UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

December 15, 2003

Mr. Daniel S. Fritz
Project Manager
Attn: KO-150
Klamath Basin Area Office
Mid-Pacific Region
Bureau of Reclamation
6600 Washburn Way
Klamath Falls, OR 97603

Subject: Supplemental Notice of Intent (SNOI) to prepare a Draft Environmental Impact Statement for the Klamath Project Operation, Oregon and California

Dear Mr. Fritz:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act. Our detailed scoping comments are enclosed.

EPA advocates an operations approach which will provide flexibility to accommodate future shifts in water policy and assure a long-term, sustainable balance between available water supplies, ecosystem health, and water supply contract commitments. We support an inclusive basin-wide collaborative process to develop the long-term Klamath Project Operation Plan that best meets the needs of all Klamath Basin (Basin) interests.

There are already many collaborative, but disconnected, actions to improve water management and fisheries in the Basin. We urge the Department of Interior (DOI) and Bureau of Reclamation (Bureau) to take a leadership role in coordinating these efforts. A unified approach to water management, fishery, and endangered species restoration plans is critical. The DOI's Water 2025 Initiative, as well as the Bureau's Klamath Basin Conservation Implementation Program provide a timely opportunity for DOI and the Bureau to assume this role. Without a unified process, we are concerned with the development of conflicting recommendations for Klamath River flows, lake elevation levels, restoration projects, and water management strategies.

The entire Klamath River is listed as "water quality-limited," in accordance with Section 303(d) of the Clean Water Act, due to the effect of nutrients and elevated stream temperatures on beneficial uses such as threatened and endangered fisheries. For each waterbody listed as "water quality-limited," the appropriate State agency (or in some specific cases EPA) will develop Total Maximum Daily Loads (TMDLs) (TMDL Schedule enclosed). A TMDL determines the total

amount of a pollutant that can enter a water body without violating water quality standards. Pollutant loads are then allocated to specific sources to achieve water quality standards. EPA will strive to ensure that the proposed operation plan is consistent with future TMDL requirements. We recommend the Bureau coordinate closely with EPA and the States on the development of TMDLs. We look forward to working with the Bureau to integrate TMDL considerations into Klamath Project operations.

Six Indian Tribes are directly affected by the operations of the Klamath Project. The Yurok, Hoopa, and Karuk Tribes, Resighini Rancheria, Quartz Valley Reservation and Klamath Tribe requested that the EPA uphold our tribal trust responsibilities in the Basin by pro-actively working with other federal agencies to protect Tribal trust resources and improve Basin water quality. We are fully committed to this partnership with the Basin Tribes. EPA is providing funds to support tribal water quality initiatives, and has initiated interstate tribal and interagency collaborative meetings.

The Klamath Basin Indian Tribes have significant expertise to contribute in crafting a basinwide water management and restoration plan. They are also developing Tribal water quality standards, have water rights claims, and other environmental concerns which could affect or be affected by Klamath Project operations. Pursuant to Executive Order 13175, Consultation with Tribal Governments and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, we urge the Bureau to conduct government-to-government consultations with all potentially affected Tribes.

Other issues which should be addressed in the Draft Environmental Impact Statement (DEIS) include potential impacts to drinking water sources and systems, Klamath Project operations during shortages, monitoring, water reuse, groundwater supply, groundwater and surface water quality, effects on endangered fisheries, and cumulative impacts. If applicable, the DEIS should address the gap between water supplies and current levels of water contract commitments.

EPA provided scoping comments on March 9, 1999. These comments are incorporated by reference. We appreciate the opportunity to review this Supplemental NOI. When the DEIS is released for public review, please send three (3) copies to the address above (mail code: CMD-2) and two (2) copies to the Office of Ecosystems and Communities, Region 10 US EPA, 1200 Sixth Avenue, Seattle, WA 98101. Questions regarding this letter should be directed to Laura Fujii, the lead reviewer for this project at (415) 972-3852 or fujii.laura@epa.gov.

