
From: hhendrixson@tnc.org[SMTP:HHENDRIXSON@TNC.ORG]
Sent: Friday, November 18, 2011 4:15:59 PM
To: BOR-SHA-KFO-Klamathsd; werner@wrinkledog.com
Subject: Web Inquiry: I support dam removal alternative 2 Auto forwarded by a Rule

Name: Heather Hendrixson
Organization: The Nature Conservancy

Comment 1 - Approves of Dam Removal

Subject: I support dam removal alternative 2

Body: I am a trained fisheries biologist (BS. fisheries from Humboldt State University, 1996; MS Water Resources Science, University of Minnesota, 2003) and land manager for The Nature Conservancy in Klamath County and I support the full dam removal alternative (#2) outlined in the draft EIS/EIR. These are the reasons I support full dam removal:

- Access to hundreds of miles of historic spawning habitat for Klamath River Chinook and Coho salmon, steelhead, and lamprey whose numbers run dangerously close to extinction. These fish are important for tribes up and down the river and are important to them for religious and cultural purposes which I greatly respect. Also, water management in the upper basin through the KBRA will likely help Klamath sucker populations.
- removal of the dams would get rid of the reservoirs behind them and would improve water quality in the river by reducing the warming of river water and eliminating the blooms of toxic algae that plague the reservoirs. The conditions in the reservoirs are inhospitable to salmonids and also cause lasting detrimental effects downstream of the dams. They are disgusting in the summer due to the intense algae blooms that occur yearly.
- flows below the dams are artificially regulated and cause parasites to build up in sediments that can kill salmon as adults and outmigrating smolts. Dam removal would allow natural fluctuations in flow to flush out the algae and disease causing parasites and allow fish to distribute into upper reaches of the river instead of bunching up in the disease hotspot at the base of Iron Gate dam.
- The four dams are not used for irrigation. Farmers upstream will still get their water from behind Keno and Link dams, which are small enough barriers for fish to pass by using ladders.
- The dams do not provide flood protection since the reservoirs are relatively small and have a very limited capacity to catch flood waters. I saw the effects of the 1997 flood in the Klamath and know that flooding did occur even with the dams in place.
- The KBRA is the best alternative we have for providing water to farmers and for fish. It shows collaboration and a willingness of many different parties to work together to come to agreement and work on solutions to very tough issues. Passage of the KBRA and subsequent dam removal would serve a good model for other basins facing similar resource issues.

Thank you for reading my comments.
Sincerely,
Heather Hendrixson

Comment Author Hendrixson, Heather
Agency/Assoc. The Nature Conservancy
Submittal Date November 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|--|--------------------------|
| AO_WI_1118_033-1 | Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal. | No |

KLAMATH DAM REMOVAL
DRAFT EIS/EIR HEARING
OCTOBER 26, 2011
PUBLIC TESTIMONY
ARCATA, CALIFORNIA

MR. HUGHES: My name is Gary Hughes,
H-u-g-h-e-s, and I'm here representing the Environmental
Protection Information Center. Our organization has
worked for more than 30 years on the North Coast of
California to protect endangered species and the wild
landscapes that they depend upon. We are in the process
of a detailed analysis of the DEIR/EIS in all of its
volume, in order to compose more substantial comments
than these brief points that I provide for your

consideration this afternoon. Comment 1 - Approves Dam Removal

Our organization emphatically supports dam
removal on the Klamath River. The ecological and
economic benefits of dam removal are well outlined in the
Plan for Facilities Removal. Dam removal is clearly in
the public interest, most specifically due to the
benefits that the restoration of the river will have for
endangered species.

We recognize that very serious cultural,
ecological, and environmental compromises are being made,
in order to gain broader participation in a water
management plan that supports dam removal. Knowing that
there is risk and compromise, we also know that there is
a great benefit in removing the dams from this crucial

stretch of habitat for recovering species. Considering
the fact that this plan may not present opportunities for
the recovery of all of the species in the area of concern
that are in desperate need of restoration, we are
steadfast in our position that it is essential that
future application of the Endangered Species Act not be
compromised by this process, or certainly not in the
legislation that would be necessary to carry forth with
the federal plan for facilities removal.

There is an ecological imperative to recover
threatened and endangered species in the Klamath Basin.
This responsibility to work towards the recovery belongs
to all of us, and there's no question that the removal of
the dams is an opportunity that must be acted upon
immediately and expeditiously.

Comment Author Hughes, Gary
Agency/Assoc. Environmental Protection Information Center
Submittal Date October 26, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|---|------------------------------|
| AO_MC_1026_015-1 | Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal. | No |

Klamath Settlement



EIS/EIR PROCESS

Comment Form

AO_MF_1020_012

Please mail your comments to:

Ms. Elizabeth Vasquez
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

OR

Mr. Gordon Leppig
California Dept. of Fish and Game
Northern Region,
619 Second Street
Eureka, CA 95501

All comments on the Draft EIS/EIR must be received by November 21, 2011.

(Please print legibly)

Name: Sarah Hugdahl

Organization: Salmon River Restoration Council

Title:

Address: 14500 Salmon River RD Forks of Salmon 96031

Comment 1 - Approves of Dam
Removal

Email:

Website:

KlamathRestoration.gov

Fax:

(916) 978-5055

Comment → I have lived on an anadromous river,

the Salmon River, for 35 years. It's a cold water supplier to the Klamath River.

I've seen the fish in the Salmon River suffer from the warm, algae ridden summer water on the Klamath and have suffered from the Klamath itch as well. I would like to see the Klamath be flushed by free running water every winter. I would like to be able to swim in the Klamath again. Maybe someday we can fish our river again, too. I believe there will be a benefit in jobs created by taking the dams out. I believe the process of creating this EIS has been fair and thorough. Good luck.

Public Disclosure: It is not required that you submit personal information. If you decide to do so, please note that this information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comment Author Hygdahl, Sarah
Agency/Assoc. Salmon River Restoration Council
Submittal Date October 20, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|---|--------------------------|
| AO_MF_1020_012-1 | Master Response GEN-1 Comment Included as Part of Record. | No |

AO_LT_1230_050



Brian J. Johnson
California Director

Kate Miller
Western Energy & Water Counsel

Elizabeth Vasquez
MP150
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Gordon Leppig
California Department of Fish and Game
619 Second Street
Eureka, CA 95501

Sent via email to: klamathsd@usbr.gov and KSDcomments@dfg.ca.gov.

December 30, 2011

RE: Comments of Trout Unlimited on the Klamath Facilities Removal Impact Statement / Environmental Impact Report (September 15, 2011).

Ms. Vasquez and Mr. Leppig,

On September 15, 2011, the U.S. Department of the Interior (Interior) and the California Department of Fish Game (CDFG) (collectively, the Agencies), with input from the State of Oregon, jointly released the *Klamath Facilities Removal Impact Statement / Environmental Impact Report* (EIS/EIR), analyzing the potential impacts to the environment from removing four PacifiCorp Dams located on the Klamath River in California and Oregon. In response to this document, Trout Unlimited offers the following comments.

Trout Unlimited (TU) is the nation's largest coldwater fisheries conservation organization, with more than 140,000 members nationwide dedicated to the protection and restoration of coldwater fisheries and their watersheds. TU has a long history of engagement in restoration efforts in the Klamath Basin and was a signatory to the Klamath Hydropower Settlement Agreement (KHSA) and Klamath Basin Restoration Agreement (KBRA).

Trout Unlimited supports removal of four dams consistent with the KHSA as a carefully balanced and environmentally preferred approach to resolving decades-old disputes in the Basin over water, ecology and economies and to reverse the continuing environmental degradation in the Klamath River. Specifically, we urge the Department to Adopt Alternative 2 (full removal of 4 dams) as the environmentally preferred alternative and encourage the Secretary to take Action as outlined in this alternative.

Comment 1 - Approves of Dam Removal

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization
California Office: 2239 5th Street, Berkeley, CA 94710
Direct: (510) 528-4772 • Fax: (510) 528-7880 • Email: bjohnson@tu.org • www.tu.org

← Comment ↑ cont.

While we believe that Alternative 2 is the most comprehensive and environmentally beneficial alternative, we also recognize that Alternative 3 (partial removal of 4 dams to achieve a free-flowing river) may provide similar benefits with possible reductions to short-term environmental impacts and cost.

The evaluations and conclusions of the EIS/EIR make clear that full or partial removal of the four Klamath River under the KHSA would provide significant beneficial effects for the environment, economies and communities in the Klamath Basin. Dam removal allowing for a free-flowing river would restore more normal water temperatures in the river, eliminate toxic algae blooms from reservoirs, improve water quality and allow for increased recreational use of the river, ensure a predictable supply of water for farmers and for fish and wildlife, and increase salmon and steelhead productivity - providing a much needed boost to the recreational and commercial fishing economies.

Improved Conditions for Native Fish Populations:

Facilities removal as contemplated in the Proposed Action would result in significant benefits to fish populations in the Klamath River system. While dam removal and associated activities would have short-term impacts to fisheries – primarily related to sediment releases – these impacts are anticipated to be short-term and will not impact the long-term success of the affected populations. On the contrary, the EIS / ER predicts improved long-term conditions for all native fish populations. That conclusion is well founded.

Key benefits include:

- *Water Quality:* Dam removal would result in significant improvements to water quality within and below the Hydroelectric Reach including improved levels of pH and dissolved oxygen, reduction or elimination of algal toxins and improved river temperatures;
- *Water Quantity:* Dam Removal as described in the Proposed Action would improve base flows for salmonids and provide the opportunity for beneficial flushing flows along with the elimination of harmful peaking flows in the Hydroelectric Reach;
- *Restored Connectivity / Habitat Quantity:* Dam removal would significantly increase the amount of available habitat for anadromous fish by providing access to at least 49 tributaries upstream of Iron Gate Dam which could provide 420 miles of habitat. In general, the EIS/EIR concludes that the Proposed Action would provide the “greatest possible benefit related to fish passage, hence, the highest survival and reproductive success;”¹
- *Habitat Quality:* Dam removal would improve the quality of habitat available to fish in the Klamath River system by maximizing gravel recruitment within and below the Hydroelectric Reach (which would benefit spawning); Dam removal would also provide for a more natural flow pattern and more stable stream bed;
- *Reduction of Fish Disease and Parasites:* The Proposed Action is expected to reduce impacts on salmonids from diseases by reducing the primary factors contributing to parasitic fish disease.

¹ EIS/EIR at 33.3-101.

← Comment 1 cont.

In addition to these general benefits and improvements, the Proposed Action would also have the following additional species-specific benefits:

Chinook Salmon:

Full facilities removal will greatly benefit populations of Chinook salmon, with 80 percent increases in run size. Dam removal would restore connectivity to 420 miles of habitat in the Upper Klamath Basin for fall and spring-Run Chinook, and would also create additional spawning and rearing habitat within the Hydroelectric Reach. The Proposed Action will increase abundance, productivity, population spatial structure and genetic diversity of fall and spring-run Chinook salmon in the Klamath River watershed.

Coho Salmon:

The Proposed Action would provide access to at least 68 miles - and possibly as much as 82 miles - of historic coho habitat for spawning and rearing. This expanded access will improve the availability of spawning sites, result in additional food resources and provide access to areas of better water quality. While elevated levels of Suspended Sediments would degrade critical habitat for Coho in the 3 to 4 months following drawdown of the reservoirs, bedload movement following dam removal is expected to distribute sediments and, ultimately, result in habitat improvements.

Steelhead:

The Proposed Action would restore connectivity to 496 miles of historic steelhead habitat in the Upper Klamath Basin and would create additional habitat within the existing Hydroelectric Reach. While the effects of suspended sediment under the Proposed Action are expected to result in significant negative impact to summer and winter steelhead in the short-term (particularly for mainstem spawners upstream of the Trinity River), the spatial distribution and life-history variability observed in steelhead indicates that the population will be able to avoid the most serious effects of the Proposed Action. Despite the short-term impacts to steelhead under the Proposed Action, the EIS/EIR concludes that, overall, the Proposed Action would increase abundance, productivity, population spatial structure and genetic diversity for summer and winter steelhead within the Klamath River watershed.

The Klamath River system is already one of the world's best places for steelhead fishing. Dam removal would result in long-term improvements to the health of steelhead in the basin, which in turn will result in improvements to the recreational value of this fishery.

Improved Recreation opportunities:

Recreational users will benefit from these improved river conditions. Removal of four dams will eliminate recreation associated with project reservoirs and whitewater boating releases from the hydro project. However, a free flowing river will result in additional new recreational use by boaters, anglers and others. The evaluation also indicates that a free-flowing river will significantly reduce the existing toxic algae blooms, which currently restrict recreational access and use.

The EIS / EIR anticipates increased recreational fishing visits related to both Ocean and In-River Sport fishing as a result of improved numbers of salmon and steelhead following dam removal. Positive increases in recreational usage are greatest under Alternatives 2 and 3. According to the Oregon Dept. of Fish and Wildlife, hunting, fishing and wildlife viewing infuses \$23 million annually into the economy of Klamath County alone. The improved opportunities for recreation will further support recreation economies.

Benefits to Jobs and Economy:

Removal of four dams not only provides the greatest environmental benefit, but this approach also bears the greatest economic benefit for the basin. In addition to positive environmental changes, removal of these four dams will result in a positive impact to the local economies in the basin. Although the EIS/EIR estimates that removing the dams would cost about 50 jobs tied to generating electricity at the dams, it is also projected to create more than 4,000 jobs, including about 1,400 for the dam removal itself and between 70 and 695 farm jobs owing to a more reliable water supply. Additionally, the EIS/EIR concludes that dam removal will cost roughly \$290 million – significantly less than previous \$450 million estimate and well within the range of the budget outlined in the KHSA.

Improved environmental conditions resulting from a free-flowing river will also result in long-term improvements to the commercial fishing industry and coastal communities who depend on healthy fisheries in the Klamath River system. The Klamath River historically supported one of the largest salmon runs on the entire west coast. Construction and operation of the Klamath River hydro system – along with other impacts – lead to continued declines of these populations. In 2006, low returns of salmon to the Klamath forced a near total shutdown of the West Coast salmon fishery, resulting in significant job losses and damage to coastal economies. Removal of four dams will dramatically improve conditions across hundreds of miles of habitat for anadromous and resident species of native fish – including populations of salmon and steelhead.

Tribal Communities:

Dam removal would benefit salmon dependent Tribes by improving water quality and increasing abundance of salmon for harvest for subsistence, cultural practices and commercial uses. Alternatives 2 and 3 are found to have the greatest benefit for Indian Tribes.

Farmers and Ranchers:

In addition to the benefits described above, the Proposed Alternative will benefit local agricultural industries. Agricultural production in Klamath County and Tulelake Irrigation District contributes over \$600 million to the economy each year and 4,890 direct/indirectly induced jobs are supported each year between the states of California and Oregon.² Historically, millions of tax dollars have gone to farmers, ranchers, tribes and

² Riggs, W., (2010). Economic Value of Upper Klamath Basin Agriculture: IMPLAN (2007) Value Added Model. Oregon State University Extension Service, OSU Klamath Basin Research and Extension Center. [Verbal presentation given during meeting held with Oregon's Governor Ted Kulongoski in Klamath Falls, March, 2010].



commercial fisherman because of drought and disaster assistance. The approach of The Klamath Agreements will save taxpayers money and improve water distribution for all. The agreements are good for people, fish and wildlife and are fiscally responsible. This approach is currently supported by fifteen irrigation districts, representing 95% of the acres irrigated from the Klamath River/Lake system.³

Protection of Ratepayers – Removal of Four Dams is the Fiscally Preferred Alternative: Removal of the four Dams under the KHSA protects ratepayers and provides a financially preferred alternative to continuing through the FERC process (as would be required under all other Alternatives). Through the FERC process – these facilities must either be relicensed or decommissioned. In order to obtain a new license, PacifiCorp will be required to implement significant facilities upgrades (including installation of fish passage facilities) and operational changes (including reduction of peaking operations) to bring the project into compliance with current law.

These upgrades and improvements would cost *at least* \$460 million, an estimate which could increase significantly following water quality compliance review and assignment of any mitigation requirements as needed to meet state water quality standards.⁴ On top of these expenses, relicensing would result in operational changes that will significantly reduce profits. In fact, FERC estimated in its 2007 Final Environmental Impact Report (FEIS) on relicensing that even if fully relicensed, the required retrofitting would be so expensive that these dams would then operate *at more than a \$20 million/year net loss*.⁵ Alternatively, PacifiCorp could pursue project decommissioning, the cost of which is estimated at \$290 million.

Under either approach, the cost of a FERC relicensing or decommissioning will be passed on from PacifiCorp to its ratepayers. Under the Proposed Action – removal of four dams consistent with the KHSA – ratepayer cost is capped at \$200 million. This cost-cap provides protection to ratepayers under the KHSA; no similar protection related to costs incurred through a FERC relicensing or decommissioning proceeding.

Removal of four dams under the terms of the KHSA protects ratepayers and provides a financially preferred alternative to project relicensing. Both the California Public Utility Commission and the Oregon PUC ruled that dam removal is in the best interest of PacifiCorp customers.⁶

Retrieved from <http://oain.oregonstate.edu/SelYearCharts.asp?sCountyName=Klamath&sCountyId=18> and <http://kwua.org/sites/kwua.org/files/3-31%20FINAL%20AM%20REPORT-TJ.pdf>

³ Gary Wright, President, Klamath Water Users Association.

