Bureau: International Trade Administration.

Title: NATO International Competitive Bidding (ICB) Bidders List Application.

Agency Form Number: ITA–4023P.

OMB Number: 0625–0055.

Type of Request: Regular Submission.

Estimated Burden: 40 hours.

Estimated Number of Respondents: 40.

Est. Avg. Hours Per Response: 1 hour.

Needs and Uses: Opportunities to bid for contracts under the NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a ''Declaration of Eligibility.'' The U.S. Department of Commerce/ITA is the executive agency responsible for certifying U.S. firms. ITA–4023P is the application form used by USDOC/ITA to collect information needed to ascertain the eligibility of a U.S. firm. ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

Affected Public: Business or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17968 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Finance Link.

Agency Form Number: None.

OMB Number: 0625–0231.

Type of Request: Regular Submission.

Estimated Burden: 33 hours.

Estimated Number of Respondents: 200.

Est. Avg. Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's Business Information Service for the Newly Independent States offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. FinanceLink is an internet-based service to facilitate contact between exporters and financing agencies. Exporters fill out a form giving relevant details about the desired transaction and submit it via Internet to BISNIS; BISNIS will, in turn, distribute the information collected to potential financing agencies. The intention is to provide a service that benefits both exporters and financing agencies.

Affected Public: Business or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–17969 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 010712176–1176–01]

Notice of Receipt of Petition for Exemption from the Requirements of Section 7(a)(2) of the Endangered Species Act

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce announces the receipt of a petition filed by Pacific Legal Foundation (PLF or Petitioner) requesting that the Klamath 2001 Operations Plan (Plan) be exempted from the requirements of section 7(a)(2) of the Endangered Species Act. Under Department of Commerce regulations implementing the Endangered Species Act, the Secretary is required to give the public prompt notice of the receipt of such a petition. The intended effect of this notice is to give such public notification.

DATES: The Secretary of Commerce or his designee will make a determination as to whether the petition for exemption meets the requirements for an application for such an exemption no later than July 15, 2001. If the Secretary of his designee determines that the petition meets the requirements for an application, the Secretary or his designee will conclude a threshold review no later than July 25, 2001.

ADDRESSES: Copes of the petition for exemption are available for inspection in Room 5876 of the Herbert C. Hoover Building, 14th St. and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief Counsel for Regulation, at (202) 482–4144.

SUPPLEMENTARY INFORMATION: On July 5, 2001, PLF filed a petition for exemption from the requirements of section 7(a)(2) of the Endangered Species Act for the Plan. PLF filed the petition on behalf of the Klamath Irrigation District in Oregon and the Tulelake Irrigation District in California. PLF asserts that the halting of delivery of water for irrigation pursuant to the Plan, aimed at protecting Coho salmon and two species of sucker fish, threatens certain

communities in California and Oregon and threatens other wildlife habitat.

Set forth below is a copy of the petition for exemption, without attachments:

David E. Haddock, Anne M. Hayes, M. Reed Hopper, Pacific Legal Foundation, 10360 Old Placerville Road, Suite 100, Sacramento, California 95827, Telephone: (916) 362–2833, Facsimile: (916) 362–2932, Attorneys for Klamath Irrigation District, and Tulelake Irrigation District.

Introduction

On April 6, 2001, the Untied States Bureau of Reclamation adopted the Klamath Project 2001 Operations Plan pursuant to Biological Opinions issued by the United States Fish and Wildlife Service on April 5, 2001, and the National Marine Fisheries Service on April 6, 2001. These Biological Opinions require that surface elevations of reservoirs in the Klamath Irrigation Project (Klamath Project or Project), and river flow because Iron Gate Dam, must be maintained at such high levels that water will not be made available to irrigators this year.

Until recently the Klamath Project had been operated chiefly for the purpose of making water available to irrigators, who paid for the construction of the project, and contracted with the United States for the delivery of water. In recent years, however, concern about impacts on endangered species has shifted the Project's focus away from irrigation in favor of environmental enhancement. This year, delivery of water for irrigation was halted because of questionable concerns about two species of sucker fish and the Coho salmon. As a result of these actions, other wildlife habitat is threatened, and area communities are being destroyed.

Because delivery water according to Project contracts is likely to have little detrimental impact on endangered species, and operating the Project to withhold water will destroy both wildlife habitat and human communities, applicants Klamath Irrigation District and Tulelake Irrigation District ask the Endangered Species Committee to exempt the operation of the Klamath Project from the water use restrictions imposed under the Endangered Species Act; the Klamath Project should be allowed to operate according to historical practice, as the Bureau of Reclamation proposed in this action.

The applicants for exemption are irrigation districts depend on water supplies from the Klamath Project. Applicants represent water users who hold the beneficial interests in water rights established at the turn of the last century and earlier. For almost 100 years, they and their ancestors have toiled to support their families and build their communities which are dependent on agriculture. They are entitled to Project water delivered through Project facilities pursuant to contracts with the U.S. Bureau of Reclamation (''Reclamation'') and have done all they promised to do under those contracts. The United States has a duty under those contracts and reclamation law to preserve and protect the water supply for irrigation purposes.

