

Thaler, Parker@Waterboards

From: Felice Pace <unofelice@gmail.com>
Sent: Wednesday, January 27, 2016 2:36 PM
To: Thaler, Parker@Waterboards
Subject: Additional Comments on Klamath Hydroelectric Project 401 Process and EIR
Attachments: Dams_401 Cert_F's Scoping Cmts.doc

Felice Pace

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TO: SWRCB Members and Klamath Dams 401 Certification Staff via Email to:
parker.thaler@waterboards.ca.gov

RE: Additional scoping comments on EIR for the Klamath Hydroelectric Project Relicensing or Project Decommissioning.

DATE: January 27, 2016

These comments are in addition to testimony I presented at the NOP/Issues Scoping meeting in Orleans on January 26, 2016 which are attached and incorporated herein by reference.

As noted in my testimony and by many of those testifying in Orleans and Arcata, the water quality impacts of the Klamath Hydroelectric Project (Project) are doing major damage and constitute ongoing multiple threats to Klamath River Communities, the Klamath River and the River's beneficial uses including Klamath Salmon and the living Indigenous cultural uses which have been recognized by the SWRCB and incorporated into the North Coast Basin Plan. The North Coast Basin Plan implements the Clean Water Act in the California portions of the Klamath River Basin.

As also pointed out by many testifying, the harmful water quality impacts of the Project can not be mitigated. Because its negative water quality impacts and resulting damage to beneficial uses can not be mitigated, the Project can not comply with Basin Plan requirements and therefore can not be legally certified as in compliance with the Clean Water Act. For that reason the SWRCB can and should only offer water quality certification for decommissioning and dam removal.

However, the SWRCB can also not legally certify decommissioning and dam removal as proposed in the Klamath Hydroelectric Settlement Agreement (KHSA). Such a certification would allow potential and unassessed threats to water quality associated with powerhouses and transmission facilities (some in excess of 100 years old) to be left in place. As documented in many instances across this country and around the world, old powerhouses and transmission facilities often harbor toxic legacies, including PCPs, which potentially pose direct and indirect threats to water quality, beneficial uses and the health of downstream community residents.

For those reasons, the SWRCB should inform PacifiCorp and FERC that it can not issue CWA 401 certification for Project Decommissioning and dam removal unless and until potential toxic legacies associated with the Project **and the potential of any such toxic legacies to be delivered to the Klamath River** are adequately assessed. FERC should order PacifiCorp to make that assessment and to present its findings to the SWRCB and the public.

In the rush to achieve a Klamath dam removal deal now that federal legislation to authorize and implement the KHSA and other political agreements has failed, no entity or individual should endorse, facilitate or embrace a dam removal scenario that leaves in place unassessed toxic legacies which threaten the River, Klamath Salmon and Klamath Communities. The SWRCB can and should play a lead role in making sure that does not happen by refusing to issue a CWA permit and 401 CWA compliance certification unless and until toxic legacies and the potential of any such legacies to impact the Klamath River and its beneficial uses are assessed and, if need be, addressed.

Sincerely,

Signed Via Email

Felice Pace

enclosure

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"There's a crack in everything; that's how the light gets in."

- Leonard Cohen

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Can PacifiCorp's Klamath River Dams comply with the Clean Water Act? Comments to the SWRCB on an EIR for the Klamath Hydroelectric Project January 2016, Karuk Tribal Office, Orleans, California

My name is Felice Pace. I've lived in the Klamath River Basin for 40 years: 25 years in the Scott River Sub-basin and the last 15 years at Klamath Glen on the Yurok Reservation about 5 river miles from the River's mouth. I began working for Klamath River restoration in 1986. I am the editor and principle writer of KlamBlog. I also serve as Water Chair for the North Group of the Redwood Chapter of the Sierra Club. The Redwood and Mother Lode Chapters will submit joint written comments. My comments today are for myself as an individual.

