

March 27, 2009

Matt St. John
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

**Re: Comments on Review Draft Water Quality Restoration Plan for
Klamath River Basin in California**

Dear Mr. St. John:

Thank you for the opportunity to comment on the Review Draft Water Quality Restoration Plan for the Klamath River Basin in California: Draft Scoping for Total Maximum Daily Load (TMDL) Implementation (Scoping Document). On behalf of its constituent districts and Klamath Project farmers and ranchers, the Klamath Water Users Association (KWUA) appreciates your consideration of the following comments on the Scoping Document.

Load Allocations

The Scoping Document provides an overview of preliminary load allocations for the Stateline (i.e., for discharges outside of the Regional Board's regulatory authority), the Klamath Hydroelectric Project, the Iron Gate Hatchery, the Klamath River Tributaries, and the Watershed-wide implementation. (Scoping Document, p. 8.) The Scoping Document does not clearly explain what load allocations might be assigned to nonpoint sources throughout the Klamath Basin or how the interstate consistency concerns raised in the Scoping Document will be addressed in identifying allocations. We understand that the Klamath River load allocations and the supporting calculations are currently undergoing peer review, and that the North Coast Regional Water Quality Control Board (Regional Board) is not seeking comments on the load allocations at this time. (Scoping Document, p. 8).

We intend to participate in the public review process of the Draft TMDL scheduled for summer 2009, and plan to comment on the load allocations and supporting science at that time. However, we have the following preliminary concerns based on the overview provided in the Scoping Document:

- *Sound Science.* The load allocations must be based on sound science and appropriately account for natural background conditions. (40 C.F.R. § 130.2(g).)
- *Reservoirs as Sources.* The Scoping Document suggests that the TMDL will assign load allocations to reservoirs within the Klamath Hydroelectric

Project. (Scoping Document, pp. 13-14.) We question whether or the extent to which a TMDL may identify a reservoir as a source of discharge.

- *Stateline Loads.* Oregon Department of Environmental Quality (ODEQ) has not completed a TMDL for the Klamath River or Lost River in Oregon. Moreover, ODEQ has not circulated a public draft document identifying the proposed loads for discharges above the Stateline. The Scoping Document, however, assumes that the Regional Board's Klamath River TMDL will assign certain loads to the Stateline. (Scoping Document, p. 10 ["[i]t is appropriate for the Regional Water Board to account for these anticipated upstream load reductions in Oregon when developing the TMDLs for the segments that are downstream in California"].) The Scoping Document further assumes full implementation of the loads assigned to the Stateline. (Scoping Document, p. 10 ["[f]or ease of reference, these anticipated reductions in Oregon-source loads are identified in this TMDL in California as load allocations that reflect anticipated water quality at the Oregon/California stateline once the Oregon TMDLs are fully implemented"].) The Regional Board's apparent reliance on loads that Oregon has not assigned or implemented is premature and unjustified. (Scoping Document, p. 11.)
- *Unachievable Water Quality Objectives.* The TMDL process should begin with an evaluation of whether the water quality objectives are attainable. Thus, before assigning the loads to achieve water quality objectives, the Regional Board should recognize that the Basin Plan water quality objectives for the Klamath River are not achievable due to natural or historic conditions. (Basin Plan, p. 3-6.00.) The current quality of Upper Klamath Lake makes the downstream water quality objectives simply unattainable.
- *Compliance with Porter-Cologne.* Development of any TMDL and implementation measures must be in compliance with the Porter-Cologne Water Quality Control Act. (Cal. Wat. Code, § 13000 et seq. (Porter-Cologne).) Porter-Cologne requires reasonableness in all actions of the Regional Board and the consideration of economics, water quality that can reasonably be achieved, and other public interest factors. (Cal. Wat. Code, §§ 13000, 13001, 13241.)

Natural Background

In embracing the assumption that Klamath River water at the Stateline will be dramatically improved (i.e., 84% reduction in total phosphorus and 60% reduction in total nitrogen), the Scoping Document appears to disregard the natural or historic background quality of the Klamath River as the water passes the Stateline from Oregon.

