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9 **BEFORE THE**  
10 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

11 HEARING IN THE MATTER OF THE  
CALIFORNIA DEPARTMENT OF WATER  
12 RESOURCES AND UNITED STATES  
BUREAU OF RECLAMATION REQUEST  
13 FOR A CHANGE IN POINT OF DIVERSION  
FOR CALIFORNIA WATER FIX  
14

**TESTIMONY OF AMY CORDALIS**

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16 I, Amy Cordalis, do hereby declare:

17 **I. INTRODUCTION**

18 My name is Amy Cordalis. I am presenting this testimony on behalf of the Pacific Coast  
19 Federation of Fishermen's Associations and the Institute for Fisheries Resources in this  
20 evidentiary hearing before the State Water Resources Control Board ("State Water Board")  
21 concerning the petition to change the point of diversion for the California WaterFix for the State  
22 Water Project and federal Central Valley Project, as specified in the licenses and permits of the  
23 U.S. Bureau of Reclamation ("USBR") and the California Department of Water Resources ("the  
24 WaterFix Project").

25 I am the General Counsel for the Yurok Tribe and Director of the Tribe's Office of Tribal  
26 Attorney.  
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1 I am also a member of the Yurok Tribe and a Yurok commercial and subsistence  
2 fisherman. I am from the Bowers/Mattz family at the village of *Rek'-woy* (Requa) at the mouth  
3 of the Klamath River. Fishing is in my family's blood. My Uncle Raymond Mattz was the  
4 plaintiff in *Mattz v. Arnett* 412 U.S. 481 (1973), the US Supreme Court decision that reaffirmed  
5 the status of the Yurok Reservation and the federally reserved fishing and water rights of the  
6 Yurok People. I have grown up fishing on the Klamath River at our family's traditional holes, for  
7 which we have exclusive rights to fish pursuant to Yurok law. We have two family fishing holes;  
8 one at Brooks Riffle, named after my great-great grandfather Billy Brooks, and one at the north  
9 side of the mouth of the Klamath River.

## 10 II. OVERVIEW OF TESTIMONY

11 What happens in the Trinity River affects the Klamath River. The Trinity begins in the  
12 Trinity Alps of Northern California. It runs south and then winds its way northwest, picking up  
13 tributaries along the way. It eventually flows into the Klamath River at the Yurok village of  
14 *Weych-pues* (Weitchpec). *Weych-pues*, in the Yurok language, this means "confluence." Trinity  
15 River water then flows down the Lower Klamath River to enter the Pacific Ocean at the Yurok  
16 village of Requa. The WaterFix Project, therefore, greatly impacts the Yurok Tribe's federally  
17 reserved water and fishing rights because of its impacts the Trinity River and Lower Klamath  
18 River.

19 In this declaration I set forth:

- 20 (a) the Yurok Tribe and Yurok Reservation;
- 21 (b) the Yurok Tribe's federally reserved fishing and water rights;
- 22 (c) USBR's Trust Responsibility To Protect Yurok Fishing And Water Rights
- 23 (d) the status of the Klamath and Trinity River fishery.

24 Lastly, the proposed changes in the petition have the potential to unreasonably affect fish  
25 and wildlife in the Trinity and Lower Klamath Rivers. These effects, however, have not even  
26 been considered because the Final EIR/EIS does not address the Lower Klamath or Trinity  
27 Rivers, and consequently, does not address mitigation measures or other permit conditions that  
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1 may be necessary to protect the Yurok Tribe’s federally reserved fishing and water rights. As an  
2 initial matter, the Board should require an analysis of the impacts of the WaterFix Project on the  
3 Lower Klamath and Trinity Rivers to be included in the Final EIR/EIS.

4 Further, the State Water Board and USBR are required by law to consult with the Yurok  
5 Tribe regarding the impacts of the project, which they have not. Until consultation is completed  
6 and conditions and mitigation measures are identified that protect the Yurok Tribe’s federally  
7 reserved fish and water rights, the State Water Board should not issue a permit for this project.

