



1 described below. Subject to the timeframes described in Management Guidance ##1, 2, and  
2 4, the timing of the releases of water is left to the Bureau's discretion.

3 2. In all other respects, the 2013 Biological Opinion on Klamath Project  
4 Operations ("2013 BiOp") and incidental take statement remain in effect pending completion  
5 of the reinitiated formal consultation.

6 3. In no event shall the mitigation measures interfere with conditions necessary to  
7 protect the endangered sucker fish.

8 **I. Winter-Spring Surface Flushing Flows and Deep Flushing Flows**

9 **a. 2017**

10 4. As of the date of this injunction, the Parties<sup>2</sup> have agreed that surface flushing  
11 flows consistent with Management Guidance #1 and that the spirit and intent, although not the  
12 specific desired magnitude, of deep flushing flows modeled on Management Guidance #2  
13 were met twice during February 2017 flow events.

14 5. If sufficient hydrologic conditions exist, and increased downstream flows  
15 would not interfere with the conditions necessary to protect endangered Lost River and  
16 shortnose suckers or negatively impact water available for the implementation of emergency  
17 dilution flows, the Bureau shall make another attempt to implement a deep flushing flow  
18 modeled on Management Guidance #2 within the inherent infrastructure limitations and  
19 public safety constraints (*e.g.*, Link River Dam release capacity, flooding concerns, etc.).

---

22 \_\_\_\_\_  
23 <sup>2</sup> For purposes of this Order, the term "Parties" refers to the parties in both this case and the  
24 companion case, No. 16-4294-WHO, and specifically includes: Plaintiffs Yurok Tribe,  
25 Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, and  
26 Klamath Riverkeeper in this case and Plaintiff Hoopa Valley Tribe in the companion case;  
27 Federal Defendants U.S. Bureau of Reclamation and National Marine Fisheries Service; and  
28 Defendant-Intervenors Klamath Water Users Association, Sunnyside Irrigation District, Ben  
DuVal, Klamath Drainage District, Klamath Irrigation District, and Pine Grove Irrigation  
District.





1 reduced below the paragraph 14.c. thresholds, flows at IGD shall be  
2 reduced slowly while disease rates are monitored. Release of Reserve  
3 Water shall not count against the EWA and Reserve Water volume  
4 shall be capped at 50 TAF. If the 50 TAF of Reserve Water is expended  
5 before the 80% outmigration date as described in paragraph 14.d.  
6 below, the Bureau shall confer with the Parties to evaluate the  
7 feasibility and desirability of utilizing other water sources to prolong  
8 emergency dilution flows.

9 b. The volume of Reserve Water released shall be accounted for as the  
10 difference between the emergency dilution flow (*i.e.*, 3,000 cfs or 4,000  
11 cfs) and the calculated IGD flow release based upon the formulaic  
12 approach for EWA distribution.

13 c. Emergency dilution releases using up to 50 TAF of Reserve Water shall  
14 be implemented when the following disease threshold criteria are met  
15 or exceeded:

16 1. Spore concentrations exceed 5 spores (non-specified genotype)  
17 per liter for the preceding sample based on quantitative polymerase  
18 chain reaction (qPCR) from water filtration samples at any sampling  
19 station;

20 or (whichever occurs first)

21 2. The prevalence of infection of all captured juvenile Chinook  
22 salmon (both wild and hatchery) exceeds 20% in aggregate for the  
23 preceding week at the Kinsman Rotary Screw Trap.

24 d. Emergency dilution flows shall not be implemented or shall cease if an  
25 estimated 80 percent of the wild juvenile Chinook salmon have  
26 outmigrated past the Kinsman Rotary Screw Trap, or after June 15,  
27



1 b. The Bureau and NMFS may also make recommendations to deviate from the  
2 formulaic approach consistent with the purpose of improving conditions for coho salmon  
3 including to address urgent ecological concerns such as mitigating fish disease.

4 c. In the event that the Bureau and/or NMFS recommend deviations, the Agencies  
5 shall coordinate with FASTA prior to implementation with the goal of gaining consensus on  
6 the flow recommendation.

7 d. Deviations shall not be implemented unless both NMFS and USFWS have  
8 determined that the resulting deviations will not result in adverse effects to ESA-listed species  
9 that would otherwise not occur without deviating from the formulaic approach.

10 e. In the event that one or more of the disease threshold criteria identified in paragraph  
11 14.c. is met while flow augmentation is occurring through deviation from the formulaic  
12 approach for the use of EWA under the FASTA process or as a result of an agency  
13 recommendation, IGD releases shall be adjusted to be consistent with Management Guidance  
14 #4. The volume of Reserve Water used to implement those flows shall be accounted for as the  
15 difference between the resulting flow and the calculated IGD flow release based upon the  
16 formulaic approach for EWA distribution (*i.e.*, not the discharge resulting from the deviation  
17 from the formulaic approach).

18 f. If disease threshold criteria have been met and flows have been increased consistent  
19 with Management Guidance #4, the FASTA Team, or Agencies may recommend increased  
20 flows above those contained within Management Guidance #4 (3,000 cfs or 4,000 cfs at IGD)  
21 through the use of EWA.

22 **III. Adaptive Management**

23 16. Until reinitiated formal consultation is complete, the flushing flows and the emergency  
24 dilution flows shall be provided according to the terms in this Order, subject to adaptive  
25 management as set forth herein. The technical representatives of the parties shall  
26 collaboratively identify and discuss reliable, newly-identified information that may relate to  
27

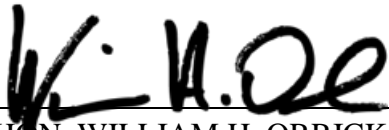
1 provisions of this Order and achieving the fish disease management purposes of this Order. If  
2 the Parties reach consensus that an amended flow plan is warranted before reinitiated formal  
3 consultation is completed, they may jointly submit such plan to the Court for approval.

4 **IV. Conclusion**

5 17. The Parties shall meet and confer in a good faith attempt to resolve any disputes that  
6 may arise relating to the Bureau's implementation of the surface flushing flows, deep flushing  
7 flows, and emergency dilution flows ordered herein, and/or the adaptive management process  
8 in paragraph 16, prior to seeking further intervention from this Court.

9  
10 IT IS SO ORDERED.

11 Dated March 24, 2017.

12  
13  
14   
15 HON. WILLIAM H. ORRICK  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27