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Upper Klamath Lake does not meet water quality standards due to natural conditions. The underlying assumptions in the Scoping Document ignore the background condition of the lake, and do not take into account existing science addressing the natural condition.

Implementation Measures

KWUA will continue to provide information throughout the Regional Board's process to establish the implementation measures, but KWUA offers the following initial comments on the proposed implementation measures:

- *Consistency.* KWUA appreciates the Regional Board's attempt to coordinate the implementation of the various pending and completed TMDLs in the Klamath Basin. KWUA believes that implementation of the Klamath River TMDL should be coordinated with the implementation of other TMDLs to ensure the requirements are consistent and feasible, and likely to lead to attainment of reasonable water quality objectives. In order to ensure consistency in implementation, however, the Regional Board must work on parallel tracks with Oregon to ensure that the load allocations are consistent and that the public has an opportunity to review the science behind both TMDLs. If Oregon and California adopt TMDLs in reliance on low quality or conflicting science, implementation of the TMDLs will not be possible.
- *Premature Assumptions.* The Scoping Document acknowledges that successful implementation of the Regional Board's Klamath River TMDL will hinge on the implementation (and, in some cases, development) of various other TMDLs within and outside¹ of California. (Scoping Document, pp. 9-13, 22-31.) Attempting to implement a TMDL that assumes upstream waters will satisfy water quality objectives is premature where there are no implementation mechanisms in place to ensure that the loads assigned in other TMDLs will be met.
- *Centralized Treatment Plant.* The Regional Board's suggested solution of a treatment plant on Upper Klamath Lake (e.g., Scoping Document, p. 44) cannot be considered without looking seriously at potential temperature effects as well as the financial feasibility of construction and operation of the plant.

¹ Notably, the Regional Board cannot attempt to "regulate" non-California discharges. For example, California does not have jurisdiction to regulate Klamath Straits Drain and, as such, should not be proposing implementation measures directed at Straits Drain. (Scoping Document, pp. 25, 27-28.) KWUA does, however, support evaluation of any and all reasonable means to improve water quality in the Klamath River, including matters that relate to Klamath Straits Drain.

- *Pollutant Trading Program.* The Scoping Document suggests that the Regional Board is considering use of a pollutant trading program whereby downstream dischargers would “implement measures for pollution control upstream to offset their contributions to water quality impairments.” (Scoping Document, p. 7.) KWUA does not fully understand how the Regional Board intends to carry out this proposed trading program, but notes that the Regional Board should not offer a trading option in lieu of adequately modeling alternative load reduction scenarios and establishing technically appropriate and equitable allocations.
- *Algae Harvesting Proposal.* The Scoping Document proposes to carry out an algae harvesting program to produce biofuels and fertilizer, despite the overwhelming scientific evidence finding no ability to produce biofuels out of the algae present in the Klamath River Basin. (Scoping Document, p. 44.) TMDL implementation measures must be supported by science. KWUA discourages any further study of algae harvesting to mitigate water quality issues because this proposal is contrary to existing science. There is also concern over the financial feasibility of construction and operation of such projects.
- *Wetland Filtration.* The Scoping Document proposes centralized treatment through wetland filtration. (Scoping Document, p. 44.) Any wetland filtration effort must carefully consider temperature effects. If a wetland filtration area were to be created, it is vital that it does not affect water allocations to the Klamath Reclamation Project, and that the cost associated with such a project be carefully considered in respect to its effectiveness in mitigating water quality concerns.
- *Stakeholder Involvement.* The Scoping Document suggests that the Regional Board will pursue a new Memorandum of Agreement with ODEQ and the United States Environmental Protection Agency Regions 9 and 10 related to the implementation of the Klamath River and Lost River TMDLs. (Scoping Document, p. 13.) Further, the Scoping Document suggests that the Regional Board may consider adoption of a waste discharge requirement or waiver of waste discharge requirement to implement loads allocated to irrigated agriculture and nonfederal grazing lands within the Klamath River Basin. (Scoping Document, pp. 37, 39.) Stakeholders must be involved in any attempt to develop a new Memorandum of Agreement as well as any Regional Board process to devise a “WDR or waiver of WDR” program for irrigated agriculture or nonfederal grazing lands.

