



December 16, 2011

Laurie Sada, Acting Field Supervisor
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Dear Ms. Sada,

The following are Oregon Wild's and WaterWatch of Oregon's comments on the draft, October 2011, revised recovery plan for the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*).

Oregon Wild and WaterWatch have worked in the Klamath Basin for over two decades. During these years with staff located in the Klamath Basin as well as throughout the state, our organizations have worked to protect the needs of fish and wildlife, and improve water quality and quantity in the Klamath through outreach and education, tactical legislation, water quality monitoring, upper basin restoration projects, collaboration with regional allies, strategic litigation, and more.

While the challenges in the basin are many, and balancing the needs of diverse stakeholders is difficult, Oregon Wild and WaterWatch of Oregon remain committed to bringing demand for water resources in the Klamath Basin back into balance with what the region can naturally provide. Only if this is ultimately accomplished can Lost River and Short-nose sucker recovery be assured.

We realize that largely because of inadequate funding and political opposition has significantly delayed the full implementation of the prior, April 1993 recovery plan. We therefore fully appreciate the necessity for the Service to revise and update the previous plan.

Since the initial 1993 recovery plan was published there have been some notable restoration achievements, such as the re-flooding of the Williamson River delta, and the removal of Chiloquin Dam. However, the impounded wetlands on BLM's land along the Wood River, and the continuation of pump storage on Agency Lake Ranch, have kept these areas separate and

apart from a truly functional wetland ecosystem, and thus have done much less than was anticipated to ameliorate or mitigate the former loss of the vast majority of wetlands surrounding Upper Klamath Lake and elsewhere in the Klamath Basin.

By the way, we wished to note a seeming contradiction in one statistic. On page 7 of the 2011 Sucker Recovery Plan it states that: "Approximately 6,500 hectares (16,000 acres) of wetlands remain connected to the lake (Snyder and Morace 1997)." However, on page 26, Fig. 7, the recovery plan gives "Connected wetlands approx. 25, 141 acres." Is one estimate incorrect, or are the increased connected wetland acres now due to the more recent Williamson River Delta restoration project?

In reading, not the October 2011 revised recovery plan, but instead included in the accompanying Q&A press materials, we were particularly disturbed by the agency's findings that sucker "populations in Upper Klamath Lake are declining between 10 to 20 percent a year", and that "some populations are estimated to be less than 40% of their 2001 numbers. Particularly, as discussed on page 8 of this letter we feel the Service and BOR need to fully disclose how sucker recovery is benefited when in the spring of 2010 approximately 400 endangered suckers were removed from otherwise favorable, prior habitat conditions in Tule Lake, to instead be placed in an aquatic environment, where there overall population "is declining between 10 to 20 percent a year".

While we appreciate the Service's putting forth a new recovery plan, the concerns and restoration needs are little changed from what was first acknowledged and addressed in the initial plan, and as now further bolstered by the last 18 years of numerous biological and water quality studies.

We are struck by much of the redundancy in the newly proposed 2011 Recovery Plan as being somewhat a rehash of much of the prior, and never fully implemented, 1993 recovery plan. Still as true as its recommendations were 18 years ago as for what needed to be done then, it is most unfortunate that so much of this still vitally necessary ecological restoration still remains unaccomplished.

As the 2011 recovery plan recommends, WaterWatch of Oregon and Oregon Wild would similarly welcome the development of a "Spawning and Rearing Enhancement Plan", an "Entrainment Reduction Plan", as well as a proposed "Genetics Assessment and Management Plan". However, again, over a span of 18 years, it should seem obvious that at least these plans should have already been accomplished.

Thus, overall, it feels that much of the 2011 Recovery Plan is little more than just *another plan to do more plans*. Moreover, if no more significant progress is made in the next couple of decades,

then in the last, we too are concerned that we may soon be facing the grimmer, worst case scenario, of having to rely on a “controlled propagation program” as seriously put forth in the current recovery plan’s discussion on pages 46 and 55.