⁴ See CPUC Docket No. A10-03-015, *Testimony of Cory Scott*, Exhibit PPL-300 (March 18, 2010), pg. 6; Opening Brief of PacifiCorp (Nov. 17, 2010), pg. 6. PacifiCorp's "conservatively estimates" relicensing costs of at least \$400 million in capital improvements, plus \$60 million in operations costs and maintenance over a 40-year relicensing term, not counting likely large (but still unknown) additional costs for any water quality mitigations that may be required to meet state 401 Certification requirements in Oregon and California.

⁵ FERC FEIS (Nov. 2007), Table 4-3 on pg. 4-2.

⁶ California PUC Final Order at: <http://docs.cpuc.ca.gov/published/proceedings/A1003015.htm>; Oregon PUC Final Order at: <http://apps.puc.state.or.us/orders/2010ords/10-364.pdf>

← Comment 1 cont.

Healthy River for a Healthy Community

In addition to the benefits described above, the EIS/EIR makes clear that dam removal would immediately eliminate risks to health for river users (humans and fish and wildlife) from toxic algae blooms on the reservoirs. Dam removal would also restore more natural water temperatures, which would enhance water quality. The EIS/EIR makes clear that water quality will improve much more quickly with dam removal than with no action.

CONCLUSION

The EIS / EIR makes clear that removing four PacifiCorp Dams - J.C. Boyle, Copco 1, Copco 2, and Iron Gate - on the Klamath River will provide the greatest long-term benefit to the environment. Trout Unlimited supports the Proposed Action (Alternative 2) for full removal of four Dams on the Klamath River under the KHSA as the preferred alternative to advance restoration of the salmonid fisheries in the Klamath Basin in a manner that will protect local economies and ratepayers, and is consistent with statutory obligations and tribal rights. We appreciate the opportunity to review and comment and look forward to continued involvement and coordination with the Agencies as this process continues.

Please contact Brian Johnson at 510-528-4772 or Kate Miller at 503-827-5700 with any questions about these comments.

Sincerely,



Kate Miller



Brian J. Johnson

Comment Author Johnson, Brian
Agency/Assoc. Trout Unlimited
Submittal Date December 30, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|------------------|---|----------------------|
| AO_LT_1230_050-1 | <p>Master Response GEN-1 Comment Included as Part of Record.</p> <p>Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal.</p> <p>The Secretary of the Interior will consider this comment along with all others in making his determination relative to the KHSA and KBRA.</p> | No |

AO_WI_1108_029

From: suekclark@aol.com[SMTP:SUEKCLARK@AOL.COM]
Sent: Tuesday, November 08, 2011 9:09:13 PM
To: BOR-SHA-KFO-Klamathsd; werner@wrinkledog.com
Subject: Web Inquiry: Klamath Lake ecosystem Auto forwarded by a Rule

Name: Susan Katz Clark
Organization: Simplexity Health

Subject: Klamath Lake ecosystem

Comment 1 - General/Other

Body: Please maintain the integrity of Upper Klamath Lake. I have been a consumer of edible microalge harvested there for 9 1/2 years, and it helps me and thousands of others age in reverse. The lake is a fragile ecosystem supporting abundant life, as well as livelihoods or those harvesting, processing, consuming, and representing this remarkable species of edible microalgae. Thank you very much!

Comment Author Katz Clark, Susan
Agency/Assoc. Simplexity Health
Submittal Date November 08, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|------------------|--|-------------------|
| AO_WI_1108_029-1 | <p data-bbox="488 447 1235 474">Master Response GEN-1 Comment Included as Part of Record.</p> <p data-bbox="488 510 1268 630">Simplexity Health (www.simplexityhealth.com, accessed 5/2/2012) is a Klamath Falls-based business that advertises Upper Klamath Lake as the source of the algae species <i>Aphanizomenon flos-aquae</i> (<i>Aph. Flos-aquae</i>) used in its nutritional supplement.</p> <p data-bbox="488 663 1260 810">Lake-like conditions conducive to growth of <i>Aph. Flos-aquae</i> in Upper Klamath Lake would not be changed under any of the five Alternatives analyzed in the EIS/EIR. The presence of <i>Aph. Flos-aquae</i> at population levels which would permit collection in Upper Klamath Lake would persist under all alternatives.</p> <p data-bbox="488 844 1260 995">Commercial enterprises that collect algae may have a role in improving water quality in Klamath Basin lakes. For example Simplexity was included by PacifiCorp in their "Plan for Water Quality Management Actions for Copco and Iron Gate Reservoirs" (PacifiCorp 2009).</p> | No |

Klamath Falls Hearing - 10-18-2011

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STATEMENT PROVIDED BEFORE PUBLIC HEARING
(Directly to Court Reporter)

MS. SHIRLEY KERNS: My name is Shirley Kerns, K-e-r-n-s.

I'm here as a board member to speak for the

Klamath Bucket Brigade.

The Bucket Brigade was formed to promote the rally and the parade that was held here in Klamath where thousands of people came after the water shutdown in 2001.

We went on to form an official organization, Klamath Bucket Brigade, and it was formed for the purpose of sponsoring the Klamath Relief Convoy that spread the message of the plight of the Klamath Basin farmers and ranchers, and it brought several hundred thousand dollars of relief into the basin.

Our mission statement is to promote individual and property rights that are vital to the safety, social and economic well being of the United States.

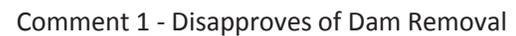
We have continued as an organization, as we believe farmers and ranchers are still under assault in this basin. While we had hoped that any agreement put together in the Klamath Basin would benefit all farmers and ranchers, unfortunately, the Klamath Basin Restoration Agreement does not meet that standard.

We cannot support the removal of dams that produce clean hydroelectric energy in a time when our electric bills for both home and irrigation are rising rapidly.

The Klamath Bucket Brigade, therefore, is adamantly opposed to dam removal and to the Klamath Basin Restoration Agreement and the Klamath Hydroelectric Settlement Agreement, as they are currently constituted.

The agreements represent a minority of special interest groups and spreads the cost to every U.S. taxpayer.

Comment 1 - Disapproves of Dam Removal



The Bucket Brigade board of trustees will support an agreement backed by a majority of the residents of the entire Klamath River Basin and that assures all property and water rights are protected.

We will be submitting written comments on specific issues that we have with the draft EIS, which we feel is a political and not a scientific document.

Thank you very much for your time.

Comment Author Kerns, Shirley
Agency/Assoc. Klamath Bucket Brigade, Inc.
Submittal Date October 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|---|------------------------------|
| AO_MC_1018_004-1 | Master Response GEN-1 Comment Included as Part of Record. | No |

AO_LT_1223_055



December 23, 2011

Ms. Elizabeth Vasquez
 Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825
 KlamathSD@usbr.gov

Mr. Gordon Leppig
 California Department of Fish and Game
 619 Second Street
 Eureka, CA 95501
 KSDcomments@dfg.ca.gov

RE: California Trout Comments on Klamath Facilities Removal Public Draft Environmental Impact Statement and Environmental Impact Report

Dear Ms. Vasquez and Mr. Leppig:

Comment 1 - Approves of Dam Removal

California Trout (CalTrout) appreciates the opportunity to comment on the Klamath Facilities Removal Public Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS). The DEIS represents a significant milestone in the restoration of the Klamath River. The comprehensive analysis provides the necessary information for the Secretary of Interior to make an affirmative Secretarial Determination in March of 2012. Dam removal is clearly 1) in the public interest and 2) will advance the restoration of steelhead, salmon and other fish species in the Klamath Basin.

CalTrout supports Alternative 2—Full Facilities removal of Four Dams. Alternative 2 includes the removal of the Four Facilities as described in the Klamath Hydroelectric Settlement Agreement (KHSA), including the removal of four dams on the Klamath River.

The benefits of dam removal coupled with the full implementation of the Klamath Basin Restoration Agreement (KBRA) provide a promising path for basin wide fisheries restoration and community health. Salmon and steelhead numbers will increase, thousands of jobs will be created, water deliveries will be predictable for agricultural water users, tribal trust responsibilities will be recognized and commercial

Ms. Vasquez and Mr. Leppig

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ocean fisheries will be improved. At the same time Alternative 2 provides the least cost option to PacifiCorp's ratepayers.

CalTrout is an active participant in finding durable solutions for the Klamath River fisheries and communities. CalTrout actively participated in PacifiCorp's dam relicensing proceeding beginning in 2000. CalTrout participated in the Energy Policy Act proceeding in 2006 that upheld the federal government prescriptions for voluntary fish passage. More recently CalTrout has been actively involved in settlement negotiations and is a signatory to the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA).

CalTrout is a statewide conservation organization whose mission is to protect and restore wild trout, steelhead and salmon and their waters throughout California. CalTrout was founded in 1971 and has over 7,500 members statewide. CalTrout operates offices in San Francisco, San Diego, Mammoth Lakes, Arcata, Lake Tahoe and Mt. Shasta. CalTrout's Mt. Shasta office, located in Siskiyou County, is one of the few non-profit organizations who are signatories to the Agreements and also have a local office. California Trout members use and enjoy the Klamath River in the areas surrounding the Project for recreational, aesthetic, and educational purposes, including sport-fishing for trout, steelhead and salmon.

Below we provide comments to selected sections of the DEIS.

← Duplicate of AO_LT_1229_054

2.0 Alternatives

CalTrout supports Alternative 2—Full Facilities removal of Four Dams. Alternative 2 includes the removal of JC Boyle, Copco as described in the Klamath Hydroelectric Settlement Agreement (KHSA). This alternative would include the complete removal of dams and associated facilities and the transfer of Keno Dam to the Department of the Interior (DOI). This would result in no dams in the Klamath River downstream of Keno dam and provide passage for steelhead and salmon into approximately 420 miles of historic spawning and rearing habitat in the Upper Klamath Basin.

The estimated cost of Alternative 2 is \$290 million, with \$200 million coming from PacifiCorp's ratepayers in Oregon (\$187 million) and California (\$13 million). The remaining \$90 million for dam removal is to be paid by the State of California.

CalTrout is also supportive of Alternative 3 as a cost saving measure. This option would remove the main areas of four dams to allow a free-flowing river and voluntary fish passage. Some related hydropower facilities and abutments would remain. The major advantage of Alternative 3 compared to Alternative 2 is cost. Alternative 3 cost estimates are \$247 million with only \$47 million coming from the State of California compared to \$90 million in Alternative 2.

← Duplicate cont.

We have reservations in supporting Alternative 3 because of potential complications with long-term maintenance of facilities that are left behind. However, Alternative 3 provides volitional fish passage and a free flow river matching the fisheries benefits of Alternative 2 so it is a viable alternative.

3.2 Water Quality

The presence and operation of the PacifiCorp's dams negatively impacts water quality in the Klamath River. The four dams slow the transport of water transport resulting in decreased water quality conditions and increases in temperature during the summer months. The dams also alter seasonal water temperature patterns disrupting spawning run-timing for fall-run Chinook and coho salmon.

The thermal mass in the four reservoirs allows for the retention of water temperature for weeks or even months, shifting the natural temperature pattern of water being released below the reservoirs. The result is cooler water being released in the spring time because of retention of cold winter water and warmer water being released in the fall because of retention of warm summer water. This negatively impacts growth rates and migratory ability of out migrant smolts in the spring months and the timing and performance of Chinook and coho salmon spawners returning from the ocean in the fall.

Following dam removal, temperatures below the location of Iron Gate Dam would average 4 degrees F higher in May compared to current conditions with the dams in place. This modest increase will bring water temperatures into the range of optimal growth for juvenile salmon and steelhead. During October, with the dams out water temperatures will be on average 7 degrees F cooler than current conditions with the dams in place. This will be a significant benefit to fall-run Chinook salmon spawning conditions.

Alternative 2—Full Facilities Removal will eliminate the thermal lag caused by water storage in reservoirs. This elimination would cause water temperatures to have more natural patterns of variation and become more suitable to natural diurnal variations and become more in with natural migration patterns of anadromous fish. Dam removal will also improve water quality conditions immediately by eliminating toxic algal blooms in project reservoirs.

Suspended Sediment

Dam removal could mobilize between one-third and two-thirds of the 13.1 million cubic yards of sediment stored behind the four dams. We are encouraged by DEIS findings that impacts of high sediment concentrations will be short lived occurring during the relatively short time period of dam removal.

Under the full dam removal scenario 5.3 to 8.6 million cubic yards of sediment would be released into the Klamath River over a several years. Suspended sediment would begin to be released during reservoir drawdown in beginning in November 2019 and continue to rise through the spring 2020 runoff period. Expected concentrations are likely to exceed 1,000 mg/l for a few weeks with the potential for concentration of 5,000 mg/l for hours or days during facility removal.

High sediment concentrations could result in lethal to sub-lethal effects on coho salmon and steelhead and other fish during the first two-three months of dam removal. However, technical studies and experts reports predict the fish populations to quickly recover from this relatively short-term disturbance and begin to take full advantage of the access to additional habitat with the dams gone and improved water quality conditions.

Sediment Toxicity

The Draft EIS found “no consistent pattern of elevated chemical composition was observed across discrete sampling locations within a reservoir and no single reservoir was observed to be consistently more or less contaminated.” This addresses one of the primary concerns of dam removal projects—that sediment released during dam removal is toxic and will be released into the Klamath River. We are encouraged by these findings that levels of toxins in the all four reservoirs are minimal and we look forward to further analysis as dam removal plans proceed.

3.3 Aquatic Resources

We appreciate the DEIS definitive statements on the historical presence of salmon and steelhead in the areas above the dams and into tributaries to Upper Klamath Lake. The evidence in support of the historical distribution of salmon and steelhead in the upper watershed is overwhelming. Hamilton et al. (2006) present the case in unequivocal terms in their paper *Distribution of Anadromous Fishes in the Upper Klamath River Watershed Prior to Hydropower Dams—A Synthesis of the Historical Evidence (Fisheries Volume 30 No. 4)*. Hamilton et al. quote extensive 19th century explorers and later newspaper articles describing the abundant salmon runs past the town of Klamath Falls and in the Wood, Williamson and Sprague Rivers. However, perhaps most definitively, is the Klamath Tribes history of thousands of years of harvesting salmon in the Upper Basin.

Chinook Salmon

Alternative 2—Full Facilities Removal will greatly benefit Chinook salmon. Dam removal plus the implementation of restoration projects in the Klamath Basin Restoration Agreement is expected to increase Chinook salmon run sizes by over 80 percent. This will also result in expected increases in salmon ocean commercial and sport harvests is also forecasted to increase by 46.5 percent, tribal harvest by 54.8 percent and in-river recreation harvest by 9 percent.

Under the dam removal alternative fall-run Chinook salmon would gain access to the Upper Klamath River basin, including the Sprague, Williamson and Wood Rivers. Another 49 tributaries would be accessible in the upper basin. All together over 420 miles of additional spawning and rearing habitat will be available Chinook salmon.

Keno Dam and reservoir experiences poor water quality conditions during the summer months with water temperatures exceeding 25 degrees C (77 degrees F). This may prevent fish passage through this area following the removal of the four dams in the lower river. However, there is evidence that Upper

Klamath Lake is suitable for Chinook salmon from October through May, suggesting that if fall spawning fish can tolerate the Keno reach, more suitable conditions await in Upper Klamath Lake. Still, poor water quality conditions may necessitate seasonal trap and haul around Keno Reservoir for some life stages of Chinook salmon. The DEIS underscores the benefits to Keno Reservoir water quality with the full implementation of the KBRA. This is one good example of the need to implement both dam removal and the Klamath Basin Restoration Agreement actions to fully achieve basin wide restoration of salmon runs.

The DEIS also highlights the findings of several expert panels on the influence of dam removal and implementation of the KBRA on salmon and steelhead populations. Expert panels agree that dam removal would be a major step forward in increasing salmon and steelhead numbers in the Klamath Basin. Expert panels also underscore the need to implement the KBRA to achieve desired fisheries benefits, especially in the area of above Upper Klamath Lake. Expert panels concluded a fully implemented dam removal and restoration program would achieve the state goal for a "natural sustainable fishery and full participation in harvest opportunities, as well as the overall ecosystem health of the Klamath River Basin".

Coho Salmon

Alternative 2—Full Facilities Removal would open up access to 68 miles of historic coho salmon spawning and rearing habitat. This includes the mainstem Klamath River between Iron Gate and JC Boyle dam and tributaries such as Jenny Creek, Shovel Creek and most notably Spencer Creek. Spencer Creek was identified by Dr. Walt Duffy from Humboldt State during a federal hearing on the Klamath Dams in 2006, as the 'most important coho salmon habitat in the project area'. The removal of the four dams will increase Klamath basin wide coho habitat by 5% according to Dr. Duffy.

Fish Disease and Parasites

Alternative 2—Full Facilities Removal is expected to decrease the exposure and impacts of disease on salmon and steelhead in the Klamath River. The infection of juvenile outmigrating salmon smolts by parasitic fish disease has been a major contributor to the decline of Klamath River fisheries. The removal of four dams from the river and resultant more natural hydrology patterns and improved water quality conditions will reduce disease impacts on salmon and steelhead. Degraded habitat conditions below the dams have provided ideal habitat for the host polychaete worm which carries the fish disease. Fish eat the worms and become infected. Dam removal will reduce the favorable habitat for the worms and reduce exposure of the disease to fish.

The removal of Iron Gate Dam will allow fish to migrate farther upstream and reduce the concentration of adults below the dam. The greater dispersal of spawning adults upstream will reduce exposure to dense populations of polychaetes in the area below Iron Gate Dam.

3.6 Flows and Flood Hydrology

The implementation of dam removal and the KBRA will establish a more holistic way to manage water flows in the Klamath basin. Single species management based on dueling Biological Opinions has created an atmosphere of regulatory legal warfare that has proven to not be of benefit to fish, farmers or communities of the Klamath basin. The proposed flows in the KBRA are better for fish than the current minimum streamflows currently being implemented.

