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RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

COMMENT SHEET

Environmental Impact Statement on the Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River

Thank you for your interest in the Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River. Please complete the appropriate sections of this form to provide scoping comments. Written comments can be submitted at the Scoping Meeting, faxed to (530) 275-2441, e-mailed to sha-slo-klamath-LTP@usbr.gov, or mailed to:

Paul Zedonis, Bureau of Reclamation, Northern California Area Office,
16349 Shasta Dam Blvd., Shasta Lake, CA 96019

Comments should be received by August 20, 2015, to be considered in defining the scope of the Draft Environmental Impact Statement. For more information about the project, visit <http://www.usbr.gov/mp/kbao/docs/long-term-plan-protect-lower-klamath-04-2015.pdf>.

Name: Destiny McKinnon E-Mail: [Redacted]

Organization and Address: [Redacted] Hoopa, Ca, 95546

Phone (optional): [Redacted]

- I would like to stay informed about the progress of the project. Please include my name on the mailing list.
- I prefer electronic communication.
- I prefer paper mailings.

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AUG 14 '15

BUREAU OF RECLAMATION
NORTHERN CA AREA OFFICE

CODE	INT.	DATE
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100		

Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

Well first ill start with im not very old but ive seen lots of people in my tribe suffer because of the government is just taking our water like I cant just go to your house and take something of yours so why can you just come take a big part of our lives away OUR river is OURS

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Classification	EVO-6.06
Project	CUP
Control No.	15021536
Folder No.	1057268

Document 1307

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We lived here for thousands of years on this
very river but you can just take it and give
it away to some farmers that chose to live in
a place with no water and we get punished
Farmers need to move or get different jobs
because we were here first and not only us
but our fish did you ever care when 1,000's of
fish were killed or did you like it or something
because it seems like your trying to do it again
plus its animal cruelty witch is illegal but
of course you get away with it. In conclusion its
not just water to us but its OUR LIFE!

Please fold, staple, stamp, and mail.

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Name: Destiny McKinnon E-Mail: [REDACTED]

Organization and Address: [REDACTED] Hoopa CA 98541b

Phone (optional): [REDACTED]

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I'll start by trying to explain our huge problem
to you but just no im holding back alot of
emotion because I dont feel that you care so just
listen our River is our life it is so important
to us its the heart of our religion and
a home to not only us but to our fish that

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that you single handly killed
and are killing it makes me
actually verry upset! 1,000's
OF fish are going to die IF
we dont start changing the
way you are working things
I NEED TO BE HERO

3

I dont want my grandkids
or even kids to not go the
river that me and all before
me swam fish and did triditons
in why cant you understand
that this war is repeating
and im not giving up!
if I where to relate to
anyone it would be martin
luther king Jr. Yes I feel
that strongly responceable
to this river I love it
its my family think of
someone taking parts of
one of your love ones yes it
hurts! in conclusion I love
my river and want it to last

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Name: Chuy Gabriel E-Mail: _____

Organization and Address: _____

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

We need our water a lot more than farmers.

We need our water for our traditional dances, for

our traditional foods. Everything in our culture

needs water, so taking our water is the same

thing as taking our culture.

FREEDOM TO REDIGON

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Farmers want water for money.

MONEY or LIFE? We need the water to live

There are other alternatives for getting water, like ~~filtering~~ filtering water ~~from~~ from the ocean

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Name: Carina Peterson E-Mail: [REDACTED]

Organization and Address: NDN Center R (Fed) Sovereignty Project
P.O. Box 428
Hoopa, CA 95546

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

The river is ours and it's been ours forever. I'm not allowed to go into someone's house and just take their stuff, so why do they get to come and take our water? Why do you think you have that option? Farmers want water for money. Money or life, we need the water to live. There are other alternatives for getting water, like filtering water from the ocean. We need water for drinking fish, ceremonies, and fires. It seems like you are trying to kill our culture, our way of life, and our lives. We can't live without our culture.

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We are repeating events of the past. We've had these fights in the past and we're having the same fights today. The bears need fish and the fish hawks need fish. IT'S NOT JUST US, it's our whole ecosystem. All the animals need the water. You need to listen to our tribe and our scientists who have done their own research in Hoopa!

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Name: hi'Ge:ch Wilson E-Mail: [REDACTED]

Organization and Address: NDN Center P.O. Box 428 Hoopa, CA 95546

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We need water for our fish, bears, birds, ceremonies, and fires. Our
history is repeating and repeating and repeating because of you.
You keep trying to take our water away from us. It is
our water. It belongs to us. We've been here since time an the
farmers think they have a right to take our water
because they've been farming for "5 or 10" years.

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What makes you think you can just come into our home
 and take what's ours? Maybe you should just relocate
 All of the farms because there in dry areas! Listen
 to our voices, listen to our calls. Give us our rights. Let
 the water come home. Let nature sooth it in once again.
 Let our ecosystem keep our water. Keep what we once had.
 What will always be ours...

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Name: Megan Baker E-Mail: [REDACTED]

Organization and Address: R(Ed) Sovereignty Project, NDN Center
P.O. Box 428
Hoopa, CA 95546

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

Hoopa is a very special & sacred place with a way of life that
has a right to exist. You cannot disregard Native nations. They
predate this "United States of America" & limiting the water supply
to the Trinity River is an act that tries to undermine the
Hoopa nation. I may not be from Hoopa, but knowing my own Choctaw
nation's history with the United States, I know that this is not

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new. We will not allow the disregard for Native/Hupa
sovereignty continue. We have voices that will be heard; rights
that will asserted, & ways of life that will continue
despite the attempts to extinguish them. Hupa/Native people are
alive & well & we will always fight.

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Name: Sara Chase E-Mail: 

Organization and Address: R(Ed) Sovereignty Project, NDN Center
Po Box 428 Hoopa, CA 95546

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

The river is so much more than a body of water that fish
swim in. It is our bloodline. It is our place of ceremony and
cleansing. If we have no more river than we have no more spirit.
We have been fighting this uphill battle against the farmers since
the first arrival of the settlers. The US needs to back up
our right to religious freedom if they truly do believe in

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their constitution. The farmers need water to meet their bottom
line we need the water to continue living. Do you really want to
choose money over life. If meeting farmers needs is so vital then
I'm sure you can find a way to subsidize their crops during
drought years. It is not just the Hupa people or the fish that
are at stake with this river, but the entire ecosystem. Pay
attention to the science given to you by the tribes they know the
river and they know what they are talking about. By ignoring
them you are perpetuating the colonial legacy of your ancestors
and saying we are just dumb savages. Plain and simple we
need this water.

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Name: Noah Ramage E-Mail: 

Organization and Address: R(Ed) Sovereignty Project and also the
NDN Center P.O. Box 428
Hoopa, CA 95546

Phone (optional): 

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The plan as it stands now is not acceptable.
The Hoopa Valley Reservation is entitled to its fair
share of water, which its people use for ceremonies
and to continue their way of life. As my friend
put it, it would be the equivalent of tearing
down your church to ~~build a new~~ build a new

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commercial farm. Stop thinking just about the
money and start thinking about the rights of
the indigenous people to continue their way of life.
Anything else is not good enough.

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Name: Bobby Campbell E-Mail: _____

Organization and Address: R(Ed) Sovereignty Project
NDN Center P.O. Box 428 Hoopa, Ca 95546

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

Give the Hupa people our river back [redacted] 1
We need water to live. Money or life.

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Organization and Address: R(Ed) Sovereignty Project
NDN Center P.O. Box 428 Hoopa CA 95546

Phone (optional): _____

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We need water to live. Would the farmers want to
live without good water.

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Name: Dellavin McLoey E-Mail: _____

Organization and Address: R(Ed) Sovereignty Project, NDN center

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

The river is very important to us Native ~~people~~
who live along the river. We need more water
for our fish to thrive and we also need more water
to carry on some of our traditions. The river
~~isn't~~ should belong to anybody, we belong to it. All of it.

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Name: Dennis Young E-Mail: _____

Organization and Address: R (Ed) Sovereignty Project
NDN Center P.O Box 428
Hoopa, CA 95546

Phone (optional): _____

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Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

Give us indians back our water. The water is our
LIFE!!! WE NEED WATER!! The farmers dont need our
water. Listen to our ^{Hoopa} tribal people.

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Name: Michelle Crowfeather E-Mail: [REDACTED]

Organization and Address: R(Ed) Sovereignty Project, NDN Center
P.O. Box 428
Hoopa, CA 95546

Phone (optional): _____

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Do you think it's okay to go into someone else's home and take something that's not yours? Of course not, so why do you think you can come and take water away from Hoopa? You may ~~good~~ think 'it's just water' but to Hoopa & the entire community, here, water is life. ^{One person} ~~doesn't~~ just need it, the fish need it, the bears need it - we

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all need it to survive. ^{Hoop} ~~our~~ ^{+ traditions} culture ~~are~~ imbued with water,
 we cherish it, respect it. What do you do with it?
 Waste it, give it to farmers who only need water
 because of money. Their greed is being prioritized
 above life, above the Hoopa community. This needs
 to be stopped. It's unacceptable. This plan is one of many
 steps taken against ^{Indigenous} ~~our~~ culture, ~~our~~ heritage, ~~and~~ ^{and} ways
 of life. You need to listen to ~~the~~ tribe and to the
 scientists who have done their own research. in Hoopa. End
 the tyranny that has become the structure of oppression,
 that makes it okay to take away our ways of life, of
 our ancestors, our heritage.

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San Luis & Delta-Mendota Water Authority



P.O. Box 2157
Los Banos, CA 93635
Phone: (209) 826-9696
Fax: (209) 826-9698

Westlands Water District



3130 N. Fresno Street
P.O. Box 6056,
Fresno, CA 93703-6056
Phone: (559) 224-1523
Fax: (559) 241-6277

August 20, 2015

Via E-mail

Mr. Paul Zedonis
Northern California Area Office
Bureau of Reclamation
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Re: Comments Letter in Response to Notice of Intent to Prepare a Draft Environmental Impact Statement for the Long-Term Plan To Protect Adult Salmon in the Lower Klamath River, Humboldt County, California

Dear Mr. Zedonis:

The San Luis & Delta-Mendota Water Authority (“SLDMWA”) and Westlands Water District (“Westlands”) (collectively, the “Public Water Agencies”) submit these comments in response to the Bureau of Reclamation’s (“Reclamation”) Notice of Intent to Prepare a Draft Environmental Impact Statement for the Long-Term Plan To Protect Adult Salmon in the Lower Klamath River, Humboldt County, California, published in the Federal Register on July 14, 2015 (“NOI”).

Reclamation is currently at the scoping stage of the National Environmental Policy Act (“NEPA”) process. The Council of Environmental Quality (“CEQ”) regulations define scoping as “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 C.F.R. § 1501.7. . As part of the scoping process, Reclamation must “[d]etermine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact assessment.” 40 C.F.R. § 1508.25. The Public Water Agencies hope to work in a cooperative manner with Reclamation to ensure that the planned environmental impact statement (“EIS”) includes an appropriate range of action alternatives, and a thorough analysis of potential environmental impacts. The preliminary information in the NOI and in the *Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River* (Apr. 17, 2015) (“Draft Plan”) necessarily limits the ability of the Public Water Agencies to provide responsive comments here. Therefore, the Public Water Agencies request an opportunity to provide additional comments when and as Reclamation provides additional information about the proposed action and alternatives.

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I. THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY AND WESTLANDS WATER DISTRICT

SLDMWA is a joint powers authority, established under California's Joint Exercise of Powers Act. Gov. Code, § 6500 et seq. SLDMWA is comprised of 28 member agencies, 26 of which hold contractual rights to water from the federal Central Valley Project ("CVP"). SLDMWA member agencies have historically received up to 3,100,000 acre-feet annually of CVP water for the irrigation of highly productive farm land, primarily along the San Joaquin Valley's Westside, for municipal and industrial uses, including within California's Silicon Valley, and for publicly and privately managed wetlands situated in the Pacific Flyway. The areas served by SLDMWA's member agencies span portions of seven counties encompassing about 3,300 square miles, an area roughly the size of Rhode Island and Delaware combined.

Westlands Water District is a member agency of SLDMWA. Westlands is a California water district formed pursuant to California Water Code sections 34000 *et seq.* Westlands holds vested contractual water rights to receive water from Reclamation, through the San Luis Unit of the CVP, for distribution and consumption within areas of Fresno and Kings Counties. Westlands' total contractual entitlement for CVP water under this contract is 1.15 million acre-feet per year. In addition, Westlands holds 43,500 acre-feet of water entitlement in the form of contract assignments from other districts including Broadview Water District, Centinella Water District, Widren Water District, and Oro Loma Water District. Most of this CVP water supply is used for irrigation. Westlands encompasses approximately 600,000 acres, including some of the most productive agricultural lands in the world.

Each of these entities, their member agencies, their customers, and others within their service areas may experience significant adverse impacts as a result of actions that may follow from the Draft Plan. Accordingly, the Public Water Agencies believe it is vital that they participate actively in the NEPA review process, to ensure that the environmental and socioeconomic impacts its member agencies and customers could experience from any further water limitations are fully disclosed and analyzed, and that policy makers and the public be fully informed regarding the choices to be made. 2

II. LEGAL AUTHORITY FOR PROPOSED FLOW AUGMENTATION RELEASES

Reclamation's proposed flow augmentation releases lack legal basis. The Draft Plan lists "general authorities" on which the Draft Plan is purportedly based, but includes no explanation of why these statutes support augmenting flows for fish in the Lower Klamath River. *See* Draft Plan § 5.1. The cited statutes do not authorize augmentation releases. The 1955 Act does not authorize the flow augmentation releases. The first proviso of Section 2 of "the 1955 Act is limited in geographical scope to the Trinity River basin and therefore does not provide [Reclamation] with authority to implement the [augmentation releases], which were designed to improve fisheries conditions in the lower Klamath River." *San Luis Delta-Mendota Water Authority v. Jewell*, 52 F.Supp.3d 1020, 1063. The second proviso of Section 2 of the 1955 Act is for consumptive use by downstream water users, and therefore, does not provide authority for the proposed fishery flow augmentation releases. 3

Further, the Trinity River Basin Fish & Wildlife Management Act of 1984 does not authorize flow augmentation releases because it only authorizes non-flow measures such as construction of “facilities” to rehabilitate fish habitat. The Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1996 does not authorize flow augmentation releases either, as it does not change the scope of the 1984 Act’s authorization, which is directed at non-flow measures. The Fish and Wildlife Coordination Act requires coordination to evaluate impacts to fish and wildlife from proposed water resource development projects, but does not provide independent authority for flow augmentation releases. Section 3406(b)(1) of the Central Valley Project Improvement Act (“CVPIA”) does not authorize the flow augmentation releases either, because it solely authorizes a program focused on natural production of anadromous fish in Central Valley rivers and streams, a category which does not include salmon in the Trinity or Klamath River basins. *See* CVPIA §3403(a) (defining anadromous fish). Finally, the reference to the tribal trust obligation is misplaced. The tribal trust obligation does not confer additional authority on federal agencies; agency authority comes from statute. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585, 589 (1952); *Louisiana Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 374 (1986). Also, it does not obligate the government to take action beyond complying with applicable statutes and regulations. *U.S. v. Jicarilla Apache Nation*, 131 US. Ct. 2313, 2318 (2011); *Gros Venture Tribe v. United States*, 469 F.3d 801, 810 (9th Cir. 2006).

Reclamation can, however, accomplish its goal of increasing flows in the lower Klamath River by purchasing or exchanging water to compensate for the use of CVP water. While the Draft Plan briefly mentions that Reclamation has the authority to purchase water to support the augmentation releases, it fails to examine purchasing water from willing CVP water users as an approach that would avoid unlawful water supply impacts to CVP water users. See Draft Plan at 24 (mentioning acquisition of water for augmentation flows “in excess” of the 50,000 acre-feet first released in reliance on the 1955 Act). Purchasing water to support the augmentation releases is not a new or novel approach. In fact, it is the approach Reclamation took in the first two years of making augmentation releases. In 2003 and 2004, Reclamation ensured that the SLDMWA’s members, including Westlands, would not suffer water supply losses as a result of the augmentation releases, by exchanging or purchasing water. See Draft Plan at 6-7 (describing water exchange with the Metropolitan Water District of Southern California to supply water for 2003 and 2004 augmentation releases). This early approach recognized that Reclamation needed to acquire water to support augmentation releases and avoid water supply impacts to CVP water users from making use of CVP water in the lower Klamath River. Any alternative examined in the EIS that depends on flow augmentation releases must be limited to water that is acquired by willing sellers.

III. NEPA’S REQUIREMENTS

NEPA has a number of requirements that must be carefully followed in order to be legally compliant with the statute and implementing regulations. We address several of these obligations below.

1. Purpose and Need

An EIS must contain a statement of “purpose and need” which briefly specifies “the underlying purpose and need to which the [lead] agency is responding in proposing the

alternatives including the proposed action.” 40 C.F.R. § 1502.13. The purpose and need statement “is a critical element that sets the overall direction of the process and serves as an important screening criterion for determining which alternatives are reasonable.” Reclamation’s NEPA Handbook at 8-5. This purpose and need are important because they will inform the range of alternatives ultimately selected for analysis in the EIS and “[a]ll reasonable alternatives examined in detail must meet the defined purpose and need.” *Id.*

The Department of the Interior’s NEPA regulations provide that in “some instances it may be appropriate for the bureau to describe its ‘purpose’ and ‘need’ as distinct aspects. The ‘need’ for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ‘purpose’ may refer to the goal or objective that the bureau is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.” 43 C.F.R. § 46.402(a)(1).

