



FRIENDS  
OF THE  
RIVER

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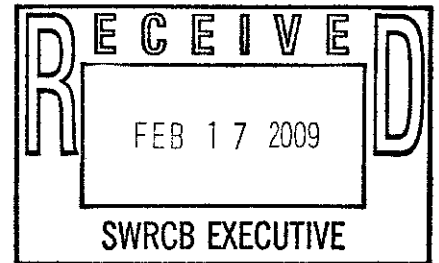
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February 17, 2009

Jennifer Watts  
California State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000



Dear Ms. Watts,

Friends of the River (FOR) is a nationally-recognized authority on the adverse impacts of dams on rivers and their ecosystems. We are dedicated to preserving and restoring California's rivers, streams, and their watersheds as well as advocating for sustainable water management. For the past thirty-six years, FOR has engaged nearly 6,000 members and various local and statewide coalitions in advocacy, legislative action, and litigation to uphold the rule of law and the public's voice for a healthy environment.

Friends of the River has been working on the Klamath project since the relicensing process began in 2000, and is one of twenty-six parties negotiating the Klamath Basin Restoration Agreement. FOR is also one of roughly twenty-three parties negotiating a final dam removal agreement with PacifiCorp. We support negotiations that result in an agreement for dam removal, and endeavor to reach a solution that benefits the environment, the private company, and the other interests within the Klamath Basin.

However, FOR is very concerned about the requested time extension for the Section 401 relicensing application of the Klamath Hydropower Projects. The framework of the Agreement In Principle (AIP), contemplated for the Final Agreement, unfortunately does not create any level of certainty that the negotiated process and ensuing actions will result in dam removal. Indeed, there are many levels of uncertainty that can either derail the entire framework or reach a result that is not dam removal. We believe that this uncertainty raises serious questions for the State Water Resources Control Board as they look to justify a delay in the regulatory process.

One potential roadblock to dam removal found in the AIP is the Secretary's Determination whether the dams should be removed, made no later than 2012. The various requirements for this decision only add to the uncertainty that dam removal could happen: Congress must approve this authority, the determination could be a cost-benefit analysis informed by "appropriate studies", the dams should remain if the costs for removal exceed \$450 million (absent subsequent written agreement by the Parties), and both California and Oregon must pass legislation necessary to ensure their respective funding sources before the Secretary can even decide. Each of these steps, among others, would have to be complete before the United States could make its determination.

Three years could pass before the proposed framework results in a federal decision to remove or retain the dams on the Klamath River, based upon economic factors. During those three years, Condition (xiii) in the AIP provides PacifiCorp with the right to withdraw if the Water Board proceeds with its regulatory review process and affirmative duty to bring impaired waters into compliance under the Clean Water Act. Moreover, if the Secretary were to make the decision to retain the dams the relicensing process would only resume at that point... three years later with no assurance of Water Board regulatory oversight, enforcement, and legal adherence to the environmental statutes in the meantime. For this time period, the dams could continue operation without having conditions set by the Water Board to ensure statutory compliance.

FOR is committed to advocating for a negotiated agreement for dam removal, and we believe that the scoping process could be extended if sufficient evidence were presented in this regard. An agreement for dam removal could render the Section 401 relicensing certification unnecessary, as PacifiCorp would be withdrawing the application for the license renewal. The current proposed framework, however, only presents the possibility of dam removal – to be determined in the future. This level of uncertainty should not deter the Board from continuing its environmental review process while settlement negotiations proceed.

The Progress Report submitted to the Water Board is not related to the matter of relicensing before your agency. While FOR applauds the efforts to create a holistic approach to water quality management for the Klamath Basin, the measures contained within the report have not been subjected to proper agency review and oversight. Without proceeding through the regulatory steps, the actions found within the Progress Report cannot be considered to satisfy the Water Board's requirements under the Clean Water Act and we have serious concerns regarding pre-judgment for CWA compliance. The Interim Measures and ICP will possibly trigger their own Section 401 applications for Water Board certification, but should not be considered to indicate legal compliance with the CWA on their own during the time period where the dams remain in place.

In the absence of certainty for dam removal as the negotiated result, we do not believe that the evidence presented to the State Water Resources Control Board is sufficient to justify a delay in the regulatory proceedings. The Klamath River is listed as a water

quality impaired river under Section 303(d) of the Clean Water Act, and further delays in the 401 process will not adequately resolve the current conditions. As the agency responsible for ensuring adherence to the CWA for FERC projects, the Water Board should not delay compliance to accommodate alternate negotiations that unfortunately cannot currently meet statutory requirements.

Friends of the River respectfully asks the Water Board to close the public comment period for PacifiCorp's CWA Section 401 certification application as scheduled on February 23, 2009 and initiate the next procedural step to create a draft Environmental Impact Report as required by the CWA and CEQA. We encourage the Water Board to find alternate mechanisms to develop the EIR that still allows the AIP negotiating framework to proceed, thereby fulfilling their responsibility under statute while the negotiated discussions continue towards the goal of a dam removal agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexandra Borack', followed by a large, stylized flourish.

Alexandra Borack  
Klamath Coordinator  
Friends of the River