The Klamath Project is a federal water project that lies within the Klamath River basin, straddling the border between Oregon and California. It was created pursuant to the Reclamation Act, enacted by Congress in 1902. The 1902 Act provided for federal financing of irrigation works, with the construction cost to be repaid over time by Project water users. Lands were made available to homesteaders who accepted the responsibility to undertake improvements and pay water changes. In May of 1905, the federal government specifically authorized the development of the Klamath Project pursuant to the 1902 Act.

The irrigable lands of the Klamath Project are in South-Central Oregon (62%) and North-Central California (38%). The Project provides full service water to approximately 240,000 acres of cropland. The total drainage area, including the Lost River and the Klamath River watershed above Keno, Oregon, is approximately 5,700 square miles. The Project consists of many dams, reservoirs, canals, tunnels, and pumping plants in both states. Various streams, springs, and other tributaries flow into upper Klamath Lake. Near the City of Klamath Falls, the lake's outlet is Link River, which eventually becomes Lake Ewauna and the Klamath River. After joining with numerous tributaries in California, the Klamath River discharges to the Pacific Ocean, at a point about 220 miles from Klamath Falls.

The Klamath Project delivers water under water rights that were originally obtained under state law. For example, with encouragement from the State of Oregon, the Untied States, acting through the U.S. Bureau of Reclamation, appropriated all the water of the Klamath River and its tributaries for use in the Project. Reclamation also acquired additional preexisting water right by purchase from private parties.

Lands within the Klamath Project have many different legal histories. Some landowners were issued certificates of Project water rights or had their own individual contracts with the government providing for delivery of water through project facilities in the early years of the Project. Many other landowners receive deliveries of Project water from various irrigation districts which, in turn, receive Project water pursuant to contracts with United States. The contracts also define the obligations of water users for repayment of construction costs and for reimbursement of operation charges for any facilities still operated by the Bureau of Reclamation. In many cases, irrigation districts have assumed full responsibility for operation and maintenance of federally constructed Project facilities.

Historically, the Klamath Project operated primarily to conserve and deliver water for irrigation use. However, in 1988, the shortnose sucker and the Lost River sucker, two species that live in Upper Klamath Lake, were designated as ''endangered'' under the Endangered Species Act. Since that time the U.S. Fish and Wildlife Service has scrutinized operation of the Klamath Project to ensure that operation of the Project does not jeopardize the continued existence of these species.

Under section 7(a)(2) of the Endangered Species Act, each federal agency is required to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (for anadromous fish) to ''insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species.'' Pursuant to this provision, the Bureau of Reclamation initiated consultation with these agencies as it has developed operating plans for the Project. As a result of section 7 consultation, in 1992 and 1994 the Fish and Wildlife Service issued Biological Opinions that required the Project to maintain minimum reservoir elevations to protect the suckers. These operating elevations were adopted by the Bureau of Reclamation.

In 1995, the Bureau of Reclamation announced that it would develop a plan for the long-term operation of the Project. Rather than adopt a long-term operating plan before the 1996 growing season, as was expected, the Bureau of Reclamation issued a series of interim one year operating plans. These plans contained new standards for maintaining lake levels and stream flow conditions. Under these new standards, the irrigators were eligible to receive only the water left over after new standards for holding and releasing water were satisfied. Although new standards were in force during these years, water deliveries were not reduced

because supply was sufficient. This changed in 2001.

On February 13, 2001, the Bureau of Reclamation released its Final Biological Assessment for proposed operation of the Klamath Project for 2001, and thereby initiated consultation with the Fish and Wildlife Service and the National Marine Fisheries Service under section 7 of the Endangered Species Act. This consultation concluded when the Services issued new Biological Opinions requiring that Reclamation maintain minimum flows and minimum reservoir elevations. On April 6, 2001, the Bureau of Reclamation released the Klamath Project 2001 Operations Plan adopting these standards, and, for the first time in the history of the Project, prohibited all water diversions for the irrigation of tens of thousands of acres of farmland. That prohibition on water diversions has created a crisis. It has subjected approximately 1,400 farms and many more families to potential economic ruin and caused damage to the very ecosystem the government was try to protect.

But this crisis is entirely of the government's making. Beginning almost a century ago, the United States enticed homesteaders to the Klamath area with promises of guaranteed water. In exchange for these homesteaders' agreement to pay the costs of building the very project in question here, the United States entered into binding contracts to provide water for irrigation in perpetuity. Later, the United States enacted the Endangered Species Act which, according to current federal policy, requires government agencies to withhold promised water for species preservation. Government officials oversee the Klamath Project, as they have since its construction.

