

OUTSTANDING ISSUES AND CONCERNS OF THE HOOPA VALLEY TRIBE
REGARDING TRINITY ROD IMPLEMENTATION
June 15, 2006

1 **Trinity River Division tribal trust legal standards:**
2

3 **“...restoration of the Trinity River fishery, and the ESA-listed**
4 **species that inhabit it, are to remedy real and continuing**
5 **environmental harm, and are unlawfully long overdue. The**
6 **chronic delays by Interior in discharging its express statutory**
7 **duties in managing the CVP, and its riverine components, have**
8 **unjustifiably thwarted these Congressional objectives...the**
9 **government is also in breach of its general and specific**
10 **(3406(b)(23) independent federal trust obligation to the Hoopa**
11 **and Yurok Tribes...All non-flow measures prescribed by the**
12 **ROD shall proceed and plaintiffs’ request for an injunction**
13 **against such ROD measures is DENIED....The federal**
14 **government has a trust obligation to the Hoopa and Yurok**
15 **Indian Tribes and Congress expressed its intent this obligation**
16 **be finally fulfilled more than four years ago.” (Westlands v.**
17 **U.S. - Wanger, District Judge - Dec. 10, 2002)**
18

19 **“As we have disposed of all of the issues ordered to be**
20 **considered in the SEIS, nothing remains to prevent the full**
21 **implementation of the ROD...” (Westlands v. U.S. - United**
22 **States Court of Appeals - July 13, 2004)**
23

- 24 – Despite the fact that both the District Court and Ninth Circuit Court of Appeals have
25 issued specific orders relating to implementation of the Trinity ROD (see above),
26 implementation of the ROD are seriously behind schedule. In 2004, the Tribe filed a
27 breach of trust action against the Secretary of the Interior for failure to implement the
28 ROD. Based on promises made by the Department of the Interior to conduct meaningful
29 discussions with the Tribe about its concerns, the Tribe withdrew its lawsuit. However,
30 almost no meaningful progress has been made by the Department toward fulfilling its
31 promises. Also in 2004 the Tribe has also filed an appeal with the Department
32 challenging CVP water contracts because they fail to specifically identify the Trinity
33 ROD as one of the terms and conditions that the contracts must comply with. The
34 Department of the Interior has yet to formally respond to the Tribe’s appeal. Despite the
35 TRD clear legal standards of protecting the North Coast fisheries, in 2006 Northern
36 California and Southern Oregon commercial, recreational and Indian fisheries have
37 undergone significant restricted harvest due to low Klamath and Trinity salmon
38 populations. It is clear that a key contributing factor that results in these inconsistencies
39 in CVPIA implementation is the failure by the Department of the Interior to coordinate

1 the parallel processes of CVP water and power long term contract renewal (Section 3404)
2 and the requirements of Section 3406 (b)(23). This failure to coordinate CVPIA legal
3 requirements has created a situation that rewards CVP water and ag interests who are
4 trying to delay or disable the Trinity fish and habitat improvement mandates of the
5 CVPIA while at the same time receive the benefits from contracts that supply water from
6 the Trinity River. On April 24, 2006, the Tribe filed another letter regarding CVPIA and
7 Trinity River activities that the Department has yet to respond to.

