



# Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

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Sacramento



Clifford Lyle Marshall, Sr.  
Chairman

## Comments of the Hoopa Valley Tribe Regarding the Delta Conservation Plan EIR/EIS Presented March 19, 2009

For thousands of years the Hoopa Valley Tribe (Tribe) has resided on the Trinity River. The Trinity River is the focal point of our culture, religion and economy. In its natural course the river is a tributary of the Klamath River. With the Bureau of Reclamation's completion of the Trinity River Division (TRD) of the Central Valley Project (CVP) in 1963, the Trinity River also became an artificial tributary of the Sacramento/San Joaquin watershed and the only source of imported water to the Central Valley. The TRD enabled irrigation of substantial areas on the west side of the San Joaquin Valley.

Contrary to law that prohibited diversion of Trinity River water required for in-basin needs, the Bureau of Reclamation diverted up to 90 percent of the annual flow of the Trinity River into the Central Valley for use as far south as the west side of the San Joaquin Valley. For 45 years, that diversion has brought enormous wealth to water and power beneficiaries in the Central Valley, as well as having provided significant benefits to the State and National economies. The price of the transfer of wealth from the Trinity River to the San Joaquin Valley was severe reductions in Trinity River fish populations and economic and cultural devastation to the Hupa people and the north coast communities who rely on the Trinity River.

Decades of bipartisan effort by our Tribe and many others, supported by past and present members of Congress and successive Administrations, have produced critical legislation intended to restore the Trinity River. The centerpiece of the restoration effort is the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575 Title XXXIV, October 30, 1992, 106 Stat. 4706). The CVPIA makes environmental restoration a CVP purpose and requires CVP water and power contractors to pay restoration costs.

In 2000, the Tribe and Secretary of the Interior signed the Trinity River Restoration Record of Decision (ROD). However, judicial and administrative attacks from water and power contractors delayed the start of restoration by four years. San Joaquin water contractors have filed administrative appeals to impede individual Trinity River fish habitat improvement projects as late as 2006. In addition, failure by the Department of the Interior to enforce restoration repayment provisions, fishery restoration remains a distant goal and restoration science and program management have suffered. The depressed state of Klamath and Trinity fish populations is so serious that in July, 2006, the Secretary of Commerce's declared a Fishery Resources Disaster for California's north

coast and southern Oregon fishery. A real twist of bureaucratic irony occurred when the National Marine Fishery Service recently informed the Tribe that our situation in 2006 does not qualify for federal economic assistance under their guidelines since the economy of our Trinity River fishery was destroyed in the late 1970s. Unlike the agricultural industry that typically receives federal subsidies, funding for water banks and the like, our tribal fishery has never received any type of federal economic assistance even though federal regulations completely close down our commercial fishing rights in 1978 due to depressed fish populations.

The ongoing environmental issues associated with conveyance of federal and state water supplies through the Bay Delta reached crisis proportions with recent judicial decisions restricting pumping to avoid harm to endangered species. The cost of resolving those issues bears directly on the funds available for ongoing Trinity restoration needs. Those issues also implicate Trinity River water supplies required by statute, federal contract and state permit to be made available for use from the Trinity River Division.

The Department of the Interior has a federal trust responsibility to implement the Trinity River restoration program while deliberations on addressing the problems in the Delta move forward. The Ninth Circuit Court of Appeals characterized the federal trust responsibility for the Trinity River in the following terms.

As a part of its harms-balancing analysis, the district court concluded that “the government is also in breach of its general and specific independent federal trust obligation to the Hoopa and Yurok Tribes.” Order, 275 F. Supp. 2d at 1232. It also stated that the purpose of the CVPIA § 3406(b)(23) was to “fulfill[] the federal government's trust obligation to the Indian Tribes.” *Id.* at 1234. These statements are significant in that they provide support for the court's order implementing portions of the Preferred Alternative as injunctive relief.

Westlands Water Dist. v. U.S. Dept. of Int., 376 F. 3d 853, 877. (9th Cir. 2004).

The trust responsibility bars the United States from putting itself in opposition to its fiduciary responsibility to the Hoopa Valley Tribe. Moreover, it requires the federal trustee not to act in conflict with its tribal beneficiary on an issue of fishery restoration that also affects thousands of non-Indians who are dependent on fishing. We are concerned that the Federal agencies, who have a responsibility to protect our tribal interests, have been silent on how they plan on protecting Trinity River funding and water supply as the plans for addressing problems in the Delta evolve.

