

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of Application to Implement
the Provisions of Senate Bill 76
Docket UE-219

PETITION TO INTERVENE
 and WAIVER OF PAPER
SERVICE

The Yurok Tribe petitions to intervene in this proceeding. In support of this petition, the following is provided:

1. The contact information (name, address, email address) of the petitioner is:

Name: John W. Corbett
Company: Yurok Tribe
Street Address: 190 Klamath Blvd.
City, State, Zip: Klamath, CA 95548
Email Address: JohnC@yuroktribe.nsn.us
Telephone: 707-482-1350 ext. 311

Please include this contact on the service list.

2a. The petitioner will will not be represented by counsel in this proceeding. The contact information for petitioner's counsel to be included on the service list is:

Name: John W. Corbett
Company: Yurok Tribe
Street Address: 190 Klamath Blvd.
City, State, Zip: Klamath, CA 95548
Email Address: JohnC@yuroktribe.nsn.us
Telephone: 707-482-1350 ext. 311

2b. Additional contacts to be included on the service list (a petitioner is limited to two contacts on the service list UNLESS waiving paper service):

Name:
Company:
Street Address:
City, State, Zip:
Email Address:
Telephone:

Name:
Company:
Street Address:
City, State, Zip:
Email Address:
Telephone:

Name:
Company:
Street Address:
City, State, Zip:
Email Address:
Telephone:

Additional contacts to be included on the service list are listed on an attached sheet.

3. If the petitioner is an organization, the number of members in and the purposes of the organization:

The Yurok Tribe is a federally recognized Tribe, Federal Registrar, February 16, 1995, (Volume 60, Number 32) having 5, 579 members located along the Klamath River. The Tribal headquarters, housing, schooling, police, court, watershed, fisheries, cultural, Yurok EPA offices are all located within the Pacific Power Service Area. The Yurok Tribal membership depend on Klamath River Fish for their livelihood, culture and way of life. Traditional Indian traditions and the Yurok language are still spoken today. The reservation boundary is one mile on each side of the Klamath River. The Tribal members have a reduction in salmon fisheries since the dams were installed. The Yurok Tribe catches more Klamath River fish than any other Tribe within the Klamath River Basin. See also attached Exhibit 1.

List of Members attached

4.. The nature and extent of the Petitioner's interest in the proceeding is:

The Tribe has been a participant in prior Utility Commission proceedings regarding PacifiCorp, the PacifiCorp FERC process, the PacifiCorp EPACT Administrative Hearings, and is a party to the Klamath Hydroelectric Settlement Agreement ("KHSA") and the Klamath Basin Restoration Agreement, ("KBRA"). The KHSA establishes a process for the potential removal of facilities at PacifiCorp's Klamath Hydroelectric Project ("Project"). Facilities removal is the purpose of the surcharge that is the subject to this proceeding. The KHSA also requires PacifiCorp to perform certain interim measures up to the time of facilities removal.

As a party to the KHSA, the Yurok Tribe has committed to support the surcharge to the extent it is consistent with the KHSA and KBRA.

The Tribe is a major paying customer of PacifiCorp and is therefore greatly interested in rate proceedings of PacifiCorp. Economic analysis is critical to understanding the affect on rates and on fish. See also attached Exhibit 1.

5. The issues the Petitioner intends to raise at the proceeding are:

Petitioner intends to support the surcharge as being fair, just, and reasonable, and necessary to successful implementation in the public interest of the KHSA and KBRA. Petitioner intends to support as a rate payer an even year surcharge approach and intends to comment on the PacifiCorp economic analysis and the fairness or not of the same. Petitioner has extensive scientific knowledge of the Klamath River and Klamath River Fish, Yurok cultural matters, and Yurok Fishing subsistence fishing and is available to clarify or supplement the record with these special interests and expertise as required.

