

1 **COUNSEL IDENTIFICATION ON FINAL PAGE**

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3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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6 SAN LUIS & DELTA-MENDOTA  
7 WATER AUTHORITY and  
8 WESTLANDS WATER DISTRICT,

9 Plaintiffs,

10 vs.

11 SALLY JEWELL, as Secretary of the U.S.  
12 Department of the Interior; U.S.  
13 DEPARTMENT OF THE INTERIOR;  
14 U.S. BUREAU OF RECLAMATION;  
15 MICHAEL L. CONNOR, as  
16 Commissioner, Bureau of Reclamation,  
17 U.S. Department of the Interior; and  
18 DAVID MURILLO, as Regional Director,  
19 Mid-Pacific Region, Bureau of  
20 Reclamation, U.S. Department of the  
21 Interior,

22 Defendants,

23 THE HOOPA VALLEY TRIBE; PACIFIC  
24 COAST FEDERATION OF  
25 FISHERMEN'S ASSOCIATIONS;  
26 INSTITUTE FOR FISHERIES  
27 RESOURCES; and YUROK TRIBE,

28 Defendant-Intervenors.

Case No. 13-cv-01232-LJO-GSA

**STIPULATION AND ORDER RE:  
WITNESSES, EXHIBITS AND ORAL  
ARGUMENT FOR SHOW CAUSE  
HEARING**

Judge: Honorable Lawrence J. O'Neill

Date: August 21-23, 2013 at 8:30a.m.

29 The parties, by and through their respective counsel of record, as identified below, have  
30 met and conferred and hereby propose the following for the hearing on Order to Show Cause  
31 scheduled for August 21-23, 2013:

32 1. By agreement, the parties exchanged witness lists on August 16, 2013. The parties  
33 identified the following witnesses and proposed areas of testimony:

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**Federal Defendants:**

- A. **Donald Reck**, Environmental Resource Specialist, U.S. Bureau of Reclamation – Mr. Reck may testify about Fall-run Chinook life history and historic abundance; the 2002 fish die off and conditions in the lower Klamath in 2002 and impacts and comparison to conditions in other years; conditions that increase risk of fish die off; fish disease and how it affects fish in the river and why Reclamation determined that forecasts and observations regarding the fishery and conditions in the river required the release of the augmentation flow this year; how the increase in Trinity releases will address the risk; additional details regarding the determination of the quantity of releases needed and effects of flow augmentation on other species; 2012 and 2013 environmental analysis of impacts of the flow augmentation.
  
- B. **Nicholas Hetrick**, Fisheries Biologist, US Fish and Wildlife Service – Mr. Hetrick may testify about Fall-run Chinook life history and historic abundance; fish disease and how it affects fish in the river; the fish die off and conditions in the lower Klamath in 2002, along with studies conducted after this event; how the increase in Trinity releases addresses the conditions of concern; development of 2013 flow release recommendation; overview of determination of the quantity of releases needed; flows and appropriate habitat conditions in the Lower Klamath River that are essential for migrating Chinook salmon and flows that are needed to create habitat conditions to restore Trinity River fish; 2012 and 2013 environmental analysis of impacts of the flow augmentation.
  
- C. **Ronald Milligan**, Manager of the Central Valley Operations Office, U.S. Bureau of Reclamation – Mr. Milligan may testify about the operations of the Central Valley Project and the Trinity River Division in particular, the

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allocation of water to CVP contractors, and potential operational and water supply impacts associated with the Trinity River flow augmentation; including projected temperature impacts in 2014 to the Sacramento River.

