

From: [Michael Belchik](#)
To: [Wr401program](#)
Cc: [Amy Cordalis](#); [Dave Hillemeier](#); [Taralyn Ipina](#); [Javier Kinney](#)
Subject: Yurok Tribe Comments on Klamath Dam Removal DEIR
Date: Tuesday, February 26, 2019 10:45:45 AM
Attachments: [YT DEIR Comm 022519 V5\(FINAL\).pdf](#)

Aiy ye kwee' Ms. Seibal and State Water Board Staff:

On behalf of the Yurok Tribe, please accept the attached comments for the Draft Water Quality Certification EIR. If you have any questions, please contact myself, Michael Belchik at mbelchik@yuroktribe.nsn.us.

For legal matters or those pertaining to cultural resources, please contact Ms. Amy Cordalis at acordalis@yuroktribe.nsn.us or at (707)482-1350.

Wok-hlew'

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YUROK TRIBE

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Ms. Michelle Siebal
State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
P.O. Box 2000
Sacramento, CA 95812-2000

Submitted electronically to: WR401Program@waterboards.ca.gov

February 25, 2019

Re: Yurok Tribe's Comments on the Lower Klamath Project License Surrender DEIR

Aiy ye kwee' Ms. Siebal;

The Yurok Tribe hereby provides comments on the December 2018 Public Review Draft of the Environmental Impact Report for the Lower Klamath Project License Surrender (DEIR). As you know, the Klamath River is the axis around which Yurok cultural and spiritual beliefs and practices are centered. The Yurok Tribe is the largest California Tribe. The Yurok Reservation straddles the lower 45 miles of the Klamath River, for a mile on each side providing the Yurok Tribe with regulatory authority over the lands and river within the Reservation. The Tribe maintains senior water and fishing rights on the River. For the Yurok Tribe, there is no other river; no alternatives exist with regard to the restoration of the Klamath River. We have long believed that restoring the river is necessary and for true restoration to take place, landscape-scale actions must be implemented, including removal of the four dams along the mainstem river. We appreciate the Board's insights and creative thinking on how to mitigate the short-term impacts to the river so that the long-term benefits of dam removal and river restoration can be realized.

The Yurok Tribe fully supports the full removal alternative as described in the DEIR as well as the partial removal alternative as long as the river itself is restored to a free-flowing condition and any serious environmental impacts by remaining structures are adequately addressed. Years of study have led to a comprehensive understanding of the potential impacts of this project and we are past the time for additional studies—it is now time for action.

In general, we support the impacts analyses and believe that sufficient study and analysis has happened to support moving forward with dam removal on an aggressive time schedule.

We offer the following comments with regard to these specific areas:

- Tribal Cultural Resources and the Fate of the Parcel B Lands
- Water Quality
- Restoration and Construction Activities
- Fisheries and Aquatic Resources
- Emergency Response

I. Tribal Cultural Resources

One of the Yurok Tribe's most serious concerns has to do with the ultimate fate of the Parcel B lands as they become exposed when the reservoirs are drained.

The Yurok Tribe does not support mitigation measure seven regarding land transfer and recommends the mitigation measure be stricken from the document. The measure regards lands referred to as "parcel B" in the Klamath Hydroelectric Settlement Agreement ("KHSA"), Section 7.6.4 and identifies that the Shasta Indian Nation has proposed to transfer the lands to the Kikaceki Land Conservancy. The proposal is included in the mitigation measure for analysis in the Environmental Impact Report. The mitigation measure does not disclose details of the Shasta Indian Nation's proposal such as location of the lands or amount of acreage.

As the Yurok Tribe has previously expressed, it is inappropriate for the State Water Board to include this proposal in the Environmental Impact Report as: 1) doing so potentially circumvents the process in KHSA Section 7.6.4, 2) the record before the State Water Board is incomplete with respect to other tribal entities that may have traditional or cultural ties to the lands, and 3) the details of the proposal are confidential which prohibits other entities from determining whether the proposal has negative impacts on their legal rights. While Yurok acknowledges the mitigation measure does not undue the process in KHSA Section 7.6.4, it does give the proposal preferential treatment and an unfair advantage over other proposals by completing environmental work required for transfer. The Yurok Tribe recommends the reference to the proposal be stricken from the document.

