May 31, 2013

By U.S. Mail and Electronic Mail

David Murillo, Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Lower Klamath River Late Summer Flow Augmentation

Dear Mr. Murillo:

This letter is in response to press accounts that the Bureau of Reclamation is being asked to again make releases from the Trinity River Division in August and September to augment flows in the lower Klamath River. Such releases were made in 2012, and in several previous years. We have expressed our concerns about such releases to Reclamation before. Our concerns are heightened by the dire water supply conditions in 2013.

The member agencies of the San Luis & Delta-Mendota Water Authority have a vital interest in the water and power supplies provided by the Trinity River Division ("TRD"). These agencies are concerned by any proposed changes to TRD operations that may reduce water and power supplies, cause adverse impacts within their service areas from shortages, or impair conditions for protected species downstream of CVP facilities. The requested releases threaten to adversely affect each of these interests, particularly given that agricultural water service contractors are receiving a 20% allocation this year, and carryover storage is projected to be exceedingly low.

As we explain below, Reclamation does not have legal authority to make the proposed August and September releases. The additional releases are inconsistent with the Trinity River Mainstem Fishery Restoration Record of Decision ("ROD") adopted on December 19, 2000, and with section 3406(b)(23) of the Central Valley Project Improvement Act ("CVPIA"). Furthermore, the releases are likely to have significant impacts on the human environment, and Reclamation has never done adequate NEPA review of such impacts. For these and other reasons, Reclamation should not make the requested releases in 2013.

1. Reclamation Has No Authority To Make The Proposed Additional Releases.

In 2012, Reclamation's environmental assessment relied upon the 1955 Act as the legal authority for making the releases. It said: "The Trinity River Division Central Valley Project Act of 1955 (P.L.84-386) provides the principle authorization for implementing the Proposed Action. Specifically, section 2 of the Act states that 'the

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Secretary is authorized and directed to adopt appropriate measures to insure preservation and propagation of fish and wildlife.'" (emphasis in original.) As Reclamation is well aware, however, the 1955 Act was hardly the last statutory direction on the subject of instream flows for the Trinity River.

The long history of controversy, legislation, studies, and directives regarding releases from the TRD for instream flows to benefit fish is recounted in detail in Chapter 2 of the Trinity River Flow Evaluation Final Report (June 1999) ("Final Flow Report"). For present purposes, it is sufficient to note that after 1955, Congress enacted specific legislation regarding Trinity River flow requirements. In 1992, in CVPIA section 3406(b)(23), Congress directed the Secretary to develop a specific set of flow criteria. That resulted in a precise definition of the quantities of water to be released from TRD releases for instream flow purposes. Those flows are defined in the ROD adopted on December 19, 2000. As we explain below, the general proviso in 1955 Act allowing "appropriate measures" does not authorize the proposed supplemental fall releases. Those proposed releases are instead unlawful, because they would conflict with the specific fishery flows terms of the ROD, and hence would conflict with specific direction to the Secretary by Congress in CVPIA section 3406(b)(23).

CVPIA section 3406(b)(23) provides "[t]he Secretary, in consultation with other State and Federal agencies, Indian tribes, and affected interests, is further authorized and directed to:

> (23) in order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Pub. L. 98-541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than 340,000 acre-feet per year for the purposes of fishery restoration, propagation, and maintenance and,
>
> (A) by September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the U.S. Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria

> and procedures for the restoration and maintenance of the Trinity River fishery; and
>
> (B) not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (A) of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly. If the Hoopa Valley Tribe and the Secretary do not concur, the minimum Trinity River instream fishery releases established under this paragraph shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe. . . .

CVPIA § 3406(b) (Pub. Law No. 102-575, 106 Stat. 4600, 4720-4721) (emphasis added).

The Final Flow Report completed in June 1999 set forth the recommendations regarding "permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures" required by section 3406(b)(23)(A). The Final Flow Report did not recommend making supplemental releases in August and September such as those now being considered, and such releases were not analyzed in the related NEPA review. Instead, much lower and steady flows of 450 cfs to 300 cfs were proposed. That after decades of study no one suggested the supplemental fall flows that are now in vogue is at least one indication that they lack scientific support.