With the removal of the four dams the differences in monthly average flows compared to dams in place is relatively small. Without the dams, however, smaller seasonal fluctuations will be translated downstream and no longer buffeted by the presence of the dams and reservoirs. These flow variations can be important migratory cues for anadromous fish.

Minimum baseflows with the dams gone and the implementation of the KBRA will be improved. The absolute minimum baseflow target under the KBRA at Iron Gate Dam will be approximately 800 cfs. Under typical water year conditions flows are expected to be more than this in the range of 1,000 cfs during the summer months. The KBRA allows for additional water to be release from Upper Klamath Lake when minimum flow values are not met. This real time operation and flow balancing is one of the benefits of managing flows at a basinwide level. For comparison, flows in 1992 dipped to around 400 cfs during the summer months. In 2002, an extended period of low flows in the 700 cfs range during the late-summer and early fall months resulted in one of the largest fish kills in the recorded with over 60,000 Chinook salmon and steelhead dying in the lower Klamath River. The implementation of dam removal and the KBRA will improve temperature and flow conditions, and real-time water management, and prevent future fish kills.

Drought Plan

The Drought Plan developed as part of the KBRA is an important component of the new flow regime post dam removal. Settlement parties recognize the need in certain low water years to develop a management plan to balance the use of limited water resources. The purpose of the Drought Plan is to implement management actions so that "no Klamath Basin interest shall bear an unreasonable portion of burdens imposed or the risk of loss or injury as a result of drought or extreme drought". The Drought Plan Response Actions could include any of the following: releasing stored water, conservation, groundwater substitution, or groundwater sharing.

These drought plan actions are designed to improve short-term water supply reliability. CalTrout agrees with the DEIS finding that the "[i]mplementation of a Drought Plan would be a beneficial effect to water supply deliveries during drought periods because management actions would help to offset shortfalls in supply as well as improve water supply reliability.

Flooding Risk

Opponents of Klamath River dam removal suggest that flooding is the inevitable consequence of the loss of the dams, yet in high spring runoff conditions the four lower Klamath River dams only provide

approximately ten hours of capacity. The four lower most Klamath dams are not designed to buffer flood flows, they are simply too small to regulate large flows.

Flood flows in the Klamath basin are buffered and managed by operations at Link River Dam on Upper Klamath Lake. Further, the KBRA calls for wetlands restoration on the shores of Upper Klamath Lake adding more flood storage to the system than will be lost by removing the four dams. CalTrout agrees with the DEIS conclusion that there will be “no significant impact” on flooding below Iron Gate dam. There is less than 7% maximum discharge difference between dams in and dams out, so in reality the dams do very little to buffer large winter flood events.

3.7 Groundwater

The KBRA includes important provisions for the management of groundwater and spring resources of the Upper Klamath Basin. Groundwater use is an integral part of the the Drought Plan and agricultural water use in the Upper Basin. The KBRA requires groundwater studies to evaluate potential effects of groundwater pumping and to provide baseline information needed to meet an objective of “no adverse impact” on specified springs in the basin. The springs monitoring plan defines adverse effects on springs as a 6 percent reduction in flow. Spring resources of the Upper Klamath Basin are important sources of cold water refugia for salmonids.

3.10 Greenhouse Gases/Climate Change

The removal of four hydroelectric dams will result in the loss of locally generated power. However, the amount of this loss must be put into perspective. The Klamath dams generate 169 MW on the books, but according to the Federal Energy Regulatory Commission an average of only 82 MW per year over the past 50 years. Contrast this to PG&E’s McCloud-Pit project in Shasta County just to the south of the Klamath Dams, where 5 dams generate over 700 MW of reliable hydropower. The Klamath Dams are not large power producing dams and represent only 1% of PacifiCorp’s entire electricity portfolio.

PacifiCorp is already committed to bringing more than 1,400 MW of brand new, cost effective renewable power online by 2015, dwarfing the loss of power from the Klamath dams. CalTrout encourages PacifiCorp and settlement parties to place future renewable power projects in Siskiyou County to further add to the economic benefits of dam removal and the KBRA to the region.

3.14 Land Use

The implementation of Alternative 2—Full Facilities Removal will result in the loss of the three large reservoirs, affecting individuals that live on or near the reservoirs—particularly Copco Lake. The KHSA calls for the transfer of PacifiCorp lands currently inundated by the reservoir to be transferred to the states of California and Oregon. The states do not yet have detailed plans for management of these lands but they are targeted for restoration.

← Duplicate of AO_LT_1229_054

← Duplicate cont.

The KHSA calls for the states to pay in-lieu of taxes to the counties for lands that are transferred from private to public ownership. CalTrout encourages the states to provide assurances this will be done. Additionally, CalTrout encourages settlement parties to engage with Siskiyou County and local residents on the use of lands along and underneath the reservoirs.

3.15 Socioeconomics

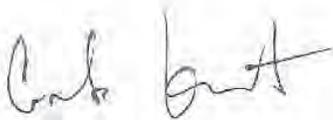
The implementation of Alternative 2—Full Facilities Removal in combination with the implementation of the KBRA will have large and lasting economic benefits to the Klamath Basin. During the one-year dam removal project a total of 1,400 jobs will be created to dismantle the dams. Implementation of the many programs in the KBRA over a 15-year time period will result in the creation of 4,600 jobs. Employment stemming from increased gross farm income during the modeled drought years is estimated to range from 70 to 695 average annual jobs.

Dam removal would affect property values in varying ways over the short and long-term. CalTrout encourages settlement parties to work with local residents and Siskiyou County to provide mechanisms for compensation for lost property values. The socioeconomic impacts to the landowners around Copco and Iron Gate Reservoir should be addressed and mitigated.

Conclusion

CalTrout supports Alternative 2—Full Facilities removal of Four Dams from the Klamath River. Alternative 2 coupled with implementation of the Klamath Basin Restoration Agreement will provide for healthy fisheries and sustainable communities in the Klamath Basin.

Sincerely,



Curtis Knight
Conservation Director
California Trout
cknight@caltrout.org
(530)926-3755

Ms. Vasquez and Mr. Leppig

Comment Author Knight, Curtis
Agency/Assoc. California Trout
Submittal Date December 23, 2011

Portions of this letter are verbatim duplicates of comments submitted in the comment author's submittal coded - AO_LT_1229_054. Responses to those initial comments that were duplicated in this letter are presented in this EIS/EIR alongside AO_LT_1229_054. Responses to comments provided in this letter that were not also submitted as a part of AO_LT_1229_054 are listed below.

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|--|--------------------------|
| AO_LT_1223_055-1 | Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal. | No |

Klamath Settlement



EIS/EIR PROCESS

AO_MF_1025_007

Comment Form

Please mail your comments to:

Ms. Elizabeth Vasquez

Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

OR

Mr. Gordon Leppig

California Dept. of Fish and Game
Northern Region,
619 Second Street
Eureka, CA 95501

Email:

KlamathSD@usbr.gov

Website:

KlamathRestoration.gov

Fax:

(916) 978-5055

All comments on the Draft EIS/EIR must be received by November 21, 2011.

(Please print legibly)

Name: Rebecca Lawrence
Organization: Mid Klamath Watershed
Title: Council + Orleans First 5
Address: Play group Coordinator
Email: rebecca.v.lawrence@gmail.com
Comments:

I support Alternative 2
 Many concerns about dam
 removal pale in the face of its historic
 benefits. Problems w/ removal?
 What about the problems, discontent
 + destruction caused by initial
 dam - installation - ?
 This needs to happen.
 Thank you

Public Disclosure: It is not required that you submit personal information. If you decide to do so, please note that this information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comment Author Lawrence, Rebecca
Agency/Assoc. Mid Klamath Watershed Council
Submittal Date October 25, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|---|------------------------------|
| AO_MF_1025_007-1 | Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal. | No |

AO_LT_1118_070

KENO IRRIGATION DISTRICT
9350 Highway 66
Klamath Falls, OR 97601

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November 15, 2011

Ms. Elizabeth Vasquez
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Comments on Draft EIS/EIR, Klamath Settlement

We are an off-project irrigation district located along the Klamath River between Klamath Falls and Keno and represent 19 landowners. The Environmental Impact Statement/Report (EIR/EIS) for Klamath dam removal vastly overstates potential benefits of dam removal and terribly understates the costs. It is disturbing to think this document will be used as the basis for a decision as to whether the Klamath dams will be removed.

Following are some of the concerns we have with the Draft EIS/EIR: Comment 1 - Fish

The entire proposal for removing four hydroelectric dams on the Klamath River is to recover Coho Salmon populations. Historical documents clearly indicate that Coho were never native to the Klamath Basin and the present listing by California ESA and Federal NMFS are unlawful as there is no provision in the Federal ESA to list non-indigenous species.

The EIS/EIR misstates the findings of the expert scientific panel on coho. The panel pointed out that much of the scientific data necessary for analysis is missing. It stated that initial dam removal activities would kill 100% of coho populations in the Klamath River. Then any population increases would be "small" for at least a decade. After that, increases could be "moderate," but only if the KBRA is "fully and effectively implemented." The panel concluded that there was a "high uncertainty" that this kind of implementation would happen, leading to a "low likelihood" of even moderate population responses by coho from dam removal.

The coho expert panel notes that there will be "potentially lower flows during the fall" caused by dam removal which "may reduce the ability of threatened coho to migrate through the mainstem in order to reach spawning areas in tributaries."

As pointed out by Siskiyou County resident, John Menke Ph.D., the Klamath dams currently "bioremediate" the high nutrient content of the water as it passes through the reservoirs. The water slows and the river self-cleanses much of the algae produced in the volcanic phosphorus-rich Upper Basin. The dead cells drop to the bottom, which is why the sediment behind the dams has such a heavy organic component.

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Comment 2 - Water Quality

Nutrient loading is currently a substantial limiting factor to anadromous fish in the Klamath River. It stimulates algae growth that can deprive water of oxygen and it provides habitat for the worms that are hosts to fish-killing parasites that have fatally infected a major percentage of the juvenile fish leaving the system. The coho panel report states that all the models recognize that "total nutrient concentrations in the Klamath River downstream of Iron Gate Dam would increase." It recognizes that there will be "long-term increases" in harmful algae and that this will have a "significant impact," making problems worse. Both the coho and Chinook panels noted that dam removal could spread fish borne disease upstream.

Comment 3 - Land Use

The Chinook panel admits that reductions in nutrient loading and water temperatures would be dependent on major upstream actions, like converting 40% of Upper Basin irrigated farms (44,479 acres) to wetlands. The KBRA will permanently reduce the amount of water available for irrigation but not in that amount. Creating that many acres of wetlands (which require more water than irrigation) would require taking even more land out of production. The Draft indicates that agriculture jobs will increase which is not possible when more land is taken out of production. Their projections for the total number of jobs being increased is questionable at best.

Comment 4 - Economics

The Trinity River historically was a large contributor of flow to the Klamath River. Now a majority of the Trinity River has been diverted to the Sacramento River system depriving the Klamath River system of cold water needed for fish habitat. This diversion of the Trinity River is specifically protected in the KBRA. (Sec. 2.2.12, pg 16)

The dam removal and KBRA may have started out as a possible solution to the water problems in the Klamath River Basin but the final product does not deliver. Dam removal not only does not produce any additional water for agriculture but actually permanently reduces the amount available each year. Without restoring the water from the Trinity River (which it does not), good water will also not be available for fish when needed.

Comment 5 - Water Rights/Supply

We strongly support Alternative 1 – No Action/No Project.

Yours truly,

John K. Lilly, President



Comment Author Lilly, John
Agency/Assoc. Keno Irrigation District
Submittal Date November 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|------------------|--|-------------------|
| AO_LT_1118_070-1 | <p>Master Response AQU – 3 Coho Native Status not Critical to NEPA or CEQA.</p> <p>Master Response AQU – 4 Coho are Native.</p> <p>The comment, as submitted, provides no evidence to support the claim that coho salmon are not native to the Klamath River</p> <p>Master Response AQU – 5 Will Benefit all Salmonids.</p> <p>Master Response AQU – 6 Expert Panel Coho, Steelhead and Chinook.</p> <p>Master Response AQU – 7 Expert Panel Uncertainty Likelihood of Success.</p> <p>Master Response AQU – 17 Expert Panel Second Line of Analysis, Not the only line of Evidence.</p> <p>Master Response AQU – 16 Benefits to Coho.</p> <p>Master Response AQU – 21 NRC Dam Removal Help Coho.</p> <p>Master Response AQU – 11 NMFS BO, ESA and KBRA Water Management.</p> <p>The comment provides no evidence that fall flows under Alternatives 2 or 3 would be inadequate to provide conditions suitable for coho salmon migration upstream during the fall.</p> | No |
| AO_LT_1118_070-2 | <p>The Coho panel report (Dunn et al. 2011) did not state that, “total nutrient concentrations in the Klamath River downstream of Iron Gate Dam would increase.” Or that there will be long-term increases in harmful algae. In contrast, Dunn et al. (2011) consistently maintained that, “The Panel lacked the information to extrapolate a likely small (if any) reduction in nutrient loading on downstream water quality and fish production.”</p> <p>Neither the Coho panel nor the Chinook panel concluded that disease issues were likely to become worse with dam removal. On the issue of fish disease, the Dunn et al. (2011) concluded on p. 51, “Removal of dams can result in reductions in disease incidence for Coho over that expected under Current Conditions if flows under the Proposed Action are sufficient to disrupt polychaetes in the channel bed and disease is not spread with increased habitat access.” The panel was consistent on the issue of fish disease in stating (including on p. 51), “The information available is insufficient to determine the net overall effects of the</p> | No |

Comment Author Lilly, John
Agency/Assoc. Keno Irrigation District
Submittal Date November 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
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| AO_LT_1118_070-3 | <p>Proposed Action.” Similarly, the Chinook panel report (Goodman et al. 2011) on p. 13, that “Although several aspects of the Proposed Action could lead to a reduction in disease-related mortality, uncertainty about these aspects is very high.”</p> <p>As stated in Draft EIS/EIR Section 3.3.4.3 (p. 3.3-88), the Proposed Action would be expected to reduce impacts on salmonids from fish disease. The main factors contributing to parasitic fish disease in the Klamath include habitat (pools, eddies, and sediment); microhabitat characteristics (stable flows and low velocities); host proximity to spawning areas; and water temperatures greater than 15°C (Bartholomew and Foott 2010).</p> <p>The removal of the Four Facilities would be likely to reduce habitat quality for the polychaete host by reducing reservoir habitat, and restoring seasonal flow patterns and sediment dynamics that reduce the stability of the host’s favored habitats. The removal of Iron Gate Dam would also remove a major barrier to fish migration, reducing the concentration of adults that presently occurs downstream of the dam. Greater dispersal of spawning adult salmon would reduce their proximity to dense populations of polychaetes.</p> <p>Master Response AQU-27 Disease.</p> <p>Master Response AQU-17 Expert Panel Second Line of Analysis, Not the Only Line of Evidence.</p> | No |
| | <p>Specific actions to meet Oregon and California nutrient TMDL over a 50-year time period have not been fully developed and it should not be concluded that taking 44,479 acres of land out of farm production for wetlands would likely occur to meet TMDL goals. There are other TMDL nutrient reduction actions that may eventually be implemented that do not take large amounts of farmland out of production. However, wetlands may be a component of nutrient reduction strategies.</p> <p>The Chinook Expert Panel’s calculations of the number of acres of wetlands (44,479) that would be needed are based on removing 100% of the phosphorus entering Upper Klamath Lake. The TMDL goal is for a 40 percent nutrient reduction, which would decrease the number of wetland acres needed in the Expert Panel’s calculation by 60 percent. The Expert Panel also indicates that use of “treatment” wetlands, which may sequester up to 10 times more phosphorus than “natural” wetlands, would increase the feasibility of this nutrient reduction strategy. If sequestration of phosphorus in wetlands is closer to “treatment” wetlands than “natural” wetlands, it would decrease the number of wetland acres</p> | |

Comment Author Lilly, John
Agency/Assoc. Keno Irrigation District
Submittal Date November 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
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| | <p>the Expert Panel calculate by up to an additional 90%.</p> <p>It is important to note that KBRA restoration programs were not designed to specifically meet TMDL goals for nutrient reductions in the upper basin. Those nutrient reduction goals are prescribed in California and Oregon TMDL reports prepared to meet Clean Water Act requirements, which is a completely different process than implementation of KBRA programs. Implementation of KBRA programs, however, is expected to accelerate meeting TMDL goals in the Klamath Basin. As described in Chapter 2 of the EIS/EIR, implementation of many specific elements of the KBRA is unknown and not reasonable foreseeable at this time.</p> | |
| AO_LT_1118_070-4 | <p>Section 3.15 analyzes the estimated changes to the agricultural sector. The analysis includes job effects, based on implementation of the KBRA, which are discussed in Section 3.15. Over the period of analysis, employment in the agricultural sector is anticipated to be an important part of the regional economy. Agricultural land will not necessarily be permanently removed from production.</p> <p>Agricultural impacts are largely a function of hydrology modeling estimates. Future hydrologic conditions, including agricultural water supply, are discussed in the technical report entitled "Hydrology, Hydraulics and Sediment Transport Studies for the Secretary's Determination on Klamath River Dam Removal and Basin Restoration," which can be found on www.klamathrestoration.gov.</p> <p>Some KBRA actions would change agricultural water supply, on-farm pumping costs, and water acquisitions in the Klamath Basin, which would affect irrigated agriculture and farm revenues (see p. 3.15-50 and 3.15-71). KBRA would provide a higher degree of certainty with respect to agricultural water supplies, which, over the period of analysis, would reduce the potential adverse impacts on the agricultural sector that would be anticipated under the No Action/No Project Alternative.</p> <p>Additional details on the methodology and results of the economic analysis can be found in the Economic and Tribal Summary Technical Report and the Irrigated Agriculture Economics Technical Report. These reports can be found on www.klamathrestoration.gov.</p> | No |

Comment Author Lilly, John
Agency/Assoc. Keno Irrigation District
Submittal Date November 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|------------------|--|-------------------|
| AO_LT_1118_070-5 | <p data-bbox="537 898 1195 1010">Master Response WSWR-4 Summary of Effects to Water Supply/Water Rights for Alternative 2 and Alternative 3 for Municipal, Agricultural, and Tribal Use. 070</p> <p data-bbox="537 1045 1292 1220">The KBRA would not produce more water for agriculture; however, several provisions would seek to improve water reliability for agricultural water users in the Upper Basin. The KBRA considers several storage projects as well as several other KBRA programs like the On-Project Plan that optimize water management and may increase water reliability in the Upper Basin.</p> <p data-bbox="537 1255 1276 1453">In response to the comment on restoring water from the Trinity River, the purpose of the NEPA and CEQA environmental review process is to disclose to decision makers and the public the significant environmental effects of a Proposed Action or project (40 CFR Section 1502.1). Trinity River restoration is not a part of the Proposed Action and therefore, it is beyond the scope of this Draft EIS/EIR.</p> | No |

KLAMATH OFF-PROJECT WATER USERS ASSOCIATION

Secretary Salazar, Department of interior
Klamath EIR/EIS comments/ questions

Please answer and or address these concerns: Comment 1 - NEPA

1. Secretary Salazar’s document we are commenting on is nearly 2,000 pages long. How can ordinary citizens be expected to have any in-depth understanding of this document in the short time period allowed. We need at least six months to study and have the needed understanding of this complex document and the far reaching implications. Destroying four dams and the possible environmental disaster cannot be rushed into.

