PATTI A. GOLDMAN (WSBA # 24426)*
Earthjustice
810 Third Avenue, Suite 610
Seattle, WA 98104
Ph: (206) 343-7340
pgoldman@earthjustice.org
**Pro Hac Vice application forthcoming*

SEAN B. HECHT (CA Bar # 181502)
Earthjustice
707 Wilshire Blvd. Suite 4300
Los Angeles, CA 90017
Ph: (213) 766-1068
shecht@earthjustice.org

AMY CORDALIS (CA BAR # 321257)
562 A St.
Ashland, OR 97520
Ph: (541) 915-3033
acordalis@ridgestoriffles.org

Attorneys for Plaintiff Yurok Tribe

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

YUROK TRIBE, Plaintiff, v. U.S. BUREAU OF RECLAMATION, Defendant.	Case No. 3:24-cv-8216 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF Endangered Species Act Case

INTRODUCTION

1. This case challenges the U.S. Bureau of Reclamation's ("Reclamation's") operation of the Trinity River Division ("TRD"), which holds back water from the Trinity River and provides only the minimum flows to the Trinity River in the winter and early spring. The extremely low winter flows are modifying salmon habitat and harming salmon in two ways.

First, Reclamation provides only the minimum winter flows from mid-October through mid-April. Reclamation then sends higher flows beginning in April, which deliver large volumes of cold water from deep in the Trinity Reservoir to the river. This influx of cold water in April and May suppresses water temperatures to levels below those that occurred naturally before construction of the TRD. The colder water temperatures are suboptimal for juvenile rearing, leading to reduced juvenile salmon growth. Juveniles that are smaller when they outmigrate are more susceptible to predation and have higher mortality rates. Second, low winter flows in December-February lead to suffocation of eggs in salmon nests, called redds, from sediment delivered by tributaries, which cannot be flushed out due to the low flows in the mainstem. Because Trinity River coho salmon are part of the Southern Oregon/Northern California Coast Coho Salmon ("SONCC Coho" or "Coho") population that is listed as threatened under the Endangered Species Act ("ESA"), causing this harm to and mortality to juvenile coho salmon and coho salmon eggs violates the ESA's prohibition on the take of ESA-listed species. Reclamation has no authorization for this take of SONCC Coho Salmon, making it unlawful. The take causes irreparable harm to SONCC Coho Salmon, and to the Yurok Tribe, which depends on salmon for its members' sustenance and well-being. This action seeks an injunction prohibiting Reclamation from maintaining the low, static winter flows that are causing unlawful take of listed coho salmon, and compelling Reclamation to provide higher winter and early spring flows to avoid or reduce the unlawful take.

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

2. This action is brought pursuant to the ESA citizen suit provision. 16 U.S.C. § 1540(g)(1)(A). More than 60 days ago, on August 20, 2024, the Yurok Tribe provided notice to Reclamation that operating the TRD in a manner that results in static, low winter and early spring flows has caused and will continue to cause the take of SONCC Coho Salmon, in

violation of the ESA's prohibition on the take of listed species. 16 U.S.C. § 1540(g)(2)(A). This Court has jurisdiction pursuant to 16 U.S.C. § 1540(g)(1), and 28 U.S.C. §§ 1331 and 1362.

3. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Yurok Tribe's reservation and fishery are located in this district, and the harm to Yurok's fishery resulting from Reclamation's violations of law have occurred or will occur in this district.

4. This case is properly assigned to the San Francisco/Oakland Division under Civil L.R. 3-2(c) because plaintiff is located in Humboldt and Del Norte counties, and the harm from the actions challenged herein will occur and has occurred in Humboldt and Del Norte counties through which the lower Klamath River flows.

PARTIES

A. The Yurok Tribe

5. The Yurok Tribe is a sovereign, federally recognized Indian Tribe. 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.

