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8 *Counsel for Federal Defendants*

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11  
12 SAN LUIS & DELTA-MENDOTA WATER  
AUTHORITY, et al.,

13  
14 Plaintiffs,

15 v.

16 SALLY JEWELL, et al.,

17 Defendants.

CASE NO. 1:13-cv-1232-LJO-GSA

**DECLARATION OF BRIAN PERSON  
in support of Federal Defendants'  
Opposition to Plaintiffs' Motions for  
Temporary Restraining Order and  
Preliminary Injunction**

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21 I, Brian Person, declare as follows:

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23 1. I am the Area Manager of the Northern California Area with the United States  
24 Department of the Interior, Bureau of Reclamation ("Reclamation"). I am responsible for  
25 Reclamation facilities and program management in the upstream end of the Sacramento River  
26 basin and the entire Trinity River basin, including the Trinity River Restoration Program  
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1 (Restoration Program), along with the Orland Project. I am Reclamation's designated  
2 representative on the eight-member Trinity Management Council (TMC) , and have served as the  
3 Chair for the last approximately four and one-half years. I have worked for Reclamation for  
4 approximately 32 years. I hold a B.S. in Civil Engineering from North Dakota State University  
5 and am a registered professional engineer in the state of Idaho.

6 2. As drought conditions in northern California persisted into the spring of 2014, tribes,  
7 federal and state fish agencies, and lower Klamath River interests began expressing concern  
8 regarding the likelihood of low summer and fall flow rates and the resulting adverse conditions  
9 for returning adult fall Chinook salmon and other species. This was a primary topic of  
10 conversation during the March and June meetings of the Trinity Adaptive Management Working  
11 Group as well as the Trinity Management Council (on which I serve as Chair). Further, the  
12 Hoopa Valley Tribe began raising the issue during regular Government-to-Government meetings  
13 at the start of the calendar year. The Yurok Tribe expressed concern during Government to  
14 Government discussions as well.  
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18 3. In late February, the Pacific Fisheries Management Council released their forecast of just  
19 under 93,000 adult fall Chinook salmon returning to the lower Klamath River. It was stated  
20 during several discussions with tribes and other fishery advocates that even though the run size  
21 projection was far lower than the 170,000 action threshold developed in 2012 and 2013, the  
22 likely low accretion forecast for the Trinity and Klamath Rivers would mean that flow  
23 augmentation may be required to prevent a fish die-off despite the smaller run size projection.  
24 As the accretion forecast was further refined during approximately the April through June period  
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1 and the low flow rate projections were confirmed, and tribes, fish agencies, and others escalated  
2 their concern.

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4 4. Also during this period, Reclamation's Central Valley Operations Office developed, and  
5 later refined, operational plans and forecasts for the Central Valley Project, including diversions  
6 from the Trinity River Basin to the Sacramento River Basin, the end-of-month storage levels,  
7 and approximate cold water pool volumes in all reservoirs.

8  
9 **2013 Decision Considerations**

10 5. In late June, Reclamation began receiving written requests describing lower Klamath  
11 River conditions, expressing concern that another epizootic disease outbreak was likely, and  
12 recommending that flows in the lower Klamath River be augmented. The inventory of letters  
13 received includes:  
14

- 15  
16 • June 20, 2014, letter from the Hoopa Valley Tribe recommending that flows in the lower  
17 Klamath River be augmented to a rate of 2,500 cubic feet per second (cfs) beginning in  
18 August and extending through September 21, 2014.  
19  
20 • July 10, 2014, letter from the Pacific Fisheries Management Council recommendation  
21 flow augmentation to an adequate level for fishery protection.  
22  
23 • July 16, 2014, letter from Yurok Tribe recommending that flows in the lower Klamath  
24 River be augmented to a rate of 2,500 cfs (later clarified to begin August 26, 2014)  
25 through September 21, 2014.  
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- 1 • July 22, 2014, letter from Humboldt County recommending flows be augmented to a rate  
2 of 2,500 cfs
- 3 • August 13, 2014, from the North Coast Regional Water Quality Control Board urging the  
4 release of protective minimum flows.  
5

