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*Admittance to the Northern District of California Pending

Attorneys for Plaintiffs Yurok Tribe and Mr. Myers

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

YUOK TRIBE, on its own behalf and on behalf
of its members, and

FRANKIE MYERS, Yurok Tribal Council Vice
Chairperson, in his official and individual
capacities,

Plaintiffs,

v.

U.S. BUREAU OF RECLAMATION,

Defendant.

Case No. 3:20-cv-5891

Related Cases: No. 3:19-cv-04405-WHO

COMPLAINT FOR DECLARATORY
RELIEF

Administrative Procedure Act and
Religious Freedom Restoration Act Case

INTRODUCTION

1. This case addresses a recent decision by the U.S. Bureau of Reclamation (“Bureau”) as a part of its ongoing operation of the Klamath Irrigation Project that substantially impacts the ability of the Yurok Tribe (“Tribe”) and its members to participate in the cultural, spiritual, and religious ceremonies they have practiced since time immemorial. This action seeks

1 to require the Bureau to adhere to its 2020 operations plan and immediately provide water
2 releases necessary to conduct the Tribe's Boat Dance, the final part of the Tribe's world renewal
3 ceremony and religious practice held every other year, scheduled for August 30, 2020.

4 2. The Bureau's decision, made only eleven days before the Tribe's ceremony, was
5 made without any consultation or coordination with the Yurok Tribe despite months of requests
6 by the Tribe. The Boat Dance, and the ability of Mr. Myers, the Tribe and its Tribal members to
7 freely exercise their religious practices and complete the world renewal ceremony, is dependent
8 on the water releases.

9 3. This case presents two claims challenging the Bureau's August 19, 2020 decision
10 to not provide 7,000 acre feet ("AF") of water releases for the Boat Dance in accordance with the
11 Bureau's 2020 annual operations plan ("AOP"). The first claim alleges that the Bureau's
12 decision is arbitrary and capricious under the Administrative Procedures Act ("APA") because
13 the Bureau's 2020 AOP included 7,000 AF of water earmarked specifically for the Tribe's Boat
14 Dance and the Bureau's rationale for its last-minute decision to not provide the water is
15 contradicted by the evidence that was before the agency. That evidence shows that there
16 presently is sufficient available water—33,564 AF as of August 20—to provide the Boat Dance
17 water releases without running afoul of other federal water commitments, including Upper
18 Klamath Lake thresholds and agricultural deliveries. Because the decision contradicts the
19 evidence, the Bureau acted arbitrarily in its decision to not provide the water.

20 4. The second claim alleges a violation of the Religious Freedom Restoration Act
21 ("RFRA"), 42 U.S.C. § 2000bb-1(a), because the Bureau's decision is a governmental action that
22 substantially burdens the ability of Mr. Myers and Yurok Tribal members to exercise their
23 religious and spiritual practices. Without the supplemental water to support the Boat Dance as
24

1 provided for in the AOP, the world renewal ceremony cannot be completed because the river
2 location would have unsafe and impassible conditions for a canoe, precluding the ability to hold
3 the Boat Dance ceremony. The Bureau's decision was not supported by a compelling interest nor
4 is it the least restrictive means of accomplishing the government's goals and violates RFRA.

5 5. This action asks the Court to issue an order precluding the Bureau from deviating
6 from the AOP and requiring the Bureau to immediately plan, coordinate, and to provide the
7 water necessary for the Boat Dance to occur on August 30, 2020.

8 JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

9 6. This action is brought under the APA, 5 U.S.C. § 706(2)(A), and RFRA, 42
10 U.S.C. § 2000bb-1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362.

11 7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Yurok Tribe
12 and Mr. Myers are located in the district and many of the events and consequences of the
13 defendant's violations of law occurred or will occur in this district.