6. With more than 6,300 members, the Yurok Tribe is the largest Indian Tribe in California. Yurok people are fishing people who have lived and fished on the Klamath River since time immemorial. The Tribe's ancestral territory includes the Trinity River and the lower Klamath River and the lands surrounding it to the north and south. The Klamath River Reservation was originally created by Executive Order on November 16, 1855. The Reservation begins at the confluence of the Trinity and Klamath Rivers and extends for one mile on each side of the Klamath River in northern California from the confluence for approximately 45 miles to the mouth of the River at the Pacific Ocean.

7. The Executive Order that created the Yurok Reservation vested the Yurok Tribe with "federally reserved fishing rights." *Parravano v. Masten*, 70 F.3d 539, 541 (9th Cir. 1995). Federally reserved fishing rights are integral to the Yurok way of life for subsistence, commercial, and cultural purposes. Yurok trust species include, but are not limited to, coho and chinook salmon, steelhead trout, lamprey, sturgeon, and eulachon. The Tribe dedicates a significant share of its financial and human resources to manage and regulate Klamath River fisheries. The Klamath River and its fishery are "not much less necessary to the existence of the [Yurok] than the atmosphere they breathe[.]" *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). The Tribe and its members rely on salmon as a healthy food source. Fishing for salmon provides food for Yurok families, economic opportunity, and the fabric of the community, bringing people together to fish, connect with each other and their heritage, and anchor themselves to their fishing culture. Without an adequate fishery, due in large part to Reclamation's operation of reclamation projects in the Klamath and Trinity River Basins, the Tribe's traditional way of life has been and will continue to be disrupted and irreparably harmed.

8. Reclamation's mismanagement of reclamation projects impacting Klamath River salmon has severely diminished the Tribe's ability to exercise its reserved fishing rights. Tragedy struck in 2002 when irrigation deliveries from the Klamath Project led to low Klamath River flows and a massive outbreak of fish disease that killed as many as 78,000 adult salmon before they could spawn, all within the Yurok Reservation. The 2002 fish kill is one of the darkest events in Yurok history. To avoid a recurrence of this devastating event, Reclamation has released pulse flows from the Trinity River in the summer in drought years. The Ninth Circuit has upheld the lawfulness of this practice. *San Luis & Delta-Mendota Water Auth. v.*

Haugrud, 848 F.3d 1216 (9th Cir. 2017). The Yurok fishery has also suffered declines as a result of Reclamation's release of inadequate flows to the Klamath River and its maintenance of static low winter flows in the Trinity River.

9. The Yurok Tribe has been and will continue to be irreparably harmed by Reclamation's disregard of its statutory duties and by the unlawful injuries imposed on SONCC Coho Salmon resulting from Reclamation's withholding of sufficient winter flows needed to sustain salmon in the Trinity River. The interests of the Yurok Tribe in the survival and recovery of SONCC Coho Salmon have been, are being, and, unless the relief prayed for is granted, will continue to be directly and adversely affected by Reclamation's failure to comply with the law.

B. Federal Defendant

10. Defendant United States Bureau of Reclamation is an agency of the United States Department of the Interior that constructed and operates federal water projects throughout the United States. Reclamation has primary management authority over the Trinity River Division, including releases to the Trinity River.

BACKGROUND

I. THE TRINITY RIVER AND ITS COHO SALMON

11. The Trinity River begins in the Trinity Alps of Northern California. The river runs south and then wends its way northwest, picking up tributaries along the way. It flows eventually into the Klamath River at the village of Weitchpec on the Yurok Reservation. The Klamath River flows approximately 45 additional miles through the Yurok Reservation before entering the Pacific Ocean. The Trinity River is the largest tributary to the Klamath River.

12. The Klamath River was once the third most productive salmon-producing river in the western continental United States and included significant populations that spawned in the Trinity River. Several species of anadromous fish inhabit the Klamath and Trinity Rivers,

including coho salmon. In 1940, SONCC Coho Salmon, a population that includes Trinity and Klamath River Coho Salmon, were estimated to range between 150,000 and 400,000 naturally spawning fish annually. 62 Fed. Reg. 24,588 (May 6, 1997). A multitude of factors, including water diversions, contributed to drastic declines of SONCC Coho Salmon.

