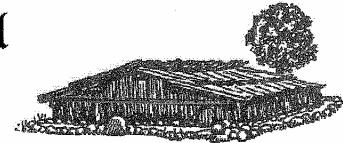


# Hoopa Valley Tribal Council

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LEONARD E. MASTEN JR  
CHAIRMAN

July 14, 2010

Ms. Tanya Sommer  
Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

and to KlamathSD@usbr.gov

Re: Comments of Hoopa Valley Tribe on Notice of Intent to Prepare an Environmental Impact Statement/Environmental Impact Report on the Klamath Hydroelectric Settlement Agreement Secretarial Determination

Dear Ms. Sommer:

The Hoopa Valley Tribe submits the following comments in response to the Department of Interior's ("Department") Notice of Intent to Prepare an Environmental Impact Statement/Environmental Impact Report ("EIS") regarding the Klamath Hydroelectric Settlement Agreement ("KHSA") Secretarial Determination (the "Scoping Notice").

## I. Interest of the Hoopa Valley Tribe

Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Hoopa Valley Tribe. The fishery was "not much less necessary to the existence of the Indians than the atmosphere they breathed." *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). The salmon fishery is integral to the customs, religion, culture, subsistence, and economy of the Hoopa Valley Tribe and its members. The lower twelve miles of the Trinity River and a stretch of the Klamath River flow through the Hoopa Valley Reservation.

The federal government established the Hoopa Valley Reservation in 1864. The Hoopa Valley Reservation is located in the heart of the Tribe's aboriginal lands; lands the Tribe has occupied since time immemorial. The Hoopa Valley Tribe has fishing and water rights in the Klamath River with a priority date of 1864, as recognized by the United States in the Memorandum from Solicitor of the Department of the Interior to the Secretary of the Interior (Oct. 4, 1993); and the Memorandum from Regional Solicitor, Pacific Southwest Region to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (July 25, 1995) (collectively, "Solicitors' Opinions"); and by federal courts in, for example, *Parravano v. Babbitt*, 70 F.3d 539 (9th Cir. 1995). Congress has recognized and confirmed, for example in the Central Valley Project Improvement Act, Public Law 102-575, Section 3406(b)(23) (Oct. 30, 1992), that the



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United States has a federal trust responsibility to protect the fishery trust resources of the Hoopa Valley Tribe. The Hoopa Valley Tribe's rights are unique. This is unlike the situation where several tribes signed a single treaty reserving rights in common. While other tribes in the Klamath Basin also have water and fishing rights, our rights are distinct in scope, derive from different authorities, and must be treated separately.

The fish and water resources of the Klamath River Basin have been severely and adversely affected by the federal authorization, construction, and operation of the Klamath Reclamation Project and the Klamath Hydroelectric Project upstream of the Hoopa Valley Reservation. The impacts associated with blocked fish passage, nutrient enrichment, loss of habitat, and inadequate instream flows due to the authorization, construction, and operation of the Klamath Reclamation Project and the Klamath Hydroelectric Project have contributed to the listing of the Southern Oregon/Northern California coast (SONCC) coho salmon and its critical habitat under the Endangered Species Act.

The Tribe has actively participated in all proceedings relating to the re-licensing of the Klamath Hydroelectric Project before Federal Energy Regulatory Commission (FERC), and proceedings to enforce operation of the Klamath Reclamation Project in compliance with the Endangered Species Act and other applicable law. Protection of the Klamath and Trinity Rivers and the aquatic resources therein is of vital importance to the Hoopa Valley Tribe.

The Tribe participated in settlement negotiations leading to the Klamath Hydroelectric Settlement Agreement (KHSA) and Klamath Basin Restoration Agreement (KBRA). Although the Tribe favors the removal of the dams of the Klamath Hydroelectric Project for the purposes of improving water quality and restoring fish passage on the Klamath River, the Tribe did not sign, and enacted a resolution in opposition to the KHSA. The Tribe opposes the KHSA as drafted because it does not require the removal of any dams, but instead establishes an uncertain planning process that could potentially lead to commencement of dam removal in 2020 subject to the achievement of numerous contingent events that include, but are not limited to: (a) enactment of federal legislation; (b) California voter approval of a \$250 million bond package; (c) an affirmative determination by the Secretary of Interior that dam removal is in the public interest; and (d) separate concurrences by the states of California and Oregon that dam removal is in the public interest. The Tribe also opposes the KHSA because it suspends the FERC re-licensing proceeding, suspends the State of California and Oregon water quality certification proceedings, and permits the licensee PacifiCorp to continue operation of the Klamath Hydroelectric Project on terms of annual licenses until at least 2020. The KHSA also fails to provide for interim license measures that will bring the Project into compliance with current state, federal, tribal environmental laws, or applicable water quality standards, or that will adequately mitigate fishery impacts associated with operation of the Project.

