



Hoopa Valley Tribal Council
Natural Resources Division
Fisheries Department
Post Office Box 417 • Hoopa, California 95546
(530) 625-4267 • FAX (530) 625-4995



January 7, 2008

Brandt Gutermuth, Environmental Specialist
Trinity River Restoration Program
P.O. Box 1300
Weaverville, CA 96093

Re: Comment on Lewiston-Dark Gulch Rehabilitation Project
Environmental Assessment/Draft Environmental Impact Report

Dear Mr. Gutermuth:

Successful channel rehabilitation at the Lewiston and Dark Gulch sites is of vital importance to the Hoopa Valley Tribe (HVT). Under the December 19, 2000 Record of Decision (ROD), channel rehabilitation, in conjunction with other management actions, is intended to restore the fishery of the Trinity River to levels mandated by Congress. Based on our review of the EA/DEIR, the Proposed Action fails to optimize site potential to recover fish habitat and will not achieve results matching the Congressional mandate. As a signatory to the ROD, we must ensure that the Proposed Action has the greatest likelihood to restore fish habitat that will contribute to the greatest possible benefit to the river's fishery. In this instance, the Proposed Action has failed to meet this criterion, and does not satisfy the Tribal Trust obligations of the Federal Government.

As stated in the cover letter for the EA/Draft EIR:

"Physical channel rehabilitation is identified in the ROD as a necessary step towards recovery of the Trinity River's anadromous fishery and fulfillment of the federal government's tribal trust responsibility. The purpose of the proposed Lewiston-Dark Gulch rehabilitation project is to provide increased juvenile salmonid and rearing habitat on the mainstem Trinity River."

The Proposed Action falls short on several accounts. First, the Goal of the Program is to restore and sustain natural production of anadromous fish populations downstream of Lewiston Dam to pre-dam levels, and to provide "increased juvenile salmonid and rearing habitat". The Proposed Alternative falls far short of achieving the Program Goal. In other words, an incrementally small "increase" in habitat is insufficient; a more aggressive approach was intended in the ROD, and must be implemented wherever feasible. To illustrate that point, the Lewiston sites, and to a lesser degree the Dark Gulch site, implements a strategy that is substantially less than that called for in the Trinity



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River Flow Evaluation Final Report (TRFEFR), ROD, and Coarse Sediment Management Plan (CSMP). The Proposed Actions fail to take full advantage each sites' potential to maximize fishery recovery. Therefore, the Proposed Action will provide less juvenile salmonid and rearing habitat than is physically and ecologically possible, leaving the government's Tribal Trust responsibility unfulfilled.

In **Section 1-10 Preparers of the EA/Draft EIR** (pg. 1-21), the document notes,

"Representatives of the TMC and their technical representatives provided support to the lead and cooperating agencies throughout this process."

We have participated in the design process for these sites and provided written and oral comment. However, we do not support the final Proposed Action, as we have stated in our reasoning previously provided to the TRRP. Our rationale is as follows:

- 1. The Proposed Action fails to optimize site potential to recover the Trinity River fishery**
- 2. The Proposed Action provides less juvenile rearing and salmonid habitat than is physically and ecologically possible.**

In the EA/ Draft EIR, the description of the *Proposed Action* (pg. ES-10) includes the following:

"These activities [of the Proposed Action] are expected to eventually result in the development of point bars and floodplain habitat that do not presently exist." "...This rehabilitation of river function could result in the rapid development of a larger and more complex expanse of river and floodplain habitats."

"In-channel and riverine activities incorporated into the Proposed Action are intended to increase the potential for the river to meander (migrate) out of the channel in which it has been confined by historic dredging activities and, more recently, by riparian berms."

In order to realize the described benefits of the Proposed Action, sufficient channel rehabilitation actions must occur. Specifically, ample coarse sediment must be supplied to the channel in the form of constructed point and skeletal bars and through direct injection during high flows. Active floodplain restoration must also be incorporated, including berm removal and tailings reclamation. As described in the following pages, we feel the Lewiston-Dark Gulch designs lack an adequate supply of coarse sediment and other design components critical for the required habitat improvements.

Coarse sediment augmentation

The Proposed Action for the Lewiston component of this project is acceptable as is. The volume of coarse sediment identified in the document is accurate and necessary, as described on **page ES-10**:

“The in-channel activities would include the placement of approximately 51,630 cubic yards of coarse sediment into the Trinity River: 36,330 cubic yards at the Lewiston site and 15,300 cubic yards at the Dark Gulch site.”

