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For Release Immediately

March 8, 2018

Water Users Motion Says Injunction Not Needed

Klamath Falls, OR – Yesterday, Water Users in the Klamath Project have asked a federal court in San Francisco to modify an injunction issued last year. The injunction, issued in cases brought by the Hoopa Valley and Yurok Tribes and environmental groups is in effect until federal agencies complete a new Endangered Species Act “consultation” process, which is not expected until after the 2019 irrigation season. The motion, filed jointly by Klamath Water Users Association, Sunnyside Irrigation District, Klamath Irrigation District, Klamath Drainage District, and Tulelake farmer Ben Duval, who intervened in the cases, says the injunction was not necessary at all, but at very least should not apply in 2018. The water users filed the motion to avoid unnecessary harm to irrigators in what is already expected to be a water-short year.

“We’ve always doubted the scientific basis for any injunction,” said KID and KWUA board member Jerry Enman. “But the more we learn, the more we realize just how speculative the case was.” The injunction was issued in the winter of 2017 by Judge David Orrick, and requires increased pulse flows above Endangered Species Act (ESA) biological opinion requirements. One type of flow is intended to dislodge aquatic worms that produce a natural salmon parasite that can cause disease; another requirement is to reserve 50,000 acre-feet of water to dilute spores of the parasite if various triggers are met in spring.

KWUA President Brad Kirby explained that “Even last year when it was wet, we almost weren’t able to start irrigation on time because of the possibility a dilution flow might be required, and letting that water out of Klamath Lake would end up affecting ESA requirements for suckers. This year that situation is much worse, and the reserve for dilution can hurt us even if it doesn’t have to be used.”

The paper filed by the water users say that extreme high flows last year flushed out the lower river, and even if conditions for infection arise, juvenile fish will have migrated out before there are any potential problem.

The injunction is also under appeal in the ninth circuit court of appeals. Reagan Desmond, attorney for Klamath Drainage District, explained that parties can go back to the original court for modification of an injunction. “Nothing’s easy, but we have put forward a solid case for relief,” according to Desmond.

A hearing on the motion is scheduled for April 11.

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11
 12 UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

16 HOOPA VALLEY TRIBE,
 17 Plaintiff,
 18 v.
 19 U.S. BUREAU OF RECLAMATION,
 20 and
 21 NATIONAL MARINE FISHERIES SERVICE,
 22 Defendants.

23 KLAMATH WATER USERS ASSOCIATION,
 SUNNYSIDE IRRIGATION DISTRICT, and
 24 BEN DUVAL,

25 Defendant-Intervenors.
 26 KLAMATH DRAINAGE DISTRICT,

27 Defendant-Intervenor.
 28 KLAMATH IRRIGATION DISTRICT and PINE
 GROVE IRRIGATION DISTRICT,

Defendant-Intervenors.

Case No. 3:16-CV-04294-WHO
 (Related Case No. 3:16-CV-06863-WHO)

Honorable William H. Orrick

DEFENDANT-INTERVENORS
 KLAMATH WATER USERS
 ASSOCIATION, SUNNYSIDE
 IRRIGATION DISTRICT, BEN DUVALL
 KLAMATH DRAINAGE DISTRICT,
 KLAMATH IRRIGATION DISTRICT,
 AND PINE GROVE IRRIGATION
 DISTRICT'S NOTICE OF MOTION AND
 MOTION FOR RELIEF FROM
 JUDGMENT AND/OR STAY OF
 ENFORCEMENT

Honorable William H. Orrick
 Hearing Date: April 11, 2018
 Hearing Time: 2:00 p.m.
 Courtroom 2, 17th Floor

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NOTICE OF MOTION

Pursuant to Rules 60 and 62 of the Federal Rules of Civil Procedure, as well as this Court’s March 24, 2017 Order Modifying the February 8, 2017 Injunction (Order, Dkt. #111), please take notice that Defendant-Intervenors KLAMATH WATER USERS ASSOCIATION, SUNNYSIDE IRRIGATION DISTRICT, BEN DuVAL, KLAMATH DRAINAGE DISTRICT, KLAMATH IRRIGATION DISTRICT, and PINE GROVE IRRIGATION DISTRICT (collectively, “Intervenors”) will move this Court for relief from the March 24, 2017 Order and/or a stay of its enforcement, as follows: for the 2018 water year, Defendant U.S. Bureau of Reclamation (Reclamation) is not required to operate the Klamath Project to implement: (a) winter-spring flushing flows modeled on Guidance Measure 1, or (b) emergency dilution flows modeled on Guidance Measure 4.

Intervenors respectfully request the most expeditious resolution of the Motion that is possible, due to exigent circumstances identified below and in the declarations supporting the Motion.

For the information of the Court and parties, an identical motion is being filed in the related case, concurrently with this Motion. The motion, points and authorities, and supporting declarations are identical in the two cases, save only for differences in the captions and certain case-specific citations.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 24, 2017, this Court issued a permanent injunction (Order) based on a “guidance” document (Guidance Measures) unilaterally drafted by employees and consultants of Plaintiffs in the related actions. The Guidance Measures document was completed (including changes from the draft) only the day before Plaintiffs filed reply briefs in support of their motions for summary judgment and injunction. The Order requires augmentation of water flows in the Klamath River below Iron Gate Dam in amounts and at times well beyond those that had been determined by the National Marine Fisheries Service (NMFS) to be sufficient for the protection of Southern Oregon-Northern California Coho salmon (Coho). The Judgment is on appeal, but remains in effect until

1 Defendants have completed a burdensome process for reinitiated consultation under Section 7 of the
2 Endangered Species Act (ESA), 16 U.S.C. § 1536, that also involves endangered sucker species
3 inhabiting Upper Klamath Lake.

4 Despite disputed issues of fact or opinion concerning the need for, and efficacy of, the
5 Guidance Measures to prevent irreparable harm to Plaintiffs, no evidentiary hearing was conducted
6 to weigh the evidence concerning these issues. In fact, the Guidance Measures remain disputed by
7 all non-Plaintiff parties. Further, new evidence establishes that, at a minimum, the Guidance
8 Measures specified in the Order are unnecessary for the 2018 water year. Post-Order events
9 establish that: conditions conducive to infection of salmonids by *Ceratanova Shasta* (*C. Shasta*) do
10 not exist in 2018; *C. shasta* infection is an entirely unreliable indicator of effects to the species; and
11 even if conditions conducive to *C. shasta* infection arise in 2018, they will not exist until after the
12 vast majority of salmon, especially Coho, have emigrated. Further, the implementation of Guidance
13 Measures in this limited water-availability year is likely to increase, not decrease, the occurrence of
14 infection. In 2017, there were extremely favorable conditions in the Klamath River, including
15 abundant inflow from both the upper watershed and tributaries down the river's entire length. The
16 basin-wide force resulted in a changed river, and conditions improved so fundamentally that
17 application of the Order is unnecessary for at least the 2018 water year.