We are also concerned at this time that the Service sees the accomplishment of this latest recovery plan primarily hooked to the success of the Klamath Basin Restoration Agreement legislation. First of all, we are not as enamored with this agreement as you express on page 35 that you are. As long as water remains over-appropriated to private irrigators, we do not believe sufficient benefits will be realized to justify the KBRA’s significant costs, as we do not believe the KBRA will either assure sufficient flows for the Klamath River, or that it can truly be depended upon to recover the numerous dewatered tule marshes surrounding areas such as Upper Klamath and Tule Lakes.

Furthermore we are deeply troubled by particular sections contained in the KBRA, that appear to be at odds with the protections presently afforded species under the Endangered Species Act, and therefore, could negatively affect the recovery of the suckers and other California state listed species. Rather than just stating the goals of the KBRA you should also note that the KBRA says:

24.2.1: “The Lost River sucker, shortnose sucker, golden eagle, southern bald eagle, greater sandhill crane, and American peregrine falcon are listed as fully protected under Fish and Game Code section 5515(b) and Fish and Game Code section 3511(b). Under such law, these species may not be taken or possessed at any time. The Parties acknowledge that implementation of this Agreement may create the possibility for the incidental take of these species.”

24.2.2: “Within sixty days of concurrence by the Governor of California with an affirmative Determination by the Secretary under Section 3.3 of the Hydroelectric Settlement, CDFG will provide the draft legislation to the Parties regarding a limited authorization to take incidentally Lost River suckers, shortnose sucker, golden eagles, southern bald eagles, greater sandhill cranes, or American peregrine falcon contingent upon the fulfillment of certain conditions, if such authorization is necessary for implementation of the Agreement.”

Therefore, we will be glad once the KBRA in its present form is behind us, and the Service may instead propose stand-alone funding, for specific ecologically worthwhile (and more cost-effective restoration projects). The recovery of the suckers are not benefited when claimed to be restoration is hooked to legislative language harmful to basin wildlife, or that (also) seeks to endorse and maintain lease-land farming on acres of the Klamath Basin National Wildlife Refuges that should instead be restored as wetlands.

Given the Service's expressed concern for habitat and water quality improvement, the Recovery Plan needs to better discuss, if the Service now again supports its previous decade conclusions, that sufficient lake levels have not been provided in Upper Klamath Lake and Clear Lake necessary to expand marsh refugia and maintain adequate water quality on which the endangered fish and other organisms are dependent on.

We note and share the Services concern (page 27) explaining that adult fathead minnows prey on sucker larvae:

“Likewise, as indirect evidence, higher larval sucker survival rates were also associated with greater water depth and shoreline vegetative cover, habitat which help larvae avoid predation (Markle and Dunsmoor 2007). These data suggest that predation by overly-abundant fathead minnows may be an important threat to larval sucker survival, and that loss of emergent wetland habitat may exacerbate this.”

Besides additional concerns about pelican predation on these endangered fish when water depths are too shallow, more realistic minimal lake levels need to be addressed and evaluated in a new Klamath Project Biological Opinion so as not to continue to further diminish and degrade the area's water quality and the best habitats that still remain.

For Upper Klamath and Agency Lake, the Recovery Plan thus needs to more specifically and fully address how sucker recovery could be better aided, if the former marsh lands that are contained in the federally owned Wood River Wetlands were to be reconnected to the Agency (Upper Klamath) Lake system. Similarly, the USFWS needs to assess the potential benefits to water quality and endangered fish species if the waters of Upper Klamath National Wildlife Refuge, composed of the former Barnes and Agency Lake Ranches, were instead not managed for pump storage, but rather allowed to rise and fall with the rest of Upper Klamath Lake. Are we even to assume, that the best the Service might promise now is that this should be evaluated as part of the promised and still future “Spawning and Rearing Enhancement Plan”?