We desire to confirm 51,630 cubic yards (or slightly more, as described in **Alternative 1, pg. ES-11**) is available for project construction. If the required yardage of coarse sediment is not anticipated to be available, the consequences of this deficiency should be more clearly described. It is the strong preference of the HVT that the full volume (51,630 cubic yards) of coarse sediment be available for construction in 2008.

Under *Tentative Schedule*, (pg. 2-35) it is noted:

“The schedule depends on funding and the availability of coarse sediment for in-river placement. If the availability of the coarse sediment or funding were to inhibit complete project implementation in 2008, in-channel gravel additions would be completed during summer (July 15-September 15) 2009 or 2010.”

It appears clear from recent correspondence with Program staff that there is a shortage of gravel relative to the 51,630 cubic yards described as necessary in the Proposed Action. Additional details are needed to describe the possible in-channel gravel additions that may be delayed until 2010. Does this include the possible delay of construction of bar features, or does this only pertain to coarse sediment inputs to the channel that are not associated with a specific hardscaped design feature? If bar features are to be impacted, additional details of the sequence of bar building should be provided in the Final EA/Final EIR. How will this possible delay affect future channel rehabilitation projects, some of which also requiring substantial coarse sediment augmentations, relative to a possible domino effect of a programmatic coarse sediment shortage (physical and/or fiscal)?

In the past, the TRRP has shown it can complete coarse sediment augmentation over multiple years, such as at the Hatchery site. If the amount of gravel (51,630 cubic yards) is more than can be placed in a single year, a multiple year augmentation schedule is needed. This needs to be detailed in the Final EA/Final EIR.

Dark Gulch

On **page ES-1**, the document states:

“The Proposed Action is designed to benefit anadromous salmonids and their habitat by developing a properly functioning, diverse floodplain and riverine habitat.”

This is a clear example of our concern. The lower portions of Dark Gulch afford substantial potential for large-scale gains in fish habitat; this area is among the few sites with such potential. A key design goal of the Proposed Action is to develop a properly functioning diverse floodplain, but floodplain restoration is not a meaningful component in the downstream portion of the design (the two meanders furthest downstream). This is

ironic given a very real opportunity for substantial floodplain restoration exists at this site. If fully restored, substantial riverine habitat benefits, especially to salmonids, should result. The design process required to assess the site potential has been short-circuited in favor of a lower-cost and faster approach.

A more comprehensive design is needed for the Dark Gulch component of this project. Given the limitations of funding for TRRP construction activities, failure to properly design the project at this point in time will virtually preclude the harnessing of site potential at a later date. The TRRP budgeting process has not included funding for redesigning or reconstructing Lewiston or Dark Gulch sites beyond the Proposed Action described in this document.

The site provides tremendous opportunity as a long-term coarse sediment source for the coarse sediment management portion of the TRFEFR, as mandated under the ROD and recommended in the CSMP. The process of extracting coarse sediment for placement within the Dark Gulch project site or elsewhere in the upper river could be done in a way that considers long-term options for side channels, floodplain reclamation, and coarse sediment augmentation. This type of approach (restoring a coarse sediment “borrow site” while placing coarse sediment at other locations) has been successful and cost-effective on Clear Creek and the Tuolumne River, and the Dark Gulch site appears ideally suited for a similar approach. Properly designed (at a large scale) the TRRP can build Dark Gulch projects apace with progress of the coarse sediment augmentation program.

The large-scale floodplain and side channel excavation at R-3 DG (Alternative 1) is more consistent with the overall vision required for the two downstream meanders of the Dark Gulch site. The document provides no analysis as to why feature R-3 DG (side channel and floodplain restoration) was not incorporated into the Proposed Action. Also, neither alternative considers the full potential of the meander upstream containing floodplain feature R-1 (immediately upstream of the R-3 DG meander). Instead, the meander has been designated a disposal area, serving no apparent ecological purpose. The current design for this area leaves the current meander wavelength of the river unchanged. The document fails to provide analysis indicating why one should expect to see shifts in meander wavelength in this reach—a fundamental goal of this Program.

The document contrasts two alternatives but does not explain *why* one alternative was selected over the other. Technical analysis to this end is essential to decision making. This technical analysis is currently missing from the document and should be incorporated into the Final EA/Final EIR. We understand that a temporary bridge would likely be needed downstream of the R-3 DG meander. If so, we support construction of a temporary bridge to enable the restoration of this floodplain.

