Statement of

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on

The National Research Council Draft Interim Report on

Endangered and Threatened Fishes in the Klamath River Basin

Before the Committee on Resources, U.S. House of Representatives

March 13, 2002

Thank you for the invitation to participate today in this oversight hearing on the Draft Interim Report of the National Academy of Sciences= National Research Council (NRC), a AScientific Evaluation of Biological Opinions on Endangered and Threatened Fishes in the Klamath River Basin.@ I appreciate the opportunity to be here today on behalf of the Department of the Interior. I will make some brief oral comments, but I request that my entire written statement be included in the record of this hearing.

As you know, on March 1, the President announced the establishment of the Klamath Basin Federal Working Group, composed of the Secretaries of the Interior, Commerce, and Agriculture, and the Chairman of the Council on Environmental Quality, in order to advise him of the immediate and long-term actions necessary to enhance water quality and quantity and to address the complex economic and natural resource issues in the Basin. The President has encouraged the Working Group to seek input from stakeholders, including members of the farming and fishing communities, residents of the Basin, representatives of conservation, environmental and water use organizations, and existing coordinating entities, the States of Oregon and California, local governments, and representatives of Klamath River Basin Tribal governments.

At the first meeting of the working group on March 8, the group announced measures to assist farmers and ranchers and to conserve fish. **The measures include:**

$ **The Agriculture Department will provide more than $1.6 million to accelerate the delivery of conservation, technical and financial assistance for irrigation water management, filter strips and creation of wildlife habitat to improve water quality and result in a water savings of up to 30 percent in some cases.**

$ **In addition, USDA will extend the sign-up period for the Emergency Conservation Program through September 2002, to give farmers and ranchers additional opportunities for financial assistance to assist in obtaining an adequate water supply for livestock.**

$ **In direct relief, USDA will work with farmers and ranchers to explore opportunities for delaying loan repayments, rescheduling or consolidating loans or even writing down of some indebtedness.**

$ **The U.S. Forest Service will begin 22 special projects in the Wimena-Fremont National Forest to provide more than 20 miles of stream improvement, decommission nearly 45 miles of roads and provide for meadow enhancement and spring protection.**

$ **The Commerce Department will make producing the biological opinion for operation of the Klamath Project its highest priority.**

$ **The Bureau of Reclamation will accelerate the construction of proposed fish screens on A Canal, the major water diversion point out of Upper Klamath Lake, once the design phase is completed. The Fish and Wildlife Service has identified screening as an important step to avoid loss of endangered fish. The screens will be completed by the beginning of the irrigation season on April 1, 2003, a growing season ahead of the original schedule. The screens will divert the fish that are larger than the openings on the screens and pumps will return them to the lake. The total cost of the project is estimated to be close to $14 million.**

The Bureau of Reclamation=s Klamath Project has historically provided water to about 1400 farm families on approximately 230,000 acres of irrigated agriculture in the Klamath Basin, and to two major portions of the Klamath Basin National Wildlife Refuge complex. In 2001, for the first time in the history of the project, farmers in the Project served from Upper Klamath Lake received only about one-fifth of their contracted Project water due to a serious drought in the Basin and the need to fulfill tribal trust and Endangered Species Act (ESA) obligations.

The U.S. Fish and Wildlife Service (FWS) has responsibility under the ESA for the Lost River and shortnose suckers, which occur only in the upper Klamath Basin and are listed as endangered. The National Marine Fisheries Service (NMFS) has the lead ESA responsibility for consultation on the coho salmon, which is listed as threatened. Prior to their designation as endangered and threatened under the ESA, these fish supported tribal fisheries and a large commercial fishery, which have been greatly diminished in recent years. The decline in these fish has been attributed to a number of factors, as noted in the NRC report [1], including degradation of spawning habitat, deterioration in water quality, overexploitation by commercial and non-commercial fishing, introduction of exotic species, blockage of migration routes, entrainment of fish in water management structures, and reduced access to spawning areas.

Prior to the 2001 planting season, on February 13, 2001, the Bureau of Reclamation prepared a biological assessment that proposed operating the Klamath Project consistent with historical operations (from 1961-1997). On April 5 and 6, 2001, the FWS and NMFS issued biological opinions that established lake levels and river flows higher than those resulting from historical operations in order to avoid jeopardizing the three listed species.

On April 6, 2001, the Bureau of Reclamation announced that given the serious drought conditions in the

Basin and in order for the Bureau to operate the Project consistent with its ESA and tribal trust obligations, no water would be made available for delivery from Upper Klamath Lake to Project contractors or to refuges. The Bureau believed this was necessary to comply with the biological opinions issued by the FWS and NMFS. Water was to remain in Upper Klamath Lake for the protection of endangered suckers or be sent down the river for the protection of the threatened coho salmon.

