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10 **BEFORE THE**
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 THOMAS P.
O'ROURKE, SR.**

15
16 I, Thomas P. O'Rourke, Sr., do hereby declare:
17

18 **I. INTRODUCTION**

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

25 I am the Chairman, Chief Executive and principal spokesperson of the Yurok Tribe. In
26 my current term, I have served as Chairman since 2016. I have previously served the Yurok
27 Tribe as Vice-Chairman from 2003 to 2006 and Chairman from 2009 to 2015.

28 I am from the Yurok village of *Mowr-rekw* along the Klamath River, and currently live at

1 Tully Creek near the confluence of the Klamath and Trinity Rivers.

2 Yurok people are fishermen, hunters, gatherers, carvers, redwood boat builders and
3 weavers of fine baskets. I have been active in Yurok traditional ceremonies and gathering
4 practices all of my life; walking the trails that my ancestors walked since time immemorial,
5 fishing on the river for ceremony and subsistence, gathering basket materials and collecting
6 ceremonial plants.

8 II. OVERVIEW OF TESTIMONY

9 What happens in the Trinity River affects the Klamath River. The Trinity begins in the
10 Trinity Alps of Northern California. It runs south and then winds its way northwest, picking up
11 tributaries along the way. It eventually flows into the Klamath River at the Yurok village of
12 *Weych-pues* (Weitchpec). The water then flows down the Lower Klamath before entering the
13 Pacific Ocean. The WaterFix Project, therefore, greatly impacts the Yurok Tribe fishery in the
14 Trinity and Klamath Rivers, the Yurok way of life and our federally reserved water and fishing
15 rights.

16 In this declaration I set out:

- 17 (a) that the Yurok Tribal fishery in the Klamath and Trinity Rivers is essential to the
18 Yurok way of life;
- 19 (b) the efforts of the Tribe to protect the fishery; and
- 20 (c) the devastating impact of the 2002 fish kill, which resulted from an outbreak of
21 the fish disease *Ichthyophthirius multifiliis* (“Ich”) and *columnaris* and very low
22 water releases into the main stem Klamath River, on the Yurok fishery and
23 people.

25 III. THE YUROK TRIBE

26 With more than 6,200 enrolled tribal members, the Yurok Tribe is the largest federally
27 recognized Indian tribe in California. The Tribe is located on the Lower Klamath River in
28 Humboldt and Del Norte Counties in Northern California. The present-day Yurok Reservation

1 extends for one mile on either side of the Klamath River from the Pacific Ocean upstream
2 approximately 44 miles, and extends up the Trinity River beyond the Yurok village of
3 Weitchpec. *Weych-pues*, in Yurok language, means “confluence”, referring to where the
4 Klamath and Trinity Rivers meet. The Tribe is governed by the Yurok Tribal Council, a nine-
5 member body that exercises inherent sovereign governmental powers.

6 The ancestral lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast
7 (including usual and customary offshore fishing areas) from Damnation Creek, its northern
8 boundary, to the southern boundary of the Little River drainage basin, and unbroken along the
9 Klamath River, including both sides and its bed, from its mouth upstream to and including the
10 Bluff Creek drainage basin. Our people have always lived on this land, that is sacred to our
11 people, along the Pacific Coast and inland on the Klamath River since the Spirit People, *Woge'*,
12 made things ready for us and the Creator placed us here. We believe we were positioned on the
13 river to care for it.

14 The inclusion of the lower 44 miles of the Klamath River in our reservation secured for
15 us federally reserved fishing and water rights that the federal government has a trust
16 responsibility to protect. We as Yurok people also have a cultural covenant to protect the River.
17 The Klamath River is the Yurok people’s lifeline. Our creation story states that the River was
18 made to support us and as long as we don’t take more than we need from the River, it will
19 always provide for our people and families. We take this responsibility—to live sustainably—
20 very seriously. Tribal elders share stories that prior to contact with Europeans, one could walk
21 across the river on the backs of the salmon. This whole ecosystem, this place that is our home,
22 Yurok Country, was kept in balance for thousands of years. It was kept that way by our good
23 stewardship, responsible management, hard work, wise laws, and constant prayers to our
24 Creator.

1 **IV. THE YUOK TRIBE FISHERY IN THE KLAMATH AND TRINITY**
2 **RIVERS**

3 The Yurok Tribe is the largest harvester of Klamath River Basin fisheries resources,
4 which includes Trinity River chinook and coho salmon, steelhead, as well as lamprey and
5 sturgeon. The existence of Yurok People has been intertwined with our fisheries resource since
6 time immemorial. The Yurok word for salmon, *ne-puey*, refers to “that which is eaten”. Our
7 traditions, culture and religious ceremonies are intricately interwoven with the state of our
8 natural resources.

9 Accordingly, the Yurok Constitution directs the Tribe and its leadership to protect the
10 natural resources that provide for the reservation and “to restore, enhance and manage the tribal
11 fishery [and] tribal water rights.” The elected leaders of the Yurok Tribe are constitutionally
12 obligated to safeguard the “natural resources” of the Tribe. This is our highest calling, to respect
13 and live in balance with the natural world.

