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June 26, 2012

Mr. Charles Hoppin, Board Chair  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Re: Restarting the 401 Water Quality Certification Application for the Klamath Hydroelectric Project

Dear Mr. Hoppin:

These comments are offered by the Resighini Rancheria regarding the hearing before the State Water Resources Control Board (Board) scheduled for July 17, 2012 on the issue of Klamath Hydroelectric Project (KHP) dam relicensing and whether your Board will re-start the related 401 Certification process. We are a federally recognized Tribe with a Reservation located at the top of the Klamath River estuary approximately three miles upstream of the Pacific Ocean. We rely on the Klamath River and its fish for sustenance and survival as we have since time immemorial. We are asking the Board to immediately lift the abeyance on the 401 Certification and take expeditious action to force removal of KHP dams to help the river regain its health.

Background: The license for PacifiCorp to operate KHP dams expired on March 1, 2006 and the company has been allowed to operate on a year to year basis by the Federal Energy Regulatory Commission (FERC) since that time. The SWRCB (2006, 2008) comments on KHP relicensing clearly demonstrated that KHP reservoirs were causing irremediable water quality problems. These include altered water temperatures and increased nutrient pollution that both negatively affect Pacific salmon species downstream. Toxic algae is also present that poses risk to public health both in the reservoirs and downstream in the lower Klamath River. During the relicensing process The Board appeared ready to exercise its authority under the Clean Water Act and to deny 401 Certification because there was no feasible mitigation short of dam removal.

After the State of California signed the Klamath Hydropower Settlement Agreement (KHSA), the Board passed Resolution 2010-0024 holding the 401 Certification process in abeyance and set a date for authorizing legislation of June 18, 2010. When the legislation failed to materialize by that date, the Board revised the deadline to May 17, 2011 by adopting Resolution No. 2010-0049. The Resighini Rancheria sent representatives to the last Board meeting where the KHP 401 Certification was discussed on August 16, 2011, when you further continued the abyaance. Your Board passed Resolution 2011-0038 that set a deadline of April 30, 2012 for an affirmative Secretary of Interior Decision on dam removal and authorizing legislation.





We recall very clearly your direction to staff to come back to the Board with a plan of action on 401 Certification, if there was no affirmative Secretary of Interior Decision on dam removal and no authorizing legislation passed by the end of at the end of April 2012. As you are aware, no Secretarial Decision has been rendered and, as we explain below, prospects of passage of such legislation in the current or future sessions of Congress is remote.

Prospects for Legislation: Neither HR-3398 nor S-1851 (Klamath Basin Economic Restoration Act) have had any hearings or action in committee since being introduced on November 10, 2011 nor is there any indication of pending action. As we noted in our comments last year (Resighini 2011a, 2011b), key Republicans like Congressman Wally Herger, who represents Siskiyou County where the dams are located, and Congressman McClintock, who heads the Committee on Water and Power, actively oppose the dam removal legislation.

In May of 2012 elections in the Upper Klamath Basin in Oregon, all candidates who favored the Klamath Basin Restoration Agreement (KBRA) and dam removal through the KHSA were defeated. After the election the editorial board of the Klamath Falls Herald and News (May 18, 2012) withdrew support for the KBRA and stated that “when you get right down to the document, it’s not going anywhere”. The significance is that the person who takes Wally Herger’s place in Congress will also reflect this opposition and legislation rarely passes when the local legislator is adamantly opposed. The original cost estimate of \$1 billion has now been revised downward to \$800 million, but will still be strongly opposed on fiscal grounds in these economically challenging times.

The State of California was supposed to make a contribution of \$250 million to dam removal under the KHSA, but the bond that would supply these funds was pulled from the November 2010 ballot and does not appearing on the ballot in 2012. According to the Los Angeles Times (April 30, 2012) the \$250 million allocation will be paired with funding of the Peripheral Canal in 2014, which means it is likely to go down to a crushing defeat. The article quotes Assemblyman Jared Huffman as calling it “the bond that can’t win and won’t be allowed to die.”

Therefore, dam decommissioning through the Secretarial Decision process and authorizing legislation is unlikely to occur and matching funding for the KHSA from the State of California is not forthcoming.