Instead, the State Water Board should defer mitigation and any predetermination of the fate of these lands to a future time as prescribed in the KHSA 7.6.4. If proposals come forward in the future regarding the fate of these lands, a separate environmental analysis could then be conducted.

Additionally, the Yurok Tribe does have specific concerns with some of the language in the Tribal Cultural Resources section of the document, and we herein provide alternative language below that addresses these concerns. (See page 3-799). Language requested for deletion is in ~~strikeout type~~, language for addition is underlined, and comments notes for consideration are in **Bold**. Plain text language is quoted from the DEIR.

Yurok

Pilling (1978) summarizes ethnographic information regarding Yurok collected by Waterman (1920), Waterman and Kroeber (1934), and others. Sloan (2003, 2011) also presents a summary of the ethnography of the Yurok and the relationship to the tribe to the Klamath River. Yurok are members of the Algonquian language family. ~~Yurok ancestral territory extends along the Pacific coast of California from Crescent City in the north to Trinidad in the south and along the Klamath River from the coast to a point near the confluence of the Klamath and Trinity Rivers and the town of Weitchpec (Pilling 1978). The Ancestral Lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast (including usual and customary off-shore fishing areas) from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin, and unbroken along the Klamath River, including both sides and its bed, from its mouth upstream to and including the Bluff Creek drainage basin. Included within these lands are the drainage basin of Wilson Creek, the drainage basins of all streams entering the Klamath River from its mouth upstream to and including the Bluff Creek and Slate Creek drainage basins, including the village site at Big Bar (except for the drainage basin upstream from the junction of Pine Creek and Snow Camp Creek), and the Canyon Creek (also known as Tank Creek) drainage basin of the Trinity River, the drainage basins of streams entering the ocean or lagoons between the Klamath River and Little River (except for the portion of the Redwood Creek drainage basin beyond the McArthur Creek drainage basin and except for the portions of the Little River drainage basin which lies six miles up from the ocean).~~ **[NOTE: Cite the Yurok Constitution for consistency as the existing reference isn't correct.]** The Yurok Tribe's reservation currently consists of a strip of land beginning at the Pacific Ocean and extending upstream a mile along each side of the Klamath River for approximately 45 miles.

The Yurok life, language, ceremonies, society, and economy are linked with the Klamath River. There are Yurok stories that reinforce the Yurok belief that the River was created in a distinct way in order to provide Yurok people with the best of worlds (Sloan 2003, 2011). Yurok refer to the river as HeL kik a wroi or "watercourse coming from way back in the mountains." Contemporary Yurok often refer to the Klamath River as the "Yurok Highway" emphasizing its comparison to a blood vessel that provides the main flow of sustenance. Karuk, Yurok, and Hupa share similar cultural traits and traditional stories state that the Klamath River was created to facilitate their interaction with each other and with salmon.

The Yurok had permanent settlements with substantial architectural features including houses, smokehouses, and storage facilities (Kroeber and Barrett 1910, Pilling 1978). ~~Pilling (1978) cites 44 villages, 97 fishing spots, 82 significant cultural places (e.g., places used for ceremonies, gathering, and hunting), and 41 places of cultural significance along the Klamath River in Yurok territory.~~ **[NOTE: Not an accurate count. Can keep sentence if numbers are removed or add a sentence that says a minimum of...The Tribe has documented over 70 villages in our ancestral territory]**

The Yurok represent a socially complex hunter-gatherer population in California (Fredrickson 1984, Kroeber 1925) that used marine and salmon resources. Organizing labor to capture the short-duration salmon runs, preserving fish by smoking, then packing and storing the fish suggests a high degree of sociopolitical differentiation.

There is also evidence of a maritime expression to Yurok culture involving marine mammal hunting more than 10 miles offshore. The most telling argument for an open-ocean maritime adaptation comes from the presence of the large amount of northern fur seal fauna in the Stone Lagoon midden. Jones and Hildebrandt (1995) argued that pinnipeds were extirpated early on shore by Native Americans, who then developed watercraft to hunt offshore.

The material culture of the Yurok people includes, to this day, dugout redwood canoes, split-plank houses, storage boxes, sweathouse pillows and stools, many fishing devices, baskets and leather, shell, straw and feather garments and ceremonial regalia.

Transportation along the rivers and streams is essential to Yurok ceremonial activity. One of the most important aspects of Yurok technology was the river- and ocean-going canoe or yoch, which were carved from selected redwood trees (Sloan 2003, 2011).

