

IN ITS OWN WORDS:

CALIFORNIA ON THE KLAMATH IRRIGATION PROJECT

California Department of Fish and Game (“CDFG”) comments on the May 16, 2002 draft Klamath flows Biological Opinion (BO) (May 24, 2002):

“We believe that the [Hardy] Phase II Report recommended flows, which are instantaneous minimums, represent the best currently available science regarding Klamath River coho salmon flow needs and should be implemented during 2002 Project operations and into the future until credible information indicates otherwise.” Id. at 3.

“The BO suggests that most of this [43%] water would come from stepped up water rights and water laws enforced by California and Oregon and programs to improve tributary flow above and below the Project so that by 2010 NMFS would expect the RPA flows to be realized unless those flows were modified by the results of scientific investigation. We have little confidence that such a complicated undertaking can be completed in eight years and will result in sufficient water to satisfy the long-term RPA flow target.” Id. at 4.

California Department of Fish and Game (“CDFG”) Letter Re: Lower Klamath River September 2002 Fish Kill (Sept. 26, 2002):

“As you are aware, a major fish kill involving adult salmon, steelhead trout, and other fish species has occurred and continues on the lower Klamath River. ... To satisfy the need for emergency flow augmentation in the Klamath River, the DFG [Department of Fish and Game] recommends flows from the Klamath Project such that the minimum flow below Iron Gate Dam meets the Hardy Phase II flow recommendations. ... The DFG believes that [Hardy Phase II] flow schedule outlined above is essential to ensure the desired objective of reducing the current fish kill is achieved and healthy fish that move upstream can spawn successfully.” Id. at 1-2.

Letter from California State Secretary for Resources Mary D. Nichols to Secretary of Interior Gale Norton (Oct. 11, 2002):

“I am writing to express my grave disappointment in U.S. Department of Interior (DOI) decisions that have contributed to an unprecedented fish kill in the Lower Klamath River. ... DFG clearly stated that flows proposed by the USBR and approved by NMFS would take (i.e. kill) salmon, especially the flows as low as the 760 cubic feet per second (cfs) that occurred throughout most of September. If the DFG comments had been incorporated into the final BO and Klamath Project operations beginning early this past summer, this tragedy would likely have been avoided.” Id. at 1.

“[T]he DOI cannot rely solely on the Interim Report from the National Academy of Sciences (NAS) to support its present policy on threatened and endangered fish in the Klamath basin. The DOI has been quick to point out that this Interim Report concludes that there was no substantial scientific foundation at the time to merit an increase in minimum flows in the

Klamath River main stem for the threatened Coho population. However, the Interim Report is equally critical of the USBR operations plan, labeling it as ‘unjustified...because it would leave open the possibility that water levels...in the Klamath River main stem could be lower than those occurring over the past 10 years for specific kinds of climatic conditions.’ This is exactly the situation we find ourselves in today. ... Even more egregious is to base the 10-year Klamath Project operations plan on the Interim Report.” Id. at 2.

“Next, I recommend you insist on completion of the Hardy report and the final NAS study by the end of February to insure next year’s BO includes the best science. In past years critically important reports have not been completed in time to allow time for discussion and incorporation into the latest opinions.” Id. at 2.

“I understand the complexity of the situation in the Klamath basin, and that there are many competing interests. No one disputes the severity of drought, and as in other areas across the nation, agriculture and natural resources both have been severely impacted. Given the heightened awareness of the resource issues in the Klamath basin, it’s critical for the federal government to work with California, the tribes, and all interests to approach operations of the Klamath Project and the implementation of the Trinity River ROD in a balanced, comprehensive, and transparent manner based on the best available information. Unfortunately, the recent fish kill on the Klamath confirms that this has not been the case to date.” Id. at 3.