Here, the proposed action is “to increase lower Klamath River flows . . .” 80 Fed. Reg. at 41061. The stated purpose of the action is to “reduce the likelihood, and potentially reduce the severity, of any Ich epizootic event that could lead to an associated fish die-off in future years.” *Id.* To achieve this purpose, Reclamation proposes to increase lower Klamath River flows to reduce danger to fish “due to crowded holding conditions for pre-spawn adults, warm water temperatures, and presence of disease pathogens.” *Id.* Reclamation’s stated “need” is “based on the past extensive fish die off in 2002,” thirteen years ago. *Id.*

The purpose and need underlying the proposed action have not been substantiated scientifically. There is no convincing evidence that flow augmentation releases are needed to prevent or are likely to prevent a fish die-off akin to what occurred in 2002. The NOI identifies crowded holding conditions, water temperature, and presence of pathogens as contributing to the 2002 fish deaths, but Reclamation does not provide convincing evidence that the flow augmentation releases are an effective mechanism for contending with these factors. There is not scientific support for the conclusion that the proposed flow augmentation releases will achieve Reclamation’s stated purpose. 5

The factors that could cause an Ich outbreak that will result in a large-scale fish die-off like in 2002 are not well understood. For example, in 2014 high levels of Ich infection were detected, with the most significant Ich infection in the upper Klamath River. Notwithstanding that none of the 2014 flow augmentation releases from the Trinity Reservoir impacted the upper Klamath River, there was no fish die-off in the upper Klamath River. *See* September 13, 2014 Draft Technical Memorandum from Yurok Tribal Fisheries Program: Klamath River Division re: Update on Prevalence and Severity of “Ich” Infections in Klamath River Adult Chinook Salmon. Therefore, the 2014 flow augmentation releases were not the controlling factor in preventing a fish die-off in 2014. 6

Reclamation’s consideration of alternatives is necessarily premised on the statement of purpose and need, but Reclamation ignores that it lacks legal authority to make these releases and Reclamation presumes that increasing flows will reduce the risk of Ich and fish death, without convincing supporting data or analysis. Reclamation should substantiate its stated purpose and need. 7

2. Affected Environment

To fulfill its NEPA duties, Reclamation must also provide a description of the affected environment. Reclamation is required to “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. This discussion should include “a general description of the physical environment of the project area and a map defining the project area, the associated ecosystem(s), and the affected environment.” NEPA Handbook at 8-13. This general description “should include not only the physical setting for the project, but it should describe those features—geographic, cultural, recreational, or unique or significant wildlife or vegetation—that distinguish the affected area from other areas.” *Id.* Here, for the proposed flow augmentation releases, the affected environment includes conditions within the service areas that are dependent upon water deliveries from the CVP. Reclamation must ensure that the EIS includes those service areas within the affected environment.

3. No Action Alternative

An EIS must “[i]nclude the alternative of no action.” 40 C.F.R. § 1502.14(d). “Because the no action alternative is the basis to which all other alternatives are compared, it should be presented first, so the reader can easily compare the other alternatives to it.” NEPA Handbook at 8-8. According to Reclamation’s NEPA Handbook, “[n]o action’ represents a projection of current conditions and reasonably foreseeable actions to the most reasonable future responses or conditions that could occur during the life of the project without any action alternatives being implemented.” (*Id.*) Moreover,

[t]he no action alternative should not automatically be considered the same as the existing condition of the affected environment because reasonably foreseeable future actions may occur whether or not any of the project action alternatives are chosen. When the no action alternative is different from the existing condition, as projected into the future, the differences should be clearly defined. Differences could result from other water development projects, land use changes, municipal development, or other actions. “No action” is, therefore, often described as “the future without the project.”

NEPA Handbook at 8-8.

In an EIS, the action alternatives are compared to the no action alternative to measure the impacts of each action alternative. *See, e.g., Center for Biological Diversity v. U.S. Dept. of the Interior*, 623 F.3d 633, 642, (9th Cir. 2010) (“A no action alternative in an EIS allows policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action. The no action alternative is meant to ‘provide a baseline against which the action alternative[]’ ...is evaluated. *Id.* A no action alternative must be considered in every EIS. *See* 40 C.F.R. § 1502.14(d).”).

The NOI does not reference a “no action” alternative. Reclamation must ensure that the EIS thoroughly describes the “no action” alternative and the scientific basis for projected conditions under the “no action” alternative. For example, if Reclamation concludes that, absent flow augmentation, a disease outbreak and fish die-off would be more likely, Reclamation must explain the scientific basis for that conclusion and disclose any uncertainties regarding projected conditions.

4. Proposed Action

Under the CEQ regulations, a notice of intent is supposed to briefly describe “the proposed action and possible alternatives.” 40 C.F.R. § 1508.22. Reclamation’s NEPA Handbook provides that “[t]he proposed action should be defined in terms of the Federal decision to be made.” NEPA Handbook at 8-6. The NOI states that:

The proposed action is to increase lower Klamath River flows to reduce the likelihood, and potentially reduce the severity, of any fish die-off in future years due to crowded holding conditions for pre-spawn adults, warm water temperatures, and presence of disease pathogens as the likely major factors contributing to the adult mortalities. The proposed increased flows would be provided primarily from releases of water stored in Trinity Reservoir, with the potential for some of the flows to be derived from the Klamath River above the confluence with the Trinity River depending on existing hydrologic and related environmental conditions.

80 Fed. Reg. 41061.

The Proposed Action presumes that increased flows will avoid adult mortalities that will otherwise occur, but that conclusion is not scientifically supported. The NEPA process should be used to explore alternatives for achieving the purpose, not begin with the premise that more flow is the answer. The NOI does not specifically identify the amount, timing, or duration of these increased flows or how the increased flows will effect crowded holding conditions for pre-spawn adults, warm water temperatures, or the presence of disease pathogens. The Draft Plan includes minimal additional information on what exactly the proposed action will include, vaguely acknowledging that “criteria will evolve” for determining when to issue “preventative flows” or “emergency flows.” Draft Plan at 17-18. The Draft Plan also acknowledges that volumetric limits on flows are needed, but no such limitations have been identified or evaluated to date. Draft Plan at §4.2. Reclamation should identify and evaluate fully all of these factors in the EIS.

The lack of specific information in the NOI and Draft Plan regarding the proposed action limits the ability of the Public Water Agencies to provide responsive comments here. When and if Reclamation provides specific information on those topics, the Public Water Agencies request that Reclamation provide them an opportunity to provide additional comment.

5. Action Alternatives

The Public Water Agencies are also concerned about the type and range of alternatives that will be analyzed in the EIS. The alternatives analysis is the “linchpin” of an EIS. *Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693, 697 (2d Cir. 1972). In the alternatives analysis, federal agencies must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§ 4332(2)(E); 4332(2)(C)(iii). Agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why any alternatives were eliminated from detailed consideration. 40 C.F.R. § 1502.14. Reasonable alternatives are those that are “technically and economically practical or feasible and meet the purpose and need of the proposed action.” 43 C.F.R. § 46.420.

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According to its own policies, Reclamation must develop and assess appropriate and reasonable alternatives for actions that may significantly affect the environment, integrate the Endangered Species Act into its analyses, and use the best available environmental data, including acquiring additional appropriate and reasonable data to support its decision-making. Reclamation Manual Policy No. ENV P03 (1998) *available at* <http://www.usbr.gov/recman/env/env-p03.pdf>, last visited August 17, 2015. Determining which alternatives are to be considered and analyzed is vitally important in shaping the EIS, and the scope of alternatives is directly related to the underlying purpose and need for which the action is being proposed. 40 C.F.R. § 1502.13. It is the purpose and need for the proposed action that dictates what alternatives should be developed for analysis. *See League of Wilderness Defenders-Blue Mountain Diversity Project v. Bosworth*, 383 F. Supp. 2d 1285 (D. Or. 2005). The Department of Interior’s Regulations for Implementation of NEPA explain that “[t]he range of alternatives includes those reasonable alternatives that meet the purpose and need of the proposed action, and address one or more significant issues related to the proposed action.” 43 C.F.R. § 46.415.

The EIS must identify and discuss a reasonable range of alternatives to the proposed action. The Draft Plan refers to “non-flow” alternatives in passing, claiming that such an alternative would not be acceptable. Draft Plan at 13-15. However, Reclamation does not describe or analyze a “non-flow” alternative with any specificity. The Draft Plan does acknowledge that non-flow alternatives should be evaluated and that additional scientific review and analysis is necessary to complete this evaluation. Draft Plan ¶ 4.3.2. It is critical that the EIS examine a non-flow alternative, particularly to address significant issues related to releasing CVP water for the flow augmentation releases.

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As explained above, Reclamation can only make flow augmentation releases if it acquires the necessary water from willing sellers. The discussion below, of alternative flow augmentation releases, is premised on Reclamation acquiring the necessary water, rather than taking CVP water for an unauthorized CVP purpose.

Reclamation’s evaluation of alternatives in the EIS should include the following:

(a) Minimum Flow Augmentation Release With Acquired Water. Reclamation should include an alternative that addresses the minimum flows that Reclamation concludes are

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necessary to meet Reclamation’s purpose, which will have the benefit of minimizing or mitigating the environmental impacts discussed later in these comments, including the impacts on the CVP water and power contractors. Any such releases must be made with additional water Reclamation has acquired for willing sellers, and not from CVP resources.

(b) Proposed Action without Emergency Flows. This alternative will eliminate both the uncertainty in developing and implementing “emergency” flow criteria as well as the proposal to double the amount of flow under emergency conditions. Reclamation proposed this doubling of flows in 2014, yet the Court in *San Luis & Delta-Mendota Water Authority v. Jewell*, 969 F. Supp. 2d 1211, 1225 n. 7 (E.D. Cal. 2013) expressly noted that “there appears to be no scientific basis for [the flow doubling] part of the [emergency release] proposal.” Doubling of flows compounds environmental impacts, including those to CVP water and power users, without identified benefits. Reclamation should evaluate an alternative without the emergency flow component. This alternative would include releases made with water Reclamation has acquired from willing sellers.

(c) Adjustment of ROD Flows. Reclamation is required to consider “potentially reasonable alternatives beyond its own jurisdiction” and to consider the “jurisdiction of other agencies (Federal and otherwise) when determining what reasonable alternatives should be considered.” NEPA Handbook at 8-9; 40 C.F.R. § 1502.14(c). To this end, Reclamation should consider an alternative that alters ROD flows under CVPIA Section 3406(b)(23). Although Reclamation cannot change the annual volume of releases, the ROD allows for adjustments to the release schedule within those annual volumes to respond to changing conditions and evolving scientific understanding. The ROD established an Adaptive Environmental Assessment and Management Program, to “recommend possible adjustments to the annual flow schedule within the designated flow volumes provided for in [the] ROD or other measures in order to ensure that the restoration and maintenance of the Trinity River anadromous fishery continues based on the best available scientific information and analysis.” Therefore, if Reclamation determines that late-summer and fall releases will benefit the restoration and maintenance of the Trinity River fishery, Reclamation can plan for making such releases within the annual volumes allowed under the ROD. The ROD allows the release schedule to be adjusted to best meet the needs of the Trinity River fishery.

(d) Alternatives that Address Protection of CVP Water and Power Contractors by Providing Replacement Water Supplies. When Reclamation dedicates CVP water for flow augmentation releases without purchasing or exchanging water to compensate for this use, it causes CVP contractors to incur the costs of CVP facilities and operations and constitutes a breach of contractual obligations. Reclamation should evaluate alternatives that will protect CVP water and power contractors by providing for Reclamation to acquire and provide replacement water to CVP contractors by replacement and exchange. Any such alternative must be based on Reclamation having legal authority to make the releases in the first place.

(e) Alternatives that Include Flow Augmentation Criteria that Address Impacts on CVP. Reclamation should consider alternatives that evaluate impacts that flow augmentation releases will have on CVP. Reclamation’s ill-defined and malleable “criteria” for issuing flow augmentation releases currently focus only on conditions that could potentially lead

to fish mortality. Draft Plan at 17. Reclamation should develop and evaluate alternatives that include criteria for flow augmentation releases that require Reclamation to consider impacts across the CVP prior to making releases and provide that Reclamation may opt not to make such releases due to those impacts, even in cases where Reclamation believes that there is a risk to fish mortality in the lower Klamath River. Consideration of these impacts on CVP necessarily include consideration of the impact of reducing flows in September and August east year. Any such alternative must be based on Reclamation having legal authority to make the releases in the first place.

(f) Alternatives to Address Impacts on Biological Resources, Including Cold Water Pool Management for Fish Species. Reclamation should consider alternatives that protect biological resources, including avoidance of impacts on cold water pool management and the resulting potential impacts to ESA-listed salmon species in the Sacramento River, which several different agencies have acknowledged. *See e.g.*, October 3, 2014 correspondence from William Stelle, Jr., Regional Administrator, National Marine Fisheries Service, to David Murillo, Regional Director, Bureau of Reclamation; *See* Draft Plan at 14. The EIS will also have to address the impacts to the listed species and other biota from the various alternatives evaluated. Reclamation also acknowledges “ecological concerns associated with deviating from a natural hydrograph,” but dismisses these concerns. Draft Plan at §3.1.3. Reclamation should address all impacts on biological resources in its alternatives in the EIS.

Some of the actions discussed above in the section on alternatives could potentially also function as mitigation measures. Other types of mitigation measures, including restoration of habitat, and reducing hatchery production to prevent overcrowding should also be explored.

6. Mitigation Measures

In addition to analyzing the impacts of all potential, feasible alternatives, the EIS must include a discussion of the “means to mitigate adverse environmental impacts.” 40 C.F.R. § 1502.16(h). Accordingly, the EIS must identify all relevant, reasonable mitigation measures that could alleviate a project’s environmental effects, even if they entail actions that are outside the lead or cooperating agencies’ jurisdiction. *See* “Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” No. 19b. Such measures must entail feasible, specific actions that could avoid impacts by eliminating certain actions; minimizing impacts by limiting their degree; rectifying impacts by repairing, rehabilitating or restoring the affected environment; reducing impacts through preservation or maintenance; and/or compensating for a project’s impacts by replacing or providing substitute resources. 40 C.F.R. § 1508.20. Any environmental effects that may occur as a result of implementation of these mitigation measures must also be disclosed and analyzed. In addition, the effectiveness of any mitigation measures in reducing such impacts must be determined, as well as how much those impacts will be reduced by any particular mitigation measure. *See South Fork Band Council of Western Shoshone of Nevada v. U.S. Dept. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

As with the identification and analysis of alternatives and project components, the development of mitigation measures has the potential to greatly reduce environmental impacts, including those to CVP contractors. Reclamation’s Draft Plan confirms that the 2012-2014 flow augmentation releases did “adversely impact” CVP water deliveries in 2014, but Reclamation

makes no firm commitment to mitigate those impacts. Draft Plan at 21, 24. Reclamation should commit to compensating CVP water and power users for impacts resulting from future flow augmentation releases, including any initial 50,000 acre-feet used for the flow augmentation releases (see Draft Plan at 24), to make CVP water users whole for the water supply impacts resulting from the uses of CVP water in the lower Klamath River. Reclamation should also mitigate impacts to CVP water users by obtaining and providing replacement water supplies, as discussed previously.

7. ESA Consultation and Coordination

Under 40 C.F.R. § 1502.25(a), “to the fullest extent possible” agencies must “prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by . . . the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.” Section 7 of the ESA requires all federal agencies to “consult with either the Fish and Wildlife Service or the NOAA Fisheries Service before engaging in any discretionary action that may affect a listed species or critical habitat.” *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1020 (9th Cir. 2012) (emphasis added); 16 U.S.C. § 1536(a)(2). The “may affect” standard for triggering ESA consultation is a relatively low threshold. *Cal ex rel. Lockyer v. U.S. Dep’t of Agric.*, 575 F.3d 999, 1018 (9th Cir. 2009).

In this case, prior augmentation releases have affected listed species and their critical habitat, and it is therefore likely that future releases “may affect” listed species or their critical habitat. Reclamation thus must conduct ESA consultation regarding the potential effects of the long-term plan’s augmentation releases on listed species. In the Draft Plan, Reclamation acknowledges that “reduced cold water pool volumes will require additional evaluation of effects to listed species; and these effects may be significant enough to require consultation under the ESA.” Draft Plan § 6.3.3. Reclamation further acknowledges that the species that could be adversely impacted include both Klamath River species such as coho salmon and Sacramento River basin species (*e.g.* winter run and spring run). *Id.* There is evidence that the augmentation releases will exceed the “may affect” threshold for ESA consultation, as there have been reports of high rates of mortality of juvenile winter run salmon in the upper Sacramento River due to high water temperatures in 2014, due in part, to past flow augmentation releases. *See e.g.*, October 3, 2014 correspondence from William Stelle, Jr., Regional Administrator, National Marine Fisheries Service, to David Murillo, Regional Director, Bureau of Reclamation; *see also* 2014 “Effects of Drought and CVP/SWP Operations on Fish” Powerpoint, U.S. Fish and Wildlife Service, California Department of Fish & Wildlife; National Oceanic Atmospheric Administration at Slides 9-15. Reclamation should thus perform ESA consultation before finalizing or implementing any long-term plan.

IV. EVALUATION OF POTENTIAL ENVIRONMENTAL IMPACTS OF ALTERNATIVES

The potential environmental impacts associated with implementing the proposed action and all alternatives must be evaluated in the EIS. Impacts occurring not only in the Delta and surrounding areas, but also in the service areas of water agencies that deliver Delta water to tens of millions of Californians and hundreds of thousands of acres of farmland must also be

analyzed. As cooperating agencies representing member agencies that have first-hand knowledge of the impacts of reduced Delta water deliveries, the Public Water Agencies can provide some of the specific information that will be needed for this analysis. We include the following information as an overview of the types of impacts to be evaluated, and other critical considerations and information that must be included.