14 8. This case is properly assigned to the San Francisco/Oakland Division under Civil
15 L.R. 3-2(c) because this case is related to *Yurok Tribe v. Bureau of Reclamation*, 231 F. Supp. 3d
16 450 (N.D. Cal. 2017) ("*Yurok I*"), and the currently stayed *Yurok Tribe v. Bureau of*
17 *Reclamation*, 3:19-cv-04405-WHO (N.D. Cal. filed July 31, 2019) ("*Yurok II*"). Both cases were
18 assigned to the San Francisco/Oakland Division and heard by Judge William H. Orrick, III. The
19 Yurok Tribe and the Bureau of Reclamation are both parties in this case and the two related
20 cases. The underlying contention of the Bureau's management of the Klamath Irrigation Project
21 and its impacts to the Klamath River and the Yurok Tribe, particularly in 2020, are the same
22 between this case and the two related cases.

PARTIES

A. Tribal Member Plaintiff

9. Frankie Myers is an enrolled member of the Yurok Tribe and currently serves as the Vice Chairperson of the Yurok Tribal Council. Mr. Myers is a religious practitioner and ceremonial leader who participates in the Tribe's biennial world renewal ceremony and Boat Dance.

B. Yurok Tribe

10. The Yurok Tribe is a federally recognized Indian tribe whose reservation is located on the lower Klamath River in northern California, spanning from the river's mouth at the Pacific Ocean upriver to the Yurok village of Weitchpec, near where the Boat Dance occurs. With more than 6,400 tribal members, the Yurok Tribe is the largest Indian tribe in California. By filing this action, the Tribe does not waive its sovereign immunity and does not consent to suit as to any claim, demand, offset, or cause of action of the United States, its agencies, officers, agents, or any other person or entity in this or any other court.

11. Yurok people have always lived on their ancestral territory along the Pacific Coast and inland on the Klamath River. The Spirit People, Woge', made the land for them and the Creator, Ko-won-no-ekc-on Ne-ka-nup-ceo, put them there. Yurok people believe they were placed on the Klamath River to care for it and they have a cultural covenant to protect the river. The Tribe's creation story tells that the river was made to support the Yurok People and as long as they do not take more resources than they need from the river, it would always provide for their livelihood. Today, the Tribe's Constitution imposes this duty on the Yurok government, to protect and "to restore, enhance and manage the tribal fishery, tribal water rights, tribal forest, and all other natural resources" of the Yurok Reservation. Yurok Const., Preamble.

12. With an understanding of the river's central role in Yurok culture and life, "a strip

1 of territory one mile in width on each side of the (Klamath) river” was set aside for the Yurok
2 people by Executive Order in 1855 as the “Klamath River Reservation.” C.J. Kappler, 1 *Indian*
3 *Affairs Laws and Treaties* 816-17 (1904); *see also* *Mattz v. Arnett*, 412 U.S. 481, 483 (1973).
4 That reservation was “ideally selected for the Yuroks,” and “[n]o place can be found so well
5 adapted to these Indians, and to which they themselves are so well adapted.” *Mattz*, 412 U.S. at
6 486, n.6. The federal government created the reservation to ensure the Yurok people could
7 continue their fishing and river-centric way of life on their ancestral homeland—it was no
8 accident that the Klamath River was the geographical heart of the 1855 reservation and continues
9 to be so today. The present-day Yurok Reservation extends for one mile on each side of the
10 Klamath River in northern California from the mouth at the Pacific Ocean approximately 45
11 miles upriver to Weitchpec.

12 13. The Yurok Reservation was established on the lower Klamath River so the Tribe
13 could maintain its fishing and river-centric way of life, reserving to the Tribe fishing and water
14 rights to support that lifestyle and conferring a legal duty on the federal government to protect
15 those rights. *See* *Baley v. United States*, 942 F.3d 1312, 1335 (Fed. Cir. 2019); *Klamath Water*
16 *Users Protective Ass’n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 1999) (in operating the
17 Klamath Project, the Bureau and United States “as a trustee for the Tribes, has a responsibility to
18 protect their rights and resources,” and “has a responsibility to divert the water and resources
19 needed to fulfill the Tribes’ rights.”); *Parravano v. Masten*, 70 F.3d 539, 541 (9th Cir. 1995). The
20 Klamath River and its fishery are “not much less necessary to the existence of the [Yurok] than
21 the atmosphere they breathe[.]” *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting
22 *United States v. Winans*, 198 U.S. 371, 381 (1905)). The Tribe has reserved water rights that
23 include water stored in Upper Klamath Lake and managed by the Bureau to provide instream
24

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