2. The dam removal and KBRA may have started out as a possible solution to the water problems in the Klamath River Basin, but the final product does not deliver. Dam removal does not produce any additional water. It only takes water away from irrigated agriculture and gives it to fish. In my book, PEOPLE are more important than fish. Comment 2 - Water Rights/Supply

3. This entire process, supported and funded by the Department of Interior, mirrors the corrupt, biased and illegal process used in the San Joaquin Valley, shutting down hundreds of thousands of acres of the most productive farm land in the United States. The exact tactics used there are again being used here in the Klamath River Basin. Flagrantly biased, non-peer reviewed, so called “best available science”, paid for by stakeholders in the dam removal and KBRA effort, is being used by Secretary Salazar to justify moving ahead on dam removal. I pray a Judge from Oregon will harshly reprimand Secretary Salazar as did U. S. District Court Judge Oliver Wanger. Presiding Judge Wanger gave a scathing reprimand to the Department of Interior calling their actions in the San Joaquin Valley as violating the law but also attempting to deceive the Court in justifying their actions. Again, this process is being repeated here in the Klamath River Basin. Comment 3 - Out of Scope

4. Using known biased, faulty so called “best available science” such as the Stillwater Report and the economic study compiled by David Gallo, is at least highly inappropriate and at worst, illegal. The Stillwater Report was funded by American Rivers. David Gallo’s study was paid for by Cal Trout and Prosper. These groups and or their Directors are signatories to both the KHSA and KBRA. Nothing like being TRANSPARENT! Comment 4 - NEPA

5. Using River Design as the lead in modeling and consulting aspects in the so called “science” seems to follow the government direction of using

Comment 4 cont.

those with a proven track record of failure in their field. River Design provided modeling and consulting in both recent dam removal projects on the Rogue River. Both projects have a lot of OOPS resulting from dam removal. The Rogue River is a very clean river system compared to the Klamath River. Any type of OOPS in the Klamath Dam Removal will result in an environmental disaster of epic proportions.

Comment 5 - Sediment Transport

6. Secretary Salazar's Report assumes there will be no adverse effect in allowing 22 million cubic yards of sediment, toxic or not, to freely flow to the Pacific. I am not allowed to put over 5 yards of rock or dirt in a river because of the harm it will do to the fish and their habitat. This massive amount of sediment can easily sterilize the entire river for 100 years or more.

Comment 6 - Fish

7. Secretary Salazar is ignoring his own "expert panel" of six that stated in their June 16th, 2011, report that the entire dam removal and restorations could boost salmon population in parts of the upper basin by 10%, only if all the other water quality problems were solved first. Solving all the water quality problems would require reversing "mother nature's" natural occurring phosphorus that is prevalent in the entire upper basin. This panel also recognized that fish would still have to be trucked around Keno dam and Keno reservoir. One of the experts, Wim Kimmerer, an environmental research professor from San Francisco State, went as far to say "I think there is no way in hell that they are going to solve the basin's water quality problems." Wim Kimmerer also stated, "It doesn't seem to me like they've thought about the big picture very much." This same panel said this entire process amounts to a huge "experiment." It is no wonder that dam removal supporters are doing everything possible to discredit or ignore Secretary Salazar's own "expert panel."

Comment 7 - Costs

8. The cost of dam removal will be extremely expensive. Since rate payers will be paying for this cost, this will cause a large cost increase on electricity to rate payers, including homeowners and elderly. I am very concerned about how the rate payers and tax payers are going to afford this increase in electricity costs. The actual cost of dam removal is largely believed to be in excess of \$3 billion and we will be the ones to pay the price.
9. It is unclear who will be liable for the removal of the dams. If the Federal government is going to incur the liability, then this cost, which will be huge, will be passed on to tax payers. Tax payers are already facing the daunting burden of repaying the national debt. When is the government going to stop spending tax dollars they do not have?
10. The KBRA and KHSA are irrevocably attached, so you cannot sign onto just one agreement, you have to agree with and totally support both agreements.

Comment 8 - Hydropower

11. The hydroelectric plants, which currently provide electricity, will be decommissioned with the dams. How will this electricity production be replaced? The proposed government off-set is significantly less than estimated cost of establishing new power sources. Who will pay this difference for establishing new, **green power sources**? How will this affect power rates, if rate payers are partially funding the establishment? I am concerned that we will not find an economical, environmentally friendly way to replace this lost green power source.

Comment 9 - FERC

12. I do not think that alternatives to dam removal were explored. Such alternatives may include improved fish ladders or trucking fish as is conducted on the Columbia River. Dean Brockbank, vice president and general counsel of PacifiCorp was quoted as saying the government “made it very clear from a public policy point of view that they did not want these dams relicensed. Once that became abundantly clear, we shifted our framework from relicensing to a settlement involving a possible dam removal framework”. What this statement makes abundantly clear to me is that top level officials within the Department of Interior conspired to orchestrate the removal of the dams from the beginning and that the rest of this discussion was simply window dressing and not a sincere attempt to settle the issues with all options available.

13. I am concerned about the precedence that this settlement agreement will set. Removing four relatively small dams within the Klamath River system will have an effect on the Upper Klamath Basin in terms of water supply and power rates. However, the greater effect is the precedence that this sets. Can you imagine what will happen if this settlement agreement is used to argue the removal of Columbia River and Snake River dams? Environmental groups have long been successful at taking baby steps toward a large long-term goal. With each baby step there is little concern. And then one day you turn around and realize you are now taking out Columbia River dams, not just a small crumbling Chiloquin Dam. Please stop the environmental groups from marching over the Klamath River system as a small baby step on their way to much larger, more detrimental steps.

Comment 10 - General/Other

14. Dam Removal is absurd because the Dams provide electricity for 70,000 homes. Why destroy this clean energy and then raise our power rates with more expensive and less reliable energy. Dam removal is expected to cost somewhere between 450 million and 4 billion dollars. This does not include the cost of replacement power. Then on top of all this we have another billion dollars with this “restoration agreement” where we have government programs where we take more and more land out of agricultural production, buy the tribes 90 thousand acres, and provide big money to water marketers. This Settlement agreement is nothing more than a massive raid on taxpayer’s wallets. If dam removal is such a

Comment 11 - Hydropower

← Comment 11 cont.

good idea why not make those people who advocate for it pays for it instead of us taxpayers and ratepayers.

15. I am being coerced into signing an agreement. I do not understand the complete implications of the agreement, as it does not provide sufficient details for me to come to a comfort level with it.

← Comment 12 - NEPA

16. What is going to happen with the comments we are presenting? Who is going to incorporate the comments? Or are we just commenting to appease the public that we have had an opportunity to comment, but nothing will actually come of the comments?

17. I am very concerned that the citizens within Klamath County will not have a way to require the Klamath Tribes to follow through with their part of this settlement agreement (Sec. 2.2.8 pg 15). The citizens cannot sue the Klamath Tribes, a sovereign nation, to enforce the terms of this agreement. This makes me nervous that if I agree to everything within the KBRA and KHSA, and the Tribes do not uphold their end of the deal, I am simply out of luck with no recourse

← Comment 13 - ITAs

18. This settlement agreement does not appear to provide any assurances that the irrigation water inside or outside the Klamath Project will be delivered. This concern is primarily in reference to the endangered fish living within Klamath River system and Upper Klamath Lake. If federal agencies decide the fish need more water, then the irrigation water will still be shut off. Therefore, even if we make this agreement and sign away portions of our Upper Basin water, we still have no guarantee that water will be delivered for irrigation. (Sec. 21.4.1 pg 152, Sec. 22.1.3 pg 154, & Sec. 21.3.1.B.e pg 151)

← Comment 14 - Water Rights/Supply

19. Do you want power and rate uncertainty? The removal of the Klamath dams will destroy electricity for 70,000 homes, equal to an area larger than the City of Klamath Falls losing its power permanently! Where is the renewable, greener replacement power that is to replace the power generated by the existing dams? This is just one of the negative aspects of the KBRA and the Klamath dam removal.

← Comment 15 - Hydropower

20. The KBRA and KHSA, gives new meaning to the phrase "I'm from the government, trust me." The KBRA is an alleged agreement formulated by 26 groups meeting secretly for several years. They even signed a confidentiality agreement, so the general public would not know what's going on behind closed doors. What happened to Due Process and

← Comment 16 - KHSA

Comment 16 KHSA

transparency? Check out Sec. 34.1 pg 171, in the KBRA. A prime example of Due Process being thrown out the window.

21. Upper Basin irrigators requested three things: reasonable power rates, assurances that endangered species would not further threaten irrigation water supply, and guaranteed water supply to irrigators not included in the water buyout. It is very obvious that there is no affordable power rate for agriculture, no guarantee of water and absolutely no protection from the ESA or Biological Opinions, in the KHSA and KBRA, Sec 22.5.
22. The KBRA and KHSA as written limit the possibility of any off stream storage, such as Long Lake, for agricultural purposes. The KBRA dedicates more water to instream flows, which will not be allowed to be used for the off stream storage and any off-stream storage would be for fish only, being called "Environmental Water", Sec 20.5-20.5.2. The need for off stream storage is huge. The KBRA will not allow for additional storage rights, as all of the additional water available will be required to remain instream for fish.

23. What exactly are the Klamath Tribes giving up in return for all of the large concessions in the KBRA and the Klamath Hydroelectric Settlement Agreement? Could you please list the tangible objects which the Klamath Tribes are giving up? Remember, they have no water right, only a claim.
24. I am not certain that the Klamath Tribes have compromised on any aspect of their demands. It appears that they are receiving everything they are asking for, while giving up nothing in return.

Comment 17 - ITAs

25. The term of the KBRA is limited to 50 years, found in section 1.6, page 5. Dam removal is permanent, water right amounts, instream amounts and priority dates advocated for in the KBRA will be permanent, water right buyouts will be permanent, Mazama Tree Farm 90,000 acre land give-away is permanent. There is no guarantee of water, affordable power or protection from the ESA or Biological Opinions. This is anything but fair and equitable in terms of "compromise".
26. This settlement agreement has the term of fifty years (sec.1.6, pg 5). At the end of fifty years, which is not that long, what incentive will there be to continue providing any of the hoped for benefits? The agreement will no longer be in place, which will allow for the government and power companies to void their incentives and raise rates as they please. All the concessions in the KBRA & Dam Removal are permanent.

Comment 18 - KBRA

27. Under the terms of the settlement, the Klamath Tribes will be receiving 90,000 acres of private timber lands, primarily at the expense of the federal government (Sec. 33.2, pg 170). I do not understand why the

Comment 19 - KBRA

← Comment 19 cont.

Klamath Tribes should be given land, instead of having to pay for it like the rest of the citizens within Klamath County. Can the government please give me some other land with irrigation water, since the government is effectively taking away my irrigation water which I purchased at a fair market value?

← Comment 20 - Water Rights/Supply

- 28. The Klamath Basin Restoration Agreement if implemented would destroy upper basin livelihoods. The Tribes are seeking essentially all of the water in stream. The KBRA and KHSA require Tribes and Environmental organizations to target upper basin irrigators, before regulating the Klamath Project. This agreement is grossly unfair. Now we have a major agreement proponent Sustainable Northwest paying Becky Hyde in excess of \$63,000, to promote this devastating so-called settlement, all the while failing to mention that settlement as written would destroy upper basin irrigators.**
- 29. The additional in-stream claims pushed in the KBRA and KHSA, will put the 30,000 acre feet of irrigation water diverted to the Rogue Valley at risk. This water is used by many irrigators in the Rogue Valley including Bear Creek Orchards. (Sec. 20.5.2.E, pg. 142 & Sec. 18.2.6, pg. 123)**
- 30. Numerous times I have read in the newspaper that the Settlement Agreement would guarantee water for agriculture. Unfortunately, the settlement agreement says no such thing. In fact, the settlement agreement is abundantly clear that there are no such protections and that the US Fish and Wildlife Service still has authority to shut down the project just like they did in 2001. This agreement is tearing our community apart; please help us stop it unless there are major fixes to these terrible conditions. (Sec 21.4.1 pg 152 & Sec. 22.1.3 pg 154)**
- 31. It seems we have a lot of people having a financial incentive to promote settlement. Settlement proponents are paying at least one off-project proponent of settlement as a consultant. Settlement also advocates in excess of 100 million dollars in water marketing schemes both on project and off-project. Some people have made a lot of money marketing water. And finally the refuges were historically last to get water in times of shortages, now the refuges appear to be guaranteed a fixed amount of water under settlement. Would this water not come from other agricultural users, and would this water not benefit those farmers who farm the refuges at the expense of other farmers. Are these people supporting settlement doing so because it is good for the community, or because it is good for their pocket book at the expense of the community?**
- 32. The Trinity River is historically a large contributor of flow to the Klamath River. Now the majority of the Trinity River goes to the central valley of California to supply their agricultural, industrial and municipal uses. This**

← Comment 21- Out of Scope

Comment 21 - cont.

is unfair that large quantities of cold water are taken away from Klamath flows, essentially to satisfy the shortages which were created by the diversion of the Trinity River to the Sacramento River system. The Trinity River diversion is specifically protected in the KBRA. (Sec. 2.2.12, pg 16)

33. As a farmer and rancher, I never thought that I would live in a community where I would have to become a welfare recipient. I do not want to depend on government programs and funds to survive. I am concerned about losing my way of life, independence and dignity.

34. What happens if you do not participate in the KBRA or KHSA? Say I choose to pay tariff rate for power, then what can the KBRA or KHSA do to me?

Comment 22 - Land Use

35. Which physical ground is going to be dried up with the so called loss of 100,000 acre feet of water from the Klamath Project?

36. Citizens within the Klamath Basin who harvest timber have to pay timber tax. This timber tax is paid to Klamath County for uses including schools and emergency services. Will the Klamath Tribes be required to pay tax on timber harvests? The current agreement only provides funding to Klamath County to offset the property tax. Will Klamath County be provided these timber tax dollars by the state or federal government, if the Klamath Tribes are not required to pay them. These tax dollars are desperately needed to help cover the costs of the Klamath County schools and other local services.

Comment 23 - Out of Scope

37. This agreement has been proposed to limit law suits. I am not sure that it will limit law suits, particularly if it does not resolve all of the contests within the Klamath adjudication. It appears the only limitation on lawsuits is by having the Off-Project Power Users endorse the settlement as a step in the process to receive lower power rates. It would be difficult for an Off-Project Power User to both sue and support an agreement or an agreement consequence.

Comment 24 -Out of Scope

38. How do you expect us to sign on to an agreement when the settlement groups are still working on filling in the details and understanding the implications?

Comment 25 - KHSA

39. Settlement agreement advocates that our water right be targeted at the same time as baiting the mouse trap with "affordable power". Unfortunately, this affordable power is not guaranteed. It is only if some government funding comes through. But the land going out of agricultural

production, the dams being removed, and the requirement that Environmentalists and Tribes target the off project irrigators every time they need more water, our guaranteed under settlement. The power program is funded through a loan, which will have to be repaid at some point. (Sec. 17.7.2.B pg 118 & Sec. 17.7.3C pg 119) Unfortunately, the only guarantee the settlement provides is that there will be a lot less land in agriculture production. 

Comment 26 - KHSA

40. If the KBRA and KHSA is the fix-all for everything, why do state laws need to change to accommodate all its parameters?

Comment 27 - Economics

41. 100,000 acres of irrigated land have been permanently retired by governmental and The Nature Conservancy purchases. The KBRA will permanently retire an additional 30,000 acre feet of water with a formula for much more (Sec. 16.1 pg 105 & Sec 16.2.2B, pg 108). This will lead to ruin in the cattle business, the biggest agricultural business in Klamath County. The support industries all the way from local country stores to the local implement dealers will be crippled. 