Reclamation provided only minimal amounts of water for irrigation, including about 70,000 acre-feet of Project water to areas served from Clear Lake and Gerber Reservoir (the full entitlement for those areas). No water was delivered to areas served by Upper Klamath Lake from April to July for irrigation or refuges. On July 24, the Secretary announced, following mid-season reassessment of available water resources, that 70,000 to 75,000 acre-feet would be released for Project farmers from Upper Klamath Lake. This water was delivered. Subsequently, the Secretary purchased an additional 3,700 acre-feet of water for the refuges to help wintering threatened bald eagles and migratory waterfowl.

The decision made in April of 2001 not to provide water to project contractors had devastating impacts on many people in the Klamath Basin. While we were deeply concerned about the possible social and economic consequences of these decisions, we believed we had to execute our ESA and tribal trust responsibilities.

It is inarguable that, for people to have confidence in decisions made on the basis of scientific judgments, we should have scientific processes that warrant such confidence. In this case, persistent charges that the decisions were not supported by the existing data made it clear that public confidence was shaken. Because of this, and because of our concerns over lack of independent scientific review, we announced in June that we would solicit an external review of the science used in the Klamath River biological assessments and biological opinions.

The Secretary of the Interior and the Secretary of Commerce arranged for the National Research Council of the National Academy of Sciences to conduct an independent review of the scientific basis for the 2001 FWS and NMFS biological opinions and the Bureau of Reclamation=s 2001 biological assessment. We asked that an interim report be issued by January 31, 2002, so that preliminary findings would be available when the Departments were preparing new assessments and opinions for the upcoming Klamath Project operating year.

The National Research Council Committee on Endangered and Threatened Fishes in the Klamath River Basin, formed specifically for this review, issued a Draft Interim Report on February 6, 2002. (The final interim report will be available in April, the final report in March of 2003.)

Among its most significant preliminary findings, the NRC Draft Interim Report found Astrong scientific support@ for all of the determinations and recommendations included in the biological opinions, except for what in this case were the most crucial determinations related to lake water levels and minimum stream flows. [2] The Report then concludes that A...there is no substantial scientific foundation at this time for changing the operation of the Klamath Project to maintain higher water levels in Upper Klamath Lake for the endangered sucker populations or higher minimum flows in the Klamath River main stem for the threatened coho population.@ [3]

Further, the Draft Interim Report also states, AAt the same time, the committee concludes that there is no scientific basis for operating the lake at mean minimum levels below the recent historical ones (1990-2000) as would be allowed under the USBR proposal. Operations leading to lower lake levels would require acceptance of undocumented risk to suckers.@ [4]

The NRC committee makes it clear that the conclusions in the Draft Interim Report are not final. It states, A The committee=s conclusions are subject to modification in the future if scientific evidence becomes available to show that modification of flows or water levels would promote the welfare of the threatened and endangered species under consideration by the committee. The committee will make a more comprehensive and detailed consideration ...over the next year, during which time it will develop final conclusions.@ [5]

Upon receipt of the Draft Interim Report, Secretary Norton instructed Dr. Steve Williams, the newly confirmed Director of the Fish and Wildlife Service, and John Keys, Commissioner of the Bureau of Reclamation, to evaluate the NRC findings.

Thus, the Bureau of Reclamation, in its recent final 2002 Biological Assessment, contemplates lake levels and river flows that are consistent with the conclusions in the Draft Interim Report.

The Fish and Wildlife Service and the National Marine Fisheries Service will consider the conclusions of the Draft Interim Report during the section 7 consultation with the Bureau, which was formally initiated by the Bureau on February 27, 2002, and during preparation of their biological opinions.

In light of the NRC comments, we need to that ensure our decisions are based on accurate and reliable science and that our science is consistent with the Secretary=s general goals for science within the Department. These goals are: high ethical and professional standards, appropriate training and allocation of staff resources, independent review of science when appropriate and time permits, active participation with our state partners, fish and game agencies and others, and effective communication with OMB, Congress, and the public.

Research continues in the Klamath Basin to improve the science base. Public Law 106-498 directed the

Secretary to complete ongoing hydrologic surveys in the Klamath Basin conducted by the U.S. Geological Survey. The study has four phases and is scheduled to be completed in Fiscal Year 2005. The Act also authorized the Secretary to compile information on native fish species in the Upper Klamath River Basin, upstream of Upper Klamath Lake. A compilation of existing information is currently underway, and will be used to determine the necessity of further studies.

We will see that these studies are given very high priority. We fully appreciate the necessity of these and other projects to work toward a sustainable future within the basin, both for those who live and work there and for the wildlife we are pledged to conserve.

In this first year of the Administration, Klamath has occupied a great deal of our time and effort. Among other things, it has brought into sharp focus our need to assess the development and application of science by the Department in addressing the goals of providing sufficient water supply while complying with federal environmental laws and meeting tribal trust obligations.

This concludes my prepared testimony. I am pleased to answer any questions you may have.

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[1] [Draft Interim Report, Summary, p.1]

[2] [Draft Interim Report, p. 2]

[3] [Draft Interim Report, p. 3]

[4] [Draft Interim Report, p. 3]

[5] [Draft Interim Report, p. 4]