Sincerely,

Enrique Manzanilla, Director
Cross Media Division

Enclosures:
TMDL Schedule

Detailed Comments

cc: Steve Thompson, California State Manager, US Fish and Wildlife Service
Arthur Baggett, Chairman, California State Water Resources Control Board
Steve Kirk, Oregon Department Of Environmental Quality, Eastern Oregon
Robert Klamt and David Leland, North Coast California Regional Water Quality Control Board
Jim Bybee, National Marine Fisheries Service, Santa Rosa Office, California
Pat Port, Regional Environmental Officer, Department of the Interior
Rod McInnis and Jim Lecky, National Oceanic and Atmospheric Administration-Fisheries
David Van't Hof, Natural Resources Policy Advisor, Oregon Governor's Office
Kirk Rodgers, Mid-Pacific Regional Director, Bureau of Reclamation
Chuck Bell, National Resources and Conservation Service
Honorable Susan Masten, Chairperson, Yurok Tribe
Chairperson, Hoopa Tribe
Chairperson, Karuk Tribe
Chairperson, Klamath Tribe
Resighini Rancheria
Quartz Valley Reservation

EPA DETAILED COMMENTS ON SNOI KLAMATH PROJECT OPERATIONS, DECEMBER 15, 2003

Project Description

The Bureau of Reclamation (Bureau) proposes a long-term operation plan that describes management actions for operating the Klamath Project's facilities to meet defined needs through March 31, 2012. Actions include management of Project water (1) storage volume, location, and timing; (2) source (surface and/or groundwater); (3) delivery quantity, timing, and duration; and (4) water quality. The Klamath Project is defined as those resources and facilities committed to diverting and distributing water for irrigation purposes and national wildlife refuges in the upper Klamath Basin (Basin). Water is diverted from the Lost River and Klamath River systems. The geographic area encompassed by the project and its operations plan is Upper Klamath Lake; the Project irrigation service area; the Tule Lake, Clear Lake, and Lower Klamath National Wildlife Refuges; and the Klamath River downstream of the Project.

Water Quality Issues

Protection of water quality for beneficial uses, pursuant to the federal Clean Water Act, is EPA's primary environmental concern in the Basin. Through establishing water quality standards, EPA, States, and Tribes designate beneficial uses for water bodies and establish maximum levels of pollution that must not be exceeded to protect those uses.

Total Daily Maximum Loads (TMDLs)

A TMDL determines the total amount of a pollutant from all sources that can enter a specific water body without violating the water quality standards. Pollutant loads are then allocated to specific sources to achieve water quality standards. The implementation of TMDL requirements could affect Klamath Project operations. TMDLs are being developed for nutrients, dissolved oxygen, temperature and pH in both the Klamath and Lost Rivers. Because of the timing of TMDL development in the Basin, it is important that the Bureau incorporate water quality goals into the development of the Klamath Project operation plan.

Recommendations:

We urge the Bureau to consult with State and EPA TMDL contacts in order to determine the potential interactions and effects between the proposed operation actions and TMDL development. Collaboration on mutually beneficial monitoring, information and data collection, and surveys can reduce duplication and costs for all involved.

Klamath River TMDLs are being developed by the Oregon Department of Environmental Quality and California North Coast Regional Water Quality Control Board in collaboration with EPA. State TMDL contacts are David

Leland, North Coast California Regional Water Quality Control Board, 707-576-2069; and Steve Kirk, Oregon Department of Environmental Quality, 541-388-6146. EPA TMDL contacts are Gail Louis, Region 9, San Francisco, CA, 415-742-3467, and Mark Filippini, Region 10, Seattle, WA, 206-553-6327.

Increasing Water Supply Reliability

There are many water supply demands and project operation requirements within the Klamath Project area (e.g., in-stream uses, wildlife refuges, tribal water rights, irrigated agriculture, fisheries, hydropower). EPA acknowledges the need to improve reliability of irrigation water delivery to Klamath Project agricultural users at sustainable levels. There is also the need to balance water supply and demand, and to address water quality and beneficial uses within the Basin. Improved water quality and adaptability of Klamath Project operations and management are integral to a long-term sustainable water supply.

Recommendation:

EPA urges consideration of all reasonable alternatives to improve irrigation water productivity and reliability, before implementing water supply options that could contribute to the further degradation of groundwater and surface water quality. Options for improving irrigation water productivity include water transfers, conservation, pricing, irrigation efficiencies, cropping changes, operational flexibilities, market-based incentives, water acquisition, conjunctive use, voluntary temporary or permanent land fallowing, and wastewater reclamation and recycling.

General Water Quality Comments

1. Potential impacts of proposed operations to surface and ground water quality should be fully evaluated in the Draft Environmental Impact Statement (DEIS). The evaluation should explain the relationship between Project operations and quantity, timing and quality of instream flow, agricultural drainage, and return flows.

2. The DEIS should evaluate the water quality impacts of agricultural chemicals (e.g., pesticides, fertilizers) and other potential Project sources of pollutants, if any; management of discharges; and the effect of water quality on aquatic resources and wildlife.