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Timeframes for Compliance

The Regional Board requested estimates of timeframes for compliance. (Scoping Document, p. 1.) However, the Regional Board acknowledges that successful implementation of the Klamath River TMDL for California hinges upon implementation of TMDLs assigned to the tributaries in California, as well as the adoption of a TMDL and implementation plan for the upstream waters in Oregon. (See, e.g., Scoping Document, pp. 9-13, 22-31.) Moreover, the Scoping Document does not provide the science behind the preliminary load allocations, and appears to ignore relevant science on the natural background conditions. As such, it is impossible to evaluate for compliance with the proposed load allocations. In light of the complexities and challenges involved, KWUA recommends the Regional Board pursue a phased approach to implementation.

Miscellaneous Issues

The Scoping Document identifies loading associated with Klamath Straits Drain. (Scoping Document, p. 25.) We are concerned that it does not reflect that Straits Drain water quality is itself a function of various factors, including Upper Klamath Lake water quality and sources on the refuges. In addition, it does not reflect that diversion and use of water in the Klamath Reclamation Project removes pollutants from the system. We understand that the Bureau of Reclamation is furnishing data to the Regional Board on this subject.

In addition, KWUA wishes to clarify the Regional Board's understanding of the function of D Pumping Plant. The Scoping Document states that D Plant keeps farmland on Tule Lake National Wildlife Refuge dry. (Scoping Document, p. 25.) This is incomplete. In the late 1920s, the water body now known as Tule Lake barely existed. Water had been removed from virtually all the land in the Tule Lake Basin through Clear Lake and Gerber Dams and the Lost River Diversion Channel. There were, however, increased return flows from upstream areas as well as seasonal runoff and Lost River flows that led to variable flooding, depending on the conditions. One purpose of D Plant was and is stabilizing water levels in Tule Lake Sump, which, along with diking and other system improvements, worked well. This protects private land as well as land in the Tule Lake National Wildlife Refuge. There was also an associated water quality purpose: there were concerns regarding salinization in the Tule Lake Basin that were addressed by providing the salt discharge at D Plant. Additionally, prior to the construction of D Plant, Lower Klamath National Wildlife Refuge was largely desiccated, so much so that dust storms were common and fire was a problem. D Plant provided a major source of water, which of course benefits the waterfowl and other wildlife of Lower Klamath National Wildlife Refuge. D Plant is also a critical feature in the overall efficiency of water use in the Klamath Project.

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Existing Klamath Basin Efforts to Improve Water Quality

The Regional Board has requested additional information about past or current efforts to improve water quality in the Klamath River Basin. (Scoping Document, p. 1.) KWUA constituents have been instrumental in improving water quality throughout the Klamath River Basin. For example, through the federal Environmental Quality Incentives Program (EQIP) and matching funds, KWUA constituents invested nearly 67.5 million dollars in water efficiency improvements throughout the Klamath River Basin over the last 10 years.

KWUA also urges the Regional Board to integrate its efforts, to the maximum extent possible, with the work of watershed stakeholders, including the proposed Klamath Basin Restoration Agreement (KBRA). The KBRA holds the promise of collaboration in addressing water quality issues as well as many other matters of importance to basin stakeholders. We will welcome dialogue with the Regional Board staff regarding these issues.

Thank you again for your consideration of these comments. We expect to provide additional comments upon release of the Draft TMDL. Please contact me with any questions. We would be happy to schedule a meeting with Regional Board staff to discuss these comments and activities KWUA constituents have undertaken to improve water quality in the Klamath River Basin.

Sincerely,



Belinda Stewart

Outreach and Program Coordinator

cc: KWUA Board of Directors
Greg Addington, KWUA Executive Director
Steve Kirk, ODEQ