The Tribe also did not sign, and enacted a resolution in opposition to, the KBRA because the KBRA conflicts with tribal sovereignty, violates trust duties owed to the Hoopa Valley Tribe by the United States, subordinates tribal water and fishing rights in favor of junior non-Indian irrigation interests without tribal consent, provides inadequate flows for the protection of tribal trust resources, offers a speculative and unfunded program for fishery restoration and water conservation, encourages unsustainable use of groundwater in the Upper Klamath Basin, fails to

abate acute nutrient pollution problems and is not based on best available, peer reviewed science. The Tribe also objects to the linkage of the KHSA and the KBRA.

Here, as in all other proceedings related to protection of the Klamath and Trinity Rivers, the Tribe is committed to ensuring that the United States and its respective departments and agencies fulfill their duties to the Tribe and to the Rivers in accordance with applicable law, including NEPA, the Endangered Species Act, Clean Water Act, Federal Power Act, and the federal government's trust responsibility to the Hoopa Valley Tribe.

## II. Comments on Scoping Notice

### A. Description of Proposed Action

The Scoping Notice describes the Proposed Action as “a determination, pursuant to the KHSA, as to whether removal of the four lower dams on the Klamath River to achieve a free-flowing condition and allow full volitional passage of fish is in the public interest, will advance restoration of the salmonid fishery and is consistent with statutory obligations and tribal rights.”<sup>1</sup>

The definition of the Proposed Action should be revised to read as follows: “an Affirmative Determination that removal of the four lower dams on the Klamath River to achieve a free-flowing condition and allow full volitional fish passage is in the public interest, will advance restoration of the salmonid fishery and is consistent with statutory obligations and tribal rights.” The question is not only whether the Secretary will make a determination, but what that determination should be. The purpose of this NEPA analysis is to guide the Secretary's determination. To be useful, the EIS should compare the consequences of an Affirmative Determination favoring dam removal with other alternatives.

The Department should also clarify whether it intends to analyze the Proposed Action (i.e., an Affirmative Determination favoring dam removal) under the assumptions: (a) that the Secretary will execute and authorize implementation of the KBRA and (b) that Congress will provide full or partial appropriations for funding that is required to fulfill the terms of the KBRA. This clarification is necessary in order to conduct a meaningful alternatives analysis. The Department must make this clarification in order to establish a clear baseline proposed action to compare with other alternatives, such as an alternative that encompasses an Affirmative Determination favoring dam removal without KBRA execution.

The Department should also clarify whether it intends to analyze the Proposed Action using alternative approaches to fish restoration. As discussed in part D, below, the EIS should evaluate addressing the acute water quality problems in the Keno Reservoir Reach. A proposal that includes refilling Lower Klamath Lake and expanding Tule Lake to improve fisheries conditions and water quality should be included.

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<sup>1</sup> The Hoopa Valley Tribe has cautioned that the Department's description of the Proposed Action is misleading in its emphasis on the Secretarial Determination. This is because, as discussed in these comments, the proposal is connected to harmful 50-year water allocation agreements and inadequate and unfunded provisions of the KBRA.

B. Description of Purpose and Need

The Scoping Notice describes the purpose of the Proposed Action as follows: “to advance restoration of the salmonid fisheries in the Klamath Basin [sic] that is in the public interest, and is consistent with the KHSA and the KBRA.” The Department should delete the clause that reads “and is consistent with the KHSA and the KBRA.” The purpose of the Proposed Action is solely to advance restoration of the salmonid fisheries in the Klamath Basin in a manner that is in the public interest. Consistency with the KBRA is not a factor in the Secretarial Determination.

Section 3.3.1 of the KHSA requires only that the Secretary determine whether “Facilities Removal (i) will advance restoration of the salmonid fisheries of the Klamath Basin, and (ii) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes.” Requiring the purpose of the Proposed Action to be consistent with the KBRA could unreasonably narrow the scope of the alternatives analysis. For example, one reasonable alternative to consider in this EIS is an Affirmative Determination supporting dam removal, but without execution or implementation of the KBRA. The Department’s NEPA analysis should not assume (for all alternatives) that Congress will approve the KBRA or direct the Secretary to sign the KBRA, or that the Secretary will ultimately execute and implement the KBRA. The scope of this EIS must be broad enough to analyze alternatives that are not dependent on approval of the KBRA, in whole or in part.