6 These documents are attached as Exhibit 1 to my declaration.

7 6. Reclamation managers, operations experts, fishery biologists, and other technical staff  
8 continued evaluating river and fishery conditions on the Trinity, Klamath, and Sacramento River  
9 Basins. In addition to Government-to-Government discussions with tribes, we conferred also  
10 with managers and fisheries biologists from the U.S. Fish and Wildlife Service, NOAA  
11 Fisheries, and the California Department of Fish and Wildlife. We discussed the applicability of  
12 the recommendations in the August, 2013 memorandum jointly developed by NOAA Fisheries  
13 and the U.S. Fish and Wildlife Service in light of the very dry hydrologic conditions. The 2013  
14 memorandum advances earlier recommendations to provide preventative and/or emergency flow  
15 augmentation based on flow, temperature, fish presence, and fish health indicators.  
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19 7. Reclamation continually assessed fishery health concerns, depleted water storage (and  
20 specifically, cold water pool), and the other related factors in a relative risk context. Of specific  
21 concern were the end-of-month storage levels and cold water pool volumes in Trinity Reservoir  
22 and the ability to meet Trinity River temperature objectives with and without releasing additional  
23 water to augment lower Klamath River flows.  
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25 **Initial Decision**  
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1 8. Relying on the above conditions, Reclamation announced on July 30, 2014 that, it would  
2 rely on a rigorous fish health monitoring protocol and the fish health trigger as described in the  
3 joint memorandum. It prescribes that if confirmed cases of Ich in a predetermined sample set,  
4 the current lower Klamath River flow rate would be doubled for a period of seven days.  
5

6 **Initial Decision Aftermath**

7 9. Tribes, the State of California, county governments, members of the congressional  
8 delegation, and fish advocacy groups immediately requested reconsideration. Reclamation  
9 responded clearly that any reconsideration would be based solely on scientific merit, and almost  
10 immediately convened state and federal fishery experts, tribal fishery experts, and consultants to  
11 further assess the conditions present in the lower Klamath River this year to determine if  
12 conditions and any other pertinent factors not considered in the criteria described in the 2013  
13 memorandum were unique to 2014 and therefore require a different response. A group of  
14 approximately 20 such representatives gathered in Arcata, CA, on August 19, 2014 for an all-day  
15 discussion of the issue. Reclamation also met on two occasions via teleconference with Central  
16 Valley Project water and power users where they presented biological and other data suggesting  
17 that flow augmentation in the lower Klamath River was unnecessary and possibly ineffective.  
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21 **Revised Decision**

22 10. Reclamation determined that waiting to provide any such flows based on a fish health  
23 monitoring protocol alone would be insufficient and that new information on environmental  
24 conditions warranted an emergency flow action. Due to the extremely low tributary flows and  
25 observed early arrival of returning adult salmon, biologists for tribes and fish agencies expressed  
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1 that providing flows only after confirmed cases of Ich were observed, the flow increase would  
2 arrive too late to protect that cohort.

3 11. Reclamation modelers also completed further simulations of the temperature impacts in  
4 the Trinity and Sacramento Rivers that would be caused by releasing an additional 25,000 acre-  
5 feet from Trinity Reservoir, and they were found to be within acceptable limits.

6  
7 12. On August 22, 2014, Reclamation announced that it would increase releases from  
8 Lewiston Reservoir beginning about 7:00 a.m. on August 23, 2014, from approximately 450 cfs  
9 to approximately 950 cfs to achieve flow rate of 2,500 cfs in the lower Klamath River. At 7:00  
10 a.m. on Monday, August 25, releases from Lewiston Reservoir began increasing to  
11 approximately 2,450 cfs to achieve a flow rate of approximately 4,000 cfs in the lower Klamath  
12 River. This release from Lewiston Dam would be maintained for approximately 24 hours before  
13 returning to approximately 950 cfs, and will be regulated at approximately that level as necessary  
14 to maintain lower Klamath River flows at 2,500 cfs until approximately September 14, 2014.  
15 River and fishery conditions will be continuously monitored, and those conditions will determine  
16 the duration of this action. The primary factors that contributed to this decision follow:

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19 **Flow and Temperature Conditions**

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21 13. Since July 30<sup>th</sup>, flow and temperature conditions in the lower Klamath River had  
22 deteriorated to levels lower and warmer than was forecasted and were very similar to those  
23 documented during the 2002 fish die-off. Flow rates in the tributaries remain extremely low and  
24 in some cases, at or near zero, meaning fish must remain in the mainstem and that little thermal  
25 relief is available in these areas to lower stress of holding fish. For example, Blue Creek, one of  
26