6. The special knowledge or expertise of the Petitioner that would assist the Commission in resolving the issues in the proceeding is:

Petitioner asserts special scientific knowledge of the Klamath River and Klamath River Fisheries, the scientific basis of dam removal, and the affect of PacifiCorp utility rates directly on the Yurok Tribe and Tribal members living within the service area of PacifiCorp. The Yurok Tribe has an extensive experienced scientific fisheries, water quality, watershed restoration and legal staff trained an active on an ongoing basis in Klamath River issues. See attachment 1 for additional details. The Yurok Tribe maintained a multidiscipline team of five persons at all times during the negotiations of the KBRA and KHSA, prior and present FERC proceedings and the FERC EPACT administrative law hearings

7. Based on the information provided above in accordance with the Commission's rules of procedure, I request to participate in this proceeding as an intervenor. I or the organization that I represent will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding. OAR 860-012-0001.

 [5]
Petitioner or Petitioner's Representative

3-31-10
Date Signed

Exhibit 1

STANDING

The Yurok People Have a Stake in the Outcome of the 401 Process Because of their Dependence on the Klamath Fishery for Survival

The Yurok Tribe is a major customer of PacifiCorp with an estimated cost of power over \$200,000 per year. Many of the 5,559 Yurok members live within PacifiCorp service area and purchase electricity from the company.

The Klamath River Basin is home to the largest population of Native Tribes in California. With 5,500 registered members the Yurok Tribe is the largest federally recognized Tribe in California.¹ The ancestral territory of the Yurok Tribe was centered on the Klamath and Trinity Rivers. Today, the Yurok Reservation extends for a mile on each side of the Klamath River from the Pacific Ocean to just upstream of the confluence of the Klamath and Trinity Rivers; approximately 45 miles. The Yurok people have depended on the Klamath River for its fisheries, cultural rites and traditions since time immemorial.²

In 1996, the U.S. Supreme Court denied cert. of the Ninth Circuit decision *Parravano v. Masten*, which articulated that for “generations, the Yurok Tribe has depended on the Klamath Chinook salmon for their food and economic livelihood.”³

The Yurok people are totally reliant on the health of the Klamath River and the salmon fishery for survival. Historically the Yurok Tribe has been allocated approximately 80% of the fall Chinook in the Klamath River Indian Fishery. Out of this conservation-dictated harvest the Yurok Tribe has traditionally harvested approximately 89% of the Salmon in the Klamath River Indian Fishery.

The Klamath River flows for 45 miles directly through the heart of the Yurok Reservation and is considered by the Tribe to be the lifeblood of the people. As stated in the Yurok Tribal Constitution: “The Yurok people have always lived on this land on the Klamath River. The Yurok bless the deep River and pray for the health of all the animals and prudently harvest and manage the great salmon runs. The Tribe never wastes and uses every bit of salmon, sturgeon, and eels that the River provides. The Klamath River was and remains the people’s highway.” Therefore, the Tribe must act accordingly and consistent with its goal of protecting tribal cultural and trust resources, which includes, but is not limited to the protection of a healthy salmon fishery.

Trust Statement -Yurok Tribe Have Federally Protected Rights to a Healthy Fishery

State and federal entities are required by various federal environmental laws and policies to consult and confer and maintain a government-to-government relationship with Tribal

¹ 65 Federal Reg. 13298, March 13, 2000.

² *Kandra v. United States*, 145 F.Supp.2d 1192, 1200 (D.Ore.2001).

³ *Parravano v. Masten*, 70 F.3d 539, 545-46 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996), 116 S.Ct. 2546 (1996).

Exhibit 1

governments.⁴ The Yurok Tribe and other Tribal groups depend on the Tribal Trust species and seasonal races of the Klamath River for subsistence fishing purposes. The trust species include, but are not limited to: Coho Salmon, Chinook Salmon, Steelhead, Lamprey Eel, Sturgeon, and Eulachon. Harvestable quantities of Trust species and seasonal races must be maintained to sustain subsistence and commercial fisheries of the Yurok Tribe. The well settled law for federal allocation of the salmon fishery to the Klamath Basin Tribes is 50% of the total available harvest.⁵ This right includes fishing for subsistence, commercial and cultural purposes. Sufficient habitat and suitable water quality is necessary to provide numbers of Tribal trust species and races adequate to support the dietary and subsistence fishing needs of the Klamath Basin Tribal members.