HVT feels the R-3 DG Alternative 1 design component should be incorporated into the Proposed Action or the Program must provide technical analysis demonstrating why this feature will not better enable the achievement of the **Project Objectives and Activities**, listed in **Section 2.6** (pg. 2-11 and 2-12), **Goals and Objectives of the Proposed Action** (pg. ES-5), and **Tribal Trust** responsibilities listed in **Section 3.10** (page 3.10-1).

Similar analysis must be provided for the difference in excavation in the Proposed Action (190,600 cubic yards) versus Alternative 1 (87,000 cubic yards). The Program also needs to justify the absence of a design (in either alternative) for the R-1 meander that optimizes fish habitat at that location. The stated purpose of this project is to provide increased juvenile rearing salmonid and rearing habitat in the mainstem Trinity River. We believe the omitted side channel/floodplain feature R-3 DG and R-1 meanders (currently missing from the Proposed Action) would provide substantially greater increases in salmonid habitat to this end. Given fish habitat sufficient to support natural production goals is the basis for the rehabilitation effort, these project elements must be fully analyzed.

Last Minute Design Alterations

Significant design alterations discussed at the Program's December 20, 2007 Interdisciplinary Team Meeting need to be detailed and analyzed in the Final EA/Final EIR. These changes result largely from the recommendations of the *Value Engineering Final Report* (October 26, 2007). Recommended design revisions stemming from this report were distributed to Program Partners, ourselves included, on December 18, 2007 (after the release of the EA/Draft EIR and *only two days* before the Interdisciplinary Team Meeting, leaving little time for review). Revisions to the design included in this EA/Draft EIR requiring additional detail and/or analysis include:

- Value Engineering Study Proposal 2 – Limit Floodplain Construction in Area R-1 (Dark Gulch)

The Program has proposed limiting excavation in Area R-1 (Dark Gulch) to save money by leaving unexcavated materials in place. We do not support this proposal as presented in the revised designs by the Program. Currently, the contours indicate the islands will be approximately three feet in height. This will not resemble any natural surface on the Trinity River, nor has information been provided as to *how* this floodplain will *function*, other than simple inundation at 6,000 cfs. The floodplain objectives at R-1 are not clear. We should pause to first monitor the other floodplains we have constructed (Hocker Flat, etc) and evaluate their overall performance. While we understand the Program is maintaining the proposed islands will create additional edge habitat, we have not been made aware that fry habitat is limited at and near flows of 6,000 cfs.

- Value Engineering Study Proposal 4 – Concentrate Coarse Sediment Augmentations

This proposal impacts both the Lewiston and Dark Gulch sites. We do not support this proposal, or the reduction in bars being built as a result. As agreed upon in the TRFEFR, ROD, and CSMP, we need to implement coarse sediment augmentations to the river as directed by these documents. This proposal is not consistent with the coarse sediment augmentation goals of this program, and effectively reduces the volume of coarse sediment being added through these designs. A scientific justification has not been provided. Furthermore, implementation of this proposal in the final design is at conflict with the Program's own statement of the amount of coarse sediment required for the Proposed Action (51,630 cubic yards).

- Value Engineering Study Proposal 5 – Tree Deflectors for Bar Formation (Dark Gulch)

We do not support the action as proposed for implementation in the Dark Gulch site. Deflectors would be better suited further upstream, and implemented in a more habitat-oriented design. A similar experiment was conducted at Indian Creek in 2007. We feel it is important to first monitor the performance of the installation at Indian Creek before proceeding with this proposal. Additionally, along with Proposal 6 below, this action is not consistent with a more comprehensive design, which is needed for this meander.

- Value Engineering Study Proposal 6 – Slash Tree Roots at R-3 DG (Dark Gulch)

We do not support the implementation of this proposal at the specific location of R-3 DG, as we feel it will have a low likelihood of success based on our observations at other locations on the river. Benefits of this approach must first be confirmed through biological and geomorphic monitoring of the berm notching conducted at Vitzhum Gulch (Indian Creek, 2007).

- Value Engineering Study Proposal 7 – IC-8-CW Grade Control Reshape

We do not support reshaping this grade control. The Program has not demonstrated the benefits of implementing this design change. Absent a technical analysis, selection of this, or any alternative, is difficult to justify.