Government biologists prepared the environmental assessment and the Biological Opinions that were applied to deprive exemption applicants of their water. The water users have done nothing to create or exacerbate the problem. They have merely irrigated their fields with water that the United States promised them. Without water, most fields are unplanted this year. Some perennial crops persist from prior years, but their demise is almost certain because of the lack of water from the Project. Unfortunately, the government has not remedied this situation, and restrictions on water use persist. Therefore applicants seek an exemption from these water use restrictions.

II. Application for Exemption

Under 50 CFR 451.02 (2001), an application for exemption to the Endangered Species Committee must include the following information.

1. Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

David E. Haddock, Pacific Legal Foundation, 10360 Old Placerville Road, Suite 100, Sacramento, CA 95827, *deh@pacificlegal.org*, Telephone: (916) 362–2833, Facsimile: (916) 362–2932.

2. A comprehensive description of the applicant's proposed action.

The general action at issue here is the Bureau of Reclamation's proposed operation of the Klamath Project in accordance with historical precedents. The Project supplies water to irrigation districts and other individual irrigators pursuant to contracts with the United States and established water rights. A comprehensive description of the proposed action can be found in the April 5, 2001, Biological Opinion for the suckers and bald eagle, attached as Appendix B.

3. A description of the permit or license sought from the federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

Exemption applicants are parties to contracts with the Bureau of Reclamation for the delivery of irrigation water from the Klamath Project. Since these contracts give exemption applicants ''the right in perpetuity * * * to receive from the Klamath Project all water needed * * * for beneficial irrigation uses,'' in 1991 Reclamation initiated consultation with the U.S. Fish and Wildlife Service to ensure that fulfilling Reclamation's duties under this and other contracts would not jeopardize the continued existence of two endangered fishes, the Lost River sucker (Deltistes luxatus) and shortnose sucker (Chasmistes brevirostris).[1] As a result of this and additional consultation, Biological Opinions were issued by the U.S. Fish and Wildlife Service in 1992 and 1994 that permitted the continued operation of the Project under reasonable and prudent alternatives designed to avoid jeopardy to suckers. In December, 2000, Reclamation reinitiated consultation with the Fish and Wildlife Service on continuing operations of the Klamath Project.

In its final Biological Assessment dated February 13, 2001, Reclamation stated that it proposed ''continuing operation of the Klamath Project to supply water to Project users and refuges.'' The Biological Opinion issued by the U.S. Fish and Wildlife Service on April 5, 2001, which required reservoir surface elevations so high as to eliminate water deliveries to Project contractors, grew out of this reinitiation of consultation that began in late 2000. Similar restrictions relating to minimum flows below Iron Gate Dam were imposed by the National Marine Fisheries Service in its Biological Opinion relating to the Coho salmon, released April 6, 2001.

On April 6, 2001, the Bureau of Reclamation formally denied Project contractors the water they are entitled to by formally adopting the Klamath Project 2001 Annual Operations Plan. While acknowledging that ''Reclamation has contractual obligations to Project water users to provide water primarily for domestic and irrigation uses,'' the 2001 Operations Plan eliminated water deliveries by adopting the minimum reservoir elevation levels and minimum stream flows required by the Federal agencies' Biological Opinions.

4. A description of all permit(s), license(s), or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

Exemption applicants are parties to contracts with the United States to receive Klamath Project water for beneficial irrigation uses in perpetuity. The present contracts have been in force for more than 40 years, are in effect now, and will continue to be in effect in future years. No other legal requirements need to be satisfied for exemption applications to receive water promised under the contracts. See water contracts attached at Appendix H and Appendix I.

5. A copy of the permit or license denial.

Exemption applicants were denied their right to receive water from the Klamath Project by operation of the Bureau of Reclamation's Klamath Project 2001 Operations Plan, issued April 6, 2001. The 2001 Operations Plan incorporated requirements of the Fish and Wildlife Service and National Marine Fisheries Service's Biological Opinions to eliminate water deliveries. See attached, Appendix E.

6. A copy of the biological assessment, if one was prepared.

See attached, Appendix A.

7. A copy of the Biological Opinion.

See attached, Appendix B.

8. A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

As noted in Item 3 above, consultation was initiated by the Bureau of Reclamation in December, 2000. A Draft Biological Opinion for the suckers and the bald eagle was released by the

Fish and Wildlife Service on March 13, 2001. The Final Biological Opinion was prepared in a scant 23 days, and was released in final form on April 5, 2001, presumably to ensure that exemption applicants would receive no water in time for planting this year.

Consultation with the National Marine Fisheries Service was concluded on April 6, 2001, with the release of the Biological Opinion relating to the Coho salmon. A further description of the consultation process as it concerns the 2001 Operations Plan may be found in the attached April 5, 2001, Biological Opinion for the suckers and bald eagle, Section I, Page 1, entitled ''Consultation History'' (Appendix B), and the April 6, 2001, Biological Opinion for the Coho salmon at Page 1 (Appendix D).