The fishing rights of the Yurok Tribe are well-established as a matter of federal law. The Yurok Reservation was created pursuant to an 1855 Act of Congress and is within the Tribe's aboriginal homeland with its purpose primarily to provide a territory in which the Tribe's fishing-based culture and way of life could thrive. This fact has been recognized repeatedly since the Reservation was established, by the Department of the Interior, the United States Supreme Court, the lower federal courts and the California Courts. U.S. Supreme Court Justice Blackmun observed the original Klamath River Reservation, the precursor to the Yurok Reservation was "abounded in salmon and other fish . . . [a]nd was in all ways ideally suited for the Yuroks."⁶

In 1973, in *Mattz v. Arnett* the U.S. Supreme Court confirmed that the Tribe's Klamath River fishery was "not much less necessary to the existence of Indians than the atmosphere they breathed."⁷

Recently the Supreme Court denied cert., in *Klamath Water Users Protective Association v. Patterson*, the court ruled that the Bureau of Reclamation (BOR) must operate the Klamath Irrigation Project in Oregon in a manner to satisfy the Yurok Tribe's senior water rights, which take precedence over any asserted water rights of the Project Irrigators who have water delivery contracts with the BOR.⁸

Because the Reservation was created in order to secure the Yuroks' fishing opportunities, the right of the Yurok Tribe to take fish on the Klamath River is protected and guaranteed by federal law. The Ninth Circuit Court of Appeals has confirmed recently that the executive orders that created the Yurok Reservation vested the Yurok Tribe with "federally reserved fishing rights."⁹

⁴ Exec. Order No. 13,175-Consultation and Coordination with Indian Tribal Governments (2000).

⁵ See Letter from Eddie F. Brown, Assistant Secretary of Indian Affairs, Department of the Interior to Barbara Hackman Franklin, Secretary of Commerce, 1-3 (May 19, 1992); See also 1993 Interior Solicitor's Opinion No. M-36979, at 27. See also Magnuson Act 16 U.S.C. § 1851 (delegated to the Secretary of Commerce the authority to set harvest levels in ocean fisheries between the states of Washington, Oregon and California and the Indian Tribes).

⁶ *Mattz* at 487.

⁷ *Mattz v. Arnett*, 633 F.2d 906, 909 (9th Cir. 1981), 412 U.S. 481 (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)).

⁸ *Klamath Water Users Protective Association v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 1999), cert. denied, 531 U.S. 812, 121 S.Ct. 44, (2000).

⁹ *Parravano v. Masten*, 70 F.3d 539, 541 (9th Cir. 1996), cert. denied, 518 U.S. 1016, (1996).

Exhibit 1

The Yurok Tribe has been a major protector of the Klamath River and the River would be in much worse condition if not for our presence.

Cultural Beneficial Uses

The North Coast Regional Water Quality Control Board designated Native American fishing and subsistence fishing as a Beneficial Use of the Klamath River.¹⁰ This Beneficial Use designation was approved unanimously by both the Regional and State Boards, was approved by the AOL and became effective with the approval of the U.S. Environmental Protection Agency, (EPA) on March 4, 2005. Similarly, the California Fish and Game Code recognizes Klamath Tribes' fishing rights and subsistence fishing.¹¹ This cultural use of the River 365 days of the year is symbolized by the Yurok Tribe's world renewal and many other cultural ceremonies. The Yurok Tribe has linked the decline in the fishery, to a loss of almost 90% of pre-dam conditions, which has caused a severe decline in the overall health of the tribal population.¹²

The Yurok Tribal Government makes it a Priority to Protect the Klamath River Fishery

The Yurok Tribe's Fisheries Department is acknowledged to be the most knowledgeable and experienced team of fish biologists on the Klamath and Trinity Rivers. The Tribe devotes a large share of its budget to fishery management and regulation including approximately 70 staff members to fishery and water quality issues. The Tribal EPA Department has eight professionally trained employees and seven technicians working full time on natural resources issues and also employs two staff members with a Masters Degree and one with a PhD. The Fisheries Department has 16 Biologists and 20 to 50 technicians depending on the season and time of year, working on fishing and water quality matters. Their work includes preparing scientific testimony, gathering in-river water quality data, and conducting various fishery studies. The Tribal Fisheries Department also employs three Masters' degrees and one pending Ph.D. (See Exhibit A Flow Chart of Yurok Tribal Fisheries). The Watershed Restoration Department

