

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, et al.,

Plaintiffs,

YUROK TRIBE,

Plaintiff-intervenor,

v.

U.S. BUREAU OF RECLAMATION, and
NATIONAL MARINE FISHERIES SERVICE,

Federal Defendants.

Civ. No. C 02-02006 SBA

ORDER

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Defendant's Counsel are directed to serve this order upon all other parties in this actions.

This matter comes before the Court on the Motion to Dismiss the Yurok Tribe's Fourth Claim for Relief, filed by defendants U.S. Bureau of Reclamation (BOR) and National Marine Fisheries Service (NMFS) (collectively, "Federal Defendants") (Docket #285); and the Motion to Dismiss the Yurok Tribes' Fourth Claim for Relief, filed by defendant-intervenor Klamath Water Users Association ("Water Users") (Docket #277). These Motions are now addressed solely to the Fourth Claim for Relief of plaintiff-intervenor Yurok Tribe.^{1/}

In its Fourth Claim for Relief, the Yurok Tribe (Tribe) alleges that the BOR violated the federal reserved fishing right of the Tribe, and breached its trust obligation to the Tribe, by allegedly failing to provide adequate levels of water flow in the Klamath River in August and September, 2002. That failure, according to the Tribe, was a substantially contributing cause of the death of an

^{1/} The Fourth Claim for Relief of plaintiff-intervenor Hoopa Valley Tribe was previously dismissed pursuant to a settlement agreement between the Hoopa Valley Tribe and the Federal Defendants. (See Docket #344).

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1 estimated 34,000-60,000 fish in the lower Klamath River on the Yurok Reservation during the period
2 of approximately September 19, 2002, to October 1, 2002. The Tribe seeks declaratory and
3 injunctive relief.

4 The Water Users' and Federal Defendants' Motions to Dismiss contend that this Court lacks
5 subject matter jurisdiction over the Tribe's Fourth Claim for Relief. Having read and considered the
6 arguments presented by the parties in their moving papers, and after hearing extensive oral argument
7 on January 13, 2005, the Court HEREBY GRANTS the Water Users' Motion to Dismiss and
8 GRANTS the Federal Defendants' Motion to Dismiss.

9 **I. BACKGROUND**

10 **A. Factual Background**

11 The following facts are not disputed by the parties. The Yurok Tribe is a federally-
12 recognized Indian Tribe. Since time immemorial, the Tribe and its members have used and continue
13 to use the Klamath River and its anadromous fishery resources for subsistence, commercial, cultural,
14 and religious purposes. See generally Parravano v. Babbitt, 861 F. Supp. 914, 919-20 (N.D. Cal.
15 1994) (summarizing the history of the Yurok Reservation and the Tribe's historic reliance on
16 fishing), aff'd 70 F.3d 539 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996). Approximately 45
17 miles of the Klamath River flow through the very center of the Yurok Reservation from the River's
18 mouth at the Pacific Ocean, to the confluence with the Trinity River at the Yurok village of
19 Weitchpec, California. The Yurok Reservation was created in that location in the 1800's because
20 the River then "abounded in salmon and other fish" and was "ideally suited for the Yuroks." Mattz
21 v. Arnett, 412 U.S. 481, 487 (1973).

22 The BOR manages the Klamath Reclamation Project (Klamath Project), an area of
23 approximately 240,000 acres located in the Upper Klamath River Basin in the States of Oregon and
24 California, and through a system of dams, headgates and canals provides water from the Upper
25 Klamath Lake and Klamath River to the Klamath Project for use in agriculture by the Irrigators, and
26 two National Wildlife Refuges within the Project boundaries. The BOR determines the level, timing
27 and rate of water flow through the Klamath Project. See Kandra v. United States, 145 F. Supp. 2d
28 1192, 1196 (D. Or. 2001). The Klamath Project is one of the earliest federal reclamation projects

