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July 31, 2013

Mr. Don Reck
Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019
dreck@usbr.gov

Re: 2013 Lower Klamath River Late Summer Flow Augmentation from Lewiston Dam

Dear Mr Reck:

Please consider these comments on behalf of the Environmental Protection Information Center (EPIC). EPIC is an Arcata, California, based public interest conservation advocacy organization whose members live through out the state and nation, including a significant number of members and supporters that reside in the Klamath and Trinity River Basins. Our organization is working on a day-to-day basis to provide a vehicle for our members to meaningful public participation on crucial natural resource management issues that can impact the livelihoods and well being of our local communities. As such, these comments are provided on the behalf of our membership and activist base, which numbers over 2,000 individuals, and who all have a direct interest in the recovery of salmon runs and the maintenance of healthy aquatic ecosystems in the Lower Klamath and Trinity Rivers.

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Support for Proposed Action

The Draft Environmental Assessment and the Draft Finding of No Significant Impact for the Lower Klamath River Late Summer Flow Augmentation from Lewiston Dam materials were made available by the Bureau of Reclamation (BOR) in a timely fashion for public review. Staff, interns, board members, and supporters associated with our organization have become familiar with the documentation for the Proposed Action. EPIC supports the Proposed Action. We also perceive the proposed action to be an emergency action designed to avoid another disastrous fish-kill as was seen in the Lower Klamath River in the late summer and fall of 2012. The Proposed Action, as important as it is to immediately address clearly dangerous river conditions for salmon and other aquatic species, is inadequate in the long run for securing salmon recovery and addressing other conservation challenges in both the Klamath and Trinity Rivers. EPIC does support the Proposed Action, as it is consistent with the priority use of Trinity River water for in-basin fisheries, which supersedes out of basin demands on Trinity water resources.

Comments Addressing Secondary Effects of Proposed Action

To meet the long-term conservation goals of our organization, and the communities we represent in the Klamath and Trinity River Basins, it is imperative that basin wide water resource management solutions be designed and implemented. In the interest of promoting these solutions, and in improving future Proposed Actions that are designed to respond to threats to salmon recovery and the maintenance of healthy aquatic ecosystems in these river basins, EPIC provides the following comments in relation to secondary effects of the Proposed Action.

Our organization is clearly concerned about adequately protecting the fall-run Chinook, as well as other aquatic species in the Klamath Basin. The Bureau of Reclamation's (BOR)

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proposal to release Trinity water is a federal action that must comply with the National Environmental Policy Act (NEPA)¹ and the Endangered Species Act (ESA).² Recognizing our stated support for the Proposed Action as a stop gap measure to address dangerous river conditions, we feel that it is important to note that the current draft Environmental Assessment and Finding of No Significant Impact does not take a sufficiently “hard look” at the broader secondary effects of augmenting the summer flow, especially upon species listed as endangered or threatened. The difficult balance between actions protecting fall-run Chinook and actions that may harm other species impels BOR to take a meticulous look at the secondary effects of the proposed release. Furthermore, BOR should consider the role hatchery populations play in aggravating conditions. To those ends, BOR should further consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). Though NEPA does not require that BOR meet the “best science” standard of the ESA,³ it is good practice. In addition to consulting directly with the services, BOR should take into consideration the timely May 2013 Biological Opinion on the Klamath project issued jointly by both services.

All parties are, ostensibly, hoping to avoid repeating 2002 where low flows compounded several threats to the fish and resulted in one of the largest historical fish-kills in the West. The 2002 fish-kill left, as the FWS reports, some 34,000 fish dead. Thirty-four thousand was an “estimate of the total number of *observable* fish that died during the [fish-kill,]”⁴ not an estimate of the *total* fish mortality. The California Department of Fish and Game (DFG) estimated that the

¹ 42 U.S.C. § 4321 *et seq.*

² 16 U.S.C. § 1531 *et seq.*

³ 40 C.F.R. 1500.1, 1502.24.

⁴ U.S. Fish and Wildlife Serv., AFWO-01-03, *Klamath River Fish Die-off: Report on Estimate of Mortality* ii, 13 (Sept. 2003) (emphasis added).

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actual mortality “may have been more than double that number.”⁵ DFG further noted “[f]low is the only controllable factor and tool available in the Klamath Basin (Klamath and Trinity rivers) to manage risks against future epizootics and major adult fish-kills.”⁶ In an effort to avoid repeating the 2002 fish-kill, BOR has augmented the flow a number of times.⁷ It appears likely that the conditions that led to the 2002 fish-kill will continue to converge in the future, perhaps even more frequently.⁸ Several advisory bodies have called for more regular monitoring,⁹ for a more consistent process to determine the necessity and quantity of flow augmentation,¹⁰ and for reallocation of Central Valley Project water.¹¹ Though some progress has been made upon these recommendations, the recurring threats necessitate further action.

Contrary to the DFG’s assertions that flow is the only controllable factor, the quantity of hatchery fish released into the basin is another factor that can be controlled. Over-crowding can compound the same factors that perpetrated the 2002 fish-kill. Though it cannot be used as a reactive tool in the same manner as flow augmentation, hatchery-released fishes’ long-term effects are significant and must be examined under NEPA. The significant population increase from these hatchery fish is increasing the risk to *all* fish—native and hatchery-raised. In a recent report, the California Hatchery Scientific Review Group identified

a large number of possible negative impacts that release of millions of hatchery fish may have on natural populations, including direct competition or predation among hatchery- and natural-origin juveniles, transmission or promotion of

⁵ Cal. Dep’t. of Fish & Game, *September 2002 Klamath River Fish-Kill: Final Analysis of Contributing Factors and Impacts* III (July 2004).