After completing a Trinity River Mainstem Fishery Restoration Environmental Impact Statement Report ("EIS/EIR"), the Secretary of the Interior adopted the ROD on December 19, 2000. The ROD sets out different volumes of releases depending upon year type. The volume of releases ranges from 368,000 acre-feet in a critically dry year to 815,000 acre-feet in an extremely wet year. ROD at p. 12. The ROD provides that "the schedule for releasing water on a daily basis, according to that year's hydrology, may be adjusted but the annual flow volumes established in Table

1 may not be changed." *Id.* The Hoopa Valley Tribe formally "concurred" with the ROD as the means to protect the Trinity River chinook salmon fishery in which the Tribe holds treaty fishing rights the same day, on December 19, 2000. Upon that concurrence, by statute the ROD's flow release schedule became "permanent," and Reclamation has a duty to implement the ROD flow release schedule and criteria.

The current water year has been declared a "dry" water year. Accordingly, under the ROD, a total volume of 453,000 acre-feet may be released for instream flow purposes. Under the release schedule for 2013 that Reclamation adopted in April, releases peaked at 4,500 cfs May 2-3, and will gradually decrease to 450 cfs on June 24. Under this schedule, releases are to remain at 450 cfs until October 16, when they drop further to 300 cfs. Reclamation did not include higher August and September releases in the schedule. Under the existing schedule, without the proposed August and September releases, Reclamation will release the full volume of 453,000 acre-feet specified for a "dry" year under the ROD. If Reclamation were to make the proposed August and September releases, it would exceed the volume of 453,000 acre-feet for fishery flows allowed by the ROD for this year.

The ROD allows for flexibility in varying the daily release schedule within a year. But as the ROD makes clear, "the annual flow volumes established in Table 1 may not be changed." ROD at p. 12. Here, Reclamation could have, but did not, hold back sufficient water from the allotment of 453,000 acre-feet for 2013 to make the supplemental releases in August or September. Under the release schedule Reclamation adopted for 2013 it will have already released too much water to make the proposed supplemental August and September releases.

One of the more troubling aspects of making fall releases in excess of the ROD annual flows is that it disregards the difficult compromise embodied in the ROD, and promotes new controversy. In section 3406(b)(23), Congress sought to bring to an end the long running controversy over the appropriate level of releases from the TRD for fishery flows, in competition with other water uses, by providing that the fishery flows would become "permanent" upon agreement of the Secretary and the Hoopa Valley Tribe. The ROD explains:

> In section 3406(b)(23) of the CVPIA, Congress sought the final resolution of these issues in order to meet the federal trust responsibility and to meet the goals of prior legislation, calling for the completion of the scientific efforts initiated by Secretary Andrus and for the implementation of recommendations, based on the best available scientific information, regarding permanent instream fishery flow requirements and TRD operating criteria and procedures necessary for

> the restoration and maintenance of the Trinity River anadromous fishery. (ROD at p. 17.)

The ROD flows represent a compromise among the competing uses of the water developed by the TRD, and among the Secretary's multiple obligations. The ROD explains:

> For the reasons expressed in this ROD, the Department's agencies are directed to implement the Preferred Alternative as described in the FEIS/EIR and as provided below. This alternative best meets the statutory and trust obligations of the Department to restore and maintain the Trinity River's anadromous fishery resources, based on the best available scientific information, while also continuing to provide water supplies for beneficial uses and power generation as a function
> of Reclamation's Central Valley Project (CVP). (ROD at p. 2.)

The Secretary expressly rejected an alternative that would require higher levels of releases to the Trinity River, based on the adverse impacts that CVP water and power users would suffer:

> Although the Maximum Flow Alternative scored better than the Preferred Alternative in terms of estimated population increases, the Maximum Flow Alternative would exclude or excessively limit the Department's ability to address the other recognized purposes of the TRD, including water diversions to the CVP and power production in the Trinity Basin. The best available science presently indicates that the Department's statutory and trust obligations can be achieved while still meeting Congressional intent to have the TRD integrated with the CVP to the extent that diversions to the CVP do not impair in-basin needs. (ROD at p. 25.)

Increasing TRD releases above the levels set in the ROD contradicts the intent of Congress to bring a "final resolution" to these issues, creates new controversy, and upsets the ROD's balance among competing uses of the TRD.

If Reclamation believes that fall supplemental releases have sufficient benefits, and that those benefits outweigh releases of water at other times of the year, then it should plan for making such releases within the annual volume allowed each year under the ROD. Because there are significant environmental impacts associated with such fall releases however, it should begin that process early to accommodate the necessary environmental review under NEPA. It is too late to do an adequate

NEPA analysis for releases in 2013. We elaborate further on NEPA's requirements in the next sections below.