1. Impacts to Specific Resource Categories

(a) Water Resources Generally, Including Groundwater. As discussed previously, the flow augmentation releases will have adverse impacts on CVP water supplies that Reclamation must evaluate. Given the value of and constraints on reliable water supplies in California, virtually any reduced deliveries of Delta water supplies to Public Water Agencies' member agency service areas will have demonstrable, dramatic, and undeniable environmental impacts. Lower export water deliveries translate directly into water losses for urban and agricultural users. Such reduced deliveries compel greater reliance by retail agencies and their customers on groundwater to meet demand not only in dry years, but in other year types when greater exported water deliveries are currently anticipated. In turn, reduced exports and deliveries during more year types and in greater quantities diminish the ability of water managers to replenish and store groundwater when water is available to do so.

These circumstances can, and likely will, lead to additional groundwater overdraft (pumping beyond an aquifer's safe yield) throughout the Public Water Agencies' service areas, particularly in agricultural areas. Reduced groundwater levels can also lead to land subsidence that can additionally damage water conveyance facilities and other infrastructure, as has been documented throughout the state.

Reduced ability to replenish ground and surface water reserves also adversely impacts the ability of water purveyors to store water for dry years and emergencies. As just one example, reduced water storage can be expected to render southern and central California increasingly vulnerable to having insufficient supplies to suppress wildfires or sufficient supplies to survive a severe earthquake affecting conveyance facilities or other catastrophic events. Reduced exports of Delta waters also results in increased reliance by retail water users and their customers on other limited and lower quality supplies, such as recycled water, that need to be blended with otherwater to make them available for beneficial use. Finally, any impacts to the ability of the CVP to facilitate water transfers, including transfers of non-project water, should be addressed. For example, Reclamation must evaluate and disclose whether an alternative imposes additional operational constraints that limit (from "no action" conditions) the time or frequency when such transfers could be accomplished. These are just a few of the dozens of potential impacts to water resources that will result from reduced export and delivery of Delta water supplies to the CVP service areas.

(b) Biological Resources, Including Fish, Wildlife, and Plant Species. Reduced Delta exports will impact biological resources dependent upon imported water from the CVP for their sustenance. Indeed, wetland and riparian areas across the state, including some national and local wildlife refuges, are maintained, in part, by imported water supplies from the CVP. The following of fields in response to the reduced availability of CVPwater supplies also increases

the proliferation of weeds and other invasive species. Invasive species can harbor disease, choke out native species, adversely affect transportation corridors, and clog irrigation canals.

(c) Land Use, Including Agriculture. Reduced CVP water deliveries will result in significant changes in land use, particularly in agricultural landscapes. As dramatically shown during the 2007-2010 period, reduced export water deliveries can and will increase fallowing of land across the Central Valley and elsewhere. Reduced water supplies can also cause shifts toward planting permanent crops that have diminished ongoing water requirements, but which also require watering year-in and year-out, thus diminishing future flexibility in water budgeting by precluding management options such as annual crop-shifting or fallowing. Reduced supplies and lower quality water can also impact the production of certain crops, as well as the yield of crops that are grown. The unavailability of project water also increases the costs to obtain supplemental water. Lost exports also negatively impact water management plans that are produced by water agencies as source documents for evaluating land use projects. As imported water supplies become less reliable, establishing firm water supplies sufficient to meet land use planning requirements becomes more difficult.

(d) Socioeconomics. Reduced CVP water supplies also cause socioeconomic impacts. In response to reduced water supplies, farmers fallow fields and this reduced agricultural productivity results in layoffs, reduced hours for agricultural employees, and increased unemployment in agricultural communities. Reduced agricultural productivity also has socioeconomic impacts for agriculture-dependent businesses and industries. In addition, unavailability of stable and sufficient water supplies reduces farmers' ability to obtain financing, which results in employment losses, due to the reduced acreage of crops that can be planted and the corresponding reduction in the amount of farm labor needed for that reduced acreage. Reduced water supplies and the resulting employment losses also cause cascading socioeconomic impacts in affected communities, including increased poverty, hunger, and crime, along with dislocation of families and reduced revenues for local governments and schools. In the urban sector, reduced supplies or increased supply uncertainty can cause water rates to increase as agencies seek to remedy supply shortfalls by implementing measures to reduce demand or augment supplies. Connection fees and other one-time costs for new developments may also increase and further retard economic development.

(e) Environmental Justice. Although the impacts from reduced water supplies will have significant impacts on people and farmland throughout the state, the hardest hit areas will be in predominantly poor and minority communities—especially in the Central Valley where employment losses and environmental effects will be the most prevalent. As a result, water export losses have the potential to disproportionately impact disadvantaged communities and persons.

(f) Water Quality. Reduced water supplies impact water quality by reducing water agencies' ability to blend lower quality water (e.g., from local groundwater or recycled water) with the higher quality CVP water, which is frequently needed to make the latter water sources beneficially usable. Increased pumping of local groundwater to offset export losses can adversely affect water quality by drawing poor quality or brackish water into higher quality groundwater basins. Increased reliance on groundwater for irrigation can also negatively impact

the water quality of surface water streams due to the leachates present in the groundwater that becomes stream runoff.

(g) Air Quality. Reduced CVP water supply deliveries can adversely impact air quality because land fallowing generally results in increased dust and particulate emissions. Additionally, increased air emissions will occur because of the greater amount of energy that is needed for groundwater well pumps to lift water from a lower depth due to the greater reliance on and depletion of groundwater reserves associated with reduced availability of export water supplies.

(h) Soils, Geology, and Mineral Resources. Reduced CVP water supplies impact soils, geology, and mineral resources because increased groundwater use results in soil subsidence due to reduced groundwater replenishment. In turn, greater deposits of salts that negatively affect soil quality occur as a result of relying more heavily upon lower quality groundwater sources. In addition, reduced agricultural planting and increased fallowing leads to greater topsoil lost to erosion.

(i) Visual, Scenic, or Aesthetic Resources. Aesthetics are impacted by reduced water supplies because resulting socioeconomic impacts from lost agricultural employment will affect urban decay in regions affected by resulting employment losses. Lower reservoirs and water levels in the upper watersheds, and barren and decaying farmland, will have negative aesthetic impacts. Increased reliance on groundwater can also negatively impact aesthetic resources by causing damage to infrastructure from land subsidence.

(j) Global Climate Change, Transportation, and Recreation. Reduced CVP water supplies and increased reservoir releases can also impact climate change due to the greater amount of energy and resulting emissions needed for pumping groundwater from greater depths, reductions in carbon uptake by plants, and changes in the timing and magnitude of project hydropower generation. Transportation can be impacted by greater impediments from blowing dust on fallowed lands, tumbleweeds, and bird-on-aircraft strikes. Recreation impacts are also likely to occur due to impacts on reservoir levels and upper watershed flows.

2. Comparison Among Alternatives

A major value of NEPA comes in the comparison that may then be made between the environmental effects of the no action alternative compared to the other alternatives. Alternatives can also be compared among themselves. In evaluating and comparing these action alternatives, NEPA requires that Reclamation discuss the level of uncertainty and conflicting information in the data used to develop the impacts analyses. Making this information available to the public and decision-makers will allow a fully informed decision to be made and provide clear explanation and accountability for that discretionary choice. Reclamation must, therefore, include in the EIS a comparison of the benefits and/or impacts of each alternative on all resource categories, in particular the impacts on CVP water supplies.

24

3. Cumulative Impacts

NEPA requires that an EIS also include an analysis and discussion of cumulative environmental impacts, which must discuss the likely long-term impacts from each alternative in conjunction with other reasonably foreseeable actions and future events. *See* 40 C.F.R. § 1508.7 (defining “cumulative impacts” as the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions”); 40 C.F.R. § 1508.8 (providing that “effects” of an action include direct, indirect, and cumulative impacts). Reclamation’s consideration of cumulative impacts should include evaluation of long-term impacts on CVP contractors as well as long-term cumulative impacts based on diminishing the cold water pool.

25

4. Disclosure and Discussion of Scientific Uncertainty and Data Gaps

Part of the value of the NEPA process is its requirement to disclose and discuss the relevance of conflicting, inconsistent data and unavailable or incomplete data. Past regulatory decisions taken without NEPA analyses have been made with an unjustified claim of certainty or necessity without acknowledgment of the significant uncertainty or imprecision that accompanied such actions. This obscures the true weight of the policy decisions set before the agency, and discourages honest and critical evaluation of policy options. Accordingly, when Reclamation is “evaluating the reasonably foreseeable significant adverse effects on the human environment in [the EIS] and there is incomplete or unavailable information,” it is required to “always make clear that such information is lacking.” 40 C.F.R. § 1502.22.

If, for example, there is incomplete or unavailable information regarding the effects of the proposed action and the alternatives, Reclamation must disclose and discuss this issue. However, “[e]very effort should be made to collect all information essential to a reasoned choice between alternatives.” NEPA Handbook at 8-16. At a bare minimum, if the relevant incomplete information “cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known,” Reclamation must include a statement in the EIS explaining the nature of such information, its relevance, a summary of existing credible scientific evidence, and Reclamation’s evaluation of potential impacts based on approaches or methods generally accepted in the scientific community. 40 C.F.R. § 1502.22(b).

As discussed previously, significant scientific uncertainty underlies Reclamation’s proposed action. There is no convincing evidence that flow augmentation releases are needed to prevent or are likely to prevent a fish die-off akin to what occurred in 2002. The NOI identifies crowded holding conditions, water temperature, and presence of pathogens as contributing to the 2002 fish deaths. But, the presence of these factors do not necessarily forecast a large-scale fish die-off, and indeed, in 2014 the presence of such factors did not lead to fish mortality in the upper Klamath River, even though no Trinity Reservoir flow augmentation releases impacted this portion of the Klamath River. *See* September 13, 2014 Draft Technical Memorandum from Yurok Tribal Fisheries Program: Klamath River Division re: Update on Prevalence and Severity of “Ich” Infections in Klamath River Adult Chinook Salmon. Reclamation fails to establish that the flow augmentation releases are an effective or necessary mechanism for contending with these factors.

26

5. Information Quality Act

The Information Quality Act (Public Law 106-554) and orders, regulations, and guidelines issued thereunder impose additional requirements on Reclamation that must be applied to this NEPA process. Reclamation recently issued its peer review policy to implement the mandate in the Office of Management and Budget's Bulletin and Guidelines that important scientific information "shall" be peer reviewed by qualified specialists before being used to inform a government decision ("IQA Policy"). Reclamation's IQA Policy requires peer reviews of all scientific information that is determined to be "influential scientific information" or "highly influential scientific assessments." The IQA Policy applies to NEPA documents:

This policy applies to all scientific information produced, used, or disseminated by Reclamation. This includes scientific information that, along with other factors, informs a policy or management decision. For example, this Policy applies to scientific components of an environmental document prepared pursuant to the National Environmental Policy Act that present a scientific evaluation or are otherwise based upon scientific information.

(Reclamation IQA Policy section 5(B)) The forthcoming EIS will likely qualify for peer review under Reclamation's policy either as a "highly influential scientific assessment" or an "influential scientific assessment" based on the level of controversy, potential for societal and resource impacts or implications, the degree to which the scientific information may be novel or precedent setting, and the clear and substantial impact on important public policies and private sector decisions that may be implicated. Accordingly, the Public Water Agencies urge Reclamation to be prepared to implement the IQA peer review policy.

27

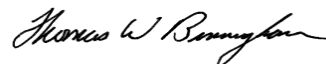
Conclusion

The SLDMWA and Westlands thank Reclamation for providing the opportunity to submit these scoping comments regarding preparing an EIS for the Long-Term Plan To Protect Adult Salmon in the Lower Klamath River.

Sincerely,



Daniel G. Nelson
Executive Director
San Luis & Delta-Mendota Water Authority



Thomas W. Birmingham
General Manager
Westlands Water District

August 18, 2015

Paul Zedonis
Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, California 96019

Dear Mr. Zedonis:

This is intended as my initial comment upon the Environmental Impact Statement on the Draft Long-Term Plan for Protecting Late Summer adult Salmon in the Lower Klamath River as presented in Arcata, August 5th this year.

First comment: your presentation failed to include references to source material. For example, information on Bureau of Reclamation flow releases which were based on annual precipitation divided into categories from extremely wet to extremely dry years. It was not clear upon what records the "normal precipitation" was based (i.e.: all records; or perhaps records of the preceding decade (which might therefore include drought years); or perhaps records excluding the present drought. There were no references listed which would shed light on the question but when I inquired I was told that I could lookup the information on the internet. It does not seem reasonable that I, a citizen should be responsible for referencing the basic information presented; I believe you are responsible for providing references in a readily accessible fashion. .

Second comment: your presentation failed to provide adequate access to presentation material in order to organize comments. For instance I was told that the posters and the PowerPoint presentation were not available as handouts nor were they available on the internet. This is not reasonable as it handicaps anyone who wishes to comment on the presentation.

Third comment: your presentation failed to consider historic salmon runs. The presentation was specifically concerning the "late summer adult salmon in the lower Klamath River or, apparently, only to Chinook salmon (*Oncorhynchus tshawytscha*) fall run. While the presentation included a poster showing four (4) annual runs: two Chinook runs (fall and spring) and two Coho salmon (*Oncorhynchus kisutch*) runs and briefly

mentions Steelhead trout (*Oncorhynchus mykiss*) it, nonetheless, fails to consider all historic salmon runs. Based on the book *Salmon Nation, People and Fish at the Edge*, 1999, Ecotrust, there were other salmon runs historically. For instance historically there was at least one annual run of Chum salmon (*Oncorhynchus keta*) in the Klamath-Trinity watershed; while allowing for some possible "strays" it is now extinct. Again, for instance historically there was at least one annual run of Pink salmon (*Oncorhynchus gorbusha*) in the Klamath watershed; while allowing for some possible "strays" it is now extinct. Again, for instance historically there was at least one annual run of Sockeye salmon (*Oncorhynchus nerka*) in the Klamath watershed; while allowing for some possible "strays" it is now extinct. Similarly, for instance historically there was at least one annual run of Steelhead trout (*Oncorhynchus mykiss*) which in the mid-Klamath watershed is now extinct; and which as of 1999 in the Trinity watershed was at risk of extinction. I believe this to be, a more complete and therefore more accurate list of salmon runs in the Klamath-Trinity watershed and is summarized in the following table.

Species	Common name(s)	Watershed (s)	Low or no risk of extinction	Of special concern for extinction	At risk of extinction	Extinct
<i>Oncorhynchus tshawytscha</i>	Chinook (King, Tyee, or Spring)	Klamath-Trinity	NA	~ 55%	NA	~ 45%
<i>Oncorhynchus keta</i>	Chum (Dog, Keta)	Klamath-Trinity	NA	NA	NA	100%
<i>Oncorhynchus kisutch</i>	Coho (Silver)	Klamath-Trinity	NA	~ 45%	~ 45%	~ 10%
<i>Oncorhynchus gorbusha</i>	Pink (Humpie)	Klamath	NA	NA	NA	100%
<i>Oncorhynchus nerka</i>	Sockeye (Red)	Klamath	NA	NA	NA	100%
<i>Oncorhynchus mykiss</i>	Steelhead	Klamath-Trinity	~ 20%	NA	~ 25%	~ 55%
Total			~ 3%	~ 17%	~ 12%	~ 68%

The table attempts to quantify historic runs by percentage of range which may or may not be misleading, however, it seems to make clear that the issues addressed in the public presentation are inadequate in conveying the totality of salmon impacts in the Klamath-Trinity watershed..

Fourth comment: the presentation failed to consider other economic species, for example Pacific lamprey or "cel" (*Entosphenus tridentatus*). 4

Fifth comment: the presentation failed to consider other species (flora, fauna, and other) and thus fails to address the ecosystem or bioregion as a whole.

Sixth comment: the presentation failed to consider global warming or its cause, the dominant global economy as presently constructed. 5

Seventh comment: you told the audience at the presentation in Arcata to the effect that public comments would only be considered if there were many comments of the same sort or a preponderance of opinion of the citizenry. I wish to point out that the value of a comment is independent of popular agreement or opinion. 6

Eighth comment: the presentation does not adequately address individual and cumulative impacts to Native (Native American) rights and interests. 7

Sincerely,



Ernest H. Stegeman

[REDACTED]
Eureka, California 95502

Sent by public FAX; do not respond by FAX

August 20, 2015

Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019
Attention: Mr. Paul Zedonis

Re: Draft Environmental Impact Statement on Long-term Plan for Protecting Late Summer Salmon in the Lower Klamath River

Mr. Zedonis:

First of all I would like to thank you for the presentation you provided in Sacramento on August 12, 2015. I was surprised when I received notice of these presentations that one was provided here, I very much appreciate having the information available locally instead of only in Oregon. 1

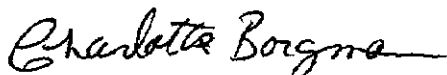
I provide the following comments, many of which I discussed with you at the above mentioned meeting.

