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June 22, 2017

Karen Gude
Office of Water Tribal Program Coordinator
United States Environmental Protection Agency
Washington, DC 20460

Sent by electronic mail to gude.karen@epa.gov

RE: Proposal to Rescind and Revise the Definition of "Waters of the United States" Pursuant to Executive Order 13778

Ayukii Ms. Gude:

The Karuk Tribe writes to offer comments regarding Executive Order 13778 and the concomitant promulgation of a new definition of 'Waters of the United States' for purposes of Clean Water Act regulations and enforcement. This comment letter is in response to Secretary Pruitt's April 20, 2017 letter to Tribal Leaders.

The Karuk Tribe's aboriginal homelands include large portions of California's Humboldt and Siskiyou Counties along the Klamath River. To begin, we should note that 2017 is the worst year for salmon in history. The Klamath River was historically the third greatest salmon producing river on the West Coast with over 1.2 million salmonids returning to spawn annually. This year, only 11,000 salmon are expected to return. This has led to tribal, sport, and commercial salmon fishing closures along the Klamath and much of the California and Oregon coasts. The Karuk and other Klamath Basin Tribes are salmon people – our cultural identity is interwoven with the salmon life cycle. Thus, the loss of salmon for us cannot be quantified or overstated. However, the closure of the West coast salmon industry results in a staggering \$1.4 billion economic loss to our region.

There are many factors that have led to the catastrophic collapse of the Klamath fishery including mining, dams, diversions, and poor management of our national forests. The Karuk Tribe along with neighboring Tribes, commercial fishing communities, and conservation organizations, are working feverishly to reverse these fishery declines and restore the abundance of the Klamath system. An important tool for this effort is the Clean Water Act.

We have several concerns and recommendations for EPA to consider as the 'Waters of the US' rule is revised. First, we oppose weakening the definition or limiting the number of streams that that are considered 'Waters of the US.' Using Justice Scalia's definition which "includes only those relatively permanent, standing, or continuously flowing bodies of water" not water that "flows intermittently or

ephemerally” would undermine efforts to restore a truly renewable resource that drives the economy in many small west coast towns – salmon.

Streams may be categorized as ephemeral or intermittent due to dewatering. The concern for us on the Klamath, and for others in many similar river basins throughout the United States, is that some streams critical to fisheries run intermittently or ephemerally because of diversions and/or groundwater pumping. This is clearly the case for many tributaries of the Scott River, one of the most important tributaries to the Klamath for salmon production. Just because a stream is purposefully dewatered should not lead to loss of protections under the Clean Water Act.

Some ephemeral and intermittent streams are critically important to salmonids. Salmonids have a complex life cycle, using a variety of habitats over the course of their lives. Different species of adult salmonids migrate and spawn at different times often relying on different habitats. As salmonids hatch, juveniles go through several life stages, each depending on differing riverine habitats before they are mature enough migrate to the ocean. Thus, naturally ephemeral and intermittent streams often play an important role in the salmonid life cycle depending on the species and watershed. Excluding these streams from the protections afforded by the Clean Water Act undermines our ability to reverse the trend towards extinction for many salmon species.

Excluding intermittent and ephemeral streams may have unintended economic impacts to agriculture. The Bureau of Reclamation manages the 220,000 acre Klamath Irrigation Project (KIP) on the California/Oregon border. Diversions from the Klamath River to serve the KIP dictates stream flow on the Mainstem Klamath. The operation of the KIP is often subject to regulation to address impacts to the ESA listed species such as Coho salmon and Lost River Sucker. Without the ability to develop Clean Water Act regulations to protect these species in Klamath tributaries and sub-basins, the entire effort to mitigate and recover these species will be focused on the KIP and the family farms that depend on it. We need to make sure our legal framework that is intended to protect fisheries and water quality allow for the equitable distribution of responsibility among all agricultural operations in the basin, not just the ones on the main-stem Klamath.

The Karuk Tribe supports inclusion of intermittent and ephemeral streams in the definition of ‘Waters of the US.’ If intermittent and ephemeral streams are to be excluded, we urge EPA to differentiate between naturally intermittent and ephemeral streams and those that intermittent or ephemeral due to diversions and/or groundwater pumping. Finally, we urge EPA to consider the cultural and economic value of salmonids which play a large roll in Pacific Northwest economies. It may be that the rules and regulations for salmon bearing river systems will be different from non-salmonid bearing streams.

Please contact us if we may offer additional insight into our views on the matter.

Yootva,

Ident Sign For Russell Attebery

Russell “Buster” Attebery
Chairman