A second legal barrier to the proposed releases of TRD stored water this fall is the terms of the water rights permits applicable to the TRD. The Trinity River and lower Klamath River are not authorized places of use under the State Water Resources Control Board permits applicable to the TRD. Reclamation may intend to address this issue by seeking a temporary change based on "urgent need" under Water Code section 1435. We question whether Reclamation can meet the criteria for such a change. We reserve further comment on that matter, however, pending our review of any such petition.

A third legal barrier to the proposed supplemental fall fishery flow releases is Reclamation's contractual obligations. Making voluntary releases of TRD stored water is inconsistent with Reclamation's contractual obligation to optimize deliveries. Indeed, in 2003 and 2004, before making fall releases of TRD stored water, Reclamation made provisions to ensure that SLDMWA's members would not suffer water supply losses. In 2003 Reclamation did an exchange with the Metropolitan Water District of Southern California, and in 2004 Reclamation purchased water from Sacramento Valley settlement contractors. So far this year, Reclamation has apparently made no such provisions.

In 2012, the Regional Director made assurances to us that Reclamation would make Authority member agencies whole in the event that the supplemental releases made in August and September of 2012 adversely affected member water supply. Trinity Reservoir did not refill in 2013. Hence, as a result of the 2012 fall releases, Trinity storage is some forty thousand acre-feet lower than it otherwise would have been. Given the current low storage, Trinity is unlikely to refill in 2014 either. If Reclamation were to repeat the 2012 action in 2013, the cumulative deficit in storage in 2014 would likely increase to some eighty thousand acre-feet. As far as we are aware, Reclamation has taken no steps to compensate for the impact of the 2012 releases, let alone the impact of further releases in 2013.

In sum, Reclamation has no legal authority to implement supplemental fall fishery flow releases. Under the ROD and section 3406(b)(23), Reclamation must work within the total annual volume of 453,000 acre-feet of water for this "dry" year. The proposed fall releases would take releases over this limit, and hence would violate CVPIA section 3406(b)(23).

2. The 2012 EA Did Not Adequately Analyze and Disclose The Likelihood And Range Of Potential Water And Power Supply Losses

Before making supplemental releases later this year, Reclamation must comply with NEPA. In 2012, Reclamation prepared an environmental assessment ("2012 EA") and finding of no significant impact ("FONSI") to support supplemental releases. Those documents were inadequate to meet Reclamation's NEPA obligations, and Reclamation should not repeat that approach in 2013.

The first inadequacy of the 2012 EA related to its analysis and disclosure of the impacts from the loss of up to 92,000 acre-feet of TRD storage. The 2012 EA conceded that "if Trinity Reservoir does not fill in 2013, some water volume, up to the amount released for supplemental Klamath River flows, may not be available for other potential purposes." 2012 EA at p. 10. In fact, Trinity Reservoir did not refill in 2013. The 2012 EA sought to minimize this potential for loss by claiming that "92 TAF, the approximate volume needed to implement the preventative flows and the unlikely emergency flows, is less than 4 percent of the total CVP water service contract volumes, and less than 1 percent of the total CVP contracted volume." *Id.* It also said: "[s]ince the CVP facilities are operated in a coordinated fashion, and annual water allocations to contractors are determined by supply conditions throughout the system, it is unlikely that any allocations to individual contractors would be reduced in the future due to implementation of the Proposed Action." *Id.* at 15. The loss of this volume of water can still affect contract allocations, as allocations are made in 5% increments. Furthermore, this analysis neglects the impact of lost storage on allocations early in the year, which are based on conservative 90% exceedance forecasts. Late precipitation that restores TRD storage may come too late to make up for low initial allocations that reflect reduced TRD storage, and planting decisions based on early forecasts and allocations.

Regarding lost hydropower, the 2012 EA said: "If Trinity Reservoir does not fill in water year 2013, some portion of the water that is released through Lewiston Dam to implement the Proposed Action may not be available for later release through the Trinity power plant, Lewiston power plant, Clear Creek tunnel, Carr power plant, the Spring Creek tunnel and power plant and the power plant at Keswick Dam in 2013. In turn, this may result in decreased power generation. However, this would be complex to determine and quantify, depending on the particular refill patterns at Trinity Reservoir, whether safety-of-dams releases occur at Trinity Dam in 2013, Shasta Reservoir operations, etc. In very general terms, if 92 TAF were released to the Trinity River to implement the preventative and unlikely emergency flows under the Proposed Action, future foregone generation could be a maximum of about 110,400 megawatt hours. However, power generation opportunities are subject to many restrictions and uncertainties unrelated to the Proposed Action." EA at p. 15. Trinity Reservoir did not refill in 2013, and hence the supplemental releases in 2012 likely did result in a loss of hydropower.