9. A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the federal agency.

As part of the proposed action presented in its Biological Assessment for the suckers, the Bureau of Reclamation incorporated both planned and ongoing provisions of the Fish and Wildlife Service's 1992 and 1994 Biological Opinions, including mitigation measures, Reasonable and Prudent Alternatives, Reasonable and Prudent Measures, and Incidental Take Statement terms and conditions. These measures are described in Reclamation's February 13, 2001, Biological Assessment, Section 13, entitled ''Appendix 1 ESA Consultation Review,'' and in the Fish and Wildlife Service's April 5, 2001, Biological Opinion, Section I.1, entitled ''Consultation History.'' These documents are attached to this application at Appendix A and Appendix B.

In addition to alternative proposed in prior Biological Opinions, the Fish and Wildlife Service has identified what it call ''[a] reasonable and prudent alternative (with 8 elements).'' This so-called alternative is fully described in Section III, Part 2, Page 143, of the April 5, 2001, Biological Opinion, beginning at Item 6.0. Although the alternative is described as having eight elements, the Biological Opinions lists only six: (1) Maintenance of Minimum Surface Elevations in Upper Klamath Lake; (2) Operation Plan for Low Water Year; (3) Adaptive Management through Water Quality Monitoring and Reporting; (4) Entrainment Reduction and Fish Passage at A-Canal and Link River Dam and Monitoring and Restoration of Sucker Habitats from Keno to Link River; (5) Management of UKL Water Quality Refuge Areas and Emergent Vegetation Habitats; and (6) Maintain Minimum Lake Levels in Clear Lake, Gerber Reservoir, and the Tule Lake Sump. The Biological Opinion for the Coho Salmon also presents a so-called Reasonable and Prudent Alternative that requires stream flows at higher than historical levels. See Appendix B.

10. A statement describing why the applicants' proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act

As an initial matter, serious questions about the scientific conclusions of the Biological Opinions persist. As discussed below, it is doubtful that operating the Project according to historical practice would have any detrimental impact on the survival of the species. Consequently, it is not clear, despite the conclusions of the Fish and Wildlife Service and the National Marine Fisheries Service, that the proposed action would in fact violate section 7(a)(2).

Contracts with the United States entitle exemption applicants to receive irrigation water from the Klamath Project. However, the alternatives described in the Biological Opinions, which were adopted by the Bureau of Reclamation in its 2001 Operations Plan, set reservoir elevations and stream flows so high that they effectively prohibit water from being made available to exemption applicants in low water years, such as this year. Federal officials claim no water can be diverted for irrigation purposes without violating section 7(a)(2) of the Endangered Species Act.

11. A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

Klamath Project water has been used continuously for almost 100 years. Applicants, and others like them, commit significant resources each year, including this year, in anticipation of receiving water from the Klamath Project. To prepare for the growing season, exemption applicants must plow fields, purchase seed, pay rent on leased farmland, and hire labor. Some of this preparation has followed the initiation of consultation by the Bureau of Reclamation. Exemption applicants committed these resources because every year prior to 2001 the United States has honored its contractual obligation to make water available through the Project. Exemption applicants expected that the United States would honor its contractual duty in 2001 as well. But because the United States has failed to make water available, resources committed to preparing for the 2001 growing season have been wasted. As a result, literally hundreds of farms are facing the possibility of economic ruin.

12. A complete statement of the nature and the extent of the benefits of the proposed action.

Ordinary water use provided by the Klamath Project offers substantial environmental, economic and social benefits. For example, water from the Klamath Project supports one of the most important staging areas for migratory waterfowl on the Pacific Flyway. Over 430 documented species of wildlife, including the largest wintering concentration of bald eagles in the lower 48 states, depend in part upon water diversions from the Project, diversions that are no longer allowed. Through direct releases and agricultural runoff, the Klamath Project supplies water for the lower Klamath and Tulelake national wildlife refuges. Water used for agriculture also serves environmental values by providing food and habitat for waterfowl and other wildlife.

In addition, the Klamath Basin produces $100 million in hay, grains, and vegetables each year. The agricultural industry supported by the Klamath Project includes 1,400 farms totaling more than 210,000 acres. Klamath farms produce livestock, barley, oats, wheat, potatoes, sugar beets, and forage. Approximately 110,000 acres serve as forage, including forage for migrating waterfowl and other wildlife; 57,000 acres are planted in cereal crops; 16,000 acres in vegetables; 7,000 acres are planted in cereal crops; 16,000 acres in vegetables; 7,000 acres in miscellaneous field crops; 298 acres in seed crops; and 227 acres in nursery crops.

The Klamath investment in agriculture produces an additional $250 million in economic activity in the various agriculturally dependent communities throughout the region. Livestock herds, that are being liquidated as a result of the lack of water this year, are worth another $100 million in replacement costs.

This traditional use of the Klamath Project for irrigation and other purposes guards against the catastrophic destruction of the Klamath Basin and the families and farms in the region, including disastrous effects on the economy and environment. Klamath farming communities and a rural way of life are dependent on regular water diversions from the Klamath Project.