3. Evaluate potential adverse aquatic impacts such as increased siltation and turbidity in surface water sources; changes in water quality and quantity; changes in dissolved oxygen, and temperature; and habitat deterioration. Include a discussion of in-stream flow effects of water diversions and return flows.

4. Identify sensitive aquatic sites such as wetlands. Describe existing conditions and beneficial uses of these areas and evaluate potential impacts from the proposed action. If dredging or filling of waters of the US is anticipated, compliance with Section 404(b)(1) of the Clean Water Act should be addressed.

5. Discuss the extent to which water quality and sensitive or unique habitats can be protected and improved.

6. Describe monitoring programs that are in place or will be implemented to determine effects on surface, groundwater, and drinking water quality and beneficial uses.

Tribal Issues

1. The Yurok, Hoopa, and Karuk Tribes, Resighini Rancheria, Quartz Valley Reservation and Klamath Tribe requested EPA uphold our tribal trust responsibilities in the Basin by pro-actively working with other federal agencies to protect the environmental interests of the Tribes.

Recommendation:

We request the Bureau work with EPA and the Tribes, on a government-to-government basis, to protect the environmental interests of affected Tribes. For instance, where appropriate, we urge the Bureau to work with Tribes in the development of tribal water quality standards. EPA has also initiated interagency collaborative meetings to work on water quality issues and invites the Bureau to be an active participant in these forums. On behalf of Basin Tribes, EPA requests that affected Tribes be provided an opportunity to review and comment on the Annual Operating Plan for the Klamath Project.

2. Six Indian Tribes are affected by the operations of the Klamath Project. The Klamath Basin Indian Tribes also have significant expertise to contribute in crafting a basinwide water management and restoration plan. In addition, they have a major role in the operations plan, including restoration activities, since they are developing Tribal water quality standards and have water rights claims for Basin water.

Recommendation:

In keeping with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, the DEIS should describe the measures taken by Reclamation to:1) fully analyze the environmental effects of the proposed Federal action on minority

communities, e.g. Indian Tribes, and low-income populations, and 2) present opportunities for affected communities to provide input into the NEPA process. Government-to-government consultation should be conducted with all potentially affected Tribes. The DEIS should include a detailed description of consultation with Tribes, Tribal issues raised, and how the Bureau has addressed these issues.

National Environmental Policy Act (NEPA) Comments

Existing Conditions

1. There are a number of projects and research studies underway that will affect the environment of the Klamath River Basin and the allocation and use of water. Without a unified process, we are concerned with the development of conflicting recommendations for Klamath River flows, lake elevation levels, restoration projects, and water management strategies.

Recommendations:

The DEIS should describe current activities, projects, and studies; their status; and their implications for operation of the Klamath Project. Other projects and research studies include the relicensing of PacifiCorp hydropower facilities (e.g., J.C. Boyle facility), the development of Klamath River TMDLs, the Bureau of Land Management Upper Klamath River Management Plan, revision of biological opinions for endangered fish, Tribal and fishermen and agricultural community accords, Evaluation of Interim Instream Flow Needs in the Klamath River Phase II Final Report (Hardy II Report), Endangered and Threatened Fishes in the Klamath River Basin: Causes of Decline and Strategies for Recovery (National Research Council Report), US Fish and Wildlife Service Klamath River Fish Die-Off September 2002 Report, California Department of Fish and Game Recovery Strategy for California Coho Salmon Report, US Fish and Wildlife Lower Klamath River sustainable harvest fisheries study, and US Geological Survey Upper Klamath Basin groundwater investigation.

We recommend the Bureau consider and integrate into the Klamath Project operation plan, where appropriate, the river management recommendations and research results from these projects and research studies. If research study recommendations (e.g., Hardy II Report) and other projects are not considered or integrated into the operation plan, the DEIS should provide the rationale for this decision. All relevant and substantiated scientific data and evaluations should be considered on a comparable basis. If other documents are incorporated by reference, the DEIS should provide a summary of critical issues, assumptions, and

decisions complete enough to stand alone without depending upon continued referencing of the other documents.

2. The DEIS should describe existing conditions, including information on existing Klamath Project operation and management, water allocation procedures, and project water quality. Existing conditions should also be described for groundwater and surface water quality, water supply infrastructure and treatment systems, biological resources, air quality, tribal trust assets, and the agricultural, fishing, and forestry communities.