**Defendant-Intervenors Pacific Coast Federation of Fisherman’s Associations, Institute for Fisheries Resources, The Hoopa Valley Tribe and Yurok Tribe:**

- A. **Josh Strange:** Josh Strange will testify about 1) his experience with the Klamath and Trinity River fisheries and the causative factors of the 2002 Klamath River fish kill, 2) Ich biology and pathology, 3) the natural conditions, rationale, evidence supporting, and decision to recommend augmented fall flows, 4) the need for and projected effects of augmented flows in 2013, and 5) the likelihood of non-target negative impacts from the necessary flows.
- B. **Michael Belchik:** Michael Belchik will testify about 1) his direct experience with and subsequent research of the 2002 catastrophic fish kill event on the Klamath River, 2) his direct experience and research of 2013 and prior year river and fish conditions, 3) identifying photos he took of the fish kill, 4) update of current Trinity and Klamath River temperature and weather conditions, 5) Indian fisheries management and long term effects on fish production from a fish kill, and 6) research, rationale, and the need for augmented flows to protect anadromous species.
- C. **Michael Orcutt:** Orcutt will testify regarding matters in his declaration (Doc. 46), the declaration of George Kautsky (Doc. 56), and regarding Indian fishing and fish resources.

**Plaintiffs:**

**WILL CALL**

- A. **Charles Hanson:** Mr. Hanson is a principal in the firm of Hanson Environmental, Inc., and has three decades’ experience in matters related to

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the status of fish species in the Klamath and Trinity Rivers and the Sacramento River and Sacramento-San Joaquin Delta. Mr. Hanson is expected to testify regarding the potential mechanisms contributing to the risk of fish die-offs in the lower Klamath River and lack of scientific data on this issue; the potential efficacy, or lack thereof, of the Excess Releases planned by the Federal Defendants in 2013 to mitigate against the potential risk of high mortality of the adult fall-run Chinook salmon; the potentially significant adverse effects of the Excess Releases on biological resources; and the aquatic communities and fish species in the Trinity, Klamath and Sacramento Rivers generally.

**MAY CALL**

B. **Russ Freeman:** Mr. Freeman has served as Supervisor of Resources at Westlands Water District (“Westlands”) for twelve years. Mr. Freeman has a Bachelor of Science degree in civil engineering from University of California, Davis, and is a licensed engineer in the state of California. Mr. Freeman is expected to testify regarding the various water supply sources available to Westlands, Westlands’ CVP supply allocation for the 2013-2014 water year and Westlands’ expectations for the 2014-2015 water year. Mr. Freeman is further expected to testify regarding the demands of Westlands’ customers, and the consequences of reduced CVP allocations to the Westland customers and their employees.

C. **James Snow:** Mr. Snow is a professional engineer and has a Bachelor of Science degree in civil engineering from California State University, Sacramento. Mr. Snow has extensive knowledge of the Central Valley Project’s (“CVP”) operations and the water supply available to the CVP. Mr. Snow monitors the Bureau of Reclamation’s (“Reclamation”) operation of the CVP and its forecast of the CVP operations for Westlands. Mr. Snow is expected to testify regarding the likely effects of

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Reclamation’s planned additional releases (the “Excess Releases”) to the Trinity River in August and September 2013 in an amount up to 109,000 acre-feet on CVP operations and its effect on the CVP allocation to south of Delta water users. Specifically, Mr. Snow is expected to testify that if Reclamation did not make the Excess Releases, that water could be used to restore 2013 allocations to south-of-Delta agricultural water users whose allocation was cut by 5% at the beginning of the year. Mr. Snow is further expected to testify that as the Trinity Reservoir is not expected to refill in 2014, the hole in the Trinity Reservoir created by the Excess Releases will likely cause the CVP contract allocations to south-of-Delta agricultural water users to be lower in 2014 than they would be absent the Excess Releases. Mr. Snow will also testify that the hole caused by the Excess Releases will negatively impact Reclamation’s management of the cold water pool in Shasta Reservoir for the benefit of listed endangered salmon species.

2. The parties stipulate to the qualification of the above identified witnesses. A witness may not offer opinion testimony on subjects beyond the scope of the qualifications stated in the declaration, unless additional qualifications are established.

3. To the extent a party identified a witness who has not yet submitted a declaration in this matter, the party identifying such witness will submit a declaration or report for that witness by 5:00 pm PDT Monday, **August 19, 2013**.

