

14-17493

**United States Court of Appeals
for the Ninth Circuit**

SAN LUIS & DELTA MENDOTA WATER AUTHORITY and
WESTLANDS WATER DISTRICT,
Plaintiffs/Appellees/Cross-Appellants,

v.

SALLY JEWELL, ET AL.,
Defendants/Appellants/Cross-Appellees,

and

HOOPA VALLEY TRIBE (*Defendant-Intervenor/Appellant/Cross-Appellee*),
YUROK TRIBE (*Defendant-Intervenor/Appellant/Cross-Appellee*),
PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS and
INSTITUTE FOR FISHERIES RESOURCES (*Defendant-Intervenors/Appellees*),

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA (No. 13-cv-1232 LJO/GSA)

OPENING BRIEF OF APPELLANT HOOPA VALLEY TRIBE

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CORPORATE DISCLOSURE STATEMENT

Appellant Hoopa Valley Tribe is a federally recognized Indian Tribe. Accordingly, a corporate disclosure statement is not required by Federal Rule of Appellate Procedure 26.1.

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I. STATEMENT OF JURISDICTION

Plaintiffs alleged jurisdiction in the District Court pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2). Joint Excerpts of Record (ER) 143.¹ The District Court entered final judgment on October 24, 2014. ER 84. Pursuant to FRAP 3 and 4(a)(1)(B), the Hoopa Valley Tribe timely filed Notice of Appeal to this Court on December 19, 2014. ER 182. This Court has jurisdiction under 28 U.S.C. § 1291.

II. STATEMENT OF THE ISSUES

Whether the Secretary of the Interior (“Secretary”) has statutory authority under the first proviso of Section 2 of the 1955 Trinity River Division Central Valley Project Act, Pub. L. No. 84-386, 69 Stat. 719 (“1955 Act”) to release water from the Trinity River Division for the purpose of preserving fish from harm and possible death during their upstream migration through the lower-Klamath River?

III. ADDENDUM STATEMENT

The attached addendum includes pertinent statutes and legislative history.

IV. STATEMENT OF THE CASE

The Hoopa Valley Tribe (“Tribe”), a federally-recognized Indian tribe, is located on the Hoopa Valley Reservation, which was established for the Tribe by the United States in 1864. *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995),

¹ Sally Jewell et al., Hoopa Valley Tribe, and Yurok Tribe prepared a Joint Excerpts of Record for their three related appeals, which is filed in Case No. 14-17506.

cert. denied, 518 U.S. 1016 (1996). The lower twelve miles of the Trinity River, and a stretch of the Klamath River near the Trinity confluence, flow through the Tribe's Reservation. ER 647. Anadromous fish returning to the Trinity River from the Pacific Ocean must swim through 44 miles of the lower-Klamath River. The principal purpose of the Tribe's Reservation was to set aside sufficient resources of these rivers for the Indians to be self-sufficient and achieve a moderate living based on fish. Memorandum from John D. Leshy (M-36979), Solicitor of the Department of the Interior to the Secretary of the Interior (Oct. 4, 1993), (ER 100, 109-110, 113, 122) (1993 Opinion), *cited with approval*, *Parravano*, 70 F.3d at 542.

In 2002, thousands of fall-run Chinook salmon died in the lower-Klamath River when a combination of a large returning fish run, unusually low flow conditions, and poor water quality led to a severe disease outbreak that spread quickly amongst the crowded fish. ER 192, 205. At least 33,000 adult salmonids were killed. ER 515-516. Actual fish losses may have been double that number. ER 499. The 2002 fish-kill effectively halted tribal harvest of fish that year and adversely affected subsequent years' harvests. ER 482, 499.

Since 2002, the Secretary has proactively released water from Trinity Reservoir in the late-summer of six separate years (2003-2004, 2012-2015) when fishery managers and scientists concluded that fish returns and low flow conditions

were expected to duplicate conditions present in 2002. ER 178-179. In each of those years, salmon migrated upstream through the lower-Klamath River to spawning grounds in the Trinity and Klamath rivers without significant disease or adult mortalities. *Id.*; ER 192.

This appeal addresses the Secretary's authority to make those preventative releases pursuant to the first proviso of Section 2 of the 1955 Act. The Tribe's position is that the actions taken by the Secretary to preserve fish (including anadromous fish of both Trinity and Klamath River origin) are authorized by the first proviso of Section 2 of the 1955 Act and are further supported by the Secretary's fiduciary obligation to protect tribal trust resources.

A. Statement of Facts

1. The Trinity River Is Tributary to the Klamath River.

The Trinity River, in northwest California, is the largest tributary to the Klamath River. ER 646. A map of the Trinity and Klamath Rivers is at ER 647. The confluence of the Trinity and Klamath Rivers is at Weitchpec, just north of the Hoopa Reservation and within the boundary of the adjoining Yurok Reservation. ER 647. The stretch of Klamath River located below the confluence is commonly known as the "lower-Klamath." The lower-Klamath flows from the confluence

through the Yurok Reservation for 44 miles to the Pacific Ocean.² *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 860-61 (9th Cir. 2004).

2. Upon Returning From the Ocean, Salmon Migrate Through the Lower-Klamath River to Trinity River Spawning Grounds.

The Klamath and Trinity Rivers provide spawning and rearing habitat to substantial runs of anadromous fish, including Chinook and Coho salmon, and steelhead trout. *Westlands*, 376 F.3d at 860-62; ER 654-663. Each species requires varied water conditions, including depth, velocity, and temperature, at different stages throughout their lives. ER 656-659. “By their very nature, anadromous fish live transient lives.” *Parravano*, 70 F.3d at 542. Depending on the species, a juvenile fish will remain in the freshwater river for a few months to a few years, before migrating downriver to the ocean. ER 657-658. After one to six years in the ocean, depending on the species, the fish will return to the mouth of the Klamath River and begin migrating back upriver to their natal spawning grounds in the Trinity River or mainstem Klamath River. ER 659-660.

The timing of the upriver migration varies depending on the species. ER 660-661. Relevant here, fall-run Chinook salmon begin their upriver migration to

² From 1891 through 1988, the strip of land through which the lower-Klamath flows from the confluence to the ocean was part of the Hoopa Valley Indian Reservation, which was shared by Hoopa and Yurok people. *Mattz*, 412 U.S. at 493-94. In 1988, Congress partitioned the “Joint Reservation” into separate reservations for the Hoopa and Yurok Tribes. *Hoopa Valley Tribe v. United States*, 597 F.3d 1278, 1281 (Fed. Cir. 2010).

Trinity or Klamath River spawning grounds in August of each year. ER 660.

Some of these salmonids will continue migrating through the lower-Klamath and up the Trinity River until they reach Lewiston Dam. *Id.* Coho salmon, which are

listed as threatened under the Endangered Species Act³ begin their upriver migration to their Trinity or Klamath River spawning grounds in September. *Id.*

Certain runs of steelhead also return to the Klamath and Trinity Rivers in late summer and early Fall. ER 661. The total quantity of fish returning to the

Klamath and Trinity Rivers (known as “escapement”) varies each year, as does the relative numbers of fish that return to spawn in the Trinity River versus the

mainstem-Klamath. “The preservation of the species depends on an adequate level of escapement, i.e., sufficient numbers of fish avoiding capture and returning up-

river from the ocean to spawn.” *United States v. Eberhardt*, 789 F.2d 1354, 1363 (9th Cir. 1986) (Beezer, J., concurring).