While estimating the impact of the releases on water allocations and hydropower

generation in the following year may be complex and subject to several factors, Reclamation may and should better estimate the size and likelihood of potential impacts. For example, it could assume a range of scenarios that would encompass the least and greatest impacts, and assess the likelihood of each scenario based on the historical record of hydrology.

Such an analysis would serve at least two purposes. First, it would better inform Reclamation and the public of the impacts and tradeoffs involved in the proposed fall releases. Second, it may help identify scenarios of greatest concern and potential mitigation opportunities. The analysis in the 2012 EA was too general and limited to adequately serve those functions.

3. The 2012 EA Did Not Adequately Assess The Impact Of The Fall Releases On Biological Resources In The Trinity River Riparian Corridor

A second inadequacy of the 2012 EA related to impacts to biological resources within the Trinity River mainstem and riparian corridor from the proposed fall supplemental releases. The 2012 EA purported to address such impacts. However, it relied entirely upon the EIS/EIR prepared in 1999 (and finalized in October 2000) for an analysis of the impacts of the proposed fall flows on biological resources other than fall Chinook salmon. The 2012 EA said:

> Affected Environment
> A variety of fish, wildlife, and plant species occur within the riparian corridor and in the Trinity River below Lewiston Dam and the in lower Klamath River [sic]. These biological resources, and the effects of various river flows, were previously described in the TRMFR EIS/EIR. The Proposed Action flow magnitudes are within the range of flows considered in the TRMFR EIS/EIR, and the preventative flows are within the range of historical flow magnitudes and timing. The primary target species expected to benefit from the Proposed Action is Chinook salmon, while other fish, amphibians, reptiles, birds, and mammal species are not likely to be affected. Therefore, the following section addressing the Environmental Consequences of the No Action Alternative and the Proposed Action will focus exclusively on Chinook salmon.

The 2012 EA did not cite to the portions of the EIS/EIR on which it relied. We do not agree that the EIS/EIR analyzed the impacts of supplemental releases in August and September.

Chapter 2 of the EIS/EIR described each flow alternative that was given detailed consideration, including a hydrograph of the releases for each alternative over the year. None of the four action alternatives, or the no-action alternative, included a spike up in releases in mid-August through September. Instead, all assumed steady or declining releases during this period. The hydrograph of "natural" flows at Lewiston pre-TRD for various water years and types (EIS/EIR Fig. 3-9, at p. 3-45) does not show a profile of an increase in flows during August and September either. Accordingly, the EIS/EIR did not consider or analyze the effect that suddenly and unnaturally increasing the flows beginning in mid-August and then dropping back to 450 cfs by late September would have on biological or other resources.

There is good reason to expect that suddenly sending tens of thousands of acre feet of TRD storage surging down the river in the naturally low-flow period of August and September will have adverse unintended consequences. "Many sensitive wildlife species occur in riparian habitats along the mainstem Trinity River . . . ." Final Flow Report at p. 31. Fish and wildlife in and around the river are accustomed to low and stable flows during these months.

Spring run chinook spawning is likely to be adversely affected. By the time the fall flows are implemented, the spring run will have completed their up migration and will be holding in the Trinity River in preparation for spawning. EIS/EIR, Fig. 3-35 at p. 154. Spring-run spawning begins in late August and peaks in late September. *Id.* The surge and then decline of flows in the Trinity River, in contrast to the steady flow called for under the ROD, may result in spawning in areas that will be dewatered as the flows recede in late September. If so, the redds will be destroyed. The potential for such an impact must be disclosed and assessed under NEPA.

