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COUNTY OF SISKIYOU

Board of Supervisors

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February 7, 2012

VIA FAX 202-208-4561

Honorable Ken Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Re: Notice of Intent to File Suit Regarding the Secretarial Determination on the Future of the Klamath Project

Dear Secretary Salazar:

Based on your 2009 statement that the proposal to remove the Klamath River dams "will not fail" and the subsequent course of action that has been followed by the Department of the Interior to construct such an outcome, the County of Siskiyou is convinced legal action is necessary to challenge a decision that is contrary to science and the stated goals for Klamath River and which will be inimical to the interests of the people of Siskiyou County. If you do indeed press forward at this time and issue the Secretarial Determination, Siskiyou County intends to challenge the decision in federal court.

The County of Siskiyou has repeatedly voiced serious objections to both the processes and substance underlying your forthcoming determination. Given the steps that have yet to be taken to coordinate federal agency decision-making and actions with local governments on a government-to-government basis, as well as delays in completing mandatory elements of the Klamath Hydroelectric Settlement Agreement (KHSA), we do not see how you can possibly make a legally defensible determination by the March deadline.

Jim Cook	Ed Valenzuela	Michael Kobseff	Grace Bennett	Marcia H. Armstrong
District 1	*District 2*	*District 3*	*District 4*	*District 5*

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In previous correspondence we have been very clear about our objections to this process moving forward without the Department of the Interior (DOI), its agencies, and other federal entities fulfilling their statutory obligations to coordinate with local governments by considering and analyzing issues of local concern and attempting to reconcile, or at least minimize, inconsistent federal actions. Less than one year ago, President Obama issued Executive Order 13575, creating the White House Rural Council and pledging to coordinate and increase the effectiveness of federal engagement with local governments to address the needs of rural America. Complete disregard for coordination obligations by the Bureau of Land Management (BLM) and other federal agencies with respect to the Klamath agreements is not only contrary to the President's recent directives, but is also in violation of the Federal Land Policy and Management Act, the National Environmental Policy Act, and the Administrative Procedure Act, among other federal laws.

For example, the Klamath Hydroelectric Settlement Agreement, the Klamath Basin Restoration Agreement, and the attendant EIS/EIR identify a multitude of actions and responsibilities involving (or likely to involve) the Bureau of Land Management:

- The current FERC boundary encompasses large tracts of public land managed by BLM, including campgrounds and other public resources.
- In the larger area analyzed in the EIS/EIR, BLM manages public lands for recreation, open space, and forest and mineral resources.
- BLM currently manages lands near Copco 1 Reservoir and Copco 2 Dam.
- Below Iron Gate Dam, the Klamath River passes through lands managed by BLM.
- Most of the land along the J.C. Boyle peaking reach of the Klamath River is managed by BLM.
- Lands around the Keno Development will be transferred to DOI.
- BLM manages whitewater boating in various reaches of the river and boater access at various locations.
- BLM had issued conditions under Federal Power Act section 4(e) related to whitewater recreation and other protection, enhancement, and mitigation measures which would have been required under a new FERC license. DOI's support for the Klamath settlement agreement effectively withdraws the 4(e) conditions and advances a radically different management scheme for the river.

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- Scenic resources in the area are regulated in part by BLM Resource Management Plans.
- BLM has identified the section of the Klamath River between the Oregon-California state line and Copco Reservoir as being suitable and eligible for wild and scenic river status, creating an obligation on the part of BLM to protect that section of river against any adverse consequences of dam removal, such as reductions in water quality.

Many of these actions and responsibilities relate to – and potentially conflict with – policies and objectives specified in BLM's Resource Management Plans for the Redding, Klamath Falls, and Medford areas. As examples:

- The BLM objective for water quality is to ensure that all waters on public land meet or exceed federal and state water quality standards. The Klamath River is already identified as water-quality-impaired for a number of pollutants under Clean Water Act section 303(d), and the settlement agreement actions include additional negative impacts to water quality. In particular, the Klamath River is already listed by both the California State Water Resources Control Board and U.S. EPA as being impaired by sediment. Dam removal will not only release massive amounts of sediment that has already been retained behind the dams, but it will also eliminate the reservoirs' current function of allowing some of the Oregon sediment to settle out of the water column.
- The BLM plan for Horseshoe Ranch and Jenny Creek calls for allowing long-term natural restoration of riparian zones. A rapid reservoir drawdown will create a zone of habitat disconnection between the Klamath River and upper reaches of Jenny Creek.
- The BLM plan for the Upper Klamath River corridor calls for the protection of cultural resources. Drawdown of the reservoirs will cause further disruption to Native American burial sites and other cultural resources.
- Jenny Creek had been designated as eligible for Wild and Scenic status based on its scenic qualities. The BLM plan for the Jenny Creek area above Iron Gate Reservoir calls for maintaining <u>existing</u> scenic quality.
- Based on the Upper Klamath River being designated as eligible for Wild and Scenic status, the BLM plan calls for all public land within ¼ mile of normal high water along the southern bank to be managed to protect scenic values. Removal of the reservoirs will eliminate existing scenic values on abutting public

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lands and leave stretches of the river canyon with no views other than post-reservoir destruction and debris.

