April 10, 2020

Ms. Tara Jane Campbell Miranda
Bureau of Reclamation
6600 Washburn Way
Klamath Falls, OR 97603

Re: Comments on Draft Environmental Assessment for Implementation of Klamath Project Operating Procedures 2020-2023 (CGB-EA 2020-018)

Delivered by email to: BOR-SHA-KBO-KlamathBasin@usbr.gov

Dear Ms. Campbell Miranda:

The undersigned organizations appreciate the opportunity to comment on the Draft Environmental Assessment for the Implementation of Klamath Project Operating Procedures 2020-2023 (Draft EA). The Klamath Irrigation Project (Project) serves lands in both Oregon and California, including the Lower Klamath National Wildlife Refuge (LKNWR). The Draft EA sets forth the Bureau of Reclamation's (Reclamation) proposed alternative for how it will operate the Klamath Project in the coming years. The Draft EA supports the settlement agreement (Settlement Agreement) reached on a motion for preliminary injunction in the case of *Yurok Tribe, et al. v. U.S. Bureau of Reclamation, et al.*, United States District Court for the Northern District of California, Case No. 3:19-cv-04405-WHO, covering Project operations under the Endangered Species Act.

The Settlement Agreement consists of a stipulation to stay further litigation until September 30, 2022, if Reclamation operates the Project in accordance with the Proposed Action Alternative (Draft EA, Section 1.4.1). The Proposed Action Alternative will reduce the water supply for the Project by 23,000 acre feet from 2020 through 2023.

The Proposed Action Will Have Significant Impacts

Our organizations have spent many decades preserving wetland habitat in California to support migratory birds and other wildlife. We are gravely concerned about how the Project is proposed to be operated for the delivery of water to the LKNWR. **The Proposed Action Alternative analyzed in the Draft EA will have significant impacts on the refuge that will cause great harm to the waterfowl and other migratory and resident bird populations that depend on the refuge in the course of their migration on the Pacific Flyway.**

The legal priority for water deliveries to the LKNWR has been under consideration by the Secretary of the Interior for years. If the Secretary makes a determination on this important issue in the future, additional environmental analysis will almost certainly be necessary. However, in the absence of such a determination we believe the Bureau of Reclamation is required to prepare an Environmental Impact Statement (EIS) to address the impacts of the unclear and inadequate plan for water deliveries to the refuge that is provided in the Proposed Action Alternative.

The Importance of a Water Supply for the Lower Klamath National Wildlife Refuge

As described in the Draft EA (Section 3.2.4), the LKNWR is one of the most important wildlife refuges in the United States, on a year-round basis. In the spring it supports the densest population of breeding waterfowl and provides nesting sites for colonial waterbirds. In the summer it provides an essential site for molting waterfowl. In the fall and winter it hosts up to 80% of all migratory waterfowl on the Pacific Flyway. Once the foremost wetland reserve in the national wildlife refuge system, and the first-ever waterfowl refuge designated in the United States, the refuge provides critical staging, breeding, and molting habitat for millions of Pacific Flyway waterfowl.

According to the refuge's website, peak waterfowl populations on the 50,092-acre refuge can reach 1.8 million birds, which represents *15 to 45 percent of all overwintering birds in California.* The refuge also hatches between 30,000 and 60,000 new waterfowl annually. The website continues: "The refuge is also a fall staging area for 20 to 30 percent of the central valley population of sandhill crane. From 20,000 to 100,000 shorebirds use refuge wetlands during the spring migration. Wintering wildlife populations include 500 bald eagle and 30,000 tundra swan. Spring and summer nesting wildlife include many colonial water birds, such as white-faced ibis, heron, egret, cormorant, grebe,

white pelican, and gulls. In all, the refuge provides habitat for 25 species of special concern listed as threatened or sensitive by California and Oregon."
(https://www.fws.gov/refuge/Lower_Klamath/about.html)

All of this habitat needs water. And therein lies the problem. In recent years, the LKNWR has been unable to obtain a sufficient water supply to meet the needs of the millions of migratory birds that pass through the area each spring and fall. The refuge requires 95,000 acre-feet per year for the marshes south of the California/Oregon border, and 19,000 acre-feet per year for the leased agricultural lands north of the border in Oregon.

The lack of water supply causes many migrating waterfowl to forego the staging and feeding that prepares them for their further journey south in the fall and north in the spring. Birds that do use the small amount of water available on the refuge are subject to avian diseases due to overcrowding that have led to tens of thousands of deaths in recent years.