3. The Proposed Action does not fulfill the federal government's Tribal Trust responsibility

In **Section 3.10 Tribal Trust** (pg. 3.10-1), the federal government's Tribal Trust responsibility is acknowledged. However, in **Section 3.10.2 Environmental Consequences/Impacts and Mitigation Measures** (pg. 3.10-8), the Tribal Trust responsibility is presented in terms of negative impacts to the fishery as a result of the channel rehabilitation effort at Lewiston and Dark Gulch. That is, if the construction does not negatively impact fish (e.g. through impacts to water quality), then the obligation is upheld. In fact, positive impacts to fish are required.

Positive impacts to fish are a trust duty resulting from the express directions of Congress in the CVPIA, § 3406(b)(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." Congress placed upon the Secretary a federal trust responsibility to achieve positive outcomes for fish. The ROD quantifies that duty by stating: "The 1984 Act directed the Secretary to develop a management program to restore fish and wildlife populations in the Basin to levels approximating those that existed immediately before TRD construction began." *Id.* at 7. It is clear that to meet the federal trust responsibility to restore fish populations to such levels, while continuing to export to the CVP over 50% of the Trinity River's average runoff at Lewiston, full advantage must be taken of potential habitat found in these restoration areas. The CVPIA gives the federal government the responsibility to restore tribal trust resources lost as a result of the TRD. The CVPIA thus establishes an additional "fiduciary relationship and define[s] the contours of the United States' fiduciary responsibilities." *United States v.*

Mitchell, 463 U.S. 206, 224 (1983). These duties go beyond the rule that reserved fisheries must not be harmed.

It is a primary purpose of this project to restore the fishery of the Trinity River to help meet the Tribal Trust responsibility of the federal government. We do not believe implementation of the Proposed Action will optimize the maximum beneficial results to salmonid habitat or geomorphic processes to restore physical and biological the function of the river. Ultimately, we expect the implementation of this channel rehabilitation action, combined with other management actions, will cumulatively result in the achievement of the spawner escapement goals listed in **Tables 3.6-1 and 3.6-2** (pg. 3.6-2 and 3.6-5) and other numeric measurements that provide evidence of a restored fishery.

4. Additional comments

Berm excavation and root re-growth

Over the past month, riparian monitoring of recently constructed channel rehabilitation sites (Hocker Flat, Valdor Gulch, and others) has provided strong evidence that root re-growth along the channel margins may cause failure of these sites soon after they are constructed due to insufficient removal of willow root material from the riparian berm. On **page ES-25**, construction specifications call for ripping to 18 inches in depth. We feel this specification is likely to be ineffective in preventing site failure via re-growth, and requests that the TRRP evaluate whether this specification alone will alleviate the occurrence of root re-growth at these sites, or develop different and/or additional construction specifications to alleviate this failure risk.

Insufficient monitoring details

On page ES-5, **Goals and Objectives of the Proposed Action**, it is stated,

“Evaluate the biological response (aquatic, riparian, upland) to changes in the physical environment and incorporates this information into the AEAM Program.”

However, we note a monitoring plan for this evaluation is not included. Additional details relative to the evaluation of these sites should be included in the Final EA/Final EIR.

In addition, we see no evidence that the limited monitoring of the biological response of recently constructed sites at Hocker Flat and Canyon Creek are being incorporated into the AEAM program. The lack of monitoring of constructed sites is preventing learning from informing future designs, thus AEAM is not being implemented, resulting in continued construction methods that may end in additional site failures. We believe that a well established monitoring and AEAM program is necessary to increase assurances of meeting Tribal Trust obligations.

The document does include a **Section 4.5 Mitigation Monitoring Program for CEQA-Mandated Mitigation**. This section refers to **Appendix A: Mitigation Monitoring and Reporting Program**. The document is a mere recitation of the combined mitigation measures compiled throughout the EA/Draft EIR and requires only a date and initial to be placed alongside each mitigation action, once completed. There is no evaluation of the

adequacy, success, or failure of these mitigation measures. The monitoring to occur in Appendix A is the only monitoring described in the document and has little, in any, value for AEAM purposes.

Thank you for taking the time to review these comments. The restoration of the Trinity River fishery is of utmost importance to us, and we look forward to our continued involvement in this program for the betterment of this fundamental resource.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mike Orcutt". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Mike Orcutt

Director, Hoopa Valley Tribal Fisheries Department