3. In 1955, Congress Authorized the Trinity River Division (TRD).

In 1955, Congress authorized development of the TRD as a part of the Central Valley Project (CVP), which is an extensive system of dams, canals, and reservoirs that stores and regulates water for California’s Central Valley.

Westlands, 376 F.3d at 861. The TRD became operational in 1964. ER 646. The

³ 62 Fed. Reg. 24588 (May 6, 1997) (listing SONCC coho as threatened; 70 Fed. Reg. 37160 (June 28, 2005) (reaffirming coho listing).

TRD impounds the Trinity River at Trinity Dam, behind which water accumulates to form Trinity Reservoir. ER 212-213. A second reservoir and dam, called Lewiston, sits immediately downstream of Trinity Dam/Reservoir, and regulates water releases to the Trinity River. *Id.*; ER 648. At Lewiston, water is also diverted to the Sacramento River Basin. *Id.* The confluence of the Trinity and Klamath Rivers at Weitchpec is located 112 miles downstream of Trinity Dam. *Westlands*, 376 F.3d at 860. *See* map at ER 647.

When Congress authorized the TRD in the 1955 Act, Congress recognized that “an asset to the Trinity River Basin, as well as to the whole north coastal area, are the fishery resources of the Trinity River.” S. Rep. No. 1154, 84 Cong., 1st Sess. (1955 Senate Report) at 5; H.R. Rep. No. 602, 84th Cong., 1st Sess. (1955 House Report) at 4. In Section 2 of the 1955 Act, Congress directed maintenance of a minimum flow in the Trinity River below Lewiston Dam of not less than 150 cfs during July through November. 1955 Act, § 2. Congress further required the Secretary “to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to [the 150 cfs minimum flow].” *Id.* It is that “preservation and propagation” authority contained in the first proviso of Section 2 of the 1955 Act that the Secretary relies on to support her fish preservation actions here.

In 1979, Interior Solicitor Krulitz explained that the provisos of Section 2 of the 1955 Act limit the integration of the TRD into the CVP and require the Secretary to exercise a priority for use of all TRD water necessary to protect fish and other in-basin needs:

On occasion the Congress has specifically limited the Secretary's discretion in meeting the general CVP priorities. For example, in authorizing the Trinity River Division of the CVP in 1955, Congress specifically provided that in-basin flows (in excess of a statutorily prescribed minimum) determined by the Secretary to be necessary to meet in-basin needs take precedence over needs to be served by out-of-basin diversion. See Pub. L. No. 84-386, § 2. In that case, Congress' usual direction that the Trinity River Division be integrated into the overall CVP, set forth at the beginning of section 2, is expressly modified by and made subject to the provisos that follow giving specific direction to the Secretary regarding in-basin needs.

Memorandum from Solicitor to Assistant Secretary, Land and Water Resources, Dec. 7, 1979 (1979 Opinion). ER 135-136.

Nonetheless, the construction and operation of the TRD radically altered the Trinity River environment by blocking, destroying, and degrading river habitats that supported once-abundant fish populations. *Westlands*, 376 F.3d at 862. In addition to obstructing 109 miles of habitat upstream of Lewiston Dam previously used for holding, spawning and rearing, the TRD diverted an average of 88% of the annual inflow out of the Trinity River and into the Sacramento River Basin during its first ten years of operation (substantially more than what Congress was advised in the plan of development). ER 642, 649; *Westlands*, 376 F.3d at 861;

1955 House Report, at 4. This had the effect of narrowing the river channels, increasing water velocity, altering normal water temperature patterns, and spoiling and limiting spawning grounds on the Trinity River below Lewiston Dam. ER 642, 649. Within a decade of the TRD's completion, salmonid populations dramatically decreased. ER 643. Between 1963 and 1981, Chinook salmon runs in the Trinity River declined by 80%. ER 744. Eighty to ninety percent of total salmonid habitat in the Trinity Basin was lost during that time period. ER 650.

4. To Protect Tribal Rights, the Secretary and Congress Took Action to Restore Fish and Fish Habitat to Pre-Project Levels.

The reduction in salmon populations had a devastating impact on the Tribe. For generations, the Tribe has depended on the fishery resources of the Trinity and Klamath Rivers. *Parravano*, 70 F.3d at 542; ER 741. The Tribe holds federally-reserved fishing and water rights in both rivers. *Parravano*, 70 F.3d at 544-46; *United States v. Adair*, 723 F.2d 1394, 1411 (9th Cir. 1984). The United States, as trustee for the Tribe, has a fiduciary responsibility to protect and preserve the Tribe's trust resources. ER 653; 741-42; *Klamath Water Users Ass'n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 2000); Memorandum to Regional Director, Bureau of Reclamation from Regional Solicitor, Pacific Southwest Region (July 25, 1995) (1995 Opinion) ("Reclamation must exercise its statutory and contractual authority to the fullest extent to protect the tribal fisheries and tribal water rights.") ER 97.

In 1981, relying on an environmental study, the authority provided by the 1955 Act, § 2, and the trust obligation to protect tribal resources, the Secretary ordered an increase in annual flows released from the TRD to the Trinity River downstream of Lewiston Dam. ER 738-753. Under the 1981 Secretarial Order, flows released from the TRD in normal water years increased from 120,500 acre-feet annually to 340,000 acre-feet annually. ER 738. The Secretary also directed initiation of a Trinity River Flow Evaluation Study (“TRFES”) to study and develop a flow regime and other measures to improve habitat conditions in the Trinity River. ER 650. In the 1981 Order, the Secretary stated:

[T]he [Hoopa] and Yurok Indians have rights to fish from the Trinity and Klamath Rivers and to adequate water to make their fishing rights meaningful. These rights are tribal assets which the Secretary, as trustee, has an obligation to manage for the benefit of the tribes. The Secretary may not abrogate these rights even if the benefit to a portion of the public from such an abrogation would be greater than the loss to the Indians.

ER 742. The Secretary concluded “there are responsibilities arising from congressional enactments, which are augmented by the federal trust responsibility to the Hupa and Yurok tribes, that compel restoration of the river’s salmon and steelhead resources to pre-project levels.” ER 753.

In 1984, Congress affirmed and authorized the Secretary’s restoration goal in the Trinity River Basin Fish and Wildlife Management Act (“1984 Act”), Pub. L. No. 98-541, 98 Stat. 2721. Congress found that “the Secretary requires additional authority [beyond that provided in the 1955 Act] to implement a basin-

wide fish and wildlife management program in order to achieve the long-term goal of restoring fish and wildlife populations in the Trinity River Basin to a level approximating that which existed immediately before the start of the construction of the [TRD].” 1984 Act, § 1(6). Section 2(a) of the 1984 Act directed the Secretary to formulate and implement a program designed to restore the fish and wildlife populations in the Trinity Basin to pre-TRD levels. Congress required the program to include: (1) rehabilitation of fish habitats in the Trinity River between Lewiston Dam and Weitchpec; (2) rehabilitation of fish habitats in tributaries of the Trinity River below Lewiston Dam; and (3) improvements to the Trinity River Fish Hatchery. 1984 Act, § 2(a)(1).