18 The current water year has been significantly drier, with low rainfall and snowpack well
19 below normal levels. Even without application of the Order, water availability for the farms and
20 ranches served by the Klamath Project will be limited to levels significantly below requirements. In
21 these circumstances, rural communities are forced to pull together, stretching water resources as far
22 as possible in an effort to survive to the next year. However, application of the Order to this water
23 year would create drastically inequitable and unworkable conditions for Intervenor because, due to
24 timing requirements, no water at all will be available to farms and ranches until it is too late. Unless
25 modified or stayed, the Order will render agriculture in the Klamath Project area to be nonviable,
26 eliminating the sole source of income for family farms that are the backbone of economic and socio-
27 economic activity in the Klamath Project area. It will bankrupt family farms, destroy the benefits
28 diligent producers have earned through performance of contracts with processors, wipe out the value

1 of real estate, require uprooting of children from their schools, and send economic and psychological
 2 shockwaves throughout every sector that has been dependent on agriculture in the Klamath Project
 3 for over a century. In addition, wildlife and their habitats on ranches and in national wildlife refuges
 4 will suffer from the absence of food, cover, and water that has long been provided, as well as weed
 5 infestation and wind erosion that can be abated only by Intervenor as stewards of land in
 6 production.

7 Grave impacts of these types occurred in 2001. In that year, Klamath Project farmers and
 8 ranchers were denied water under the auspices of the ESA, based on then-current hypotheses that
 9 were later found, by no less authority than the National Academy of Sciences¹, to be unsupported
 10 and unscientific. The Court must not allow history to repeat itself in the face of new evidence
 11 contradicting Plaintiffs' unsupported and unscientific hypotheses. This Court can avert disaster
 12 before it is too late by granting this Motion.

13 II. STATEMENT OF ISSUES

14 A. Whether extremely favorable water and river conditions in 2017 that drive conditions
 15 in 2018, and other new information not available at the time of the Order, render the application of
 16 the Order to water year 2018 unnecessary.

17 B. Whether application of the Order would be inequitable for the 2018 water year.

18 C. Whether the Order should be stayed pending adjudication of this Motion and/or
 19 pending the outcome of the appeal of the Judgment before the United States Court of Appeals for the
 20 Ninth Circuit.

21 III. STATEMENT OF FACTS

22 A. Procedural Background

23 As required by Section 7(b)(4) of the ESA, the non-jeopardy 2013 Biological Opinion
 24 (BiOp) for Coho issued by NMFS to Reclamation for operation of the Klamath Project included an
 25 incidental take statement (ITS). 16 U.S.C. § 1536(b)(4). The ITS does not relate to Coho, but uses a
 26

27 ¹ See "Endangered and Threatened Species in the Klamath River Basin; Causes of Decline and
 28 Strategies for Recovery." Committee on Endangered and Threatened Fishes in the Klamath River
 Basin, Board on Environmental Studies and Toxicology, Division on Earth and Life Studies.
National Research Council of the National Academies (2004).

1 metric for a different species, Chinook salmon, as a surrogate. Based on then-recent and limited
2 historical data, NMFS stated its expectation that “up to . . . 49 percent . . . of the total annual
3 Chinook salmon juveniles in the mainstem Klamath River between the Shasta River and the Trinity
4 River may be infected with *C. shasta* during the months of May to July.” Reclamation Excerpts of
5 the Administrative Record (AR) AR1057 (Table 13.6). *C. shasta* is a waterborne pathogen excreted
6 by microscopic worms (polychaetes). Infection with *C. shasta* spores can lead to development of
7 clinical signs of disease, which can lead to fish mortality, but infection does not equate to disease or
8 mortality. Declaration of Steven Cramer in Support of Defendant-Intervenors’ Motion for Relief
9 from Judgment and/or Stay of Enforcement (Cramer Decl.), ¶¶ 16-18. The stretch of the Klamath
10 River referenced by NMFS in the ITS is between 70 and 200 miles downstream of the Klamath
11 Project. The river increases greatly in volume below Iron Gate by the inflow of tributaries.
12 AR1311, 1314. It is influenced not only by the multitude of tributaries, but also other activities that
13 have nothing to do with the Klamath Project. *Id.*

14 To aid Plaintiffs’ understanding of the fact that “Prevalence of Infection” (POI) of the
15 surrogate Chinook salmon in 2014 and 2015 was higher than that stated in the ITS for the months of
16 May to July, in September of 2016, United States Fish and Wildlife Service (USFWS) scientists
17 prepared four technical memoranda summarizing what is known about *C. shasta*. AR344. Plaintiffs
18 then prepared a draft document titled “Measures to Reduce *Ceratanova shasta* Infections of Klamath
19 River Salmonids: A Guidance Document” (Draft Guidance Document). AR231. The final
20 Guidance Document was not completed until the day before filing Plaintiffs’ reply briefs in support
21 of their motions for summary judgment. Dkt. #96-4.

22 After filing their Complaint on November 29, 2016, the Yurok Plaintiffs filed their Motion
23 for Summary Judgment and Injunction the very next day, with the Plaintiff Hoopa Valley filing its
24 own Motion for Summary Judgment on December 1, 2016 (MSJs). The MSJs addressed only the
25 first causes in Plaintiffs’ Complaints, which alleged a failure to reinitiate consultation under
26 Section 7 of the ESA. The injunctive relief requested for this violation was a permanent injunction
27 requiring the implementation of Guidance Measures 1, 2, and 4 of the Draft Guidance Document.
28 The final Guidance Document, which included substantial changes in Measures 2 and 4, greatly

1 increasing their consequences for the Klamath Project, was issued on January 17, 2017, and filed
2 with Plaintiffs' replies the next day. Dkt. ##96, 96-4.