8 For almost 200 years, the Yurok Tribe has witnessed the development of water resources  
9 in Northern California in a manner that has caused extreme harm – almost to the point of  
10 extinction – to the Yurok Tribe’s fishery. In most cases the Tribe’s water and fishing rights were  
11 not considered in the planning process, and even when they were, the project was completed  
12 despite the potential to cause extreme harm. The Yurok Tribe implores the State Water Board to  
13 ensure that the California WaterFix Project reviews, and where necessary, mitigates, the effects  
14 of the project on the Tribe’s fishing and water rights.

### 15 III. THE YUROK TRIBE AND YUROK RESERVATION

16 The Yurok Tribe is a federally recognized Indian tribe with a reservation located on the  
17 Lower Klamath River in Humboldt and Del Norte Counties in Northern California. Flowing  
18 through the very center of the Yurok Reservation, the Klamath River is geographically and  
19 culturally the heart of the Yurok Reservation. The Reservation extends for one mile in width on  
20 either side of the Klamath River from the mouth at the Pacific Ocean at the Yurok village of  
21 Requa, past the Yurok village of Weitchpec, 44 miles up to the confluence with the Trinity  
22 River.

23 The Yurok Reservation, one of the largest in California, lies within only a small portion  
24 of the Tribe’s ancestral territory. The Yurok Reservation (known as the ‘Klamath River  
25 Reservation’) was created by Executive Order on November 16, 1855. The Reservation was set  
26 aside for the purpose of preserving the Yurok way of life in Yurok traditional homelands. *Arnett*  
27 *v Mattz*, 412 U.S. at 481. The 9th Circuit in *Parravano v. Masten* recognized that one of the  
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1 “Indian purposes” of the Executive Orders that created the Yurok Reservation was salmon  
2 fishing, and that “one of the concerns of Congress was to protect the [Yurok and Hoopa] Tribes’  
3 fisheries.” *Masten*, supra, 70 F.3d at 542.

#### 4 IV. THE YUROK TRIBE’S FEDERALLY RESERVED FISHING AND 5 WATER RIGHTS

6 Since time immemorial the Yurok people have depended on the Klamath River for our  
7 survival. *See, Kandra v. United States*, 145 F. Supp. 2d 1192, 1200 (D. Ore. 2001); *Parravano v.*  
8 *Masten*, 70 F.3d 539, 545-46 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996) (for  
9 generations, the Yurok Tribe has depended on the Klamath Chinook Salmon for their food and  
10 economic livelihood). This aboriginal use, coupled with the inclusion of the lower 44 miles of  
11 the Klamath River in the Yurok Reservation, secured for the Tribe federally reserved fishing and  
12 senior water rights, with a time immemorial priority date, in the Klamath Basin, which includes  
13 the Trinity River. *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983); *Klamath Water Users*  
14 *Protective Ass’n v. Patterson*, 204 F.3d 1206, 1214 (9th Cir. 2000), cert. denied, 531 U.S. 812  
15 (2000) (“We have held that water rights for the Klamath Basin Tribes carry a priority date of  
16 time immemorial.”) (internal quotations omitted).

17 Courts have recognized that a main purpose of the Yurok Reservation was to maintain  
18 tribal member hunting and fishing on the Reservation lands. *Mattz*, 412 U.S. 481 (1973). The  
19 establishment of the Reservation carries an implicit reservation of water sufficient to satisfy the  
20 Tribe’s fishing and hunting rights. *See, e.g., Klamath Water Users Protective Ass’n v. Patterson*,  
21 204 F.3d 1206, 1213 (9th Cir. 2000), cert. denied, 531 U.S. 812 (2000) (Klamath Basin Tribes  
22 hold implied water rights to support hunting and fishing rights). The Yurok Tribe’s federally  
23 reserved fishing rights include the right to take fish from the Klamath River for subsistence,  
24 commercial, and ceremonial purposes. *United States v. Eberhardt*, 789 F.2d 1354, 1359 (9th  
25 Cir. 1986). This means the Yurok Tribe’s federally reserved water rights include sufficient  
26 instream flows to support a fishery for subsistence, commercial, and ceremonial purposes. *Id.*  
27 The Yurok Tribe’s fishery interests necessarily extend upstream of the Yurok Reservation  
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1 because anadromous Klamath River salmon “hatch in the upper tributaries of rivers such as the  
2 Klamath . . . .” *Parravano*, 70 F.3d at 542. The Yurok Tribe’s senior water rights include  
3 sufficient instream flows for fisheries to support one of the main purposes of the Yurok  
4 Reservation; preservation of our fishing way of life.

