

**WATER AND POWER
LAW GROUP PC**

2140 SHATTUCK AVENUE, STE. 801
BERKELEY, CA 94704-1229
(510) 296-5588
(866) 407-8073 (E-FAX)

January 29, 2016

By Electronic Mail

Parker Thaler
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Parker.thaler@waterboards.ca.gov

Re: “Notice of Preparation and Scoping Meetings for an Environmental Impact Report for the Klamath Hydroelectric Project Relicensing” (Nov. 30, 2015)

Dear Mr. Thaler:

American Rivers, California Trout, and Trout Unlimited submit these comments on the Notice of Preparation and Scoping for the Environmental Impact Report (EIR) in this proceeding.

We are parties to the relicensing proceeding before the Federal Energy Regulatory Commission. We are signatories to the Klamath Hydroelectric Settlement Agreement (KHSAs) and the Klamath Basin Restoration Agreement (KBRA). Our interests are to assure that the Project, as may be modified by final actions in this and related licensing proceedings, will contribute to the sustainability of natural resources and communities in the Klamath River Basin, including attainment of water quality objectives.

We are grateful to the State Water Board for the abeyances and other actions that you took since February 2010, as the parties sought to secure statutory authorization for the Klamath Agreements. We regret that Congress did not act on that comprehensive solution for water resources management, which was supported by the United States, both states, three tribes, and the great majority of affected private stakeholders. Along with other signatory parties, we will continue efforts to amend those agreements to implement that comprehensive solution without the need for new federal authorization. We support the State Water Board's proceeding as we continue those efforts on a parallel track.

Project Objectives

The Notice states the Project objectives for purposes of EIR preparation. Notice, p. 11. We support this statement. All of the alternatives discussed below are consistent with the power element of those objectives, preserving at least some of the generation capacity of the Project.

Alternatives

The Notice states that the EIR here will be informed by the alternatives considered in prior environmental documents in related proceedings. *Id.*, pp. 7, 9. These documents are: the Final Environmental Impact Statement (November 2007) (EIS) which FERC prepared in the relicensing proceeding, and the Final Environmental Impact Statement/Report (Dec. 2012) (EIS/R) which U.S. Department of Interior and California Department of Fish and Wildlife prepared for KHSA implementation. We agree that the EIR should include a similar range of alternatives.

In a later section, “CEQA Information,” the Notice states that the EIR in this proceeding may include an alternative for removal of the three mainstem dams in California. *Id.*, p. 11. It does not mention the alternative of removal of the four mainstem dams while continuing operations of Falls Creek Development and Keno Dam. The prior environmental documents considered this alternative.

It is true that modifications to J.C. Boyle Development, which is located in Oregon, will be addressed through Oregon Department of Environmental Quality’s (ODEQ) certification proceeding. Notice, p. 11. That said, the Notice acknowledges that the EIR must address that upstream development “...to the extent modifications impact California resources.” *Id.* As demonstrated by the prior environmental documents, J.C. Boyle today materially affects flow and fish passage in California, and modifications such as removal would cause other impacts. Further, ODEQ’s proceeding is a closely related action for purposes of this proceeding. 14 C.C.R. §§ 15355(b), 15130(a)(1). For both reasons, we request the State Water Board consider an alternative of removal of the four mainstem dams, understanding that any modifications of J.C. Boyle Development may depend on ODEQ’s certification decision.

The KHSA EIS/R extensively analyzes the environmental impacts of full or partial dam removal of the four mainstem dams. This analysis is the starting point and may well prove to be sufficient for the purpose of this alternative in the EIR in this proceeding.

Analytical Methods

The Notice does not describe the methods that the Division (including your consultant, AECOM Technical Services) will use to analyze potential impacts on water quality. At the January 14, 2016 Scoping Meeting, the Water Board staff described a procedure whereby the next public event will be the publication of the draft EIR. *See* http://www.waterboards.ca.gov/videos/video_pages/ceqa_scoping_mtg011416.shtml (minute

15:45). We recommend instead that the State Water Board promptly develop and disclose your analytical methods for this purpose. For example, as listed under Clean Water Act section 303(d), there are seven different impairments of the waters potentially affected by this Project. Notice, pp. 8-9. Per its September 10, 2008 letter (FERC eLibrary 20080911-5112), PacifiCorp has stated that many factors other than the Project contribute to such impairments. Since this issue is disputed and central to this proceeding, the EIR must be based on methods that reliably distinguish the contributions of the Project from whatever contributions may result from other factors.

Record

This is a quasi-adjudicatory proceeding. The record is critical to the integrity and sufficiency of the final action. While the State Water Board maintains a webpage (http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/klamath_ferc2082.shtml), that does not contain all of the prior filings in this proceeding, and it is not indexed or searchable by date. Understanding that the webpage was not originally designed to be an electronic library, we respectfully request that Division prepare an index to the existing record of this proceeding, assure that such past filings are downloadable from the webpage or another online source (such as FERC's eLibrary), and establish a procedure that assures that all future filings are indexed and available in that same manner. We request that you consult with PacifiCorp and other parties to discuss feasible options for such procedures.

As a related matter, we request that you confirm that the record of this proceeding now includes the relicensing EIS (2007) and KHSA EIS/R (2012). The Notice implies but does not state that result. We support that result as consistent with 14 C.C.R. § 15150, which authorizes incorporation by reference of relevant analyses. We also request that you specify whether you are incorporating the records (in whole or part) for the impairment listings under Clean Water Act section 303(d).

Service

We request that the State Water Board add the following representatives to the service list for this proceeding:

Steve Rothert
American Rivers
120 Union St.
Nevada City, CA 95959
srothert@americanrivers.org

Curtis Knight
California Trout
701 S. Mt. Shasta Blvd.
Mount Shasta, CA 96067
cknight@caltrout.org

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Brian Johnson
Trout Unlimited
4221 Hollis Street
Emeryville, CA 94608
BJohnson@tu.org

Richard Roos-Collins
Julie Gantenbein
Water and Power Law Group PC
2140 Shattuck Avenue, Ste. 801
Berkeley, CA 94704
rcollins@waterpowerlaw.com
jgantenbein@waterpowerlaw.com

We request electronic service.

We also request that the State Water Board establish a required procedure for service of future filings in this proceeding. In the absence of a service requirement, participants will not have timely access to a complete record of future filings.

Supplemental Notice

We request that the Division publish a Supplemental Notice containing three elements. These are: (1) range of alternatives, (2) analytical methods that you will use to evaluate water quality conditions that may have multiple contributing factors, and (3) schedule and further procedures, including service requirement and record.

Thank you for considering these comments.

Respectfully submitted,



Brian Johnson
California Director,
Trout Unlimited

Steve Rothert
Director, California Office
American Rivers

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Curtis Knight
Executive Director
California Trout



Richard Roos-Collins
Julie Gantenbein
Water and Power Law Group PC

Attorneys for American Rivers and California Trout

Cc: FERC Service List (P-2082)