Since I am from a farming family with land in the Klamath Basin, Oregon and in the Natomas Basin, California (Sutter County) water for crop irrigation becomes my main focus. I agree that fish and their habitat are important, but I urge the inclusion of the human dimension in regard to the long term planning for the protection of late summer adult salmon in the Lower Klamath River. If you recall, in 2001 no water was provided to the Klamath Basin irrigation districts which resulted in many unforeseen impacts on the while Klamath area among them: businesses closing due to lack of revenue, birds and small animals severely suffering including a dramatic die-off of fish. Were the fish more important than the livelihood of farmers, business owners, bald eagles and other critters? 2

The Bureau of Reclamation and other governmental agencies need to consider increased water storage capacity in the long term planning. With more water storage, additional flows could be provided not only for the late summer fish but also for irrigation and even recreation. Additional water storage is a key factor in providing for fish as well as farming which provides food for people and livestock and also provides for the economic support for local business. Increased surface water storage would mean an opportunity for more hydro-electric plants which provide low cost, pollution free energy. I understand the cost of hydro-electric installations is dramatic, but once "paid-for" they are among the lowest cost providers of electricity and can easily supply energy at peak use times, then cut back when not necessary. 3

Another factor regarding increasing the fish runs include the number for fish harvested off shore as well as the limits allowed for recreational fishing. If fewer fish were removed by commercial and recreational fishermen, there would be greater numbers in the streams and rivers.

Respectfully submitted,



Charlotte Borgman

Please keep me informed about the progress of the project via paper mailings.

Paul Zedonis
Bureau of Reclamation Northern California Office
16349 Shasta Dam Boulevard
Shasta Lake, California 96019

Aug.20, 2015

Dear Mr. Zedonis:

I am writing comments as part of the scoping on the Bureau of Reclamation’s Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River (the plan). I am writing as an individual and am providing additional comments as a member of the Klamath County, Oregon water advisory committee.

Your Aug. 12, 2013 Joint Memorandum of Understanding between the National Marine Fisheries Service and the Bureau of Reclamation (BOR) regarding minimum river flows on the lower Klamath violated the federal Administrative Procedures Act as there was no process for public comment before it was signed. Since this has already been implemented on an interim basis; it has the appearance that the final decision will be a foregone conclusion. This violates both the spirit and the letter of the NEPA Act.

1

Your scoping process for both the interim and long-term plan for protecting late summer adult salmon in the lower river was not advertised, as legally required in the Klamath Falls Herald and News, the newspaper of record, as required by NEPA, thus many residents were deprived of their opportunity to comment on this scoping process. It should therefore be started over.

2

The plan’s call for minimum water flows, with contributions from both the Trinity river and Upper Klamath Lake, ignores history.

3

The independent peer review by the National Academy of Sciences of the 2001 water shutoff to the Klamath reclamation project found that “Higher summer flows could be disadvantageous by further increasing water temperature and reducing thermal refugial habitat in the mainstem Klamath river.” (See Exhibit A).

Increasing warm water flows increases the number of side channels where harmful bacteria, which are naturally occurring, survive. These side channels act as a deadly trap for salmon and cause the bacteria to proliferate. If you have any scientific proof that an increase in warm water will benefit salmon; please make it known.

Additionally, historic water flows out of upper Klamath lake, before the dams, were no more than 350 cubic feet per second as measured between 1905 and 1917. (See Exhibit B). The BOR needs to return upper Klamath lake to historic outflow levels.

Furthermore, this plan increases water volumes in the river without identifying any tribal or government water rights to make river levels increase. To say that the BOR has a trust obligation to the tribes without identifying any tribal water rights to increase water flows; represents nothing more than an attack on private property rights that the federal government has no

4

jurisdiction over. This attempt to gain power over private property rights would represent a taking under the constitution. The BOR needs to identify how much compensation it plans to pay private water right holders for any harm caused by this plan.

Jerry Jones



Chiloquin, OR



A handwritten signature in cursive script that reads "Jerry Jones".

Exhibit A**Jerry Jones comments on the Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River.****1 BACKGROUND**

The purpose of the review is to evaluate and comment on the use of the best available scientific and commercial information in the National Marine Fisheries Service (NMFS) 'Draft Biological Opinion on Bureau of Reclamation's Klamath Project Operations 2008-2018' (KPO-BiOp). This biological opinion considers the effects of the Bureau of Reclamation's (Reclamation) Klamath Project Operations (the Project) on the listed threatened Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) and its designated critical habitat for the period 2008 to 2018. As instructed in the Statement of Work (SOW) (Annex 1), the review focuses on the technical aspects of the KPO-BiOp and does not consider whether NMFS's conclusions regarding the Project's potential to adversely modify or destroy critical habitat or jeopardize the continued existence or recovery of listed SONCC coho salmon are correct.

Due to water limitation to meet all the needs of humans, wildlife and fisheries resources, NMFS's 2001 and 2002 biological opinions on the effects of the Project, including water supplies to the Klamath Irrigation Project, have been subject to intense scrutiny and litigation. NMFS therefore sought a review from the National Academies Committee on Endangered and Threatened Fishes in the Klamath River Basin (NRC) on the strength of scientific support for the biological assessment and biological opinion. The NRC's interim report included the following conclusions, and these were confirmed in their final report on the NMFS's 2002 biological opinion:

- A lack of evidence indicating mainstem flows influences coho year class strength;
- The relative increase in available habitat for coho salmon in the mainstem Klamath River resulting from higher flows required an NMFS' Reasonable and Prudent Alternative to the Proposed Action were minor;
- A lack of scientific evidence in the Klamath River of a positive relationship between mainstem Klamath River flows and coho smolt survival; and
- Higher summer flows could be disadvantageous by further increasing water temperature and reducing thermal refugial habitat in the mainstem Klamath River.

NMFS also sought a peer review on its Central Valley Project and State Water Project Operations, Criteria and Plan Biological Opinion (OCAP-BiOp) from the CalFed Bay-Delta Authority Science Program (Cal-Fed) and the Center for Independent Experts (CIE). The NMFS's Science Centre then consolidated these reviews to develop recommendations and guidance for the development of future NMFS biological opinions (Lindley *et al.* 2006). The NRC and Science Centre Reviews provide the background for the Terms of Reference (ToR) to this review.

The itemized tasks for this review are specified as follow:

1. Read "NMFS' Draft Biological Opinion on Bureau of Reclamation's Klamath Project Operations 2008-2018" with a focus on the effects analysis.
2. Consider additional scientific information as necessary.
3. Conduct an independent peer review and complete an independent peer-review report addressing each task in accordance to the Terms of Reference with a copy each sent

Exhibit B

Jerry Jones comments on the Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River.

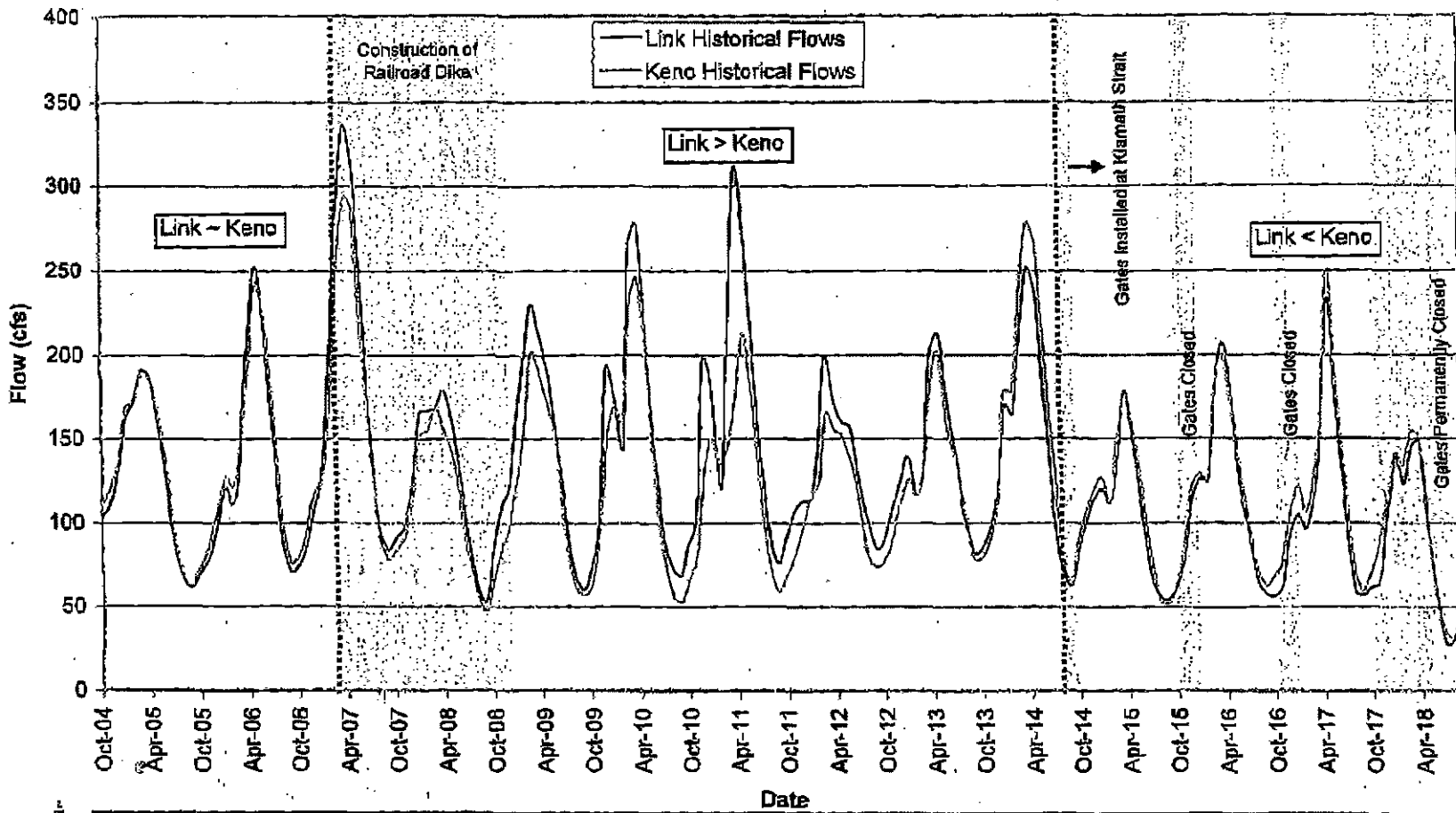


Figure 1. Historical flows at the Link and Keno stations for 1904-1918. Historical flows for the Link and Keno stations are plotted with descriptive notes that identify important time periods when watershed-altering events took place in the early 1900's. Note that three distinct flow patterns can be identified and correspond with physical changes to the watershed.



Balance Hydrologics, Inc.



Klamath County Commissioners

Tom Mallams, *Commissioner*
Position One

Kelley Minty Morris, *Commissioner*
Position Two

Jim Bellet, *Commissioner*
Position Three

August 20, 2015

Paul Zedonis
Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019

Dear Paul,

Current documents attempt to lay blame on the 2002 Klamath River fish die-off on irrigated agriculture. The complete lack of timely water sampling, which were requested, and the lack of definitive scientific evidence showing cause of death is extremely alarming. To date, I have not seen or even heard of any scientific proof including fish tissue sampling, which supports this laying of blame.

The presence of fish disease is a normal, historic occurrence in the Klamath River. The documentation so far seems to completely ignore ongoing shift in ocean conditions. This would include changing natural conditions as well as the increasing off shore foreign fishing factories.

The continual increasing presence and collateral damages of numerous massive marijuana grows along the Klamath River, Trinity River and their many tributaries, seem to be ignored. Historic late season low flows provided solar conditions that naturally, drastically, reduced harmful organisms. Maintaining abnormal, late season high river flows as well as high Klamath Lake levels may be beneficial for power generation, but is certainly indicative of harming downstream fisheries and also harming the sucker populations in Klamath Lake. Periodic pulse flows have been ineffective in preventing the spread of harmful organisms that have the potential of harming fish.





Klamath County Commissioners

Tom Mallams, Commissioner
Position One

Kelley Minty Morris, Commissioner
Position Two

Jim Bellet, Commissioner
Position Three

The addition of thousands of acres of shallow, warm water wetlands in the Upper Klamath Basin has reduced available water and increased nutrient loading in Klamath Lake.

For the record, reports of specific comments by Bureau of Reclamation staff at the Weaverville and Klamath scoping meetings are very disturbing. Apparent comments were that Congressman LaMalfa has changed his position on Klamath dam removal and the three settlement agreements. This is blatantly untrue. 2

My last comment would be a reminder that the largest recorded salmon runs have occurred after the Klamath River dams were in place. 3

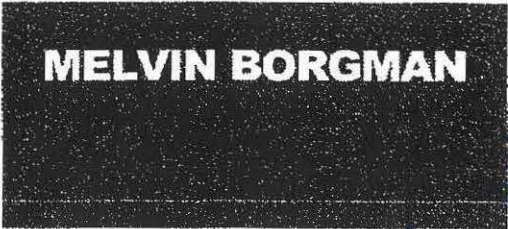
Thank you for the opportunity to submit comments for the record.

Sincerely,

Tom Mallams
Commissioner



3559 Howsley Road
Pleasant Grove, CA 95668
(916) 655-3339
(916) 655-1449
Email:Melvin.borgmom@yahoo.com



ORIGINAL FILE COPY RECEIVED

AUG 20 15

BUREAU OF RECLAMATION
NORTHERN CA AREA OFFICE

CODE	INT.	DATE
317		
300		

FILES

Fax

To: Mr. Paul Zedonis, Bureau of Reclamation
From: Melvin Borgman
Fax: (530) 275-2441
Pages: 3, including cover sheet
Phone:
Date: August 20, 2015
Re: Draft Long-term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River
cc:

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Attached are my comments concerning the environmental impact statement on the draft long-term plan for protecting late summer adult salmon in the Lower Klamath River.

I want to be kept informed about the progress of this project, paper mailings will allow both myself and my wife to share one set of the information.

v.w.

Classification	END-6.00
Project	CUP
Control No.	15021979
Folder No.	1057268

August 20, 2015

Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019
Attention: Mr. Paul Zedonis

Re: Draft Environmental Impact Statement on Long-term Plan for Protecting Late Summer Salmon in the Lower Klamath River

Mr. Zedonis:

I make the following comments:

1. Policies and decisions must be based on fact, genuine unbiased science, not on philosophical ideologies or political agendas. 2

All evidence must be given equal consideration.

All observations and studies must be based on scientific principles and be accurately recorded.

Estimates and "educated guesses" have no validity in final analysis, though it may be a place for beginning the investigation.

2. What is the cause for the decline in fish numbers in the Lower Klamath River? 3

The dams and diversions upstream are pointed to as THE cause of the decline in fish population in the Lower Klamath River, yet these dams and reservoirs provide the water that was necessary to protect the fish in drier conditions of the river.

3. What other factors contribute to the decline of the fish in the Lower Klamath River? 4

- a. Excessive take by commercial and sport fishing on the river and in the ocean.
- b. Predator species in the ocean and in the river.
- c. Non-native species introduced into Western waterways.

4. Agriculture must be given equal priority to fisheries. 5

Agriculture produces abundant food sources which reduces pressure of fisheries to provide food for people (potatoes, rice, bread and other foods compliment fish menus.)

5. Green fields, orchards and vineyards take carbon dioxide, water, sunlight (heat) and produce carbohydrate (food, fiber, fuel) release oxygen, cool the environment, and provide enriched habitat for many native creatures. Associated reservoirs and canals also provide habitat for many aquatic creatures. 6

6. What action can be taken? 7

- a. Retain more surface water in the inland areas with on stream and off stream reservoirs, retention basins and wetlands.
- b. More water should be retained in the Klamath Basin, particularly Lower Lake area and surrounding areas as well as on the tributaries of Klamath and Trinity Rivers. This would make more water available for (non-polluting) hydroelectric power, irrigation, and supplemental water for fisheries and provide habitat for aquatic creatures as well as recharge ground

Bureau of Reclamation

Melvin Borgman

August 20, 2015

Page 2

Other action:

Reduce take of threatened species.

Improve spawning areas.

Reduce negative impacts of predators and non-native species.

Reduce the take of threatened species by commercial and sport fishing.

Do we chose between fishing or farming or hydroelectric power? The challenge is to integrate and support all the above. Sound scientific principles and innovative engineering principles can significantly improve fisheries, agriculture, hydroelectric power and the environment.

Respectfully submitted,

Melvin Borgman



Pleasant Grove, CA 95668

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

COMMENT SHEET

Environmental Impact Statement on the Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River

Thank you for your interest in the Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River. Please complete the appropriate sections of this form to provide scoping comments. Written comments can be submitted at the Scoping Meeting, faxed to (530) 275-2441, e-mailed to sha-slo-klamath-LTP@usbr.gov, or mailed to:

Paul Zedonis, Bureau of Reclamation, Northern California Area Office,
16349 Shasta Dam Blvd., Shasta Lake, CA 96019

Comments should be received by August 20, 2015, to be considered in defining the scope of the Draft Environmental Impact Statement. For more information about the project, visit http://www.usbr.gov/mp/kbao/docs/long-term_plan_protect_lower_klamath_04-2015.pdf.

Name: Lynn E. Long E-Mail: _____

Organization and Address: _____

Klamath Falls, OR 97603

Phone (optional): _____

- I would like to stay informed about the progress of the project. Please include my name on the mailing list.
 I prefer electronic communication. I prefer paper mailings.

Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

There are not words strong enough to express my
disgust and anger over the actions of the USBR
in taking irrigation water from farmers in Oregon
and California! It is simply called stealing.

Proposed actions to divert additional flows to

All comments become part of the public record.

support Indian Trust Assets and associated environmental justice concepts are suspect.

It would lead one to believe that American citizens are NOT all equal under the law. Indians on the Klamath River are somehow more equal and deserving of USBR beneficence.

The EIS should clearly explain and delineate the reasoning and morality of the United States' total disregard of states water rights and the exclusion of irrigators from "Applicant Status" in the Klamath River biological opinion process.