Letter from California State Secretary for Resources Mary D. Nichols to Dave Sabo, Bureau of Reclamation (Nov. 14, 2002):

“The most important tasks to focus upon are:

1. Completion of a final Hardy Study no later than January to allow the National Academy of Sciences (NAS) team to use the study in their final report. The Hardy Study has been underway for over four years at a cost of approximately \$900,000. The purpose of the Study is to provide recommendations for the monthly instream flows within the mainstream Klamath River from Iron Gate Dam to the estuary for five water year types. These recommended flows are considered necessary to support salmon and steelhead populations in the Klamath basin and to meet the U.S. Department of Interior’s (DOI) trust responsibility to protect tribal rights and resources as well as other statutory responsibilities such as the Endangered Species Act and the Magnuson-Stevens Act. Thus, the Flow Study Report is intended to provide the best currently available science regarding salmon and steelhead flow needs in the Klamath River. A draft final report was available last December with peer review comments due by January 15, 2002. Clearly, since January there has been enough time to incorporate the comments and publish a final report.
2. Utilizing the Hardy Report and all other science complete a final NAS report by the end of February that provides for a healthy salmon population in the Klamath River.
3. Prepare a new NMFS BO and essential fish habitat consultation by April 1, 2003.

California has no information to conclude the above three steps will all be completed in a manner that will allow for public review and dialogue at each step in the process. It makes sense to us to delay the launch of the Conservation Implementation Program until after April 1, 2003 to insure it is based on the best science and new opinions, and to free up our collective staff resources to accomplish the most important work of the next few months.” Id. at 2-3.

California Department of Fish and Game report, *Klamath River Fish Kill: Preliminary Analysis of Contributing Factors* (Jan. 2003).

“Flow management under the 2002 Biological Opinion (BO) compared to the 2001 BO is the only major factor DFG can identify over the past two years that differs substantially enough to have caused the 2002 fish kill. The BO flow prescriptions for September 2002 were significantly lower than in 2001 and lower than those recommended in the Hardy Phase II Flow Study. Other conditions that could lead to a disease outbreak and fish kill were actually the same or worse in 2001, yet no disease or mortality was observed. DFG concludes that the low flows and other flow related factors (e.g. fish passage and fish density) caused the 2002 fish kill on the lower Klamath River.” Id. at 52.

Letter from California State Secretary for Resources Mary D. Nichols to Secretary of Interior Gale Norton (May 19, 2003):

“In light of the loss of over 30,000 salmon last year on the Klamath River, I strongly urge the U.S. Bureau of Reclamation (USBR) to revisit their approach to operations of the Klamath River Project. Unfortunately, the 2003 Klamath Project Operations Plan – released on April 10th – does not reflect any change to the 10-year plan and flow schedules put in place last year.” Id. at 1.

“While we commend your effort to balance competing environmental and economic interests, California strongly feels that the current flow schedule is inadequate to protect the Klamath River’s Coho and Chinook salmon and steelhead trout. As California suggested in October 2002, we again request you to direct the USBR to also work closely with the California Department of Fish and Game (CDFG) and tribal interests to develop a revised 2003 Operations Plan that will protect the Klamath River’s ecosystem and the native fish its supports.” Id. at 1.

“The NRC Interim Report did raise questions about the evidence to support higher flows downstream of the Klamath Project for Coho salmon, but it found an equal lack of evidence to support changing the then existing Project operations. Specifically, the NRC Interim Report described the proposed operations plan as ‘unjustified ... because [it] would leave open the possibility that water levels ... in the Klamath River main stem could be lower than those occurring over the past 10 years.’ Despite this clear assessment, the USBR continues to use the NRC Interim Report to justify the current operations plan.” Id. at 2.

“California Coho and Chinook salmon and steelhead trout are very significant economic, recreational, cultural, and biological resources of our State, and the Klamath Basin is an

important watershed for these native fish and Northern California communities. These resources are also central to the history, tradition, culture, and future of California's Native American communities along the river.... California was not consulted in the development of the current 2003 Operations Plan despite federal policies that encourage, and in some cases require, coordination with State agencies having fish and wildlife management responsibilities." Id. at 3.

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