



Mr. Parker Thaler
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

January 27, 2016

Subject: Notice of Preparation of an Environmental Impact Report for the Klamath Hydroelectric Project Relicensing Water Quality Certification.

The Sierra Club is pleased to offer these written comments on the State Water Resources Control Board's (Board) upcoming Environmental Impact Report for the Klamath Hydroelectric Project (P. 2082) water quality certification under section 401 of the Clean Water Act.

The action of the Board recognizes the reality that the Settlement Agreement reached between federal agencies, the states of Oregon and California, the licensee, and many organizations in and outside the watershed has failed to be implemented by the Congress—and may not be for the foreseeable future. In such circumstances, the responsibility of the Board is to resume processing licensee PacifiCorp's request for water quality certification of its project.

Recognizing these circumstances, Sierra Club Vice President for Conservation David Scott, in a May 12, 2012, letter to the Board requested this resumption and urged the adoption of a water quality decision that would result in the removal of four dams of the Klamath Hydroelectric project (JC Boyle, Copco 1 & 2, and Iron Gate). That remains the view of the Sierra Club today.

Today the State Water Board's first responsibility is to honor the North Coast Basin Plan which implements the Clean Water Act in the California portions of the Klamath River Basin. Honoring the Basin Plan by faithfully adhering to its provisions will fulfill the State Water Board's responsibility to protect the beneficial uses of the Klamath River and its waters, including Klamath River salmon, the aquatic ecosystem on which those salmon depend, and the cultural uses of salmon by the Indigenous Native Peoples of the Klamath River Basin.

The following Basin Plan Requirement is key:

Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then

controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled. (P. 3-1.00)

The record is clear and the data do not lie. PacifiCorp's Klamath Hydroelectric Project receives poor quality water from the Upper Basin and makes that water's quality much worse in violation of the Basin Plan. Furthermore, the Klamath Hydroelectric Project makes the water quality worse in ways that scientists and water quality specialists believe meaningfully threatens human health and damages Klamath River salmon and the aquatic ecosystems on which those salmon depend.

Making decisions about the future of the Klamath Hydroelectric Project come when licenses expire and new water quality certifications are required. That time is now.

No amount of mitigation can render PacifiCorp's Klamath Hydroelectric Project compliant with the Basin Plan. Therefore, no amount of mitigation can justify certification that the Project is in compliance with the Clean Water Act. We believe that the Board will agree with the already extensive record of the FERC, Department of the Interior public interest determination, state agency, and independent reviews that the Klamath Hydroelectric Project would be ineligible for certification pursuant to section 401 of that Act.

The FERC staff-recommended alternative in the completed FERC EIS (relicense the project with expensive fishways that have been required by federal agencies) will not result in Klamath River and reservoirs that could meet water quality standards (nor avoid major financial operating losses for the licensee).

Thus, the Board is uniquely positioned to turn FERC's decision-making process around so that it results in the removal of these four dams with such major impacts on water quality and passage for anadromous fisheries. The Board is also well positioned to work with the water quality certification authorities in the state of Oregon to develop complementary water quality certification alternatives that achieve the Klamath River Hydroelectric Project dam removals contemplated in the Klamath Hydropower Settlement Agreement (KHSA) but under FERC's jurisdiction. We urge the Board to do so and are heartened by Board staff's agreement at the Sacramento public hearing to work with the state of Oregon along these lines.

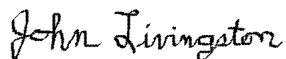
The Klamath River watershed is large and important. The failure of its fishery has in the past resulted in season closures and harvest restrictions of the extensive nearby ocean Chinook and coho salmon sport and commercial fisheries. Similar restrictions have occurred for the river Chinook and coho salmon sport fisheries and Native American commercial and subsistence fisheries.

The existence of the KHSA is a demonstration that there is substantial consensus that the four dams should be removed. The Board should take advantage of this consensus, as well as agency, tribal, and NGO expertise, to develop one or more alternatives that take advantage of ratepayer funding approved by the California and Oregon PUCs and backup California Water Bond funding to remove these four dams.

The Sierra Club encourages the KHSA settling parties and all interested entities to work with the Board to develop more detailed dam-removal alternatives that could achieve water-quality certification. That would make implementation of these important actions easier. We recognize that resolution of water quality issues upstream are likely to be out of the jurisdiction of state certifications of actions taken in FERC proceedings regarding these projects. But in the end, it is up to the water-quality certification entities of the states of California and Oregon to take advantage of this critical opportunity to fix some of the problems on the Klamath that they are presented with now, at this day and time.

The Sierra Club was also heartened by the comments of Board staff at the Sacramento hearing that they expect that the draft EIR would be made available in 2016 and the final EIR in 2017. Expedient development of the California Environmental Quality Act (CEQA) review is warranted given the dangerous condition of the watershed and long delay created by failure of the Settlement Agreement approach.

Sincerely,



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