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State Water Resources Control Board

NOV 28 2011

Ms. Elizabeth Vasquez
MP150 – Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Mr. Gordon Leppig
California Department of Fish and Game
619 Second Street
Eureka, CA 95501

Dear Ms. Vasquez and Mr. Leppig:

COMMENTS ON *KLAMATH FACILITIES REMOVAL PUBLIC DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT* (DEIS/DEIR)

The State Water Resources Control Board (State Water Board) appreciates the opportunity to comment on the DEIS/DEIR prepared by the United States Bureau of Reclamation and the California Department of Fish and Game (CDFG). The comments focus primarily on resource areas under the jurisdiction of the State Water Board. In addition to general comments in this letter, more specific comments are provided in the attachment.

The DEIS/DEIR was developed to fulfill the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) requirements for environmental review to support the upcoming Secretarial Determination that is required as part of the Klamath Hydroelectric Settlement Agreement (KHSA). The Secretarial Determination involves a decision by the Secretary of the Department of Interior regarding whether removal of the four dams on the Klamath River, which are part of the Klamath Hydroelectric Project (KHP), will advance salmon restoration and is in the public interest. The Klamath Basin Restoration Agreement (KBRA) is considered a connected action for the purpose of NEPA and CEQA and a programmatic level environmental review of the KBRA is included in the DEIS/DEIR. For purposes of the KHSA, the State Water Board is a responsible agency under CEQA.

It is clear from the DEIS/DEIR and the additional technical studies completed as part of the Secretarial Determination process that substantial effort has gone into providing a comprehensive analysis of environmental impacts associated with KHSA implementation. The DEIS/DEIR incorporates the extensive analysis performed to develop the Klamath River Total Maximum Daily Load (TMDL). The TMDL was developed by the North Coast Regional Water Quality Control Board, in cooperation with the Oregon Department of Environmental Quality, to address Klamath River water quality impairments that include temperature, organic enrichment/low dissolved oxygen, nutrients, and microcystin toxins. The DEIS/DEIR builds on the TMDL and additional studies to augment the large amount of information generated during the Federal Energy Regulatory Commission (Commission) relicensing process.

State Water Board staff submitted scoping comments during the initial NEPA/CEQA scoping process. Issues raised in those comments have, for the most part, been addressed in the DEIS/DEIR. In general, the DEIS/DEIR covers a reasonable range of alternatives to the Proposed Action (i.e., removal of Iron Gate, Copco 1, Copco 2 and J.C. Boyle Dams). Although a three dam removal alternative (i.e., Iron Gate, Copco 1 and Copco 2 Dams) is not analyzed in the DEIS/DEIR, the document states, and State Water Board staff agrees, that sufficient information is provided to enable this option to be analyzed, if necessary. The significance criteria utilized in the DEIS/DEIR for resources under the State Water Board's jurisdiction (i.e., water quality, algae, water rights/water supply and aquatic resources) are well-defined and appropriate. State Water Board staff also agrees that, notwithstanding the impacts on water quality associated with the hydroelectric facilities, the presence of the dams is considered the baseline condition for the purpose of NEPA and CEQA.

For the CEQA No Project alternative, the DEIS/DEIR correctly states that the appropriate alternative is existing conditions and what would reasonably be expected to occur if the proposed project is not approved. If the proposed project is not approved, the facilities will operate under the current license for an unspecified period of time, and the water quality certification process for the Commission's relicensing proceeding will continue. Because federal agencies have set mandatory conditions requiring modifications to the hydroelectric facilities, it is reasonable to anticipate that the relicensing process would result in structural differences from the current configuration. The state water quality certification agencies and the Commission have not yet issued their decisions. These decisions could obviate the need for some of the modifications required by the federal agencies' mandatory conditions. The water quality certification agencies and the Commission also have authority to deny approval of the project. Accordingly, the ultimate result of the Commission's relicensing proceeding is uncertain. The DEIS/DEIR's alternatives include the likely range of potential outcomes of the Commission's relicensing proceeding. Therefore, although the NEPA No Action alternative does not describe a long-term outcome to project denial, the DEIS/DEIR as a whole adequately addresses the range of reasonably foreseeable long-term outcomes.

In some instances, the language in the DEIS/DEIR is unclear regarding actions that have been or will be taken in California. The KHSA specifically defines the state of California to mean the California Natural Resources Agency (Resources Agency) and CDFG. The Resources Agency and CDFG are signatories to the KHSA and KBRA. The State Water Board is not a party to either agreement and maintains its independent authority and jurisdiction over water quality and water rights in California. The State Water Board also retains authority to address issues related to public trust and the waste and unreasonable use of water in California. The DEIS/DEIR should be more clear that the State Water Board is not a signatory and is not and cannot be bound by the terms of the agreements.

The State Water Board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act. (33 U.S.C. § 1251, et seq.) (Wat. Code, §13160.) As a participant in the Commission proceeding to relicense the KHP, the State Water Board is required to issue water quality certification under Section 401 of the Clean Water Act (33 U.S.C. § 1341) prior to the issuance of any new Commission license. The State Water Board adopted Resolutions No. 2010-0024, No. 2010-0049, and No. 2011-0038, which hold the KHP water quality certification process in abeyance contingent upon ongoing progress towards KHSA implementation, including a positive Secretarial Determination by April 30, 2012. If a positive Secretarial Determination is issued and the other requirements of the KHSA are met, no new Commission license will be required because the decision-making and implementation processes outlined in the KHSA will replace the Commission's relicensing process for the KHP. We look forward to the upcoming Secretarial Determination resulting from the KHSA and final DEIS/DEIR.