Without water, farms cannot operate, and farm workers will be unemployed. Without farmers to buy seed, supplies,

and equipment, the infrastructure of small businesses that support agriculture will collapse. In turn, restaurants, grocery stores, and other small community businesses will lose their customer base. Property values will plummet, loans will be in default, and county tax revenues will spiral downward.

The farmers and communities in the Klamath Basin have committed their livelihoods, their way of life, and the welfare of their families to cultivation of the region's agriculture, based on the water promised to them by the government through he Klamath Project.

Some individual farmers stand to lose nearly half a million dollars in potential income, based on resources that were long ago committed to farming the land. The predicament of David Cacka is typical of what is happening in the basin. Cacka runs a farming operation. He owns 80 acres of land and leases an additional 420 acres, some of which is owned by his father, some of which is owned by an elderly widow, and some of which is owned by other retired individuals. Each of Mr. Cacka's landlords depends for their livelihood on the rent he pays them. Cacka raises potatoes, grain, and alfalfa. He has one full-time employee and up to nine seasonal employees in his farming operation. Operating expenses for the farming business run as high as $400,000 per year, all of which is spent in the economy of the Klamath Basin. See Declaration of David Cacka in Support of Plaintiffs' Motion for Preliminary Injunction, Kandra v. United States, No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix J.

Because of the loss of water due to the application of the Endangered Species Act to the Klamath Project, Cacka has had to leave idle farmland that has been in continuous production for 91 years. He will not have any employees, and will not be able to support the local businesses or contribute to the local economy. He and the other farmers in the Klamath Basin who depend upon water from the Klamath Project are facing economic hardship, if not outright ruin. Id.

Because the region developed and grew based on a century-old water rights agreement with the United States government, virtually the entire community has its resources committed to receiving its allocation of water from the Klamath Project, including schools, fire departments, libraries, parks, churches, community service organizations, and businesses, as well as county and city governments.

13. A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

The Biological Opinions, and the 2001 Operations Plan that was adopted pursuant to them, did not consider any alternative that would actually allow the exemption applicants to receive water. If such alternatives had been considered, they would have shown how recognizing exemption applicants' contractual right to receive water from the Project would have led to few impacts on imperiled species and would have served several other important interests. Because serious impacts on the suckers and coho would be unlikely, the benefits of making water available from the Klamath Project according to the terms of the contracts and according to historical practice, would clearly outweigh the benefits of eliminating water deliveries.

If operation of the Klamath Project according to historical practices would actually threaten to extirpate the species, requiring higher reservoir elevations would certainly provide an important benefit to be weighted. But there are legitimate reasons to doubt the validity of the Biological Opinions' conclusions. For example, fisheries biologist David Vogel, who has made significant contributions tot he understanding of the suckers at issue here, and was a principal contributor of information for the 1992 Biological Assessment on Long-Term Operations of the Klamath Project, has raised grave questions about the reliability of the Fish and Wildlife Service's scientific conclusions. Vogel testified before Congress recently about the scientific problems with the conclusions in the Biological Opinion for the two species of sucker fish.

As a scientist who has also provided comments on scientific analyses related to the Klamath Project, Vogel claims that in recent times it is ''virtually impossible to comment and certainly impossible for the agencies to consider the comments objectively and meaningfully'' because the time for submitting comments is too short. In this case, for example, the time between the issuance of the Draft Biological Opinion on March 13, 2001, and the issuance of the Final Biological Opinion on April 5, 2001, was only 6 days. The ''overriding sense'' Vogel has from this process is that ''the goal is to dismiss what we have to offer.''

More important, though, is that this flawed process leads to flawed results. Vogel raises serious questions abut the status of the suckers as endangered, and the value of higher Upper Klamath Lake elevations for their continued survival. For example, Vogel argues that within three years after the sucker listing it ''became apparent that the assumptions concerning the status of the shortnose suckers and Lost River suckers in the Lost River/Clear Lake watershed were in error.'' Consequently, Vogel concludes, ''[t]he species were either inappropriately listed as endangered because of incorrect or incomplete information or the species have rebounded to such a great extent that the fish no longer warrant the 'endangered' status.'' Moreover, Vogel argues that ''artificially maintaining higher-than-historical lake elevations,'' as the Fish and Wildlife Service has required here, ''is likely to be detrimental, not beneficial, for sucker populations.'' Accordingly to Vogel, the facts show that in past low water years, increased fish kills simply have not occurred at low reservoir elevations. See attached, Appendix F, for a complete transcript of the ''Testimony of David A. Vogel Before the House Committee on Resources Oversight Field Hearing on Water Management and Endangered Species Issues in the Klamath Basin, June 16, 2001.''

Vogel's concerns are merely examples of the scientific problems inherent in the Biological Opinions. Others abound. For example, there is no evidence that historical stream flows below Iron Gate Dam will have any detrimental effect on Coho salmon. With more study, and a truly objective scientific approach, it might be possible to arrive at a better understanding of the needs of these fish. Yet, at this point, the conclusions of the Biological Opinions are too questionable to accept in their fullness. But this is not all.