The 1984 Act focused on restoration of fish habitat in the mainstem Trinity River and its tributaries, which would help to achieve the goal of restoring fish populations in the Trinity River. *Id.* In 1986, Congress expanded the scope of the restoration mandate to the Klamath River in the Klamath River Basin Conservation Restoration Area Act (“1986 Act”), Pub. L. No. 99-552, 100 Stat. 3080. In passing the 1986 Act, Congress found that “the Secretary has the authority to implement a restoration program only in the Trinity River Basin [under the 1984 Act] and needs additional authority to implement a restoration program . . . to restore anadromous fish to optimum levels in both the Klamath and Trinity Basins.” 1986 Act, § 1(9).

Neither the 1984 Act nor the 1986 Act repealed or restricted the pre-existing authority to preserve and propagate fish provided to the Secretary by the 1955 Act.

In 1992, Congress passed the Central Valley Project Improvement Act (“CVPIA”), Pub. L. No. 102-575, §§ 3401-12, 106 Stat. 4600, 4706-31 (1992). Section 3406(b)(23) of the CVPIA required the Secretary to take specific actions “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 [1984 Act].” CVPIA, § 3406(b)(23). The Secretary was directed to complete the TRFES initiated by the Secretary in 1981 by September 30, 1996. *Id.*, § 3406(b)(23)(A). If the Secretary and the Tribe concurred in the TRFES’ recommendations once completed, the Secretary was directed to implement any increase in flow accordingly. *Id.*, § 3406(b)(23)(B).

In 1996, Congress reauthorized and amended the 1984 Act in the Trinity River Basin Fish and Wildlife Management Act of 1996 (“1996 Act”), Pub. L. No. 104-143, 110 Stat. 1339 (1996). The 1996 Act amended the scope of the 1984 Act’s mandate to include rehabilitation of fish habitat “in the Klamath River downstream of the confluence with the Trinity River.” 1996 Act, § 3(b). Neither the CVPIA nor the 1996 Act repealed or restricted the authority to preserve and propagate fish provided to the Secretary by Section 2 of the 1955 Act.

5. The TRFES, Finalized in 1999, Recommended Specific Measures to Restore Fish Habitat in the Mainstem Trinity River.

The Final TRFES was released in 1999. ER 606. The scope of the TRFES and the recommendations made therein were limited to habitat restoration in the mainstem Trinity River. ER 681-683; 689-705; 722-726. Prior to TRD development, the Trinity River was a “dynamic alluvial river,” in which plentiful salmon spawning and rearing habitat existed. ER 631. Regulation of flows, resulting from the TRD, destroyed the alluvial features and limited salmon habitat in the mainstem Trinity. *Id.* In the TRFES, scientists analyzed the fundamental attributes of an alluvial river and how those attributes could be restored (in part) through carefully managed flow releases. ER 633. The TRFES recommended a flow regime and management actions to rehabilitate habitat in the mainstem channel of the Trinity River between Lewiston Dam and the Klamath confluence at Weitchpec. ER 633-636; 681-683. The TRFES did not address restoration issues downstream of the Trinity-Klamath confluence. ER 681-737.

Following completion of the TRFES and an EIS under NEPA, the Secretary executed and the Tribe concurred in the Trinity River Record of Decision (“ROD”) in December 2000. ER 549. The ROD adopted the recommendations from the TRFES, which were designed to restore physical fishery habitat in the mainstem Trinity River pursuant to Congress’ direction in the 1984 Act and CVPIA. ER 530-

531. Included in the recommendations adopted in the ROD is a schedule of flow releases below Lewiston Dam on the Trinity River, which are intended to facilitate restoration of fish habitat between Lewiston Dam and Weitchpec. ER 533; 556-57; 681-718. The ROD went into full effect in 2004 following this Court's ruling in *Westlands*, 376 F.3d 853, which rejected claims brought by these same Plaintiffs.

6. Following the 2002 Fish-Kill, the Secretary Has Taken Action When Necessary to Prevent A Recurrence Pursuant to the Authority to Preserve Fish in the 1955 Act.

In September 2002, thousands of fall-run Chinook salmon died in the lower-Klamath River during their migration upstream when a combination of unusually low flows, warm water temperatures, and a large number of returning fish led to a severe disease outbreak. ER 192-193, 515. Since 2002, the Secretary has scheduled extra releases of water from Trinity Reservoir during the late-summer in six separate years (2003-2004, 2012-2015) when fishery managers and scientists concluded that fish returns and low flow conditions were expected to duplicate conditions present in 2002.⁴ *Id.*; ER 178-179.

⁴ The releases are referred to as "Flow Augmentation Releases" or "FARs." The 2003 FARs were made while appeal of the ROD was pending in this Court in the *Westlands* litigation. In 2003, District Court Judge Wanger, upon the United States' motion, issued a ruling permitting the Secretary to use up to 50,000 acre-feet for the purpose of preventing recurrence of fish-kill conditions. ER 336. This Court approved modification of the injunction to permit use of the 50,000 acre feet

In their First Amended Complaint (FAC), Plaintiffs challenged the Secretary's legal authority to make the 2012 and 2013 FARs, contending primarily that the FARs were barred by § 3406(b)(23) of the CVPIA. ER 164. Plaintiffs' request to enjoin the 2013 FARs was denied. ER 1. Plaintiffs sought injunctive relief to halt the 2014 FARs, but Plaintiffs' request was denied.⁵ ER 17.

In 2012, projected flow conditions and a forecasted record fall-run Chinook salmon escapement to the lower-Klamath River presented similar conditions to those experienced during the 2002 die-off. ER 335-336. Thus, the Fall Flow Subgroup, including the U.S. Fish and Wildlife Service ("USFWS") and National Marine Fisheries Service ("NMFS"), developed recommendations for maintaining flows in the lower-Klamath River to reduce the possibility of a disease outbreak. *Id.*; ER 389-409. The Bureau of Reclamation ("Reclamation") prepared a Draft Environmental Assessment ("EA") and a Draft Finding of No Significant Impact ("FONSI") pursuant to NEPA, which analyzed and solicited public comment on the potential effects of the proposed releases. ER 359-388. In the EA, Reclamation analyzed the possibility of releasing up to 92,000 acre-feet of water.

for additional releases in 2003. *Westlands*, 376 F.3d at 865. The Secretary released 38,000 acre-feet of water in 2003. Plaintiffs did not challenge the 2004 FARs.

⁵ Plaintiffs filed a separate lawsuit and a request to enjoin the 2015 FARs, which was denied. That lawsuit, *San Luis & Delta-Mendota Water Authority v. Jewell*, No. 15-1290 (E.D. Cal.), which addresses other sources of legal authority not at issue in this appeal, remains pending in the District Court below.

ER 378-379. After reviewing public comment, a final EA and FONSI were issued.