1 the largest of lower river tributaries offers scant amount of flow and what flow is entering the  
2 Klamath River is only providing a narrow band along the rivers margin which is used  
3 extensively, despite of the shallow nature of these habitats. Discharge in the Klamath River  
4 above the Trinity River confluence is similar to that observed in 2002, despite releases from Iron  
5 Gate Dam being significantly lower in 2002 than in 2014. This difference can be attributed to the  
6 lower contributions from tributaries, which are generally of better water quality and are colder  
7 than water in the mainstem Klamath River. In addition, the low volume of tributary accretions  
8 has resulted in a smaller overall volume of thermal refugial areas along the mainstem river.  
9 These conditions provide limited thermal relief, as needed to reduce the stress of holding fish and  
10 to minimize conditions conducive to increasing fish-to-fish disease transmission due to  
11 crowding.  
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15 14. Based on observations since early August, biologists surmise that because of the lack of  
16 thermal refugia that many fish are migrating upriver in search of available habitat. In doing so,  
17 they are migrating at water temperatures that are as great as 25 degrees C which is very stressful  
18 to fish. Providing flow augmentation from Lewiston would reduce water temperatures to afford  
19 Trinity River stocks the opportunity to migrate up river in less stressful conditions while  
20 allowing Klamath stocks larger areas of more suitable habitat to hold below the confluence until  
21 ambient conditions allow safer upstream migration.  
22

23 15. Similarly because 2014 flows are similar to those of 2002, the water turnover rates are  
24 likely to be similar to those that resulted in the disease outbreak observed in that year. In the  
25 absence of flow augmentation, these conditions would persist thereby increasing the probability  
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1 that an epizootic dieoff would occur. Therefore, flow augmentation will improve on the water  
2 turnover rates as experienced in 2002 to lower this risk.

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4 16. Providing additional water from Lewiston now will provide thermal benefits to the  
5 mainstem Trinity River and lower Klamath River. Multiple U.S. Fish and Wildlife reports on the  
6 effects of increased releases on water temperatures of the Trinity River and lower Klamath River  
7 during the late summer are available to illustrate this point. A similar effect is anticipated in this  
8 year because suitably cold water remains available from Trinity Lake as indicated by  
9 contemporary storage supply thermal profiles and water temperature modeling by the Central  
10 Valley Operations Division.  
11

### 12 **Fish Residence Time**

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14 17. Also, since August 1<sup>st</sup>, significant numbers of fish began moving into the lower river  
15 earlier than expected and have been observed holding in large, crowded schools for long periods  
16 in small thermal refugial areas. This appeared to have been in response to a freshet that occurred  
17 in the basin, most notable in the Salmon River, in late July. Following this rain event, water  
18 temperatures measured at the Klamath gage site dropped to below 22 degrees C, but thereafter  
19 increased to reach daily maximums of over 25 degrees C in early August. Prior to the July 30  
20 Decision it was anticipated that fish would not enter the river system if it was too hostile. It is  
21 well documented that fish remaining in close proximity for extended periods can accelerate the  
22 spread of Ich through fish-to-fish transmission.  
23  
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### 25 **Observations of Abnormal Fish Behavior**



1 18. Since August 1<sup>st</sup>, there have been numerous credible reports of fish exhibiting the signs  
2 of acute stress, such as:

- 3 • Slow and lethargic fish movement, in some cases enabling observers to pick up fish by  
4 hand.
- 5 • Video documentation of adult fish holding in shallow water at cold water seeps as  
6 opposed to in deep pools in the mainstem river associated with cover.
- 7 • Adult Chinook salmon migrating up into non-natal tributary to seek refuge in the cooler  
8 water.
- 9 • Adult fish migrating up riffle areas at Pecwan in water temperatures around 25 degrees C.  
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- 11

12 19. These types of behavior in fish were reported to have been observed in 2002 and are  
13 indicative of stress and possible disease. Fish in a stressed state are more susceptible to disease  
14 due to compromised immune systems, and are less capable of moving upriver and dispersing  
15 should migratory conditions improve.  
16