If you have questions regarding this letter, please contact Ms. Jennifer Watts at (916) 341-5397 or by email: jwatts@waterboards.ca.gov. Written correspondences or inquiries should be addressed to: State Water Resources Control Board, Division of Water Rights, Attn.: Jennifer Watts, P.O. Box 2000, Sacramento, CA, 95812-2000.

Sincerely,

Caren Trgovcich
Chief Deputy Director

Enclosure: Attachment A

cc: Ms. Catherine Kuhlman
Executive Officer
North Coast WQCB
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Attachment A: State Water Resources Control Board's Specific Comments on *Klamath Facilities Removal Public Draft Environmental Impact Statement/Environmental Impact Report*, dated September 2011

Section or Page No.	Comment
Page 1-23	Footnote 12 specifies the federal agencies involved in KBRA negotiations. A similar note for state agencies would be appropriate.
Page 2-38	Additional clarification is needed in the discussion of the CEQA specific analysis for KBRA implementation. The text should use "CDFG" rather than "California."
Page 2-38	The DEIS/DEIR states that CDFG, as the CEQA lead agency, has agreed to consider those portions of the KBRA elements located within California in a programmatic fashion. Table 2-15 provides an overview of programs included in the KBRA. To better understand how future actions associated with the KBRA could cause impacts to resources under the jurisdiction of the State Water Board, additional detail should be added to identify KBRA measures that either will take place in California or that could affect resources in California.
Page 2-19	The Project Description (Chapter 2) provides a graphical representation of the projected flow conditions downstream of Iron Gate Dam in Figure 2-8 for an average year, a dry year, and a wet year. Additional detail regarding how the projected Klamath River stream flows (i.e., KBRA flows) are estimated and the underlying assumptions on which the flows are based should be added to the DEIS/DEIR.
Page 2-19	A footnote to Figure 2-8 indicates that minimum flows may change in the future due to the final Drought Plan required by the KBRA or future actions associated with the Endangered Species Act. Clarify the extent to which the Drought Plan may affect stream flow conditions in California and provide, if possible, an estimate for the range of stream flows expected to occur during drought conditions.
Section 3.2	Various models are used to assess the effects on water quality that result from the alternatives examined in the DEIS/DEIR. Some models utilize flows projected under the KBRA and other models utilize flows that correspond with baseline conditions. For example, the predictions for water temperature and dissolved oxygen utilize baseline flow conditions based on the TMDL water quality model output. Clarify the degree to which changes to stream flow expected under the KBRA are incorporated into the effects analysis for water quality, algae, and aquatic resources.

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Section or Page No.	Comment
Page 3.2-116	Figures 3.2-24 and 3.2-25 depict TMDL model predictions that indicate pH may exceed water quality standards during the summer months in the Klamath River downstream of Iron Gate Dam to the confluence with the Scott River. The discussion of pH states that the high pH values are based on model results that predict increased periphyton growth and increased photosynthesis below Iron Gate Dam, but that increased scour due to high spring flows could reduce periphyton at that site. Clarify how changes in stream flow under the Proposed Action lead to increased scour in both the Hydroelectric Reach and the Klamath River downstream of Iron Gate Dam.
Section 3.8	The effects assessment for water supply for several of the KBRA elements (e.g., Off-Project Water Reliance Program, Water Use Retirements Program, Water Diversion Limitations) mentions how the geographic separation between these elements and the hydroelectric facility removal eliminates negative effects to water supply beyond those effects already identified for facilities removal. The water supply analysis does not cover changes to hydrology within and downstream of the hydroelectric facilities. To improve clarity, describe the relationship, if any, between the KBRA elements discussed in this section and stream flows within and/or downstream of the Hydroelectric Reach.
Page 3.3-87	Interim Measure 16 provides for the removal of screened diversions on Shovel Creek and Negro Creek and relocation of these diversions to the Klamath River to provide additional flow that will benefit anadromous fish, resident redband trout, and benthic macroinvertebrates. Clarify how far upstream the current diversions are located to better quantify the extent of habitat improvement in those tributaries.
Page 3.8-14	The section on water supply and water rights describes the measures that will be taken to relocate the City of Yreka water supply pipeline and states that the pipeline will need to be disconnected for "a short amount of time." Describe what is meant by "a short amount of time" and, if possible, estimate the water storage supply needed by the City of Yreka during the water supply pipeline relocation to ensure that water supplies are not decreased beyond what is needed for public health and safety.
Page 3.8-17	The Water Rights/Water Supply section describes how Interim Measure 16 calls for the relocation of PacifiCorp Energy's (PacifiCorp) point of diversion for Shovel Creek and Negro Creeks, which will require modification of PacifiCorp's water rights. PacifiCorp is required to submit a petition to the State Water Board, Division of Water Rights to request modification of the point of diversion.

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Section or Page No.	Comment
Page 3.8-26	Mitigation Measures Associated with Other Resource Areas states "Water supplies for the campgrounds would most likely be supplied through wells placed on the new sites as appropriate. There would be no impact to water rights or supplies from the implementation of REC-1." If wells are placed on the new sites for campgrounds, there could be an impact to the groundwater supply from implementation of REC-1. Describe what measures will be taken to assure that groundwater quality is suitable for use at the campground, and explain how implementation of REC-1 would not impact the groundwater supply. If needed, discuss any additional mitigation measures that may be necessary.