ER 324-358. Pursuant to the Secretary's authorization, Reclamation ultimately released 39,000 acre-feet of water for the 2012 FARs. ER 205. No significant disease outbreak or unusual fish mortalities occurred. *Id.*

In 2013, due to dry hydrologic conditions and well above average expected escapement, the Trinity Management Council and the Pacific Fishery Management Council recommended flow releases to prevent replication of fish-kill conditions.

ER 317-323. Reclamation prepared an EA and FONSI based on the input from scientists and fishery managers and solicited and reviewed public comment on the proposed action. ER 190-240. The EA estimated a need to release 62,000 acre-feet of water to prevent recurrence of fish-kill conditions in 2013 (ER 193); however, Reclamation ultimately released 17,500 acre-feet. No significant disease or mortality occurred.

The FARs are made during the late-summer/early Fall when adult salmon return from the ocean to the Klamath River and migrate upstream to spawn in the Trinity or Klamath River, depending on their stream of origin. ER 660-61. The FARs are limited to those amounts deemed necessary by the Secretary, as informed by scientists and fishery managers, to provide flow conditions that will reduce the likelihood of disease outbreak among fish migrating upstream to reach their natal spawning grounds. ER 205-211; 317-323. In each year where the Secretary

released FARs to preserve and protect the fish returning in the lower-Klamath River, salmon migrated through the lower-Klamath to their spawning grounds without significant disease or adult mortalities. ER 205.

B. Procedural History

On August 7, 2013, Plaintiffs filed suit challenging the Secretary's legal authority to make the FARs. ER 39. Plaintiffs alleged the Secretary's action violated provisions of the CVPIA, NEPA, the ESA, and other provisions of federal Reclamation law and California state law. *Id.* The Tribe and three other parties intervened as defendants in support of the Secretary. *Id.* The Secretary and Intervenor-Defendants argued that the FARs did not violate any law and that the Secretary had authority and a responsibility to implement the FARs pursuant to the first proviso in Section 2 of the 1955 Act.

On August 13, 2013, the District Court issued a temporary restraining order (TRO) that enjoined the Secretary from making the FARs. ER 39. Following a hearing on August 21-22, 2013, the Court lifted the TRO and denied Plaintiffs' motion for preliminary injunction. *Id.* The Secretary implemented the 2013 FARs. Plaintiffs filed their FAC on October 4, 2013, which retained all claims asserted in their Complaint. *Id.*; ER 137. Following cross-motions for summary judgment, the Court entered a Memorandum Decision on October 1, 2014 (ER 33) and Final Judgment on October 24, 2014. ER 84. In the interim, Plaintiffs sought a

preliminary injunction to bar implementation of FARs in 2014. ER 17. The Court denied Plaintiffs' request and the Secretary implemented the 2014 FARs.⁶ *Id.*

In its Memorandum Decision and Final Judgment, the Court rejected all claims raised in Plaintiffs' FAC and entered judgment in favor of the Secretary and Defendant-Intervenors on all of Plaintiffs' claims arising under the CVPIA, NEPA, the ESA, the Reclamation Act, and California law. ER 82-86. However, the Court entered judgment in favor of Plaintiffs and against the Secretary and Defendant-Intervenors on the related issue of whether the Secretary has statutory authority to implement the FARs under the first proviso of Section 2 of the 1955 Act. *Id.* The Court's judgment "declares that the provision of section 2 of the 1955 Act cited by Defendants is limited in scope to the Trinity River basin, and so does not provide authorization for Federal Defendants to implement the 2013 FARs to benefit fish in the lower-Klamath River." ER 85.

C. Rulings Presented for Review

The Tribe appeals the District Court's judgment and related ruling that the first proviso of Section 2 of the 1955 Act does not provide the Secretary with statutory authority to implement the FARs for the purpose of preserving fish from

⁶ The Secretary relied on the second proviso of Section 2 of the 1955 Act and other sources of legal authority, to support the 2015 FARs. Plaintiffs' suit challenging the 2015 FARs remains pending in the District Court. *See* note 5 *supra*. This appeal addresses only the first proviso of Section 2 of the 1955 Act, which was the only authority relied on by the Secretary to support the 2012 and 2013 FARs.

harm or possible death during their upstream migration through the lower-Klamath River to their natal spawning grounds.⁷ ER 85; 67-76.

V. SUMMARY OF THE ARGUMENT

The first proviso of Section 2 of the 1955 Act provides that “the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish” 1955 Act, § 2. This statutory language grants the Secretary broad authority and an affirmative responsibility to take appropriate measures to preserve fish from harm. In this case, the Secretary directed water releases into the Trinity River for the purpose of preserving and protecting anadromous fish as they migrate through the lower-Klamath River to spawning grounds in the Trinity River and upper-Klamath River. The Secretary’s action is authorized by plain and unambiguous language of the 1955 Act.

The plain language of the 1955 Act supports the Secretary’s authority to act to preserve fish in this case. But even if the 1955 Act were ambiguous, the District Court should have deferred to the Secretary’s interpretation, which is persuasive, reasonable, and has been the consistent position of the Department of the Interior for four decades. Applicable federal Indian law canons of construction further support the Secretary’s interpretation.

⁷ The District Court’s analysis of the first proviso of Section 2 of the 1955 Act is at ER 67-76.

The Secretary's interpretation of the 1955 Act is more reasonable than the District Court's, which would only permit the Secretary to take action to preserve anadromous fish of the Trinity River while the fish are physically located upstream of the Trinity-Klamath confluence. The District Court's interpretation would prohibit the Secretary from taking action to preserve Trinity River fish that during their normal migration are found even a short distance (e.g., a few meters) downstream of the confluence, while permitting action to protect those same fish once they swam upstream of the confluence. The Court's interpretation would also bar the Secretary from taking action to preserve intermixed Klamath-river runs. Such an arbitrary interpretation directly conflicts with and undermines Congress' mandate to preserve fish from harm wherever they may be located in the river and ignores an essential biological attribute of salmon – their anadromy.

The District Court reviewed the purpose and context of the 1955 Act, and its legislative history, all of which strongly support the Tribe's argument that the Secretary's action was authorized. Congress was aware that the Trinity and lower-Klamath river and their anadromous fish resources were inter-connected. While Congress underestimated the negative impact that the TRD would have on the river system and its fishery, Congress imposed broad responsibility on the Secretary to take action to insure preservation and propagation of fish. 1955 Act, § 2.

Congress has never repealed the authority and directive to *preserve* fish found in the 1955 Act. In the 1980's and 1990's, Congress provided the Secretary with new authority and direction to develop programs to *restore* fish and fish habitat in the Trinity and Klamath Rivers to pre-TRD levels. The 1984 Act, the CVPIA, and the ROD that resulted from the CVPIA were focused on restoration of fish and fish habitat in the mainstem Trinity River to pre-TRD levels. Those laws did not take any authority away from the Secretary; rather, they provided the Secretary with additional authority above and beyond that provided in the 1955 Act in recognition of the failure of Congress' expectation that the TRD would "maintain[] and improv[e] fishery conditions." 1955 House Report, at 4; 1955 Senate Report, at 5. In this case, the Secretary relied on her broad authority to insure preservation of fish by releasing water into the Trinity River to prevent recurrence of fish-kill conditions while fish migrated through the lower-Klamath River to their Trinity River and mainstem Klamath spawning grounds.

