

# Committee on Resources, Full Committee

-- Rep. James V. Hansen, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6201 -- (202) 225-2761

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## Witness Statement

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### TESTIMONY OF TROY FLETCHER

#### Executive Director, Yurok Tribe

On Water Management and Endangered Species Act Issues in the Klamath Basin

Before the House Committee on Resources

June 16, 2001

Klamath Falls, Oregon

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear before you today to provide the perspective of the Yurok Tribe on the problems of water scarcity in the Klamath Basin. I am the Executive Director of the Yurok Tribe, the largest Indian tribe in California, with a population of approximately 4,000. We appreciate your interest in finding acceptable and permanent solutions to the water crisis facing the Klamath Basin.

It is an unfortunate fact that today there is insufficient water available in the Klamath Basin to satisfy the demands of irrigators, tribes, and wildlife refuges. The Yurok Tribe feels the effect of these shortages in an especially acute way. Our reservation is bisected by the last 45 miles of the Klamath River as it makes its way to the Pacific Ocean. Our people and our culture are tied to the Klamath River in ways that are sometimes difficult for outsiders to understand. We rely on the River for the anadromous fish it supplies for our food, for the spiritual meaning that comes from ceremonies based on the River, and for the ultimate cultural significance as Yurok people. As one of our elders put it, the Klamath River is our identity as Yurok people. This has been true since time immemorial.

The United States created our reservation in 1855 so that our people would have a permanent place to practice a culture centered on the Klamath River. We see that as a promise made to us that the United States must honor today. This fact has led the Department of the Interior, and many federal and state courts to conclude that we have fishing rights that are protected by federal law. And, because a fishing right without water would be largely meaningless, we also have a right to adequate amounts of water to satisfy our fishing needs. Although our water right has not been formally quantified by the courts, law and morality require that federal agencies, such as the Bureau of Reclamation, must operate their projects in ways that respect our water and fishing rights.

The federal government has undertaken a trust responsibility for the lands and resources of Indian tribes. The courts have ruled time and again that the Bureau of Reclamation has a legally-enforceable trust obligation to satisfy the fishing and water rights of the tribes in the Klamath Basin, including the Yurok Tribe. We believe as well that as a legal matter the tribes in the Klamath Basin should have the first priority to scarce supplies of water.

We continue to be frustrated by the failure to resolve the water problems in the Klamath Basin. In contrast

to the farmers in the Klamath Irrigation Project, who typically have received full contract deliveries of water, the Yurok Tribe has rarely received sufficient instream flows to support the restoration and maintenance of the Tribe's fishery. The diversion of water by the Klamath Project for irrigation is one of the primary reasons for the deteriorating condition of our fishery. We understand that other factors contribute as well, but the simple fact is that salmon and other anadromous fish cannot survive without a natural streamflow of adequate amounts, depths and velocities at critical times in the spawning and rearing cycles.

The Klamath River anadromous fishery is in deep trouble, with population levels at historic lows. As you know, coho salmon are listed as threatened under the Endangered Species Act. These actions show that some species of the Klamath fishery are facing extinction. Spring chinook and summer steelhead salmon populations are presently at levels that represent a small fraction of their historic abundance. Eulachon are nearly extirpated from the Basin, and anecdotal information shows that lamprey and sturgeon populations are also declining. The decline of our fishery has decimated our community, increasing unemployment, destroying the social cohesion of our reservation and degrading our cultural practices.

The failure to provide adequate instream flows has harmed and continues to harm the Yurok Tribe. Our culture is degraded and our economy suffers. Without the ability to rely and subsist on our fishery, our people are forced to leave the reservation for employment. Our unemployment rate therefore is very high. The Tribe's commercial fishery, which operates only occasionally at minimal levels, is one of the few economic enterprises we have. Last year, there was a fish kill in the Klamath River of an estimated 100,000 to 300,000 juvenile steelhead, chinook and coho salmon that will undoubtedly affect the health of future fish runs. We need a viable, sustainable fishery to support our people, and to have that, we need enough water in the River. The impact on our people and our fishery will likely be especially harsh this year, because of the extremely low amounts of rainfall and snowpack in the Klamath Basin.

We have spent considerable sums of the Tribe's scarce money and devoted enormous amounts of staff time to this problem, but we fear that our voice is not being heard. The Tribe's Department of Fisheries, the largest department of the Tribe, commits millions of dollars each year to fish management, habitat restoration, law enforcement, and fishery monitoring. Restoring the fishery is our highest priority. Yet each year it seems that we bear a disproportionate share of the burden that water shortages impose on all water users.

