorp's pending application for 401 permits to relicense the dams. Scientific reports incorporated into the Federal Energy Regulatory Commission's EIS documents, the regional water quality control board's preliminary TMDL drafts and filed in various courts document both the water quality violations perpetrated by PacifiCorp's dams and the profound clean water benefits of taking them out.



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With or without another extension, Klamath Riverkeeper will submit comments onto the record by the current February 23 CEQA scoping deadline, including relevant scientific reports.

In the event of another extension, Klamath Riverkeeper submits that the Agreement in Principle released in December is flawed, and therefore submits the following criteria for progress.

Negotiating parties must provide the board and the public with a tangible work-product that:

- 1) Either eliminates off-ramps to increase the certainty of dam removal or write into the agreement what alternative/s are triggered by off-ramp use. For instance, the agreement should specify that if PacifiCorp re-negs on the agreement because of clean water compliance costs imposed, that off-ramp should trigger a speedy resumption of the CEQA analysis on 401 permits to relicense the dams.
- 2) Effectively limits immunity for PacifiCorp to the act of dam removal and any subsequent impacts. Depriving citizens of due processes to clean water, when we have already been deprived of those processes for far too long by the negative impacts from the dams, does not seem legally advisable.
- 3) Writes stronger interim water quality conditions to make good faith efforts towards compliance with Clean Water Act standards and TMDL guidelines. Specifically the interim conditions should reduce nitrogen and phosphorous pollution and overall nutrient loading in the Klamath River. Whether this materializes through construction of temporary or permanent treatment wetlands or a water treatment facility or some combination of both, research by regional water board staff and other scientists have found this interim solution to be a feasible one. Water quality experts who convene in the conference already prescribed in the AIP are best qualified to determine the best method/s, amount, time/s and place/s to reduce nutrient loading.
- 4) Authorizes the state water board to evaluate, enforce and even recommend changes to the interim conditions stipulated in a final agreement. If the interim conditions turn out to be insufficient or the parties fail to implement them, water quality regulators must be empowered to carry out their legal obligations to enforce compliance with water codes, regulations and laws.



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- 5) Commits to a funding path that does not include money to fund Klamath dam removal from a California general obligation water bond that would also be likely to fund the peripheral canal, new dams or other ecologically damaging projects.
- 6) Has been vetted through North Coast regional water board representatives or staff, who should be present or otherwise included in all future negotiations towards a final dam removal agreement to ensure compliance with mainstem Klamath River TMDLs.

Klamath Riverkeeper recognizes that the board may view some or all of these changes as outside the scope of its jurisdiction or authority. However, Klamath Riverkeeper urges the board to note that these are uncharted regulatory waters, and that the negotiating parties who requested the last 401 extension have entrusted safe keeping of the public's interests and legal rights to you by proposing today's progress report.

If, by mid-April, negotiating parties have not satisfied these criteria for progress, Klamath Riverkeeper advocates that the state water board immediately return to the 401 scoping currently in limbo, and deny the requested 401 permits for a new license to operate the Klamath hydroelectric project for 30-50 more years.

Whatever the outcome, it is incumbent on all of us to ensure that it is adequately protective of clean water, fisheries and the state's authority to enforce the Clean Water Act, Porter Cologne Act and other water quality laws.

Thank you for your time, consideration and diligent pursuit of clean water in the Klamath River basin, and all of California's rivers and streams.

Sincerely,

Erica Terence, Klamath Riverkeeper
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