The Secretary's action also is consistent with and supported by her fiduciary obligation to protect the Tribe's fishery trust resources. This Court has recognized the Tribe's federally protected fishing rights in the Trinity and Klamath Rivers. *Parravano*, 70 F.3d at 544-546. This Court has also recognized the Secretary's responsibility as trustee to protect the Tribe's trust resources. *Patterson*, 204 F.3d at 1213-14. The Secretary has a fiduciary duty to exercise her statutory and

contractual authority to the fullest extent possible to protect tribal rights. Section VII(H) *infra*. This Court should affirm the Secretary's broad authority to preserve fish as provided by Congress in the first proviso of Section 2 of the 1955 Act and find that the FARs are permissible under that authority.

VI. STANDARD OF REVIEW

The District Court's interpretation of the 1955 Act is a question of law that this Court reviews de novo. *Sullivan v. Dollar Tree Stores, Inc.*, 623 F.3d 770, 776 (9th Cir. 2010). The District Court's interpretation is not entitled to deference. *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 971 (9th Cir. 2003).

While this Court must not defer to the District Court's interpretation, it is required to defer to the Secretary's reasonable interpretation of the 1955 Act. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984); *Pronsolino v. Nastri*, 291 F.3d 1123, 1131 (9th Cir. 2002) ("If *Chevron* deference applies, we must defer to the agency's interpretation as long as it is reasonably consistent with the statute"). If *Chevron* deference is not appropriate, the Court must give "substantial deference" to the Secretary's interpretation pursuant to *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944) and *United States v. Mead*, 533 U.S. 218 (2001). "Substantial deference" is owed to the agency's interpretation under *Skidmore* where the issue involves a "complicated, science-driven statute for which the [agency] has delegated regulatory authority."

Pronsolino, 291 F.3d at 1133. The District Court erred by failing to provide any deference (under either *Chevron* or *Skidmore*) to the Secretary’s interpretation of her authority to preserve fish and to protect tribal trust resources under the first proviso in Section 2 of the 1955 Act.

VII. ARGUMENT

A. The Plain Language of the First Proviso of Section 2 of the 1955 Act Broadly Authorizes and Directs the Secretary to Take Appropriate Actions to Insure Preservation of Fish.

The starting point for interpreting a statute is the language of the statute itself. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49, 56 (1987). The Court begins by “determin[ing] whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). The Court must assume that “the ordinary meaning of that language accurately expresses the legislative purpose [of Congress].” *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985).

Section 1 of the 1955 Act authorized construction, operation, and maintenance of the TRD on the Trinity River. 1955 Act, § 1. Section 2 of the 1955 Act provides in relevant part:

Subject to the provisions of this Act, the operation of the [TRD] shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the [CVP], . . . in

such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available:

Provided, That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than [150 cfs] unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; . . . (underlining added)

The first proviso of Section 2 of the 1955 Act is stated in the broadest terms. It unambiguously vests the Secretary with authority and responsibility to take whatever measures she, in her discretion, deems appropriate to insure the preservation and propagation of fish. *Trinity County v. Andrus*, 438 F. Supp. 1368, 1376 (E.D. Cal. 1977) (discussing Secretary's discretion to determine appropriate measures to preserve and propagate the fishery). The fish that the Secretary is authorized to preserve explicitly include, at least, the anadromous fish of the Trinity River. *Westlands*, 376 F.3d at 861; 1955 House Report, at 4; 1955 Senate Report, at 5. Here, the Secretary acted by releasing water from the TRD into the Trinity River for the purpose of preserving anadromous fish returning to spawn in the Trinity River, as well as fish returning to spawn in the mainstem Klamath. ER 64 ("There is no dispute that the FARs were designed to aid fish returning to *both* the Trinity River and the Klamath River basins.") (emphasis in original) This is an

action plainly encompassed by the broad authority vested in the Secretary by the plain language of the 1955 Act and no further statutory analysis is required.

The District Court did not find that any language of the 1955 Act expressly prohibited the Secretary's action; rather, the Court declared the 1955 Act to be "ambiguous as to the Federal Defendants' asserted authority." ER 73. The Court found ambiguity where none existed by focusing on the lack of any specific reference to the Klamath River or Klamath Basin in Section 2 of the 1955 Act. But this is a backwards interpretation of the 1955 Act that wrongly assumes Congress was unaware that the Trinity flows into the Klamath River and that Congress intended an arbitrary geographic restriction not found in the text of the statute itself. *Zuber v. Allen*, 396 U.S. 168, 185 (1969) ("legislative silence is a poor beacon to follow in discerning the proper statutory route"). The plain language of the authorization in the first proviso of Section 2 of the 1955 Act is broad and should be interpreted broadly. Nothing in the plain language of the 1955 Act restricts the Secretary from taking appropriate measures to preserve fish downstream of the TRD, including downstream of the Trinity-Klamath confluence. Even if the statute were ambiguous (which it is not), the Court erred by failing to defer to the Secretary's reasonable interpretation. *See* Section VII(F) *infra*.

Congress chose to use broad language, with no explicit limitations, when authorizing and directing the Secretary to act to preserve migratory fish. *BedRoc*

Ltd., LLC v. United States, 541 U.S. 176, 183 (2004) (courts must presume Congress “says in a statute what it means and means in a statute what it says there”). Congress was certainly aware that the Trinity River flowed into the Klamath downstream of the TRD and that anadromous fish would migrate up the lower-Klamath when returning from the Pacific Ocean to spawn. *See, e.g.*, Hearing on H.R. 4663, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 84th Cong., at 26-27, 104 (April 13-15, 1955); Hearing on H.R. 123, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 83rd Cong., at 71-72 (April 16, 1954); 1955 House Report; 1955 Senate Report; Section VII(C) *infra*. There is no other route from the ocean back to the Trinity River except through the lower-Klamath. ER 647.⁸ Congress could have, but did not, place any qualification or geographic limitation on the Secretary’s authority. Instead, Congress vested the Secretary with broad authority and direction to preserve fish. The action of releasing water from the TRD into the Trinity River for the purpose of preserving anadromous fish while migrating up the lower-Klamath River falls well within the broad scope of authority vested in the Secretary by Congress.

The District Court’s cramped interpretation of the Secretary’s authority also compels absurd and arbitrary results. *Griffin v. Oceanic Contractors, Inc.*, 458

⁸ The 44-mile stretch of river downstream of the Trinity-Klamath confluence (known as the “lower-Klamath”) could also be called the “lower-Trinity.”

U.S. 564, 575 (1982) (“[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available”). Under the District Court’s interpretation, the Secretary would have authority to take action to preserve anadromous Trinity River fish only while those migratory fish are physically located upstream of the Trinity-Klamath confluence. The Secretary, according to the District Court, would lack authority to protect Trinity River fish that are physically located just a short distance (e.g., a few meters) downstream of the confluence, but she would regain authority to protect that same fish once it swam upstream of the confluence. If the perils facing the fish are located just downstream of the confluence, the Secretary (according to the District Court) is barred from taking action. The Secretary would also be barred from taking any action to preserve the intermixed Klamath River runs. Nothing in the 1955 Act requires or supports this arbitrary result and such interpretation is inconsistent with Congress’ intent that the Secretary be vested with whatever authority is necessary to preserve fish. Congress made no distinction between preserving fish located upstream or downstream of the confluence and this Court should not construe the authority of the 1955 Act in such an arbitrary manner.