17  
18 This Declaration is made under 28 U.S.C. § 1746. I declare under penalty of perjury that the  
19 foregoing is true and correct to the best of my current knowledge.  
20

21 Executed on August 26, 2014 in Redding, CA.  
22

23  
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25 \_\_\_\_\_  
26 Brian Person  
27  
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**Hoopa Valley Tribe**  
PO BOX 13418, HOOPA CA 95546 • WWW.HOOPA-NSN.GOV



20 June 2014

Ms. Sally Jewell  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

**Re: Hoopa Valley Tribe Request for Supplemental Flows in Lower Klamath River During 2014 Adult Salmon Migration**

Dear Secretary Jewell:

The purpose of this letter is to advise you that real-time data reported by USGS Trinity-basin streamflow gages show that we are now experiencing the worst drought on record. Scientists for the Hoopa Valley Tribe have concluded that current gage data reviewed in the context of historic Klamath Trinity hydrology make it very likely that supplemental releases from Reclamation facilities will be necessary in the late summer of 2014.

Supplemental releases would be used to protect Klamath/Trinity fishery resources held in trust by the United States from adverse habitat conditions associated with the fish kill of 2002. The trajectory of data for June 2014 provides evidence that flow levels in the lower Klamath River will likely fall below minimum thresholds developed collaboratively by the Trinity River Restoration Program (TRRP) and the Bureau of Reclamation's Klamath Basin Area Office under the guidance of the TRRP's Fall Flow subgroup for protection of adult fall Chinook migrants.<sup>1</sup>

Specifically, flows no lower than 2,500 cfs as measured at USGS gage "Klamath River near Klamath" are required commencing in August and continuing at least through September 21. This discharge is required to be met regardless of projected run size for fall Chinook salmon. Additional supplementations would be required, should disease outbreaks or unseasonably warm late-September water temperatures come to pass.

In a related matter, we are concerned that excessive diversions of Trinity water through Carr Tunnel may lead to violations of Trinity River water temperature criteria recommended in the Trinity River Flow Evaluation Study Final Report.<sup>2</sup> End of September storage behind Trinity Dam is now projected at 658TAF, a level that threatens meeting these criteria. Lessening diversions

<sup>1</sup> Hayden, T. 2012. Memorandum to the fall flows subgroup. Re: 2010 and 2012 Fall flow release criteria and evaluation process. Available from the Trinity River Restoration Program. <http://odp.trrp.net/Data/Documents/Details.aspx?document=1608>

<sup>2</sup> United States Fish and Wildlife Service and Hoopa Valley Tribe. 1999. Trinity River Flow Evaluation Final Report. U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, Arcata, CA.

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now would be key to assuring these criteria are met while providing for supplemental flows during the adult salmon migration this summer-autumn.

We are requesting immediate action by Reclamation to engage with Hoopa Tribal Fisheries Department to prepare for release of supplemental flows this year. For further information please contact Mike Orcutt, Director, Hoopa Tribal Fisheries (530) 625-4267.

Sincerely,



Danielle Vigil-Masten, Chair  
Hoopa Valley Tribal Council

Cc: David Murillo, USBOR Mid-Pacific Region

2  
06/20/2014  
Secretary Jewell  
HVT Request for Supplemental Flows in Lower Klamath River During 2014 Adult Salmon Migration





# YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

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REC'D  
JUL 21 2014

July 16, 2014

U.S. Department of the Interior  
Sally Jewell, Secretary of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

RE: Action Requested to Prevent Klamath River Fish Kill

Dear Secretary Jewell:

On behalf of the Yurok Tribe, I write to request that the Bureau of Reclamation proactively release supplemental flows during the 2014 fall Chinook salmon migration to minimize the risk of a fish kill similar to what occurred during 2002. We are facing near record-low flows in the Lower Klamath this summer/fall, well below what scientist of the basin have recommended for minimizing the chance of another adult salmon fish kill. Therefore, we are asking that BOR provide a minimum of 2,500 cubic feet per second (cfs) at the Lower Klamath gauge during the primary period of the fall chinook migration in the Lower Klamath River.

The Yurok Tribe is located on the lower 44 miles of the Klamath River, and is the largest Tribe in California. Fisheries resources of the Klamath Basin are an integral component of the Yurok way of life - for sustenance, ceremonial, religious, and commercial purposes. In light of the importance of the Klamath River fishery resource to Yurok People, the Tribe has been a leader in Klamath Basin science and restoration efforts. We must be vigilant stewards of the river and the fishery it supports, to ensure that future generations of Yurok People may continue our way of life.