13. Coho have a three-year life cycle, spending half their lives in fresh water and half in salt water. After the eggs hatch in the winter, the coho fry spend up to 15 months in freshwater, which makes them especially sensitive to changes in river flows and temperatures. Coho salmon out-migrate to the sea between mid-February and mid-June. At about three-years old, they return to the same stream where they were born to spawn between November and January, although the precise timing is influenced by many factors including river flow. A large portion of Trinity Coho Salmon spawning occurs in the upper 40 miles of the Trinity River below Lewiston Dam.

14. In 1997, the National Marine Fisheries Service ("NMFS") listed SONCC Coho Salmon under the ESA as threatened. It found that the coho populations "are very depressed, currently numbering approximately 10,000 naturally produced adults." 62 Fed. Reg. 24,588 (May 6, 1997). NMFS noted that "water diversions" and "water withdrawals" were "major activities responsible for the decline of coho salmon in Oregon and California." *Id*. at 24,592. Trinity River Coho Salmon make up a significant portion of the Klamath population and their viability is necessary for recovery of SONCC Coho Salmon.

15. NMFS designated critical habitat for SONCC Coho Salmon in 1999 and included most of the Trinity River in the designation. 64 Fed. Reg. 24,049 (May 5, 1999). NMFS found that water withdrawals and dam operations were "[a]ctivities that may require special management considerations." *Id.* at 24,059.

16. In its five-year status review completed in 2016, NMFS found that SONCC Coho continue to be at high risk of extinction and noted heightened risk to coho persistence since 2011 from increased water withdrawals and unprecedented drought conditions. Five-Year SONCC Coho Review at 47-49 (2016). The abundance of Trinity River Coho Salmon has continued to steadily decline since the 1997 ESA listing with extremely low returns in several recent years.

II. THE TRINITY RIVER DIVISION AND ITS DEVASTATING EFFECTS ON ITS SALMON.

17. In 1955, believing there to be water in the Trinity River surplus to the needs of Trinity River fish and wildlife, Congress authorized the construction of a major storage reservoir and conveyance system, consisting of tunnels, dams, and other works, to export water from the Trinity River to the Sacramento River for the Central Valley Project ("CVP"). Pub. L. No. 386, 69 Stat. 719 (1955). It called the infrastructure the Trinity River Division ("TRD") and directed that its operations be integrated and coordinated with the operation of the CVP to effectuate the beneficial and economic utilization of the water resources. To ensure diverting substantial flow out of the Trinity River Basin would not harm Trinity River fisheries, Congress directed that operation of TRD be integrated and coordinated with the operation of the CVP, subject to Proviso 1:

> "*Provided,* That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River" at specified levels that have since been increased.

The Ninth Circuit has recognized that Proviso 1 authorized and required fish protection measures to account for unintended consequences to Trinity fisheries. *San Luis & Delta-Mendota Water Auth. v. Haugrud*, 848 F.3d 1216, 1228-29 (9th Cir. 2017).

18. Pursuant to the 1955 Act, Reclamation constructed two dams: (1) the Trinity Dam, which blocks water flowing from the upper river and creates the Trinity Reservoir; and (2) the Lewiston Dam, where Reclamation can divert water to the Sacramento River Basin via Clear Creek Tunnel or allow it to flow into the Trinity River. The TRD became operational in 1964 and caused severe destruction of salmon habitat and fisheries declines, including by blocking access to over 100 miles of salmon habitat, exporting huge quantities of Trinity River flows to the Sacramento River Basin, and changing the water temperature regime in the Trinity River. During its first ten years of operation, Reclamation diverted an average of 88% of the annual inflow out of the Trinity River Basin, and salmon populations plummeted. In 1980, the U.S. Fish and Wildlife Service estimated that Trinity River fish populations had suffered a 60-80% reduction and fish habitat had declined by 80-90%. *Westlands Water Dist. v. Dept. of Interior*, 376 F.3d 853, 861-62 (9th Cir. 2004).