⁶ *Id.* at III, 131.

⁷ 2003, 2004, and 2012. U.S. Dep’t. of the Interior, Record of Decision, *Trinity River Mainstem Fishery Restoration*, Dec. 19, 2000, p. 1 ¶ 3–4 (2000).

⁸ Letter from D. O. McIsaac, Ph.D., Executive Director, Pac. Fishery Mgmt. Council, to Sally Jewell, Sec’y, U.S. Dep’t of the Interior 4 (Apr. 24, 2013).

⁹ *E.g.*, U.S. Dep’t. of the Interior, *Recommendations for Averting Another Adult Salmonid Die-off* 8 (Mar. 2003).

¹⁰ *E.g.*, *supra* n.8, Letter from D. O. McIsaac, Ph.D. at 4.

¹¹ *E.g.*, Letter from Donald K. Hansen, Chairman, Pac. Fishery Mgmt. Council, to Gale Norton, Sec’y, U.S. Dep’t of the Interior 3–4 (Apr. 21, 2005).

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disease from hatchery to natural populations, competition between hatchery- and naturally-produced adults for spawning habitat, and reduction in fitness due to interbreeding¹²

The report specifically recommended that hatchery managers consider scaling back or eliminating certain Chinook hatchery programs to reduce threats from disease.¹³ These are precisely the impacts, effects, and recommendations that warrant a NEPA analysis.

Though BOR must conduct additional NEPA analyses and consult with the services, it also must release the proposed 62,000 acre-feet water block. It is on the substance of this fact that our organization provides our support for the Proposed Action. For decades, Congress nonchalantly exported Trinity River water, telling themselves that the Trinity Basin fish and wildlife could not only survive but *thrive* in spite of diversions sending as much as 90% of the natural flow out of the basin, and in spite of dams eliminating over a hundred miles of important habitat.¹⁴ Surprising no one, the fish stocks dropped precipitously. Eventually even Congress could not ignore the devastating reduction in fish populations. In 1992, they passed the Central Valley Project Improvement Act (CVPIA) to slow, stop, and reverse the damage dealt to the river. The Act lists as its purpose to—first and foremost—“protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins”¹⁵ No doubt the Record of Decision in 2000 (ROD) struck a compromise between competing interests, but it is clear in its introduction that human misuse and abuse of the basin’s resources are at the core of the environmental devastation it intends to address.¹⁶ These measures correct for the unworkable division of water resources that contributed to the precarious situation in the first place. The

¹² California Hatchery Scientific Review Group (California HSRG). 2012. *California Hatchery Review Report*, 27. Prepared for the U.S. Fish & Wildlife Serv. & Pacific States Marine Fisheries Comm’n. June 2012.

¹³ *Id.* at 68.

¹⁴ *Supra* n.7, .DOI, Record of Decision at 1 ¶ 3.

¹⁵ Central Valley Project Improvement Act, Pub. L. 102-575, § 3402(a).

¹⁶ *Supra* n.7, .DOI, Record of Decision at 1 ¶ 3.

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Proposed Action is necessitated by current conditions in the Lower Klamath River, as well as the established obligation of federal agencies to prioritize in-basin uses of Trinity River water over out-of-basin transfers.

Humboldt County Interest in Water From Trinity Reservoir

The County of Humboldt water interest in the Central Valley Project (CVP) is provided by the statutes of the Trinity River Division Act of 1955. Under the contract that Humboldt County has with the Bureau of Reclamation under the 1955 Act “not less than 50,000 acre-feet of water shall be released from the Trinity Reservoir and made available to Humboldt County and downstream water users.” Though to this date the Bureau of Reclamation has failed to say whether or not it will fulfill its responsibility to provide Humboldt County with its statutory right to this water, it is clear that this 50,000 acre-feet of water, beyond the 62,000 acre-feet specified in the Proposed Action, could be of crucial importance in avoiding a disastrous fish-kill this summer. We encourage the Bureau of Reclamation to act as soon as possible to honor the contractual right that Humboldt County has to this water.

Conclusion

Another fish-kill would affect more than just fish. The local tribes, to whom the U.S. government has a fiduciary duty, are profoundly connected to the fish runs and natural resources of the land. The commercial fishermen depend on these stocks, and recreational fishermen bring economic benefit to the region. The Proposed Action, though inadequate as a long-term solution, is a necessary and imperative stop-gap measure to avoid a fish-kill that would be ecologically devastating, as well as threatening a socio-political tragedy that would seriously impact efforts by Klamath and Trinity Basin communities to develop long-lasting, ecologically responsible, and

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socially viable solutions to the complex challenges inhibiting salmon recovery and the maintenance of healthy aquatic ecosystems in Klamath Basin rivers. Thank you for your attention to our comments.

Sincerely,

A handwritten signature in black ink that reads "Gary Graham Hughes". The signature is written in a cursive style with a large initial 'G'.

Gary Graham Hughes

Executive Director

EPIC – the Environmental Protection Information Center

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