There are historic accounts of expeditions traveling up to 180 miles along the coast (Sloan 2003, 2011). A typical river canoe measured 16 to 20 feet in length and 3 to 4 feet in width. River canoes were customarily paddled and/or pushed with a long pole. Yurok technology and facilities do not only serve utilitarian functions, but also include ceremonial aspects of Yurok culture. For example, facilities, such as fishing weirs, were created specifically to signify the time of sacred ceremonies (e.g., the White Deerskin and Jump ceremonies).

Fishing places along the Klamath River are owned by individuals, families, or groups of individuals. Fishing places can be borrowed, leased, inherited, or bought and sold (Sloan 2003, 2011). Some ownership rights at fishing places depended on species of fish caught at the site, while others depended on the water level (i.e., individuals owned the right to fish at a place if the river was below or above a certain level). Yurok still recognize this traditional form of resource management and use of the river. Families and individuals continue to use and own rights to fishing places on the Klamath River.

Like the Karuk, the religious and ceremonial practices highlight the Yurok relationship to the Klamath River and its associated resources. Of particular importance were the Jump, White Deerskin, Boat, and Brush Dance ceremonies. The Jump and White Deerskin ceremonies were held in late fall to give thanks for food resources abundance collected during the year and to insure a continued abundance of food resources for the next year (Sloan 2003, 2011). Affluent individuals and religious leaders conduct most ceremonies, and wealthy individuals were expected to feed salmon to everyone attending the ceremonies.

The Boat Ceremony is part of the White Deerskin Ceremony. In this ceremony, several boats filled with participants travel down the Klamath River. The participants thank the river for continuing to flow and provide resources. The Brush Dance Ceremony unfolds over a ten day period and is for the healing of a sick child or individual. This ceremony highlights the importance of Klamath River resources to Yurok. For example, baskets made of plant materials collected at the water's edge are used to hold food and ceremonial medicine; acorns are cooked in the baskets using cooking stones gathered at specific river bars; ceremonial regalia is made from various plant and animals that live along the river; ceremonial bathing is performed; and participants listen to the sounds made by the Klamath River (King 2004).

The social and ceremonial significance of the Klamath River is evident in and reinforced by Yurok traditions. For example, there are at least 77 Yurok stories that make direct reference to the Klamath River (Sloan 2003, 2011). These Yurok stories reinforce the belief that the Klamath River was created to provide Yurok with a very good place to live.

Spanish explorers and vessels traveling from the Philippines interacted with Yurok along the coast in the late 1700s. **[NOTE: Bodega visited the Village of Tsuru and the Vancouver expedition followed shortly after.]** Other explorers such as Peter Skene Odgen and Jedediah Smith certainly encountered Yurok along the Klamath River in the early 1800s. Regardless, Euro American settlement and use of Yurok territory did not begin until after the discovery of gold in California in early 1850. With strikes along the Klamath and Trinity rivers, gold prospectors inundated the region affecting Yurok traditional culture (Pilling 1978).

In 1851 a "Treaty of Peace and Friendship" was signed between the United States Government and the Klamath River Indians, but the United States Congress did not ratify this treaty. Subsequently, on November 16, 1855, the Klamath River Reserve, also known as the Klamath Indian Reservation, was established by Executive Order. The Order designated the reservation lands from the mouth of the Klamath River, one mile on each side extending approximately 20 miles upriver to Tectah Creek (Sloan 2003, 2011).

Escalating conflict between Yurok and Euro Americans during the 1860s and 1870s over encroachment onto the Klamath Indian Reservation resulted in the ~~gradual~~ attempted displacement of Lower Klamath Indians further upriver (Sloan 2003, 2011). Euro Americans on the reserve resisted attempts to remove them, including eviction in 1879 by the United States Army (Sloan 2003, 2011). After decades of struggle to keep their traditional homelands, the Yurok Tribe was re-organized and was granted its own reservation in 1988. As a result of the 1988 Hoopa-Yurok Settlement Act (PL-100-580), the Yurok Indian Reservation was established.

The ancestral lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast (including usual and customary off-shore fishing areas) from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin, and unbroken along the Klamath River, including both sides to the associated tributary watershed boundaries from the mouth upstream to the Bluff Creek drainage basin. The Yurok Tribe considers cultural resources sites along and associated with the Klamath River to be part of a larger ethnographic riverscape (King 2004, Yurok Tribe 2012).