3 The Court granted Plaintiffs' MSJs in its February 8, 2017 Order, directing that an injunction
4 would be issued based on Guidance Measures 1, 2, and 4 from the final Guidance Document. *See*
5 February 8, 2017 Order (Dkt. #102). The February 8, 2017 Order was thereafter modified by the
6 March 24, 2017 Order. At paragraph 16 of the Order, the Court subjected the terms of its Order to
7 "Adaptive Management" until the completion of formal consultation between Reclamation and
8 NMFS. The adaptive management provision requires the parties to collaboratively identify and
9 discuss reliable, newly-identified information that may relate to provisions of the Order and
10 achieving the fish disease management purposes of the Order. While the parties were instructed to
11 jointly submit an amended flow plan to the Court for approval when consensus can be reached,
12 paragraph 17 allows intervention from the Court if the parties have met and conferred in a good faith
13 attempt to resolve disputes. The parties met and conferred in such a good faith attempt to resolve
14 Intervenor's concerns regarding the application of the Order to water year 2018. Plaintiffs did not
15 agree to compromise the water demands that the Order will place on the Klamath Project in 2018.

16 The applicable Guidance Measures for 2018 are numbers 1 and 4, as Guidance Measure 2
17 applies only in every other year starting in 2017. Order ¶ 7. Guidance Measure 1 requires flushing
18 flows during the winter period of at least 6,030 cubic feet per second (cfs) for 72 hours. Guidance
19 Measure 4 requires Reclamation to identify a reserve of 50,000 acre-feet of water in the early spring,
20 which is to be provided below Iron Gate Dam, as water over and above BiOp compliance
21 requirements. Water up to the 50,000 acre-feet reserve amount must be provided if one of two
22 triggers are met. Order ¶ 14. As with Guidance Measure 2, the final Guidance Measure 4 is more
23 stringent and more damaging to the Klamath Project than the draft Guidance Measure 4 that had
24 originally been before the Court.² The Order requires that providing additional flows below Iron
25
26

27 _____
28 ² The final Guidance Measure 2 expanded the period of deep flushing flows from 6 hours to
24 hours, and the final Guidance Measure 4 removed the temperature component from the 20%
POI trigger. *Compare* AR240-241 to Dkt. #96-4, 12-13.

1 Gate Dam not interfere with ESA requirements related to endangered suckers in Upper Klamath
2 Lake. Order ¶ 3.

3 **B. The Guidance Measures Adopted by the Order are Premised on Unrealistic POI Rates**

4 Hypothesizing that drastic measures were necessary to protect Coho, Plaintiffs' MSJs relied
5 heavily on a single quantitative polymerase chain reaction (QPCR) metric for *C. shasta* (POI) rates.
6 The metric is particularly narrow in terms of its sampling timing, yet overly-inclusive in terms of the
7 test's sensitivity to positive spore counts. The Yurok Plaintiffs emphasized that, "[t]he 81% and
8 91% *C. shasta* disease [sic] rates for 2014 and 2015, respectively, exceeded the 49% limit in the ITS
9 by a large margin." Yurok MSJ Reply (Dkt. #54), 2:2-3. They asserted that these QPCR rates
10 caused irreparable harm to Coho. *Id.* 6:8-9. Citing to these same QPCR figures for 2014 and 2015,
11 Chairman of the Hoopa Valley Tribal Council stated in his declaration to this Court that, "[t]his
12 means that nearly all of the outmigrating juvenile fish in those two years were harmed or killed by
13 disease." Declaration of Ryan Jackson in Support of Hoopa MSJ (Dkt. #96-1), ¶ 17.

14 This is a gross misstatement of reality because: (1) the QPCR figures do not include
15 anywhere near *all* 2014 and 2015 outmigrating juvenile fish, but rather only those sampled at select
16 locations during the months of May through July, and (2) of those fish sampled during those months,
17 a fish is considered positive for infection when only a single spore is identified, rather than any
18 manifestation of the disease, let alone mortality.

19 First, as a matter of undisputable fact, the QPCR figures do not include the totality of
20 migrating fish, and the POI numbers are biased high; in fact, very high. In an email dated
21 February 14, 2018, Dr. Nicholas Som, an expert on *C. shasta* for USFWS and co-author of the
22 Technical Memoranda upon which Plaintiffs purported to rely in their Guidance Measures,
23 explained the misuse of his work by some parties as follows:

24 The weekly fish health monitoring has been a tremendous resource for improving
25 our understanding of *C. Shasta* dynamics in the Klamath, and for providing near
26 real-time measures of disease impacts to fish. **However, several years ago people
27 noticed that if the outmigration timing of juvenile fish didn't overlap well with
28 the weekly disease progression, the disease monitoring alone might not be a
good measure of disease impacts to fish populations.**

1 In 2016 I conducted an analysis to investigate this issue, and the findings are
2 summarized in this independently peer-reviewed technical memo available on our
3 webpage [I]t is also important to note that, conversationally, sometimes
4 people alternate between the terms “infection” and “mortality”, even though the
5 correct term (as it relates to weekly prevalence of infection sampling and my
6 associated population analysis) is “infection.” As you can see from Figure 5 of the
7 technical memo, **in 2014 the majority of the juvenile Chinook Salmon
8 population was indeed estimated to outmigrate prior to the increases in weekly
9 prevalence of infection estimates.** In that year, annual summaries of the weekly
10 prevalence of infection estimates (as reported in the USFWS California-Nevada
11 Fish Health Center reports) average out to 67% (Table 1 of the tech memo).
12 **However, in my analysis that took outmigration timing into account, I**
13 **estimated that only 18% (95% confidence interval: 12% - 26%) (also found in**
14 **Table 1 of the tech memo) of the population became infected with C. shasta.**
15 **You can see that accounting for the outmigration timing of the population can**
16 **lead to drastically different estimates of impact to the populations.**

17 Kirby Decl., ¶ 29, Ex. D (emphasis added).

18 Fisheries biologist Mark Johnson explains this issue further:

19 The POI is determined by dividing the number of fish that return a positive result by
20 the total number sampled. However, this does not take into account the total
21 number of fish that pass the sampling location during the week that the tests are
22 taken. More importantly, **it does not account for the fact that the vast majority
23 of fish pass the sampling location earlier in the year when POI is low. The
24 historical sampling period, from May through July, is later in the season, when
25 POI is usually higher, which biases the numbers to reflect a higher POI and
26 additionally omits the non-infected portion of the population that migrated
27 prior to the historical sampling period.** For example, if during week 15 of the
28 year, ten thousand and thirty juvenile Chinook pass Kinsman, 20 are sampled and
one shows infection, then during week 20, 30 fish pass Kinsman, 20 are sampled,
and 14 show infection, **the total number of infected fish is 15 out of 10,060, or
0.15%. But under the POI calculation method, 15 are infected out of
40 sampled, which is 37.5% POI (250 times greater than the percentage of fish
infected).**

29 Declaration of Mark Johnson in Support of Defendant-Intervenors’ Motion for Relief from
30 Judgment and/or Stay of Enforcement (Johnson Decl.), ¶ 2.