42. Do we want thousands of acres of land lying idle and becoming a dust bowl? The proposed KBRA & KHSA will dictate considerably more water for refuges, less for agriculture than has historically been the case, hurting our local economy and reducing tax revenues. We crippled the timber industry; do we harm the agricultural community as well? (Sec. 15.1.2.B)

43. Water claims for the Klamath Project were filed under the Oregon and US Reclamation Acts, which called for irrigation uses. Under KBRA & KHSA, uses would be expanded for fish and wildlife. Deadlines have long passed to amend claims filed. How can we legally amend these claims at this time? (Sec. 15.1.1.A.i, pg. 52)

44. The Oregon adjudication grants rights based upon historical uses. Project usage has been dependent on stored water. How can stored water under the KBRA & KHSA now be dedicated to these new instream purposes and now allow calling on Upper Basin water to meet the Project needs? 

Comment 28 - Water Rights/Other

45. Who elected all of the new governing bodies established within the KBRA and KHSA?

46. Since the KBRA and KHSA are so controversial in southern Oregon, why had it not been put to the public for a vote? 

Comment 29 - KHSA

Thank you for taking the time to address all of these questions and concerns.

Tom Mallams

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| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|--|--------------------------|
| AO_LT_1120_035-1 | Master Response N/CP-12 Comment Period. | No |
| AO_LT_1120_035-2 | Master Response WSWR-1 Effects to Agricultural Water Supply. | No |
| AO_LT_1120_035-3 | Master Response GEN-1 Comment Included as Part of Record. | No |
| AO_LT_1120_035-4 | Master Response GEN-3 Best Available Information. | No |
| AO_LT_1120_035-5 | Master Response AQU-1 Sediment Amounts and Effects to Fish. Master Response AQU-2 Sediment Dredging. | No |
| AO_LT_1120_035-6 | Master Response AQU-22 Expert Panel Considered in Entirety. Master Response AQU-6 Expert Panel Coho, Steelhead and Chinook. Master Response AQU-7 Expert Panel Uncertainty Likelihood of Success. Master Response AQU-19 Chinook Expert Panel Proposed Action Better Than No Action. A summary of existing poor water quality in the Upper Klamath Basin is presented in the Draft EIS/EIR Section 3.2.3.1 Existing Conditions (p. 3.2-19 to 3.2-33). Additional details are provided in Appendix C (p. C-1 to C-86). The presence and operation of the Four Facilities affect many aspects of water quality in the Klamath River, including slower transport of water downstream, interception and retention of sediment, organic matter, nutrients, and other constituents that would otherwise be transported downstream, and alteration of seasonal water temperatures when compared to free-flowing stream reaches. Existing data and numeric models described in the Draft EIS/EIR Section 3.2.4.3.2 (p. 3.2-76 to 3.2-125) indicate that dam removal would improve water quality in the Hydroelectric Reach and the Klamath River downstream of Iron Gate Dam by decreasing late summer/early fall water temperatures, increasing seasonal dissolved oxygen concentrations, decreasing seasonal pH levels*, and decreasing or eliminating high seasonal chlorophyll-a and algal toxin concentrations (see also Table 3.2-14, p. 3.2-149 to 3.2-161). Water quality improvements in Upper Klamath Basin, including the Keno Impoundment, are critically important to water quality further downstream in the Klamath River. As described in the Draft EIS/EIR Section 3.2.4.3.1 No Action/No Project Alternative (p. 3.2-47 to 3.2-76), full attainment of the Oregon and | No |

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| | <p>California TMDLs would eventually be beneficial for algal-derived suspended material, nutrients, dissolved oxygen, pH and algal toxins/chlorophyll-a in the Hydroelectric Reach; however, it could require decades to achieve and is highly dependent on improvements in Upper Klamath Lake and the Keno Impoundment. As described in the Draft EIS/EIR Section 3.2.4.3.2.10 KBRA (p. 3.3-125 to 3.2-132), resource management actions implemented under KBRA as part of the Proposed Action would accelerate long-term improvements in water quality, including those anticipated under the TMDLs. Additional detail on the interaction of the TMDLs and the Alternatives is provided by the Water Quality SubTeam (2011) (also referred to as the Water Quality SubGroup), as cited in the Draft EIS/EIR Section 3.3.5, p. 3.3-241. This document, entitled "Assessment of Long Term Water Quality Changes for the Klamath River Basin Resulting from KHSA, KBRA, and TMDL and NPS Reduction Programs" can be found at http://klamathrestoration.gov/keep-me-informed/secretarial-determination/role-of-science/secretarial-determination-studies.</p> <p>Salmonids that use the Upper Klamath Basin evolved with the naturally occurring phosphorous levels. Volcanic activity has dominated the geology of Upper Klamath Basin for the past 35 million years. Consequently, relatively high levels of phosphorus are present in Upper Klamath Basin's volcanic rocks and soils. The Draft EIS/EIR provides considerable text on this subject in Appendix C (p. C-19 to C-23). Erosion is currently understood to be the major process by which sediment-associated particulate phosphorus is delivered from the upper sub-basins of the Wood, Williamson, and Sprague Rivers to Upper Klamath Lake (ODEQ 2002). During peak flows, particulate phosphorus has been observed to increase to 60 percent of the TP load compared to less than 5 percent during summer low flows (Kann and Walker 1999). The observed seasonal increase in particulate phosphorus loading and increase in volume-weighted concentration of TP during high flows may be indicative of degraded watershed conditions (Kann and Walker 1999), where land uses including road building, forestry, grazing and agriculture have altered upland and riparian plant communities and subsequently increased contribution of phosphorus through erosion to Upper Klamath Lake (DEA 2005). Based on available information, local watershed groups have suggested that insufficient data exists to clearly demonstrate the proportion of TP loading due to natural sources and the proportion due to degraded riparian conditions and increased water yields (Connelly and Lyons 2007, Rabe and Calonje 2009). However, research published in peer reviewed journals demonstrates that although levels of naturally occurring phosphorus are elevated in Upper Klamath Lake, historical land</p> | |

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| | <p>use activities in the Upper Klamath Basin resulted in increased nutrient loading to the lake, subsequent changes in its trophic status, and associated degradation of water quality (Bradbury et al. 2004, Eilers et al. 2004). Nitrogen sources to the lake have been identified as upland erosion, return flows from agricultural lands, and in situ nitrogen fixation by cyanobacteria (ODEQ 2002) (Draft EIS/EIR, Appendix C, Section C-3, p. C-19–20). As noted above, resource management actions implemented under KBRA as part of the Proposed Action would accelerate long-term improvements in water quality.</p> <p>The comment as written does not accurately represent the findings of Expert Panels nor does it provide evidence that resolution of all water quality problems would require reversal of natural phosphorous levels prevalent in the entire Upper Klamath Basin. Summertime increases in pH levels and daily variability could occur in the Klamath River immediately downstream of Iron Gate Dam due to periphyton colonization. These increases would be less-than-significant.</p> <p>As noted in the Draft EIS/EIR on p. 2-39, trap and haul around Keno is seen as a temporary solution, for a single fish stock (fall Chinook adults) and would only be done seasonally when water quality cannot meet certain criteria (U.S. Department of the Interior [DOI] 2007; NOAA 2007). These conditions generally occur during the period July- October, however they can occur over a broader period on occasion. In some years it may not be necessary. In the long run, implementation of KBRA and TMDLs may eliminate the need for trap and haul around Keno Impoundment/Lake Ewauna, or sooner if engineering solutions to the low summer DO in the Keno reach can be found and implemented. Trap and haul around the four dams would bypass 58 miles of important salmonid main stem and tributary habitat and cold water refugia (Administrative Law Judge 2006).</p> | |
| AO_LT_1120_035-7 | <p>Master Response COST-1 Cost Estimate.</p> <p>Master Response COST-3 Cost of Power Surcharge.</p> | No |
| AO_LT_1120_035-8 | <p>Master Response HYDP-2 Power Production at the Four Facilities.</p> <p>Master Response GHG-1 Green Power.</p> <p>Master Response GHG-2 Rate Increases.</p> <p>Master Response GHG-3 Replacement Power.</p> | No |
| AO_LT_1120_035-9 | <p>All 18 of the alternatives considered in Reclamation's Klamath</p> | No |

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| | <p>Project are discussed in Appendix A of the EIS/EIR. Alternatives, including the No Action/No Project Alternative were developed in accordance with NEPA and CEQ Regulations. Of the 18 considered alternatives, 5 were carried forward for complete analysis in the EIS, including Alternative 1, the No Action/No Project Alternative and Alternative 4, which considers fish passage at all 4 dams. Trapping and hauling was considered as part of Alternative 9, Trap and Haul Fish (Draft EIS/EIR, Section 2.2). Alternative 9 was not carried forward for full analysis in the Draft EIS/EIR because it did not meet the screening criteria established for alternatives to the Proposed Action (Draft EIS/EIR Appendix A, Section 4.2.9, p. 4.9).</p> <p>PacifiCorp is signatory to the KHSA which acknowledges the interests of both the general public and PacifiCorp's customers (KHSA Recitals, p. 1–2). The KHSA is one part of a basin-wide approach to address the continuing and unresolved issues related to the basin resources that have resulted from over-stressed water supplies and water quality concerns (Draft EIS/EIR, p. ES-1). Alternatives 1 (No Action/No Project), 4, and 5 do not implement the KHSA. The Draft EIS/EIR describes and analyzes 4 Action Alternatives and the No Action/No Project Alternative. The Secretary of the Interior would select an alternative for implementation. The Secretary may also pick the No Action/No Project Alternative or a blend of alternatives.</p> | |
| AO_LT_1120_035-10 | <p>The effects of dam removal to water supply and power rates are discussed in the EIS/EIR in Section 3.6, Flood Hydrology and Section 3.15, Socioeconomics respectively. Reclamation's Klamath Project has no relationship to dam removal potential elsewhere in the country.</p> | No |
| AO_LT_1120_035-11 | <p>Master Response HYDP-2 Power Production at the Four Facilities.</p> <p>Master Response GHG-1 Green Power.</p> <p>Master Response GHG-2 Rate Increase.</p> <p>Master Response GHG-3 Replacement Power.</p> <p>Master Response COST-1 Cost Estimate.</p> | No |
| AO_LT_1120_035-12 | <p>Master Response GEN-12 Comment Period.</p> <p>Master Response N/CP-20 Response to Public Comment.</p> | No |

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| AO_LT_1120_035-13 | Master Response GEN-1 Comment Included as Part of the Record. | No |
| AO_LT_1120_035-14 | The Proposed Action includes removal of the Four Facilities, as described in the KHSA, and it has less than significant impacts (after mitigation) to water supply or water rights. The potential to affect water supplies for the Klamath Project or users in the Upper Klamath Basin is associated with actions in the KBRA. The KBRA is a connected action to the Proposed Action and analyzed on p. 3.8-18 to 3.8-24. As discussed on p. 3.8-18, a primary purpose of the KBRA is to increase water supply reliability. The KBRA would not guarantee water supply for agriculture, but it would establish water diversion limitations that would be more reliable in the long-term and simultaneously develop programs to address decreased diversions. For example, the On-Project Plan would seek to implement projects that could help optimize water management and potentially increase supplies to address decreased diversions. The comment author is correct that the KBRA does not provide assurances of these deliveries because it cannot limit application of the Endangered Species Act; however, the actions in the KBRA would improve water supply reliability in the future. | No |
| AO_LT_1120_035-15 | Master Response HYDP-2 Power Production at the Four Facilities. Master Response GHG-1 Green Power. Master Response GHG-2 Rate Increases. Master Response GHG-3 Replacement Power. | No |
| AO_LT_1120_035-16 | Master Response GEN-20 PacifiCorp Private Ownership of Hydroelectric Facilities. Master Response KHSA-1 Negotiations of KHSA and KBRA. The KBRA does not limit the possibility of off-stream storage. It includes provisions to study off stream storage, such as Long Lake. "Reclamation shall work diligently to complete appropriate studies for off-stream storage projects." (KBRA, Section 18.3) The KBRA does include in-stream flow requirements that may affect the amount of water available to be stored in an off-stream storage reservoir. However, the existing Biological Opinions have in-stream flow requirements and future conditions would also have in-stream flow requirements that may also limit off-stream storage opportunities. These flow limitations would exist regardless of the implementation of the KBRA. | No |

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| AO_LT_1120_035-17 | <p>In return for benefits for the Klamath Tribes and their members, including the commitments made by the parties to this Agreement and the events beneficial for the Klamath Tribes enumerated in this Agreement, and without terminating or relinquishing the treaty rights underlying these claims, the Klamath Tribes, on behalf of themselves and their members, subject to the conditions stated in Section 15.3.5.C, relinquish and release the following claims against the United States, its agencies, or employees relating to actions in the Klamath Basin, excluding the Williamson River drainage above Kirk, and the drainage above the Sycan Marsh, above the Oregon-California border that first accrued at any time up to and including the Effective Date: i. all claims resulting from (a) water management decisions, including the failure to act, or (b) the failure to protect, or to prevent interference with, the Tribes' water or water rights, that relate to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering rights or other activities, due to loss of water or water rights); ii. all claims relating to the litigation of the Klamath Tribes' water rights in the KBA in Oregon in Cases 282 and 286; and if the OPWAS under Section 16.2.1 is successful in resolving the contests in any other case in the KBA, all claims relating to the litigation of such other case; and iii. all claims relating to the negotiation, execution, or adoption of this Agreement and the Hydroelectric Settlement.</p> | No |
| AO_LT_1120_035-18 | <p>Master Response N/CP-13 KBRA Analyzed as a Connected Action.</p> <p>Master Response KBRA-5 KBRA and Klamath Tribes.</p> <p>Master Response KHSA-1 Negotiations of KHSA and KBRA.</p> | No |
| AO_LT_1120_035-19 | <p>Master Response KBRA-5 KBRA and Klamath Tribes.</p> | No |
| AO_LT_1120_035-20 | <p>Master Response WSWR-5 Klamath Adjudication.</p> <p>Alternatives 2 and 3 include the KBRA, and these alternatives would have very little effect on water supply and water rights upstream from Upper Klamath Lake. In this area, the KBRA includes provisions to purchase water from willing sellers, but it would not affect any other users that did not volunteer to participate.</p> <p>The Lead Agencies were not able to substantiate the discussion of impacts to the Rogue Valley.</p> <p>Master Response GEN-7 Unsubstantiated Information.</p> | No |

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| Comment Code | Comment Response | Change in EIS/EIR |
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| AO_LT_1120_035-21 | Trinity River flows and their relationship to the Central Valley Project (CVP) are not part of the Proposed Action for dam removal. | No |
| AO_LT_1120_035-22 | <p>At this time, it is not known what specific parcels and properties would be affected as a result of water diversion limitations from Upper Klamath Lake.</p> <p>Water diversion limitations could be met through a variety of actions including:</p> <ul style="list-style-type: none"> • Creation of conservation easements, forbearance agreements, and/or land acquisitions intended to reduce water use for irrigation. This could result in land fallowing and/or a shift in crop types to dry land crops. • Implementation of water use efficiency and conservation measures to reduce surface water use, including drip irrigation. • Development of new groundwater sources, and the potential creation of new surface and groundwater storage areas. <p>All KBRA actions would undergo detailed development and analysis in the future. Therefore NEPA and/or CEQA analyses for the actions contained in the KBRA would be tiered as appropriate to this EIS/EIR. Future NEPA and CEQA analyses would include this more detailed analysis of which parcels and properties would be affected by KBRA programs.</p> | No |
| AO_LT_1120_035-23 | <p>Among the various provisions under full implementation of the KBRA, tribes that are parties to the agreement would agree to not exercise their senior water rights within the basin and to relinquish claims for natural resources damages (KBRA Section 15) in exchange for increases in fisheries (dam removal and fisheries habitat restoration programs) and assistance with acquisition of the Mazama Forest.</p> <p>As described on p. 2-36 and 2-37 in Chapter 2 of the Draft EIS/EIR, the NEPA Lead Agency, the DOI, is analyzing the KBRA as a connected action. NEPA defines connected actions as those actions that are closely related or cannot or would not proceed unless other actions are taken previously or simultaneously (40 CFR 1508.25(a)(1)(ii)). Some actions or component elements of the KBRA are independent obligations and thus have independent utility from the KHSA, but the implementation of several significant elements of the KBRA package would be different, if the determination under the KHSA is not to pursue full dam removal. Recognizing that implementation of many elements of the KBRA</p> | No |