Service acknowledgement of the potential, positive ecological contributions, that these particular wetlands could provide, would be consistent with the USFWS's general premises that the principal “actions needed to recover the species” would be to: “1) Restore or enhance spawning and nursery habitat in Upper Klamath Lake and Clear Lake Reservoir Systems”, and “2) Reduce negative impacts of poor water quality.” These long have been, and still are, the driving principals necessary for sucker and ecosystem recovery, and where more specifically identified wetland restoration measures need to be soon implemented in order for any hope of achieving species recovery.

The recovery plan needs to better view the restoration of marshes in, and in proximity to, the Klamath Basin NWR system as integral to the recovery of the marshland ecosystem of the endangered suckers.

In the Klamath River Expert Panel's Final Report on the Scientific Assessment of Two Dam Removal Alternatives on Chinook Salmon (June 13, 2011), the panel made a number of recommendations regarding water quality improvements in the Klamath Basin. They suggested that in order to "effectively remediate the water quality problem" in the Klamath River, agencies should "evaluate reductions in irrigated agriculture for lands draining to UKL and the Lost River for their feasibility to reduce summer and fall nutrient additions from those waters." The panel went on to recommend that agency staff "Consider managing the refuges to further emphasize their benefits for fish and wildlife, which can be in contrast to their agricultural objectives" (p.20).

However, harmful KBRA language such as, "The fish and wildlife and National Wildlife Refuges purposes of the Klamath Reclamation Project shall not adversely affect the irrigation purpose of the Klamath Reclamation Project..." stands to nix needed wetland restoration projects, as well as the ultimate recovery of the shortnose and Lost River suckers.

Also, in regards to the lower refuges, the recovery plan at one point repeats a misleading irrigator and BOR comment that seemingly seeks to shift the blame to the Klamath Basin NWR as being the problem. Specifically, on page 25 the recovery plan describes: "Upper Klamath Lake levels are affected by drought, because it is shallow (average depth in summer = 2.2 meters [7.1 feet]), and because during droughts larger irrigation diversions are needed to offset low soil moisture in agricultural fields and **wildlife refuges.**"

That water, during droughts, is being diverted to the lower refuges is contradicted by a document posted on the KBNWR website, titled Implementation of the Agricultural Program on Tule Lake NWR Philip W. Norton, Project Leader wrote June 4, 2002: "Even if the Service were to curtail farming on Tule Lake or Lower Klamath NWR during periods of water shortage, it is assumed that any water savings would not likely be available for refuge wetland use."

More recently, BOR's 2010 Operations Plan bluntly stated: "Water Supply for Refuges: Due to severe water supply conditions this irrigation season, it is unlikely the national wildlife refuges will receive water from April 1 through October 31, 2010. Any releases from November 1 through March 31, 2011, will be contingent upon hydrologic conditions and UKL elevations."

During "droughts" Lower Klamath National Wildlife Refuge "wetlands" are presently the last to receive water. Even in this last wetter year (2011) Lower Klamath NWR was greatly shorted

the water needed for fall flood up still once again. Rather it is irrigation water deliveries that reduce natural lake levels and impoverish the very tule marshes that comprised Upper Klamath National Wildlife Refuge and other state refuge wetlands around the shores of Upper Klamath Lake.

While the USFWS has sought comments on this revised recovery plan independent of your recently proposed (December 6, 2011) rule for sucker critical habitat, it is informative to look at these two proposals together. Most striking of the Service's proposed critical habitat rule is that only 27% of the critical habitat formerly proposed in 1993, is now included in the recent critical habitat recommendation. While perhaps consistent with some of the KBRA's more objectionable provisions (as we've noted above) this much reduced critical habitat acreage is generally at odds with the recovery plan's overall goals by the elimination of Tule Lake (and it's single, Lost River tributary) for critical habitat designation.

The Service's Dec. 6, 2011 press release defends this reduction in wetland acres to be afforded critical habitat designation by saying "The Service is only proposing to designate area where the species is present and is not proposing any new areas not already identified in 1994."

As endangered suckers are still very much present in Tule Lake, this critical habitat proposed rule, moreover cast doubt on the credibility of the recovery plan's stated priorities for habitat protection and restoration in Tule Lake and the Lost River.