19. In subsequent laws, Congress reinforced the 1955 mandate to preserve Trinity fish populations by directing the Department of Interior to develop restoration programs. In addition to increasing the minimum Trinity River flows set out in the 1955 Act, Congress directed the Secretary to formulate and implement a fish and wildlife program to restore the Trinity River fish and wildlife populations "to the levels approximating those which existed immediately before the start of the construction" of the TRD. Trinity River Basin Fish and Wildlife Management Act, Pub. L. No. 98-541, 98 Stat. 2721 (1984). Congress subsequently directed that "Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration."

Trinity River Basin and Wildlife Management Reauthorization Act. Pub. L. No. 104-143, § 2, 110 Stat. 1338 (1996).

20. The 1992 Central Valley Project Improvement Act directed Reclamation to complete a flow evaluation study and develop "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." Pub. L. No. 102-575, § 3406(b)(23), 106 Stat 4600 (Oct. 30, 1992). In 2000, Reclamation, with the concurrence of the Hoopa Valley Tribe, adopted the flow study recommendations and mandated a series of habitat restoration projects. The 2000 Record of Decision increased the annual instream flows in the Trinity River, with each year's flows set based on the hydrological forecasts for that water year. It also established daily minimum flows of 300 cubic feet per second ("cfs") for seven months of the year, including in the winter months when un-dammed streams in the region experience their highest and most variable flows following rainstorms. Without the Trinity and Lewiston dams, flows reached 10,000-40,000 cfs in storm events in winter months and were much higher than the levels set in the 2000 Record of Decision for the winter and early spring months.

21. The 2000 Record of Decision also established the Trinity River Restoration Program, guided by an Adaptive Environmental Assessment and Management process consisting of technical work groups, scientific peer review bodies, and a decision-making structure. The adaptive management process can produce recommendations for changes in Reclamation's operation of the TRD, including adjustments to the daily flows while remaining within the specified annual volumes. Under the adaptive management program, technical teams make recommendations to the Trinity Management Council ("TMC"), which is the decision-making

body that makes recommendations to Reclamation. The TMC consists of representatives from the eight federal, state, tribal, and county restoration program partner agencies. It can adopt recommendations if seven of its eight members support the recommendation, TMC By-Laws, § 603 (Oct. 29, 2003), and Reclamation is expected to implement the TMC's recommendations.

22. Under the Restoration Program's adaptive management process, a flow work group consisting of federal, state, and tribal experts has reviewed the best available scientific evidence and found that the static low winter flows are causing harm to Trinity River salmon. The flow work group has developed a proposal to shift some of the TRD releases scheduled for April and May to earlier in the water year. These recommendations are embodied in the Trinity River Winter Flow Project Final Report completed in 2022. The flow recommendations have two components.

23. First, the Winter Flow Report recommends a peak flow release coinciding with a storm event between December 15 and February 15, called the flow synchronization period. The purpose of such flows is to mimic natural winter runoff events that scour the riverbed, flush out sediment entering the Trinity River from tributaries during storm events, and make floodplain and side channel habitat accessible to rearing salmon.

24. Second, the Winter Flow Report recommends the release of elevated base flows between February 15 and April 15 to reduce flow-induced temperature suppression. Under the flow schedule in the 2000 Record of Decision, static low winter flows continue until April 15th when higher flows begin and run through May. Flows from the Trinity Reservoir come out of a deep, cold-water pool due to the Reservoir's infrastructure. The influx of cold water beginning in April has reduced mainstem stream temperatures below the naturally occurring temperatures in which Trinity River salmon evolved. The optimal water temperature for juvenile salmon

growth is 55.4-61.7°F. The spring influx of cold water produces water temperatures that far lower than this optimal temperature range. The cold-water temperatures slow juvenile salmon metabolism and reduce juvenile salmon growth. When the salmon outmigrate, they are smaller due to their reduced growth and are more susceptible to predation and mortality.