FERC Relicensing Not in Abeyance: FERC filed only brief comments on the Draft Klamath Facilities Removal EIS/EIR. “Contrary to the assertion, first made on page 1-17 of the document, that ‘the relicensing proceeding is in abeyance,’ the relicensing of the Klamath Hydroelectric Project is an active Commission proceeding....we continue to wait for California and Oregon to take action on PacifiCorp’s applications and either issue, deny, or waive Water Quality Certification for the project, pursuant to section 401 of the Clean Water Act.”





FERC (2007) acknowledged all the KHP related problems recognized by the SWRCB (2006) with regard to water pollution and fish disease epidemics in their *Final Environmental Impact Statement* but did not recommend dam removal. You have the obligation as well as the authority to block KHP relicensing to protect beneficial uses and to improve the health of the Klamath River. Regardless of your actions, the Resighini Rancheria is confident that a return to the FERC relicensing process will lead to PacifiCorp abandoning the KHP and decommissioning its dams because of the National Marine Fisheries Service requirement for fish ladders that cost \$240 million. Therefore, we ask you to exercise your 401 Certification authority immediately or formally waive it so that the KHP relicensing process can resume

Need for Prompt Action: The Resighini Rancheria urges the Board to take prompt action to restart the 401 Certification. Interim measures carried out by PacifiCorp as part of the KHSA do not lessen pollution. Waiting until 2020 for dam removal as called for under the KHSA would mean continuous violation of the Clean water Act, failure to meet Basin Plan standards on the lower Klamath River and continuing high risk of fish disease epidemics. The apparent paralysis with regard to legislation and the Secretarial Decision make even the projected KHSA 2020 dam removal date uncertain. Consequently, the Board needs to do its job, block relicensing and help force dam decommissioning.

The Klamath River is just one of many water bodies over which you have jurisdiction, but it is our life blood. The removal of Klamath dams will be a major step in healing the river and restoring harmony to the Klamath Basin. Thanks for your consideration of our request and we will be watching with interest to see whether the Board has the courage to do its job and block KHP relicensing.

Sincerely,

Donald McCovey  
Resighini Rancheria Tribal Council Chairman.





**References**

Federal Energy Regulatory Commission (FERC). 2007. Final Environmental Impact statement for the Klamath Hydroelectric Project, Docket No. P-2082-027. 11/18/07. U.S. DOE, FERC, Washington D.C.

Federal Energy Regulatory Commission (FERC). 2011. Comments on Klamath Facilities Removal Draft EIS/EIR. Letter of November 18, 2011 from Jeff Wright of FERC (Office of Energy Projects) to Elizabeth Vasquez of the Bureau of Reclamation and Gordon Leppig of California Fish and Game. FERC, Washington DC. 2 p.

Klamath Falls Herald and News. 2012. Editor's Notes: Post-Election Discussions and the KBRA Obsession. May 18, 2012.

Los Angeles Times. 2012. Water Bond is Circling the Drain. By George Skelton, April 30, 2012.

Resighini Rancheria. 2011a. Resighini Rancheria Request for Reinitiation of 401 Certification Process Related to the Application for the Relicensing of the Klamath Hydroelectric Project (P-2082). Letter from Tribal Council Chair Rick Dowd to Jeanine Townsend, Clerk of the SWRCB. Dated May 17, 2011. Resighini Rancheria, Klamath, CA. 5 p.

Resighini Rancheria. 2011a. Proposed Resolution Under Item 10 of the SWRCB 8/16/11 Agenda Regarding the Section 401 Water Quality Certification Application for the Klamath Hydroelectric Project. Letter from Tribal Council Chair Rick Dowd to Jeanine Townsend, Clerk of the SWRCB. Dated August 10, 2011. Resighini Rancheria, Klamath, CA. 5 p.

State Water Resources Control Board. 2006. Response to PacifiCorp's Request for Consideration of 401 Certification for the Klamath Hydroelectric Project (P-2082). SWRCB, Sacramento, CA.

State Water Resources Control Board. 2008. Response to PacifiCorp's Letter Regarding State Water Resources Control Board on the 2008 Water Quality Study Plan and Information Request for the Klamath Hydroelectric Project (P-2082). To Cory Scott of PacifiCorp from Jennifer Watts SWRCB Environmental Scientist. SWRCB, Sacramento, CA. 5 p.