We are committed to work with State and Federal agencies on solutions to California's water issues that honors the trust responsibility, secures needed restoration funding, and assures timely implementation of restoration.

On a related matter, the 110<sup>th</sup> Congress adopted Pay-As-You-Go (PAYGO) rules for new program authorizations. As the Administration and Congress consider solutions for the

Delta crisis, they should not subordinate ongoing and prior responsibilities for Trinity River restoration. PAYGO should not be a constraint on Trinity River restoration because section 3406(b)(23) of the CVPIA requires CVP contractors to pay the full cost of the restoration program as part of the annual operation and maintenance charges for use of CVP water and power. The fact that the Department of the Interior has not included mandatory cost reimbursement provisions in water contracts does not excuse that obligation.

Recommendations:

- 1) Full and timely implementation of the Trinity River Record of Decision and reform ROD administration.
- 2) Funding for Trinity River restoration at the levels identified in the February 26, 2007 determination of costs by the Secretary of the Interior in consultation with the Hoopa Valley Tribe. (attached)
- 3) Full integration of the fish and wildlife restoration Central Valley Project purpose established in the CVPIA based on the best science available and adjust deliveries to water contractors accordingly.
- 4) Implementation of CVPIA contract reform provisions, particularly those in section 3404 requiring contractors to pay for environmental restorations and in section 3406(b)(23), which make the costs of Trinity restoration fully reimbursable operation and maintenance costs.
- 5) Ensure transparent implementation of the CVPIA so that no Tribal Governments are excluded from deliberations affecting California Water Resources.
- 6) Ensure that decision making respects the senior priority of Indian rights in natural resources and the federal responsibility for the resources that the United States holds in trust for the Hoopa Valley Tribe.
- 7) Fulfill obligations under the 1955 Trinity River Division authorization requiring annual availability of 50,000 acre feet of TRD water for uses in the Trinity River, as set forth in contracts and permits.
- 8) Remedy the adverse impacts on CVPIA implementation due to the double-counting provision contained in the San Joaquin Settlement, S. 22 Sec. 10007(2), 111th Cong., 1<sup>st</sup> Sess. The Tribe concurs with the analysis of the Bureau of Reclamation and U.S. Fish and Wildlife Service regarding CVPIA implementation funding that "the amount available for CVPIA activities will be reduced sooner" following enactment of the San Joaquin Settlement Agreement by Congress. (CPAR at 14).

We appreciate the opportunity to present our views on the Delta Plan. If you have questions or are in need of further information please contact me at the above address.

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**Trinity River Restoration Program**  
**Projected Costs for Construction and O&M: FY2008 to FY2030<sup>1</sup>**  
 (all dollars in millions)

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	Average Annual FY2015-FY2030
<b>Construction</b>	6.6-6.8 <sup>2</sup>	6.6-9.8	5.9-6.6	6.2-7.8	3.1-4.3	0.0-0.2	0.0-0.2	0.0-0.2
First 5-Year Construction Average <sup>3</sup>	6.4							
<b>Operations and Maintenance<sup>4</sup></b>	9.5-10.2	10.1-10.3	9.5-9.5	9.6-9.9	10.4-10.8	11.7-11.8	11.0-11.6	10.8-11.0
First 5-Year O&M Average	10.0							
<b>Total Costs</b>	16.1-17.0	16.8-20.2	15.3-16.1	15.7-17.6	13.6-15.0	11.8-11.9	11.2-11.6	10.8-11.2
First 5-Year Average All Costs	16.4							

<sup>1</sup>These cost estimates are companion to a drafting service provided by the Department of the Interior in response to a request from Senator Feinstein's office, regarding legislation proposed by the Hoopa Valley Tribe. As such, the estimates they are unconstrained by the typical limitations on the Program's appropriation requests.

<sup>2</sup>These ranges in cost estimates reflect different assumptions and/or methodologies used by the Hoopa Valley Tribe and DOI/Reclamation. Initial differences in projected costs were largely resolved during several review sessions. Each entity has figures at the upper and lower end of the ranges, depending on the fiscal year in question.

<sup>3</sup>A five-year average was developed for use in the draft legislation, which would specify a construction component and an operations and maintenance component. FY2012 represents the last year when major construction activities would be expected to occur.

<sup>4</sup>Amounts for Construction and Operations and Maintenance would be reviewed annually according to provisions in the proposed legislation.