

**AGREEMENT BETWEEN THE UNITED STATES
AND THE HOOPA VALLEY TRIBE
FOR SETTLEMENT OF THE TRIBE'S CLAIM FOR
BREACH OF TRUST (FOURTH CLAIM FOR RELIEF)**

Pacific Coast Federation of Fishermen's Ass'ns, et al. v. U.S. Bureau of Reclamation, et al.,
No. C 02-02006 SBA (N.D. Cal.)

I. EXPLANATORY RECITALS

WHEREAS since prehistoric times the fishery resources of the Klamath and Trinity Rivers have been an important mainstay of the life and culture of the Hoopa Valley Tribe (Tribe);

WHEREAS the salmon fishery of the Klamath and Trinity Rivers holds significant value for the Tribe for ceremonial, subsistence, and commercial purposes, and Chinook salmon are the principal fish upon which the Tribe relies;

WHEREAS the Department of the Interior (Interior) has recognized that the federal government intended to reserve a fishing right for the tribes of the Hoopa and Yurok Reservations and that this right includes the "right to harvest quantities of fish on their reservations sufficient to support a moderate standard of living limited to fifty percent of the harvest in any given year unless varied by agreement of the parties...." Memorandum from the Solicitor to the Secretary of the Interior, M-36979 (October 4, 1993) at 2-3, *cited with approval, Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996);

WHEREAS Interior has acknowledged that the Tribe has federal reserved fishing rights to take resident and anadromous fish within its reservation, including various species of salmon, lamprey, and sturgeon, and has further acknowledged that the United States has a trust responsibility to protect tribal trust resources;

WHEREAS Federal Defendant Bureau of Reclamation (Reclamation) manages the Klamath Project, a federal reclamation project in southern Oregon and northern California, pursuant to federal reclamation law as amended and supplemented, and other applicable law;

WHEREAS in managing the Klamath Project, Reclamation recognizes that it shares in a trust responsibility to the Tribe and to the protection of the fishery resources of the Tribe consistent with that trust responsibility;

WHEREAS the U.S. Department of Commerce, National Marine Fisheries Service (NOAA Fisheries), also shares in the trust responsibility to the Tribe and to the protection of the fishery resources of the Tribe consistent with that trust responsibility, including the fishery resources and federal reserved fishing rights of the Tribe;

WHEREAS the Tribe recognizes that Reclamation has certain legal obligations to manage the Klamath Project as a federal reclamation project under federal reclamation law, as amended and supplemented, to deliver water to project water users pursuant to contracts; additionally, there are four National Wildlife Refuges within the Project that either receive water from, or are associated with, Project facilities; and further, that certain Project operations are also subject to the requirements of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and other federal laws;

WHEREAS in September 2002, a fish die-off occurred on the Klamath River within the boundaries of the Yurok Reservation, in which over 34,000 fish died, the majority of which were fall run Chinook salmon, including Chinook of Iron Gate Hatchery and Trinity River Hatchery origin;

WHEREAS Reclamation, NOAA Fisheries, and the Tribe (collectively, the Parties) are aware of no recorded historical or Tribal cultural record of an adult salmonid die-off on the Klamath River as large as that which occurred in 2002;

WHEREAS following the 2002 fish die-off, the Hoopa Valley and Yurok Tribes separately moved to intervene as plaintiffs in the above-referenced case, and were granted intervenor status by the court in January 2003;

WHEREAS the Tribe's complaint in intervention included a claim for relief for breach of trust, alleging that Reclamation's operation of Klamath Project facilities in 2002 violated a legal duty to maintain biologically adequate flows in the Klamath River, thereby contributing to the death of over 34,000 fish;

WHEREAS Reclamation and NOAA Fisheries (the Federal Defendants) deeply regret the occurrence of the 2002 fish die-off on the Klamath River;

WHEREAS the United States has made extensive efforts to conserve and protect listed species in the Klamath Basin, including the fishery resources of the Tribes. The federal government has spent millions of dollars on restoration activities in the Klamath Basin, has initiated and led collaborative efforts to find a long-term solution involving all stakeholders in the Basin, has funded and/or undertaken scientific studies to ensure that the agencies use the best available information when designing measures to protect fish species, and has planned substantial land and structural reforms to improve habitat for the fish;

