



**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of:

The Application of PACIFICORP (U 901 E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011, and Granting Conditional Authorization to Transfer Assets, Pursuant to the Klamath Hydroelectric Settlement Agreement

Application No. 10-03-015  
(Filed March 18, 2010)

**MOTION FOR PARTY STATUS BY THE YUOK TRIBE**

The Yurok Tribe hereby moves to become a Party to this proceeding. In support of this motion, the following information is provided:

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

**Name:** The Yurok Tribe,  
**Contact Name:** C/O John W. Corbett, Senior Counsel  
**Mailing Address:** 190 Klamath Boulevard  
**City, State, Zip:** Klamath, California 95548  
**Email Address:** [johnc@yuroktribe.nsn.us](mailto:johnc@yuroktribe.nsn.us)  
**Telephone:** (707)482-1350

Please include this contact on the Service List on behalf of this organization.

- 2a. The Yurok Tribe will be represented by legal counsel in this proceeding. The contact

information for its legal Counsel is:

**Name:** John W. Corbett, Esq. CA Bar #  
Senior Counsel for the Yurok Tribe  
**Mailing Address:** 190 Klamath Boulevard  
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**2b.** For purposes of future physical delivery of packages or hardcopy documents by Federal Express, DSL, United Parcel Service (UPS), or some other similar package carrier service the shipping address above may be used, however, Intervener hereby waives delivery of hard copy versions of documents in favor of delivery of electronic document services to be delivered to the email address of their Legal Counsel above, email [johnc@yuroktribe.nsn.us](mailto:johnc@yuroktribe.nsn.us), pursuant to the CPUC Rules of Procedure.

**3. The organizational nature of the Intervener is as follows:**

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, and Yurok EPA offices are all within the Pacific Power service area. The Yurok Tribal membership depend on Klamath River Fish for their livelihood, culture and way of life. The Yurok language is still spoken and age old Yurok traditions are still practiced today. The reservation sits on a stretch of land one mile on either side of the Klamath River, including the River and the bed thereof. The Tribal members have seen 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.

**4. The nature and extent of the Interveners' interests in this proceeding are:**

The Yurok Tribe is also an Intervener in the FERC Klamath Hydroelectric Project relicensing proceeding, FERC Docket No. P-2082-027, and a signatory Party to the Klamath Hydroelectric Settlement Agreement (KHSA) (executed Feb. 18, 2010). This rate adjustment case is an important part of the funding mechanism for the KHSA's full implementation, including being a necessary element in the achievement of the KHSA's ultimate Klamath River Basin dam removal targets. Dam removal in the Klamath Basin as contemplated in the KHSA is expected to greatly improve Klamath River-origin salmon numbers and survival

rates within the Klamath River, thus to greatly improve the economic opportunities of the Yurok Tribe's fishing members from the commercial, cultural and subsistence harvest of salmon from the Klamath River.

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

The purpose and implementation requirements of the Klamath Hydropower Settlement Agreement (KHSA), including the fair and equitable structuring and collection of the Klamath surcharge pursuant to its terms; future collection, management and accountability for those Klamath surcharge funds; PacifiCorp rate base Facilities depreciation schedules proposed pursuant to, or in order to implement, the KHSA; whether PacifiCorp should be pre-authorized to transfer the Klamath Hydroelectric Project Facilities to an entity designated to remove the dams in question pursuant to Public Utilities Code § 851 or other provisions, and the KHSA; timing of KHSA implementation vis-à-vis issues subject to CPUC jurisdiction; other issues indicated by the ALJ or evidence on the record to be relevant or germane to any of the above.

**6. The special knowledge or expertise of the Intervener that would assist the Commission in resolving the issues of the proceeding are:**

The Yurok Tribe has been a key stakeholder representative in the negotiations which led to the Klamath Hydroelectric Settlement Agreement (KHSA) since they began in 2000, is a signatory Party to the KHSA, and is familiar with every aspect of that Agreement. Since our government facilities and many of our individual members are also PacifiCorp ratepayers in northern California and coastal Oregon, we also have some expertise on how implementing the KHSA might affect those PacifiCorp customers. PCFFA has intervened in prior CPUC proceedings with respect to PacifiCorp, in particular in Docket Nos. A.05-11-022 and A.09-11-015.



## CERTIFICATE OF SERVICE

I, *John W. Corbett*, hereby certify that I am over the age of 18, and that I have this day served a copy of MOTION FOR PARTY STATUS BY THE YUOK TRIBE, on all known parties to this proceeding as shown on the most recent PUC Docket Service List in this docket, either by: (1) email with electronic documents attached to the Party's designated email address, or; (2) if no email address appears for a Party on the most current Service List as of this date, or the Party has requested paper service only, then by first class U.S. mail, postage pre-paid, to the postal address for the party shown on the current Service List.

Executed on May 11, 2010 at Klamath CA.

/S/ John W. Corbett

John Corbett, Esq.

Senior Counsel for the Yurok Tribe

(707)482-1350

**The Service List addresses to which this Motion has been sent are as follows:**

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**STANDING**

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

The Klamath River Basin is home to the largest population of Native Americans in California. With over 5,500 registered members the Yurok Tribe is the largest federally recognized Tribe in California.<sup>1</sup> 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.<sup>2</sup>

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.”<sup>3</sup>

The Yurok people are totally reliant on the Klamath River salmon fishery for survival. Historically the Yurok Tribe has been allocated approximately 80% of the fall Chinook in the Klamath River Indian Fishery. In most years, for conservation reasons, both of the Klamath River Tribes with federally reserved fishing rights have typically harvested less than the allocated amount. 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 to consult and confer and maintain a government-to-government relationship with Tribal governments.<sup>4</sup> 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

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<sup>1</sup> 65 Federal Reg. 13298, March 13, 2000.

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

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

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

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.<sup>5</sup> 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."<sup>6</sup>

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."<sup>7</sup>

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.<sup>8</sup>

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."<sup>9</sup>

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.

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<sup>5</sup> 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).

<sup>6</sup> *Mattz* at 487.

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

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

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

## **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.<sup>10</sup> This Beneficial Use designation was approved unanimously by both the Regional and State Boards, were 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.<sup>11</sup> This cultural use of the River 365 days of the year is symbolized by the Yurok Tribe's yearly 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.<sup>12</sup>

## **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 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 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

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<sup>10</sup> 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."

<sup>11</sup> 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."

<sup>12</sup> 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).

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 LLP<sup>13</sup> and Hogan and Hartson<sup>14</sup> 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.

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<sup>13</sup> 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.

<sup>14</sup> 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.