As discussed below, the 2001 Operations Plan threatens serious impacts to other critical wildlife resources, such as two federal wildlife refuges, and a major stopover for migratory waterfowl. Moreover, federal action, like this, that impairs the habitat of migratory birds and other species may violate international conventions. For example, the Convention on Biological Diversity, signed in 1992 by more than 160 nations, including the United States, obligates the United States to ''[r]egulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use.'' See Appendix G. The United States must also ''[p]romote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.'' Id. By

depriving federal wildlife refuges and other wildlife resources of necessary water, the United States violates its commitments to the international community.

Also, the Fifth Amendment to the United States Constitution concludes: ''[N]or shall private property be taken for public use, without just compensation.'' The purpose of that clause—as the oft-quoted language from *Armstrong* v. *United States,* 364 U.S. 40, 49 (1960), explains—is ''to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'' It is well established that a right to use water is a compensable property right. See *United States* v. *State Water Resources Control Board,* 227 Cal. Rptr. 168. (Dist. Ct. App. 1986) (explaining that ''once rights to use water acquired, they become vested property rights. As such they cannot be infringed by others or taken by governmental action without due process and just compensation.''). This is so even when the right to use water is derived from contract. See *Tulare Lake Basin Water Storage District* v. *United States,* 49 Fed. Cl. 313 (2001) (finding liability under the Takings Clause of the Fifth Amendment where the United States interfered with contractual rights to receive and use water). By depriving exemption applications of the water to which they are contractually entitled, the United States not only violates the terms of applicable contracts, but it also takes exemption applicant's private property in violation of the Fifth Amendment.

The United States important public benefits when it keeps its commitments and follows fundamental principles; it engenders trust among its citizens. The benefits of the United States fulfilling its contractual obligations and following the U.S. Constitution, in this case by making water available, thereby protection struggling communities of people and wildlife, are incalculable. These public benefits outweigh the questionable benefits that will occur as a result of depriving exemption applicants of the water to which they are entitled.

14. A complete discussion of why none of the considered alternatives are reasonable and prudent.

Federal law requires that once a determination has been made that a proposed action will jeopardize the continued existence of the species, the consulting agency must propose ''Reasonable and Prudent Alternatives'' to the proposed action. The regulations define ''reasonable and prudent alternatives'' as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likehood of jeorpardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

50 CFR 402.02 (2001).

The greatest problem with so-called reasonable and prudent alternatives required by the Fish and Wildlife Service and the National Marine Fisheries Service is that they violate the first requirement, that alternatives be ''consistent with the purpose of the underlying action.'' The purpose of the Klamath Project is, and has always been deliver irrigation water to Project contractors, who have contracted for delivery of the water, and have paid substantial sums to the United States in exchange for the right to receive it. Alternatives that look only to environmental protection, like those offered in the Biological Opinions, are not ''consistent with the purpose of the underlying action.'' To the contrary, the alternative involved here are flatly inconsistent with the established irrigation purposes of the Klamath Project because they make the availability of water for irrigation secondary to other values.

Also, the requirements of the Biological Opinions may actually harm environmental values. The sucker Biological Opinion mandates Upper Klamath Lake surface elevations substantially higher than they have historically been, even in above-average water years. The difference between a full reservoir in wet years and the average low point in critically dry years is only about six feet. Yet the Biological Opinion sets a minimum Upper Klamath Lake elevation almost three feet higher that historic averages in critically dry years. As discussed more fully in Items 13 and 15, lower lake elevations are not likely to jeopardize the continued existence of the sucker fish. In fact, the unprecedented high elevation will hurt both wildlife and the environment by reducing foraging habitat for migratory birds and valuable wetlands. The higher elevation requirement will also result in increased sediment runoff and injure other protected species like the bald eagle.

Because the alternatives proposed are not consistent with the purposes of Klamath Project, and are not necessary for the ultimate protection of the fish, they do not fall within the definition of ''reasonable and prudent alternatives'' as provided in the regulations.

15. A complete statement explaining why the proposed action is in the public interest.

The public interest includes many things in addition to protecting imperiled wildlife. The public requires food and shelter, along with other aesthetic, educational, historical, recreational, and scientific values. In the Klamlath region, as in most of the Western United States these public interest values cannot be achieved without water. Water is necessary for all life, not just the life of endangered suckers. The proposed action would help satisfy these many public interests by providing this essential ingredient.

State law, which governs the use of water, finds specifically that the public interest includes other concerns beyond environmental protection. For example, ''in acting upon applications to appropriate water,'' the California State Water Resources Control Board is required to consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan.