WHEREAS the Parties seek water management solutions in the Klamath Basin whose objective will be to maintain and protect agricultural, wildlife, and fishery resources in the basin, and seek to avoid another fish die-off, and avoid an adversarial approach;

WHEREAS the Parties believe that improved technical and policy consultation between the Tribe and Reclamation, prior to decisions affecting the Tribe's trust resources, will (1) assist in providing both short-term and long-term solutions to water management concerns in the Klamath Basin; (2) provide Reclamation with a greater understanding of the needs of the Tribe's fishery, and how the operations of the Klamath Project may affect those resources; (3) provide Reclamation with a better understanding of technical data and monitoring programs of the Tribe related to tribal trust resources affected by Project operations; and (4) provide the Tribe with greater input concerning Klamath Project operations regarding the nature and scope of the trust resources it believes are affected by the Klamath Project; and recognizing that Reclamation accordingly seeks information from the Tribe regarding the nature and scope of the trust resources it believes are affected by the Klamath Project;

WHEREAS the Tribe acknowledges that the President's current budget request for fiscal year 2005 seeks appropriations from Congress for, among other things, environmental restoration and protection of resources in the Klamath Basin in amounts over \$100 million, including the funding of projects intended to benefit the Tribe's fisheries; and

WHEREAS the Parties want to settle and resolve the Tribe's claim for breach of trust without further litigation;

NOW, THEREFORE the Parties mutually stipulate and agree as follows:

II. AGREEMENT

1.0 General Provisions.

1.1 This Agreement is executed solely for the purpose of compromising and settling the Tribe's fourth claim for relief (breach of trust) as alleged in its complaint in intervention filed in December 2002, is in full and complete settlement of such claim, and nothing herein shall be construed as a precedent in any other context.

1.2 This Agreement shall bind the Parties only as may be necessary to implement the terms of the Agreement, and the Agreement shall not otherwise be cited, construed, offered in evidence, or referred to in any proceedings, whether judicial or administrative.

1.3 Nothing in this Agreement shall be construed or offered in evidence in any proceeding as an admission or concession of wrongdoing, liability, or any issue of fact or law concerning the claim settled under this Agreement, and the United States further denies that Reclamation or NOAA Fisheries breached any trust duty to the Tribes in connection with Klamath Project operations in 2002. The United States or the Tribe, and only the United States or the Tribe, may use this Agreement to document the fact that the Tribe's fourth claim for relief was disposed of pursuant to the terms incorporated herein.

1.4 Nothing in this Agreement shall be deemed or construed to limit or diminish the current existing federal trust responsibility and government-to-government relationship between the Parties.

1.5 Nothing in this Agreement shall be construed to deprive any federal official of authority to revise, amend, or promulgate regulations. Nothing in this Agreement shall be deemed to limit the authority of the executive branch to make recommendations to Congress on any particular piece of legislation.

1.6 The Parties agree that the technical consultation process established pursuant to Section 4 of this Agreement shall be the exclusive means by which Reclamation and the Tribe will consult over technical aspects of Klamath Project operations;

1.7 The Parties do not intend by this Agreement to confer any rights or interests on any third-parties or non-parties to the Agreement.

1.8 No Member of, or Delegate to, Congress, Resident Commissioner or tribal council member shall benefit from this Agreement other than as a member of the Hoopa Valley Tribe in the same manner as other members of the Tribe.

1.9 Nothing in this Agreement shall be construed to commit a federal official to expend funds not appropriated by Congress.

1.10 To the extent that the expenditure or advance of any money or the performance of any obligation of the United States under this Agreement is to be funded by appropriation of funds by Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of funds by Congress that are available for this purpose and the apportionment of such funds by the Office of Management and Budget. No breach of this Agreement shall result and no liability shall accrue to the United States in the event funds are not appropriated or apportioned.

