

Hoopa Valley Tribal Council

Hoopa Valley Tribe

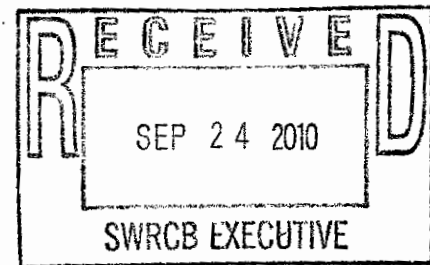
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Leonard E. Masten Jr.
Chairman

September 24, 2010

Charles R. Hoppin, Chairman
Water Resources Control Board
1001 I Street
P.O. Box 100
Sacramento, CA 95812-0100



Re: Opposition to October 5 Board meeting agenda item 9 (Proposed Resolution to Extend Abeyance of the Klamath Hydroelectric Project 401 Water Quality Certification Application)

Dear Chairman Hoppin:

On several occasions, including December 3, 2008, February 11, 2009, February 23, 2009, June 1, 2009, May 11, 2010, and September 7, 2010, we have urged the State Water Resources Control Board to take action to bring water quality of the Klamath River into compliance with state and tribal water quality standards. Both the Klamath, and its principal tributary, the Trinity, flow through the Hoopa Valley Indian Reservation. Our Tribe is a State within the meaning of the Clean Water Act. But it is difficult to reach the objectives of our water quality standards until California exercises the authority it possesses to bring upstream Klamath River water quality into compliance with law.

On May 18, 2010, the Board adopted Resolution No. 2010-0024 granting the request to hold in abeyance the processing of a water quality certification application of the Klamath Hydroelectric Project. Since PacifiCorp submitted its application to the Board in 2006, PacifiCorp has done little other than make an annual withdrawal and resubmission of the application. However, the Board conducted CEQA scoping sessions in 2008 and retained a consultant to help complete an environmental impact report. Earlier this year, PacifiCorp, the States of California and Oregon, the United States entered into an agreement (the "KHSAs") to commence a process which may (or may not) lead to removal of four Klamath river dams and the elimination of PacifiCorp's hydroelectric project that have so seriously degraded Klamath water quality. The Board's May 18, 2010 Resolution approved suspension of PacifiCorp's application for a certification if the KHSAs process proceeds as planned.

In fact, numerous obstacles to the KHSA process make its completion, let alone its outcome, highly problematic. Among many contingencies, the KHSA depends upon enactment of federal legislation to immunize PacifiCorp from liability. Also, it calls for funding from a California bond measure in the amount of \$250 million. As you know, the water bond measure which contained funds for Klamath dam removal, was removed from the ballot by an act of the legislature and will not be proposed before 2012. In addition, as discussed below, federal implementing legislation required for the KHSA has not been enacted.

The Board's May 18 Resolution directed the staff to resume processing PacifiCorp's application for water quality certification within 90 days if federal legislation to implement the KHSA had not been introduced by June 18, 2010. No such legislation has been introduced. It is our understanding that KHSA implementation legislation will not be introduced this year.

On the date abeyance of the Board's action was lifted, PacifiCorp requested continuation of the abeyance. Clearly, PacifiCorp also doubts that the KHSA process will lead to dam removal. PacifiCorp's recent comments concerning the mainstem Klamath TMDL show PacifiCorp opposes TMDL temperature and nutrient standards. However, those standards do not apply to them so long as the KHSA is in effect. Further, the Board's draft resolution erroneously recites that "interim measures have begun to be implemented." While the Interim Measures Implementation Committee has met two times during 2010, and small technical studies have been commenced, nothing is being done in the river.

The Clean Water Act section that halts the FERC relicensing process pending completion of the State water quality certification provides that the State's authority to act is "waived" if the request for certification is not acted upon "within a reasonable period of time (which shall not exceed one year)." 33 U.S.C. § 1341(a)(1). The delay already experienced is unreasonable.

In view of these facts, there appears to be no basis for the Board to amend its resolution or to grant a further delay in addressing water quality and the serious public health hazards of the Klamath River. Accordingly, we urge the Board to complete the CEQA process now and deny or issue a Water Quality Certification that will ensure compliance with water quality standards.

Sincerely,

HOOPA VALLEY TRIBAL COUNCIL



Leonard E. Masten Jr., Chairman