1. The State Water Board's Responsibility:

In this instance, the State Water Board's primary responsibility is to honor the North Coast Basin Plan which implements the Clean Water Act in the California portions of the Klamath River Basin. Honoring the Basin Plan by faithfully adhering to its provisions will fulfill the State Water Board's responsibility to protect the beneficial uses of the Klamath River and its waters, including Klamath River Salmon, the aquatic ecosystem on which those salmon depend, and the cultural uses of salmon by the Indigenous Native Peoples of the Klamath River Basin.

In this regard I call your particular attention to the following key Basin Plan requirement which you can find on Page 3-1.00 of the Basin Plan:

"Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled."

The record is clear and the data do not lie. PacifiCorp's Klamath Hydroelectric Project receives poor quality water from the Upper Basin and makes that water's quality much worse in violation of the Basin Plan. Furthermore, the Klamath Hydroelectric Project makes the water quality worse in ways that scientists and water quality specialists, some of whom work here on this property as well as at Oregon State and other universities, threatens human health and damages Klamath River Salmon and the aquatic ecosystems on which those salmon depend.

No amount of mitigation can render PacifiCorp's Klamath Hydroelectric Project compliant with the Basin Plan, including the "No Further Degradation" provision cited above. Therefore, no amount of mitigation can justify certification that the Project is in compliance with the Clean Water Act. The people of the Klamath River Basin, many of whom have devoted their lives to restoring the River, expect the State Water Board to do its duty by declaring the Klamath Hydroelectric Project ineligible for certification as Clean Water Act compliant.

2. Get on with it!

My second message to the Water Board is to just get on with it. We have already had four 401 certification abeyances, two Environmental Impact Statements and one Environmental Impact Report. The EISs and the EIR already completed have taken hard looks at the impacts of the Klamath Hydroelectric Project, including a relicensed Project, removal of four of PacifiCorp's five Klamath River dams, and all other feasible alternatives. The State Water Board should use the information in those documents to quickly complete the additional EIR. All of us here, including the tribes, agencies and restoration councils, will help you find whatever you need to complete the process. So, in the name of justice and propriety, please just get on with it!

3. Do not aid and abet PacifiCorp's delay strategy

I am a PacifiCorp ratepayer. That means I get my electricity from and pay my power bill to PacifiCorp. The company says it is acting in my interest. But PacifiCorp's behavior shows that it prioritizes stockholder interests over the interests of its ratepayers.

Using PacifiCorp's own data, the California Energy Commission calculated that removing the dams would be about \$114 million less costly than relicensing the project and installing fish ladders. Referring to those calculations, CEC Commissioner John Geesman said: *"The new analysis clearly indicates that it is best for the ratepayer that these four dams be removed."*

In its 2007 EIR, FERC calculated that, if relicensed with modern requirements already approved by an administrative law judge, PacifiCorp's Klamath Hydroelectric Project would operate at a \$20 million loss each and every year (see FERC FEIS, Table 4-3 on pg. 4-2).

Clearly, relicensing a hydroelectric project that will lose \$20 million each and every year does not make common sense and is not in the interest of PacifiCorp's ratepayers whether those ratepayers live, like me, in Northern California or in Oregon, Idaho and Utah.

If the dams come out PacifiCorp must find or build replacement power. If the dams are relicensed, the Klamath Hydroelectric Project will lose \$20 million each year. That means the status quo, year-to-year licenses without changes in operations, maximizes shareholder equity as compared to relicensing or dam removal. PacifiCorp stockholder interest is delay and that is precisely what PacifiCorp's corporate operatives have pursued.

PacifiCorp's delay strategy is not in the interest of the company's ratepayers. PacifiCorp's delay strategy extends and intensifies the Klamath's salmon disease epidemic. PacifiCorp's delay strategy threatens the health of the children and adults who live along the River and all those who come in contact with the River's water.

The State Water Board is tasked with protecting the public interest in clean water and the beneficial uses clean water supports. The public's interest is to resolve the fate of the Klamath Hydroelectric Project as quickly as possible. The Water Board has already delayed far too long. Please do not aid or abet PacifiCorp's delay strategy any longer. Use existing data and existing environmental reviews to expeditiously reach a decision.

I hope the Water Board does the right thing. But whatever you do, please just get on with it. Thank you for the opportunity to comment.