A surge in August-September flows also threatens harm to other Trinity River salmonids, including threatened coho salmon protected under the Endangered Species Act. Coho salmon rear in the river for a year or more after spawning, as do steelhead. EIS/EIR Table 3-10, at p. 3-152; Final Flow Report at 14. According to the Final Flow Report, a 150 cfs release provided the most juvenile salmonid rearing microhabitat in the mainstem's channel configuration between Lewiston Dam and the Klamath River confluence. A higher, 450 cfs flow requirement was imposed to meet temperature criteria, even though the higher flow rate reduces available salmonid rearing habitat. The effect of higher flows on available habitat varies by stream reach, but overall useable habitat decreases as releases increase from 450 cfs to 1,500 cfs. Final Flow Report at 234, 240-241. The National Marine Fisheries Service's ("NMFS") October 12, 2000, Biological Opinion for mainstem Trinity River fishery restoration concludes that 450 cfs flow releases from July through mid-October in all water year types strikes the best balance by providing suitable rearing microhabitat for juvenile coho salmon, while also providing the water temperatures needed to increase coho survival. NMFS Biological Opinion at 31. The impacts of a

sudden, dramatic change in fall flows on threatened juvenile Trinity River coho or steelhead must be assessed.

Other "sensitive and highly aquatic species," like foothill yellow-legged frogs, also are threatened with harm if the fall flow proposal is carried out. Final Flow Report at 31. The foothill yellow-legged frog is active during spring, summer and fall along the Trinity River's margins and in flowing side channels. *Id* at 34. Yellow-legged frog egg and larvae survival depends on timing and volume of flow events. *Id.* During the minimum 15-week metamorphosis from egg to frog, the species is "extremely vulnerable to fluctuating flows . . . ." *Id.* "Unhatched eggs subjected to a high-flow event are generally washed away." *Id.* Although larvae "that hatch prior to a high-flow event are more likely to survive depending on the rate of fluctuation . . . [r]apidly ascending or descending water levels can decrease survival because larvae have difficulty tracking rapidly changing water levels and cannot find appropriate habitat before they are washed away or stranded." *Id.* "On the Trinity River . . . yellow-legged frogs . . . subjected to releases that are not in sync with their environmental cues [] result[] in high egg and larvae mortality." *Id.* Thus, a surging storage release down the Trinity River in the August-September low-flow period clearly threatens harm to yellow-legged frogs and perhaps other sensitive and highly aquatic species, like the western pond turtle. *Id* at 31, 34-35.

In sum, the impacts of the proposed fall releases on biological resources in the Trinity River and the riparian corridor were not addressed in the EIS/EIR, contrary to the assumption in the 2012 EA. Information in the EIS/EIR and the Final Flow Report indicates that the proposed flows may have significant adverse impacts on spring run Chinook, coho salmon, steelhead, and amphibious species. Accordingly, Reclamation should address these impacts in an EIS before proceeding with any fall supplemental releases.

4. Resources From Potentially Reduced Flows In Clear Creek And The Sacramento River

The 2012 EA did not address potential impacts to Central Valley biological resources at all. Instead, it defines the "affected environment" as limited to "the riparian corridor and in the Trinity River below Lewiston Dam and the in lower Klamath River [sic]." Draft EA at p. 11. That scope is too narrow, however, because as the 2012 EA conceded, the proposed action may reduce diversions of water from the TRD to the Central Valley. Such reductions would reduce flows available to the Central Valley spring- run Chinook salmon, and to the winter-run Chinook salmon. The impacts from those reduced flows on these salmonids should be analyzed under NEPA.

That decreases in the flows available to the Central Valley from the TRD negatively affect salmonids in the Central Valley has been well established. For example, as a

result of the lost TRD flows from implementation of the restoration program, Reclamation estimated that mortality of early life stage winter-run would increase up to 64% in dry or critically dry years absent reconsultation and preventative measures. NMFS Biological Opinion at p. 38. For that consultation regarding long-term impacts from the restoration program, Reclamation estimated an overall 2% increase in mortality of early life stage winter-run averaged across all year types. *Id.* The EIS/EIR likewise assessed increases in temperature related mortality due to reduced diversions from the TRD to the Central Valley. Table 3-15 in the EIS/EIR summarized those impacts, and shows a 3% increase in average annual loss for both winter-run and spring-run salmon spawned in the Central Valley.

The 2012 EA conceded that the loss of stored water in the TRD will be felt most severely if 2013 were dry. Dry years likewise create the greatest concern for temperature impacts on salmon in the upper Sacramento River and Clear Creek, as shown by the greatly increased mortality rates in critically dry and dry years due to loss of TRD supplies as reported in the NMFS Biological Opinion. The 2012 EA did not address this potential impact. Reclamation should analyze this effect in an EIS before proceeding with any fall supplemental releases.