5 **V. USBR’S TRUST RESPONSIBILITY TO PROTECT YUROK FISHING**  
6 **AND WATER RIGHTS**

7 The federal government, including USBR, has a trust responsibility to Indian tribes.  
8 *United States v. Jicarilla Apache Tribe*, 131 S. Ct. 2313, 2334 (2011) (There exists “a general  
9 trust relationship between the United States and Indian tribes.”). The federal trust responsibility  
10 extends to all federal agencies. *Parravano*, 70 F.3d 539, 546, citing *United States v. Eberhardt*,  
11 789 F. 2d 1353, 1363 (9th Cir. 1986). This obligates USBR to protect the fishing and water  
12 rights of the Yurok Tribe. *Klamath Water Users Protective Ass’n v. Patterson*, 204 F.3d 1206,  
13 1213 (9th Cir. 1999), amended by 203 F.3d 1175 (9th Cir. 2000). USBR must ensure that  
14 California WaterFix operations do not interfere with the Yurok Tribe’s senior water rights.  
15 USBR has a responsibility to divert water to protect the Yurok Tribe’s fishing right. *Klamath*  
16 *Water Users Protective Ass’n*, 204 F.3d. at 1214. USBR must exercise its operational discretion  
17 to ensure tribal fishing rights are not diminished and to act as necessary to protect these rights.

18 At minimum, to begin USBR must consult with the Tribe if an action may affect the  
19 Tribe’s rights. Here, USBR has made no attempt to consult with the Yurok Tribe regarding the  
20 impacts of the California WaterFix Project on the Tribe’s rights. USBR’s failure to do so is  
21 contrary to federal law and the general requirements of the government-to-government  
22 relationship the Yurok Tribe enjoys with the federal government. Further, the effort to exclude  
23 the effects of the California WaterFix Project on the Trinity and Lower Klamath Rivers in the  
24 EIR/EIS is contrary to USBR’s trust responsibility and legal duty to ensure that operations do not  
25 interfere with the Yurok Tribe’s senior water and fishing rights.

1 The State Water Board should not issue a permit until USBR has consulted with the  
2 Yurok Tribe and considered the impacts that the California WaterFix Project may have on the  
3 Yurok Tribe's federally reserved fishing and water rights.

#### 4 VI. THE STATUS OF THE KLAMATH AND TRINITY FISHERY

5 The Klamath and Trinity River Fishery is already vulnerable to very low water releases in  
6 the main stem Klamath River, and the Yurok People have witnessed first-hand the devastating  
7 effects of a failure to provide necessary instream flows for fish and have acted to protect the  
8 River and fishery.

9 In 2002, a combination of factors, including the presence of the fish pathogens ich and  
10 columnaris, warm water temperatures, and crowded fish conditions, resulted in a massive fish  
11 kill of over 34,000 adult fish, including Chinook and endangered coho salmon. During the event,  
12 our experts and tribal members observed tens of thousands of dead adult chinook salmon,  
13 steelhead trout, and coho salmon ranging in size from approximately 5 to 40 pounds lying dead  
14 alongside each other on the riverbank. This resulted in unprecedented destruction of the tribal  
15 fishery resource and had a profound spiritual and economic effect on the Yurok Tribe.