As the purpose of Critical Habitat is to identify "geographic areas containing features essential for the conservation of a threatened or endangered species, and which may require special management considerations or protection," Tule Lake National Wildlife Refuge most definitely qualifies as meeting this criteria. Furthermore, Tule Lake and the Lost River are specifically identified in the recovery plan as specific "Recovery Units"—for which the plan states specific "criteria must be met ... before downlisting or delisting will be considered (page vii)."

While we will be providing similar comments specific to the recently proposed Critical Habitat rule, it should still be noted here that Tule Lake's value to suckers is well referenced in the currently proposed recovery plan, which notes for these category (2) & (3) priority areas:

page viii:

"Lost River Basin Unit (designated for each species separately): includes all individuals residing in the reservoirs and flowing water in this sub-basin. Four specific management units have been designated:

- Clear Lake Reservoir and tributaries
- **Tule Lake**

- Gerber Reservoir and tributaries
- **Lost River Proper**

page 47:

“7.2. Facilitate successful spawning for the Tule Lake population (3)”

page 49:

“1.3. Re-establish stream and river connectivity (2)

Lost River sucker and shortnose sucker spawn in rivers and streams and grow to adulthood in lakes; this requires connectivity between habitats for spawning adults ascending the rivers and drifting larvae moving to wetland habitats surrounding the lakes. Likewise, barriers often preclude entire populations from being able to access suitable spawning habitat, as in the case of populations in Keno Reservoir and Tule Lake. Efforts to restore connectivity to promote spawning and rearing should occur based on recommendations from the Spawning and Rearing Enhancement Plan.

page 56 -57

“Facilitate successful spawning for the Tule Lake population (3)

Habitat within Tule Lake is able to sustain populations of both Lost River and shortnose sucker; however, spawning habitat is limiting. Attempts to perform spawning migrations by adult suckers in this system have been observed. With the addition of successful spawning from this population the threat of extinction of these species from stochastic events would be significantly reduced. Details to accomplish Draft Revised Lost River Sucker and Shortnose Sucker Recovery Plan this should be included in the Spawning and Rearing Enhancement Plan, and implementation should occur, including collaboration with the Tule Lake National Wildlife Refuge.”

page 54:

Given that Tule Lake is the only known auxiliary population where significant sucker populations currently occur that will be able to persist into the future outside of Upper Klamath Lake, Clear Lake Reservoir, and Gerber Reservoir, this system should be given preference for establishing and maintaining an auxiliary population. However, should equally suitable and/or successful areas be identified, the establishment of auxiliary populations in these areas should not be preempted by the current importance of Tule Lake.

Additionally, on page p. 55, Tule Lake is even recommended as a potential containment location should it become necessary to have to “develop a controlled propagation program.”

Finally, it should be noted that on page 15-16 of the previous draft 1994 “Lost River & Shortnose Sucker Proposed Critical Habitat Biological Support Document” it stated: “...Tule Lake is considered to be the most productive sucker habitat in the Basin...”

Perhaps for that reason it, was later stated in the November 1998 *EA for an Integrated Pest Management Program for lease lands at Lower Klamath and Tule Lake National Wildlife Refuges Oregon/California*, on pps. 3-2 & 3-3, under 3.1.1 Sump Rotation:

“An additional feature of the Tule Lake NWR sump rotation project is expected to restore deep-water habitat and migration corridors for endangered suckers to potential spawning habitat within the Lost River. Sump rotation provides a means of enhancing wetlands by reestablishing a diverse wetland plant species community, restoring waterfowl use and other wildlife values, improving water quality and water depth of endangered sucker habitat, and reducing pests in Tule Lake NWR. Tule Lake NWR’s current program of sump/wetland/crop rotations...will continue to be expanded under any of the selected alternatives, including the No-Action Alternative. Although sump rotation is expected to result in pest control by non-chemical means and can be regarded as an important IPM method, ongoing aspects of the sump rotation project, or those that will be completed in the future pending funding and permits, are independent of the proposed IPM Plan.”