- 8
- 9 – Because of dwindling fish populations of the Klamath and Trinity Rivers that were
10 caused largely to over diversions of riverflows to the Central Valley, in 1978 the
11 Department of the Interior imposed Indian fishing regulations for the Hoopa and Yurok
12 Tribes. The regulations effectively destroyed the fishery based Indian economies.
13 However, unlike the annual financial subsidies provided to off set economic impacts in
14 the agricultural industry, no financial or technical assistance has ever been provided to the
15 Indian communities to address damages that were caused by the federal regulations. The
16 continuing delays in implementing the TRRP activities only perpetuates this situation,
17 which is a key factor in the Tribe's breach of trust claims related to TRD operations
18 against the Federal Government.
- 19
- 20 – Funding has never been provided to levels identified in the ROD. Uncertainty of
21 availability of CVPIA Restoration Funds (RF) and failure to dedicate RF and other
22 funding at levels identified in the ROD has impeded restoration of fish populations and
23 habitat improvement activities. Similar problems are created by the lack of formal
24 Departmental policy regarding power and ag cost reimbursements for TRD fish
25 restoration and maintenance responsibilities. Funding constraints have resulted in re-
26 prioritizing of construction activities and has left some important scientific studies
27 deferred. The Tribe is very concerned that the arbitrary application of the TRRP 50/30/20
28 fund distribution formula will result in undermining critical science programs that are
29 crucial to the long term protection of Trinity River flows. In addition, the proposed
30 TRRP funding reductions in the FY 2007 Reclamation budget virtually guarantees that
31 the ROD requirements will not be carried out.
- 32
- 33 – The Trinity River Restoration Program has inadequate processes for resolving
34 disagreements among partner agencies and tribes. There is no agreed upon process to
35 account for failure to meet ROD timeframes and deliverables, or any means to ensure
36 compliance with the ROD requirements, or any agreed upon process for making
37 modifications to the ROD implementation schedules, as demonstrated by the item that
38 follows.
- 39
- 40 – Reclamation and FWS have included language in the CVPIA PAR review process states:
41
42 “Subsequently the ROD was prepared that established a 2002
43 timeframe. Agency planning and program implementation

1 constraints have revised the timeframe to 2008. *This date is*
2 *dependent upon completion of necessary infrastructure*
3 *improvements.*” (Emphasis added)
4

5 By including the last sentence in the PAR process, the Agencies have introduced one
6 more justification for not implementing the TRRP in the future, which is inconsistent
7 with tribal trust and other TRD legal obligations. The Tribe believes this language will
8 become the next round of excuses for not implementing the TRRP.
9

- 10 – The Weaverville Field Office is not functioning or structured in the way that was
11 originally contemplated when the ROD was developed. The ROD organizational
12 structure for the TRRP was as based on the Pacific Fishery Management Council (PFMC)
13 model because the PFMC serves as an effective mechanism that sets annual regulatory
14 requirements for the entire West Coast fishing industry within specific scientific
15 standards within a very precise timeframe. To properly carry out its functions and
16 purpose the PFMC process necessarily mandates that effective and timely coordination
17 takes place among all regulatory partners and stakeholders. Contrary to the PFMC model,
18 the Weaverville Field Office has become a dominating force in implementing the TRRP
19 where Trinity partners do not feel welcome. There will be continuing conflicts between
20 Trinity partners until this situation is corrected.
21
- 22 – Consistent with the ROD requirements, the Secretary should coordinate a Trinity Summit
23 with appropriate jurisdictions to be held in September, 2006, for the purpose of
24 developing measures necessary to bring the ROD mandates up to date to fulfill the
25 requirements of 3406 (b)(23) and the TRD Act. The discussion must also include what
26 sanctions will be imposed for not completing restoration actions on time.
27
- 28 – Similarly, a convention of scientists, program staff and legal counsel akin to the “Eureka
29 Conference” that led to adoption of the Trinity River Flow Evaluation Final Report by the
30 Fish and Wildlife Service and Hoopa Valley Tribe (June 1999) should be organized to
31 ensure the adoption of a science framework appropriate for the conduct of restoration
32 activities.