16 Again, in 2014 and 2015 up to 90% of sampled fish tested positive for a protozoan  
17 parasite known as *Ceratonova shasta* (*C. shasta*) that is deadly to juvenile chinook and coho  
18 salmon, resulting in a devastating loss to the class of salmon for those years. The disease arose as  
19 a product of low winter releases into the Klamath River in recent years, coupled with the  
20 presence of the dams in the Klamath Hydroelectric Project optimizing habitat for a polychaete  
21 worm that acts as a host for *C. shasta*. For over 150 years the Yurok Tribe has been actively  
22 involved in ensuring adequate water to support the Tribal fishery, and we mobilized in response  
23 to these major events. For example, the Yurok Tribe intervened in *San Luis & Delta-Mendota*  
24 *Water Authority et al. v Haugrud* 848 F.3d 1216 to defend the use of supplemental flows from  
25 the Trinity River to prevent fish kills in the Lower Klamath River in dry years, a strategy that  
26 had been deployed by USBR in response to the 2002 fish kill.

1 In 2017, in response to the outbreak of *C.shasta* the Yurok Tribe filed a lawsuit (*Yurok v.*  
2 *Bureau of Reclamation* 231 F.Supp.3d 450 (N.D. Cal. Feb. 8, 2017))<sup>1</sup> that called for, among  
3 other things, higher winter flows designed to mobilize sediment and reduce the concentration of  
4 polychaete worms. In February 2017 in *Yurok v. BOR* the Tribe successfully obtained a court  
5 order to compel USBR and National Marine Fisheries Service to provide additional water flows  
6 on the Klamath River (high pulse flows every year, very high pulse flows every other year, and  
7 Spring dilution flows if certain disease triggers are met) to flush out the *C. shasta* disease.

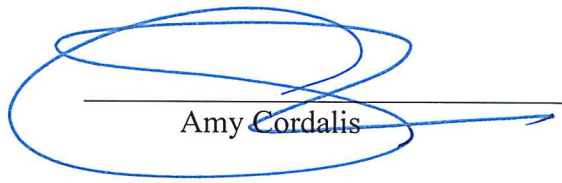
8 Despite these significant victories to protect salmon, the returning salmon runs in 2016  
9 and 2017 were the lowest recorded in history. To preserve the resource, the Yurok Tribal  
10 Council cancelled the 2016 and 2017 commercial fisheries, and completely closed the  
11 subsistence fishery in 2017. Indeed, this year was the first year in the history of the Yurok people  
12 that we did not fish for salmon on the Klamath River. The poor status of the fishery is anecdotal  
13 evidence that the Klamath River fishery will continue to decline if additional stress – such as  
14 more consumptive water uses and increasing poor water quality – are exasperated. The system  
15 simply cannot handle more. This is why it so important to study the environmental effects of the  
16 WaterFix Project on the Trinity and the Lower Klamath River, as any change in the delicate  
17 fragile conditions on both Rivers could be catastrophic to the fishery. As such, this Board should  
18 require that the environmental impacts to the Trinity River and the Klamath River be considered  
19 in the Final EIR/EIS.

20 The spiritual and physical health and well-being of Yurok Tribal members has depended,  
21 and always will depend, on the existence of a healthy Klamath River and fishery. The  
22 preservation and continued existence of the Klamath and Trinity River fishery requires the  
23 prioritization of the use of Trinity River water in the Trinity River basin, rather than to out of  
24 basin diversions.

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28 <sup>1</sup> The Hoopa Valley Tribe also filed a lawsuit on similar grounds.

1 **VII. CONCLUSION**

2 The WaterFix Project, in its proposed form, does not appear to safeguard the Yurok  
3 Tribe's water and fishing rights. The State Water Board must condition any approval of the  
4 WaterFix Project in a manner that protects Yurok water and fishing rights, and gives effect to its  
5 legal and moral responsibility to divert water to protect the Klamath and Trinity River fishery. I  
6 declare under penalty of perjury under the laws of the State of California that the foregoing is  
7 true and correct, and that I executed this declaration November 28, 2017 in Klamath, California.

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10 Amy Cordalis  
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