C. Alternatives Analysis

The alternatives analysis is the “heart of the environmental impact statement.” 40 C.F.R. § 1502.14. The EIS must “rigorously explore and objectively evaluate all reasonable alternatives,” and “devote substantial treatment to each alternative . . . so that reviewers may evaluate their comparative merits,” including “reasonable alternatives not within the jurisdiction of the lead agency. 40 C.F.R. § 1502.14(a),(b),(c); *see also* 43 CFR 46.420(c) (defining “range of alternatives”).

The CEQ publication “NEPA’s Forty Most Asked Questions” confirms that in establishing a reasonable range of alternatives, “the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative.” Question 2a. The CEQ publication adds that “an alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. . . . Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA’s goals and policies.” Question 2b.

In addition, each alternative should make clear that the Secretary will continue to carry out the Trinity River Restoration Program, as required by existing law.

The Hoopa Valley Tribe requests analysis of the following reasonable alternatives in the EIS:

1. No Action Alternative: The No Action Alternative in this proceeding should evaluate the consequences of the Secretary failing to make any determination under the KHSA. In that event, the KHSA would be terminable under Section 8.11 and key provisions of the KBRA, such as the guaranteed diversions and claim waivers would not become effective. Parties would likely withdraw from the KBRA under Sections 15.3.4.C and 7.5 of that Agreement. The likely result of No Action would be the resumption of the FERC re-licensing proceeding, conclusion of the State of Oregon and California Section 401 water quality certification proceedings, imposition of Section 18 and Section 4(e) conditions under the Federal Power Act, and management of the Klamath Reclamation Project in accordance with existing and future limitations on diversion required by the Endangered Species Act and other applicable law.

2. Proposed Action Alternative – Affirmative Determination With KBRA Implementation: As discussed above, the Proposed Action Alternative should evaluate the consequences of an Affirmative Determination in favor of dam removal. The Proposed Action Alternative should also examine the effects of executing and implementing the KBRA, because as the Agreements are currently drafted, the rendering of an Affirmative Determination is a prerequisite to implementation of KBRA provisions. The lack of restoration goals and standards in the KBRA must inform the description of those effects. Also, when analyzing the KBRA, the EIS must consider the likelihood that the KBRA will not be fully funded by Congress. The EIS should evaluate the implications of an under-funded or unfunded KBRA on the restoration objectives of that agreement. The EIS should evaluate and compare the environmental consequences of a KBRA that is 100% funded, 66% funded, and 33% funded. In addition, the EIS should evaluate the environmental consequences of a KBRA that is funded solely from existing appropriations.<sup>2</sup> To be clear, the Proposed Action Alternative will not necessarily be the same as the Preferred Alternative – particularly in light of the negative consequences/impacts of the KBRA.

3. Affirmative Determination Without KBRA Implementation: The EIS should evaluate an alternative scenario in which the KBRA is not approved by Congress, executed by the Secretary, or implemented, but the Secretary still renders an Affirmative Determination in favor of dam removal. Under this scenario, the Secretary would render a determination in favor of dam removal, but diversions to the Klamath Reclamation Project would continue to be managed under currently applicable laws, such as the ESA, without the guaranteed diversions prescribed by the KBRA.

4. Negative Determination Alternative: The EIS should evaluate the environmental consequences of a Negative Determination. Under the structure of the KHSA and KBRA, a Negative Determination would likely have the same result as the No Action Alternative or No Determination Alternative discussed above.

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<sup>2</sup> The Hoopa Valley Tribe has been advised by the House of Representatives' Natural Resources Committee staff that the Interior Department has identified as available from existing appropriations only 25% of funds called for by the KBRA.

5. Federal Power Act Takeover and Decommissioning Alternative: The EIS should evaluate an alternative in which the Secretary does not render a Determination pursuant to the terms of the KHSA, but rather exercises authority to takeover the Klamath Hydroelectric Project pursuant to Section 14 of the Federal Power Act, 16 U.S.C. § 807 and/or supplemental Congressional authorization. Under this alternative, the Secretary, on behalf of the United States, would acquire the facilities of the Klamath Hydroelectric Project from PacifiCorp and would commence the decommissioning and removal of the facilities as soon as possible, but no later than June 30, 2015.

