



Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

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Clifford Lyle Marshall, Sr.
Chairman

By Facsimile: 202 208-6956

April 3, 2007

The Honorable Dirk Kempthorne
Secretary of the Interior
1849 C Street, NW
Washington, D.C. 20240

**Re: Bureau of Reclamation's Failure to Comply with H.J. Res. 20 Funding
Mandate for Trinity River Restoration Program in FY 2007**

Dear Secretary Kempthorne:

The Hoopa Valley Tribe has reserved fishing rights in the Trinity River that have been confirmed by statute, judicial ruling, Solicitor's opinion, and administrative rulemaking. The fishery resources that the United States holds in trust for our tribe have been in severe decline ever since the completion of the Trinity River Division of the Central Valley Project in 1963, which has diverted up to 90 percent of the river's flow at the Trinity Division diversion into the Central Valley. For more than 35 years, tribal, federal and state efforts have been underway to restore the fishery. A milestone in restoration occurred in 2000 with the adoption of the Trinity River Mainstem Fishery Restoration Record of Decision (ROD). Actual restoration began following litigation by Central Valley opponents to the ROD that concluded in 2004 with judicial rulings upholding the ROD. The court of appeals concluded its opinion with the statement that "[R]estoration of the Trinity River fishery, and the ESA-listed species that inhabit it . . . are unlawfully long overdue." (internal citations omitted) Westlands Water Dist. v. U.S. Dept. of Int., 376 F.3d 853, 878 (9th Cir. 2004).

The purpose of this letter is to bring to your attention an immediate problem, the Bureau's deliberate refusal to implement the mandate of H.J. Res. 20, the continuing resolution enacting appropriations for FY 07. As a result, the science portion of the ROD is once again being significantly compromised.

In FY 06, appropriations for Trinity Restoration totaled \$10,064,000, consisting of \$8,064,000 from Water and Related Resources and \$2,000,000 from the Central Valley

Project Improvement Act Restoration Fund. (CVPIA FR). The Administration request for FY 07 was \$7,000,000 from Water and Related Resources and \$0 from the CVPIA RF. The Senate Report 109-274, p. 106, (at Hoopa Valley Tribe's behest) added \$2 million to the \$7 million Administration request "to accelerate implementation of the Trinity River Restoration Program" for a total of \$9 million. The FY 07 bill was not enacted; Congress instead adopted H.J. Res. 20, Public La 110-5, which states in section 2 as follows, with emphasis added:

The following sums are hereby appropriated . . . for the several departments, agencies, corporations, and other organizational units of Government for fiscal year 2007, and for other purposes, namely . . .

Sec. 101. (a) such amounts as may be necessary, at the level specified in subsection (c) and under the authority and conditions provided in the applicable appropriations Act for fiscal year 2006, for projects or activities. . . that are not otherwise provided for and for which appropriations, funds, or other authority were made available in the following appropriations Acts: . . .

(2) The Energy and Water Development Appropriations Act, 2006.

'(b) For purposes of this division, the term 'level' means an amount.

'(c) The level referred to in subsection (a) shall be the amounts appropriated in the appropriations Acts referred to in such subsection, including transfers and obligation limitations.'

The Bureau of Reclamation has published its "Account Level of Detail FY 07 Spending Plan", which identifies the following appropriations for the Trinity River Division:

Trinity River Division Account Level	Water and Related Resources		CVPIA Restoration Fund	
	FY 06 enacted	FY 07 Spending Plan	FY 06 enacted	FY 07 Spending Plan
	\$11,724,000	\$10,697,000	\$2,000,000	\$1,000,000

As can be seen from the Bureau's "Account Level" information, the Bureau of Reclamation has cut by 50% the amount of CVPIA RF funds that will be made available for Trinity River restoration in FY 07. Further, the "Account Level" of detail reveals that the Bureau intends to reduce spending on the entire Trinity River Division account in FY 07 by more than \$1 million. But that does not express the greater impact on the line item at the sub-account level for Fish and Wildlife Management and Development from which Trinity River restoration funding is derived. Instead of providing for \$8,064,000 in FY 07 as was enacted in FY 06, the Bureau of Reclamation has notified the Hoopa Valley Tribe and other members of the Trinity Management Council that it has decided to allocate only \$7,000,000 for Fish and Wildlife Management and Development in 2007.

Trinity River Division Sub- Account Level	Fish & Wildlife Management and Development		CVPIA Restoration Fund	
	FY 06 enacted	FY 07 Spending Plan	FY 06 enacted	FY 07 Spending Plan
	\$8,064,000	\$7,000,000*	\$2,000,000	\$1,000,000

* Source: Trinity river Restoration Program Staff, Weaverville, California.

In summary, H.J. Res. 20 mandates that the level, i.e. amount, of funding in FY 07 for Trinity River restoration from Water and Related Resources and the CVPIA FR be the same as the appropriation enacted for 2006, \$10,064,000. However, the Bureau's FY 07 spending plan allocates \$2,064,000 less than that to Trinity River restoration. Essentially, the Bureau is taking money that Congress specifically added to the FY 06 appropriation "to accelerate implementation of the Trinity River Restoration Program" and diverting it to other uses notwithstanding the fact that the restoration program is "unlawfully long overdue" and the fishery itself has been declared a disaster. The Bureau's conduct toward the Trinity River fishery defies the law and contravenes the federal responsibility for a vital trust resources.

Your immediate attention to this matter is requested. Specifically, we request that you direct the Commissioner of Reclamation to restore funding to the line items for the CVPIA RF and Fish and Wildlife Management and Development in the Trinity River Division budget to not less than the levels enacted in 2006. Finally we would appreciate the opportunity to discuss this with you at your earliest convenience.

Sincerely,



Clifford L. Marshall

cc:

Hon. Dianne Feinstein
Hon. Barbara Boxer
Hon. Mike Thompson
Hon. Grace Napolitano
Hon. Cathy McMorris Rodgers
Assistant Secretary Indian Affairs
Assistant Secretary Water and Science
Associate Director Natural Resources Division OMB David Anderson
Department of the Interior Inspector General