Legislative and administrative linkages between restoration of the Trinity River's fish and wildlife resources and watershed restoration in the Trinity Basin.

Public Law 98-541 - Trinity River Basin Fish and Wildlife Management Act

The initial legislation that started the Trinity River Restoration Program, Public Law 98-541 Trinity River Basin Fish and Wildlife Management Act, identified that an interagency task force has developed a fish and wildlife management plan to restore the fish and wildlife resources of the Trinity River Basin and that the Secretary of the Interior (Secretary) needed authority to implement the plan. The plan was developed as part of the *Trinity River Basin Fish and Wildlife Management Program – Final EIS October 1983* and P.L. 98-541 gave the Secretary the authority to implement it. In addition to the action plan identifying watershed restoration as a component of the overall Basin restoration plan, Section 2(a)(1)(B) of P.L. 98-541 states that the program shall include "rehabilitation of fish habitats in tributaries of such river below Lewiston and in the south fork of such river".

Trinity River Basin Fish and Wildlife Management Program – Final EIS October 1983

Several action items address work in Trinity River tributary watersheds as needed to meet restoration goals. Action item #3 (Rehabilitate and maintain the mainstem Trinity River) identifies reducing tributary sediment input; Action item #4 addresses rehabilitating tributaries in a similar manner as action item #3; Action item #5 identifies watershed rehabilitation via revegetation; and Action item #6 identifies rehabilitation of the South Fork Trinity River via measures identified in action items 3,4,and 5.

Public Law 102-575 - Central Valley Project Improvement Act.

P.L. 102-575, the CVIPA, Section 3406(b) (23), identifies actions (i.e.: completion of the Trinity River Flow Evaluation) necessary to meet the Federal trust responsibilities to the Hoopa Valley Tribe and to meet the restoration goals of the Trinity River Basin Restoration Act (P.L. 98-541). In this reference to meet the goals of P.L. 98-541, in addition to meeting the tribal trust responsibilities, a linkage is established between the CVPIA and the actions proposed under P.L. 98-541, including watershed restoration throughout the Basin, to meet fish and wildlife restoration goals.

Public Law 104-143 - Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995

This act (P.L. 104-143) reauthorized the existing restoration program and among other things clarified/extended the program downstream of Weitchpec along the Klamath River.

Trinity River Mainstem Fishery Restoration EIS/EIR and Record of Decision

The preferred alternative of the Trinity River Mainstem Fishery Restoration EIS/EIR and Record of Decision (ROD) is a combination of the Trinity River Flow Evaluation alternative and the watershed component of the Mechanical Restoration alternative. This component of the preferred alternative is to address "upslope watershed restoration program to address the problems of excessive sediment input". The description of the watershed area covered by the preferred alternative of the ROD includes areas "within the Trinity River Basin below Lewiston dam, including the South Fork Trinity River basin."

Authorization of Appropriations for Activities Identified in the ROD

While the previous legislation for the Trinity River Restoration Program (P.L. 98-541 and 104-143) provided authorization for appropriations, these have both expired and the primary authorizing legislation that is used to appropriate funds for the TRRP is the CVPIA and BOR A30-Water and Related actions. Discussions among the TMC have focused on the linkage between the construction and operation of the TRD and, primarily, the linkage to watershed rehabilitation work in the South Fork Trinity River. While it is clear that the intent of the ROD was to include watershed work in the South Fork Trinity, the Solicitor's Office has stated if a causal linkage cannot established between the TRD then funds cannot be expended on the South Fork Trinity (Solicitor's Opinion May 22, 1998).

Once approach that might be worth pursuing concerning authorization of appropriations for work in the South Fork Trinity is that the ROD contains language noting that the concurrence between the Secretary and the Hoopa Valley Tribe with the recommendations contained in the ROD as the preferred alternative meet the obligations of CVPIA Section 3406(b)(23)(B)concerning Tribal concurrence (ROD, pg 26). In Section 3410 of the CVPIA, the following language can be found "There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title", and with ROD being the vehicle to meet the Tribal concurrence of Section 3406(b)(23)(B), there seems to be a linkage with the authorization of appropriations and the actions prescribed in the Trinity River Mainstem Fishery Restoration ROD, including watershed work.

BACKGROUND INFO – text highlighted in yellow addresses watershed work.

Trinity River Mainstem Fishery Restoration EIS/EIR and Record of Decision

ROD page 2:

For the reasons expressed in this ROD, the Department's agencies are directed to implement the Preferred Alternative as described in the FEIS/EIR and as provided below. This alternative best meets the statutory and trust obligations of the Department to restore and maintain the Trinity River's anadromous fishery resources, based on the best available scientific information, while also continuing to provide water supplies for beneficial uses and power generation as a function of Reclamation's Central Valley Project (CVP).

