



BOARD OF SUPERVISORS  
**COUNTY OF HUMBOLDT**

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March 9, 2005

Honorable Gale Norton  
United States Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

**Re: Humboldt County's Central Valley Project Contract and  
Klamath River Fishery Water Supply**

Dear Secretary Norton:

The Klamath/Trinity River system benefits tribal, commercial and sport fisheries, as well as timber, ranching and river recreation businesses critical to the North Coast's economy and way of life. Current precipitation patterns suggest that 2005 will be a 'critically dry year' in the Klamath River Basin. Such an occurrence could lead to another catastrophic anadromous fish kill in the Klamath River, as occurred in 2002. In an effort to avoid such a result, and in a spirit of cooperative conservation, we renew our intention, first expressed to you by letter of March 25, 2003, from the Humboldt County Board of Supervisors to allocate for protection of fish habitat in the lower Klamath River the water supply to which the County is entitled under our 1959 Central Valley Project (CVP) contract with the Bureau of Reclamation.

Humboldt County's interest in the CVP is provided for in the Trinity River Division Act of August 12, 1955, Public Law 84-386, 69 Stat. 719 (1955 Act). As a condition to enactment of that legislation, Congress agreed to protect Humboldt County and users of water downstream from Lewiston Dam by enacting in section 2 of the act two distinct limitations on the Secretary's authority to divert water from the Trinity River into the Central Valley:

1. The first authorizes and directs the Secretary of the Interior to determine flow releases necessary for the preservation and propagation of Trinity River basin fish and wildlife--that is the original source of statutory authority for use of the water identified in the Trinity River Mainstem Fishery Restoration Record of Decision (ROD) that was issued pursuant to the Central Valley Project Improvement Act (CVPIA), Public Law 102-575 §3406(b) (23).
2. The second requires that "not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users."

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The second limitation and the June 19, 1959 CVP contract referred to above, has the effect of establishing the Humboldt County water supply as a vested property right. Our interest in that water is protected by the permit conditions issued by the State of California in 1959 for the benefit of our basin of origin rights in the Trinity River. Those conditions include a mandate for the annual release of the 50,000 acre-feet of water.

In an October 21, 2003, press release, the Department recognized the importance of TRD water to the lower Klamath River. The Department stated that it was "pleased" to announce:

"[National Research] Council found that conditions on the Trinity River and other Klamath tributaries -- rather than the main stem -- provide the best opportunity for preventing future kills through increased cold water flows. The Department this year [2003] sought and received permission to increase these cold-water flows on the Trinity River. There was no fish kill in 2003 like that seen in 2002."

It is important to note in this regard that use of water for instream purposes in the Klamath River below Iron Gate Dam and in the Trinity River below Lewiston Dam is a beneficial use of water under California law. Under the circumstances, there is no question of: (1) the ability of Humboldt County's CVP contract supply to help avoid a crisis on the Lower Klamath River in 2005; and (2) your authority to release TRD water under Humboldt County's contract for the benefit of the lower Klamath River fishery.

We are entitled to the TRD water at no cost and we are making it available for the benefit of the entire Klamath basin community at no cost to the United States, an especially important consideration at this time when both the Federal and County governments are operating under severe budgetary constraints.

We have compiled a detailed record from state and federal sources that documents our rights to use the water for lower Klamath River fish protection. We would welcome the opportunity to brief you and your staff in more detail. Time is of the essence if we are to protect the lower Klamath River on which so many of our citizens depend.

Finally, we welcomed the conclusion late last year of the litigation brought by Central Valley interests to set aside the Trinity River Fishery Restoration ROD. The Court of Appeals for the 9<sup>th</sup> Circuit has ruled that the Department is now free to implement fully the ROD. The entire ROD water supply is scientifically and legally required for Trinity mainstem restoration, and the schedule for release of the ROD water (late spring and early summer) is not compatible with the late summer/early fall releases of water envisioned for lower Klamath River fishery protection. Accordingly, Humboldt County would oppose any attempt to use ROD water for the lower Klamath River fishery independent of mainstem Trinity restoration needs.

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Thank you for your attention to this matter. We would appreciate an opportunity to discuss this with you further at your earliest convenience.

Sincerely



Roger Rodoni, Chair  
Humboldt County Board of Supervisors

cc:

Honorable Dianne Feinstein  
Honorable Barbara Boxer  
Honorable Gordon Smith  
Honorable Ron Wyden  
Honorable Mike Thompson  
Honorable Richard Pombo  
Honorable Greg Walden  
Honorable Nick Rahall  
Honorable Wes Chesbro  
Honorable Patty Berg  
Jason Peltier, Deputy Assistant Secretary, DOI, Water and Science  
Kirk Rodgers, Mid-Pacific Regional Director  
Stephen Thompson, Regional Director USFWS  
David Allen, USFWS Region 1  
Art Baggett, State Water Resources Control Board  
William Massey, North Coast Regional Water Quality Control Board  
L. Ryan Broddick, Director, Ca. Department Fish & Game  
Del Norte County Board of Supervisors  
Klamath County Board of Supervisors  
Siskiyou County Board of Supervisors  
Trinity County Board of Supervisors  
Lyle Marshall, Chair, Hoopa Tribal Council  
Arch Super, Chair, Karuk Tribal Council  
Howard McConnell, Chair, Yurok Tribal Council  
Klamath Water Users Association