Sites include fishing areas; a fish dam (weir) site; many different types of resource gathering sites, complex trail systems that connect villages, camps, the river, ceremonial sites, gathering areas, and other Tribes; and 47 villages with graves/cemeteries.

The Yurok Tribe is the largest tribe in California, with over 6,200 enrolled tribal members and over 300 tribal government employees. The Yurok Tribe is actively pursuing economic development and management of fisheries, forestry, and cultural programs, both on the reservation and Yurok ancestral lands.

Resighini Rancheria: The Resighini Rancheria is located on the southern banks of the Klamath River Estuary, surrounded by the Yurok Reservation. The Rancheria is composed of Indians relocated through the Homeless Indian Act which include some individuals with Yurok ancestry, ~~and has~~ other homeless Indians from central California.

NOTE: Major shifts in federal Indian policy at the national level during the late 19th century exacerbated the Indian problems in California. Passage of the General Allotment

Act in 1887 opened part of the limited lands in California to non-Indian settlement. In 1905 the public was finally advised of the 18 unratified treaties. Citizens sympathetic to the economic and physical distress of California Indians encouraged Congress to pass legislation to acquire isolated parcels of land for homeless California Indians. Between 1906 and 1910 a series of appropriations were passed that provided funds to purchase small tracts of land in central and northern California for landless Indians of those areas. The land acquisitions resulted in what has been referred to as the Rancheria System in California.

Land known as the Resighini Rancheria was designated by Secretarial Order and was officially declared a reservation in 1939. In 1975, a group of Indians stood together and formally created a non-traditional form of government with a constitution and bylaws which was approved and ratified by the last Indian Commissioner Bruce Thompson from the Department of Interior of the United States. However, the disastrous flooding of 1964 (see also Figure 3.6-14) led to the temporary evacuation of Resighini Rancheria.

Today, the tribal government consists of a General Council with an elected Tribal Council to operate our governmental and private tribal affairs as well as represent the tribal needs of our small membership. The Tribal Council consists of five tribal members who are elected annually by staggered two-year terms of Chairman, Vice Chairman, Secretary, Treasurer and Councilperson. Their general membership serves on boards, committees, commission and corporations to assist the Tribal Council.

II. Water Quality

The Yurok Tribe's Environmental Program (YTEP) has reviewed the document and does not have substantive comments except to say that they support the conclusions of the DEIR and the methods used. Most, if not all of our previous concerns with regard issues related to water quality appear to have been resolved to the best of our knowledge.

III. Restoration and Construction Activities

With regard to proposed restoration activities and construction, the Yurok Tribe fully supports the Proposed Project as described in the Draft EIR document distributed on December 2018. The tribe specifically supports the following proposed actions listed in the DEIR and the Definite Plan Appendix H including:

- Overall Project Implementation Schedule
- Reservoir Drawdown Schedule
- Road Access and Bridge Improvements
- Spoils and Staging Area Development
- Deconstruction Activities
- Sediment management during reservoir drawdown including Sediment Jetting
- All Restoration Actions within and outside the Reservoir Footprints including: Revegetation Seeding and Planting, Habitat Restoration and Enhancement

Actions, Tributary and Floodplain Connectivity Actions, and Upland Restoration components.

