



YUROK TRIBE

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July 21, 2014

BDCP Comments
Ryan Wulff, NMFS
650 Capital Mall, Suite 5-100
Sacramento, CA. 95814

Re: Yurok Tribe Comments on the Draft Bay Delta Conservation Plan (BDCP) and BDCP EIR/EIS

Mr. Wulff:

The Yurok Tribe supports the goal of restoration of the Bay Delta ecosystem and its endangered and threatened species. We recognize the likelihood of increased future water demand and increased uncertainty in water reliability due to impending climate change and population growth in California. We encourage the development of a scientifically based restoration plan that fully recognizes the Yurok Tribe's reserved fishing and water rights on the Klamath and Trinity Rivers, and respects and honors the federal trust relationship between the United States and the Yurok Tribe. We do not support the Draft BDCP as proposed and believe that the Draft EIR/EIS is insufficient, both from a procedural and technical perspective, and fails to fully analyze impacts to the Klamath and Trinity Rivers and their fishery resources that are of utmost importance to the Yurok Tribe and its members.

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 and Trinity Basins 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 and Trinity 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.

Despite last minute attempts from the California Department of Water Resources (DWR) to outreach and consult with tribes, we are frustrated that the Yurok Tribe was not consulted and engaged early in the BDCP EIR/EIS development process and that alternatives were evaluated and eliminated prior to adequate tribal consultation efforts by the DWR as lead agency. Furthermore we are concerned that as the BDCP co-lead agency, and federal trustee of the Yurok Tribe, the Bureau of Reclamation (Reclamation) has not initiated formal government-to-government consultation with the Yurok Tribe regarding the development of the Draft BDCP

and supporting Draft EIR/EIS. This failure to consult with the Tribe is a violation of Reclamation's federal trust responsibility to act in our best interests and is contrary to the protection of the Tribe's federally reserved rights and trust resources.

The Yurok Tribe submitted formal comments on the 5th Staff Draft of BDCP in September 2011. We did not receive a written response to our comments, which remain unaddressed in the Draft BDCP and supporting EIR/EIS. In our 2011 comments, in addition to requesting early and ongoing consultation during development of the BDCP, we expressed our concerns regarding the following insufficiencies of the 5th Staff Draft of the BDCP, concerns that remain today:

- Specific language that preserves the fishery restoration flows established in the December 2000 Trinity River Mainstem Fishery Restoration Record of Decision (ROD) and recognizes and authorizes the 50,000 acre-feet of Trinity water identified in the second provision of the 1955 Act.
- Full recognition and compliance with the instream flow requirements and restoration prescriptions of the Trinity River ROD.
- Scientific certainty that the BDCP would not impact annual carry-over storage in Trinity Reservoir and cold-water pool availability and thus jeopardize compliance with Trinity River water temperature objectives contained in the "Water Quality Control Plan for the North Coast Region" by the North Coast Regional Water Quality Control Board (NCRWQCB).
- Water budget analyses and water operating plans for the CVP and State Water Projects that fully account for 50,000 acre-feet of water from the Trinity River Division that is required to be managed for release on a schedule that makes it available to Humboldt County and downstream water uses for beneficial uses in the Trinity/Klamath basin, including non-consumptive instream flows for fishery purposes.
- Segregation and management of the 50,000 acre-feet in a manner that does not interfere with or diminish flow releases identified in the 2000 Trinity River Record of Decision.
- Requirements in the BDCP that, pursuant to section 3404(c)(2) of the CVPIA, every new, interim or renewed CVP water service or repayment contract will include provisions by which CVP water and power contractors expressly agree that the Trinity Division will provide: (a) the separate amounts and independent management and use of the ROD flow releases and the 50,000 acre-feet for the Trinity basin; and (b) pay the cost of Trinity River fishery restoration pursuant to section 3406(b)(23) of the CVPIA.

These insufficiencies remain unaddressed and/or are not incorporated into the Draft BDCP and were not included in the modeling and analysis that was used to evaluate the project alternatives

in the Draft BDCP EIR/EIS. For these reasons, the CEQA/NEPA analysis is insufficient, and does not fully evaluate the impacts related to implementation of Alternative 4 in the Draft BDCP EIR/EIS.

Furthermore, Trinity River in-basin flows for in-basin needs have priority over out-of-basin needs under the 1955 Act. It is clear from the legislative and administrative record that the diversion of Trinity River water is limited to water that is surplus to the needs of the Trinity River basin, which includes the amount of water necessary to meet the federal government's Tribal trust obligations to restore and protect the fishery resources of the Yurok and Hoopa Valley Tribes. Therefore, the BDCP should contain a policy stating that meeting the co-equal goals of water supply reliability and ecosystem restoration shall give priority to in-basin needs over out-of-basin diversions and not adversely impact the downstream federally reserved fishing rights and tribal trust resources of the Yurok and Hoopa Valley Tribes. Klamath and Trinity fishery resource protection includes meeting the flow requirements of the Trinity River ROD,¹ satisfying Trinity River temperature objectives contained in the "Water Quality Control Plan for the North Coast Region"² by the NCRWQCB, and ensuring adequate cold water carry-over storage for downstream fishery needs.