Cal. Water Code section 1257. In-stream uses, such as higher flows for fish protection, are not favored over other uses in determining what would be serve the public interest. They are simply one factor to be considered. California courts, for example, have specifically rejected the notion that California is prohibited from favoring water uses such as irrigation, even where harm may result to fish and wildlife resources. The California Supreme Court explained:

As a matter of current and historical necessity, the Legislature, acting directly or through an authorized agency such as the Water Board, has the power to grant usufructuary licenses that will permit an appropriator to take water from flowing streams and use that water in a distant part of the state, even though this taking does not promote, and may unavoidably harm, the trust uses at the source stream. The population and economy of this state depend upon the appropriation of vast quantities of water for uses unrelated to in-stream trust values. California's Constitution, its statues, decisions, and commentators all emphasize the need to make efficient use of California's limited water resources: all recognize, at least

implicitly, that efficient use requires diverting water from in-stream uses. Now that the economy and population centers of this state have developed in reliance upon appropriate water, it would be disingenuous to hold that such appropriations are and have always been improper to the extent that they harm public trust uses. * * *

National Audubon Society v. *Superior Court of Alpine County,* 638 P.2d 709, 727–28 (Cal. 1983) (emphasis added; citations and footnote omitted). In short, according to statute, California must be able to balance competing water uses according to its own ideas about the public interest. Similar rules apply to Oregon water rights.

The States of California and Oregon permitted the United States to appropriate water for the Klamath Project with the understanding that such water would be distributed for irrigation. Thus, in this case, state water agencies have already exercised their authority to safeguard the public interest, have considered the water needs of fish and wildlife resources, and have nevertheless authorized the use of water for irrigation.

Beyond this, cutting off water to the basin will have injurious consequences to a wide array of wildlife in the region. The Klamath Basin is one of the most important staging areas for migratory waterfowl on the Pacific Flyway. Each year nearly three-quarters of all Pacific Flyway waterfowl stop in the Klamath Basin, including peak fall concentrations of over 2 million ducks, geese, and swans, and the largest wintering concentration of bald eagles in the lower 48 states. The wetlands and other resources upon which these birds depend require a regular supply of water from the Klamath Project. Some of the necessary water is delivered directly from the Project to federal wildlife refuges. Other important resources are supplied by agricultural runoff. But these sources have been cut off. As the region's 185 miles of canal ecosystem and 516 miles of drainage canal ecosystem are destroyed by government-imposed water prohibitions, the environment will suffer.

If Klamath Project water is not delivered as it has been in prior years, it will become extremely difficult to maintain the facilities used to divert and deliver water, along with the facilities used for draining runoff. This will reduce the availability of wildlife forage and valuable wetlands, not to mention increase the risks to public safety and property in the future due to hazards such as flooding. Irrigated land in the Tulelake area also supports large numbers and diversity of birds and other wildlife, including migratory waterfowl, raptors, deer, and antelope. These species feed on grain, alfalfa, and other crops grown in area farms. Irrigated farmland provides valuable wildlife habitat. Without irrigation water from the Project, once-productive farmland will not longer provide these important habitat values.

16. A complete explanation of why the action is of regional or national significance.

Agricultural production is one of America's greatest strengths. Americans spend a smaller percentage of income on food than residents of other nations. Forty-six percent of the world's soybeans are grown in the United States, 41% of corn. One-forth of the world's beef and nearly one-fifth of the world's grain, milk, and eggs are produced in the United States. About 17% of raw U.S. agricultural products are exported yearly, including 83 million metric tons of cereal grains, 1.6 billion pounds of poultry, and 1.4 million metric tons of fresh vegetables. Much of this abundance is produced using water from federal water projects such as the Klamath Project.

The Klamath Basin produces $100 million in hay, grains, and vegetables, with more than 1,400 farms totaling approximately 210,000 acres being supplied by the Klamath Project. Klamath farms produce livestock, barley, oats, wheat, potatoes, sugar beets, and forage. For example, 110,000 acres serve as forage, 57,000 acres are planted in cereal crops, 16,000 acres in vegetables, 7,000 acres in miscellaneous field crops, 298 acres in seed crops, and 227 acres in nursery crops.

The Klamath investment in agriculture produces an additional $250 million in economic activity in the various agriculturally dependent communities throughout the region. Livestock herds, that are being liquidated a result of the lack of water this year, are worth another $100 million in replacement costs.

The failure of the Klamath Project to deliver water to Project contractors threatens catastrophic destruction in the region. Without water, farms cannot operate, and farm workers will be unemployed, Without farmers to buy seed, supplies, and equipment, the infrastructure of small community businesses will lose their customer base. Property values will plummet, loans will be in default, and county tax revenues will spiral downward.

The farmers and communities in the Klamath Basin have committed their livelihoods, their way of life, and the welfare of their families to cultivation of the region's agriculture, based on the water promised to them by the government through the Klamath Project.

As noted above, some individual farmers, like David Cacka, stand to lose nearly half a million dollars in potential income, based on resources that were long ago committed to farming the land. This predicament is typical of what is happening in the basin.

Because the region developed and grew based on a century-old water rights agreement with the United States government, virtually the entire community has its resources committed to receiving its allocation of water from the Klamath Project. Directly or indirectly, availability of water from the Klamath Project is necessary for area schools, fire departments, libraries, parks, churches, community service organizations, and businesses, as well as county and city government.