25. In each water year since finalization of the Winter Flow Report, the technical flow work group has unanimously recommended implementation of the winter flow regime in that report. NMFS has urged Reclamation to implement the recommended flows to avoid impairing ecological systems and salmon habitat. In water year 2023, which runs from October 1, 2022 to September 30, 2023, the TMC adopted that recommendation with one dissenting vote. Reclamation implemented elevated base flows between mid-February and mid-April, 2023, to reduce water temperatures impeding juvenile salmon growth, but did not implement higher winter flows before mid-February. Reclamation provided only the minimum 300 cfs flows from mid-October to mid-April in the following water year.

26. For water year 2025, which began on October 1, 2024, the TMC adopted the technical flow group's recommendation to implement the Winter Flow Report flows with one dissenting vote. Reclamation has not yet acted on that recommendation. Reclamation has also not responded to the Yurok Tribe's 60-day notice seeking higher winter flows to avoid or reduce the take of listed SONCC Coho Salmon.

CAUSES OF ACTION
VIOLATION OF THE ESA TAKE PROHIBITION

I. ALLEGATIONS COMMON TO BOTH CAUSES OF ACTION

A. The ESA Prohibits Reclamation From Engaging In Actions That Take Listed SONCC Coho Salmon.

27. Section 9 of the ESA prohibits any person from "taking" an endangered species. 16 U.S.C. § 1538(a)(1)(B). Under ESA Section 4(d), 16 U.S.C. § 1533(d), NMFS has the

authority to issue regulations extending the take prohibition to threatened species. NMFS has extended the take prohibition to threatened species, including SONCC Coho salmon. 50 C.F.R. § 223.203. Under Section 9(a)(1)(G), it is unlawful to take threatened salmon in violation of the ESA and this regulation. 16 U.S.C. § 1538(a)(1)(G).

28. The take prohibition applies to "any person." 16 U.S.C. § 1538(a)(1). The ESA defines "any person" to include "any officer, employee, agent, department, or instrumentality of the Federal Government." 16 U.S.C. § 1532(13). The ESA citizen suit provision authorizes suits to enforce the ESA and its implementing regulations against any person, including federal agencies. *Id*. § 1540(g)(1). Reclamation is a "person" subject to the ESA take prohibition and to ESA citizen suits.

29. Before bringing an ESA citizen suit, parties must provide a 60-day notice of the violation to the alleged violator and the fish and wildlife agency with oversight over the listed species. 16 U.S.C. § 1540(g)(2)(A)(i). The Yurok Tribe provided such a notice on August 20, 2024.

30. The ESA defines "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect." 16 U.S.C. § 1532(19). By regulation, NMFS has defined "harm" to include:

> Significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.

50 C.F.R. § 222.102. In *Babbitt v. Sweet Home Chapter of Communities for a Great Or.,* 515 U.S. 687, 704 (1995), the Supreme Court upheld the validity of the harm regulation and made it clear "take" includes direct, as well as indirect harm, and need not be purposeful.

B. Reclamation Lacks Authorization To Take Any SONCC Coho Salmon.

31. Through incidental take statements and permits, NMFS and the Fish and Wildlife Service can authorize incidental take upon determining that a federal agency action will not jeopardize the species' survival and recovery, and imposing conditions to minimize the take. ESA Section 7(b)(4), 16 U.S.C. § 1536(b)(4) (incidental take statements can authorize take in conjunction with a no-jeopardy biological opinion); Section 10(a)(2), 16 U.S.C. § 1539(a)(2) (incidental take permits can authorize incidental take if accompanied by a habitat conservation plan that will minimize and mitigate the take and avoid jeopardizing the species survival and recovery).

32. Pursuant to Section 7 of the ESA, Reclamation must consult with NMFS to ensure its actions will not jeopardize the survival and recovery of listed salmon or result in the destruction or adverse modification of habitat of salmon critical habitat. 16 U.S.C. § 1536(a)(2). Pursuant to this mandate, Reclamation consulted with NMFS on its 2000 Record of Decision, which included a new managed flow regime intended to restore fishery habitat in the Trinity River. In October 2000, NMFS issued the Biological Opinion for the Trinity River Fishery Restoration EIS concluding that the 2000 Record of Decision would not jeopardize the survival and recovery of SONCC Coho Salmon or listed winter- and spring-run Sacramento Chinook Salmon or adversely modify their critical habitat.

