



Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594



Duane J. Sherman, S
Chairman

**Statement of the Hoopa Valley Tribe
Regarding
Trinity River Restoration and the Calfed Process
August 12, 1999**

The Trinity River rises in the Trinity Alps region of California's Coast Range and flows to its confluence with the Klamath River and then to the Pacific Ocean. For the last 60 miles of their course to the sea, the waters of the Trinity River traverse the Hoopa Valley and Yurok Indian reservations. The Hoopa people have occupied the Hoopa Valley, the site of our reservation, since time immemorial; scientists have been able to date our presence back as far as 10,000 years. The Trinity River is the life blood of our culture, religion and economy. Everything we are and do as a people is oriented to the Trinity River.

In the last 150 years, California's population and economy have grown and expanded into the North Coast region. Today, the Trinity River remains not only essentially important to the Hoopa Valley, Yurok, and Karuk Indian Tribes, but also to the commercial and sport fishing industry, recreation and tourism businesses, and the towns and cities throughout Humboldt, Trinity and Del Norte Counties.

The Trinity River is the only source of imported water to the Central Valley. In 1955 Congress authorized construction of the Trinity River Division of the Central Valley Project (CVP) (Act of August 12, 1955, ch. 872, 69 Stat. 719). In order to protect the fish and wildlife of the Trinity River basin, Congress specifically limited the Secretary's discretion to divert water to the Central Valley by requiring that in-basin flows needed for the Trinity River take precedence over uses to be served in the Central Valley. This special "area of origin" protection for the Trinity River in federal law is in addition to state county of origin restrictions on export of Trinity River water to the Central Valley.

The Hoopa Valley and Yurok Tribes have reserved rights in the Trinity River fishery that have been affirmed by the Department of the Interior and the Department of Commerce, and upheld by the courts. In addition, in 1992 Congress provided in the Central Valley Project Improvement Act an express declaration of the federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe. It is a well-established principle of federal Indian law that secretarial discretion is limited by trust responsibilities for Indian resources. The trust responsibility operates in this case to reinforce the Secretary's obligation to operate the Trinity River Division for the benefit of fish and wildlife in the Trinity River.

The construction and operation of the Trinity River Division have devastated not only the ecology of the Trinity River, but also the customs, traditions, and culture of the Hoopa Valley, Yurok, and Karuk Tribes, and the economies of the North Coast communities. Between 1964 and 1996 the Bureau of Reclamation diverted 31,780,400 acre-feet of Trinity River water to the Central Valley with devastating effects on Trinity River fish and wildlife. The river we had known for thousands of years transformed itself in less than a decade following completion of the Trinity River Division. Gone were its broad, braided channel with well-washed gravels for spawning. Gone were its pools, shallows, and shade for juvenile rearing. Gone were the velocity, volume, and frequency of flows essential to fish migration and to maintain the dynamic equilibrium of a living river and its riparian ecology. Upstream of the project, the destruction was absolute: Fish passage to 109 river miles of prime fish habitat was barred forever. And now, gone are the days when our people could exercise their federally-protected fishing rights without the threat of Endangered Species Act restrictions.

None of this was intended or foreseen by project planners. The chief sponsor of the Trinity River Division, Congressman Clair Engle, promised that not "one bucketful of water" needed in the Trinity River basin would be exported to the Central Valley. Others testified of their expectation that construction of the Trinity River Division would actually improve the Trinity River fishery and that the hatchery built at the base of Lewiston Dam would fully mitigate the loss of upstream habitat.

Today, most Trinity River fish populations are either listed, proposed for listing or under status review for listing under the Endangered Species Act. For example, the Trinity River coho salmon was listed as a threatened species in May, 1997; the Trinity River steelhead is a candidate for listing; and the Trinity River chinook is under status review. From our Tribe's perspective, extinction of fish species, or their mere recovery to some minimum population is not an option.

By the end of the 1970s, the Trinity River Division's adverse effects on the fishery were clear and Congress and the Secretary of the Interior took the first steps toward fulfilling the promise--and the legal mandate--that no harm would come to the Trinity River fish and wildlife from construction of the Trinity River Division:

- 1979--** The Interior Department Solicitor confirms the precedence of water for Trinity River fish and wildlife over diversions to the Central Valley under federal law.
- 1980--** The Trinity River Stream Rectification Act is enacted to address sediment accumulation in the absence of flushing flows. Public Law 96-335.
- 1981--** Interior Department Secretary Andrus directs increased releases to the Trinity River from the Trinity River Division in the amount of 340,000 acre-feet annually in years of normal water supply. (This amount, although an increase, represents the third lowest volume on record for the Trinity River at Lewiston which dates from

1912; in effect, the water available under severe drought conditions). The Secretary also orders a long term-study to assess the water requirements of the fishery.

