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

Re: Klamath Hydroelectric Project Water Quality Certification

Dear Ms. Watts,

On November 14, 2008, the State Water Resources Control Board extended the scoping comment deadline regarding the state's review of the Klamath Hydroelectric Project's water quality certification to February 23, 2009. In preparation for the February 17, 2009 Board hearing, Oregon Wild, along with the undersigned organizations, requests your attention to the enclosed comments. On behalf of thousands of members in the states of Oregon and California, we strongly encourage the State Water Resources Control Board to carry out the necessary clean water quality certification processes for the Klamath River and the Klamath Hydroelectric Project. Continued delay of the necessary studies and certification subverts the Clean Water Act while maintaining toxic water conditions in the Klamath River. If the certification process cannot continue then the application should be denied.

The Agreement in Principle Should Not Be the Basis for Continued Extensions or Delays

The undersigned commend the Board's interest in a negotiated settlement regarding the future of the Klamath Hydroelectric Project, owned and operated by PacifiCorp Energy. Unfortunately the draft Agreement in Principle ("AIP") regarding Klamath dam removal remains an unreliable settlement among parties that have yet to agree to reasonable removal terms or establish secure financing for said removal.

The AIP is nothing short of a deal rich with "get out of jail free" cards for dam-owner PacifiCorp. Though some concerns over the AIP have been raised to the Board already, the undersigned emphasize that the agreement remains far from a final dam removal deal; it is simply a commitment to talk about a deal, discussion and negotiation that could continue to paralyze water quality conditions on the Klamath River for years. Long before dam removal, the AIP requires the commission and completion of a cost/benefit analysis of dam removal (though such studies have already been executed); and the passage of legislation by both Oregon and California to raise a combined \$450 million from a general bond paid for by taxpayers and rate increases to power customers.

In brief, we are very concerned about the delay in the water quality certification that has resulted from the filing of the AIP. We would like to encourage the Board to proceed with its environmental review process under the Clean Water Act to evaluate the water

quality impacts of the Klamath Project. Simply stated, if PacifiCorp refuses to complete the necessary environmental studies, we encourage the Board to deny 401 Certification.

#### Delays in 401 Certification Put Human and Natural Communities At Risk

As the Board noted in a letter dated August 22, 2008 to PacifiCorp Energy, conditions on the Klamath River indicate an ongoing “decline in the river’s water quality and ability to support healthy fisheries.” In addition, the Board acknowledged that the river has seen noteworthy increases in toxic blue-green algae and a general decline in fish populations. Without holding PacifiCorp accountable for dramatic improvements in management (or removal) of the Klamath River dams, conditions on the river show no evidence of improving from the aforementioned state.

A history of point and non-point source pollution in the waters of the Klamath Basin indicate that water quality challenges in the basin watershed, rivers, and tributaries are not temporary and should not be treated as such. Instead, this problem must be addressed with more considerate and long-term solutions, including water quality certification proceedings. A long history of pollution in the Klamath River, as a result of nutrient loading in the basin, has led to fish kills and water quality challenges in the reservoirs of the Klamath Hydroelectric Project. While some argue that algal pollution has been present in the Klamath River prior to the PacifiCorp Klamath Hydroelectric Project (specifically at Copco and Iron Gate dam reservoirs), there is considerable evidence that dams both cause and exacerbate toxic pollution. The notable and harmful impacts of cyanobacterial species *Microcystis aeruginosa*, which produce microcystin toxins, are many and sampling evidence points directly to the impacts of the Klamath Hydroelectric Project reservoirs.

Microcystin toxins, released by toxic algae, pose significant health risks. Microcystin toxins are known to cause harmful results ranging from skin rashes and fevers to livestock poisoning and liver toxicity. Sampling of microcystin toxins in several locations in the Iron Gate and Copco reservoirs of the KHP since 2004 have revealed hazardous levels of toxic algae above the World Health Organization recommendation (20 µg/L). During July-September of 2005, samples exceeded World Health Organization levels by 10-100 times. Later sampling in July and August of 2006 revealed that one site exceeded the World Health Organization moderate-risk-exposure standard by 3900 times.