Thank you for your consideration of the concerns expressed in this letter. Reclamation has been on the wrong track in making supplemental fall releases from the TRD. The releases are above and beyond the volumes allowed under the ROD, and have been made without complying with NEPA. Reclamation should not repeat these mistakes in 2013. We are not alone in our concerns—on May 29, 2013, the Tehama Colusa Canal Authority, Redding Electric Utility, Trinity PUD, Friant Water Authority, Westlands Water District and San Joaquin River Exchange Contractors Water Authority submitted a joint letter on this topic, a copy of which is enclosed, and we join in those comments as well. We would welcome the opportunity to discuss this with you further.

Sincerely,

Daniel G. Nelson
Executive Director

cc: Senator Diane Feinstein
Representative Jim Costa
Jeffrey P. Sutton, General Manager, Tehama Colusa Canal Authority
Thomas W. Birmingham, General Manager, Westlands Water District
Steve Chedester, San Joaquin River Exchange Contractors Water Authority
Barry Tippin, Redding Electric Utility

P. Hauser, Trinity PUD
Ron Jacobsma, Friant Water Authority
Jim Pope, Northern California Power Agency
Brian Person, US Bureau of Reclamation Area Manager

May 29, 2013

Mr. David Murillo
Regional Director, Mid-Pacific Region
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

RE: Potential for 2013 Lower Klamath River Late Summer Flow Augmentation

Dear Mr. Murillo:

The undersigned Central Valley Project (CVP) water and power stakeholders wish to express their concern regarding the Bureau of Reclamation's (Reclamation) proposed implementation of a Lower Klamath River Late Summer Flow Augmentation for 2013. Such an action was taken in 2012, and is now again contemplated for 2013, causing consternation amongst CVP stakeholders. These concerns are heightened by the fact that no mitigation or reimbursement has been made to CVP water and power stakeholders for the lost water and foregone hydroelectric energy attributable to the actions taken in 2012, despite assurances to the contrary.

As you are well aware, CVP water and power stakeholders pay for CVP costs, none of which are borne by the Klamath Project. You are likewise aware that CVP water costs per acre foot and power costs per megawatt-hour have significantly increased in recent years due to dry hydrologic conditions and impaired operations related to a myriad of environmental regulatory actions.

In 2012, Reclamation issued a Finding of No Significant Impact for the release of ninety-two (92) thousand acre-feet (TAF), in part based on the understanding that CVP water and power stakeholders would be unaffected if Trinity Reservoir filled during the 2013 water year, and an assurance that if any loss of water and power generation did occur, it would be mitigated. The 2013 water year has been officially designated a dry year, and it is well understood that a refill of Trinity Reservoir will not occur.

On April 4, 2003, Judge Wanger provided for Reclamation to use up to an additional fifty (50) TAF of water in 2003 to prevent a recurrence of the September 2002 fish die-off. This ruling, however, does not provide Reclamation with authority to use additional water in subsequent years. As such, this proposed action gives rise to several questions: What was the legal justification for Reclamation to employ this operation in 2012, and to again contemplate this operation in 2013? How will the CVP water and power customers be reimbursed for the 2012 release, and for the proposed 2013 release? What benefits were derived from the 2012 supplemental fall flows, compared to years when no action was taken? The findings of Federal Judge Sandra Armstrong and the National Academy of Sciences Committee Report in 2003 were unable to conclude that additional flows would have prevented the 2002 fish die-off. What studies is Reclamation relying on to justify the 2012 proposed action?

While we are sensitive to the challenges being experienced on the Klamath Project, it must be noted that CVP operations are currently being stressed to meet various requirements due to the extremely dry conditions that have persisted since the beginning of 2013, resulting in severely reduced water allocations, lost power generation opportunities, and struggles to meet operational and environmental requirements. As such, there is much concern about any effort to utilize CVP water and power supply to meet the needs of other projects.

We look forward to your response.

Sincerely,

Barry Tippin
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Jeffrey P. Sutton
General Manager
Tehama Colusa Canal Authority

James H. Pope
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Northern California Power Agency

Ronald D. Jacobsma
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Paul Hauser
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Steve Chedester
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San Joaquin River Exchange Contractors Water Authority

Tom Birmingham
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Cc: Brian Person, Bureau of Reclamation Area Manager