- 1984--** The Trinity River Restoration Act (Public Law 98-541) is enacted which establishes restoration goals to ensure preservation and propagation of fish and wildlife in order to restore them to, and maintain them at, “levels approximating those which existed immediately before the start of construction” of the Trinity River Division.
- 1991--** Interior Secretary Lujan directs that not less than 340,000 acre-feet of water be released to the Trinity River for fishery purposes in all water year types pending the conclusion of the long-term study originally ordered by Secretary Andrus.
- 1992--** The Central Valley Project Improvement Act (Public Law 102-575 Title XXXIV (October 30, 1992) (CVPIA) is enacted, including the Trinity River provision (section 3406(b)(23)) which: confirms the administrative decision to release not less than 340,000 acre-feet annually pending completion of the study; mandates the completion of the study based on the best available scientific information; requires development of recommendations for permanent in stream fishery releases; if the Secretary and the Hoopa Valley Tribe concur in the recommendations, requires that they be implemented accordingly; and makes the costs of implementation reimbursable as operation and maintenance expenditures pursuant to existing law.
- 1996--** The Trinity River Restoration Act is amended and extended (Public Law 104-143). The restoration goal is revised explicitly to achieve “mitigation of fish habitat loss above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin.” The act also adopts the goal of the “resumption of commercial, including ocean harvest, and recreational fishing activities.” In addition, funding requests are authorized for the purpose of monitoring, evaluating and maintaining program investments in fish and wildlife populations.

The Hoopa Valley Tribe has worked closely with the Department of the Interior on the Trinity River Flow Evaluation Report and associated recommendations by coauthoring them with the Fish and Wildlife Service. We appreciate the cooperation and consultation of the California Department of Fish and Game, the Geological Survey, the Bureau of Reclamation, and the National Marine Fisheries Service in the preparation of the Report and recommendations. The Report and recommendations are based on the best available scientific data, as required by the CVPIA.

The Report and recommendations provide for an increase of releases to the Trinity River from the Trinity River Division. The increased releases would bring the diversions from the

Trinity River to the Central Valley in line with the volumes of water originally contemplated for use in the Central Valley by the Bureau of Reclamation in its 1952 Ultimate Plan Report and by the Committees of Congress when the project was authorized in 1955. It is important to note that the Report and recommendations still provide for the lion's share of Trinity River water to be diverted to the Central Valley. (See attached "Summary of Volume and Diversion of Trinity River Water.")

The law is clear that Calfed's objective of restoring the Bay/Delta cannot be at the expense of the riparian ecology of the Trinity River and the trust resources which it sustains. In his May 20 testimony before the House Subcommittee on Water and Power, Interior Secretary Babbitt explained that, once the water requirements in the Trinity River are identified and implemented, operational adjustment of water supplies in the Central Valley may be made in response to reductions in diversion of Trinity River water to the Central Valley in order to minimize effects on Central Valley Project users. Secretary Babbitt testified:

Mr. Chairman, the Trinity River is a distinct, defined, specific mandate in law which says I must make a decision about water flows sufficient to restore the fishery. That's the baseline. Now, obviously, that decision has impacts in the Sacramento Valley and indeed the entire system. And having made – once having made the decision about what's necessary for the flow regimes and the hydrograph, I think it is then possible and indeed imperative that we look at the management regimes in a way that is designed, to the extent possible, to minimize the impact in the Central Valley.

With regard to funding restoration of the Trinity River, we are working to ensure that Congress appropriates funds to meet restoration mandates and the underlying federal trust responsibility for the Indian fishery resources. In that regard we join in the Administration's strong opposition to attempts by the Central Valley Project Water Association and those affiliated with it to use the Fiscal Year 2000 Energy and Water Development appropriations process to delay or defeat the restoration of the Trinity River.

In conclusion, every Interior Secretary and every congressman from the California's First District, irrespective of party affiliation, has recognized the need to fulfill the original promise of the Trinity River Division for the North Coast. Fulfillment of the promise is long overdue and must not be delayed any further.