Please fold, staple, stamp, and mail.

Please be uneasy with the idea that many of your fellow citizens view the Bureau of Reclamation with contempt, especially in light of the unprofessional and unethical behavior of government workers in the matter of saving salmon.

PLACE
STAMP
HERE

Lynn E. Long

Paul Zedonis
Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

COMMENT SHEET

Environmental Impact Statement on the Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River

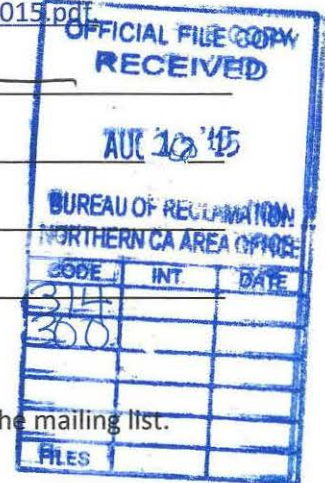
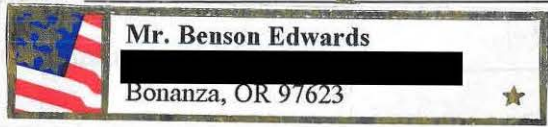
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Paul Zedonis, Bureau of Reclamation, Northern California Area Office,
16349 Shasta Dam Blvd., Shasta Lake, CA 96019

Comments should be received by August 20, 2015, to be considered in defining the scope of the Draft Environmental Impact Statement. For more information about the project, visit http://www.usbr.gov/mp/kbao/docs/long-term_plan_protect_lower_klamath_04-2015.pdf

Name:

E-Mail:



Phone (optional):

- I would like to stay informed about the progress of the project. Please include my name on the mailing list.
 I prefer electronic communication. I prefer paper mailings.

Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

Thank you for having the meeting in Klamath Falls on 11 Aug. 2015.

All comments become part of the public record.

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August 20, 2015

Via Electronic Mail Only

Mr. Paul Zedonis
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Shasta Lake, CA 96019
sha-slo-klamath-LTP@usbr.gov

Re: Environmental Impact Statement for the Draft Long-Term Plan for Protecting Late Summer Adult Salmon in Lower Klamath River

Dear Mr. Zedonis:

This letter provides additional comments from Klamath Water Users Association (KWUA) on the “Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River” (Draft Plan). These comments also provide additional scoping considerations for the Environmental Impact Statement (EIS). KWUA submitted comments on January 30, 2015 regarding an earlier version of the Draft Plan, but it appears that no changes were made in response to our comments in the latest rendition of the Draft Plan (April 2015). We resubmit these comments in hopes that the final plan will be clearer in stating that any water from Upper Klamath Lake for flow augmentation in the lower Klamath River must be planned for and provided through the Environmental Water Account (EWA) under current Klamath Project operations. Although we have concerns with the technical and legal basis for the EWA, there certainly is not a basis for releases from Upper Klamath Lake in excess of the EWA, which is itself for fisheries management.

KWUA is a non-profit corporation whose members are primarily irrigation districts and similar water delivery agencies holding contracts with the Bureau of Reclamation (Reclamation) for the diversion, delivery, and use of water through the Klamath Project. KWUA members operate on more than 170,000 acres in south-central Oregon and northern California, sustaining approximately 1,200 farms and ranches that depend on the Upper Klamath Lake/Klamath River system for water for irrigation. KWUA has consistently communicated with Reclamation in regard to the lower Klamath River flow issues addressed in the Draft Plan for more than a decade, and most recently on July 25, 2014. We do not repeat all of that information here, but focus on specific attributes or mechanics of the Draft Plan itself and further scoping considerations for the EIS.

COMMENTS ON THE DRAFT PLAN

Under Reclamation’s proposed action evaluated in the Klamath Project biological opinions and the Klamath Project operations plans, the EWA is calculated and then managed

through the year based on the input of federal, state, and tribal biologists, PacifiCorp, and others. Although we have concerns about the biological opinion and scale of the EWA, we acknowledge that these EWA practices are applicable for the term of the biological opinion. Footnotes 8 and 14 of the Draft Plan state that, “[b]ecause subnormal accretion flows in the lower Klamath River are predicated by subnormal hydrology within the entire Klamath River basin, only rarely will water storage conditions in the Klamath Basin be sufficient to provide augmentation water.” We understand this text to be a recognition that, in dry years, the EWA for Klamath Project operations may be relatively smaller than in wetter years. We also understand that Klamath Project storage is viewed as a potential source for flow augmentation under the Draft Plan only if there is EWA water available, but not otherwise. Subject to other concerns, we recommend that, if a plan of this sort is considered further, the plan specify that it considers potentially “available” water to be water strictly within the current biological opinion’s EWA quantity (e.g., section 4.3.1 of the Draft Plan, subpart C under May-June).

3

Section 5 of the Draft Plan states the “Statutory Authority” for the proposed plan. As you know, none of the identified statutory authorities authorizes, let alone requires, releases from Upper Klamath Lake for Klamath River flow augmentation. Further, the Klamath Project is authorized only for 1902 Reclamation Act purposes, and those are the purposes of its water rights. The Draft Plan also does not suggest that tribal trust is a source of authority. Rather, the Draft Plan states only that it is consistent with Reclamation’s obligations to preserve tribal trust resources.

4

The Draft Plan primarily would threaten water supply impacts to the Central Valley Project (CVP) water and power users. KWUA does not support or advocate that action, and urges your consideration of information and comments of those parties that relate to their interests. We also support and encourage your careful review of comments submitted by the Family Farm Alliance.

Watershed-based restoration efforts, and improved non-flow related habitat access, are key factors in providing beneficial conditions for Klamath River salmonids. We encourage Reclamation to support those activities. The sole focus on flow-centric solutions is questionable to us. Reclamation must seriously consider options and recommendations other than simply increasing flows without conclusive evidence that is actually solving a problem. Additionally, Reclamation must justify how the draft documents have repeatedly reached the conclusion that “no viable non-flow alternatives for fish protection have been identified.”

5

EIS SCOPING CONSIDERATIONS

As stated above, the EIS for the Draft Plan should not consider releases from Upper Klamath Lake (UKL) as a viable source of water for lower Klamath River flows due to the strict regulation under the current biological opinion. Requiring more water to be released from UKL than calculated under the EWA would amount to double regulation on the Project’s already meager and inadequate water supply. If flow augmentation or pulse flows are to be derived from UKL, they should be planned for and taken from the EWA supply.

6

If further releases above the EWA are considered, there would be significant and potentially significant adverse impacts in taking water from the Klamath Project and national wildlife refuges that the EIS must address. For example, additional releases would be expected to result in more involuntary fallowing of farmland in the Klamath Basin, which would have multiple negative effects:

- First, less water would be sent to the Lower Klamath National Wildlife refuge and economic and wildlife impacts should be addressed.
- Second, agriculture produces significant amounts of food and habitat for hundreds of species on farms, in the refuges, and in the canals, ditches and drains that make up the water delivery system. Fewer acres of farmland in production would burden these other wildlife populations and create further stresses on their ability to find food and habitat.
- Third, fewer farm acres in production will also have devastating socioeconomic impacts. The Klamath Basin Research and Extension Center calculates that for every million dollars of production lost in the agricultural sector, the community loses 15 jobs. Property values would decrease as would the region's tax base. The demand to provide social services will increase while the ability to pay for such programs would decrease.
- Fourth, an increase in fallowed fields would also increase the amount of wind erosion of the soil and the spread of noxious weeds. This would decrease air quality, reduce the quality of any remaining habitat for wildlife, and further decrease land values and the productivity of land.

In addition to the fallowing of more acres, Reclamation should expect to see an increase in groundwater use and must evaluate the effects of such an increase. If surface water is not available for agriculture, groundwater will likely be used at some significant level. Furthermore, the cost of pumping groundwater increases the overhead for small family farms and ranchers, further reducing economic contribution of agriculture to the basin, and potentially driving more farms to bankruptcy.

We have additional information and studies that can be provided on these issues for use in the EIS. Finally on this issue, the impact analysis in the EIS should not treat as "given" (or as a baseline) the adverse impacts related to water shortage in the Klamath Project (same types of impacts as above) driven by operations for the ESA, including the EWA itself. These impacts have not undergone NEPA analysis to date and should not be "grandfathered" in any current EIS. Releases for Lower Klamath River flow augmentation could also affect elevations of Upper Klamath Lake, directly or indirectly. Any attendant impacts must also be considered.

EIS Alternatives

If UKL water is considered a potential source for additional releases to address fish health issues, Reclamation should look at all the alternatives available. An alternative to consider would be to adjust the current calculation under the biological opinion for making

releases at Iron Gate Dam (IGD). This could be accomplished by lowering the daily base flows released at IGD, which would leave more water in the EWA. This banked water could then be used for pulse flows at the most critical times of the year.

There is also evidence that this idea of lower base flows may be an effective technique to reduce the prevalence of *Ceratomyxa shasta* that affects salmon in the Lower Klamath River. Researchers at Oregon State University have seen positive results in the lab in controlling the polychaetes associated with the *C. shasta* life cycle by drying out the river bank environments they are found in.¹ The theory is that artificially high and stable flows have created an ideal environment for the polychaetes to flourish, which increases the probability of more parasites infecting the fish. Further studies are currently being completed on this hypothesis and researchers are eager to try the theory out in the field.

Finally, there are water sources other than UKL that can and should be considered if proposing water releases from the Upper Basin. Recent experience has shown that when water is requested and sent from the Upper Basin, it is the Klamath Project irrigators that take the full hit. Other sources should be considered should the United States decide to reallocate water, an action that is not supported by authority or facts.

CONCLUSION

KWUA's position is that any additional flows from the Upper Klamath system would be highly inappropriate. If alternatives are considered that include the Upper Klamath water supply, the above issues must be seriously considered and addressed in the EIS.

Respectfully submitted,



Matthew Vickery
Deputy Director

cc: David Murillo, Regional Director, USBR
Jason Phillips, Deputy Regional Director, USBR
Therese O'Rourke Bradford, Area Manager, Klamath Basin Area Office, USBR
Jason Cameron, River Operations Manager, Klamath Basin Area Office, USBR

¹ Sarah J. Bjork, *Appendix 1: The Effects of Temperature and Dewatering on the Survival of Manyunkia Speciosa*, in SARAH J. BJORK, *FACTORS AFFECTING THE CERATOMYXA SHASTA INFECTIOUS CYCLE AND TRANSMISSION BETWEEN POLYCHAETE AND SALMONID HOST 193-201* (2010), available at <http://ir.library.oregonstate.edu/xmlui/handle/1957/15435?show=full> (click on "View/Open" link at bottom of page).

August 20, 2015

VIA EMAIL

Mr. Paul Zedonis
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Re: PacifiCorp Scoping Comments on the Environmental Impact Statement for the Draft Long-term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River

Dear Mr. Zedonis:

Through this letter, PacifiCorp submits its comments relating to the scope of the Environmental Impact Statement (EIS) that Reclamation is preparing for implementation of the *Draft Long-term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River* (Plan), released by the Bureau of Reclamation in April 2015. The Proposed Action in the EIS is the implementation of the Plan which could augment flows in the lower Klamath River between August 15 and September 21 in response to fish disease metrics or triggers by using water stored in Trinity Reservoir and potentially from water sources upstream of the confluence of the Klamath and Trinity rivers to help protect returning adult salmon from a disease outbreak and resultant mortality during this late-summer period. The scoping process allows Reclamation the opportunity to solicit input from stakeholders thereby ensuring the range of alternatives and environmental impacts discussed in the EIS fully address concerns. PacifiCorp appreciates the opportunity to provide scoping comments for the EIS process. The adequacy and accuracy of the EIS analysis hinges on having a comprehensive and complete Proposed Action. Because the Plan is the Proposed Action, we have also provided comments on the Plan.

By way of background, PacifiCorp owns and operates the Klamath Hydroelectric Project (the Project), which includes four hydroelectric dams on the Klamath River, the lowermost of which is Iron Gate dam at River Mile (RM) 190. PacifiCorp cooperates with Reclamation to implement flow releases to the Klamath River at Iron Gate Dam consistent with both PacifiCorp's and Reclamation's operational objectives and commitments. These releases are based on instream flow requirements and ramp rates as specified in the 2013 Biological Opinion (2013 BiOp) prepared by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on Reclamation's Klamath Project. The Trinity River enters the lower Klamath River at approximately RM 40, about 150 river miles downstream of the Project. Therefore, the augmentation under the Plan and to be analyzed in the EIS appears intended to apply specifically to the lower 40 miles of the Klamath River.

Plan Comments

1. **The Plan omits discussion of October 2014 flow augmentation releases from Iron Gate dam.** In discussing the background of flow releases that have been made in prior years since the 2002 fish die-off, Section 2.6 of the Plan omits discussion of flow releases that were made at Reclamation's request by PacifiCorp from Iron Gate dam in October 2014 to address fish health concerns in the Lower Klamath River as a result of observed *Ichthyophthirius multifiliis* (Ich) infections. From October 4, 2014 to October 15, 2014, PacifiCorp drew upon hydroelectric reservoir storage to increase flows below Iron Gate dam from 1,000 cfs to approximately 1,700 cfs for a period of 12 days. This flow release used approximately 15,500 acre-feet of stored water and resulted in the drawdown of PacifiCorp's hydroelectric reservoirs until refill occurred as a result of flow accretions into the hydroelectric project reach and from upstream releases. The Plan should include this flow release in its discussion of prior flow release actions. 1

2. **The Plan should incorporate the potential for releases from Iron Gate dam to augment flows in the Lower Klamath River to address fish health concerns.** The Plan should evaluate the potential for flow releases from Iron Gate dam to address fish health concerns. The Plan should develop criteria for assessing when emergency releases from Iron Gate dam may be necessary, and the timing of those potential releases, so that releases from Iron Gate dam, if determined to be available and necessary, can be planned in a manner that may avoid conflicts with other river management priorities, maintenance activities that may affect flow release capabilities, or safety considerations. Because flow releases from Iron Gate dam have the potential to address fish health concerns above the Klamath-Trinity confluence, the Plan should evaluate conditions in the river upstream of Weitchpec, California that would trigger flow releases from Iron Gate dam. Additionally, since tribal boat dance flow releases are provided from Iron Gate dam every two years, the Plan should address how flow augmentation from Iron Gate dam would be coordinated with these flow releases. 2

3. **The Plan is short on details that explain, and citations that support, various statements.** The lack of detail and citations make it difficult to assess if Reclamation has accurately interpreted all the source material (see Comment 4 below), and the lack of detail hinders the reader's understanding of the Plan. For example, Section 1.3, which discusses Chinook habitat, should probably focus on how adult fish use the Klamath River from the confluence with the Trinity River downstream and how low flows combined with warm water temperatures can lead to crowding of fish in refuge habitats which in turn facilitates disease transmission. This would give the reader the information to understand why flow augmentation could be a benefit. Instead, the Plan tells the reader that the fall Chinook run is proportionally the largest fish population in the Klamath River and that this run of fish cannot access historic habitat areas because of upstream dams. However, lack of habitat access is not necessarily a cause of holding in the lower Klamath River, as fish may hold in the Lower River to await the onset of more favorable temperatures. Another example of this the lack of detail is the use of the 7,000 fish Yurok Tribal harvest target as an indicator of fish presence and run timing (Plan Section 4.1). 3

While we agree that harvest can be used as an indicator of run timing, we did not reach this conclusion until reviewing the Joint Memorandum from National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA) and the U.S. Fish and Wildlife Service (USFWS) (2013) which explains how this value was generated. A summary of the reasoning in the Plan would help inform the reader. The lack of detail will make preparation of an accurate and adequate Proposed Action for the EIS more challenging.

4. **The process for changing the Plan over time should be clarified.** Section 4.1 of the Plan indicates changes to the Plan may be necessary in the future. While this is certainly possible, Plan does not define the actual process by which this would occur. The final step of the implementation process talks about gathering feedback from partners and other regulatory agencies as related to emergency releases, but there is nothing about follow-up after the augmentation period to determine if the releases were effective, what modifications may be necessary, challenges, and so on. An after-action review and summary would provide valuable information that could be used to adaptively manage the release program. This review should probably even be conducted in those years when flows were not augmented to ensure that the decisions that led to that conclusion were valid. An adaptive management approach was recommended in the 2013 joint NOAA and USFWS memorandum (NOAA and USFWS 2013)
5. **Joint Memorandum implementation criteria should be expanded upon in the Plan.** The Plan relies on the implementation criteria presented in the Joint Memorandum from NOAA and USFWS (2013) but doesn't completely include all the specifics and provides no reasons for why those elements were not included. For example, the Joint Memorandum (NOAA and USFWS 2013) specifies the following which are not included in the Plan:
 - Monitoring location for both temperature and flow compliance at RM 8
 - Water temperature models to be used include RBM10 and SN Temp
 - A duration associated with the temperature trigger for implementation of emergency flow augmentation (mean water temperatures $\geq 23^{\circ}\text{C}$ for three consecutive days)
6. **The Plan should better justify the 170,000 escapement threshold used as the basis for considering flow augmentation.** The Plan should provide justification for using a projected fall Chinook in-river escapement of 170,000 fish or more as the threshold for even considering flow augmentation. PacifiCorp is not aware of data or analysis that suggests a substantial fish die-off is only a risk when the forecasted return is 170,000 or more fall Chinook. While a larger return could certainly exacerbates crowding, relatively high mortality rates could occur under smaller run sizes if hydrologic conditions restrict movement for an extended period. We understand that Reclamation is currently considering flow augmentation for fall 2015. While 2015 is extremely dry year, the forecast run size of 119,800 (PFMC 2015) is well below the Plan threshold for flow augmentation. While we don't disagree that augmentation may become necessary in

2015, the point is that there doesn't appear to be anything in the Plan that would trigger proactive augmentation at smaller forecast run sizes. Reclamation is encouraged to review the recent memorandum from the USFWS (2015) which discusses the reasons to not focus on run-size as a yes/no threshold.