31 Mr. Johnson then uses the exact same data that are relied upon in generating a “POI” to
32 determine what percentage of fish (not *sampled* fish) were infected in the historically high infection
33 zone, the “hot spot” described by Plaintiffs as being most subject to influence by Klamath Project
34 operations. Johnson Decl., ¶ 4. This straightforward analysis shows that **the percentage of fish
35 infected in 2014 and 2015 was not even the highest-on record.**

Year	Total Fish	Total Infected	Percent Infected
2005	844844	321041	38%
2007	923980	92398	10%
2008	3792857	1934357	51%
2009	1071320	621366	58%
2010	2120883	84835	4%
2011	823386	90572	11%
2012	308262	24661	8%
2013	7722028	463322	6%
2014	5271066	948792	18%
2015	3587638	1040415	29%
2016	3020487	66792	2%

Table 1. Annual abundance, total infected, and percent infected of natural origin juvenile Chinook salmon in the K4 Reach of the Klamath River. Please note that there are no data for 2006 due to high volume flows and a reduced trapping window, and that 2016 is a partial sample due to Kinsman Trap not operating until calendar week 15.

Johnson Decl., ¶ 4. What is more, the “Percent Infected” numbers in the above table are likely biased high, because the “total fish” estimates do not begin until significant numbers of salmon have already emigrated, during the early season when the possibility of infection is at its very lowest. *Id.* ¶ 7.

Second, it is also indisputable that positive QPCR *C. shasta* “infection” of a fish does not equate to a “diseased” fish and, even in the instances when a fish develops the disease, the disease itself does not necessarily lead to “mortality.” Steven Cramer’s review of 2017 conditions and incidences of infection confirm that POI as determined by QPCR alone is an unreliable metric when evaluating the risk of disease and mortality to fish. Cramer Decl., ¶¶ 15-18. In spite of extremely low spore concentrations at all sampling locations in 2017, the QPCR metric for Chinook salmon reached 20% in mid-May. *Id.* In the face of this QPCR figure, however, there was an absence of clinical symptoms of disease to indicate that any fish were at risk of mortality. *Id.* It is critical to note, in fact, that only a small number of fish that were confirmed infected by *C. shasta* from QPCR testing ever develop symptoms of disease that could lead to mortality. *Id.* ¶ 14. Therefore, the figures presented to this Court in Plaintiffs’ MSJs grossly misstated actual disease impacts to Coho, because the QPCR metric used by Plaintiffs solely considers sampling from late in the migration season, during which likelihood of infection – and not disease or mortality – is always highest, and

1 fails to account for the outmigration timing of the majority of the Coho population or the reality that
2 infection and disease are not synonymous.

3 **C. Other New Evidence Since the Order Also Demonstrates that Application of the Order**
4 **to Water Year 2018 Is Unnecessary to Prevent Irreparable Harm to Plaintiffs**

5 The year 2017 saw exceptional runoff from wet-season precipitation and snowpack in the
6 Upper Klamath Basin and the Klamath Basin as a whole:

7 Beyond the high releases from Upper Klamath Lake that resulted from distribution
8 of the well above average EWA, there was very high inflow to the Klamath River
9 from all its tributaries creating high flow events of magnitudes, durations and
10 frequencies that are not commonly observed, and that have not occurred in over a
11 decade.

12 Kirby Decl., ¶ 25. In fact, conditions exceeding Guidance Measure 1 (maintaining flows of
13 6,030 cfs for 72 hours) occurred no less than *four times* in 2017. Kirby Decl., ¶ 27. And, despite
14 infrastructure limitations and flood risk that prevented Guidance Measure 2 from being fully met,
15 the Guidance Measure 2 flows were very nearly met on two separate occasions. *Id.* Klamath
16 Project irrigation demand was also met, even though there was nearly a delay in the time irrigation
17 could begin, even in the very wet year, due to the need to plan for implementation of Guidance
18 Measure 4. *Id.*

19 There have been several new reports analyzing fish abundance and disease prevalence in the
20 Klamath River. This new information confirms that the hypotheses supporting Guidance
21 Measures 1, 2, and 4 are scientifically unsound, and that it is very likely that infection of Coho will
22 be low in 2018, and not have any significant effect on overall populations or Coho returns. Cramer
23 Decl., ¶ 3. Based on the unique events witnessed in 2017, USFWS fish disease researchers
24 concluded that:

25 In summary, 2017 presented a unique fish health monitoring year because of low
26 adult returns, geomorphic flow events (“flushing flows”), and low numbers of
27 juvenile Chinook release from Iron Gate Hatchery in late May This resulted in
28 low *C. shasta* infection levels and no clinical disease observed in any of the fish
groups sampled in the Klamath basin during the out-migration period of March to
August In the Klamath Basin, 2017 represented a unique “natural experiment”
in the efficiency, and perhaps disruption, of the *C. shasta* parasite life cycle.

28 Cramer Decl., ¶ 19.

1 Additionally, Dr. Julie Alexander of the Oregon State University (OSU) Fish Disease Lab
2 conducted sentinel fish trials in September of 2017 where none of the Chinook salmon died and
3 *C. shasta* spore concentrations averaged 0.01 spores/liter over the three-day exposure period.
4 Cramer Decl., ¶ 6(c). The new studies from 2017 demonstrate that while *C. shasta* prevalence
5 was at an historic low, POI based on QPCR still reached 20% in mid-May in spite of all other
6 metrics remaining low, which undermines POI based on QPCR as a credible metric for measuring
7 *C. shasta* risk to fish. Cramer Decl., ¶ 16.

