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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

YUROK TRIBE, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, and INSTITUTE FOR FISHERIES RESOURCES,

Plaintiffs,

v.

U.S. BUREAU OF RECLAMATION and NATIONAL MARINE FISHERIES SERVICE,

Defendants,

and

KLAMATH WATER USERS ASSOCIATION,

Intervenor-Defendant.

Case No. 3:19-cv-04405-WHO

FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO LIFT THE STAY OF LITIGATION AND TO ENTER A TEMPORARY RESTRAINING ORDER (ECF 909)

Hearing Date: May 22, 2020
Hearing Time: 10:00 AM
Judge William H. Orrick

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I. Introduction

As the Court is aware, this litigation is currently stayed pursuant to the unanimous stipulation of the parties, which was approved by this Court on March 27, 2020. ECF 907 & 908. The stipulation was the end result of intensive negotiations in which all parties to the litigation actively participated over the course of many weeks, and during which the parties discussed in detail the U.S. Bureau of Reclamation's ("Bureau") proposed plan for interim operation of the Klamath Project (the "Interim Plan") while it completes reinitiated consultation pursuant to the Endangered Species Act ("ESA") on a longer-term plan that protects endangered suckers in Upper Klamath Lake ("UKL") and threatened Southern Oregon/Northern California Coast coho salmon ("SONCC coho") in the Klamath River, listed species with countervailing water needs, among other listed species. Methods of maintaining elevations of UKL to protect suckers and Klamath River flows to protect SONCC coho in light of various potential hydrology scenarios were discussed. In the end, all parties agreed that the litigation should remain stayed in full until September 30, 2022, so long as the Bureau did not deviate from implementation of the Interim Plan, the details of which were fully, and well, known to all parties. ECF 907 at 5, ¶ 3.[1]

A key benchmark of the Interim Plan was holding an elevation of 4,142.00 feet in UKL in April and May for suckers, and the Plan intended that there would be no augmentation of Klamath River flows if implementation of such flows would thwart this elevation. The Interim Plan provides that the Bureau would coordinate with the Services, Yurok Tribe, and other affected Klamath River Tribes on how to manage water to best meet the needs of listed species if augmentation was triggered by the April 1 forecast but delivery of those flows would cause UKL to fall below 4,142.00 feet in elevation. The Plan provides that the Bureau would adaptively manage the situation in coordination with the relevant stakeholders to best protect suckers and coho salmon while it continues to operate the Project. As it turned out, due to a late storm event, the Natural Resources Conservation Service's ("NRCS") April 1, 2020 forecast for inflows to UKL – the standard metric used for operational decisions – eked in near the bottom end of the range of inflows that would trigger a 40 thousand acre feet ("TAF") augmentation of river flows under the Interim Plan.

[1] Citations to ECF filings are to the ECF pagination, not the internal pagination on the filings.

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