4. The parties agree to file and serve their Exhibit Lists and serve electronic copies of their exhibits by 5:00 pm PDT Monday, **August 19, 2013**. Electronic copies of the exhibits may be made available on a file transfer protocol (“FTP”) site or exchanged on a flash drive, cd or other media by the deadline. The exhibit lists will identify those exhibits to be used for each party’s case-in-chief, but need not include exhibits that may be used for demonstrative, cross-examination and/or rebuttal purposes. The parties agree to make a good faith effort to identify those exhibits to be used solely for cross-examination and/or rebuttal purposes as soon as

1 practicable, but failure to identify such exhibits prior to their use will not preclude a party's use  
2 thereof subject to the Court's ruling on any objections. The parties further agree that any power  
3 point or demonstrative exhibit presented during opening statements or closing arguments will not  
4 be admissible as evidence unless identified on the party's exhibit list prior to the hearing. The  
5 parties agree to an exhibit naming convention whereby each party will choose a unique set of  
6 letters to identify itself followed by the exhibit number, *e.g.*, Plaintiffs will use SL-1 to SL-25.  
7 Each party will therefore start with exhibit "1" and proceed numerically. A party presenting a  
8 witness will not be responsible for providing paper copies of exhibits used with the witness to  
9 counsel for the other parties during the hearing, unless the exhibit was not provided to other  
10 counsel electronically on August 19, 2013.

11 5. The parties agree to file and serve any objections to other parties' exhibits, except  
12 relevancy objections, no later than Noon PDT Tuesday, **August 20, 2013**.

13 6. The parties agree to provide notice to the Court by August 20, 2013 of the parties'  
14 proposal regarding time allocation. Federal Defendants and Defendant-Intervenors will present  
15 their case-in-chief first in light of the Court's August 14, 2013 Order directing the Federal  
16 Defendants to appear and Show Cause.

17 7. In addition to the foregoing live testimony, the parties further stipulate that the  
18 previously submitted declarations may be considered as evidence in the Show Cause hearing  
19 pursuant to Fed. R. Civ. P. 43(c), and further that the parties will not raise a hearsay objection  
20 against the admissibility of such declarations on the grounds that the declaration is a statement  
21 that was made other than while testifying at the trial or hearing. In so stipulating, the parties  
22 against whom the declarations have been offered do not stipulate that the facts stated within the  
23 declarations are undisputed or waive any other evidentiary objections, including hearsay within  
24 hearsay objections.

25 8. The parties agree that any declarant may be subpoenaed for cross examination,  
26 however the parties do not anticipate the need to cross examine all prior declarants. In order to  
27 provide an opportunity to cross examine key declarants, the parties agree to make available for  
28 examination without subpoena, any declarant a party has identified as a witness in paragraph 1.

1 The parties agree to make both “will call” and “may call” witnesses available all three days of the  
2 hearing with the exception of Russ Freeman who is not available to testify on August 21, 2013.  
3 Any party may examine such declarants during their case-in-chief; but should they fail to do so,  
4 and the witness is not called by the party that identified them, the declaration of that uncalled  
5 witness/declarant may continue to be used as evidence.

6 9. The parties do not anticipate filing any pre-trial motions.

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**SO STIPULATED**

Dated: August 16, 2013

KRONICK, MOSKOVITZ, TIEDEMANN  
& GIRARD, A Law Corporation

*/s/ Daniel J. O'Hanlon*  
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DISTRICT

Dated: August 16, 2013

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Dated: August 16, 2013

EARTHJUSTICE

*/s/ Jan Hasselman (as authorized)*  
\_\_\_\_\_  
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PACIFIC COAST FEDERATION OF  
FISHERMENS' ASSOCIATIONS AND  
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Dated: August 16, 2013

YUROK TRIBE, OFFICE OF THE TRIBAL  
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/s/ John Corbett (as authorized)

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Dated: August 16, 2013

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Dated: August 16, 2013

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/s/ Anna K. Stimmel (as authorized)

ANNA K. STIMMEL  
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**IT IS SO ORDERED**

**Dated: August 19, 2013.**

/s/ Lawrence J. O'Neill  
**United States District Judge**



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