7. **The role of Humboldt County's water allocation in providing augmentation flows should be clarified.** There needs to be clarification of the ability of Reclamation to use water allocated to Humboldt County (Section 6.3.1) as part of the stored water that provides augmented flows. The Plan presents an apparent contradiction between acceptable reasons for release of this water between the State Water Resources Control Board and Reclamation. The current Plan appears to rely on this water to minimize impacts to other users, but the Plan is unclear in the process for authorizing release of that water for this purpose, and whether that decision is made by Reclamation or Humboldt County.

EIS Scoping Comments

- A. PacifiCorp believes that the EIS should evaluate an alternative that would provide additional flow augmentation from Iron Gate Dam in response to in-river conditions that could cause disease outbreaks to occur above the confluence of the Trinity River (see Comment 2 above). Evaluation of this alternative would be prudent given the abundance of Chinook that spawn in the mainstem Klamath River at locations upstream of the confluence with the Trinity River. As it is currently written, the Plan is ambiguous about the source of flow augmentation. In some places the Plan states that Reclamation determined that supplemental water from the upper Klamath River is not available in practical terms for flow augmentation and thus did not include flow supplementation from Iron Gate Dam as part of the Plan. In other places it states that Reclamation will consider using water from Reclamation's Klamath Project if available. It is unclear how the decision about which source of water to use would be made. It is also unclear if the Plan has the potential to assess flow releases that could be cooperatively released from PacifiCorp's reservoir storage, should emergency conditions indicate that such a release would be beneficial, as occurred in October 2014.

Regardless of the Plan's intentions, the EIS should consider as an alternative the potential for flow augmentation to also be provided from Iron Gate Dam in order to respond to crowding and the potential for fish disease outbreaks that could occur upstream of the Trinity River confluence (RM 40) in years with low flow. Because additional upper Klamath River flow releases from Iron Gate Dam could have value in alleviating crowding conditions in the Klamath River upstream of the Trinity River, the EIS should consider this alternative. It would be prudent to plan in advance for flow releases from Iron Gate Dam should conditions in the river, as determined from real-time monitoring, indicate that such releases would be a valuable response to fish disease concerns. Prior planning would prevent situations where Reclamation wants water released from PacifiCorp's Project with limited notice and avoid circumstances in which PacifiCorp, having been unaware of the need or potential for Iron Gate releases to be called upon, is

implementing maintenance activities or has hydroelectric reservoirs at elevations that do not support increase flow releases. Such situations that could eliminate the possibility of a timely release of water could be avoided with clear communication and planning actions such as should be incorporated into the Plan.

- B. The EIS should evaluate model simulations and analysis from various sources (e.g., Deas 2000; PacifiCorp 2005; Dunsmoor and Huntington 2006; Perry et al 2011; and Risley et al 2012) that indicate that during the August and September periods the “thermal lag” effects of PacifiCorp’s reservoirs on water temperatures downstream of Iron Gate Dam (RM 190) are largely diminished by approximately Seiad Valley (RM 129), and are minimal, if not absent, downstream of the Salmon River (RM 66). Thus, the temperature effects of PacifiCorp’s Project do not extend to the portion of the river downstream of the confluence of the Trinity River (RM 40). This indicates that meteorological conditions are the principal driver of water temperatures in the Klamath River at the time of year covered in the Proposed Action. Thus, while there would be no discernible temperature effects from a flow release at Iron Gate Dam, increased flow from Iron Gate Dam could be beneficial for reducing crowding that can result in increased disease susceptibility and transmission, especially if those conditions were observed upstream of the confluence of the Trinity River. 10
- C. The EIS should contain a fuller discussion of those alternatives not carried forward for detailed analysis including comprehensive discussion and documentation of the non-flow alternatives which are dismissed out of hand in the Plan. 11
- D. The cumulative effects analysis in the EIS needs to be accurately defined both spatially and temporally so that it includes not only the effects on resources in the Klamath River basin but those in the Sacramento River through the proper time scale. We recognize that defining these boundary conditions will be challenging but the result will be a more accurate EIS. 12
- E. The effects analysis needs to look at implementation of flow releases at various forecasted run sizes. As discussed previously (see Comment 6 above) it is reasonable to expect that substantial mortality could occur at smaller run sizes. This would increase the frequency of flow augmentation which could require the use of more water that would otherwise be delivered to the Central Valley Project or used for cold water supply in the upper Trinity River. 13
- F. The EIS needs to carefully determine the level of analysis and set the boundary conditions for the EIS (both resource areas to be covered and geographic scope and temporal scale of analysis). 14
- G. Reclamation should clearly specify the amount and type of environmental review that would be required (if any) for flow augmentation in future years following completion of the EIS. 15

Please feel free to contact me at (503) 813-6170 should you have any questions regarding these comments.

Sincerely,



Tim Hemstreet
Klamath Project Manager

REFERENCES

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P.O. Box 216 Klamath Falls, Oregon 97601

Protecting Water for Western Irrigated Agriculture

August 20, 2015

Via Electronic Mail Only

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Re: Comments on Draft Long-Term Plan for Protecting Late Summer Adult Salmon in Lower Klamath River

Dear Ms. Curtis:

On behalf of the Family Water Alliance (Alliance), thank you for considering this letter, which has been prepared to provide comments on the “Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River” (Draft Plan).

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. The Family Farm Alliance is interested in this matter, not only because of the common concerns shared by our many members in California’s Central Valley and the Klamath Basin in Oregon and California who rely on water from the Klamath-Trinity system, but also because of the important precedent that could be set here and possibly expanded to other regions of the West.

The Bureau of Reclamation (Reclamation) on December 31, 2014 released its Draft Plan. In January 2015, we joined a group of Central Valley Project (CVP) agricultural water service contractors from the San Joaquin and Sacramento Valleys and Klamath Water Users Association (KWUA) representatives and met directly with Reclamation Mid-Pacific Regional Director David Murillo, to share our concerns on this matter with him and his staff. Following the meeting, the San Luis & Delta-Mendota Water Authority (Authority) and KWUA each transmitted final letters to Reclamation that outlined concerns and offered recommendations on the Draft Plan. Conversations with the Authority and KWUA confirm that the latest Draft Plan contained minimal changes in response to those formal comments previously transmitted to you

and our conversations in Reno. I urge that you carefully review the latest comment letters prepared by these organizations, and please respond to the recommendations provided by your water and power customers.

Background

I have specific, professional experience on this matter that dates back to 2002, when the much-publicized Klamath River salmon die-off occurred while I was employed by KWUA. My input herein is primarily related to that event, which was clearly the catalyst for many of the actions taken on the Klamath / Trinity system in the past decade. Unfortunately, the manner in which that event was mischaracterized in the Draft Plan sets the tone not only for the report but the manner in which the “flow-centric” philosophy of certain downstream entities and the U.S. government has been exercised – with little apparent benefit to the fish – in the past decade.

In 2002, a die-off of salmon occurred on the lower Klamath River, the only recorded time this has happened. Blame for the die-off ranged from political interference to illegal drug labs. The Department of Interior’s official cause was related to severe infections of two fish pathogens, *Ichthyophthirius multifiliis* (*Ich*) and *Flavobacter columnare* (*Columnaris*), due to a “combination of factors”, including low flows, high temperatures, and high fish density. However, an independent National Academy of Sciences (NAS) study published later found a unique combination of these factors could not explain the event. David Vogel, a respected fisheries biologist with nearly 30 years of experience, also studied this incident extensively and prepared a detailed report, which formed the basis for expert witness testimony that influenced a federal court decision on this matter. His findings were also in line with the NAS conclusions; the combination of warm water, the timing of the salmon run, and crowded conditions was chronically and cumulatively stressful to fish and is probably the most plausible reason for the fish die-off. This explanation is further buttressed by hydrologic records which show that flow conditions similar or worse than those in 2002 have occurred six times in the past 36 years with no similar salmon die-off.

After a decade of providing flow augmentation, we are unaware of any sound scientific evidence clearly showing that flow augmentation has prevented a disease outbreak. All of the decisions made to date appear to have been policy- (not science-) based, driven by fear and political pressure. Unfortunately, California and Oregon water and power customers have suffered enormous, quantifiable, and unmitigated losses.

Throughout this severe drought, Reclamation has chosen to release over 120,000 acre-feet of stored water from Trinity Reservoir at the expense of the Central Valley Project, including its water users across California and endangered species in the Central Valley. While there is no known benefit of those releases to salmon in the lower Klamath River, other listed species may have also been harmed, such as winter-run salmon on the Sacramento River. Other affected species include listed Coho salmon, Giant Garter Snake, and San Joaquin Kit Fox, migratory waterfowl and the once imperiled American Bald Eagle.

To CVP agricultural contractors, the loss of 123,000 acre-feet in today's water market equates to nearly a \$250,000,000 replacement value. This does not account for the other known socio-economic impacts resulting from fallowed acreage, lost production, lost sales, lost employment, and increased need for social services throughout Sacramento and San Joaquin Valley communities, many of which are disadvantaged.

In the Western U.S., environmental enhancement and mitigation programs are increasingly competing for existing sources of water. In some instances, these actions –such as those summarized in the Draft Plan and the recent federal management of water in California's Bay-Delta - have caused major conflicts, costly lawsuits and delayed benefits for endangered species and the environment. During the critical drought period - when every acre-foot of stored water has value - environmental interests, fish and wildlife agencies, and water managers need to inject some reality in their decisions, set priorities, and be accountable in their effort to manage the environmental share of this water pie.

Summary of Long-Term Plan Proposal

Reclamation's Draft Plan proposes to augment flows in the lower Klamath River when conditions suggest the potential for a significant fish die-off event. Recognizing that criteria will evolve, Reclamation will consider whether flow augmentation is necessary when the fall Chinook in-river run size is projected to be 170,000 or greater and flows in the lower Klamath River are forecast to be 2,500 cubic feet per second (cfs) or lower. Additionally, irrespective of these thresholds, Reclamation will continue to monitor conditions in the lower Klamath River and coordinate and collaborate with partners and other experts to determine whether degraded river conditions may require a response (as was the case in 2014) and to evaluate the efficacy of augmentation actions.

Meanwhile, Humboldt County has expressed that during instances when Trinity River Record of Decision (ROD) flow releases and other flows in the Trinity and Klamath Rivers are insufficient to protect fish, they may call for the release of water under Section 2 of the 1955 Act. Reclamation will consider whether to compensate for any releases above 50,000 acre-feet (AF) based on the conditions at the time any such additional release becomes necessary. Reclamation will also consider whether to compensate CVP water users for effects related to releases of project water supplies made in 2012, 2013, and 2014, as they occurred prior to the revised determination regarding the Humboldt County contract.

The Draft Plan's Incomplete Characterization of the 2002 Klamath River Fish Die-Off

In 2002, an estimated 170,000 salmon moved through the lower Klamath River estuary to return to upstream spawning beds. Fishery agencies estimated that 34,000 fish (one percent estimated to be ESA-listed coho salmon, 2 percent steelhead, and the rest non-listed Chinook salmon) were lost to the die-off. We also know that 36,000 were lost to hooks, clubs and gill nets,

leaving over 100,000 salmon returning to spawn. The cause of the fish die-off remains unknown. Nevertheless, it is the only occurrence of a fish die off in the recorded and oral history of the lower Klamath River. Again, it should be noted that lower flows have occurred six times on record without a die-off occurring.

The Draft Plan dedicates a very brief – and incomplete – characterization of the 2002 Klamath River fish die-off, an unforeseen and unprecedented die-off that occurred during a two-week period beginning in late September of 2002. The Draft Plan cites subsequent U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) reports, which suggested that at least 34,000 adult fall Chinook salmon died from severe infections of two fish pathogens, *Ich* and *Columnaris*. High fish densities due to the relatively large run size (approximately 170,000), low flows, and relatively high water temperatures were identified as contributing factors to the rapid spread of disease. Although a larger number of Klamath River fall-run Chinook died, a greater proportion of the Trinity River run was lost because the die-off occurred during the peak of the Trinity run, the Draft Plan found. As discussed in more detail below, analyses by the National Academy of Science and fisheries biologist David Vogel concluded that no obvious explanation of the 2002 fish die-off based on unique flow or temperature conditions was possible.

The fish die-off became a story of national political significance and was the subject of litigation. Thus far, the one and only management action yet pursued to prevent another massive die-off has been flow augmentation. In the years since, tribal, environmental, and regional interests began calling for “new water” to “avoid” future die-offs, with a seemingly endless supply of varying reasons to justify these calls. The Draft Plan notes that the Department has undertaken flow augmentation because “flow augmentation has been and remains the most viable management action to help protect the returning adult salmon population in late summer”. The Draft Plan - which is intended to provide the fundamental elements of a long-term plan – is built upon this flow-centric philosophy. The Draft Plan does not consider other actions that could provide help avoid conditions that lead to a die off. The failure to consider a reasonable range of alternative approaches, particularly as many Western states are suffering through a historic drought, undermines the document’s credibility and objectivity.

The 2002 Klamath River Fish Die-Off: The Rest of the Story

Findings of Klamath Water Users Association and David Vogel

During late summer and early fall of 2002, David Vogel, a fisheries biologist with 28 years of experience, conducted a field investigation for the Klamath Water Users Association to assess water temperatures in the main stem Klamath River. Mr. Vogel noted that main stem water temperatures in the Klamath River were measured hourly just prior to and during the fall-run Chinook salmon migration season. He also found that large numbers of salmon entered the lower Klamath River earlier than usual and were exposed to two dramatic and uncharacteristic cooling and warming conditions causing disease outbreak from warm water and crowded

conditions. The combination of these factors was chronically and cumulatively stressful to fish and is probably the most plausible reason for the fish die-off.

Some fishery advocates asserted that 2002 was unique because there was a large salmon run and low Iron Gate Dam flows. They postulated that this circumstance was an explanation for the fish die-off in September 2002. Contrary to this claim, 1988 had a much larger salmon run than 2002 and the lower Klamath River flows were similar to that observed in 2002. According to the CDFG fish die-off report, in 1988 the lower Klamath River flow during September was 2,130 cubic feet per second (cfs), the salmon run was 215,322 fish and there was no consequent fish die-off; in 2002, the lower Klamath River flow during September was 2,129 cfs and the salmon run was 132,600 fish. These facts provide empirical evidence that this assumption is invalid.

Further, in a sworn statement made by Mr. Vogel in March 2003, directed to the California Department of Fish and Wildlife (previously the California Department of Fish and Game (CDFG), he found:

☛ “There is no evidence to indicate that increasing upper Klamath reservoir releases during late summer or early fall during naturally dry hydrologic conditions, such as occurred in September 2002, would benefit salmon. In fact, because of a variety of meteorological, physical, and biological reasons, artificially increasing flows at that time would probably be harmful. This is due to the fact that Iron Gate Dam discharges are too warm for salmon during much of September. Additionally, there is no evidence that releasing more water from Iron Gate Dam during early or mid-September could have prevented a fish kill more than 170 river miles downstream because upper main stem temperatures were within the range known to cause mortality or reproductive failure in salmon. **The gradual declining temperatures in the Klamath River downstream of Iron Gate Dam during the fall are primarily attributable to normal seasonal declines in ambient air temperatures, not river flow.**” (Emphasis added).

☛ “In 1994, I co-authored a technical report which concluded that any increased flows from Iron Gate Dam, pulsed or otherwise, to benefit adult salmon should only occur during late September or early October to coincide with normal seasonal declines in air temperatures and concomitant cooler river flows. Earlier seasonal increased releases from Iron Gate Dam are unlikely to provide biological benefits because the water is naturally too warm. Based on my research in 2002, my conclusions remain the same.”

Mr. Vogel’s conclusions concerning the effect of Iron Gate Dam releases and upper main stem Klamath River water temperatures in the fall are similar to the findings of other researchers. For example, Deas and Orlob in 1999 found the following: "During early fall, mean daily measured water temperatures are fairly uniform throughout the river system. However, by late fall it is apparent that temperatures are decreasing in the downstream direction by late fall, i.e., after October 1. During this period, releases from Iron Gate Dam are generally at temperatures above equilibrium and the reservoir is acting as a heat source to the river."

Finally, according to Mr. Vogel, the fishery agencies in their post-fish die-off reports also asserted that toxic substances could not have caused the die-off, despite an important fact revealed in the CDFG report: water samples were not taken until 7 days after the onset of the fish die-off. Therefore, that potential source of mortality is still in question. To date, we are unaware of any evidence ruling out the possibility that toxic substances may have caused the fish die-off.

Findings of the National Academy of Sciences (NAS)

The Draft Report makes no mention of the fact that, despite the 2002 die-off, the numbers of fish returning to Iron Gate hatchery on the Klamath River were the third highest in 40 years. The Draft Report also ignores a similar finding made in October 2003 by the National Research Council Committee (NRC) on Endangered and Threatened Fish in the Klamath Basin. In its final report, the Committee failed to find a linkage between the operation of the Klamath Project and the fish die-off, and questioned whether changes in federal project operations at the time would have prevented it:

- ☛ “...no obvious explanation of the fish kill based on unique flow or temperature conditions is possible” (p. 8, NRC report)
- ☛ “It is unclear what the effect of specific amounts of additional flow drawn from controllable upstream sources (Trinity and Iron Gate Reservoir) would have been.” (p. 8, NRC report).