In 2002, the Lower Klamath River, within the Yurok Reservation, was the scene of a catastrophic and devastating fish kill. Somewhere between 33,000 to 78,000 adult salmon died in a massive fish kill, prior to reaching their spawning grounds. Although the primary cause of death was disease (Ich and Columnaris), three different reports attributed the kill at least in part, to low flow conditions<sup>1</sup>, combined with an above-

<sup>1</sup> Yurok Tribal Fisheries Program 2004, The Klamath River Fish Kill of 2002: Analysis of Contributing Factors; USFWS 2003, Klamath River Fish Die-off September 2002; California Department of Fish and Game 2004, September 2002 Klamath River Fish Kill: Final Analysis of Contributing Factors and Impacts

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3  
4 average salmon run size. While the fall chinook fish run in 2014 is predicted to be  
5 slightly less than average, there is substantial uncertainty associated with this prediction.  
6 What we know with certainty is that flows will be extremely low during the 2014 fall  
7 Chinook migration; in fact six weeks before the peak migration time, low flows are  
8 already substantially less than the 2,500 cfs minimum threshold that scientists of the basin  
9 have recommended to minimize the risk of a fish kill, regardless of the run size<sup>2</sup>.

10  
11 As you may be aware, we faced similar low flow conditions during 2012 and in 2013,  
12 when the BOR augmented flows to help provide for the successful migration of the  
13 Klamath Basin fall chinook. We are appreciative of these proactive flow releases from the  
14 Trinity River, which were implemented according to the recommendations of a science  
15 advisory team. This supplemental flow provided conditions that allowed for adult salmon  
16 to migrate through the lower river and successfully reach their spawning grounds; thereby  
17 ameliorating conditions for another fish kill. We are extremely grateful for the foresight  
18 and leadership that was displayed in the decision to protect those great runs of fish by  
19 releasing more water to the Klamath River via the Trinity River.

20  
21 The Yurok Tribe is growing increasingly concerned because near-record extremely dry  
22 hydrologic conditions will lead to low flow conditions and high water temperatures  
23 during this year's upstream migration of fall-run Chinook salmon. In particular, we are  
24 concerned that without intervention, low late-summer and fall flows have the potential  
25 to lead to conditions similar to those fostering the outbreak of disease that killed the adult  
26 salmon in 2002. Indeed, large numbers of adult salmon and steelhead are already trapped  
27 at tributary mouths on the Yurok Reservation due to low flows and high water  
28 temperatures. These are precisely the conditions that preceded the 2002 fish kill.

Therefore, we ask that the Bureau of Reclamation proactively take action to minimize the  
potential for another fish kill by augmenting flow releases to alleviate stressful conditions  
for the 2014 fall Chinook. In particular, we recommend that BOR provide flows near the  
mouth of the Klamath of 2,500 cfs as recommended by the Trinity fall flows working  
group in 2012, including the possibility of emergency flows if needed. Attached please  
find the final recommendations of that group. If the Department requires additional  
technical analysis, we recommend they work with scientists of the Klamath-Trinity Basin;  
our staff will consider such collaboration a high priority.

<sup>2</sup> Hayden, 2012, Fall Flows Subgroup memorandum regarding fall flow release criteria and evaluation process. One of the three criteria recommended by the group was that "Flows projected below 2,500 cfs at RKM 13 during the migration season = recommend implement proactive fall flow release to increase base flows to at least 2,500 cfs during migration season regardless of projected fall chinook salmon run-size (Turk et al 2004)".

Strange, 2012. Summary of Scientific Evidence to Guide Special Flow Releases to Reduce the Risk of Adult Fall Chinook Salmon Mass Disease Mortality in the Lower Klamath River. Strange notes that "the one variable that can be directly influenced by managers is the flow of the river, with a minimum base flow of 2,500 cfs detailed herein as necessary to avoid another fish kill under most circumstances, and ..."

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For planning purposes, we would like the Department of Interior to commit to the provision of this water as soon as possible. Because the best available scientific evidence does not ascribe any advantages to water provided from one basin or the other, we believe all options from the Klamath and Trinity Rivers be explored thoroughly.