8 A quantitative epidemiological model created by Ray et al. (2015), and updated with data
9 from 2016 and 2017 by Dr. Alexander of OSU, demonstrates that disease prevalence in the fall,
10 multiplied by adult salmon abundance, has a strong legacy effect on *C. shasta* disease prevalence
11 the following spring. Cramer Decl., ¶ 8. Legacy effects analysis of the extremely low spore
12 concentration levels in the fall of 2017 show that 2018 spore concentrations will be low. Water
13 year 2017 flows were so high, in fact, that no *C. shasta* clinical disease was observed in any fish
14 groups sampled by USFWS in the Klamath Basin. Also, the prevalence of genotype II that infects
15 Coho was even lower than genotype I that infects Chinook, so any infection rates leading to
16 clinical disease should likewise be very low among emigrating juvenile Coho in 2018.

17 Further, even if conditions conducive to infection arise, emigration of fish will be early in
18 2018, due to its own hydrologic conditions. Cramer Decl., ¶ 22.

19 Researchers also have yielded significant findings from the comparison of the artificial
20 pulse flow of 2016 to natural 2017 flows that magnified the downstream flushing power. Cramer
21 Decl., ¶¶ 32-33. Whereas an artificial pulse flow in 2016 only shifted the infectious zone
22 downstream, the massive natural flows of 2017 flushed out the infectious zone from the river. *Id.*
23 This result confirmed that natural flushing flows of sufficient magnitude to flush out polychaetes
24 are impossible to duplicate artificially, and certainly cannot be created through any releases of
25 water at Link River Dam. *Id.* In fact, flows of insufficient magnitude may serve only to shift the
26 infectious zone downstream to a location where a greater proportion of Coho may be exposed. *Id.*
27 Thus, in the absence of pulses contributed by the tributaries during natural high-flow conditions,
28

1 flushing flows from Link River Dam may be counterproductive to the Order's intent to protect
2 Coho. *Id.*

3 New information further demonstrates that *C. shasta* is not the cause of poor salmon returns
4 in recent years. Salmon returns in 2015 primarily resulted from smolts that emigrated in 2012 and
5 2013, and the returns in 2017 resulted from smolts in 2014 and 2015. Cramer Decl., ¶ 29. Juvenile
6 Chinook that emigrated in 2012 and 2013 were among the lowest clinical symptoms (by histology)
7 of tissue damage observed, but returns in 2015 were down 67% from the previous year. *Id.* In
8 contrast, although 2014 and 2015 were two of the worst years for clinical symptoms, fall Chinook
9 in 2017 doubled the preseason prediction, and spawner counts increased by about one-third over
10 those in 2016. *Id.* The Stream Salmonid Simulator (S3) model developed by USFWS and the
11 United States Geological Survey (USGS) has shown that the actual infection of all migrants is
12 much lower than the POI index reported by QPCR, and has demonstrated quantitatively that the late
13 release of hatchery fish artificially increases the POI index. *Id.* ¶¶ 23-27. Finally, ocean conditions
14 have a much stronger influence on salmon abundance than conditions in the Klamath River, and
15 anomalous warm ocean conditions that have persisted since 2014 show indications of dissipating in
16 2018, which will lead to improved survival in 2018 and years beyond. Cramer Decl., ¶ 34.

17 **D. Application of the Order to Water Year 2018 Would Be Inequitable**

18 The Order presupposed that implementation of specified guidance measures in all years is
19 necessary to prevent irreparable harm to Plaintiffs. While the Intervenor respectfully disagree, at
20 minimum, application of the Order in 2018 both is unnecessary and would create dire
21 circumstances. Snowpack in the Klamath Basin is tracking below 50% of average, and less than
22 60% of average inflow is projected to reach Upper Klamath Lake between March and September
23 of 2018. Kirby Decl., ¶ 30. Even if the Order did not exist, the pre-existing ESA requirements
24 (which are not challenged here) will result in irrigation water availability far below the needs of
25 the irrigation water users in the Klamath Project. *Id.* This problem is magnified by the Order.
26 Current projections show that it will be impossible to meet either of Guidance Measures 1 or 4
27 naturally under BiOp operations. *Id.* The estimated volume of water to meet both Guidance
28 Measures in addition to BiOp operational flows potentially totals as much as 90,000 acre-feet. *Id.*

1 The potential shortage is worse still because the need to plan for the 50,000 acre-feet
2 reserve is delaying the time by which water will be available at all. At this time, there has been no
3 indication of a Klamath Project start date that would meet the practical needs of all irrigators and
4 all crop types. Kirby Decl., ¶ 30. The beginning of the spring-summer irrigation season per the
5 2013 BiOp has commenced as of March 1 and no Project diversion has been allowed. *Id.*
6 Farmers and ranchers have not been given reason to believe that diversion will be allowed even
7 before May. *Id.* If total restriction on diversions persist in this way, this can eliminate the ability
8 to plant certain key crops and will reduce the production of others – resulting in tens of thousands
9 of dry, unproductive acres of agricultural land within the Klamath Project that will have a
10 crippling effect on the economy of the Klamath Basin as well as great hardship to family farming
11 operations that will not survive this year. *Id.* In other words, harm will occur due to Guidance
12 Measure 4 even if the criteria that require its implementation are not actually triggered.

13 The Klamath Project is located in an area with an arid climate, cold winters, and a short
14 growing season. Declaration of Luke Robison in Support of Defendant-Intervenors’ Motion for
15 Relief from Judgment and/or Stay of Enforcement (Robison Decl.), ¶ 3. In order to produce food,
16 maintain farm employment, and maintain the viability of the community, irrigation water is
17 essential. *Id.* The timing of the delivery of irrigation water is very sensitive for growing of crops.
18 *Id.* In other words, the delivery of irrigation water early in the growing season is essential for seed
19 sprouting, growth, and plant survival. *Id.* Irrigation deliveries throughout Klamath Basin’s short
20 growing season is essential for sprouting and maturing crops. *Id.*