ROD page 10:

Preferred Alternative: consists of the Flow Evaluation Alternative which includes increased variable annual instream flow releases from Lewiston Dam, a coarse sediment introduction program, 47 new channel projects (mechanical channel rehabilitation), and implementation of an adaptive management program. Additionally, this alternative includes a watershed restoration program identical to the watershed protection efforts identified in the Mechanical Restoration Alternative.

ROD page 14

D. Watershed Restoration

The Trinity Management Council, in consultation and cooperation with Hoopa and Yurok Tribes, other responsible Federal, State, local jurisdictions, and private landowners will guide an upslope watershed restoration program to address the problems of excessive sediment input from many of the tributaries of the Trinity River due to past land use practices. The watershed protection program of the Preferred Alternative includes road maintenance, road rehabilitation and road decommissioning on private and public lands within the Trinity River basin below Lewiston Dam, including the South Fork Trinity River basin. Approximately 80 percent of the lands within the Trinity basin are federally managed of which the USDA Forest Service administers approximately 95 percent and the Bureau of Land Management administers five percent. Of the remaining 20 percent privately owned land in the basin, approximately half (10 percent of the total) are industrial timberlands, with the remainder being small private holdings. Additional environmental planning and environmental compliance steps will be necessary in order to acquire all the necessary permits and other authorizations prior to implementation of this portion of the Preferred Alternative.

Draft EIS/EIR – Page 2-26

2.1.6 **Mechanical Restoration Alternative**

This alternative depends on mechanical means to restore fish population. Flows would be maintained at not less than 340,000 acre-feet per year (af/yr). The level of mechanical rehabilitation projects indentified in the Flow Evaluation and Percent Inflow Alternaives would be the same for this alternative. However, unlike those alternatives, the mechanical rehabilitation projects would be mechanically maintained because the relatively limited flows associated with this alternative would be insufficient to promote adequate streambed and sediment mobilization.

A key element of this alternative would be the inclusion of an extensive watershed protection component, which would limit sediment inputs into the mainstem Trinity River.

Draft EIS/EIR – Page 2-29

Watershed Protection. The Mechanical Restoration Alternative would include measures to limit sediment inputs into the mainstem Trinity River beyond those assumed under the No Action Alternative, including accelerated road decommissioning, road maintenance, and road rehabilitation on public and private lands. These additional measures would essentially represent a modification of a portion of a 1993 proposal by the Committee for Healthy Communities in Healthy Forests, as endorsed by the Trinity BioRegional Group and Trinity County for implementation of the President's Forest Plan.

Accelerated road decommissioning, road maintenance, and road rehabilitation would primarily be focused on public lands within Trinity national Forest watershed (South Fork and mainstem areas below Lewiston Dam), which contains approximately 3,450 miles of mostly unpaved roads. The area would also include a small portion of the Six Rivers National Forest in the lower South fork and lower mainstem watersheds, as well as the private lands and county roads within the entire Trinity River watershed. This type of proposed work is identified as critical in restoring salmon and steelhead habitat as part of the ROD on the President's Forest Plan (Option 9: U.S. Department of Agriculture and U.S. Department of the Interior, 1994). The USFS, through the plan, adopted new Riparian Management Zone Standards and Guidelines prescribing improved standards for roads and decommissioning of those roads deemed unnecessary.

Road decommissioning would consist of removing culverts, out-sloping, and ripping roads (primarily Level 1 roads) that cannot be maintained with existing and foreseeable budgets. Many of the roads are already closed to public traffic, but pose potential and ongoing erosion problems. Rehabilitation of the remaining roads would consist of resurfacing or culvert replacement over 22 years to support ongoing USFS, county, and

private efforts, which are currently very limited due to funding and staffing. Annual maintenance, which is primarily grading and some placing of rock, would ensure that all drainage structures perform as designed.

BLM's Trinity River Watershed Analysis contains an average annual sediment yield estimate at Hoopa of 1,283 yd^3 per square mile (US Bureau of Land Management, 1995). Extrapolating this to the entire basin (exclusive of the areas upstream of Lewiston Dam and the federally designated roadless/wilderness areas), the 2,223-square-mile are in question would produce approximately 2.85 million yd3 if sediment per year. Full-scale implementation of the watershed protection program would result in a reduction of 240,000-480,000 yd^3/yr, which is approximately 9-17 percent of the average annual sediment produced in the Trinity River Basin.

Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995, PL 104-143

SEC. 2. CLARIFICATION OF FINDINGS.

Section 1 of the Act entitled ``An Act to provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes'', approved October 24, 1984 (98 Stat. 2721), as amended, is amended--

(1) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively;

(2) by adding after paragraph (4) the following: ``(5) Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully, through enhanced in-river and ocean harvest opportunities, in the benefits of restoration;''; and

(3) by amending paragraph (7), as so redesignated, to read as follows: ``(7) the Secretary requires additional authority to implement a management program, in conjunction with other appropriate agencies, to achieve the long-term goals of restoring fish and wildlife populations in the Trinity River Basin, and, to the extent these restored populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program will aid in the resumption of commercial, including ocean harvest, and recreational fishing activities.''.