The Secretary exercised her authority under the 1955 Act by releasing water from the TRD into the Trinity River for the purpose of preserving anadromous fish returning to spawn in the Trinity River, as well as fish returning to spawn in the

mainstem Klamath. Because the plain language of the statute supports the Secretary's authority, the Court's inquiry must end here with the conclusion that the District Court's interpretation of the 1955 Act is erroneous and the Secretary's action was authorized. *Miranda v. Anchondo*, 684 F.3d 844, 849 (9th Cir. 2012) (judicial inquiry must cease if statutory language is unambiguous and statutory scheme is coherent and consistent).

B. The Statutory Purpose and Context Further Support the Secretary's Authority to Take Appropriate Action to Preserve Fish While Migrating Through the Lower-Klamath River.

"If necessary to discern Congress's intent, [a court] may read statutory terms in light of the purpose of the statute. Thus, the structure and purpose of a statute may also provide guidance in determining the plain meaning of its provisions." *Wilderness Soc'y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1060-61 (9th Cir. 2003). In Section 2 of the 1955 Act, the integration of the TRD into the CVP is subject to two provisos, the first of which states:

Provided, That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than [150 cfs]⁹

⁹The second proviso, which provides 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," is not at issue in this appeal. See note 6 *supra*.

The District Court found it “unclear whether Congress intended to limit the authorization to preserve and propagate fish and wildlife in Trinity River or whether that authorization was meant to permit acts to preserve and propagate any fish and wildlife impacted by the ‘principal purpose,’ namely, integration of the TRD into the CVP to export water to the Central Valley.” ER 73. The Court acknowledged that “if the latter interpretation were adopted, it is plausible that the 1955 Act’s authorization could include the lower Klamath.” ER 73-74. Yet, the Court concluded that “there is nothing in the statutory text that illuminates whether this is a reasonable interpretation.” ER 74. While finding the text of the statute ambiguous, even in context, the Court erroneously declined to provide any deference to the Secretary’s reasonable interpretation of her authority to preserve fish whether located above or below the confluence.

The Court’s analysis is wrong for multiple reasons. First, the Court fails to acknowledge that the plain language of the 1955 Act, standing alone, contains no limitation that would preclude the Secretary’s action in this case. Second, even if the authorization in the first proviso of Section 2 of the 1955 Act was intended to preserve fish of Trinity River origin, the Secretary’s action adhered to that purpose as the increased flows were intended, in part, to preserve anadromous fish returning to spawn in the Trinity River, as well as fish migrating to spawn in the

Klamath. ER 64. Regardless of which of the two interpretations described by the Court are adopted, they both support the Secretary's action here.

Third, the fact that the first proviso of Section 2 refers only to the Trinity River in the sole mitigation measure expressly identified [the 150 cfs minimum flow] does not mean that Congress intended to limit the Secretary's authority to areas above the confluence. As the Court acknowledged, the identification of the 150 cfs minimum flow in the Trinity River was non-exclusive and "only one aspect of the Federal Government's authority to adopt appropriate measures to insure the preservation and propagation of fish" ER 72. Congress was aware that water released from the TRD would ultimately flow into the lower-Klamath. *See, e.g.,* Hearing on H.R. 4663, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 84th Cong., at 104 (April 15, 1955); Section VII(C) *infra*. Congress left it to the Secretary, in her discretion, to determine what other measures would be necessary to preserve fish.

It would be nonsensical to grant the Secretary authority to preserve salmonids only when they are physically located above the confluence, but to preclude any authority to preserve those same fish, migratory by nature, when they are located in the same river system downstream of the confluence (i.e., when migrating through the lower-Klamath). The "lower-Klamath" is the only pathway for anadromous fish to migrate to and from the Trinity River. ER 647. Even if the

authority provided in the 1955 Act were limited to preservation of fish of Trinity origin, the geographic limitation found by the Court (which would limit the Secretary's authority to the area upstream of the confluence) produces an absurd result and undermines Congress' intent to preserve and propagate fish.

There are a number of ways in which Congress could have drafted a limitation into the first proviso of Section 2 to clearly restrict the Secretary's authority to the Trinity River above the confluence; or to specify that the fish to be preserved were only those of Trinity origin or only those fish physically located above the confluence. For example, Congress could have stated "That the Secretary is authorized and directed to adopt appropriate measures *in the Trinity River* to insure the preservation and propagation of fish . . ." or "That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish *while in the Trinity River* . . ." Or Congress could have said that "the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of *Trinity River* fish . . ." Congress wrote no such restrictions into the 1955 Act, instead granting open-ended authority and direction to the Secretary "to adopt appropriate measures to insure the preservation and propagation of fish . . ." 1955 Act, § 2.¹⁰ Congress vested the Secretary with

¹⁰ Compare language used by Congress in the 1984 Act, which shows that Congress knows how to specify geographic limitations when it intends them. 1984 Act, § 2(a)(1) (requiring restoration program to: "(A) rehabilitate fish habitats in

broad authority to take action as appropriate depending on the circumstances at hand. This Court should honor Congress' intent to preserve fish, reject the unsupported limitations on the Secretary's authority found by the District Court, and hold that the actions taken by the Secretary to preserve fish in this case are authorized by the first proviso of Section 2 of the 1955 Act.

C. The 1955 Act's Legislative History Supports The Secretary's Action.

Review of legislative history is not necessary or appropriate where a statute is not ambiguous. *United States v. McNeil*, 362 F.3d 570, 574 (9th Cir. 2004) (“resort to legislative history is justified only where the ‘face of the act is inescapably ambiguous’”). The plain language of the 1955 Act confirms the Secretary's broad authority. If the Court finds the first proviso of Section 2 of the 1955 Act ambiguous, the legislative history supports the Secretary's interpretation.

Citing the 1955 Congressional reports that discussed the importance of the Trinity fishery to “the whole north coastal area” and Congress' plan to maintain and improve the fishery conditions through development of the TRD, the District Court acknowledged that “the legislative history of the 1955 Act suggests that Congress was at least aware of the fact that impacts from the TRD were not

the Trinity River between Lewiston Dam and Weitchpec; (B) rehabilitate fish habitats in tributaries of such river below Lewiston Dam and in the south fork of such river.” *See also* 1996 Act, §3(b) (extending restoration program to fish habitat “in the Klamath River downstream of the confluence with the Trinity River”).

necessarily confined to the Trinity River Basin.” ER 74. Yet, the District Court declined to interpret this history as supporting the Secretary’s interpretation of the 1955 Act that permits actions intended to preserve fish while those fish are located downstream of the Trinity confluence.