Sincerely,



Thomas P. O'Rourke Sr.  
Chairman, Yurok Tribe

CC: Lowell Finley, P.E., Acting Commissioner, Bureau of Reclamation  
David Murillo, Mid Pacific Region Director, Bureau of Reclamation  
Brian Person, Northern California Area Manager, Bureau of Reclamation



**Pacific Fishery Management Council**

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

July 10, 2014

The Honorable Sally Jewell, Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

**RE: Action Requested to Prevent Klamath River Fish Kill**

Dear Secretary Jewell:

The Pacific Fishery Management Council (Council) is concerned that potential low flows in the Klamath River will substantially affect salmon essential fish habitat (EFH) and potentially create conditions leading to a fish kill in the Klamath River during the fall Chinook migration in late summer of 2014, such as occurred in 2002. The purpose of this letter is to recommend the Department engage in advance planning for stored water releases this fall to prevent such an occurrence.

As you know, the Council is one of eight regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (MSA), and recommends management actions for Federal fisheries off Washington, Oregon, and California. The MSA includes provisions to identify, conserve, and enhance EFH for species regulated under a Council fisheries management plan. Each Council is authorized under MSA to comment on any Federal or state activity that may affect the habitat, including EFH, of a fishery resource under its authority. Furthermore, for activities the Council believes are likely to substantially affect the habitat of an anadromous fishery resource under its authority, the Council is specifically charged with providing comments and recommendations (MSA §305(b)(3)).

**Forecasted Flows**

Precipitation and resultant water supply in the Klamath Basin this year are most likely to continue a trajectory toward extreme drought. This is indicated by the fact that precipitation has been substantially lower than average since January 2013 and that flows at several gauging stations throughout the Basin today stand at levels at or below those seen during the severe drought of 1997-98. Precipitation between now and August is

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forecasted to be insufficient to mitigate what is expected to be adverse habitat conditions. There are water management decisions to be made between this point and September, and we remain concerned that sufficient water supplies be saved now so that the Bureau will be in a position to prevent conditions that may appear in the lower river similar to those that led to the September 2002 fish kill, when more than 33,000 adult salmon died in the Lower Klamath River.<sup>1</sup>

The hydrologic data for June 2014 provides evidence that flow levels in the lower Klamath River will likely fall below minimum thresholds developed collaboratively by the Trinity River Restoration Program (TRRP) and the Bureau of Reclamation's Klamath Basin Area Office under the guidance of the TRRP's Fall Flow Subgroup for protection of adult fall Chinook migrants.<sup>2</sup> Specifically, flows no lower than 2,500 cfs as measured at the U.S. Geological Survey (USGS) gauge "Klamath River near Klamath" are needed commencing in August and continuing at least through September 21. The Subgroup determined that this minimum floor would be recommended regardless of projected run size for Klamath fall Chinook salmon. Additional supplementation would be necessary, should disease outbreaks or unseasonably warm late-September water temperatures come to pass.

#### Requested Action

The Council requests that you examine allocations of water scheduled or expected in the current year, and pursue all necessary measures to ensure an adequate amount of supplemental water be available for release from the Trinity and/or Upper Klamath basins during the peak migration and holding timeframe for the fall Chinook salmon return. Such flow augmentation should be designed to maintain the quality of salmon EPH and minimize the likelihood of another fish kill and specifically avoiding the river flow patterns and adverse conditions that resulted in the 2002 fish kill. The Council also recognizes that actions taken this year may impact available water management options in the coming year, and that those impacts should be considered while deriving the optimal flow allocation for the key period in August and September. We recommend the Department of Interior work with Klamath Basin scientists, the TRRP, and co-managers to determine the best manner for shaping flows to minimize the potential for another fish kill.

<sup>1</sup> Bullen, G.L. 2003. Klamath River Fish Die-off: September 2002: Report on Causative Factors. APWD 08-03.USFWS. Arcata, California

<sup>2</sup> Hayden, T. 2012. Memorandum to the fall flows subgroup. Re: 2010 and 2011 Fall flow release criteria and evaluation process. Available at <http://odp.trp.net/Data/Documents/Details.aspx?document=1608>



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Page 3

In closing, the Council requests planning efforts be initiated now to ensure protection of EFH. Further, this recurring issue leads us to recommend the Department of Interior finalize a permanent and comprehensive plan to address the needs of lower Klamath fish passage.