We see many challenges to progress toward resolving the water crisis in the Klamath Basin. We appreciate the fact that there must be a sound biological basis for planning and water management in the Basin, particularly as to the water and habitat needs of salmon and other fish. The Yurok Tribe for many years has been engaged in developing that strong scientific basis. However, rather than join with us to develop a consensus about the biological needs of the species, the Klamath Project Irrigators have attacked each and every report on the flow needs of anadromous fish as "advocacy science." Similarly, in the recent suit brought to overturn the BOR 2001 Annual Operations Plan, the biological opinion of the National Marine Fisheries Service, which determined the instream flows necessary to avoid jeopardy to coho salmon, was attacked as arbitrary and capricious. The federal judge in the case rejected this argument, finding that NMFS considered all of the available facts and reached a reasonable and supportable conclusion. We hear a constant refrain that our carefully designed studies, conducted in conjunction with experts from other agencies, are "junk science" and that the needs of the fish are greatly exaggerated. We categorically reject this characterization. These unfounded attacks make cooperative efforts at long-term solutions difficult. This is not the place to debate the merits of these biological determinations, but we raise this to show our frustration with the failure to develop cooperative relationships to work on this problem. Our objective has been, and continues to be, to develop credible, unbiased science to use when making important decisions

about scarce Klamath Basin water resources.

No one involved with the water problems in the Klamath Basin believes that the annual operations plans of the Bureau of Reclamation is the best way to manage the Project. The Yurok Tribe shares that view, because of the chaotic nature of the decision-making process, the rush to consult at the eleventh hour, and the uncertainty of not knowing how much water will be available for our fishery. Some of these problems could be alleviated if the work on the long-term environmental impact statement were completed. We have urged completion of this process for years and we renew our call to finish this work. We believe this document could serve as the basis for a long-term operations plan that would avoid the unsatisfactory process we go through every year.

We are willing to work with the tribal, state, local and federal governments, as well as the citizens of the Klamath Basin, to develop solutions that will engender support among all the interests in the Klamath Basin. We are concerned, however, that solutions that may be developed in the upper portion of the Basin are not always properly assessed for their impact, whether adverse or beneficial, on the instream flow requirements of the Yurok Tribe. From our perspective, the key question to ask about all of these proposals is whether they will result in sufficient water quality and quantity for downstream uses on the Yurok Reservation and surrounding area. Solutions that make up for deficiencies in deliveries to irrigators, but do not address the health of the Klamath Basin ecosystem, including appropriate Klamath River flows, are not real solutions to the problem. In other words, we believe federal agencies and Congress need to take a basin-wide view of the problem.

The Yurok Tribe is committed to joining with our neighbors in the upper basin to find common ground and workable solutions. The Tribe is fully participating in the mediation in the Kandra litigation ordered by federal Judge Aiken. For many years, we have taken a leadership role in finding solutions through our participation in various restoration and water fora. We intend to continue those efforts. The fate of our tribal people depends on the success of those efforts.

Let me outline a number of factors that we believe could help overcome the current obstacles to long-term solutions to the water crisis. First, blaming the legal requirements of the Endangered Species Act and the federal tribal trust obligation for the current crisis is not a constructive beginning point for finding common ground. The courts have carefully and fairly applied the law in legal challenges brought by the Project Irrigators, and proposals to radically change this legal regime are not calculated to lead to mutually acceptable solutions.

Second, any solution to the water crisis must be founded on the principle that each stakeholder recognizes the legitimate interests of others in obtaining water for their needs. The Yurok Tribe recognizes that the Project Irrigators have legitimate needs, and we are sympathetic to the economic suffering they have experienced this year. In turn, we expect a corresponding recognition and respect for the Tribe's legitimate needs for adequate instream flows.

Third, solutions must address the fact that the basin is overappropriated. There is complete agreement that demand outstrips supply in most years. Although we believe that supplies could potentially be increased through groundwater development and other measures, no solution will work in the long run unless agricultural demand for water is reduced.

Finally, we believe that solutions to the current crisis must include both short-term and long-term measures. The planning process for the 2002 water year will begin soon, but we should be cognizant of the fact that

devising a better way to allocate scarce water supplies on an annual basis leaves unanswered many of the important questions about long-term solutions. The Yurok Tribe is interested in permanent fishery and watershed restoration, which may take years to implement. These long-term measures will contribute as much to permanent solutions as proposals focused on the upcoming water year.

We appreciate the opportunity to appear before you today. We would be pleased to answer any questions you may have.

Thank you.

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