Instead, in determining that the Secretary’s interpretation was not supported by legislative history, the Court relied on a single excerpt of a statement of Clyde H. Spencer, Regional Director of the Bureau of Reclamation, “that low-water flows throughout the lower Trinity and Klamath Rivers would be improved, while water would be stored in Trinity Reservoir or diverted to the Sacramento only [in] times when large quantities are flowing in the lower Trinity from other sources.” ER 74. From this single excerpt, the Court concluded that “Congress had reason to believe there would not be any significant impact to flows in the lower-Klamath, in which case why would they need to authorize the Secretary to take action to protect fish and wildlife there?” *Id.*¹¹

The Court’s reliance on this single statement from the Regional Director is improper, as it does not evidence Congress’ intent. *Pacific Ins. Co. v. United States*, 188 F.2d 571, 572 (9th Cir. 1951) (isolated excerpt of statement of witness

¹¹ Spencer also testified: “In proposing a project which would take water from one of the coastal basins and bring it into the Central Valley Basin, we have been acutely aware of the importance of not depriving the basin of origin of water which it needs now or will ever need.” Hearing on H.R. 4663, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 84th Cong., at 10 (April 13, 1955).

before congressional committee is “not entitled to consideration in determining legislative intent”); *Marsh v. United States*, 506 F.2d 1306, 1315 n. 30 (D.C. Cir. 1974) (“individual opinions of witnesses at hearings are of dubious value in interpretation of legislation”). The District Court cited no statement by any Congressional member or committee to support its conclusion. Even if Congress misunderstood the expected benefits that the TRD would produce, there is no evidence that Congress intended to limit the Secretary’s authority to preserve anadromous fish only while they are located above the confluence, but not below.

Moreover, the Regional Director asserted that conditions in *both* the lower Trinity and Klamath rivers would be improved by development of the TRD. Thus, the isolated sentence from the Regional Director’s testimony does not support the conclusion reached by the Court that the first proviso of Section 2 of the 1955 Act authorizes the Secretary to preserve fish only while in the Trinity River, but not while migrating through the lower-Klamath. A more consistent interpretation of the Regional Director’s statement (to the extent it is relevant at all) is that Congress understood the relationship between the Trinity and Klamath Rivers and the need to preserve and protect anadromous fish in both the Trinity and lower-Klamath.

As the Court acknowledged, other legislative history shows Congress was aware that development of the TRD would result in effects beyond the Trinity River, including the lower-Klamath and its resources. ER 74. This supports the

Secretary's interpretation that she is authorized to take action to preserve fish both in the Trinity River and while fish are migrating through the lower-Klamath below the confluence.

For example, on April 12, 1955, the Interior Department reported that:

The few opposed interests who reside downstream in the Klamath River Basin are concerned over their future water needs. . . . the proposed [Trinity] diversion would utilize only a small percentage of the water now wasting into the Pacific Ocean from the Klamath River watershed. These studies also disclose that the relatively small amount of water that would be diverted would not affect future development of either the Trinity River Basin or the Klamath River Basin downstream since water in those areas would be more than adequate to satisfy future needs.

1955 House Report, at 8. (emphasis added). The 1955 House Report, at pages 4-5, states:

The fishery resources of the Trinity River are an asset to the Trinity River Basin *as well as to the whole north coastal area*. Accordingly, the Trinity River development has been planned with a view to maintaining and improving fishery conditions. The legislation requires that the project be operated so as to insure the preservation and propagation of fish and wildlife

. . . there is available for importation from the Trinity River water that is surplus to the present and future water requirements of the Trinity *and Klamath River Basins*, and that surplus water, in the amount proposed in the Trinity division plan [704,000 annual acre-feet], can be diverted to the Central Valley without detrimental effect to the fishery resources. (emphasis added).

See also 1955 Senate Report, at 5 (stating that fishery resources of the Trinity River are an asset to "the whole north coastal area," that the TRD was planned

“with a view to maintaining and improving fishery conditions” and that the 1955 Act “requires that the [TRD] be operated so as to insure the preservation and propagation of fish and wildlife”). *Zuber*, 396 U.S. at 186 (committee reports represent the “considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation”). While Congress underestimated the impacts that the TRD would ultimately have on water and fishery resources, Congress understood the inter-relation of the Klamath and Trinity Rivers and their anadromous fish resources and it provided the Secretary with broad authority to insure preservation and propagation of the fishery. There is no evidence in the legislative record that Congress intended the narrow interpretation and arbitrary geographic restriction imposed on the 1955 Act’s fish-preservation mandate by the District Court.

In hearings on the 1955 Act, Congress received opposition to the proposal to authorize the TRD and its associated diversions of water from representatives of the Klamath River and Klamath Basin, not just Trinity Basin interests. *See, e.g.*, Hearing on H.R. 4663, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 84th Cong., at 26-27, 104-06, 169-71 (April 13-15, 1955) (regarding concerns of Humboldt and Del Norte counties due to effects to north coast communities); Hearing on H.R. 123, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 83rd Cong., at 71-72

(April 16, 1954) (concerns of Yurok Tribe regarding impacts on the lower-Klamath river and its fish resources). This contradicts the Court's conclusion that the Secretary's authority to preserve fish under the first proviso of Section 2 of the 1955 Act arbitrarily ends at the Trinity's confluence with the Klamath River.

Other legislative history supports a broad interpretation of the Secretary's discretion and authority to preserve anadromous fish. The sponsor of the 1955 Act, Congressman Clair Engle, responded to testimony on the potential effects of the TRD on Trinity River salmon and steelhead runs by observing that the bill gave broad authority to the Secretary to do "whatever is necessary" to preserve fish:

Just one observation: The language of the present bill . . . provides that the Secretary of the Interior is instructed to take all necessary steps for the maintenance and propagation of fish life in the Trinity River. It doesn't specifically tell the Secretary to build a hatchery, but whatever is necessary to maintain and propagate fish life in the Trinity River, he is, by the legislation, if it is enacted, instructed to do.

Hearing on H.R. 123, *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 83rd Cong., at 11 (April 16, 1954).

Congress understood that the water and anadromous fishery resources of the Trinity and Klamath rivers were inter-related. Congress vested the Secretary with broad authority and responsibility in the 1955 Act to take whatever measures are necessary to insure preservation of fish. Congress expressly limited the integration of the TRD into the CVP and mandated that the Secretary exercise a priority for use of all TRD water necessary to preserve fish and other in-basin needs. 1979

Opinion, ER 135-136. In accordance with the statute's plain language, and to fulfill Congress' intent, this Court must construe the fish preservation mandate consistent with the broad scope of the first proviso of Section 2, not in a way that defeats fishery protection. The District Court was wrong to conclude that Congress restricted the Secretary's authority to act only in the area above the confluence.

D. Congress Has Not Repealed or Limited the Secretary's Authority to Act to Preserve Fish In the 1955 Act.

Congress has not repealed or limited the scope of its directive to the Secretary in the 1955 Act to insure the preservation of fish. Subsequent acts of Congress address the Secretary's authority to restore habitat on the mainstem Trinity River and to restore fish populations to pre-TRD levels. None of this subsequent legislation limited the Secretary's authority to preserve or propagate fish. The subsequent acts address the separate issue of restoring fish and fish habitat, primarily in the mainstem Trinity River, to pre-project levels. The grant of authority to restore fish and fish habitat to pre-project levels is additional to the Secretary's pre-existing authority to preserve and propagate fish in the 1955 Act.