We would appreciate hearing about the results of your planning, and offer our assistance in any way possible. Thank you for your attention to this important matter.

Sincerely,



D. O. Melcang, Ph.D.  
Executive Director

IDG:esp

Cc: Council Members  
Habitat Committee  
Salmon Advisory Subpanel  
Salmon Technical Team



BOARD OF SUPERVISORS  
**COUNTY OF HUMBOLDT**  
825 6<sup>TH</sup> STREET  
EUREKA, CALIFORNIA 99901-1154 PHONE (707) 476-2100 FAX (707) 448-7288

July 23, 2014

The Honorable Sally Jewell, Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

**Subject: Request for augmentation flows in lower Klamath River**

Dear Secretary Jewell:

I am writing today to express grave concerns of the Humboldt County Board of Supervisors regarding the threat of a fish kill in the lower Klamath River, and to request your prompt attention to mitigate anticipated low flows in lower Klamath River. Flows in lower Klamath River are as of today exceptionally low, significantly lower than in July of 2002 (the fish kill year), and well below the minimum protective flow recommendation of 2,500 cfs. This minimum flow rate, established using best available science, is recommended regardless of projected run size during the peak migration season.

Flows in the lower Klamath are expected to drop substantially lower in the coming weeks. The USGS California-Nevada River Forecast Center prediction for flows in the lower Klamath River for September 1<sup>st</sup> 2014 is 1,780 cfs with a range of 1,770 to 1,963 cfs; flows will be significantly lower than during the 2002 fish kill, when they approximated 2,000 cfs.

Based on these conditions, a fish kill is more likely than not in 2014 in the lower Klamath River. Our estimates of water volumes needed to supplement lower Klamath flows at 2,500 cfs are within the 50,000 acre foot range, corresponding to the annual entitlement of water from the Trinity River Division of the Central Valley Project required to be made available to "Humboldt County and downstream water users" under section 2 of the Act of August 12, 1935, Public Law 84-386, State of California water permit No. 11968 (1959), and the June 19, 1950 contract between Humboldt County and the United States. More than a half century ago, Congress assured us that water needed in our basin would not be diverted to the Central Valley. It is time for the Department to make clear to all Californians that it will honor Congress' mandate.

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As you may know, since the 2002 catastrophic fish kill in the lower Klamath River, the County and the Hoopa Valley Tribe have repeatedly requested that the Department of the Interior honor and fulfill the prior rights of the Trinity Basin communities to all water from the Trinity River Division required for fish and wildlife and other uses in the Trinity Basin. As California's drought worsens, the need to be clear on our water rights under the Law of the Trinity River grows more urgent. On February 24, 2011, the Commissioner of Reclamation advised the Hoopa Valley Tribe that the Solicitor had given legal advice to the Secretary about the status of our water rights, but he has refused to disclose that advice. We are entitled to know that the Secretary is faithfully executing the law when it comes to our rights.

We have heard reports that the Bureau of Reclamation may consider making no proactive supplemental flow releases this year unless and until evidence of distress and mortality are observed in migrating adult fall Chinook salmon. If true, that would be an unconscionable and unlawful risk to assign the Trinity Basin communities without our consent. The ability to provide timely relief to diseased and dying salmon by increasing flows after the fact, has not been demonstrated. Despite emergency response flow management actions in 2002, over 35,000 fish died. Transit times for relief flows and bureaucratic delays render post-incident flow augmentation ineffective. We ask you to act now by proactively allocating supplemental flows from Klamath-Trinity water supplies managed by Interior to mitigate this extraordinary threat.

Sincerely,



Rex Bohm, Chair  
Humboldt County Board of Supervisors

RB:ch



**North Coast Regional Water Quality Control Board**

August 13, 2014

Lowell Finley, Acting Commissioner  
Bureau of Reclamation  
U.S. Department of the Interior  
1849 C Street NW  
Washington DC 20240

Dear Acting Commissioner Finley:

As the Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) I am writing to urge the U.S. Bureau of Reclamation (Reclamation) to release protective minimum flows from Lewiston Reservoir into the Trinity River, as recommended by the Trinity River Restoration Program (TRRP 2012). This action of releasing water into the Trinity River, and subsequently into the Klamath River, from the last week of August through the third week of September, will significantly reduce the probability of a major fish kill and facilitate the safe passage of thousands of fall Chinook salmon and other anadromous species into the Klamath River and its tributaries. This request is informed through Regional Water Board staff's involvement in the Klamath Fish Health Assessment Team and the Klamath Basin Monitoring Program, and is consistent with the requests received by Reclamation from the Karak Tribe, the Hoopa Tribe, and the Yurok Tribe.

