

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2011-0038**

TO AMEND RESOLUTION NO. 2010-0024 REGARDING THE SECTION 401 WATER
QUALITY CERTIFICATION APPLICATION FOR THE KLAMATH HYDROELECTRIC PROJECT

WHEREAS:

1. On May 18, 2010, the State Water Resources Control Board (State Water Board) adopted [Resolution No. 2010-0024](#), which holds in abeyance further processing of the water quality certification application for the Klamath Hydroelectric Project and establishes occurrences, based primarily on Klamath Hydroelectric Settlement Agreement (KHSA) goals, that would lift the abeyance if the goals are not met within 90 days;
2. On October 5, 2010, the State Water Board adopted [Resolution No. 2010-0049](#), which amends Resolution No. 2010-0024, modifying the first occurrence under paragraph 3 to cause the abeyance to lift 90 days after May 17, 2011, if the federal legislation contemplated in the KHSA is not enacted by Congress by that date;
3. No federal legislation was enacted by May 17, 2011;
4. On June 21, 2011, PacifiCorp Energy (PacifiCorp) requested that the State Water Board modify Resolution No. 2010-0024 to remove the requirement that federal legislation be enacted by a date certain since federal legislation is not likely to be enacted before August 15, 2011 (90 days after May 17, 2011);
5. PacifiCorp's request states that settlement parties continue to actively pursue such legislation, which is needed to authorize the federal government to implement the KHSA and the associated Klamath Basin Restoration Agreement;
6. PacifiCorp also describes progress towards implementing the KHSA, including:
 - On May 6, 2011, the California Public Utilities Commission approved PacifiCorp's request to collect surcharges from California customers to fund dam removal costs for KHSA implementation;
 - On September 6, 2010, the Oregon Public Utilities Commission approved a similar request by PacifiCorp to collect surcharges from Oregon customers;
 - The Department of the Interior and the California Department of Fish and Game are moving forward in the preparation of a joint document as part of the environmental review process under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA);
 - PacifiCorp has begun to implement and provide funding for interim measures called for in the KHSA that focus on water quality and habitat improvement;
7. No events triggering dissolution of the KHSA have occurred;

8. NEPA and CEQA development that is underway in support of the Secretarial Determination will provide valuable information that may be useful for issuance of water quality certification, under Clean Water Act Section 401, as part of the Federal Energy Regulatory Commission relicensing process, should that be necessary. Issuance of water quality certification is a discretionary action that requires compliance with CEQA; and
9. Removal of the deadline for enactment of federal legislation from Resolution No. 2010-0024, as amended by Resolution No. 2010-0049, will not affect the Executive Director or Chief Deputy Director's discretion to lift the abeyance if a finding is made that removal of the California facilities is unlikely to proceed in a timely manner, as provided for in Resolution No. 2010-0024.

THEREFORE BE IT RESOLVED THAT:

The State Water Board amends Resolution No. 2010-0024, as amended by Resolution No. 2010-0049, to:

1. Delete the requirement for the enactment of federal legislation by May 17, 2011, (the original requirement for introduction of federal legislation by June 18, 2010, was deleted and replaced by Resolution No. 2010-0049) in the first bullet in paragraph 3;
2. Add a new requirement to paragraph 3 that reads: *A finding by the Executive Director or Chief Deputy Director that the environmental review process for the Secretarial Determination is not being done in a manner that will facilitate completion of the State Water Board's 401 certification process for the relicensing proceeding should that become necessary because the Secretarial Determination does not occur by April 30, 2012, or the abeyance is lifted for any other reason; and*
3. Add language to paragraphs 2 and 3 authorizing the Executive Director or Chief Deputy Director to lift the abeyance, by adding "or Chief Deputy Director" after "Executive Director".

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on August 16, 2011.

AYE: Chairman Charles R. Hoppin
 Vice Chair Frances Spivy-Weber
 Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



 Jeanine Townsend
 Clerk to the Board