33. NMFS predicated its no-jeopardy and no-adverse modification determination as to SONCC Coho Salmon on its conclusions that the new flow regime "would result in greatly improved fishery habitat in the mainstem Trinity River by the year 2020," Biological Opinion at 33-34, 44, and the flow regime and habitat restoration projects would significantly improve habitat conditions, which would, in turn, improve SONCC Coho Salmon survival and production, and contribute to attainment of management goals for SONCC Coho Salmon. *Id*.

34. Where a federal action is not likely to cause jeopardy or adverse modification of critical habitat, and will cause take of a listed species, the biological opinion must include an "incidental take statement" that specifies the amount and extent of incidental take of the listed species that may occur without causing jeopardy or adverse modification, includes "terms and conditions," and provides for monitoring of take. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(1)-(3). The incidental take statement provides a safe harbor, insulating from take liability activities undertaken in compliance with the incidental take statement's terms and conditions. 16 U.S.C. § 1536(o)(2); *see* 16 U.S.C. § 1536(b)(4)(C). Actions that result in take above the level specified in the incidental take statement are not protected by the statement's safe harbor.

35. Based on its belief that the 2000 flows would improve conditions compared to the status quo, the incidental take statement provides:

> The NMFS does not anticipate that implementation of the proposed flow schedules will incidentally take any SONCC coho salmon. Biological Opinion at 46.

NMFS issued no incidental take statement for the take of SONCC Coho salmon from the flows set out in the Record of Decision. Reclamation, therefore, has no incidental take authorization for any take of SONCC Coho Salmon from the Trinity River flows.

FIRST CAUSE OF ACTION

RECLAMATION'S LOW WINTER FLOWS HAVE CAUSED AND ARE REASONABLY CERTAIN TO CAUSE TAKE BY REDUCING JUVENILE SONCC COHO SALMON GROWTH.

Plaintiffs reallege each and every allegation set forth in this complaint.

36. Pacific salmon life histories adapted to natural seasonal flows. The survival of freshwater salmon life stages is dependent upon suitable water temperatures. Because they spend more time in freshwater than other salmon species, coho salmon are the least temperature

tolerant of native salmonids, including in the Trinity River. The optimal temperature range for juvenile salmon growth in the Trinity River is 55.4-61.7°F. Water temperatures below this range are associated with reduced juvenile salmon growth.

37. Under the 2000 Record of Decision's flow schedule, Reclamation provides static low winter flows of 300 cfs from mid-October through mid-April. It begins providing higher flows on April 15, and these higher flows continue through May. Flows from the Trinity Reservoir come out of a deep, cold-water pool due to the Reservoir's infrastructure. The spring influx of cold-water beginning in April has led to reduced water temperatures in the Trinity River that are too cold for optimal juvenile salmon growth. In the absence of the dams, water temperatures would warm up naturally, and the temperatures would be in the range that fosters faster juvenile salmon growth. By artificially cooling water temperatures in the spring months, the static low winter flow releases are reducing juvenile salmon growth. This reduced growth leads to lower survival rates because smaller salmon outmigrants are more susceptible to predation and mortality.

38. By producing water temperatures that impair juvenile salmon growth and survival, Reclamation's maintenance of static, low flows of 300 cfs between February 15 and April 15 followed by higher flows through May has caused and is reasonably certain to cause the take of listed SONCC Coho Salmon in violation of the ESA's take prohibition.

SECOND CAUSE OF ACTION

RECLAMATION'S LOW WINTER FLOWS ARE REASONABLY CERTAIN TO CAUSE TAKE OF SONCC COHO SALMON EGGS.

Plaintiffs reallege each and every allegation set forth in this complaint.

39. Salmon return to their natal streams to spawn. Female salmon excavate a gravel pit, called a redd, in which to lay their eggs. The redd needs to remain free of mud and silt that

can smother the eggs. Inside the egg, the developing embryo obtains oxygen from air dissolved in the water that flows through the redd. The eggs need a supply of clean, aerated water to develop properly.