The Klamath River is listed as impaired under Section 303(d) of the Clean Water Act yet it remains a unique and productive natural resource. It is a state and federally designated Wild and Scenic River and is habitat for declining populations of rare and threatened anadromous fish. The world-class recreation and fishing industries supported by the Klamath River make it a vital part of the Northern California environment, economy and culture. The Klamath River basin is home to several indigenous cultures that rely on the river for subsistence and hold it sacred as a central part of their spiritual and cultural heritage. We believe that the requested action is necessary to protect water quality and the beneficial uses related to subsistence and recreational fishing, aquatic life, and Native American culture as defined in the Water Quality Control Plan for the North Coast Region (Basin Plan). The beneficial uses for the Klamath River identified in the Basin Plan are listed in Attachment 1.

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August 13, 2014

Current conditions on the Klamath River, as described by Dr. Joshua Strange in his technical memorandum dated July 30, 2014 (Attachment 2), are more severe than they were in July 2002, which is the period of the last major fish kill in the Klamath River. The current plan proposed by Reclamation to release water from Lewiston Reservoir at the onset of a confirmed disease outbreak (e.g., Ich) is ill conceived and provides inadequate protection to fish-related beneficial uses. The protective TRRP minimum flow recommendations, if implemented, would help avoid the outbreak of disease conditions, and thus a preventable impact could be avoided. The strategy for a post-disease flow release is less desirable because it would give time for disease conditions to increase to catastrophic levels due to the time associated with confirming disease surveys, the administrative decision-making process, and the travel time of any released water. Therefore, we believe that prompt action by Reclamation to adopt this request is essential.

The current situation is critical. With continued hot weather in the forecast and ongoing low flows in the lower Klamath River, the stage is set for a potentially devastating fish kill. However, it is widely accepted that a preemptive flow release from Lewiston Reservoir beginning the last week of August could improve conditions considerably and avert a potential disaster. We request a prompt reply, outlining measures that Reclamation is prepared to implement to provide flows protective of Klamath River basin salmonids and other aquatic species. Please do not hesitate to contact me directly at (707) 570-3762 or [Matt.St.John@waterboards.ca.gov](mailto:Matt.St.John@waterboards.ca.gov) if I can assist you in any way or if you have any questions or require any additional supporting information for this request. I look forward to your reply. Thank you very much.

Sincerely,

Original Signed by

Matthias St. John  
Executive Officer

**References:**

Trinity River Restoration Program (TRRP). 2012. Memorandum to Brian Person, Reclamation Northern California Area Manager. 2012 fall flow release recommendation. May 31, 2012.

**Attachments:**

The beneficial uses for the Klamath River identified in the Basin Plan.  
Dr. Joshua Strange technical memorandum dated July 30, 2014

cc: Congressman Jared Huffman, 1630 Longworth House Office Building,  
Washington, DC, 20515. [John.Driscol@mail.house.gov](mailto:John.Driscol@mail.house.gov)  
Michael L. Connor, Deputy Secretary of the Department of the Interior, 1849 C Street,  
N.W. Washington DC, 20240

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August 13, 2014

Congressman Mike Thompson, 231 Cannon Office Building, Washington, DC 20515  
Thomas P. O'Rourke Sr., Chairman Yurok Tribe, P.O. Box 1027, Klamath, CA 95548  
Danielle Vigil-Master, Tribal Chairwoman Hoopa Valley Tribe, P.O. Box 1348,  
Hoopa, CA 95546  
Russell Attebery, Chairman Karuk Tribe, P.O. Box 1016, Happy Camp,  
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Inna Lagomarsino, Assistant Regional Administrator NOAA Fisheries, 1655 Heindon  
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Brian Person, Northern Area Manager, Bureau of Reclamation, 16349 Shasta Dam  
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