Comment Author Mallams, Tom
Agency/Assoc. Klamath Off-Project Water Users Assoc.
Submittal Date November 20, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
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| AO_LT_1120_035-24 | <p>are unknown and not reasonably foreseeable at this time, the connected action analysis is being undertaken at a programmatic level. Consequently, appropriate NEPA compliance would be completed for the KBRA in the future.</p> | No |
| AO_LT_1120_035-25 | <p>The Klamath agreements are examples of negotiations designed to resolve longstanding legal battles over the use of water resources in the Klamath Basin. There are provisions in law that allow parties to negotiate privately to resolve litigation and to keep the contents of discussions confidential. This is what occurred in the negotiations over PacifiCorp's Klamath Hydroelectric Project, as well as the related Klamath Basin Restoration Agreement. PacifiCorp, tribes, environmental, fishing and agriculture interests are using these meetings to negotiate agreements that avoid litigation. The Federal Government often times has a vested interest in resolving the litigation as well.</p> <p>Master Response GEN-1 Comment Included as Part of the Record.</p> <p>Master Response GEN-2 Some People Approve of Dam Removal, and Others Disapprove of Dam Removal.</p> <p>The purpose of the EIS/EIR is to evaluate impacts of a project and to inform the public and decision makers of these impacts, not to convince individuals or parities that they should "sign on to" a settlement agreement.</p> <p>This EIS/EIR has been developed in accordance with the requirements of NEPA and CEQA to analyze the potential impacts to the environment from the removal of the four PacifiCorp dams on the Klamath River as contemplated in the KHSA and from the implementation of the KBRA. Together, these two agreements attempt to resolve long-standing conflicts in the Klamath Basin. Some of the conflicts and issues these agreements attempt to resolve are enumerated on Draft EIS/EIR p. ES-1 and ES-8-9. The activities leading to the development of the KHSA and the KBRA are discussed on p. ES-7-13. Both the KHSA and KBRA were negotiated and signed by a diverse array of over 40 parties with an interest in resolving Klamath Basin issues. The goal of the KHSA is found on p. 3 of the agreement and the goals of the KBRA are found on p. 4 of that agreement. See Klamathrestoration.gov for the KHSA and KBRA.</p> | No |
| AO_LT_1120_035-26 | <p>The KBRA and KHSA are not intended to be the "fix-all for everything." As stated in the KHSA, the parties entered into the KHSA to resolve the pending FERC relicensing proceeding by establishing a process for potential facilities removal (KHSA,</p> | No |

Comment Author Mallams, Tom
Agency/Assoc. Klamath Off-Project Water Users Assoc.
Submittal Date November 20, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
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| AO_LT_1120_035-27 | <p>section 1.2). Legislation is necessary to carry out the settlement (KHSA, section 2.1.1). The State of California was to recommend legislation for Water Bond Funds (Appendix G-1, KHSA) and CEQA (Appendix G-2, KHSA). To date, that legislation has not been introduced.</p> <p>As discussed in the EIS/EIR Section 3.5, removal of the Four Facilities could result in the incidental take of a number of species that are now considered “fully protected” pursuant to Fish and Game Code Sections 3511(a)(1) and 5515(a)(1). These species are listed in KHSA Section 2.1.1 (C). That section states that within 60 days of concurrence by the State of California with an Affirmative Determination, CDFG would provide draft legislation to the parties regarding a limited authorization to take these species, if such authorization is necessary for implementation of the KHSA. EIS/EIR Section 3.5 and Section 6, Table 6.2 address the need for this legislation and compliance of project alternatives with Fish and Game Code. An analysis of the environmental impacts of project alternatives on the species listed KHSA Section 2.1.1 (C) is included in EIS/EIR Section 3.5.</p> <p>The fact that irrigated land has purchased or retired in the past is not relevant to the set of alternatives analyzed in the EIS/EIR. What is relevant to the regional economic analysis is the extent to which the Agreements might result in additional lands being temporarily or permanently removed from agricultural production, and the income and employment impacts that might be associated with this. To the extent data was available, the implications of lands being shifted to conservation uses is analyzed in the EIS/EIR. In addition, it is useful to note that the relevant language in the KBRA Section 160202, which states:</p> <p>“G. Voluntary Participation</p> <p>Participation by Off-Project Irrigators in any of the measures to achieve the WURP purpose is voluntary.</p> <p>H. Compensation for Voluntary Participation</p> <p>I. Acquisition of water rights or uses to achieve the WURP purpose will be compensated, as applicable, through market mechanisms based upon values mutually agreed to by purchaser and seller, as informed by appraisals.”</p> | No |
| AO_LT_1120_035-28 | <p>The expansion of Reclamation’s Klamath Project purposes is not intended to and would not create or amend any water rights. It would allow Reclamation’s Klamath Project water to be used for all purposes that are otherwise lawful under other State and Federal</p> | No |

Comment Author Mallams, Tom
Agency/Assoc. Klamath Off-Project Water Users Assoc.
Submittal Date November 20, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
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| | <p>law and would not be limited by the current irrigation-only purpose of Reclamation's Klamath Project. Additionally, any new uses of stored water under the KBRA would be supported by water rights and otherwise consistent with applicable law.</p> <p>Master Response WSWR-5 Klamath Adjudication.</p> | |
| AO_LT_1120_035-29 | <p>The KBRA was negotiated to provide as much local control as possible to decisions affecting local resources. Under Federal law such local control over resources can be met through the implementation of a committee established pursuant to the Federal Advisory Committee Act (FACA). The KBRA does call for the establishment of a FACA committee.</p> | No |



AQ_LT_1213_045

Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384
 Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pccouncil.org
 Dan Wolford, Chairman Donald O. McIsaac, Executive Director

December 13, 2011

Ms. Elizabeth Vasquez
 Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825

Subject: Klamath Facilities Removal Public Draft Environmental Impact Statement/
 Environmental Impact Report

Dear Ms. Vasquez:

This letter presents the comments of the Pacific Fishery Management Council (Council) regarding the Klamath Facilities Removal Public Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

The Council would like to commend the Department of Interior and the State of California for completing this comprehensive National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) document over a relatively short period of time. The proposed action includes the removal of four dams owned by PacifiCorp from the mainstem of the Klamath River, in addition to implementing the landscape-scale restoration efforts outlined in the Klamath Basin Restoration Agreement (KBRA). These are major steps toward addressing habitat-related problems that have plagued Klamath Basin fishery resources for decades; the Council recognizes the significant controversy surrounding this action.

The Council has previously expressed its concern, in various forums, regarding the extensive impacts of the Klamath Hydroelectric Project to the West Coast salmon fishery and dependent communities. The Council is gratified to see that an agreement to remove the dams (Klamath Hydroelectric Settlement Agreement) and to address other habitat problems facing the Basin's fishery (KBRA) has been reached, and that environmental studies are progressing in a timely manner.

The Council was created by the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) of 1976 with the role of developing, monitoring, and revising management plans for fisheries conducted in Federal waters off Washington, Oregon and California. Subsequent congressional amendments in 1986, 1990, and 1996 added emphasis to the Council's role in fishery habitat protection. Amendments in 1996 directed the National Marine Fisheries Service, as well as the regional fishery management councils, to make recommendations regarding Federal or

Page 2

state agency activities that may affect the “essential fish habitat” (EFH) of fisheries under their authority. The proposed action to remove the hydro-electric facilities from the Klamath River is a Federal action that has an effect on EFH and will require formal EFH consultation.

The current Facilities Removal EIS/EIR and the previous Federal Energy Regulatory Commission EIS regarding the relicensing of the Hydroelectric Project show that the Project has dramatically diminished the range, quantity, and quality of habitat for Klamath Basin anadromous fish stocks, and has had other profound negative impacts on the anadromous fish of the Klamath Basin. Anadromous fish have been extirpated from several hundred miles of historic habitat above Iron Gate Dam, and habitat in the mainstem Klamath River below Link River Dam has been degraded, as a result of the Project. Our review of the EIS/EIR and its large body of supporting documentation and studies confirm these observations.

The decline of Klamath River Basin fisheries resources is a serious concern to the Council. Ocean fisheries along the Pacific Coast from Cape Falcon to Monterey Bay are often constrained by the need to reduce harvest impacts to Klamath River fall Chinook because of the depleted status of this stock. The Klamath Hydroelectric Project has had a significant effect on Klamath Basin fisheries and on the economies of tribal and nontribal fishing communities within the Klamath Basin and along the Pacific Coast from Monterey Bay, California to Cape Falcon, Oregon. We are gratified to see that these effects, long ignored in other analyses, are treated with rigor and quantitative discipline in the current EIS/EIR.

The fish production modeling efforts that were developed for the socioeconomic analysis of the NEPA/CEQA document support the need to implement the proposed action, as they indicate a substantial increase in both spring and fall Chinook salmon production as a result of the hydroelectric facilities' removal and KBRA implementation. The estimated 42 percent increase in ocean troll and sport fishery income over the next 50 years is indeed encouraging. However, we note that the independent expert panels whose purpose is to inform the Secretary of Interior about the effects of dam removal on fish populations have cautioned that significant improvements in water quality and fisheries habitat must accompany dam removal to see the true benefits of the proposed action. We urge the Secretaries of Interior and Commerce to do everything in their power to prioritize resources and expertise to accomplish these tasks.

Comment 1 - Approves of Dam Removal

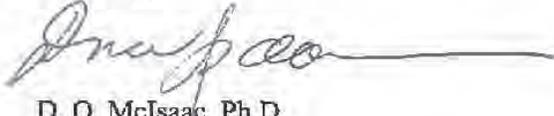
In light of substantial benefits to the fishery resource and dependent fishing communities along the Pacific Coast and Klamath River, the Council is supportive of proposed action, Alternative 2: complete removal of the facilities. We could also support the partial removal alternative (Alternative 3), which includes removal of enough of each dam to allow free-flowing river conditions and volitional fish passage for all anadromous species at all times, especially if cost considerations would preclude full removal. The document notes that benefits to the fishery are expected to be similar under Alternatives 2 and 3.

In summary, we appreciate the monumental effort that has gone into development of this environmental analysis over a relatively short time period. We believe that it forms a

Page 3

solid foundation for a positive determination by the Secretary of Interior to remove the hydroelectric facilities and implement the KBRA.

Sincerely,

A handwritten signature in black ink, appearing to read "D. O. McIsaac", followed by a long horizontal line extending to the right.

D. O. McIsaac, Ph.D.
Executive Director

JDG:kam

C: Council Members
Habitat Committee Members
Salmon Advisory Subpanel Members

Comment Author Mclsaac, D.O.
Agency/Assoc. Pacific Fishery Management Council
Submittal Date December 13, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|---|------------------------------|
| AO_LT_1213_045-1 | Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal. | No |



A program of the Center for Justice.

AO_LT_1118_043

November 18, 2011

Gordon Leppig
California Department of Fish & Game
619 Second Street
Eureka, CA 95501

SENT VIA EMAIL (KSDcomments@dfg.ca.gov)

RE: Draft EIS/EIR analyzing the impacts of Klamath dam removal

Dear Mr. Leppig,

These comments are submitted on behalf of Spokane Riverkeeper, a non-profit organization in Spokane, Washington.

Spokane Riverkeeper is a membership organization with a mission to preserve and protect the Spokane River watershed. As a member of the international Waterkeeper Alliance, we fight for our right to clean water in nearly 200 watersheds worldwide, including the Klamath River watershed. Though we focus our individual efforts on our own watersheds, we exercise our ability to raise awareness for clean water and healthy communities across the world. Because of this mission, Spokane Riverkeeper supports Alternative 2 in the Klamath Facilities Removal DEIS, the full removal of four dams scenario. We feel strongly that this option is best for healthy fish runs, healthy communities and cleaner water in the Klamath watershed.

Comment 1a - Approves of Dam Removal

As citizens of the western United States, we have engrained in our cultural DNA an understanding of clean, cool, free-flowing rivers. Rivers that provide one of life's essential resources, bountiful recreation opportunities, economic advantages and ecological health. We also have come to live with the fact that Rivers are why we live where we do; they are why some of the west's great communities sprouted where they did. As we have progressed as a nation, we have reached a point where many of these Rivers are no longer needed to provide the way they once did. That is nature's way of saying it's time for something new.

Comment 1b - Approves of Dam Removal

Full removal of the four Klamath River dams would drastically improve fish runs on the Klamath River by providing cold, clean, oxygen-rich water along hundreds of miles of historic spawning habitat. Improved fish runs would provide a trickle-down benefit for other animal populations and overall ecosystem health in the Klamath River watershed. Water flows would also increase, which is a huge benefit for water and economic security for agriculture communities in the area.





A program of the Center for Justice.

Removing the aging dams would help the surrounding community as well as the entire western United States start to move towards a cleaner and greener energy future. We have no chance of developing a green-jobs market until we have a paradigm shift, a shift that would be jumpstarted by removing the four dams. The Klamath River could provide the blueprint on how the western United States leads the rest of the country into the clean and green energy future we so desperately need to realize.

Spokane Riverkeeper appreciates the opportunity to show support for Alternative 2 in the Klamath Facilities Removal DEIS. It's not that often that we reach so far out of area to comment on a local issue, but when you're talking about ecosystem restoration and clean water, there are no boundaries. Thank you for your time.

Sincerely,

Bart Mihailovich
Spokane Riverkeeper

A handwritten signature in black ink that reads "Bart Mihailovich".



Comment Author Mihailovich, Bart
Agency/Assoc. Spokane Riverkeeper
Submittal Date November 18, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|---------------------|--|--------------------------|
| AO_LT_1118_043-1 | Master Response GEN-2 Some People Approve of Dam Removal, Others Oppose Dam Removal. | No |

AO_LT_1121_039

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November 18, 2011

Elizabeth Vasquez
Bureau of Reclamation
2800 Cottage Way, MP150
Sacramento, CA 95825

Gordon Leppig
California Department of Fish & Game
619 Second Street
Eureka, CA 95501

Re: **Klamath Facilities Removal Project Draft EIS/EIR**

Dear Ms. Vasquez & Mr. Leppig:

Pursuant to CEQA Guidelines section 15087 and the Department of Fish and Game's (DFG) public notice inviting comments on its Draft Environmental Impact Statement/Environmental Impact Report (EIR) for its Klamath Facilities Removal Project ("Project"), on behalf of Siskiyou County Water Users Association, Inc., we respectfully submit the following comments that discuss problems with and inadequacies of the EIR.

I. DFG is the Wrong Lead Agency

Comment 1 - CEQA

The lead agency under CEQA is the agency that has the principal responsibility for carrying out, or the principal responsibility for approving a project. (Pub. Res. Code § 21067 Guidelines §§ 15050, subd. (a), 15051, subd. (a)). The role and responsibility of the lead agency is "fundamental to the CEQA process as a whole." (Guidelines § 15050). The identification of the proper lead agency plays a "crucial role" in the division of responsibility for the core project activity. (*Friends of Cuyamaca Valley v. Lake Cuyamaca* (1994) 28 Cal.App.4th 419, 427). The lead agency responsibility is placed upon the agency with power to approve or disapprove the project. (*Lexington Hills v. State of California* (1988) 200 Cal.App.3d 415, 433). Though one agency has substantial responsibility for a project, it cannot act as lead agency if another agency bears final responsibility. (*Fullerton Joint Union*

| | |
|-----------------------|------------|
| Classification | ENV-0-00 |
| Project | 12 |
| Central No. | 6 |
| Folder ID | 1190998-2 |
| Date Input & Initials | 11/21/2011 |

SCANNED

U.S. Bureau of Reclamation and California Department of Fish and Game

Re: *Klamath Facilities Removal Project Draft EIS/EIR*

November 18, 2011

Page 2.

Comment 1 cont.

High School District v. Board of Education (1982) 32 Cal. 3d 779, 795, n. 15 [State Board of Education, not county, had final responsibility for school district plan]).

In nearly identical dam removal and river restoration projects, such as the Battle Creek Salmon & Steelhead Restoration Project, involving multiple federal, state, and private parties, the State of California has insisted that the State Water Resources Control Board (“SWRCB”) is the appropriate lead agency for purposes of CEQA review. Indeed, the EIR for the Battle Creek Project provides:

Reclamation, the lead federal agency, is responsible for ensuring overall NEPA compliance, and FERC, a cooperating federal agency, is responsible for ensuring that proposed changes to the Hydroelectric Project comply with prior to issuing a license amendment for the Hydroelectric Project. Because this FERC license amendment requires a Clean Water Act (CWA) (33 USC 1251 *et seq.*) Section 401 water quality certification from the California State Water Resources Control Board (State Water Board), the State Water Board is the state lead agency responsible for ensuring compliance with CEQA, the CWA, and other applicable state laws.

(Battle Creek Salmon and Steelhead Restoration Project July 2005 Final Environmental Impact Statement, Environmental Impact Report , p. ES-2)

In Courts of this State, DFG and SWRCB have defended the SWRCB’s designation as the CEQA lead agency for dam removal and restoration projects. For example, DFG’s and SWRCB’s joint Opposition lodged in the Third District Court of Appeal states:

Here DFG approved conditional funding for the [Battle Creek] Project, but its jurisdiction over the Project is narrower than the Water Board’s. Thus, in this Project, the Water Board has broader jurisdiction over water transfers, water quality, and all its beneficial uses, including fish habitat, while DFG has more specific jurisdiction over fish and wildlife resources.

(Respondents’ Opposition, *Outfitter Properties, LLC et al. v. SWRCB et al.* (Feb. 4, 2011) (Court of Appeal, Third Appellate District)¹).

Lead agency designation is ministerial under CEQA; it *shall* be the public agency that has the principal responsibility for carrying out, or the principal responsibility for approving a project. (Pub. Res. Code § 21067; Guidelines §§ 15050, subd. (a), 15051, subd. (a)). Naming DFG as lead agency has robbed the public of full and complete environmental

¹ SWRCB’s and DFG’s joint argument, pages 32 through 38 of the subject brief, are attached as Exhibit A.

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Re: ***Klamath Facilities Removal Project Draft EIS/EIR***
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Page 3.

Comment 1 cont.

review by the agency – SWRCB – with unique expertise concerning Project analysis, review and consideration of alternatives and mitigation measures, and Project implementation. As stated by DFG and SWRCB in context of the Battle Creek Project, SWRCB, not DFG, has “broader jurisdiction” over the issues presented for consideration with the Project. According to Chapter 8 of the EIR (List of Preparers and Contributors) expert staff of the SWRCB were not even consulted, despite it being the entity with the broadest jurisdiction over water transfers, water quality, and all its beneficial uses, including fish and habitat.