Regardless of whether BLM is ultimately determined to be taking actions that are inconsistent with existing Resource Management Plans or to be effectively amending its Resource Management Plans by way of participating in the Klamath settlement agreements, either one is a violation of the Federal Land Policy and Management Act. Also, by participating in such substantial changes in management of the Klamath River resources, BLM triggers an obligation under 43 U.S.C. 1712 to undertake the processes to coordinate the new management scheme with local government plans and policies.

Siskiyou County continues to be willing to work with the Department of the Interior, other federal agencies, and other Klamath River stakeholders to see that coordination requirements are addressed and that local issues are given proper consideration and attention before final decisions are made to approve the EIS/EIR and proceed with dam removal. We believe your only alternative will be to engage in similar processes following judicial review of your decisions. At this point in the Klamath process, it would be an unfortunate and tragic misstep for the settlement parties to force the courts to become involved as the only avenue of redress for the local government coordination issues, as well as for substantive violations of the Endangered Species Act, Clean Water Act, and Federal Power Act, among other things. A turn toward litigation will only add substantial delay, unnecessary expense, and tremendous uncertainty to a final Klamath River solution.

Beyond the coordination issue, there are also other fundamental obstacles that make issuance of the Secretarial Determination premature. The KHSA requires the following actions, among other things, to be completed prior to any determination:

1. **Enactment of federal legislation to implement the settlement.** The target date to enact implementing legislation for the KHSA was in May 2010. Legislation was not even introduced in Congress until November 2011, and to date no action has been taken in either the Senate or the House of Representatives to advance any bill. This prerequisite to the Secretarial Determination obviously has not been satisfied.

2. **State of California authorization of funding.** Section 4.1.2.A. requires the State of California to authorize $250,000,000 to implement the settlement. At the time the settlement agreement was signed, such funding was included in a bond measure that was set to go before California voters in November 2010. However, in August 2010, the California Legislature postponed consideration of the bond measure until

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November 2012 based on concerns that it would not secure voter approval in the midst of a state budget crisis and national recession. The ability to pass such a bond measure in the current economic climate continues to be a concern to the bond's supporters, and it is an open question whether the bond will remain on the November 2012 ballot.

Aside from the bond measure, California has taken no other action to authorize the funding required by the KHSA and, with the State of California facing chronic, multi-billion-dollar annual deficits, has little financial capability to do so.

The issue of the California bond funding is also tied to the federal legislation, since alternatives to the bond funding may not be considered as part of the determination in the absence of enacted federal legislation to implement the settlement.

3. **Agreement on terms to transfer the Keno facility.** Section 3.3.4.B. requires the Secretary and PacifiCorp to agree upon acceptable terms for transfer of the Keno facility prior to the Secretarial Determination. We have seen no indication that such terms have been agreed upon and the terms of such an agreement are not included in the draft EIS/EIR, which characterizes the transfer as being addressed as a "connected action" but also only "programmatically." The EIS/EIR simply claims to assume, for purposes of analysis, that the transfer has been completed, despite the fact that the terms and details of such a transfer have not been agreed upon. However, transfer of the Keno facility is inextricably tied to dam removal and implementation of the KHSA. Not only has this prerequisite to the Secretarial Determination not been satisfied, but there also appears to be an improper deferral (or outright circumvention) of adequate NEPA analysis.

Additionally, section 3.2.5 of the KHSA contemplates the possibility of the Secretarial Determination being made at a time before environmental review is complete, although there is a clarification that the settlement does not <u>require</u> that the determination be made before such time. The State of California, wisely, has made clear that it will not concur in an Affirmative Determination until it has completed its review under the California Environmental Quality Act. We hope you will recognize the ultimate futility of attempting to take such a significant action without full compliance with the National Environmental Policy Act and other applicable laws. The Secretarial Determination should only be made after the final environmental impact statement is complete and the public has had sufficient time to review its analysis, conclusions, and responses to comments.

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We urge you to set aside any impulses to make a premature decision on the Secretarial Determination. We also request that you provide 30 days advance formal notice to the other settlement parties, as required by the KHSA, if you realize it is best to defer your determination beyond the March deadline.

Very truly yours,

Grace Bennett

Grace Bennett, Chair
Siskiyou County Board of Supervisors

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Wally Herger
Congressman Mike Thompson
Congressman Greg Walden
Congressman Tom McClintock
Senator Doug LaMalfa
Assemblyman Jim Nielsen
Senator Ron Wyden
Senator Jeff Merkley
Governor Jerry Brown
Governor John Kitzhaber
Secretary John Laird
Director Charlton Bonham, California Dept. of Fish and Game
John Bezdek, Solicitor to Secretary Salazar
Greg Norton, President, RCRC
Mike McGowan, President, CSAC
Siskiyou County Board of Supervisors
Klamath County Commissioners
Humboldt County Board of Supervisors
Del Norte County Board of Supervisors
Trinity County Board of Supervisors
Modoc County Board of Supervisors
Dean Brockbank, PacifiCorp