21 Klamath Project family farmers are presently making cropping decisions for 2018.
22 Robison Decl., ¶ 4. Investments must be made in advance of water deliveries, and include field
23 preparation, seed purchases, soil improvements, equipment, and employment of workers. *Id.* ¶ 5.
24 For example, Luke Robison’s pre-planting costs for his 140 acres (for which he has a prior rental
25 obligation) total \$2,080 per acre for his potato crops. *Id.* ¶ 7. On top of the rental obligation, his
26 fixed costs include machinery payments, insurance, living, and other expenses. *Id.* ¶ 9. This year
27 alone, his potential risk for this single crop is \$291,200 over and above his other fixed costs. *Id.*
28 ¶ 11. For farmers that are currently engaged in alfalfa crop rotation, as another example, revenue

1 loss for a 140-acre farm would be \$113,400 to \$157,500. *Id.* ¶ 14. Bryce Crawford, who grows
2 onions, expects to lose out on desperately needed returns for his 400 acres in the event that water
3 deliveries are not made or not timely made. Declaration of Bryce Crawford in Support of
4 Defendant-Intervenors' Motion for Relief from Judgment and/or Stay of Enforcement (Crawford
5 Decl.), ¶ 20. Other crops grown in the Klamath Basin include hay and grains, onions, mint,
6 strawberries, horseradish, peppermint, and numerous others, all of which would experience similar
7 losses. Kirby Decl., ¶ 16; Robison Decl., ¶¶ 16-17; Declaration of Jason Flowers in Support of
8 Defendant-Intervenors' Motion for Relief from Judgment and/or Stay of Enforcement (Flowers
9 Decl.), ¶ 6); Crawford Decl., ¶¶ 3, 6.

10 Shane Brollier, Business Manager for Organic Valley Cooperative's grain elevator,
11 receives organic grains from Klamath Project farmers and arranges for delivery to markets and
12 food buyers. Declaration of Shane Brollier in Support of Defendant-Intervenors' Motion for
13 Relief from Judgment and/or Stay of Enforcement (Brollier Decl.), ¶ 2. As his and other grain
14 elevators are only viable if in proximity to grain production, they will cease if untimely or
15 insufficient water deliveries eliminate the organic grains produced in the Project. *Id.* ¶¶ 8-9. This
16 would also put his and other employees' jobs at risk. *Id.*

17 Other ways in which farmers are being affected by water shortages include the inability to
18 obtain financing on the front-end and loss of valuable contracts on the back-end. Crawford Decl.,
19 ¶¶ 7-8. Consistency of water supply is a primary consideration of lenders, so interruptions
20 anticipated in the current water year will damage or destroy farm operations. *Id.* Further, farmers
21 will lose valuable contractual relationships if water shortages, or untimely availability of water,
22 prevent them from meeting deliveries on one to five-year term contracts. *Id.* Once a farmer
23 cannot perform on a delivery contract, the resulting uncertainty makes it unlikely that further
24 financing or contracts will be available in the future. *Id.*

25 Many farmers have already gone to great lengths to conserve water. Flowers Decl., ¶ 12.
26 Further loss of water during a dry season will result in loss of family farms, industry work forces,
27 and significant impacts to local vendors, schools, communities, and banks. Robison Decl., ¶ 18.

1 Anguish over the insecurity of water deliveries is already permeating the community. *Id.* ¶ 19;
2 Flowers Decl., ¶ 13.

3 IV. LEGAL STANDARDS

4 On motion and just terms, the Court may relieve a party from a final judgment or order based
5 on (a) “newly discovered evidence that, with reasonable diligence, could not have been discovered
6 in time to move for a new trial under Rule 59(b),” or (b) if “applying [the Order] prospectively is no
7 longer equitable.” Fed. R. Civ. P. 60(b)(2), (5). District courts have great latitude in making
8 Rule 60(b) rulings because that decision “is discretion piled on discretion.” *Bakery Machinery &*
9 *Fabrication, Inc. v. Traditional Baking, Inc.*, 570 F.3d 845, 848 (7th Cir. 2009).

10 Rule 60(b)(2) allows the Court to relieve a party from a judgment on the basis of newly
11 discovered evidence where the evidence was discovered after trial, the movant exercises due
12 diligence to discover the new evidence, the evidence is not merely cumulative or impeaching, the
13 evidence is material, and the evidence would probably produce a different result. *Feature Realty,*
14 *Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2003).

15 Rule 60(b)(5) allows the Court to relieve a party from a judgment where “applying it
16 prospectively is no longer equitable.” *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004). A
17 party must show that a significant change in facts or law warrants revision of the judgment, and the
18 proposed modification is “suitably tailored to the changed circumstance.” *United States v. Asarco*
19 *Inc.*, 430 F.3d 972, 979 (9th Cir. 2005).

20 Also, the Court may stay the execution of a judgment pending disposition of a Rule 60
21 motion for relief from judgment or while an appeal is pending. Fed R. Civ. P. 62(b)(4), (c). The
22 Court considers the following four factors to determine whether a stay should be granted:
23 (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits,
24 (2) whether the applicant will be irreparably injured absent a stay, (3) whether issuance of the stay
25 will substantially injure the other parties interested in the proceeding, and (4) where the public
26 interest lies. *Nken v. Holder*, 556 U.S. 418 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776
27 (1987)). The success on the merits factor cannot be rigidly applied, because if it were, an injunction
28 would seldom be granted “because the district court would have to conclude that it was probably

1 incorrect in its determination of the merits.” *Himebaugh v. Smith*, 476 F.Supp. 502, 510 (C.D. Cal.
 2 1978). An injunction is “frequently issued where the trial court is charting new and unexplored
 3 ground and the court determines that a novel interpretation of the law may succumb to appellate
 4 review.” *Stop H-3 Ass’n v. Volpe*, 353 F.Supp. 14, 16 (D. Haw. 1972). Rather, district courts
 5 properly “stay their own orders when they have ruled on an admittedly difficult legal question and
 6 when the equities of the case suggest that the status quo should be maintained.” *Washington*
 7 *Metropolitan Area Transit Community v. Holiday Tours*, 182 U.S.App.D.C. 220 (D.C. Cir. 1977).

8 V. LEGAL ANALYSIS

9 A. **New Information Including the Very Low Likelihood of High Infection or Disease 10 and the Timing of Out-Migration, Renders the Application of the Order to Water 11 Year 2018 Unnecessary**

12 The Order is based on the February 8, 2017 conclusion that applicable Guidance Measures
 13 were necessary to prevent irreparable harm to Plaintiffs and that Plaintiffs had satisfied the test for
 14 permanent injunction. While Intervenors respectfully disagree with the Court’s determinations of
 15 liability and remedy based on that record, there is compelling cause to reconsider the
 16 appropriateness of the Order in 2018. New reports and information from 2017 demonstrate that
 17 Guidance Measures 1, 2, and 4 were based on unsound scientific hypotheses, and are not necessary
 18 to protect Coho in 2018.