¹⁰ See pgs. 2-3.00 North Coast Regional Water Quality Control Board's Water Quality Control Plan for the North Coast Region, January 2007, Klamath River. Native American Culture (CUL) "uses of water that support the cultural and/or traditional rights of the indigenous people such as subsistence fishing and shellfish gathering . . . navigation to traditional ceremonial locations, and ceremonial uses . . . Subsistence Fishing (FISH) uses of water that support subsistence fishing."

¹¹ See CAL. FISH & GAME CODE § 16530 stating "The director may enter into a mutual agreement or compact . . . [w]ith the Yurok Tribe, or the Bureau of Indian Affairs acting as trustee for the Yurok Indians, regarding the taking of fish from the Klamath River within the exterior boundaries of the Yurok Reservation." See also § 16532 stating "the compact or agreement may include provisions for commercial sales of salmon allocated to qualified Indian members of the Klamath River Indian Tribes and that the salmon may be taken by traditional Indian methods, including, but not limited to, use of gill nets, if the agreement or compact includes provisions for all of the following: (a) Separating the salmon taken for commercial purposes from the salmon taken for subsistence use, which may include tagging or marking of the salmon to be sold; See also CAL. FISH & GAME CODE § 1615 providing for "ceremonial or religious purposes" by Klamath River Tribes; See also CAL. FISH & GAME CODE § 7155 which states "Notwithstanding any other provision of this code, California Indians who are bona fide registered members of the Yurok Indian Tribe may take fish, for subsistence purposes only, from the Klamath River."

¹² The Effects of Altered Diet on the Health of the Karuk People: A Preliminary Report Kari Marie Norgaard, Ph.D. (August 2004); Healthy River, Health Fish, Healthy People, Yurok Survey (2007).

Exhibit 1

has four full time employees and 12 part time employees working on watershed restoration projects. In total the Tribe employs approximately 70 Tribal employees who devote 100% of their time to Fisheries, Water Quality, Watershed, and Natural Resources on the Klamath River.

The Office of Tribal Attorney legal department has two attorneys, a law clerk, a paralegal and a legal secretary who work on fishery and water quality issues. Cross deputized Tribal officers, who enforce tribal as well as state law, spend approximately 60% of their time (equivalent to five full time positions) patrolling the River and enforcing fishing regulations. The Yurok Tribal judge, who is also a sitting California Superior Court Judge, for the County of San Francisco, and the Yurok Tribal Prosecutor, spend over 70% of their time on fishing and environmental cases. The Tribe further supports these efforts with a full time Natural Resources Policy Analyst. In addition, the Tribe also employs one Doctor of Philosophy; one additional Masters' of Laws in Water Quality; a former federal Magistrate Judge; and a former Coastal Commissioner. The Tribe has two outside law firms, Alexander, Berkey, Williams & Weathers LLP¹³ and Hogan and Hartson¹⁴ working on fisheries and natural resources issues for the Tribe. One of these lawyers includes a former California Resources Agency Secretary. In addition, the Tribe has 706 registered commercial fisherman and approximately 5,000 subsistence fishing members.

The Yurok Tribe has conducted and participated in numerous scientific studies related to habitat, fish regulation and instream flow needs.

In summary, the Yurok Tribe devotes significant resources and has a sophisticated professional team that protects water quality within the 56,061 acres of tribal reservation land along the Klamath River, as well as the entire Klamath-Trinity Basin.

¹³ A Bar area firm specializing in Indian law and Water Rights. Alexander, Berkey, Williams & Weathers LLP, 2030 Addison Street, Suite 410 Berkeley CA 94704 (510) 548-7070.

¹⁴ Hogan & Hartson is an 100 international law firm headquartered in Washington D.C. 555 Thirteenth St., N.W. Washington D.C. 20004 (202) 637-5600.