Naming SWRCB lead agency in one dam removal and river restoration project, and thereafter naming DFG lead agency in a separate, nearly identical dam removal and river restoration project without any explanation or factual basis constitutes an abuse of discretion. If DFG and SWRCB believe there are differences between this Project and the Battle Creek Project that justify a different lead agency, then those reasons should be explained in detail. The fact that this EIR is purportedly programmatic is not, in and of itself, a sufficiently distinguishing factor. The lead agency on a programmatic EIR should be the agency with the broadest jurisdiction over the first tier and subsequent tier environmental analysis. DFG and SWRCB have asserted that the SWRCB has broadest jurisdiction over dam removal and river restoration projects.

Comment 2 - CEQA

2. DFG is Improperly Committed to Dam Removal Such that It Will not and Cannot Consider Feasible Alternatives and Mitigation Measures

The California Supreme Court in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 (“*Save Tara*”) cautioned lead agencies that CEQA compliance should occur before committing to a particular project so that environmental review does not devolve into a *post hoc* rationalization of a decision already made. “A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved.” (*Laurel Heights Improvement Assoc. v. Regents of the University of California* (1988) 47 Cal.3d 376, 394 [emphasis in original]). Accordingly, “before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in any manner that forecloses alternatives or mitigation measures that would ordinarily be of CEQA review of that public project.’” (*Save Tara, supra*, 45 Cal.4th at 138).

The State of California, particularly the purported lead agency DFG, has committed itself to the dam removal Project. In so doing, DFG has foreclosed feasible alternatives to dam removal and mitigation measures. By executing the Klamath Hydroelectric Settlement Agreement (“Settlement Agreement”) and Klamath Basin Restoration Agreement

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Re: **Klamath Facilities Removal Project Draft EIS/EIR**

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Comment 2 cont.

(“Restoration Agreement”), DFG has contracted away its discretion and decisionmaking power to consider alternatives to dam removal and other mitigation measures.

The express purpose of the Settlement Agreement is to establish a process for removal of 4 dams on the Klamath River. DFG agreed to “refrain from any action that does not support or further cooperative efforts in support of the goals of this Settlement and its effective implementation.” (Settlement Agreement § 2.1). The term of the Settlement Agreement continues “until Facilities Removal has been fully achieved and all conditions on this Settlement have been satisfied....” (*Id.* § 8.1). DFG may not terminate the Settlement Agreement except upon specific “termination events”. (*Id.* § 8.11.1). Notably, approval of an alternative other than the agreed-to four dam removal Project is not one of the terminating events. No more obvious case of a lead agency committing to a particular project in a manner that forecloses the ability to consider and approve alternatives or mitigation measures can be imagined.

There are a number of obligations in the Settlement Agreement that anticipate and assume dam removal will occur, further highlighting DFG’s farce that the EIR meaningfully evaluates alternatives/mitigation measures. These include:

(a) DFG and other State parties must request that the California Public Utilities Commission establish two accounts known as the California Klamath Trust Accounts that will be used to track costs, for ratemaking purposes, incurred for removal of the 3 dams located in California (*Id.* at § 4.2.2);

(b) DFG must support a depreciation schedule, to be used for ratemaking purposes, that assumes the California dams will be removed by 2020 (*Id.* at § 4.5.2);

(c) DFG must support PacifiCorp’s request to include in its rates and tariffs California’s allocated share of costs that are incurred as a result of the interim operation modifications to the 3 California dams, including reductions in the generating capacity of the dams (*Id.* at § 4.6.2);

(d) DFG and other State parties must support various “Interim Measures” set forth in Appendices C and D of the Settlement Agreement “and will not advocate additional or alternative measures for the protection of environmental resources affected by the Projects during the Interim Period.” (*Id.* at § 6.1.2 [emphasis added]). Again, no clearer case of DFG’s inability to fully consider alternatives and mitigation measures – except those contractually agreed to “Interim Measures” – can be imagined. Examples of the Interim Measures, which DFG and the State commit to without the benefit of completing environmental review under CEQA, include: (i) establishment of a restoration fund

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Comment 2 cont.

administered by DFG to “fund actions in the Klamath Basin designed to enhance the survival and recovery of coho salmon...”; (ii) turbine venting at Iron Gate Dam; (iii) implementation by DFG of the terms of a hatchery and genetics management plan; (iv) development and implementation by DFG of mitigation objectives for the Iron Gate Hatchery, which will be funded by PacifiCorp and then charged to its customers under subsection (c) above; and (iv) DFG must develop an Iron Gate Dam Mitigation Hatchery Plan;

(e) DFG and other State parties must support the development and implementation of total maximum daily loads (“TMDLs”) on the Klamath River under the Federal Clean Water Act and California’s equivalent known as the Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.) (*Id.* at § 6.3);

(f) DFG and other State parties must request that the SWRCB hold its FERC relicensing 401 water quality certification and associated review under CEQA in abeyance during the interim period (*Id.* at § 6.5);

(g) Before the proposed facilities are removed and before the Secretary issues a possible Affirmative Determination, PacifiCorp must transfer ownership of its lands within the FERC project boundary to DFG and other state parties which “shall thereafter be managed for public interest purposes such as fish and wildlife habitat restoration and enhancement, public education, and public recreational access (*Id.* at § 7.6.4); and

(h) At such time agreed to by the parties or at the time of transfer of the Iron Gate Hydro Development to the dam removal entity, DFG will receive title to and the obligation to operate the Iron Gate Hatchery (*Id.* at § 7.66).

The aforementioned, and other commitments, demonstrate a predetermination to dam removal. In light of the foregoing, DFG cannot credibly contend that it can consider, and possibly approve, alternatives to dam removal, including the No Project Alternative. DFG has contractual, financial, and other vested interests in dam removal; such interests would be harmed or not realized if the dam removal alternative was not selected. This level of pre-CEQA commitment to a single alternative violates CEQA as addressed in *Save Tara*.

The Restoration Agreement further evidences DFG’s inability to fully consider alternatives to dam removal and mitigation measures. Its term is 50 years. (Restoration Agreement § 1.6). One of its primary goals is to govern “performance in advance of the physical performance of Facilities Removal.” (*Id.* § 8.2.2). DFG and other State parties are required to implement the obligations under the Restoration Agreement in good faith and with due diligence (*id.* § 3.2.1) and “shall cooperate in the implementation of this Agreement.” (*Id.* § 3.2.2). DFG and other parties “shall support the Hydroelectric

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← Comment 2 cont.

Settlement which includes, among other provisions, a process for potential Facilities Removal.” (*Id.* § 20.2.1). Like the Settlement Agreement, the Restoration Agreement limits DFG’s ability to terminate or amend the Agreement if an alternative other than Facilities Removal is selected. DFG may withdraw from the Restoration Agreement under limited circumstances outside its control (*Id.* § 7.5) and the Agreement may only terminate (a) if federal legislation has not been enacted by December 31, 2012, or (b) upon consensus of all the parties (*Id.* § 7.6.1).

The Restoration Agreement contemplates a number of actions occurring prior to completion of CEQA studies that anticipate and rely on dam removal, including:

(a) Creation of a “Fisheries Program” the purpose of which is to “restore and sustain natural production of Fish Species throughout the Klamath River Basin” and agreement to “pursue restoration actions above, within, and below the Hydroelectric Project to substantially remove, reduce or mitigate the conditions described in Sections 9.1.1 [blockage of passage] through 9.1.2 [other harmful conditions].” (*Id.* § 9.1.4). How can DFG simultaneously claim it can consider alternatives, including the No Project Alternative, when it “shall” pursue restoration actions to substantially remove, reduce or mitigate fish passage blockage and other harmful conditions?

(b) Creation of a “Water Resources Program” consisting of six elements: (i) On-Project Water Use Program to coordinate and align water supply and demand, including conservation easements, forbearance agreements, efficiency measures, land acquisition, water acquisition, groundwater development, etc.; (ii) Off-Project Water Program to resolve water right disputes and provide for increased streamflow; (iii) Power for Water Management Program to provide affordable electricity to eligible water users in the absence of the hydroelectric dams; (iv) additional water conservation and storage; (v) drought, climate change and emergency, including DFG developing a “drought plan” to provide water in dry years after Facilities Removal; and (vi) Environmental Water to restore and sustain fish species throughout the Klamath River Basin and a commitment to “not take any actions inconsistent with this Agreement and, where appropriate, shall act to promote compliance with this Agreement.” (*Id.* at § 20.2.6.D). Would approving an alternative other than dam removal, such as the No Project Alternative, be considered inconsistent with the Restoration Agreement? The Water Resources Program anticipates complete dam removal; what value, if anything, does the Program have if the No Project Alternative or another non-preferred alternative is selected?

(c) Giving various regulatory assurances related to the performance of the fisheries and water resources programs, including funding and committing to using DFG’s “best efforts” to implement its obligations under the Restoration Agreement.

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(d) DFG acknowledges that implementation of this Agreement may create the possibility for the incidental take of protected species (*Id.* at § 24.2.1), and without the benefit of environmental review under CEQA DFG agrees to provide draft legislation permitting the incidental take of Lost River suckers, shortnose suckers, golden eagles, southern bald eagles, greater sandhill cranes, and American peregrine falcons.

In addition to the Agreements, the EIR evidences the improper commitment to dam removal. For example:

(a) “CDFG recognizes it is not ‘approving’ any discretionary portion of the KBRA that could alter the physical environment and that by signing the KBRA it has already executed and committed to the agreement itself. Thus, similarly to the EIS, there are no alternatives that consider what a new or revised KBRA might look in the event dams are not removed.” (DEIR, ES-4). The Agreements, entered into prior to and without the benefit of CEQA analysis, impermissibly determine the scope of the project and as a practical matter foreclose the ability to consider in good faith dam removal alternatives and mitigation measures.

(b) Under project objectives, DFG identifies “To be consistent with the goals and objectives of KHSA and KBRA”. (*Id.* at ES-17). Complete dam removal is the only goal and objective identified by the Agreements.

(c) “The Fish Passage at Four Dams Alternative would not satisfy the conditions in the KHSA.” (*Id.* at ES-25). In other words, alternatives are rejected or deemed less worthy because they do not meet the terms and conditions agreed to in the Settlement Agreement. Does DFG agree that it cannot comply with the terms of the Agreements if it approves the No Project Alternative, for example?

(d) Figures ES-7 and 2-1 illustrate the process used for developing and screening project alternatives. Step one, is “Develop Purpose and Need Statement/Project Objectives.” The Agreements define the purpose and need for only one alternative – complete dam removal. Any other alternative would not meet the parties’ predetermined goal of Facilities Removal. The Agreements stack the deck and effectively nullify good faith consideration of dam removal alternatives. No alternative except Facilities Removal can ever be analyzed or considered in good faith because the Agreements do not permit the adoption of any other alternative.

CEQA is designed to foster informed decisionmaking. This policy ensures that lead agencies approve a project *after* reviewing and considering environmental impacts, project alternatives and mitigation measures. DFG and other California public agencies that

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executed the Settlement Agreement and Restoration Agreement agreed to dam removal *before* conducting the requisite environmental review. DFG placed the project “cart” before the EIR “horse”. The complex commitments to fund, support and even implement portions of the Agreements as a practical matter forecloses DFG’s ability to review and possibly adopt alternatives to dam removal. DFG contracted away its ability to modify the Agreements or to terminate the Agreements such that it could practically consider and possibly adopt the No Project Alternative of some other non-dam removal alternative. The adoption of the No Project Alternative would constitute breach of the Agreements by DFG.

DFG should relinquish its role as lead agency for the Project and instead defer to SWRCB as the agency with the “broadest jurisdiction” in dam removal and river restoration projects. DFG should secure the other parties’ consent to rescind its commitments to funding and implementing the actions under the Settlement and Restoration Agreements. Until DFG performs the aforementioned, it is in violation of CEQA.

Comment 3 - Alternatives

3. Inadequate Baseline/Description of No Project Alternative

An EIR must describe the environmental setting for the proposed project, known as the baseline, for evaluating whether the impacts of the project are significant. (Guidelines § 15125). The concept of baseline is also closely tied to the required analysis of a “no project” alternative, which describes the impacts of not approving the project in question. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1, 11). “Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures...and weigh other alternatives in the balance.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193).

The EIR inadequately defines the baseline/No-Project descriptions. The EIR states that “The KBRA is not included in the No Action/No Project Alternative.” (EIR at ES-21). Subdivision (e)(2) of Guidelines section 15126.6 states that “The ‘no project’ analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.”

The Restoration Agreement was executed on February 18, 2010. The notice of preparation was executed on June 17, 2010. Clearly the KRBA was part of the existing conditions at the time the notice of preparation was published. Further, it contains actions that are reasonably expected to occur in the foreseeable future.

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The failure to include the Restoration Agreement as part of the baseline/no project description skews and artificially enhances environmental impacts. The no project alternative is less appealing to decisionmakers and the public given the inadequate description. For example, the baseline is described in the worst possible terms: "The Klamath Basin currently suffers from degraded fisheries, degraded habitat quality (including flows, water temperatures, and river channel structure), habitat limitations (barriers to fish passage), and degraded water quality (including problems with dissolved oxygen, pH, nutrient enrichment, algal growth, and algal toxins)." (EIR, ES-41). The Restoration Agreement includes a "Fisheries Program" and a "Water Resources Program" which, if included in the baseline, would have greatly diminished the incidence and appearance of environmental impacts.

The Restoration Agreement, and all the actions currently being undertaken or contemplated therein, should be included as part of the baseline/no-project descriptions. Only then can decisionmakers and the public truly weigh and consider the environmental impacts of dam removal alternatives.

Comment 4 - Alternatives

4. The EIR Fails to Consider a Reasonable Range of Alternatives

Consistent with Guidelines section 15126.6, subdivision (a), the EIR "shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." "An EIR is required to 'ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.'" (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872).

Here, the Settlement Agreement and Restoration Agreement impermissibly limit the review and consideration of feasible alternatives to dam removal. The EIR states that "there are no alternatives that consider what a new or revised KBRA might look in the event dams are not removed." (EIR at ES-4). Further, DFG "considers the proposed actions by California to be implementation of the KHSA and thus has crafted alternatives only for dam removal itself, assuming that absent full facilities removal the relevant elements of the KBRA will no longer be ascertainable." (*Id.* at ES-5).

Rather than letting the Agreements dictate the development of alternatives, DFG should be guided by alternatives that eliminate any significant adverse environmental impact or reduce them to the level of insignificance. (*See Friends of the Eel River, supra*, 108 Cal.App.4th at 873). One alternative that should be fully examined in the EIR is known as Alternative 11. (DEIR, Appendix A, p. 4-11).

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← Comment 4 cont.

Alternative 11 is listed in Appendix A of the EIR is an alternative that was briefly considered, but summarily rejected. It would allow for passage of anadromous species through natural drainages and a tunnel in a manner that would permit Copco 1, Copco 2 and Iron Gate Dams to remain in place. It would permit unimpaired passage of fish, while also preserving dams that produce clean, renewable hydroelectric power. This is a reasonable, technically feasible, alternative that should be given full analysis in the EIR.

Notably, the reason this alternative was summarily rejected for further discussion and analysis in the EIR is because the alternative did not satisfy the contractually-defined parameters of the Restoration and Settlement Agreements. Appendix A states that "Because the KHSA and KBRA requirements would not be met, the programs under the KBRA would not be implemented to provide reliable water or power supplies." (*Id.*). The Settlement and Restoration Agreements are used as reasons to exclude analysis and consideration of Project alternatives. No clearer case of a pre-CEQA commitment to a project that effectively precludes consideration and possible adoption of alternatives can be imagined.

5. The EIR's Description of Water Supply and Rights is Inadequate

The EIR should disclose past, current, and potential future adverse impacts on upper watershed streams and lakes, including detailed descriptions of current operations and how current operations would be altered under each alternative. In *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952-956, the lead agency, like here, proposed changes to reservoirs. The Court held that vague references to end-of-month lake levels were insufficient to gauge environmental impacts of the proposed project and its alternatives.

Here, similarly, the EIR relies on vague descriptions of current operations and how flows may appear in dry, wet and average years. This description needs more detail. How are the dams currently being operated? How will flows change, if at all, under each alternative? This portion of the EIR should be revised to comply with CEQA and provide the level of specificity enunciated by *County of Amador, supra*.

← Comment 5 - Water Supply/Rights

6. The EIR Does Not Disclose All Areas of Controversy Known to the Lead Agency

Guidelines section 15123, subdivision (b)(2), requires the EIR summary to include areas of controversy, including issues raised by agencies and the public. The discussion at pages ES-46 through ES-47 and in Chapter 5 of the EIR is inadequate and misleading. At least two areas of controversy were left off the list. First, Siskiyou County Water Users Association, Inc. has filed suit against DFG and other public agency signatories to the

← Comment 6 - CEQA

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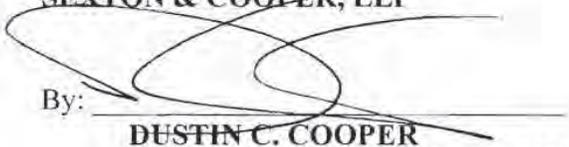
Agreements on the basis that the Agreements constitute CEQA “projects” that require environmental review prior to execution. That case is currently in the Court of Appeal for the Third Appellate District.

Second, on November 2, 2010, approximately 80 percent of Siskiyou County’s electorate voted “no” to Measure G, which asked “Should the Klamath River Dams (Iron Gate, Copco 1, and Copco 2) and associated hydroelectric facilities be removed?”

DFG may not like including information in the EIR that detracts from its designs for complete dam removal, but CEQA requires that these items be included in the EIR and described. The EIR cannot be considered a truly informational document unless it includes all information, including those items that DFG would like to keep hidden.