Further, during the press teleconference following the public release of the final NAS report, Dr. William Lewis, Chair of the NRC Committee, told reporters, "A simple explanation based on a unique low flow or high temperature is not possible."

A reporter from USA Today observed: "CDFG says the Klamath Project killed the fish. Is NAS saying they are incorrect?"

"There must be some other dimension to this, other than flow or temperature," Lewis replied. "The CDFG findings are skeptical. The cause of the fish kill is unproven at the moment."

And so it remains.

Federal District Court Decision

The Draft Report fails to document that a federal judge in 2003 – after assessing Mr. Vogel’s testimony - found that conflicting facts about the fish die-off prevented her from concluding that Klamath Project operations caused the death of the fish. The Pacific Coast Federation of Fishermen’s Associations and tribal interests in 2002 filed a suit in federal court, claiming that Reclamation’s management of the Klamath Project violated their fishing rights in 2002 and resulted in the salmon die-off. Oakland, Calif., Judge Sandra Armstrong in 2003 agreed with

motions put forth by the Klamath Water Users Association and the federal government that there was no evidence linking Reclamation's management of water with the die-off.

August 2007 House Natural Resources Committee Oversight Hearing

There are further statements in the public record which suggest that the flow-centric philosophy of the Draft Report is questionable. On August 2, 2007 the House of Representatives Natural Resources Committee conducted an oversight hearing titled "Crisis of Confidence: The Political Influence of the Bush Administration on Agency Science and Decision-Making." Among other issues, the focus of the hearing was originally intended to address claims made by Democrats that Vice President Dick Cheney allegedly over-rode scientists to give Klamath Project farmers water in 2002 - thereby killing fish in the lower Klamath River that fall.

Dr. Lewis was a key witness at this hearing. He explained that the federal agencies sponsoring the NRC Klamath study requested specifically that this incident of mortality be addressed by the committee as an addendum to its statement of task. Mass mortality of salmon at the mouth of the Klamath attracted much attention to the work of the Klamath Committee, Dr. Lewis reported. According to Dr. Lewis, the salmon that died in 2002 were gathered in a dense mass at the mouth of the Klamath in preparation for group migration up the main stem of the Klamath. He also responded to a question about whether management of water by the Klamath Project was responsible for withholding the pulse of flow that would have allowed the salmon to migrate.

“The NRC committee concluded that this is very unlikely,” he said. “The Klamath Project is located over 150 miles upstream from the mouth, and water flowing through the Klamath Project accounts for only 10% of the total flow at the mouth. Furthermore, the Klamath Project releases water that is warm because it comes from storage lakes rather than reaching the stream through groundwater or surface runoff.”

According to Dr. Lewis, the Klamath Committee concluded that a relatively small amount of warm water propagated over a distance of 150 miles would not have made a critical difference to the salmon that were staging for migration at the mouth of the river. The committee also examined previous conditions and found that low flows similar to those of 2002 had occurred in several years within the period of record without any accompanying salmon mortality. The committee therefore concluded that mortality was the result of an unusual combination of conditions, probably including unusually low flow plus the absence of a cool pulse of flow that even a brief precipitation event might have provided.

Recommendations Previously Offered by Water and Power Users

In addition to evaluating options internally and during consultation with tribes and fishery resource agencies, Reclamation conducted a collaborative workshop in Redding, California on December 19, 2013. The workshop was well attended by tribes, fishery resource agencies, counties, water users, power users, environmental interests, and other stakeholders. Prior to the

workshop, a paper was submitted by KWUA, the Authority, Redding Electric Utility, Tehama-Colusa Canal Authority, and the Westlands Water District describing the need for a long-term solution and the essential components of a long-term solution. During the workshop, various proposed measures were discussed, including non-flow alternatives. The majority of the discussion, however, focused on refining predictive tools for enhanced real-time evaluation of fish health, more accurately estimating return populations, more accurately predicting river accretions, and determining flow augmentation efficacy.

The Draft Plan, without any detailed justification, essentially discarded the non-flow recommendations developed by the water and power users. According to the Draft Plan, “none of the non-flow alternatives gained widespread acceptance among fishery experts for application in the lower Klamath River to protect returning adult salmonids”. Non flow-related channel improvements in other river basins were described during the workshop, however, and partner staff indicated they would continue to monitor any published results describing their efficacy that could inform fish protection efforts in the lower Klamath River. Meanwhile, in October of 2013, the Hoopa Valley Tribe submitted a recommended fish protection approach that emphasized determining fishery needs and the available water supply, then allocating water first to the fishery and secondarily to water users.

6

Current Recommendations

The Draft Plan generates additional uncertainty for Klamath Project operations and would threaten water supply impacts to CVP water and power users. The Family Farm Alliance urges your consideration of information and comments of those parties that relate to their interests, particularly the comment letters sent to you on the Draft Plan by the San Luis & Delta-Mendota Water Authority and Klamath Water Users Association. Additionally, we respectfully request that the final report be modified to address the following recommendations:

1. Reclamation and the technical experts it relies on must justify how they reached the conclusion that “no viable non-flow alternatives for fish protection” have been identified. 7
2. The technical experts used by Reclamation to develop this report should be identified, accompanied by a brief description of their professional experience. 8
3. The authors of the plan should also be identified, accompanied by a brief description of their professional background.
4. The final plan must clearly state that water from Upper Klamath Lake for flow augmentation in the lower Klamath River must be planned for and provided through the Environmental Water Account (EWA) under current Klamath Project operations. There is not a basis for release from Upper Klamath Lake in excess of the EWA, which is itself for fisheries management. 9
5. Section 5 of the Draft Plan states the “Statutory Authority” for the proposed plan. As you know, none of the identified statutory authorities authorizes, let alone requires, releases from Upper Klamath Lake for Klamath River flow augmentation. Further, the Klamath Project is authorized only for 1902 Reclamation Act purposes, and those are the purposes 10

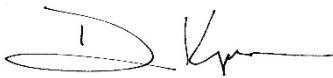
of its water rights. We understand the importance of tribal trust resources and actions consistent with protection of such resources. The Draft Plan does not suggest this is a source of authority. Rather, the Draft Plan states only that it is consistent with Reclamation's obligations to preserve tribal trust resources.

After a decade of providing flow augmentation, we are unaware of a single state, federal, tribal, regional, private, or non-governmental organization that has produced sound scientific evidence that flow augmentation has prevented a disease outbreak. Finally, and perhaps most importantly, we believe that it is time for a truly unbiased, outside scientific body to review flow augmentation efforts on the lower Klamath River between 2002 and 2015. The purpose of such a review would not be to weigh the benefits of particular uses of the water (fishery flow augmentation vs. agricultural use vs. power use, etc.). Rather, the purpose would be fairly narrowly focused and intended to address one primary question: how effective have flow augmentation efforts been towards preventing disease outbreaks? Such a study would also be helpful in identifying data and monitoring gaps that might be addressed to ensure that the best options are being pursued to protect salmon on the lower Klamath River¹.

We remain committed to supporting the concept that a watershed-wide approach to species recovery – one that addresses all the stressors to fish – is essential to improving the environment and saving rural economies in California and Oregon dependent upon the Klamath River. Increased knowledge, improved management, and cohesive community action are needed to promote recovery of the fishes in the Klamath River.

Thank you for this opportunity to comment on this draft document. If you have any questions about this letter, please do not hesitate to contact Dan Keppen at (541) - 892-6244 or dankeppen@charter.net.

Sincerely,



Dan Keppen, P.E.
Executive Director

¹ For example, a 2010 PhD dissertation at Oregon State University ("The Effects of Temperature and Dewatering on the Survival of Manayunkia Speciosa") describes experiments that studied the effect of drying out the substrate where polychaetes (worms that are infected by a parasite that eventually lead to the release of actinospores that can infect salmon with *c. Shasta*) dwell. After 24 hours of drying the substrate, the study showed 100% mortality in polychaetes (*M. Speciosa*) that inhabited the algae substrate and greater than 80% in the sand-silt substrate after 12 weeks. This suggests that a dewatering event could be effective in reducing the quantity of spores that infect salmon.



August 20, 2015

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Subject: Scoping Comments on EIS for Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River

Dear Mr. Zedonis;

Thank you for the opportunity to provide scoping comments on the Environmental Impact Statement (DEIS) for this important long-term plan to prevent the outbreak of disease in salmon within the Lower Klamath and Trinity Rivers, during late summer and fall. Given the extraordinary efforts to maintain and restore salmon and steelhead populations in the Klamath-Trinity basin, it is vitally important to prevent a repeat of the 2002 fish kill in which at least 65,000 adult salmon perished in the lower Klamath River due to a large run, poor water conditions and the resultant disease outbreak of *Ich* and *Columnaris*.

We have specific comments on the Purpose and Need for the Plan, as well as a recommendation to analyze a Tribal Trust/Public Trust alternative. We also have specific recommendations on modeling of hydropower losses and Trinity Reservoir cold-water carryover storage needs to preserve the anadromous fishery resource.

Purpose and Need

The unique protection afforded the Klamath and Trinity Rivers, their fisheries and water is embodied in State and federal law. The special legal status of the Trinity River to do no harm has been expressed in numerous legal opinions, court decisions and administrative actions at both the State and federal level. This special status creates a priority for the use of Trinity River water for Trinity River fisheries and other in-basin uses that is superior to any other use of CVP water outside of the Trinity River basin. The same concept applies to Klamath River water and a priority of use for instream purposes over Klamath Project irrigation.

Because these supplemental flow releases have been needed almost half of the years since 2002 this plan should focus on prevention.

Therefore, the Purpose and Need statement should address the unhealthy condition of the mainstem Klamath River and the need to have a healthy river that ultimately will not require supplemental flows from Trinity Reservoir or the Klamath Project reservoirs to prevent catastrophic die offs of both juvenile and adult salmonids and other native fish species, not just fall Chinook adults. The purpose would be to provide healthy river conditions for fish in compliance with the Tribal Trust obligations of the Interior Department, Public Trust requirements under California case law and other pertinent laws that prioritize the use of Trinity and Klamath River waters for instream purposes, including the salmon fisheries. The specific legal authorities are cited below.

Tribal Trust/Public Trust Alternative

The unique protection afforded the to the Klamath and Trinity rivers and their salmon fisheries warrants the development and analysis of “Tribal Trust/Public Trust Alternative” in the Draft EIS. The Tribal Trust/Public Trust Alternative would be a long-term plan to restore health and balance to the Klamath-Trinity Rivers and their anadromous fisheries.

Elements of the Tribal Trust/Public Trust Alternative includes but is not limited to the following:

1. The priority of use for waters of the Klamath and Trinity rivers is for the health, protection, propagation and restoration of salmon, steelhead, lamprey and other important tribal, recreational and commercial fish species found in the basin. Legal authorities to support this priority of water use can be found below in this comment letter.
2. The five hydroelectric dams on the mainstem Klamath River would be removed through the relicensing process of the Federal Regulatory Energy Commission, significantly improving both water quality, and increasing available anadromous fish habitat.
3. There would be establishment of a minimum cold-water carryover storage in Trinity Reservoir of no less than 900,000 AF on September 30 to ensure the survival of salmonids below Lewiston Dam during a drought similar to 1928-1934.
4. Physical Improvements between Lewiston Dam and Trinity Dam would be made to minimize the heating of water in Lewiston Reservoir following a recommendation from Reclamation for Congress to authorize a feasibility study.
5. Supplemental flows to prevent catastrophic adult and juvenile fish die offs would be made available per the recommendations of the Hoopa Valley Tribe, the Yurok Tribe, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. This includes a minimum flow of 2,500 cfs in the Lower Klamath River at Klamath during fall Chinook migration and at least 2,800 cfs during periods of adverse conditions.
6. Submittal by Reclamation to the California State Water Resources Control Board for a water right change petition and Section 1707 water transfer to conform Reclamation’s Trinity and Klamath River water rights with Tribal

Trust/Public Trust reservoir releases from reservoirs, a requirement for a Trinity Reservoir minimum cold water carryover storage, and to require compliance with North Coast Basin Plan temperature objectives for the Trinity River.

Modeling Needs- Carryover Storage and Trinity Powerplant Bypasses

The Draft Plan expresses concerns with additional drawdown of Trinity Lake with resultant need for Trinity powerplant bypasses in order to meet temperature objectives. Reservoir drawdown of less than 1 million AF increases the need for Trinity powerplant bypasses.

The Draft Plan indicates on page 31 that as a result of supplemental releases in 2014 “the reduced storage in Trinity Reservoir led to the need to bypass power generation at Trinity Powerplant to access the deeper and coldest available water for temperature management.”

We suggest that modeling be performed for any analysis that looks at September 30 carryover storage of 224,000 AF, 600,000 AF, 900,000 AF and 1.2 million AF for the purposes of temperature control, instream flows and determination of long-term powerplant bypass generation losses. It is important to note that Reclamation’s 2000 Trinity Dam Enhancement Technical Appraisal¹ concluded that it would not be worth it to raise Trinity Dam unless there is a cold-water carryover storage requirement greater than 900,000 AF. The conclusion is based on an analysis by Reclamation’s Nancy Parker that uncontrolled spills (losses to storage) are not significant if carryover storage is less than 900,000 AF. Since Trinity Dam powerplant bypasses do not generally occur at storage of less than 1 million AF, a carryover storage requirement of 900,000 AF should minimize powerplant bypasses without significantly reducing long term CVP yield. Modeling of various carryover storage requirements and their impact on CVP long term water yield and powerplant bypasses would be instructive to determine a long-term carryover storage requirement that meets the needs of the fishery while minimizing significant long term losses to CVP water and power production from the Trinity River Division.

The NMFS 2000 Biological Opinion² for the Trinity River, includes a minimum carryover storage on September 30 of 600,000 AF and requires reconsultation if storage falls below that level. However, other analyses have found that 600,000 AF minimum carryover storage is inadequate. A 2012 report by Reclamation found that September 30 carryover storage requirement of less than 750,000 AF

¹ See “Technical Service Center (2000) Trinity Dam Enhancement Technical Appraisal. Report prepared by the USBR Technical Service Center and Mid-Pacific Regional Office for the Regional Planning Office Mid-Pacific Region.” Accessed at <http://odp.trrp.net/Data/Documents/Details.aspx?document=2037>

² National Marine Fisheries Service (2000), Biological Opinion for the Trinity River Record of Decision, accessed at: http://www.fws.gov/arcata/fisheries/reports/technical/TREIS_BO_NMFS.pdf

is “problematic” in meeting state and federal Trinity River temperature objectives protective of the fishery.³

In 1992 Balance Hydrologics found that a minimum carryover storage of 900,000 AF was necessary to meet Basin Plan temperature objectives.⁴ C-WIN considers 900,000 AF on September 30 to be a bare minimum for the Tribal Trust/Public Trust alternative.

Analyses completed for Trinity County for the Trinity Record of Decision by Kamman Hydrologics indicated that September 30 carryover storage of at least 1.2 million AF on September 30 is necessary at the beginning of a simulated 1928-1934 drought in order to meet Basin Plan temperature objectives.⁵ We are now into a fourth year of drought and Trinity Lake storage is below levels necessary to survive a historic multi-year drought such as 1928-1934.

Furthermore, Reclamation’s Mid-Pacific office also produced a preliminary technical memorandum on the problem of excessive heating of Trinity Dam releases⁶ when they pass through the shallow 7-mile long Lewiston Reservoir. While Trinity Dam releases are normally 43-44°F, summer heating in Lewiston Reservoir can be severe unless approximately 1,800 cfs is being released from Trinity Dam. Given that Trinity River summer base flows are only 450 cfs, water must be diverted to the Sacramento River to keep the Trinity River cold enough to meet Basin Plan temperature objectives. However, during severe drought or under certain operational circumstances, there may not be adequate water to provide base fishery flows and to divert water to the Sacramento River to keep the Trinity River cold. Several structural solutions have been identified in Reclamation’s preliminary technical memorandum; however, a full feasibility study and environmental document would need to be prepared to select a solution and no such plans exist at this time.

³ See Bender MD (2012) Trinity Reservoir Carryover Storage Cold Water Pool Sensitivity Analysis. Technical Memorandum No. 86-68220-12-06, U.S. Bureau of Reclamation, Technical Service Center, Denver, CO. Accessed at <http://odp.trrp.net/Data/Documents/Details.aspx?document=1813>

⁴ See Balance Hydrologics (6/26/1992) “The Need for Standards for Minimum Carryover Storage in Trinity Reservoir” Accessed at <http://tcrd.net/trl-stor.htm>

⁵ Memorandum from Greg Kamman to Tom Stokely and Mike Deas on Carryover Storage Analysis Simulated (1928-34) Period, 5/22/1998. Accessed at http://www.c-win.org/webfm_send/414

⁶ See USBR (2012) Lewiston Temperature Management Intermediate Technical Memorandum, Lewiston Reservoir, Trinity County, California. Report by U. S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA. accessed at <http://odp.trrp.net/Data/Documents/Details.aspx?document=1814>

Federal Laws and Policies Support a Tribal Trust/Public Trust Alternative

Leo Krulitz explains the primacy of the waters of the Trinity River for use in the Trinity River basin in a 1979 Interior Solicitor's Opinion⁷ on the water contract and drought shortage provisions with the Grasslands Water District:

"...in authorizing the Trinity River Division in 1955, Congress specifically provided that in-basin flows (in excess of a statutorily prescribed minimum) determined by the Secretary to meet in-basin needs take precedence over needs to be served by out of basin diversions."