SEC. 3. CHANGES TO MANAGEMENT PROGRAM.

(b) Fish Habitats in the Klamath River.--Paragraph (1)(A) of such section (98 Stat. 2722) is amended by striking ``Weitchpec;'' and inserting ``Weitchpec and in the Klamath River downstream of the confluence with the Trinity River;''.

Public Law 102-575 - Central Valley Project Improvement Act.

Section 3406. Fish, Wildlife, Improved Water Management & Conservation

(b) Fish and Wildlife Restoration Activities.--The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under state and federal law, including but not limited to the federal Endangered Species Act, 16 U.S.C. s 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. The Secretary, in consultation with other State and Federal agencies, Indian tribes, and affected interests, is further authorized and directed to:

....

(23) In order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Pub. L. 98-541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than 340,000 acre-feet per year for the purposes of fishery restoration, propagation, and maintenance and,

(A) By September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the U.S. Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery; and

(B) Not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (A) of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented accordingly. If the Hoopa Valley Tribe and the Secretary do not concur, the minimum Trinity River instream fishery releases established under this paragraph shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa Valley Tribe. Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law.

Section 3410. Authorization of Appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title. Funds appropriated under this title shall remain available until expended without fiscal year limitation.

Trinity River Basin Fish and Wildlife Management Program – Final EIS October 1983

Identifies the spawning escapement goals for the entire Trinity River Basin for a fully restored system.

Proposed the restoration program with 11 action items. Below are the action items that are pertinent to the watershed restoration recommendations that were adopted as part of the preferred alternative of the ROD.

#3. Rehabilitate and maintain the main Trinity River below Lewiston by rebuilding spawning riffles and dredging holding pools and cleaning food producing areas...Corrective work will include, but not be limited to, the following:

A) Reducing sediment inflow from tributary streams.
B) Removal of accumulated sediments from river channel where needed.
C) Rehabilitation of spawning riffles, food-production areas, nursery habitats, etc..
D) Development or rehabilitation of holding pools.
E) Periodic modification of tributary deltas for fishery habitat
F) Removal of upstream fish migration barriers.
G) Continuing maintenance of rehabilitated areas.

#4. Rehabilitate and maintain tributaries below Lewiston through measures similar to those in Action 3 above and by improving road crossings, removing barriers and screening diversions...

Corrective measures based on extensive habitat surveys of these tributaries will include, but not be limited to, the following:

A) Barrier removal for fish passage.
B) Sediment control.
C) Construction of halding and nursery areas.
D) Screening water diversions.
E) Streambank stabilization.
F) Spawning are rehabilitation.
G) Delta modification.
H) Periodic maintenance of rehabilitated areas.

#5. Rehabilitate and maintain watersheds below Lewiston through revegetation of barren slopes, landslide areas and streamside bands and overflow areas....

The work necessary to rehabilitate the watersheds of the basin may include, but not be limited to the following:

A) Ensure that activities within the watershed are closely monitored to detect possible damage to the fishery.
B) Direct revegetation efforts toward saving soil (a nonrenewable resource) for future production of forest products and wildlife.
C) Establish vegetation on stream overflow areas. On some soil types and in areas where a large quantity of sediment exists adjacent to stream channels, sprinkler irrigation may be required to assure establishment of vegetation.
D) Stabilize barren slopes and landslide areas with vegetation or other appropriate rehabilitation measures.
E) Assist with the implementation of nonerosive drainage measures.
F) Alter stream and drainage crossings where necessary to avoid excessive concentration of flow.

#6. Rehabilitate and maintain South Fork Trinity River and Watershed through measures similar to those listed above for Actions 3,4, and 5.

The work proposed under this action item is very similar to that proposed for the main Trinity River Basin under action items three, four, and five. Only damaged areas of highest priority are targeted for work because of the following reasons:

A) The flushing action of available full natural flows will help improve reiverine habitat.

B) The major resource managers in the watershed will continue to conduct activities in accordance with effective management practices to achieve the goals of this program.
C) Corrective work on damaged lands under Forest Service control will be performed by the Forest Service to the extent that funds are made available. The California Department of Forestry and Soil Conservation Service will encourage and assist private land owners in rehabilitation of damaged lands, particularly in Grouse and Pelletreau Creek watersheds. Financial assistance toward this rehabilitation can be provided where warranted.
D) It is possible to realize significant fishery increases with limited habitat rehabilitation work.
E) Recent federal wild and scenic river designation of this stream will prevent project development that would regulate instream flow. (The designation is a subject of legal reviews during preparation of this EIS.)