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**State Water Resources Control Board**

SEP 03 2019

Mr. Mark Bransom, Chief Executive Officer  
Klamath River Renewal Corporation  
2001 Addison Street, Suite 317  
Berkeley, CA 94704

**Lower Klamath Project  
Federal Energy Regulatory Commission Project No. 14803  
Siskiyou County, California and Klamath County, Oregon**

Dear Mr. Bransom:

**SUBJECT: DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION**

On September 4, 2018, the State Water Resources Control Board (State Water Board) received a request from the Klamath River Renewal Corporation (KRRC) for water quality certification (certification) pursuant to section 401(a)(1) of the Federal Clean Water Act (33 USC § 1341 et seq.) for the Lower Klamath Project (Project). Waterbodies associated with the Project include the Klamath River, Fall Creek, and tributaries currently submerged in Project reservoirs.

In taking a certification action, the State Water Board must review the application, all relevant data, and any recommendations of Regional Water Quality Control Boards, other state or federal agencies, and interested persons, and either: (1) issue an appropriately conditioned certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859). A certification may be issued if it is determined that there is reasonable assurance that an activity is protective of state and federal water quality requirements and that the appropriate review has been conducted to support certification and meet the requirements of the California Environmental Quality Act (CEQA). When a proposed project's "compliance with water quality standards and other appropriate requirements is not yet necessarily determined, but the application suffers from some procedural inadequacy (e.g., failure to ... meet CEQA requirements)," the State Water Board may deny certification without prejudice. (Cal. Code Regs., tit. 23, § 3837, subd. (b)(2).).

Since submitting its certification application on September 4, 2018, the KRRC has provided the State Water Board with several updates to its Project including, but not limited to: its July 29, 2019 *Responses to Independent Board of Consultants' Recommendations*; information on ice management at J.C. Boyle and offsite nighttime hauling; and an updated Aquatic Resource Measure 7 for Freshwater Mussels. Additional information is pending.

Additionally, the State Water Board is the CEQA lead agency for the Project. The State Water Board cannot issue a certification until the CEQA process is complete. On December 27, 2018, the State Water Board issued a draft environmental impact report for the Project, with the public comment period concluding on February 26, 2019. The State Water Board received approximately 2,500 comments.

The State Water Board issued a draft certification for public comment on June 7, 2018, and is considering changes to the draft certification in light of changes to the Project, comments on the draft certification, the draft environmental impact report, and comments on the draft environmental impact report. At this time, the State Water Board is unable to certify that the Project will comply with California water quality standards and other appropriate requirements of state law because of recent changes to the proposed Project requiring evaluation, the pendency of information requests, and the ongoing work necessary to comply with CEQA. The KRRC is hereby notified that the September 4, 2018, request for water quality certification for the Project is denied without prejudice, effective the date of this letter.

If you have questions regarding this letter, please contact Philip Meyer, Project Manager in the Water Quality Certification Program of the Division of Water Rights, at (916) 341-5369 or at [Philip.Meyer@waterboards.ca.gov](mailto:Philip.Meyer@waterboards.ca.gov). Written correspondence should be directed to:

State Water Resources Control Board;  
Division of Water Rights  
Water Quality Certification Program;  
Attn; Philip Meyer;  
P.O Box 2000;  
Sacramento, CA 95814-2000.

Sincerely,



Eileen Sobeck  
Executive Director

cc: Ms. Kimberley D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Mr. Tomas Torres, Director  
U.S. Environmental Protection Agency  
Region 9, Water Division  
75 Hawthorne Street  
San Francisco, CA 94105

Mr. Matthias St. John  
Executive Officer  
North Coast Regional Board  
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Interested Parties Mailing List