The Klamath National Wildlife Refuge Complex is the single most important staging area for waterfowl in all of North America. An estimated 80 percent of Pacific Flyway waterfowl, representing one-quarter of the continental population, depend on this region for fall and spring staging during their annual migrations. In addition, 40 percent of California's mallards, 66 percent of its gadwalls, 77 percent of cinnamon teal, 90 percent of redheads, and 100 percent of canvasbacks have been documented as breeding on the Klamath refuge complex.

The LKNWR should support over 1 million ducks and geese by early November each fall. In 2018, refuge biologists counted a peak bird population of 160,000, the lowest ever recorded. These numbers are staggeringly low when compared to historical waterfowl numbers from just two decades ago, when the refuge received a more adequate and reliable water supply.

The Water Supply Problem

The problem plaguing the refuge is the imbalance of competing claims for water from the Klamath Project. In short, Reclamation's management of the area's water supply almost exclusively for the benefit of listed fish species and other water users is resulting in the decline of important waterfowl populations and other species that rely on the LKNWR, including species of special status and concern. In recent years the refuge has been at the bottom of Reclamation's priority list for Klamath Basin water. The needs of the refuge have not been considered in developing and implementing Biological Opinions that govern the allocation of water to endangered species and other water users in the Klamath Basin, nor is the refuge adequately considered under the proposed Project Operating Procedures.

As a result, average water deliveries have declined by more than half since 2009. The refuge needs to have sufficient water to flood the wetlands complex ahead of the arrival of the migrating birds in

September through mid-October, water to sustain the birds through the winter and spring, and water in the spring and summer to accommodate breeding and molting birds and to grow feed for the fall migration. If sufficient water is not available at these times, migrating waterfowl and other birds will either struggle to find other water and feed sources or will be subject to overcrowding that inevitably leads to large die-offs.

The Proposed Action Does Not Include an Assured or Adequate Water Supply for the Lower Klamath NWR

The Draft EA is entirely unclear about whether, when, and how Reclamation will make water deliveries to LKNWR after 2020. The analysis includes up to 25,000 acre-feet made available through purchase of water from irrigators with federal drought relief funding (Draft EA, Section 2.4.4). Previous experience indicates that the amount of water that will be made available for purchase will very likely be a fraction of the 25,000 acre-foot maximum. The federal drought relief funding will not be available after December 31, 2020, unless Congress acts to extend it, and the dedication of an additional 23,000 acre-feet of Project supply to downstream uses makes it very unlikely that surplus Project supply will be available for LKNWR.

The Impacts of an Inadequate Water Supply for the Lower Klamath NWR Are Significant and Require the Preparation of an Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), an EA is no longer sufficient and an EIS should be prepared when there is "enough information to indicate that significant impacts may occur or that sufficient controversy (disputes over scientific conclusions or impacts of the action) about the impacts exists." (Reclamation's NEPA Handbook (2012), p. 3-2.) An EIS is required when the environmental effects of a project are potentially significant. An EIS provides for a discussion of significant environmental impacts, project alternatives, and available mitigation measures.

An EIS is appropriate here for a number of reasons. First and foremost, by failing to provide for assured or adequate water deliveries to the LKNWR, Reclamation has failed to integrate into its NEPA analysis the requirements of other statutes, including the National Wildlife Refuge System Administration Act (adequate water deliveries are required to fulfill the purpose of the LKNWR and the mission of the National Wildlife Refuge system), the Migratory Bird Treaty Act (prohibiting the take of migratory birds), and the Kuchel Act (the Klamath Project shall be administered and managed to preserve habitat for migratory waterfowl on the LKNWR).

Finally, this environmental review process provides ample opportunity for Reclamation to comply with the directives set forth in the Deputy Secretary of Interior's January 19, 2017 memorandum, which stated that "Reclamation and FWS should also work closely on strategies to increase water deliveries to the Refuge through infrastructure improvements" and that "Reclamation and FWS will

seek additional opportunities to provide water to meet Refuge purposes and water needs, including water transfers (both on and off-Project), short-term water storage options, and the use of return flows." Such actions are not presented with adequate detail in the Proposed Action, although they could constitute acceptable mitigation measures to offset the project's impacts.

We urge Reclamation to prepare an EIS that discloses, analyzes, and mitigates the significant impacts that the Proposed Action will have on the LKNWR. We also urge Reclamation to include the LKNWR's water needs in its re-initiation of consultation with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. This was attempted during the previous consultation that resulted in the Biological Opinions adopted in May 2019, but the LKNWR's water needs were ultimately not included in the adopted Biological Opinions and are not adequately addressed in the proposed Project Operating Procedures.

Yours truly,

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