6. Affirmative or Negative Determination with Water Quality Improvement Strategy: The EIS should evaluate an alternative in which the Secretary does not render a Determination based upon the inadequate terms of the KBRA, but by incorporating the modified approach recommended below: refilling Lower Klamath Lake using Lost River winter water, somewhat expanding the footprint of Tule Lake, and restoring riparian zones along the entire lower Lost River and Keno Reach of the Klamath River. For further information, please see the Klamath Basin Tribal Water Quality Work Group comments on the Klamath River TMDL process, found at <http://www.schlosserlawfiles.com/~hoopa/LostRiverTMDL.pdf>.

#### D. Scope of EIS – Evaluation of KBRA

The Scoping Notice states that “the potential impacts of any connected actions, including any actions under the KBRA, will be analyzed.” The Tribe agrees that this EIS must analyze the impacts of actions resulting from execution of the KBRA. The KHSA and KBRA have been drafted as interdependent components of a larger plan relating to Klamath Basin restoration. *See, e.g.*, KBRA Section 8.2.2 (discussing relationship between KHSA and KBRA). An Affirmative Determination by the Secretary is not only a first step towards dam removal under the KHSA, but it is a necessary prerequisite to implementation of key provisions of the KBRA, including the controversial guaranteed diversions and waivers/subordination of tribal rights. When determining whether to render an Affirmative Determination, the Secretary must be fully aware of the environmental consequences associated with the execution and implementation of the KBRA. The consequences of the KBRA should be evaluated as part of the Proposed Action Alternative. In analyzing the KBRA, the following issues should be addressed in the EIS:

##### 1. Impacts to Trinity River Restoration Program

The EIS should evaluate whether and/or how execution and implementation of the KBRA could adversely impact the Trinity River Restoration Program. Implementation of the KBRA will cost over \$1 billion for fiscal years 2012-2022. Available information indicates that much of this funding will come from the reprogramming of existing Departmental funds rather than new appropriations from Congress. *See, e.g.*, KBRA Section 4.1.1 (committing parties to support reprogramming of existing funds to implement KBRA). The EIS must analyze whether execution and implementation of the KBRA will likely result in the redirection of existing restoration funds for Klamath and Trinity River programs towards KBRA programs designed to benefit irrigation interests. The EIS must analyze the consequences of redirecting Trinity River restoration funds to KBRA programs that primarily benefit irrigation and farming interests.

The EIS must also evaluate the impacts to the Klamath and Trinity River fishery that will result from the guaranteed diversions allowed to the Klamath Reclamation Project by the KBRA. Specifically, the EIS should evaluate whether implementation of the KBRA and its guaranteed diversion of 330,000 acre-feet for the Klamath Reclamation Project will result in flows harmful to the health of the Klamath fishery, resulting in decreased Klamath stocks and increased harvest pressures on Trinity river fish stocks.

The EIS must evaluate the consequences of implementing a KBRA that has no quantified fish restoration goals; that permanently guarantees the Klamath River has too little water for natural fish populations to be restored, let alone be maintained in harvestable quantities, and that limits all harvest on Klamath-origin stocks forcing those fisheries to target Trinity-origin fish.

## 2. Implications of Inadequate Appropriations to Fund KBRA Measures

Many of the purported environmental benefits of the KBRA are speculative and entirely dependent on future funding, either through new appropriations or the reprogramming of existing Department funds. It is not reasonably certain that Congress will authorize or appropriate funds to fulfill the KBRA. *See, e.g.*, KBRA Section 2.2.2 (noting need and uncertainty of federal appropriations); Section 7.2.1 (acknowledging possibility of inadequate funding to implement KBRA provisions). The EIS must analyze the consequences of an executed KBRA that is underfunded by Congress – in other words, an agreement that results in the guaranteed diversions for the Klamath Reclamation Project, but that fails to result in the anticipated environmental benefits which are entirely dependent on speculative funding. *See* CEQ Forty Most Asked Questions, Question 18 (requiring good faith effort to address uncertain effects of a decision).

The EIS should analyze the implications of an under-funded KBRA on the purported fishery restoration objectives. The EIS should evaluate and compare the environmental consequences of a KBRA that is 100% funded, 66% funded, and 33% funded. In addition, the EIS should evaluate the environmental consequences of a KBRA that is funded solely from existing appropriations. The issue of KBRA funding is relevant in this EIS, because if the restoration concepts of the KBRA cannot be achieved due to lack of sufficient appropriations, the need for an Affirmative Secretarial Determination calling for prompt dam removal will be even more imperative. The Secretary must be aware of the possible lack of sufficient funds to carry out the KBRA, and the consequences of insufficient funding on the purported restoration objectives.