IV. Fisheries:

- Page 2-8: the storage volumes given for the various project facilities are misleading because much of it is dead storage which cannot be released under normal operations. Please revise table with available storage and dead storage.
- Page 2-20: It should be noted that Article X (10) of the Klamath River Compact states that “To deprive any individual Indian, tribe, band or community of Indians of any rights, privileges, or immunities afforded under federal treaty, agreement or statute.”
- Not sure what purpose 2.6.1 serves, given that dam removal is only peripherally related to water management. Certainly the Yurok Tribe would add 1994 to the list of water conflicts where the Klamath River flows were taken down to less than 400 cfs at Iron Gate Dam. Recommend deleting entire section as needlessly controversial and not entirely relevant. A better approach might be to sum up from a 20,000 ft level “Water management in the Klamath Basin has been controversial in the past few decades with farm shortages, commercial salmon fishery failures and uncertainty and other effects all occurring frequently.” Or something similar.
- Page 2-67: even if coarser sediment is only 0.5% of the total of over 12,000,000 cu. yd. that’s still over 60,000 yards of coarse sediment. This is an immensely important amount of sediment for macroinvertebrates and can be more easily mobilized than the current armored condition of the bed. Furthermore, fine sediment that does settle near the removal location is important to lamprey ammocoetes and other species.
- Section 2.7.6.1 (page 2-78) currently reads: *“percent of Bogus Creek flow during part of each year, especially during October, November, April, and May. In spring/early summer of 2014, Bogus Creek flows were insufficient to meet the proposed full water needs of the hatchery. These results may be due to the short duration of the dataset or drought conditions between 2013 and 2017 that may not represent long-term conditions. The KRRC proposes that if Bogus Creek flows are insufficient to meet minimum operational needs while balancing flow requirements in the creek, water reuse (recirculation) from the rearing raceways could be utilized. In addition to recirculation, early release of smolts (i.e., prior to April 1) may occur to reduce water use requirements in the hatchery. The effectiveness of recirculation and early smolt release would be studied to determine whether they could be used to meet minimum operational flow and water temperature needs in the hatchery given annual variations in Bogus Creek flow and water temperature during the early release period.”* Comment: The

above statement should more clearly state what recirculation capacity will exist at the hatchery. It should also clearly state that the “early smolt release” option will only be used after exhausting Bogus Creek diversion and recirculation options. Due to competition with natural rearing fish in the Klamath River, release of smolts early should only be done as a last resort. The above text leaves too much latitude to use recirculation OR early release of smolts.

- Page 4-17: Suggest inserting the following language. “In 2018 and continuing into 2019 , the Bureau of Reclamation has initiated formal consultation under the ESA for the operation of the Klamath Project. The resulting BiOp is expected to govern water operations for the next 10 years from implementation. Although the Bureau of Reclamation released its Biological Assessment in late December 2018 and has stated its intention to finish consultation by April 1, 2019, it is speculative to forecast what hydrology may result from implementation of the proposed action. NMFS and USFWS may either or both require modification of the proposed action in ways that are not foreseeable at this time. Therefore, this DEIR uses current hydrology as described in the previous few paragraphs.
- Page 4-68: The Yurok Tribe does not agree that the probability of dam removal is low for the KHP. Iron Gate Dam, for example, has no emergency spillway, has recently been raised due to an increase in the maximum probable flood estimate, and the emergency drain tunnel has never actually been used. Because the tunnel and penstock have relatively low capacities, the bulk of large flood flows must pass over the spillway, which is located immediately adjacent to the face of the dam. If the spillway should fail (as happened on Oroville Dam) there is no emergency action that can save the dam from catastrophic failure. In fact, spillway failure nearly brought the dam down in the 1964 flood, after which the spillway was lined with concrete. This concrete lining, while it is presumably inspected, is vulnerable to failure as was seen in Oroville.

V. Emergency Response

The Tribe urges the State Water Board to reconsider its finding that the restoration of the free-flowing Klamath River will permanently decrease response ability for catastrophic fire. Although reservoirs provide more options for emergency aerial water tanker response, this is a very small portion of the overall response to fire danger. Safe evacuation routes (which will be left in an improved state due to necessary upgrades for demolition activities), fuels management, and a host of other factors go into this determination. We believe that other activities (a renewed focus on fuels management, for example) can offset the loss of flatwater areas for refilling aerial tankers. It is also possible for restoration projects to deliberately include off-channel areas suitable for filling water buckets via helicopter.

Summary and Conclusion

The Yurok Tribe has reviewed the DEIR and has found it to be a thorough and sound document, above comments notwithstanding. The DEIR appropriately uses the voluminous material generated in previous environmental analysis efforts for the FERC relicensing itself as well as the Secretarial Determination EIS that was a product of the first version of the KHSA.

The full dam removal project, as well as the partial removal alternative, would be the largest fisheries restoration project in the history of the United States, and would represent a major boost to the economy of the west coast. It is also a very important step toward protecting the Yurok Tribe's federally reserved fishing rights. Additionally, this type of landscape-scale restoration effort is essential for providing for diverse Tribal, farming, and environmental interests to peacefully coexist in the Klamath Basin. We urge the timely implementation of this project as soon as possible.

Wok-hlew'

A handwritten signature in black ink, appearing to read 'Franklin Joseph Myers', written over a horizontal line.

Franklin Joseph Myers
Yurok Tribal Vice-Chairman