40. Redds are especially sensitive to fine sediment accumulation. High concentrations of fine sediment reduce oxygen supply to the eggs by clogging the interstitial pores of the redd and reducing water velocity around the egg membrane that would evacuate waste products. Mortality occurs when fine sediments infiltrate into where eggs are deposited and effectively suffocate the eggs.

41. In the Trinity basin, winter storms deliver large amounts of sediment from tributaries into the mainstem. In a natural flow regime, wet-season peak flows transport a significant amount of sediment down the river to the ocean. The low static flows in the mainstem of 300 cfs are insufficient to transport the sediment downstream. As a result, the sediment accumulates at the confluence of the tributaries and the mainstem. Salmon redds are concentrated at the confluence of tributaries and the mainstem in the Trinity River below Lewiston Dam. The high concentrations of fine sediment has reduced oxygen supply to the eggs by clogging the pores of the redd and has suffocated the eggs. Each redd contains approximately 2500 eggs, which perish in these sedimentation events.

42. The altered landscape resulting from recent fires makes sediment available for transport, as does the long legacy of logging, roadbuilding, and mining along the tributaries. NMFS has documented unnaturally high salmon mortalities from this phenomenon after the 2018 Carr Fire led to landslides sending sediment into Deadwood Creek, a tributary that enters the Trinity River in an area with a high concentration of salmon redds. Winter storms have delivered, and will continue to deliver, available sediment from tributaries to the mainstem in

areas where salmon redds are located. If Reclamation provides only static winter flows of 300 cfs, the flows will be insufficient to flush out the sediments from the tributaries and will harm the salmon redds.

43. By maintaining static, low winter flows of 300 cfs between December 15 and February 15, Reclamation has caused and is reasonably certain to cause the take of listed SONCC Coho Salmon by causing suffocation of salmon eggs in violation of the ESA's take prohibition.

PRAYER FOR RELIEF

WHEREFORE, the Yurok Tribe respectfully requests that this Court:

A. Declare that Reclamation's maintenance of static low winter flows from mid-February to mid-April, followed by higher spring flows, has produced and will continue to produce cold-water temperatures that reduce juvenile salmon growth and survival, and has caused and is reasonably certain to cause the illegal take of SONCC Coho salmon in violation of the ESA, 16 U.S.C. § 1538(a)(1)(B) and 50 C.F.R. § 223.203.

B. Declare that Reclamation's maintenance of static winter flows from mid-December to mid-February has led to and will continue to lead to the suffocation of salmon eggs from sediment delivered from tributaries in winter storms that cannot be flushed out of the mainstem due to inadequate flows, and has caused and is reasonably certain to cause the illegal take of SONCC Coho salmon in violation of the ESA, 16 U.S.C. § 1538(a)(1)(B) and 50 C.F.R. § 223.203.

C. Issue an injunction prohibiting Reclamation from maintaining static, low winter flows in the Trinity River that are reasonably certain to cause the take of SONCC Coho Salmon

and requiring Reclamation to provide higher flows in the winter and early spring that will avoid or reduce the unlawful take.

D. Award plaintiffs their reasonable fees, expenses, costs, and disbursements, including attorneys' fees associated with this litigation pursuant to ESA, 16 U.S.C. § 1540(g)(4); and

E. Grant plaintiffs such further and additional relief as the Court may deem just and proper.

DATED this 20th day of November, 2024.

Respectfully submitted,

s/ Sean B. Hecht
SEAN B. HECHT (CA Bar # 181502)
Earthjustice
707 Wilshire Blvd. Suite 4300
Los Angeles, CA 90017
Ph: (213) 766-1068
shecht@earthjustice.org

PATTI A. GOLDMAN (WSBA # 24426)*
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810 Third Avenue, Suite 610
Seattle, WA 98104
Ph: (206) 343-7340
pgoldman@earthjustice.org
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s/ Amy Cordalis
AMY CORDALIS (CA Bar # 321257)
562 A St.
Ashland, OR 97520
Ph: (541) 915-3033
acordalis@ridgestoriffles.org

Attorneys for Plaintiff Yurok Tribe