## 3. Unconsented Subordination and Waiver of Tribal Water Rights

In the KBRA, the United States provides assurances, without the consent or approval of the Hoopa Valley Tribe, that the United States will not assert the Hoopa Valley Tribe's tribal water, fishing, or trust rights, in a manner that will interfere with the Klamath Reclamation Project's annual diversion of 330,000 acre-feet of water from the Klamath River (the "Assurances"). These Assurances in favor of the Klamath Reclamation Project, once effective, are permanent regardless of: (a) whether federal appropriations are provided for anticipated

fishery restoration and reintroduction programs; (b) the success or failure of anticipated fishery restoration and water quality improvement efforts; (c) future effects of climate change, or other environmental conditions, on water quality and quantity in the Klamath River; (d) the future fishery harvest needs of the Hoopa Valley Tribe; or (e) other unknown or unforeseeable events.

The Assurances in the KBRA effectively terminate the United States' fiduciary obligation to the Hoopa Valley Tribe by permanently subordinating the Tribe's senior water and fishing rights in the Klamath River to junior non-Indian irrigation interests in the Upper Klamath Basin, regardless of future impacts on tribal trust resources, and without the consent or approval of the Hoopa Valley Tribe. The Assurances become permanent only if the Klamath dam facilities are removed pursuant to an Affirmative Secretarial Determination. The unconsented waiver of tribal water rights must be considered in the EIS' evaluation of tribal trust obligations, and the sections on socioeconomics and environmental justice.

4. Evaluation of an Alternative or Additional Approach to Fish Restoration Focused on Water Quality

A key issue that the KBRA and KHSa avoid is the acute water quality problem in the Keno Reservoir reach of the Klamath River and its linkage to the Lost River, Tule Lake and Lower Klamath Lake. The Keno Reservoir exhibits anoxic conditions for up to five weeks a year (Deas and Vaughn, 2007). This reach lies immediately below Lake Ewauna, the City of Klamath Falls and the outlet of Upper Klamath Lake. The nitrogen fixing bacteria *Aphanizomenon flos-aquae* took over Upper Klamath Lake after marshes that maintained pH balance were filled. The resulting nitrogen fixation causes acute nutrient pollution that then feeds the Link River and is also pumped through the A-Canal into the Lost River basin to irrigate the Klamath Project. High pH and water temperature also create a substantial conversion of ammonium ions to dissolved ammonia that can be lethal to fish species. Water from Tule Lake is pumped directly through Sheepy Ridge and into the Klamath Straits Drain and the Keno Reservoir in summer.

Even if the Klamath Hydroelectric Project dams below Keno Dam are removed, acute water quality problems in the Keno Reservoir reach are likely to confound lower Klamath River recovery unless alternative strategies are incorporated. The nutrient pollution problems below Iron Gate Dam that create stressful or toxic conditions for Pacific salmon will persist but the location of problems will move. Similarly, the ideal conditions for the deadly fish pathogen *Ceratomyxa shasta* and its polychaete host *Manayunkia speciosa* will similarly relocate upstream to reaches below Keno Reservoir.

The winter water flushed from the Lost River into the Klamath River and the Keno Reservoir should instead be used to refill Lower Klamath Lake. This could serve as a major water supply source. Current practices shunt winter Lost River water into the Klamath River (Deas and Vaughn 2007) when it is not needed and in turn this practice contributes to Keno Reservoir pollution. Work on the Lower Klamath Lake Wildlife Refuge by Mayer (2005) found that wetlands have very high nutrient retention capacity, indicating that refilling the lake and restoring surrounding marshes could play a major role in abating Klamath River pollution. Tule Lake nutrient filter and buffer capacity also needs to be restored through expansion of a healthy



marsh ecosystem to maintain the necessary pH balance to help prevent *A. flos aquae* blooms. Similar buffers also need to be established along the Lost River and the Keno Reservoir reach of the Klamath River, if water quality problems are to be reversed.

Refilling Lower Klamath Lake and expanding Tule Lake were not considered in Klamath Settlement discussions. Leaving the Klamath Project at 200,000 acres, including allowing lease land farming adjacent to Tule Lake and in the bed of Lower Klamath Lake for the next 50 years, makes little sense for fish restoration. It may be better to shrink the footprint of farming and expand wetlands and riparian zones that can promote water quality objectives.