14 To ensure this, the Yurok tribal government devotes a significant amount of human and
15 financial resources toward protecting the Klamath River fishery. Our Fisheries Department is
16 the Tribe’s largest department, employing approximately 55 people to manage, conserve, and
17 restore Yurok’s fishery resources. The Fisheries Department also contracts with numerous
18 experts in various fields—including hydrology, geology, pathology, and biology—to assist with
19 protecting Yurok’s fishery resource and associated habitat. The Tribe’s legal and environmental
20 departments, tribal law enforcement, and tribal court complement the fisheries department’s
21 work by monitoring the Tribe’s harvest and enforcing violations of the Tribe’s Fishing Rights
22 Ordinance.

23 The Yurok Tribe Watershed Department maintains 15-20 employees for watershed and
24 fisheries restoration work, including decommissioning of roads and removal of stream crossings
25 that have a high likelihood of impacting viable spawning habitat, and large-scale, in-stream
26 habitat restoration activities on the Trinity River, the most important fishery tributary to the
27 Klamath River.

28 The Yurok Tribe Department of Public Safety provides policing services for the Yurok
29 Reservation and surrounding communities. The Department of Public Safety spends a significant

1 amount of staff time on fisheries-related issues, including patrolling the Klamath River and
2 enforcing fishing laws that govern the Indian fishery within the Yurok Reservation. It employs
3 two conservation wardens and three temporary conservation officers to assist with patrol of the
4 Indian fishery.

5 The Yurok Tribe Environmental Program employs 12 full-time staff to monitor and
6 protect our natural resources.

8 V. IMPACT OF FISH KILLS IN LOWER KLAMATH

9 Despite our best efforts, Yurok people have witnessed first-hand, and experienced
10 significant hardship due to, the demise of our Klamath fishery. When diversions and dams were
11 constructed upstream on the Klamath and Trinity Rivers, they brought about a swift decline in
12 the fishery because these structures blocked access to spawning grounds and diverted so much
13 water that river conditions could not support fish habitat; there simply was not enough water left
14 instream.

15 In the most culturally devastating event in modern Yurok history, in 2002 over 30,000
16 adult salmon died due to a massive outbreak of the fish disease *Ich* and *columnaris*, and very low
17 water releases into the main stem Klamath River from the upstream Klamath Irrigation Project.
18 This fish kill happened entirely within the Yurok Reservation. During the event, our experts and
19 tribal members observed tens of thousands of dead adult chinook salmon, steelhead trout, and
20 coho salmon ranging in size from approximately 5 to 40 pounds lying dead alongside each other
21 on the riverbank. The number of dead Chinook was conservatively estimated at over 34,000
22 adults, but the actual number was likely higher. The fish kill was one of the darkest events we
23 have ever experienced. Each year we live in fear that the federal government is going to allow it
24 to happen again.

25 The Tribe operates a sustainable tribal commercial fishery. For many of our tribal
26 members, the money they make during our commercial fishery is the only income they earn each
27 year. Unemployment on the Yurok Reservation is high, the poverty level is high, and we have
28 very few opportunities to improve conditions for our children and their families. The

1 commercial salmon season effectively clothes and feeds our Yurok families and keeps their
2 lights on. This makes the Yurok fishery an incredibly important economic resource, if not the
3 most important resource, for our tribal members. Each year the Tribal fisheries department sets a
4 sustainable harvest allocation based on the size of the return salmon run. The smaller the return
5 run, the smaller our harvest, and the less opportunity our tribal members have to earn income
6 from the commercial fishery.

7 The returning fall chinook salmon runs in 2016 and 2017 were the smallest in history.
8 The Tribal Council cancelled the commercial harvest, and severely limited the subsistence and
9 ceremonial harvest, for 2016 and 2017. The Tribe's allocation in 2017 was 650 fish, not enough
10 for each tribal member to have even 1/10 of a salmon. The United States Department of
11 Commerce declared the 2016 Yurok Klamath River Fishery a commercial fisheries disaster. We
12 are currently anticipating the same declaration for 2017. The recent fishery collapse is not only
13 an economic loss, it is a cultural and social loss to us.

14 As Tribal Chairman, and as a member of the Tribal Council, it is my responsibility to
15 make decisions for our Yurok people that improve their lives and that strengthen our tribal
16 government. We look to the traditional teachings of Creator and our spiritual leaders to guide
17 our decisions and we strive to bring our physical world back in harmony with the spiritual world.
18 We seek to protect the Klamath and Trinity Rivers and their resources, and are concerned about
19 the negative impacts that the WaterFix Project will have on these rivers, which sustain our
20 salmon runs and wider fishery. Unfortunately, the world is not in balance. The Yurok Fishery in
21 the Klamath and Trinity Rivers continues to decline and our fish are dying from disease,
22 threatening our people in many ways. It is not only the fish that are in danger of becoming
23 extinct, it is our way of life and very existence as Yurok people.

24 25 **VI. CONCLUSION**

26 The principal purpose behind the creation of the Yurok Indian Reservation was to
27 guarantee the survival and growth of our fishing-based culture. As we witness the continued
28 death of our fishery, we have to explain to our children and our grandchildren what is happening

1 and why. Our children, and our children's children should not have to suffer through continued
2 destruction of their livelihood and culture.

3 Accordingly, the WaterFix Project should not negatively affect the fisheries in the Trinity
4 and Klamath Rivers. To ensure this, the State Water Board should include the Trinity River in its
5 environmental review, and condition any permit on there being no negative effects on the Trinity
6 River and its fishery.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct, and that I executed this declaration November 27, 2017 in Klamath,
9 California.

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11 
12 Thomas P. O'Rourke, Sr.