19 The 2017 water year saw a substantially unique combination of extremely high water flows,
 20 low fish abundance, low infection rates, and a total absence of clinical symptoms of disease, such
 21 that the legacy effect from 2017 will keep disease prevalence low in 2018. These unique conditions
 22 yielded several significant findings related to 2017: (1) the incidence of *C. shasta* clinical disease in
 23 Chinook salmon was at the lowest level it has been since disease sampling began, (2) *C. shasta*
 24 spore concentrations were the lowest observed through summer of any year since sampling began,
 25 (3) *C. shasta* spore concentrations remained low in the fall when Chinook spawner abundance was
 26 also low, (4) as fall spawning began, no Chinook died in the OSU sentinel fish testing. Cramer
 27 Decl., ¶ 6. In 2017, low exposure to *C. shasta* spores led to low disease, and low disease in the fall
 28 will lead to low production of *C. shasta* in the spring 2018. *Id.*

1 Also, analytical work on quantitative models has progressed significantly in 2017, which will
2 serve to more reliably predict actual mortality of Coho and Chinook salmon due to *C. shasta*.
3 Cramer Decl., ¶ 6. At present, the quantitative model of the *C. shasta* life cycle shows us that
4 disease prevalence in the fall, multiplied by adult salmon abundance, has a strong legacy effect on
5 disease prevalence in juvenile salmon the next spring. *Id.* ¶ 8. This legacy effect of low *C. shasta*
6 production on disease outcomes for the following year establishes that the 2017 water year will have
7 a strong effect on water year 2018, which is further illustrated by the sequence of effects from water
8 years 2010 to 2013. *Id.* The sequence of disease outcomes throughout this period demonstrates the
9 strong influence of *C. shasta* spore production in the fall on outcomes the following year. *Id.* ¶ 12.
10 And because spore production in the fall of 2017 was so low, infection and clinical disease will
11 likely be very low in 2018 as a result of the significant interruption of the disease life cycle in 2017.
12 *Id.*

13 Further aiding the legacy effect for Coho in 2018 is the fact that in 2017 waterborne
14 concentrations of genotype II *C. shasta* spores, which infect Coho, were lower than those for
15 genotype I spores that infect Chinook. Cramer Decl., ¶ 20. Sentinel tests of hatchery Coho resulted
16 in an average of only 8% mortality even at high temperatures that the fish would naturally avoid and,
17 regardless, natural emigration of Coho smolts is complete well before the timeframe in which the
18 tests were conducted. *Id.* As a result, Coho experienced little to no infection and mortality in 2017,
19 and these conditions will likely persist in 2018. *Id.* Further, salmon are expected to emigrate earlier
20 than normal in 2018, additionally reducing whatever potential risk of infection might otherwise
21 exist. Cramer Decl., ¶ 22.

22 POI measured by QPCR is an unreliable and overly sensitive metric to determine *C. shasta*
23 risk to salmon because it could not reliably demonstrate a low level of infection during the extremely
24 low levels of disease prevalence in 2017. Even though spore concentrations and clinical symptoms
25 of disease remained at historically low levels in 2017, POI by QPCR reached 20% in mid-May.
26 Cramer Decl., ¶ 16. Plaintiffs have characterized POI by QPCR to reflect the prevalence of disease
27 or even mortality, but the USFWS determined that there was “no clinical disease observed in any of
28 the fish groups sampled in the Klamath basin during the out-migration period of March to August.”

1 *Id.* ¶ 19. Furthermore, in 2011, POI by QPCR reached 60% in June and tapered to 33% in July,
2 whereas histological samples that actually reveal clinical symptoms of disease after examining tissue
3 samples were only detected in 2% of fish sampled during the same time periods. *Id.* ¶ 17. The stark
4 contrasts in these results demonstrate that while QPCR can show that many fish have some *C. shasta*
5 DNA present in them, only a tiny fraction of the fish were impacted enough to develop clinical
6 symptoms of disease, much less symptoms severe enough to cause mortality. Likewise, just because
7 a person may have a few flu virus DNA in them does not mean that person gets the flu, and it is
8 certainly not a logical conclusion that they will die from it.

9 New tools have been developed that more accurately estimate the rates of exposure to disease
10 and estimation of mortality. The S3 model developed by the USFWS and USGS has shown that
11 actual infection of all migrants is much lower than POI reported by QPCR. Cramer Decl., ¶ 24.
12 Dr. Russ Perry of the USGS used 2008 as an example year because POI by QPCR of 49% was the
13 value chosen by NMFS in the 2013 BiOp as the upper limit of incidental take. *Id.* Using the actual
14 flows, temperatures, and spore concentrations from 2008, however, the S3 model estimated that only
15 12.8% of natural migrating Chinook were infected. *Id.* Mortality rates were considerably less than
16 the infection rate. *Id.* The S3 model is able to isolate natural salmon populations from hatchery
17 populations that are released into the Klamath River later, and therefore, encounter higher spore
18 concentrations and higher temperatures. *Id.* ¶ 25. The late releases of hatchery fish has artificially
19 increased the POI because most of the natural fish have already migrated from the upper river when
20 the temperatures and *C. shasta* concentrations are higher. The S3 model accounts for this artificial
21 increase and removes it. *Id.* ¶¶ 26-27.

22 New information also demonstrates that *C. shasta* is not the cause of decreased salmon
23 populations because the populations that were most affected came back in stronger numbers than the
24 populations that were less affected by *C. shasta*. Salmon returns in 2015 primarily resulted from
25 smolts that emigrated in 2012 and 2013, and the returns in 2017 from smolts in 2014 and 2015.
26 Cramer Decl., ¶ 29. Juvenile Chinook that emigrated in 2012 and 2013 were among the lowest
27 clinical symptoms (by histology) of tissue damage observed, but returns in 2015 were down 67% in
28 2015. *Id.* In contrast, 2014 and 2015 were two of the worst years for clinical symptoms, yet fall

1 Chinook in 2017 doubled the preseason prediction and spawner counts increased by about one-third
2 over those in 2016. *Id.* Comparison of the size of return populations show that *C. shasta* is not the
3 cause of low populations. Instead, it has been widely demonstrated that ocean conditions are a more
4 dominant cause of variation in salmon populations than the conditions in the Klamath River.