Very truly yours,

**MINASIAN, MEITH, SOARES,
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By: 

DUSTIN C. COOPER

**Attorneys for Siskiyou County Water
Users Association, Inc.**

DCC:aw

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

**OUTFITTER PROPERTIES, LLC AND
ROCKY SPRINGS RANCH, LLC,**

Petitioners and Appellants,

v.

**CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD AND
CALIFORNIA DEPARTMENT OF FISH
AND GAME,**

Defendants and Respondents.

Case No. C0664470

Superior Court, Case No.
07CS00462 consolidated with
Case No. 06CS01520

Sacramento County Superior Court, Case No. 06CS01520
Timothy Frawley, Judge

**OPPOSITION BRIEF OF RESPONDENTS
CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD AND CALIFORNIA
DEPARTMENT OF FISH AND GAME**

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inadequate. (*Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1617.) (ROA at p. 04241.)

Finally, a petitioner who appeals a trial court ruling and who urges the insubstantiality of the evidence to support an agency decision cannot shift the burden onto respondent to prove the evidence is substantial. (*Brown v. World Church* (1969) 272 Cal.App.2d 684, 690, [[W]hen an appellant urges the insufficiency of the evidence to support the findings it is his duty to set forth a fair and adequate statement of the evidence which is claimed to be insufficient. He cannot shift this burden onto respondent, nor is a reviewing court required to undertake an independent examination of the record when appellant has shirked his responsibility in this respect.])

Appellants must demonstrate error, and that burden remains with Appellants. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2003) ¶¶ 8:16, 8:17.3 & 8:76.5, at pp. 8-5, 8-6, 8-32.)

ARGUMENT

I. THE WATER BOARD IS THE PROPER CEQA LEAD AGENCY AS IT HAS THE PRIMARY STATUTORY DUTY FOR THE APPROVAL OF THE BATTLE CREEK RESTORATION PROJECT.

Appellants claim that the Water Board should not have been the lead agency, but that DFG should have been the designated lead agency as DFG has “[t]he general authority to fund fish and wildlife preservation, restoration and enhancement projects” (Appellants’ Opening Brief (AOB) at pp. 26-27.) Appellants further claim that as a result of this “misclassification,” “[t]he public has been robbed of full and complete environmental review conducted by the agency (DFG) with unique expertise concerning Project implementation.” (AOB at p. 26.) As the trial court found, Appellants are wrong.

In rejecting Appellants' contention that DFG should have been the designated lead agency, the trial court correctly noted that, "SWRCB [Water Board] is the proper lead agency because it is the State agency with the broadest jurisdiction over the Project." (ROA at p. 04244.) Further, the trial court stated, "Moreover, even if the selection of SWRCB [Water Board] was error, it was not prejudicial because it did not preclude informed decision-making or informed public participation." (ROA at p. 04244, citing, *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236; *Rural Landowners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013, 1022-1023.) Appellants offer nothing new to warrant a different result.

CEQA defines the term lead agency as "[t]he public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067.) It is the Water Board that has the principal responsibility for approving the Project not DFG. As noted by the Appellants, the EIS/EIR explains why the Water Board is the lead agency. (AOB at p. 26.) Prior to FERC issuing any approval for the modification of a hydroelectric facility, the Water Board must issue the requisite 401 water quality certification. (33 U.S.C. § 1341.)

Under section 401 of the Clean Water Act, a state may impose conditions on a project in order to certify that the project protects beneficial uses and meets water quality as specified in the Basin Plan. (*S.D. Warren Co. v. Maine Board of Env'l. Protection* (2006) 547 U.S. 370 [unanimously upholding state's jurisdiction to regulate FERC hydroelectric facilities under section 401 of the Clean Water Act].) The Water Board is the only state entity that has the statutory authority to perform the section 401 functions, as it is the primary state entity with the necessary expertise in developing and implementing state-wide water quality policy. (See also *id.*

pp. 385-386 [the water quality issues subject to 401 water quality certification are defined broadly, and include barriers to fish passage].)

The Water Board, along with nine regional water quality control boards, is charged with the primary responsibility for the coordination and control of water quality to achieve a unified and effective water quality control program. (Wat. Code, § 13001.) The Water Board is tasked with regulating water quality of the state taking into consideration all demands including the beneficial uses of waters within the state. (Wat. Code, § 13000.) Beneficial uses “[i]nclude but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.” (Wat. Code, § 13050, subd. (f).) Additionally the Water Board has approval authority over the transfer of water rights. (Wat. Code, §§ 1250 et seq.)

DFG is charged with the protection and conservation of fish and wildlife resources of the state. (Fish & Game Code, § 1600.) DFG is a trustee agency as defined by CEQA as “[a] state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California.” (Pub. Resources Code, § 21070; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359.)

Here DFG approved conditional funding for the Project, but its jurisdiction over the Project is narrower than the Water Board’s. Thus, in this Project, the Water Board has broader jurisdiction over water transfers, water quality, and all its beneficial uses, including fish habitat, while DFG has more specific jurisdiction over fish and wildlife resources. In the FERC process, an applicant is only required to consult with DFG and FERC may approve an amendment contrary to DFG’s recommendations. (18 C.F.R. § 4.38.) State laws such as Fish and Game Code section 5937 (requiring that fish be maintained in good condition below and around a

dam) are preempted by the Federal Power Act unless applied through a water quality certification pursuant to section 401 of the Clean Water Act.²⁰

Appellants rely primarily on *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892 for the proposition that the Water Board was “misclassified” as the lead agency. (AOB at p. 26.) In *Planning and Conservation League*, the court held that in the environmental review of the Monterey Agreement, the Department of Water Resources should have been the lead agency rather than the Central Coast Water Agency—one of the 29 water contractors to the Agreement.²¹ (*Planning and Conservation League, supra*, at p. 898.) The court reasoned that it was the Department of Water Resources that had a state-wide perspective and expertise on the supply of water in California, as opposed to the Central Coast Water Agency, a local water agency. (*Id.* at p. 907.) Since the Central Coast Water Agency did not have the principal

²⁰ The United States Supreme Court has ruled that the Federal Power Act preempts state law. The state may not require a permit for a project already licensed by FERC except for proprietary rights to water. (See *First Iowa Hydro-Electric Cooperative v. FPC* (1946) 328 U.S. 152; *California v. FERC* (1990) 495 U.S. 490; *Sayles Hydro Associates v. Maughan* (9th Cir. 1993) 985 F.2d 451.) On the other hand, states must ensure compliance with state water quality standards and other requirements of state law through the 401 water quality certification process. (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700.)

²¹ The Monterey Agreement was a statement of principles slated to be integrated into an omnibus revision of the long-term contracts between the State Water Project/Department of Water Resources, and 29 water contractors governing the supply of water to the contractors. (*Planning and Conservation League, supra*, 83 Cal.App.4th at p. 897.)

The Department of Water Resources is a major developer of water resources in the state and it builds and operates the State Water Project. The State Water Project is designed as a complex system delivering water to water agencies throughout the state. (*Id.* at pp. 898–899.)

responsibility for carrying out or approving the implementation of the Monterey Agreement, it was not the proper lead agency. (*Id.* at p. 904.)

Appellants' reliance on *Planning and Conservation League* is not only misplaced but the case supports the Water Board as the lead agency here. Unlike in *Planning and Conservation League* where a local agency with limited jurisdiction was selected as lead agency, in this case, the state agency with the broadest jurisdiction was selected. The Water Board has state-wide authority to protect the beneficial uses of water including waters utilized for power production. It is the Water Board that has ultimate approval authority of the project through the 401 water quality certification process—a necessary prerequisite before FERC can consider approving a license amendment for the Hydroelectric Facilities. Without the Water Board's approval there would be no Project.

Appellants also rely on *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960. In *City of Sacramento*, the court found that the Department of Food Agriculture (DFA) had broader statutory authority than the Central Valley Regional Water Quality Control Board in a matter concerning application of pesticides to rice. Thus DFA was the proper lead agency for CEQA purposes. DFA, the court reasoned, was concerned with the "total environment" when rice pesticide plans were developed. (*City of Sacramento, supra*, 2 Cal.App.4th at p. 973.) In making this determination, the court recognized that under CEQA the lead agency is the public agency "with the greatest responsibility for supervising or approving the project as a whole." Usually this is the agency with the broadest governmental powers." (*Id.* at p. 971, citing Cal. Code Regs, tit. 14, § 15051, subd. (b)(1).)

Just as DFA in the *City of Sacramento* case, the Water Board is the state agency with the greatest responsibility for approving the Project as a whole for the reasons discussed above. And contrary to Appellants'

unsupported assertions, DFG is not the entity with the primary responsibility for the Project—Reclamation is. (AOB at p. 31.)

Appellants take issue with the trial court's ruling that even if selection of the Water Board as lead was in error, there was no prejudice as it did not preclude informed decision-making or informed public participation. (AOB at p. 31.) Appellants' claim that the public was robbed of DFG's expertise and its full and complete environmental review is contradicted by the evidence in the administrative record. (AOB at pp. 31–32.) As detailed above, DFG, a trustee and responsible agency, was an active and crucial participant in the Project. The CEQA consultation process, by which trustee and responsible agencies participate in the environmental review, is the manner in which all agency expertise is brought to bear, not in the lead agency designation process. Lead agency designation is based on implementation or approval authority, not expertise. (Pub. Resources Code, § 20167.)

Additionally, the Water Board has a substantial claim to be the lead agency pursuant to CEQA Guidelines section 15051 subdivision (d) which provides: "(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency." (Cal.Code Regs., tit. 14 § 15051(d).) Here, as Appellants have noted, the parties to the EIS/EIR agreed that the Water Board should be the lead agency for the Project. (AOB at p. 26.)

Because the two agencies agreed that the Water Board would be lead agency, perhaps the ultimate issue is whether the Water Board has a substantial claim to having the greatest approval responsibility. As discussed above the answer is yes.

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Appellants assert that the phasing of the Project supports their claim that DFG was the proper lead agency. (AOB 31-31.) However, this claim too is without merit.

II. BOTH THE WATER BOARD AND DFG PROPERLY RELIED ON THE FINAL EIS/EIR AS PHASING OF THE RESTORATION PROJECT DID NOT REQUIRE A SUBSEQUENT OR SUPPLEMENTAL EIR.

Appellants claim that either DFG or the Water Board should have prepared a subsequent or supplemental EIS/EIR based on their assertion that the phasing of the Project produced a new project leading to new significant impacts not examined in the EIS/EIR. (AOB at p. 34.) Appellants assert that this alleged “new project” was not fully disclosed to the public, thus depriving the public its right to comment, many mitigations measures are not enforceable, and the Project will not be completed after Phase 1 due to lack of funding, and DFG failed to repeat certain portions of the EIS/EIR. (AOB at pp. 32–58.) As shown below and as the trial court found, Appellants failed to sustain their burden of proving any additional CEQA document was required or that any of their other claims regarding phasing have merit.

A. No Additional CEQA Documents Shall Be Prepared Unless the Circumstances Delineated in Public Resources Code Section 21166 and the CEQA Guidelines Are Present, Which They Are Not in this Case.

Public Resources Codes section 21166 specifies when an additional CEQA document is required:²²

When an environmental report has been prepared for a project to this division, no subsequent or supplemental environmental impact report shall be required by the lead or any responsible agency, unless one or more of the following events occurs:

²² ROA at pp. 04249-04250.

Comment Author Minasian, Meith, Soares, Sexton, & Cooper, LLP.
Agency/Assoc. Siskiyou County Water Users Assoc.
Submittal Date November 21, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|------------------|---|-------------------|
| AO_LT_1121_039-1 | <p>A response to this comment is not required under CEQA or NEPA because the comment does not raise a significant environmental issue (CEQA Guidelines Section 15088; NEPA Regulations 40 CFR 1503.4). However, California Department of Fish and Game (CDFG) as lead agency complied with the criteria for identifying a lead agency as required under CEQA (CEQA Guidelines Section 15051.) Additionally, the comment author discusses the Battle Creek Salmon and Steelhead Restoration Project as an example where the State Water Resources Control Board acted as CEQA lead agency, but the circumstances under which the State Water Resources Control Board acted as CEQA lead agency for that project were different than for the Proposed Action.</p> | No |
| AO_LT_1121_039-2 | <p>The comment constitutes legal argument and does not raise or address a significant environmental impact of the project, so no response is required under the CEQA (CEQA Guidelines, sec. 15088). The signing of the KHSA and KBRA was not a “project” under CEQA and did not require CEQA compliance since the agreements did not bind or commit any public agency to any course of action; rather, they establish a process whereby certain actions will be analyzed. The KHSA itself requires California to conduct CEQA review of Facilities Removal (KHSA, sec. 3.2.5). In the event of an Affirmative Determination, California must still make an independent decision whether it concurs with the Secretary’s determination (KHSA, sec. 3.3.5). The CDFG as lead agency complied with the criteria for identifying a lead agency as required under CEQA (CEQA Guidelines, sec. 15051).</p> <p>Both the KBRA and the KHSA simply identify the general nature of improvements and activities that may occur in the future, and set the framework for the Proposed Action that is addressed in the Klamath Facilities Removal EIS/EIR. That point is made in the very first paragraph of the Draft EIS/EIR (p. 1-1, Chapter 1 Introduction). Neither agreement commits public agencies to a definite course of action with respect to improvements and activities that may ultimately come to fruition. In fact, to the contrary, both agreements specifically state that nothing in the either agreement is intended or shall be construed to be a pre-decisional commitment of funds or resources by public agency party. Nothing in either agreement is intended or shall be construed to predetermine the outcome of any regulatory approval or other action by a public agency party necessary under applicable law in order to implement either agreement – see, specifically, Article 1.6.6 of the KHSA and Article 2.6.6 of the KBRA. Additionally, both agreements specifically contemplate the need for NEPA and CEQA review of improvements and activities that may ultimately occur – see, specifically Article 3.2 of the</p> | No |

Comment Author Minasian, Meith, Soares, Sexton, & Cooper, LLP.
Agency/Assoc. Siskiyou County Water Users Assoc.
Submittal Date November 21, 2011

| Comment Code | Comment Response | Change in EIS/EIR |
|------------------|---|-------------------|
| AO_LT_1121_039-3 | <p>KHSA and Article 2.2.7 of the KBRA.</p> <p>Portions of the KBRA that are reasonably expected to occur in the future even without implementation of the KHSA, are included as part of the No Action/No Project Alternative in the Draft EIS/EIR.</p> <p>As described on p. 2-13 and 2-14 of the Draft EIS/EIR, the No Action/No Project Alternative would only include the portions of the KBRA that are ongoing resource management activities. These resource management actions could receive additional funding and could be expanded or accelerated through the KBRA; however, they were started or under consideration before the KBRA was developed and would move forward even without the KBRA. Therefore, the No Action/No Project Alternative includes the following resource management actions:</p> <ul style="list-style-type: none"> • Williamson River Delta Project • Agency Lake and Barnes Ranches Project • Fish Habitat Restoration • Climate Change Assessment <p>As defined by CEQA Guidelines, existing conditions are the conditions at the time of the Notice of Preparation (NOP). The NOP was released on June 21, 2010; therefore existing conditions are described for this time period and only include actions that have been implemented by June 2010.</p> | No |
| AO_LT_1121_039-4 | <p>As described under NEPA regulations Section 1502.13, the Purpose and Need "shall briefly specify the purpose and need to which the agency is responding in proposing the alternatives including the Proposed Action." CEQA regulations Section 15124 describes that a clearly written statement of objectives helps the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR. "The statement of objectives should include the underlying purpose of the project" (CCR Title 14, Chapter 3, Article 9 Section 15124). The purpose and need and CEQA project objectives were developed to reflect the underlying goals and objectives included in the KHSA and KBRA. The Lead Agencies set forth a reasonable statement of purpose and need and project objectives regarding why the action was proposed and what it hoped to achieve. Moreover, the Lead Agencies formulated a reasonable range of alternatives to meet the purpose and need/project objectives.</p> <p>Master Response ALT-2 Elimination of Alternative 10 - Fish Bypass: Bogus Creek Bypass and Alternative 11 - Fish Bypass: Alternative Tunnel Routing from Detailed Study.</p> | No |
| AO_LT_1121_039-5 | <p>In the court case cited in the comment, the El Dorado County Water Agency and El Dorado Irrigation District were seeking to</p> | No |

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| AO_LT_1121_039-6 | <p data-bbox="537 422 1292 537">purchase Project 184 from Pacific Gas & Electric. The concerns regarding inadequate information were related to water levels in the reservoirs in Project 184, which were directly part of the project description.</p> <p data-bbox="537 569 1292 1062">The Proposed Action in the EIS/EIR consists of removal of the Four Facilities, and the EIS/EIR includes detailed hydraulic and hydrologic modeling of the existing conditions and potential future conditions with and without the action alternatives. Actions within the upper watershed are part of the KBRA, which is a connected action. The KBRA analysis, however, is programmatic, as described in Section 15168 of the CEQA Guidelines, because the details of this plan are unknown and not reasonably foreseeable at this time. A program-level document is appropriate when a project consists of a series of smaller projects or phases that may be implemented separately. These programs will likely undergo detailed development and analysis in the future. Therefore, it is anticipated additional NEPA and CEQA analyses for the suite of actions contained in KBRA will be tiered as appropriate to this EIS/EIR. Additional information regarding actions in the upper watershed would be analyzed in additional detail, if necessary, in these subsequent documents.</p> <p data-bbox="537 1098 1292 1299">P. ES-46 through ES-48 and Table ES-7 describe the “areas of known controversy” raised by the public and agencies during development of the EIS/EIR.</p> <p data-bbox="537 1213 1292 1299">The two areas of controversy the comment author has identified have been added to the list of areas of controversy (Table ES-7) in the EIS/EIR.</p> | Yes |