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



July 22, 2011

Mr. Charles Hoppin, Chair  
Mr. Tom Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



**Re: Request for Amendment to SWRCB Resolution Nos. 2010-0024 and 2010-0049 (May 18, 2010, as amended October 5, 2010) Regarding Abeyance of Klamath Hydroelectric Project Clean Water Act Section 401 Water Quality Certification Process and Related California Environmental Quality Act Process**

Dear Mr. Hoppin and Mr. Howard:

The California Natural Resources Agency (Agency) respectfully requests the State Water Resources Control Board (SWRCB) amend SWRCB Resolution Nos. 2010-0024 and 2010-0049 (amending SWRCB Resolution 2010-0024), allowing the Parties to the Klamath Hydroelectric Settlement Agreement (KHSA) to continue to their implementation efforts.

SWRCB Resolutions 2010-0049 and 2010-0024 placed the Clean Water Act section 401 water quality certification process for PacifiCorp's Klamath Hydroelectric Project in abeyance for an interim period. Pursuant to the terms of the Resolutions, the abeyance period will expire on August 16, 2011, at which time the SWRCB may resume processing PacifiCorp's water quality certification application, unless federal legislation is enacted to implement the KHSA and the Klamath Basin Restoration Agreement (collectively Settlement Agreements) by that date.

The 40 stakeholders that are parties to the Settlement Agreements, including both Oregon and California, the federal government, irrigators, environmentalists, and various tribes have worked hard to achieve an agreement to bring peace, certainty and restoration to a badly degraded basin in a way that mere regulatory efforts cannot. The parties continue to work diligently to implement the Agreements. Requiring the passage of federal legislation based on an arbitrary deadline threatens to undermine these efforts.

As the Agency explained in its correspondence to you on September 22, 2010, the KHSA does not require the enactment of legislation by any particular date. Therefore, the Agency requests an amendment to the Resolutions to eliminate provisions that condition the abeyance on federal legislation. Instead, the Agency proposes that the SWRCB consider a condition that initiates 401 proceedings after an official Secretarial Determination on the removal of the four dams at issue has been rendered. This modification would be consistent with other provisions of Resolution 2010-0024 that direct the SWRCB to resume processing PacifiCorp's application for water quality certification if the Executive Director finds that dam removal is unlikely to proceed in a reasonably timely manner.

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>



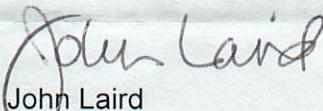
Mr. Hoppin and Mr. Howard  
July 22, 2011  
Page 2

It should be noted, the abeyance at issue here is contemplated by the KHSA and is necessary to successfully implement the Settlement Agreements. However, that does not mean implementation work will be indefinite or allow any party to avoid its obligations under the Clean Water Act, least of all PacificCorp. The Agency and others are actively working to introduce federal legislation, and a Secretarial Determination is slated for March 2012. Thus, the Agency believes federal legislation will be introduced in the very near future allowing for the consideration of environmental, technical and economic studies currently being prepared and coordinated with multiple entities, including your own.

Finally, some parties have incorrectly suggested that the SWRCB will somehow waive its right to consider the 401 certification for this project if it does not act. That is not the case, and the Agency wishes to expressly incorporate by reference the comments PacificCorp has made regarding this point. Importantly, the KHSA recognizes California's and Oregon's authorities under section 401 of the federal Clean Water Act, establishing a process whereby the settlement Parties must request that the states hold the 401 processes in abeyance for an interim period to allow the Parties to focus efforts and resources on implementing the KHSA. The KHSA does not request the SWRCB to abdicate or waive its certification authority in any way, nor can it, as the SWRCB was not party to the Agreements. Rather, it asks that the SWRCB exercise its discretion to not process PacificCorp's certification application for an interim period. Thus, as Pacific Corp has pointed out, the KHSA expressly obligates PacificCorp to withdraw and resubmit its water quality certification applications with the SWRCB and Oregon Department of Environmental Quality for the very purpose of ensuring that the states do not waive their respective certification authorities under existing law.

For all of the foregoing reasons, the Agency respectfully requests you amend the Resolutions to more accurately reflect the Settlement Agreements and process in this matter. Thank you for your consideration.

Sincerely,



John Laird  
Secretary for Natural Resources