5 Finally, analysis of the effects of the implementation of the artificial pulse flows shows that
6 the artificial pulse flows create a greater risk to salmon by moving the infectious zone downstream
7 such that more migrating salmon must pass through it. Absent combined natural flows from the
8 tributaries, the artificial pulse flows did not flush out the infectious zone, but rather simply shifted it
9 down river. Cramer Decl., ¶¶ 31-32. The natural high flows of 2017 did flush out the infectious
10 zone because the combined flows from all the tributaries created a natural peak twice the size of the
11 artificial pulse. *Id.* ¶ 32. The results of 2016 and 2017 demonstrate that the magnitude of flows
12 necessary to accomplish the goals of the Guidance Measures would be greater than can be physically
13 created by release of water from Link River Dam, and instead, only creates a greater risk by shifting
14 the infectious zone downstream into the path of the larger migrating salmon population.

15 Therefore, Intervenors ask this Court to grant relief from Guidance Measures that are
16 unnecessary, and perhaps counterproductive, to accomplish the intent of the Order.

17 **B. Application of the Order in Water Year 2018 Would be Inequitable**

18 Based on an analysis by the OSU in 2012, the economic activity or local benefit associated
19 with Klamath Project agriculture is approximately \$400 million per year. Kirby Decl., ¶ 16. The
20 potential ruinous impacts for family farms and ranches in 2018 are real. The Klamath Project water
21 diversions are also the source of water for two national wildlife refuges. *Id.* ¶ 17. This benefits the
22 Pacific Flyway, helping to maintain abundance of wildlife and recreational enjoyment for the public
23 by furnishing food, forage, and cover. Crawford Decl., ¶ 1.

24 In its February 8, 2017 Order, at 46:6-9, this Court noted the following:

25 The intervenor defendants undeniably have genuine and important interests, and the
26 court recognizes that the proposed measures might cause hardship to the farmers,
27 ranchers and their communities. However, as plaintiffs point out, courts are not
28 permitted to favor economic interests over potential harm to endangered species.

1 Intervenor do not support this logic. Further, the Klamath Project family farms and ranches
2 and their communities are not simply about money. They are a culture, albeit one different from
3 those of the urbanized west. Their lives, schools, churches, and identify are rooted in the land and
4 their work. Subjected to false stereotypes and bias, they remain close and persevere, and committed
5 to the greater good. Leaders like Jason Flowers and other young farmers are courageous, innovative,
6 and valuable. *See* Flowers Decl., ¶¶ 2-4. They matter. In light of new evidence demonstrating that
7 not only are the Guidance Measures unnecessary to protect Coho in 2018, but perhaps also
8 counterproductive, the genuine and important interests of Intervenor merit consideration, and relief
9 from the Order is warranted.

10 **C. The Federal Defendants Control Other Water Sources**

11 Intervenor submit that the application of the Guidance Measures in 2018 is entirely
12 unnecessary. With that said, the Klamath Project is not the only federally-controlled diversion in the
13 Klamath Basin. Among other things, Reclamation has developed an inter-basin diversion system
14 that diverts water to the Rogue River Basin that would otherwise flow down the Klamath River. The
15 Rogue River Basin Project removes approximately 24,000 acre feet per year from the Jenny Creek
16 watershed by means of Hyatt Dam and Reservoir and Howard Prairie Lake and related regulation
17 and conveyance facilities. Kirby Decl., ¶ 36. If not sent to the Rogue River Basin, this high quality
18 water would enter the Klamath River above Iron Gate Dam. The Rogue River Basin Project does
19 not release any water to the Klamath River for the protection of Coho. It is uncertain why this has
20 not been required. *Id.* A biological opinion for the Rogue River Basin Project includes the
21 following recommendation by NMFS:

22 NMFS recommends Reclamation analyzes and quantifies the potential benefits to
23 the Klamath Project reliability through storage and delivery of Jenny Creek flows
24 via Iron Gate Dam. Study parameters should focus not only on in-stream flow
25 volumes and associated habitat values, but also consider water quality. NMFS
26 suggests that Reclamation convene a working group consisting of Federal, state,
27 tribal, and irrigation district representatives to assist in study design and
28 implementation.

26 Kirby Decl., ¶ 36, Ex. F. Reclamation should look to the high quality water from this tributary
27 before even considering action that would adversely affect the Klamath Project. If the Court

1 determines that any aspect of the Order should apply in 2018, the Court should order Reclamation to
2 meet injunction terms from all sources in an equitable manner.

3 **D. The Order Should be Stayed Pending Adjudication of this Motion and/or Pending the**
4 **Outcome of the Appeal**

5 This Court faced disputed legal questions when, faced with MSJs seeking adjudication of
6 Plaintiffs’ claims for failure to reinitiate consultation between federal agencies, it was asked to
7 implement then-recently drafted Guidance Measures based on novel hypotheses and without the
8 benefit of new research that is presently underway. Findings related to these difficult legal
9 conclusions and novel hypotheses were necessarily made in the Order, which is under challenge in
10 the Ninth Circuit Court of Appeals, and also subject to review for purposes of relief in the Motion.
11 Based on the non-rigid application of the “success on the merits” factor as addressed by the Central
12 District Court in *Himebaugh v. Smith*, 476 F.Supp. at 510, the irreparable harm to be incurred to
13 Intervenor and the public as a whole as discussed in section B above, and the lack of any harm to
14 Plaintiffs’ interests given section A above, the factors favor a stay of enforcement of the Order. *See*
15 *Nken v. Holder*, 556 U.S. 418 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

16 **VI. CONCLUSION**

17 Based on the foregoing reasons, Intervenor respectfully ask this Court for relief from the
18 Order for water year 2018, either by modifying the Order as stated herein or by staying its
19 enforcement.

20 SOMACH SIMMONS & DUNN, PC

21
22 DATED: March 7, 2018

23 By s/ Paul S. Simmons
24 Paul S. Simmons
25 Kristian Corby
26 Jared Mueller
27 Attorneys for Defendant-Intervenor
28 Klamath Water Users Association, Sunnyside
Irrigation District, and Ben DuVal

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CLYDE SNOW & SESSIONS, P.C.

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