The Board’s allowance for the AIP to dictate a delay in clean water certification proceedings allows PacifiCorp to maintain the status quo of poor water quality conditions on the river, including toxic algae, for at least another decade. Allowing PacifiCorp to delay certification proceedings and environmental studies through the illusory AIP and a series of permissible water quality certification application withdrawals and resubmittals undermine the Clean Water Act and the health of the Klamath River.

#### Interim Conditions Necessary

The Board’s Notice of Preparation and Scoping Meetings for an EIR on the Klamath from September 30, 2008 aptly points out the need to interim conditions on the river while 401 certification proceedings are underway, or halted, as the case may be today.

The NOP states, “Additionally, any feasible long-term alternative must demonstrate the ability to meet California water quality standards. The State Water Board has not yet determined what long-term modifications are needed to meet water quality objectives, however, and the analysis of a long-term modification and operation alternative in the EIR does not necessarily amount to a conclusion that the alternative is feasible or will meet this goal.” Given conditions on the Klamath River, it is imperative that the Board review the immediate need for interim conditions. Detailed analysis of measures to improve water quality and habitat values may be found in the federal agencies mandatory conditions and prescriptions filed in the FERC proceeding. An example of such interim conditions is enclosed as Attachment 1.

The AIP’s Interim Conservation Plan, while a supposed proposal for interim conditions, is hardly sufficient. In keeping with the Board’s expectations and aforementioned water quality standards, we encourage the Board to adopt interim conditions that meet the needs of the river.

Moving Ahead For The Health Of The River

Along with the undersigned parties, Oregon Wild looks forward to the Board’s review of this complex issue during the February 17, 2008 hearing. We hope the Board will reflect on this and like concerns when considering water quality certification for the Klamath Hydroelectric Project. We ask that we be informed of additional hearing notices, comment deadlines, or other opportunities for participation related to this important issue.

Thank you for your consideration.

Regards,

Ani Kame’enui  
Klamath Campaign Coordinator  
Oregon Wild  
5825 North Greeley Ave.  
Portland, OR 97217

Scott Greacen  
Executive Director  
Environmental Protection and Information Center  
#122 600 F Street  
Arcata, CA 95521

Noah Greenwald  
Biodiversity Program Director  
Center for Biological Diversity  
PO Box 11374  
Portland, OR 97211

## ATTACHMENT 1

### Interim License Conditions Requested By Hoopa Valley Tribe

1. Ramping During Controlled Events for J.C. Boyle Peaking Reach: The Licensee shall operate the J.C. Boyle Development to not exceed an up-ramp rate or down-ramp rate of two inches per hour when conducting controlled flow events (e.g., scheduled maintenance, power generation, changes in streamflow requirements), as measured at the J.C. Boyle powerhouse gage USGS #11510700.

2. Ramping During Controlled Events for J.C. Boyle Bypassed River Reach: The Licensee shall operate J.C. Boyle Development to not exceed an up-ramp rate or down-ramp rate of two inches per hour as measured at the new gage below J.C. Boyle Dam when conducting controlled flow events (e.g., scheduled maintenance and changes in minimum flow requirements), except when turbine capacity is exceeded.

3. Required Minimum Streamflows: The Licensee shall operate J.C. Boyle Development to accomplish the following:

(a) Proportional Flow Requirement: Provide no less than 40% of the inflow to J.C. Boyle Reservoir to the J.C. Boyle Bypassed River Reach, to be measured at a new gage below the J.C. Boyle Dam near River Mile 225. Inflow to J.C. Boyle Reservoir shall be calculated by averaging the previous three days of the combined daily flows as measured at the Keno gage #11509500 and Spencer Creek gage #11510000 (Calculated Inflow).

(b) Minimum Base Flow Requirement: When Calculated Inflow is less than 1,175 cubic feet per second (cfs), no less than 470 cfs shall be provided to the J.C. Boyle Bypassed River Reach, except that when the Calculated Inflow is less than 470 cubic feet per second (cfs), then flow shall be provided to the J.C. Boyle Bypassed River Reach in an amount equal to the Calculated Inflow.