The Trinity River Act of 1955 (PL 84-386) "*directed and authorized*" the Secretary of Interior to "*preserve and propagate*" the fish and wildlife resources of the Trinity River. Another provision in the 1955 Act reserved 50,000 acre-feet for Humboldt County and downstream water users.

The Trinity River Basin Fish and Wildlife Restoration Act of 1984 (PL 98-541) clarified the above language from the 1955 Trinity River Act to mean "*...restoring fish and wildlife populations in the Trinity River basin to a level approximating that existed immediately before the construction of the Trinity River division.*"

Under the Tribal Trust Doctrine, and the federally reserved fishing rights of the Hoopa Valley and Yurok tribes there is a property right associated with the flows of the Klamath and Trinity Rivers. These rights date back "*10,000 years or time immemorial*",⁸ making them senior to any water rights obtained by the Bureau of Reclamation for the Central Valley Project or the Klamath Project.

The Central Valley Project Improvement Act, PL 102-575 (CVPIA) Congressionally defined that in order to meet the Tribal Trust responsibility to the Hoopa Valley Tribe and to meet the fishery restoration goals of the 1955 Act, Interior MUST complete the ROD, obtain the Hoopa Valley Tribe's concurrence and implement it accordingly, while charging the CVP customers for its implementation. CVPIA also acknowledged the difference between the Trinity River and Central Valley streams by having separate fishery restoration goals for each basin

The Reclamation Act (Section 8), as well as the Central Valley Project Improvement Act (Section 3406(b)) waived the federal government's sovereign immunity as subservient to state water rights authority. In the case of CVPIA, there was a very specific Congressional waiver of Reclamation's sovereign immunity for California water laws including decisions of the State Water Resources Control Board (SWRCB).

⁷ http://www.c-win.org/webfm_send/156

⁸ http://www.schlosserlawfiles.com/~hoopa/SolOp_93.pdf

Federal Clean Water Act Section 303 approval by the United States Environmental Protection Agency of Trinity River Water Quality Objectives in 1992⁹ constituted establishment of federal water quality standard that all federal agencies, including the Bureau of Reclamation must comply with. USEPA also stated in their approval that Trinity River diversions to the Sacramento River are a controllable factor in protection of the Trinity River and have also harmed the Trinity River.

⁹ https://www.c-win.org/webfm_send/416

The 2000 Trinity River Record of Decision clearly stated:
“From the inception of the TRD, Congress directed this Department to ensure the preservation and continued propagation of the Trinity River’s fishery resources and to divert to the Central Valley only those waters surplus to the needs of the Trinity Basin.”

The 2000 Trinity River Biological Opinion by the National Marine Fisheries Service¹⁰ contained two provisions to prevent harm to the Trinity River fishery from warm water discharges out of Trinity Dam by requiring powerplant bypasses and a minimum cold water pool of 600,000 acre-feet in Trinity Lake on September 30 of each year.

State Laws and Policies Support a Tribal Trust/Public Trust Alternative

The Trinity River’s fisheries have protections under the concept of the Public Trust Doctrine, as expressed in the Mono Lake Opinion (National Audubon Society vs. Alpine County Superior Court).¹¹ “The public trust...is an affirmation of the duty of the state to protect the people’s common heritage of streams, lakes, marshlands and tidelands....” – Supreme Court of California, 1983

The Area of Origin and Watershed Protection Statutes under California law contain a priority for in-basin uses compared to out of basin uses. The waters of the Trinity River are subject to California’s Watershed Protection, Area of Origin and County of Origin Statutes (WC Sections 10505, 11128 and 11460 et seq.) that limit the export of its waters to surplus flows only. Water Code Section 11128 specifically applies the watershed protection and county of origin statutes to the Bureau of Reclamation’s Central Valley Project, which includes the Trinity River Division.

Each of Reclamation’s 8 Trinity River water permits contains three separate conditions requiring instream flow releases (120,500 AF/year for fisheries, 50,000 AF/year for Humboldt County and other downstream water users, and a condition requiring County of Origin water releases for Trinity County pursuant to Water Code Section 10505).

The California Department of Fish and Game (DFG), in its comments on the Supplemental EIS/EIR for the Trinity River Mainstem Fishery Restoration Program¹², stated that impacts to listed species in the Central Valley and Delta as a result of increased Trinity River flows (and decreased Trinity exports to the

¹⁰ National Marine Fisheries Service (2000), Biological Opinion for the Trinity River Record of Decision, accessed at:

http://www.fws.gov/arcata/fisheries/reports/technical/TREIS_BO_NMFS.pdf

¹¹ <http://www.monobasinresearch.org/legal/83nassupct.html>

¹² See DFG’s letter at http://c-win.org/webfm_send/157

Sacramento River) are not a “significant impact” requiring mitigation under the California Environmental Quality Act. DFG cited California’s watershed protection and area of origin statutes as the rationale for the determination that the priority for Trinity River water is within that basin:

“In California, the controls put in place governing a single source of water supply from two separate basins, requires needs for beneficial uses in the basin of origin be met first- then needs can be supplied for the other basin.”

California Fish and Game Code Section 5937 also applies to the dams on the Trinity and Klamath Rivers:

“The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.”

State Water Resources Control Board Water Permit Change Petition

Reclamation holds eight water permits for storage and diversion of the Trinity River. Page 32 of the Draft Plan states Reclamation has not determined whether to submit a change petition to the SWRCB for a change in the place of use. Reclamation should submit a change petition as suggested above. The Draft Plan references a letter from the SWRCB indicating that release of Trinity water for late summer flow augmentation is not a permitted use and recommends Reclamation submit a change petition. Failure to obtain a change petition would lead to that amount of water becoming abandoned water under the California Water Code. 6

This is an important concept and has ramifications beyond just late summer flow augmentation. The existing minimum instream flow in Reclamation’s Trinity River water permits is only 120,500 AF/year. The weighted annual average instream flow release under the 2000 Trinity River Record of Decision (ROD) is 594,500 AF. The difference is 474,000 AF of water that must also be dedicated to instream flow releases, plus 50,000 AF for Humboldt County and downstream users.

Furthermore, the change petition should also include incorporation of a term and condition in Reclamation’s water permits to comply with North Coast Basin Plan temperature objectives for the Trinity River that were established to protect

spawning salmonids in the Trinity River pursuant to Section 1505 of the California Fish and Game Code.

The concept of doing no harm to the Trinity River is also manifested in Water Right Order 90-05 (WRO 90-05)¹³, which contained a term and condition prohibiting harm to the Trinity River as it relates to the export of Trinity River water to the Sacramento River for temperature control on the Sacramento River.

WRO 90-05 also cited a Trinity-specific temperature water right proceeding promised in SWRCB Water Quality Order 89-18 (page 17)¹⁴ that has yet to be held. The limited Trinity River protections contained in WRO 90-05 and the need to amend Reclamation's Trinity River water permits for temperature control are discussed in detail below.

The North Coast Regional Water Quality Control Board and the California State Water Resources Control Board approved Trinity River temperature objectives in 1991, which were approved by USEPA in 1992. The EIS should address how well each alternative meets the following water quality objectives:

Daily Average/Period /	River Reach
60°F July 1 - Sept. 14	Lewiston Dam to Douglas City Bridge
56°F Sept. 15 - Oct. 1	Lewiston Dam to Douglas City Bridge
56°F Oct. 1 - Dec. 31	Lewiston Dam to confluence of North Fork Trinity River

Water Right Order 90-05 prohibits Reclamation from diverting water from the Trinity River for the purpose of temperature control on the Sacramento River in a manner which would harm the Trinity River by exceeding the above Basin Plan temperature objectives of 56°F. However, WRO 90-05 does not prohibit Reclamation from exceeding the 60°F (the Basin Plan objectives were adopted after WRO 90-05). It also does not prohibit Reclamation from violating any of the Basin Plan temperature objectives for other beneficial uses of water such as irrigation, power, Delta water quality, Municipal/Industrial, wildlife refuges, etc. Therefore WRO 90-05 provides very limited temperature protection for the

¹³ See SWRCB Water Right Orders 90-05 and 91-01 at http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1990/wro90-05.pdf and http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1991/wro91-01.pdf.

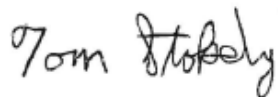
¹⁴ See SWRCB Water Quality Order 89-18 at http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/1989/wq1989_18.pdf

Trinity River because it does not apply to the 60°F summer objective and Trinity River water is used for several purposes other than Sacramento River temperature control including water quality in the Delta.

Therefore, in order to protect anadromous fisheries, the change petition should also include not only increased fishery flows, but also incorporation of a term and condition in Reclamation's water permits to comply with North Coast Basin Plan temperature objectives for the Trinity River. There should also be a term and condition added to require minimum cold water carryover storage.

Thank you for the opportunity to provide scoping comments. Please provide a response to our recommendations in your scoping report and we request a copy.

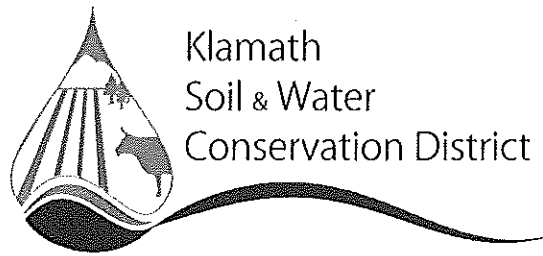
Sincerely,



Tom Stokely
Water Policy Analyst
California Water Impact Network
tstokely@att.net
530-926-9727



Carolee Krieger
Board President and Executive Director
California Water Impact Network
caroleekrieger7@gmail.com



Klamath
Soil & Water
Conservation District

541.883.6932 | Fax: 541.882.5409 | 2316 South 6th Street, Suite C | Klamath Falls, Oregon 97601 | www.klamathswcd.org

Paul Zedonis
Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd
Shasta Lake, California 96019

Dear Paul,

Attached are the Klamath Soil and Water Conservation District and the Klamath Basin Water Advisory Committee's comments for the Environmental Impact Statement on the Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River.

Thank you for taking our comments into consideration when drafting the final document.

Brian Quick

Watershed Technician
Klamath Soil and Water Conservation District
Klamath District Office
2316 South 6th Street, Suite C
Klamath Falls, Oregon 97601

Joe Watkins

Klamath Basin Water Advisory Committee, Chairman
2316 South 6th Street, Suite C
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Board members | Martin Kerns, *Chairman*, Jason Hagerty, *Secretary/Treasurer*, Corey Thompson, *Vice Chairman*,
Earl Miller, *Director*, Glenn Lorenz, *Director*, Joe Watkins, *Director*

Staff | Joe Watkins, *District Manager*, Brian Quick, *Conservation Technician*, Samantha Mitchell, *Office Manager*

Document 1372

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

COMMENT SHEET

Environmental Impact Statement on the Draft Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River

Thank you for your interest in the Long-Term Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River. Please complete the appropriate sections of this form to provide scoping comments. Written comments can be submitted at the Scoping Meeting, faxed to (530) 275-2441, e-mailed to sha-slo-klamath-LTP@usbr.gov, or mailed to:

Paul Zedonis, Bureau of Reclamation, Northern California Area Office,
16349 Shasta Dam Blvd., Shasta Lake, CA 96019

Comments should be received by August 20, 2015, to be considered in defining the scope of the Draft Environmental Impact Statement. For more information about the project, visit http://www.usbr.gov/mp/kbao/docs/long-term_plan_protect_lower_klamath_04-2015.pdf.

Name: Brian Quick E-Mail: brian@klamathswcd.org

Organization and Address: Klamath Soil and Water Conservation
District, 2316 South Sixth Street, Suite C,
Klamath Falls, Oregon 97601

Phone (optional): 541-883-6932 x116

- I would like to stay informed about the progress of the project. Please include my name on the mailing list.
 I prefer electronic communication. I prefer paper mailings.

Please write comments, questions or concerns below. Continue on the back or a separate sheet if necessary.

Please see attached document

All comments become part of the public record.

Current Basin Water Strategy

- **Higher than historical lake levels:**

Higher than historic lake levels are being used to manage populations of Lost River and Shortnose suckers in Upper Klamath Lake. Levels were set in 2001 in the Biological Opinion and stayed the same in the 2013 revision **opinion**. Historic lake levels at Putman Reef were below 4138 feet above sea level. Today, the lake is being managed for suckers at 4143 feet above sea level. Two times since 1996 has the lake elevation fallen below 4138 according to U.S. Geological Survey data.

Results of current management on Upper Klamath Lake

- Up to 86% decline since lake levels set in 2001 (Hewitt, USGS 2012)
 - Increase in predatory species populations, mainly fathead minnow
 - Increase in disease (increased habitat for host species)
- **Unnaturally elevated river flows.**

Flows in the Lower Klamath River are being artificially manipulated by control over the dams along the river from Link River to Iron Gate Dam. Unnatural flows in the summer are designed to mimic what local scientists believe are natural conditions, to have positive effects on fish populations including Chinook and Coho.

 - Historic flows in drought conditions would be negligible below Putnam and Keno reefs as proof by historic photos of Link River going dry
 - **Pulse flows:**

Pulse flows for disease management are currently being used to manage disease in the lower river. The objective is to flush out habitat like sand and silt and Cladophora for the parasite host (polychaete worms).

- Polychaete worms (*M. speciosa*) live in the substrate and cannot be flushed with current pulse flow regime
- Can tolerate a range of temperatures
- Depend on stable food supply and available habitat
 - Do not inhabit edge habitat where water levels fluctuate
 - Apparent fragility of polychaete worms makes them susceptible to drying events

Ultimately current management of the Upper Klamath Lake is not working as evidenced by the USGS 2012 study results showing unprecedented loss of spawning sucker populations

Ultimately, current management of downstream flows will not result in fewer *C.shasta* host species. Drying (Bartholomew et. al. 2007) will reduce host species numbers and ultimately reduce actinospore numbers.

Alternative Action Plan for UKL Levels

Current management of lake levels has had an adverse impact on Lost River and shortnose sucker populations. Since lake level minimums were set in 2001 at higher than historical levels, both lake and river spawning populations of both species have declined by up to 86% (Hewitt et.al 2012).

There has also been a sharp increase in predatory fish numbers with increased habitat (Williamson River Delta Project 2008) where an additional 5500 acres of warm water habitat was created for fathead minnows and other non-native warm water species. Disease host snails are also more abundant in these shallow warm water habitats (Dr. Douglas Markle, OSU, pers. comm.). Currently 19 non-native fish species exist in the Klamath basin and most of them eat fish. Furthermore, the basin has seen an increase in fish eating birds including cormorants and non-native artic terns.

Our management alternative would be to reduce lake levels to pre-dam levels to reduce habitat for predacious non-native species, decrease lake temperatures in the spring as the lake fills, flush out excessive phosphorus levels and reduce toxic algal blooms. To achieve this the objective is to manage Upper Klamath Lake levels like Gerber and Clear Lake, with one yearly lake minimum that is met in late fall. Lake levels historically declined in late summer when inflows were reduced once snowmelt inputs stopped. Water over Putnam Reef and Keno Reef declined as input from winter run-off and spring rains decreased. At this point evaporation began to increase and shoreline levels receded. The lake historically was more of a swamp than lake. Shoreline vegetation will increase during periods of de-watering and will provide habitat for juvenile suckers, other native fish, as well as shorebirds and waterfowl.

Suckers are benthic feeders that adapted well to poor water quality conditions including low lake levels with limited stress (look at Gerber and Clear Lake populations, survival is good with minimal stress at low lake levels). The increase in lake levels has been shown to have a detrimental effect on both spawning populations as well as juvenile recruitment.

Alternative Action Plan for Downstream Flows

The current model for downstream flows includes pulse flows to reduce the population of actinospores that infect salmonids and can cause severe die-offs in warm summer conditions. Pulse flows are meant to scour the stream banks and remove habitat (sand and silt and Cladophora) for polychaete worms (*M. speciosa*), a host species for *C. shasta* actinospores. Polychaete worms (*M. speciosa*) are a host species for *Ceratomyxa shasta*, a myxozoan parasite identified as a significant contributor to salmonid mortality in the Lower Klamath River. Densities of polychaete worms increase at higher flow rates (Bartholomew and Bjork, 2007).

Our management alternative would reduce downstream flows during strategic times (summer flow events) to dry out the banks along the river and decrease habitat for polychaete worms. De-watering the river will mimic historic flow regimes during summer months and reduce polychaete numbers. A reduction in polychaete numbers will translate into fewer destructive actinospores and less salmonid mortality. This will translate to increased survival of juvenile salmonids during downstream migration to the ocean.

Suggestions:

- ❖ Work more closely with OSU Research Microbiologists on Non-flow alternative research
- ❖ Research historical run-time for chinook. Did they move into the river in August when natural flows were low and water was warm

Agricultural Economic Concerns

Klamath County is enduring its third driest year on record as agricultural, urban and environmental demands for water are at an all-time high. Current management of lake levels restricts water availability to agriculture and potential future ESA and tribal requirements could restrict surface water even further. Through the proposed comprehensive agreements, surface water availability is expected to be further reduced if regulations to force land managers into Riparian Management Agreements are put in place through legislation. These water management restrictions on agriculture will have up to a 20% (approximately 60 million dollars) negative impact on the Agricultural economy.

If the proposed Long Range Plan for Protecting Late Summer Adult Salmon in the Lower Klamath River is going to require more flows from the upper basin, the losses to the basin economy could be even higher. In the analysis for the long range plan these things need to be considered:

Economic impacts on private businesses and individuals, including costs and benefits (if they might occur)

- Fiscal impacts on local governments
- Fiscal impacts on state government