

September 21, 2010

Via Email and First Class U.S. Mail

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

Re: Request for Amendment to SWRCB Resolution No. 2010-0024 (May 18, 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:

This firm represents Klamath Water Users Association (KWUA). By letter dated September 16, 2010 (copy enclosed), Robert Donlan, on behalf of PacifiCorp, requested that the State Water Resources Control Board amend its Resolution No. 2010-0024 by eliminating the provision of the Resolution requiring the introduction of federal authorizing legislation for the Klamath Hydroelectric Settlement Agreement (KHSAs) by a date certain as a condition of maintaining the abeyance of PacifiCorp's application for certification under Clean Water Act section 401. KWUA supports PacifiCorp's request. Your Board's approval of the requested amendment would further the implementation of far-reaching settlements for a basin in need and, importantly, would not implicate any concerns related to potential delay in actual implementation of the KHSAs.

KWUA is a non-profit corporation whose members consist primarily of irrigation districts and similar entities that deliver water in the Klamath Reclamation Project in south-central Oregon and northern California. KWUA has been involved directly in the contentious, destabilizing disputes that have plagued the Klamath Basin over the past decades. KWUA is a party to the KHSAs and the companion Klamath Basin Restoration Agreement (KBRA). So too are the two districts – Tulelake Irrigation District and Westside Improvement District – that encompass all of the Klamath Reclamation Project's irrigated farm and ranch land in California. The Parties negotiated and entered the agreements as a means to provide an improved future for all the diverse interests in the basin. We are actively engaged now in collaborative implementation of the agreements.

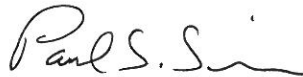
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Federal legislation is, of course, necessary for KHSA implementation. While we expect that legislation will be introduced, the settlement Parties are unable to control events in Congress or their specific timing. However, as Mr. Donlan reports in his letter, the Parties are performing, now, on all the obligations under their direct control. Studies necessary for the Secretarial determination described in section 3.3 of the KHSA are proceeding apace. As Mr. Donlan discusses, PacifiCorp is implementing interim measures, and proceedings are occurring in the states' public utilities commissions to authorize a surcharge to fund potential dam removal. These and many other activities require the settlement Parties' resources, energies, and continued collaboration. Resumption of the section 401 certification process would be detrimental to this work, and counterproductive.

The (current) lack of an introduced bill in Congress does not impede these other, ongoing KHSA activities. Perhaps more importantly, the absence of federal legislation at this time is not a threat to full and timely implementation of the KHSA itself. For KWUA, prompt introduction and passage of federal legislation is a top priority. But the events that are essential now to timely implementation of the KHSA are occurring.

Thank you for your consideration. Please contact me if you have any questions.

Cordially,



Paul S. Simmons

Encl.

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Re: Request for Amendment to SWRCB Resolution No. 2010-0024 (May 18, 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:

On February 18, 2010, the parties listed on the Attachment to this letter executed the Klamath Hydroelectric Settlement Agreement (KHSA), which establishes a process for removal of PacifiCorp's hydroelectric facilities on the Klamath River. Section 6.5 of the KHSA requires the parties, with the exception of the Oregon Department of Environmental Quality (ODEQ), to submit a request to the State Water Resources Control Board (SWRCB) and to ODEQ that permitting and environmental review for PacifiCorp's Klamath Hydroelectric Project (FERC No. 2082), including but not limited to water quality certifications under Section 401 of the Clean Water Act and review under the California Environmental Quality Act (CEQA), be held in abeyance during an interim period under the KHSA. During this abeyance period PacifiCorp would withdraw and resubmit its water quality certification application as necessary to avoid waiver of certification under the Clean Water Act.

On May 18, 2010 the SWRCB approved the abeyance request by Resolution No. 2010-0024. Resolution No. 2010-0024 included a number of conditions, the occurrence of which would cause the termination of the abeyance. One such condition requires the introduction of federal legislation to implement the KHSA by June 18, 2010 (plus 90 days). Unlike many of the other conditions of the Resolution, this particular condition is not an express requirement of the KHSA. Rather, recognizing that the introduction of legislation requires the cooperation of and action by elected officials and not just settlement Parties, the KHSA requires only that the Parties use best efforts to introduce federal legislation in furtherance of the settlement. The Parties have diligently pursued introduction of legislation. Unfortunately, due to congressional schedules and priorities, particularly during this election cycle, federal legislation has not been introduced in

Congress. Consequently, this condition of Resolution No. 2010-0024 has not been satisfied and it is not clear when it will be satisfied.

Given this situation, PacifiCorp respectfully requests that the SWRCB modify Resolution 2010-0024 to remove this condition to keep the abeyance in effect. As described below, the Parties are making great progress implementing the KHSA, which was the primary intent of the abeyance. Additionally, Resolution 2010-0024 already includes a condition that allows the SWRCB to resume processing PacifiCorp's water quality certification upon a finding by the Executive Director that removal of the California facilities is unlikely to proceed in a reasonably timely manner. Therefore, if failure to introduce federal legislation unreasonably slows progress on implementation of the KHSA, then the Executive Director may exercise his authority under this condition to cause the certification process to resume.

The KHSA, along with its companion Klamath Basin Restoration Agreement (KBRA), is an historic agreement that lays out the process for additional studies, environmental review, and a decision by the Secretary of the Interior in 2012 (Secretarial Determination) regarding whether removal of four main stem Klamath River dams within the Klamath Hydroelectric Project owned by PacifiCorp: 1) will advance restoration of the salmonid fisheries of the Klamath Basin; and 2) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and tribes. Three of the dams are in California (Iron Gate, Copco No.1 and Copco No. 2), and one is in Oregon (J.C. Boyle). The KHSA additionally provides for the interim operation of the dams and a process to transfer, decommission, and remove the dams. The KHSA proposes federal legislation that will limit FERC to annual licenses for the Klamath Hydroelectric Project.

PacifiCorp has met each and every obligation set forth in the KHSA and the interim measures, and the settlement parties have made significant progress to implement key provisions of the KHSA since the agreement was signed. Consistent with the KHSA, PacifiCorp made filings in March 2010 to the California and Oregon Public Utility Commissions to initiate customer surcharges in those states to begin collecting the \$200 million customer contribution towards dam removal costs and to adjust the depreciation schedule for the Klamath facilities in contemplation of their potential removal in 2020. These proceedings are advancing through the regulatory process and the California and Oregon Public Utilities Commissions are expected to issue final orders on these surcharges in April 2011 and September 2010, respectively. In Oregon, dam removal customer surcharges are already being collected and transferred to the trustee.

PacifiCorp, in cooperation with parties and stakeholders, has also begun implementing the interim measures contained in the KHSA. These interim measures are providing immediate benefits to aquatic species and improving the understanding of basin water quality that will inform the implementation of projects to improve water quality during the interim period prior to potential removal of the Klamath dams.

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For the reasons set forth herein, PacifiCorp requests that the SWRCB amend Resolution No. 2010-0024 to eliminate the condition requiring the introduction of federal legislation by June 18 (plus 90 days) to keep the abeyance in effect. This modification preserves the Executive Director's flexibility to terminate the abeyance if the legislative process unreasonably slows progress on the KHSA. Please contact the undersigned if you would like additional information.

Sincerely,



Robert E. Donlan
ELLISON, SCHNEIDER & HARRIS
Counsel to PacifiCorp Energy

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