Not only the region, but the nation as a whole, has an interest in preserving the Klamath Basin and averting disaster. The impact on the environment from lack of irrigation water is of tremendous regional and national significance. As a result of the Biological Opinions, displaced bald eagles will go elsewhere and battle for survival. Some likely will starve or die of exposure or disease. Others will have a harder time breeding successfully next spring.

The effects will be felt in employment, too, which has far-reaching consequences for the region and beyond. Steve Kandra, a third-generation farmer from Merrill in Klamath County has already had to lay off his work force: ''I have been forced to lay off all of my employees, half of whom are Hispanic. Half of the students in our local public schools are Hispanic, most with parents who have jobs associated with agriculture. The Hispanic community would be a group severely impacted by the lack of irrigation water.'' See Declaration of Steven L. Kandra in Support of Plaintiffs' Motion for Preliminary Injunction, *Kandra* v. *United States* No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix K. The failure to make water available will result in defaulted loans and lost farms. According to David Solem, manager of the Klamath Irrigation District, all of these types of impacts (social, cultural) are likely to occur, including impacts to ethnic communities and other local cultural attributes, loss of food, foraging and habitat for migratory waterfowl and other birds and wildlife that makes heavy use of farmland, soil erosion, air quality, impacts from soil erosion, infestations, future chemical

applications to control weeds and pests, and loss of fish and wildlife habitat in irrigation canals and drains.

See Declaration of David A. Solem in Support of Plaintiffs' Motion for Preliminary Injunction, *Kandra* v. *United States,* No. 01–6124–TC, 2001 U.S. Dist. LEXIS 6932 (D. Or. Apr. 30, 2001), attached at Appendix L.

According to Rick Woodley, Director of Klamath County Soil and Water Conservation District, denial of water will adversely affect the soil in the region, which will have dramatic regional significance.

Without normal crop production or establishment of cover crops on the bare soil, as it continues to dry, the entire Klamath Basin will see the full effect of life without water on the farmland. The loss of topsoil can never be recovered. The sedimentation (pollution) on the lakes, rivers, and streams of this basin, when rain does come, will have adverse effects to the very species this decision was designed to ''protect.''

Letter from Rick Woodley, Apr. 18, 2001, attached at Appendix M.

17. A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

The Bureau of Reclamation's February 13, 2001, Biological Assessment for the suckers incorporated planned and ongoing provisions from the 1992 and 1994 Biological Opinions that do not require unprecedented reservoir elevations. These measures are fully discussed in the Biological Assessment in Section 2.6, entitled ''1992 and 1994 Biological Opinion Provisions,'' and in Section 13.0, entitled ''Appendix 1 ESA Consultation Review.'' They encompass a wide range of substantial and effective mitigation and enhancement measures, including sucker toxicity studies, taxonomy projects, spawning enhancement, marsh restoration, watershed improvement, and many other measures. These measures may continue without prohibiting essential water diversions for irrigation and wildlife in the Klamath Basin.

III Conclusion

Delivering water according to Project contracts is likely to have little detrimental impact on endangered species. Yet operating the Project to withhold water, as the Fish and Wildlife Service and the National Marine Fisheries Service have required, will destroy both wildlife habitat and human communities. Exemption applicants therefore ask the Endangered Species Committee to exempt the operation of the Klamath Project from the onerous water user restrictions imposed under the Endangered Species Act. The Committee should allow the Klamath Project to operate according to historical practice, as the Bureau of Reclamation proposed.

July 2, 2001.

Respectfully submitted,

David E. Haddock, Anne M. Hayes, M. Reed Hopper,

By _____

David E. Haddock, Attorneys for Klamath Irrigation District and Tulelake Irrigation District.

1. On June 11, 1991, the United States Department of the Interior Agreement on Compliance with the Endangered Species Act entered into. The U.S. Fish and Wildlife Service considered the agreement to be a request for formal consultation pursuant to section 7 of the Endangered Species Act.

[End of Petition]

Section 451.02 of the Title 50, CFR requires the Secretary of Commerce or his designee to initially determine whether a petitioner is eligible to apply for an exemption, whether a petition is timely, and whether the petition presents all required information. If the Secretary or his designee determines that a petitioner is eligible to apply for an exemption and that the petition is timely and presents all required information, § 451.02(f)(3) of Title 50, CFR requires the Secretary or his designee to conduct a threshold review and make determinations in accordance with the requirements of § 452.03 of Title 50, CFR.

Michael A. Levitt

Assistant General Counsel for Legislation and Regulations.

[FR Doc. 01–17922 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, software, and technologies presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking private-sector members with senior export control expertise and direct experience in one or more of the following industries: Machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals. Please send a short biographical sketch on the individual who wishes to become a candidate. The material may be faxed to the number below.

Deadline: This request will be open on or before August 2, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Materials may be faxed to (202) 482–3195, to the attention of Ms. Carpenter.

Dated: July 11, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17870 Filed 7–17–01; 8:45 am]

BILLING CODE 3510–33–M