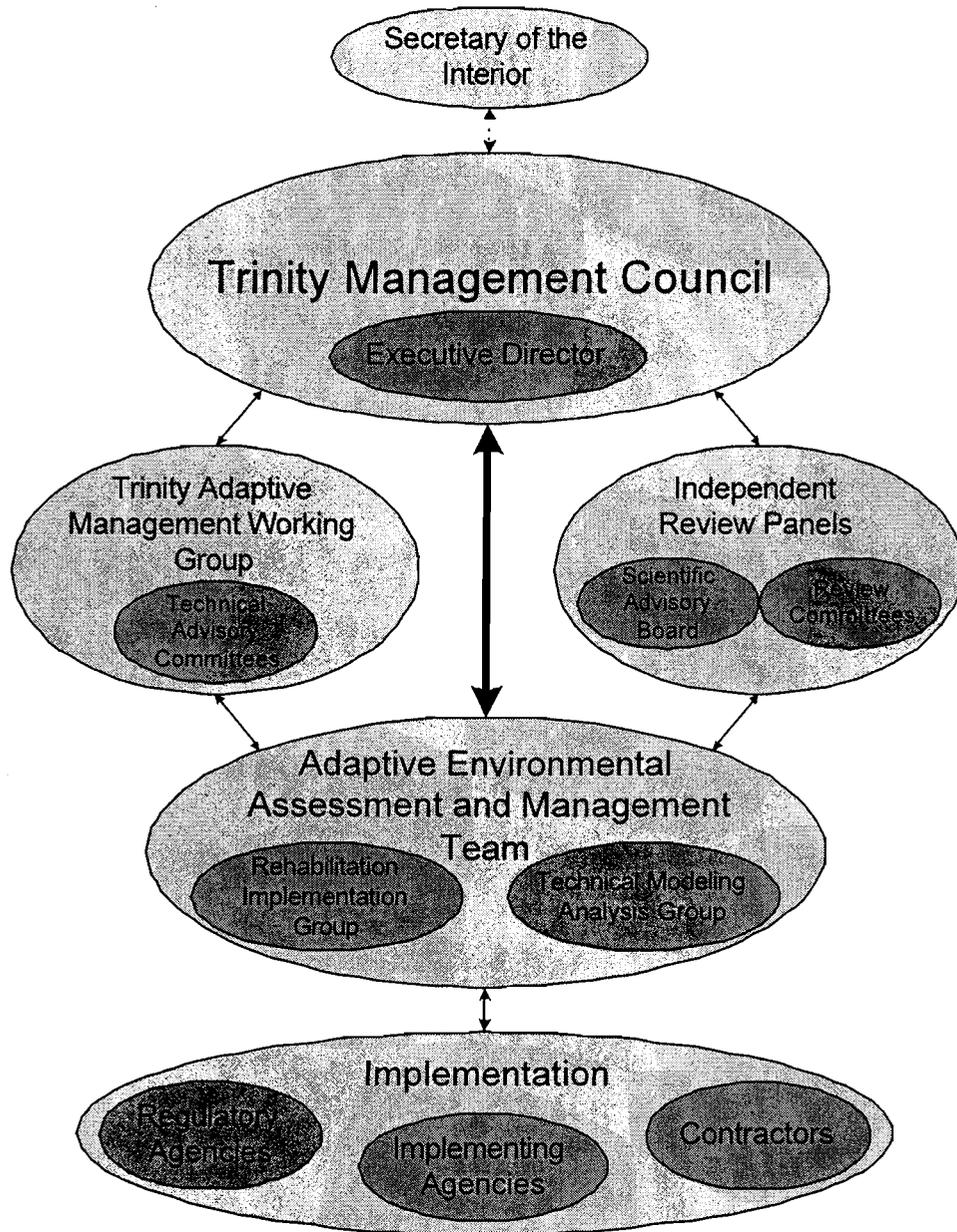


Figure 1 Trinity River Adaptive Environmental Assessment and Management organization structure.

The AEAM organization will be funded primarily by the U.S. Department of the Interior. The Trinity Management Council (TMC) and Executive Director will be the decision-making body for the organization, operating as a board of directors and advising the Secretary of the Interior. Within the overall AEAM organization structure are Stakeholder Groups, Independent Review Panels, Regulatory Agencies, and the Adaptive Environmental Assessment and Management Team.