In its current form, the BDCP will fail to achieve its purpose of restoring the Delta ecosystem. The conservation and mitigation measures promoted by the BDCP are unlikely to succeed, and will result in further degradation of Endangered Species Act (ESA) listed Sacramento River Winter-run Chinook salmon, Delta Smelt and other ESA covered fish species. For example the BDCP modeling results reveal substantial decreases in smolt survival rate as a result of Alternative 4 implementation.

The Yurok Tribe is especially concerned about BDCP impacts to Trinity River water quality and temperature compliance targets established by the NCRWQCB for threatened SONCC coho salmon and Spring-run Chinook populations. Water quality impacts of the BDCP and its alternatives on surface water quality in the Trinity River are inadequate, did not consider or evaluate operational/infrastructure changes to Lewiston Reservoir for improved water temperature control measures, and did not contain models or analyses that incorporated the 50,000 acre-feet of Trinity water identified in the second provision of the 1955 Act for Humboldt County and downstream users.

In addition, the Draft BDCP EIR/EIS did not fully evaluate the cumulative impacts of climate change on Trinity Reservoir cold-water pool and end-of-September carry-over storage levels as a result of the BDCP. California is in a third year of drought and forecasted end-of-September (EOS) water volumes for Trinity Reservoir will be insufficient to provide for Trinity ROD flows

¹ See http://www.trrp.net/?page_id=72, accessed 9/14/11.

² See "Water Quality Control Plan for the North Coast Region" Table 3-1, page 3-8.00, footnote 5, located at http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/04_water_quality_objectives.pdf, accessed 9/14/11.

if a multi-year drought continues such as occurred in 1928-1934. Even without the BDCP and its increased capacity for South of Delta water transfers, the potential to exceed Trinity River temperature standards during critically dry years is high, and may impede recovery of Trinity River ESA-listed coho salmon populations. Current Central Valley Operations forecasts are dire, and predict EOS carry-over storage in Trinity Reservoir to be 654,000 acre-feet under current operations. This is less than the 750,000 acre-feet identified as “problematic” in the Trinity Reservoir Carryover Storage Cold Water Pool Sensitivity Analysis -Technical Service Center Technical Memorandum No. 86-68220-12-06, and close to the reconsultation threshold of 600,000 acre-feet minimum EOS carry-over storage identified in the NMFS 2000 Biological Opinion. The draft BDCP does nothing to reduce the risk; in fact it threatens to increase it, due to increased ability to conduct water transfers from North to South of Delta during drier years. The failure to analyze this risk or consider this variable in the Draft BDCP EIR/EIS demonstrates again the inadequacy of the environmental review under NEPA and CEQA.

The BDCP fails to consider an adequate range of alternatives to new conveyance as required by NEPA and CEQA. The listed alternatives are simply variations on tunnel export capacities, North Delta intake locations, tunnel routes, and operational rules. Alternatives that reduce exports from historical levels have been ignored and eliminated despite support from numerous water organizations throughout California, and despite strong scientific evidence confirming that reduced exports and increased outflows to San Francisco Bay positively benefit Delta ecosystem restoration and fisheries recovery.

The Yurok Tribe is especially concerned that the implementation of the BCDP will result in an enlarged and inflated market for water transfers, which was not fully evaluated and modeled in the Draft EIR/EIS. The EIR/EIS included selective modeling of only the contractual water volumes and did not include the non-contractual amounts transferred via the water market in drier years. It is clear that south of Delta exports will not only increase in wetter years, but increase in drier years as the water market grows and the capacity to transfer water around the Delta increases.

The Yurok Tribe strongly supports the overall technical analysis regarding the Draft BDCP and BDCP EIR/EIS captured in the formal comment letter submitted by the Environmental Water Caucus and its supporting stakeholder groups and tribes.

In conclusion, the Yurok Tribe is concerned that as currently scoped and evaluated, the BDCP is seriously flawed, does not fully recognize and account for Trinity River ROD flows, does not recognize and account for the 50,000 acre-feet of water identified in the 1955 Act for Humboldt County and downstream users, threatens recovery of Trinity River ESA-listed coho salmon, fails to adequately address climate change impacts to Trinity Reservoir cold-water pool, and violates the federal trust responsibility of the Bureau of Reclamation to the Yurok Tribe. Given these concerns and the failure of the lead agency DWR and the federal government to adequately consult with the Tribe during the development of the document, the current Draft BDCP and

preferred alternative are inadequate and a new preferred alternative should be developed that addresses these insufficiencies.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. O'Rourke', with a stylized flourish at the end.

Thomas P. O'Rourke
Chairman
Yurok Tribe
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Klamath, CA. 95548