#### E. Issues for Evaluation

The EIS should analyze the following issues and questions to assist with selection of a Preferred Alternative:

##### 1. Water Quality

- How does the current existence of the Klamath Hydroelectric Project (“Klamath Project”) dams, and the associated reservoirs, impact water quality in the Klamath River?
- How does the current operation of the Klamath Project dams, including minimum flows, and ramping, impact water quality in the Klamath River?
- Whether and/or how applicable water quality standards, including those found in the Hoopa Valley Tribe’s water quality control plan, could be achieved with the Klamath Project dams in place?
- How does the current existence and operations of the Klamath Reclamation Project dams impact water quality in the Klamath River?
- How will the guaranteed diversion of 330,000 acre-feet provided in the KBRA impact water temperatures in the Klamath River?

##### 2. Hydrology

- How will the guaranteed diversion of 330,000 acre-feet provided in the KBRA impact flows in the Klamath River downstream of the Reclamation Project?
- What specific level of flow is anticipated to be available for fish if the guaranteed diversion of 330,000 acre-feet is implemented?
- How would removal of the Klamath Project dams affect the flow regime in the Klamath River?
- How is climate change expected to change or impact Klamath River flows?

##### 3. Air Quality

- To what extent do the reservoirs behind the Klamath Project dams contribute to greenhouse gas emissions?

4. Biological Resources

- Whether removal of Klamath Project dams would result in increased habitat for all life functions of Klamath fish stocks, and how will such access to additional habitat benefit Klamath fish stocks?
- Whether removal of Klamath Project dams is likely to reduce incidence of disease in Klamath fish stocks?
- Would removal of Klamath Project dams have a positive impact on food supply for Klamath fish stocks?
- Would removal of Klamath Project dams result in additional sediment supply for spawning?
- Would anticipated benefits associated with removal of Klamath Project dams result in increased abundance of Klamath fish stocks?
- How will implementation of the KBRA and its guaranteed diversions for the Klamath Reclamation Project impact Klamath fish stocks?
- What regulatory process will be used to implement the harvest restrictions required in the KBRA to protect fish stocks introduced above Iron Gate Dam?
- Will implementation of the KBRA and its guaranteed diversions for the Klamath Reclamation Project result in flows necessary to achieve the Ecological Base Flows as described in “Evaluation of Instream Flow Needs in the Lower Klamath River” (2006) by Hardy, Addley and Saraeva?
- Whether the KBRA and its guaranteed diversions can be implemented in a manner consistent with the Endangered Species Act?
- How is climate change expected to impact fishery resources of the Klamath River?

5. Tribal Trust Obligations

- How does federal licensing, and continued permission to operate, the Klamath Project impact the Hoopa Valley Tribe’s established rights to water and fish in the Klamath and Trinity Rivers?
- Would an Affirmative Determination favoring dam removal be consistent with the United States’ fiduciary trust obligation to protect the Hoopa Valley Tribe’s fishing rights in the Klamath and Trinity Rivers?
- How does execution of the KBRA and the unconsented subordination of Hoopa Valley Tribe senior water rights to junior irrigation interests comport with the United States’ fiduciary trust obligations to the Tribe and its members?

6. Socioeconomics and Environmental Justice

- Will removal of Klamath Project dams result in increased abundance of Klamath fish stocks and increased opportunities for harvest by tribal fishermen?

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- Will implementation of the KBRA and the reduced flows for fish reduce abundance of Klamath fish stocks and increase pressures on Trinity River harvests?
- What specific socioeconomic benefits will result to the Hoopa Valley Tribe and its members from the execution of the KBRA?
- What impacts will result from the anticipated reprogramming of funds from existing programs relating to Klamath and Trinity River restoration to Upper Basin irrigation and farming interests?
- Is the unconsented subordination of the Hoopa Valley Tribe's reserved water rights consistent with principles of environmental justice?

Thank you for your consideration to these comments on the Department's Scoping Notice. We look forward to working towards a solution that will protect the Trinity River, restore the Klamath fishery, remove the dams of the Klamath Hydroelectric Project, and preserve Hoopa water and fishing rights.

Sincerely,

HOOPA VALLEY TRIBAL COUNCIL

*s/ Leonard E. Masten, Jr.*

Leonard E. Masten, Jr., Chairman