Alternatives

1. The DEIS should evaluate alternatives that address water quality standards, maximize benefits for aquatic species, and address water contract commitments. While we recognize that components of such alternatives may be outside the jurisdiction of the Bureau (i.e., acquisition of water rights), NEPA requires an EIS to rigorously explore and objectively evaluate all reasonable alternatives including alternatives not within the jurisdiction of the lead agency (40 CFR Section 1502.14(c)). We recommend the EIS describe the role and responsibilities other agencies play in meeting water quality standards in the planning area, the activities outside the Bureau's jurisdiction that will affect water quality, and a plan for incorporating decisions and recommendations by these other agencies into the Klamath Project Operation Plan. The EIS should also address existing basin-wide hydrology models as they would apply to water quality standards and aquatic species.

2. The DEIS should include a discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

Environmental Consequences

1. The DEIS should provide full disclosure of direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8) of the proposed action and reasonable alternatives. Indirect effects may include growth-inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. (40 CFR 1508.8(b)).

2. Particular attention should focus on an evaluation of the environmental impacts of the proposal and alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options for the decisionmaker and the public (40 CFR 1502.14).

3. Council on Environmental Quality regulations state that the EIS should include a discussion of the means to mitigate adverse environmental effects (40 CFR 1502.16(h)). This

provision applies to indirect effects as well as direct effects. The DEIS should include a discussion of mitigation measures for potential effects.

Summary Paragraph for HQ OFA

EPA advocates a flexible operations approach which will accommodate future shifts in water policy and assure a long-term, sustainable balance between available water supplies, ecosystem health, and water supply contract commitments. We support an inclusive basin-wide collaborative process and urge DOI/BOR to take a leadership role in coordinating these efforts. EPA requests BOR coordinate closely with the State water quality agencies and EPA on the development of TMDLS and carefully consider the interaction between the proposed operation actions and new TMDLs. EPA urges government-to-government consultations with all potentially affected Tribes to utilize Tribal expertise and to ensure protection of tribal trust assets.

FAX # for Dan Fritz - 541-884-9053

ccs:

Steve Thompson, California State Manager, California Office, US Fish and Wildlife Service, 2800 Cottage Way, West 2605, Sacramento, CA. 95825-1886. 916-414-6000

Arthur G. Baggett, Jr., Chairman, California State Water Resources Control Board, P.O. Box 100, Sacramento, CA. 95812, 916-341-5611

Steve Kirk, Oregon Department of Environmental Quality, 541-388-6146. Email KIRK.Steve@deq.state.or.us

Robert Klamt, North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Suite A, Santa Rosa, CA. 95403. 707-576-2655.
Also send a copy to David Leland 707-576-2069, email LelaD@rb1.swrcb.ca.gov

Jim Bybee, NOAA Fisheries (National Marine Fisheries Service), 777 Sonoma Ave., Room 325, Santa Rosa, CA. 95404

Pat Port, Regional Environmental Officer, Department of the Interior, Oakland
Queenie - I do not know the current address. Please call 510-817-1477 for the correct mail address. Please give me the addresses you find for my files. Thank you.

Rod McInnis and Jim Lecky, National Oceanic and Atmospheric Administration- Fisheries
Queenie - I do not have their address. Please call 562-980-4005 for the correct mail address.

David Van't Hof, Natural Resources Policy Advisor, Oregon Governor's Office, Public Service Building, Suite 126, 255 Capitol Street, NE, Salem, OR 97301; phone: 503-378-3589 x 30.

Kirk Rodgers, Mid-Pacific Regional Director, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825-1898

Chuck Bell, California State Conservationist, National Resources and Conservation Service, California State Office, 430 G. Street #4164, Davis, CA 95616-4164; phone: 530-792-5600

Honorable Susan Masten, Chairperson, Yurok Tribal Council, P.O. Box 1027, Klamath, CA 95548

Queenie - Please ask Tim Wilhite, 530-841-4577, for the addresses for the Tribes below.

Hoopa Tribe, P.O. Box 417, Hoopa, CA. 95546 **Please verify address with Tim Wilhite.**

Karuk Tribe

Klamath Tribe

Resighini Rancheria

Quartz Valley Reservation

bc: Karen Schwinn, WTR-1
Doug Eberhardt, WTR-5
Carolyn Yale, WTR-3
Maria Rea, WTR-3
Gail Louis, WTR-3
DavidW Smith, WTR-2
Susan Saucerman, WTR-5
Clancy Tenley, CMD-3
Tim Wilhite, CMD-3 (place-based in Yreka, CA)
Michelle Roos, AIR- 6
Christine Psyk, TMDLs, Region 10 EPA
Paula Vanhaagen, Region 10 EPA
Mike Letourneau, NEPA Review, Region 10 EPA
Mark Filippini, Region 10 EPA