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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOOPA VALLEY TRIBE,
Plaintiff,
v.
NATIONAL MARINE FISHERIES
SERVICE, et al.,
Defendants.

Case No. [16-cv-04294-WHO](#)

**REQUEST FOR SUPPLEMENTAL
BRIEFING**

United States District Court
Northern District of California

In their Motion for Relief from the Judgment and/or Stay of Enforcement [Hoopa Dkt. No. 139; Yurok Dkt. No. 101], defendant-intervenors Klamath Water Users Association, Sunnyside Irrigation District, Ben Duval, Klamath Drainage District, Klamath Irrigation District, and Pine Grove Irrigation District argue that the prevalence of infection (“POI”) rates underlying the permanent injunction issued on February 8, 2017 and modified on March 24, 2017 are misleading. They suggest that the failure to weight the POI rates by abundance has skewed the 2014 and 2015 rates (81 percent and 91 percent, respectively) upward, but weighted by abundance, they are far lower (18 percent and 29 percent) and in fact do not exceed the limits set in the 2013 Biological Opinion. Federal defendants have indicated that they agree that POI weighted by abundance is the more accurate metric. In evaluating this issue in reference to the 2013 Biological Opinion, it is not clear to me whether the 81 and 91 percent figures were measured consistently with the incidental take triggers (54 percent via histology or 49 percent via QPCR). I request supplemental briefing from the parties on this issue.

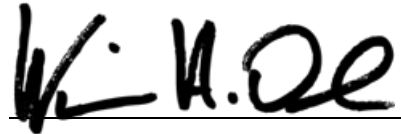
In the event that the POI rates weighted by abundance is the correct metric under the 2013 Biological Opinion and the lower figures presented by intervenors are accurate, I am inclined to issue an indicative ruling that modification of the injunction is necessary. Among the

1 modifications would be a provision in the injunction that allows the parties to move in the district
2 court to modify the injunction to the extent that there are new developments in the best available
3 science or if certain conditions and hydrology require. I also welcome the parties' thoughts on
4 such a modification.

5 Given the time-sensitive nature of this case, I request that the parties submit supplemental
6 briefing up to 10 pages as soon as possible, but no later than one week from the date of this order.

7 **IT IS SO ORDERED.**

8 Dated: April 19, 2018

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11 William H. Orrick
12 United States District Judge

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United States District Court
Northern District of California