Additionally, as the Service has described in this same IPM EA on page 3-9: “Sump 1A provides year-round habitat for Lost River and shortnose sucker (Figure 3) and Sump 1B only provides habitat in the spring...”

Yet in the spring of 2010, apparently for the purposes of waterfowl enhancement needs, approximately 400 endangered suckers were reportedly removed from portions of Tule Lake by the action agency BOR, where they were then transported to and released into Upper Klamath Lake.

If future similar management actions are to be taken, that are seemingly contrary to the goals set forth in this proposed or existing recovery plan, the USFWS and BOR need to first explain how its actions are to the benefit of the endangered fish—particularly when they are removed from the very waters they were to have been recovered in.

If the legal basis for the removal of 400 endangered fish was simply a Section 10 recovery permit, it still needs to be explained how the refuge’s sump rotation plan is now, seemingly no longer seen by the refuge as being compatible with the maintenance and recovery of endangered

suckers--as it was so previously claimed to be both since, as well as at the time the sump rotation plan was first formally adopted. For example, as stated on page 23 of the December 10, 1999 “*Biological Opinion: Sump 1(B) Wetland Enhancement Project—reference number 1-10-00-F-19*:

“The Service does not anticipate any significant, adverse modification of proposed sucker critical habitat as a result of the proposed plan. Although dewatering Sump 1(B) will reduce potential habitat use, radio telemetry data indicates that it is not currently being utilized. This action should ultimately lead to net improvements in habitat conditions, through reduced nutrients, temperature and pH, increased structure and shade, and deeper, refugial channels within the sump. The Service anticipates that short-term modification to proposed sucker critical habitat in Sump 1(B) will be offset by long-term improvement that may benefit Lost River and shortnose suckers.”

And on page 25: “take is expected to be low to undetectable...Rehabilitation of aquatic macrophytes, improvement of water quality, and increased depth of Sump 1(B) would benefit both suckers and eagles.”

Simply stated, our review of this document revealed nothing about suckers periodically having to be removed from the waters of Tule Lake in order to accomplish other described refuge objectives necessitated by sump rotation.

As the 2011 recovery plan has noted the documentation of a significant decade-long decline in overall sucker numbers in Upper Klamath Lake, the Service and BOR must also explain if the environment these fish removed from Tule Lake were moved to, was potentially less favorable for their survival, than if they had been allowed to remain in Tule Lake, had the 2010 Tule Lake sump water drawdown not occurred. While sucker spawning has not been successfully occurring in Tule Lake, still, a previous fish and water quality study by USFWS biologist Elaine Snyder Conn found that the water quality, and associated lack of fish parasites and other diseases was less of a problem, with more favorable conditions for fish in Tule Lake than in other Klamath Basin water bodies similarly sampled and compared.

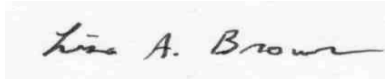
To our knowledge, until this recovery plan was presented this October, no other comment opportunity has been afforded the public to express concerns on this seeming change in agency endangered species management direction. As part of the management goals and objectives of the Tule Lake Recovery Unit discussed in the 2011 recovery plan, the Service needs to address if artificially and purposefully creating less favorable environmental habitat conditions by water draw downs in Tule Lake (that necessitates hundreds of fish being permanently removed to avoid otherwise pending harm) is truly in the short, or long-term benefit of these endangered fish.

Therefore, at this time, we are requesting that before any planned, or periodic Tule Lake water level drawdowns occur for purposes of future “sump rotation” and waterfowl habitat management, that the concerns we have raised here be properly and fully addressed. These seeming inconsistencies and changes from the already existing refuge management and sucker recovery plans, must first be fully evaluated in accordance with NEPA, the re-initiation of formal ESA consultation, and finally, consistent with and in accordance with this 2011 revised sucker recovery plan.

Sincerely,

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