In 1984, Congress passed the Trinity River Basin Fish and Wildlife Management Act ("1984 Act"). In Section 1 of the 1984 Act (and after expressly referencing the 1955 Act), Congress found that "the Secretary requires *additional* authority to implement a basin-wide fish and wildlife management program in

order to achieve the long-term goal of restoring fish and wildlife populations in the Trinity River Basin to a level approximating that which existed immediately before the start of the construction of the [TRD].” 1984 Act, § 1(6) (emphasis added). In the 1984 Act, Congress formally acknowledged that the vision of maintaining and improving fishery conditions through development of the TRD, as propounded by Reclamation to Congress in 1955, was a complete failure. *Id.*, § 1(1). Rather, the TRD contributed to a “drastic reduction in the anadromous fish populations of the Trinity River system.” *Id.* Section 2(a) of the 1984 Act directed the Secretary to formulate and implement a program designed to restore the fish and wildlife populations in the Trinity Basin to pre-TRD levels. Congress required the program to include: (A) rehabilitation of fish habitats in the Trinity River between Lewiston Dam and Weitchpec; (B) rehabilitation of fish habitats in tributaries of the Trinity River below Lewiston Dam; and (C) improvements to the Trinity River Fish Hatchery. 1984 Act, § 2(a)(1).

The additional authority provided by the 1984 Act was necessary because the 1955 Act did not expressly authorize the Secretary to implement fishery restoration programs to restore fish populations to pre-project levels. Such authorization would have made little sense in 1955, because the TRD was approved then with the expectation that it would maintain and improve fishery conditions. 1955 House Report, at 4; 1955 Senate Report, at 5; ER 642. While not

authorizing a restoration program, the 1955 Act gave the Secretary authority and a directive to “adopt appropriate measures to insure the *preservation* and propagation of fish . . .” 1955 Act, § 2 (emphasis added). “Preservation” and “restoration” are related, but distinct concepts. Webster’s Dictionary defines “preserve,” as “to keep safe from injury, harm, or destruction.” “Preserve” is synonymous with “protect.” In contrast, “restoration” is a “bringing back to a former position or condition.” The 1984 Act directed restoration of fish habitat in the mainstem Trinity River and its tributaries to achieve the goal of restoring fish populations to pre-project levels.

In the 1992 CVPIA, § 3406(b)(23), Congress required the Secretary to take specific actions “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 [1984 Act].*” (emphasis added). The Secretary was directed to complete the TRFES initiated by the Secretary in 1981 by September 30, 1996. *Id.* From 1992 through 1996, pending completion of the TRFES, the Secretary was directed to increase releases from the TRD to not less than 340,000 acre-feet per year “for the purposes of fishery *restoration*, propagation, and maintenance.” *Id.* (emphasis added). If the Secretary and the Tribe concurred in the TRFES’ recommendations once completed, the Secretary was directed to implement the recommendations, including any increase in flow accordingly. *Id.* No language in the 1984 Act or

CVPIA § 3406(b)(23) expressly or implicitly limits the Secretary's authority to preserve fish. Those statutes address restoration of fish and fish habitat on the mainstem Trinity River to pre-project levels. The 1984 Act and CVPIA are remedial; they are intended to repair the damage resulting from the TRD that Congress had not anticipated. They do not restrict the Secretary's 1955 Act mandate to preserve and propagate fish.

The TRFES Final Report, co-authored by USFWS and the Tribe, was released in 1999. ER 606. The scope of the TRFES and recommendations made therein (and referenced in the CVPIA) are focused on habitat restoration in the mainstem Trinity River and primarily in the areas between the North Fork Trinity River and Lewiston Dam. ER 681-683; 689-705; 722-726. They also include provisions for restoration of healthy river conditions for all life history stages of anadromous fish. *Id.* In the TRFES, scientists analyzed the fundamental attributes of an alluvial river and how those attributes could be restored (in part) through carefully managed flow releases. ER 632-635. The TRFES recommended a flow regime and management actions to rehabilitate habitat in the mainstem channel of the Trinity River between Lewiston Dam and the confluence at Weitchpec. *Id.*; ER 681, 699. Following completion of the TRFES, the Secretary and the Tribe executed the ROD in December 2000. ER 549. The ROD adopted recommendations from the TRFES that were designed to restore fishery habitat in

the mainstem Trinity River pursuant to Congress' direction in the 1984 Act and CVPIA. ER 530-533.

Similar to the authorization of the 1984 Act, Congress separately granted the Secretary new authority to implement a "restoration" program for the Klamath Basin in the Klamath River Basin Conservation Act of 1986 (P.L. 99-552). In the 1986 Act, Congress found that the Secretary required "additional authority to implement a restoration program . . . to restore anadromous fish populations to optimum levels in both the Klamath and Trinity River Basins." 16 U.S.C. § 460ss(9). This finding was nearly identical to the finding made in the 1984 Act that Congress required additional authority (beyond the preservation authority of the 1955 Act) to implement a restoration program in the Trinity Basin. As it did in the 1984 Act with respect to Trinity restoration, Congress found that the Secretary required additional authority to implement a comparable "restoration program" in the Klamath Basin downstream of the confluence. 16 U.S.C. §§ 460ss(9). ER 75.

None of the subsequently enacted statutes restrict the Secretary's authority to preserve fish in the 1955 Act. Nor do those statutes support any finding of implicit repeal. Repeals by implication are "heavily disfavored." *Southern Cal. Edison Co. v. Lynch*, 307 F.3d 794, 810 (9th Cir. 2002). "A finding of implied repeal must be based on a finding that the legislative body actually formulated the intent to repeal the earlier enactment but somehow failed to carry out that intent."

Kenai Peninsula Borough v. Alaska, 612 F.2d 1210, 1214 (9th Cir. 1980); *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 639, 656 (1974) (statutes addressing tribal resources “are to be read to reserve Congress’ powers in the absence of a clear expression by Congress to the contrary”).

There can be no finding that Congress intended to repeal the authority of the 1955 Act in the subsequent enactments. In the 1984 Act, Congress expressly referred to the Secretary’s existing authority to preserve fish provided by the 1955 Act. Congress did not express any intent to repeal or restrict that pre-existing authority. The purpose of the 1984 Act was to provide the Secretary with separate “*additional* authority to implement a basin-wide fish and wildlife management program in order to achieve the long-term goal of *restoring* fish and wildlife populations in the Trinity River Basin to [pre-project levels].” (emphasis added). The subsequent CVPIA, § 3406(b)(23) was enacted to “meet the fishery restoration goals of the [1984 Act].”

The 1984 Act, 1986 Act, and CVPIA provided *additional* authority to *restore* fish and their habitat, i.e., to bring populations and habitat conditions back to pre-project levels. The directives to restore Trinity River habitat were implemented through development of the TRFES and the ROD. Congress never limited the Secretary’s pre-existing and underlying authority to take appropriate action to preserve fish from harm (as opposed to restoring fish to pre-project

levels). In this case, the Secretary exercised her authority under the 1955 Act to release flows for the purpose of preserving fish (including fish of Trinity origin) from harm while transiting through the lower-Klamath River. The Secretary acted for the purpose of preventing recurrence of a large scale fish-kill of both Trinity and Klamath origin fish. This was a lawful exercise of the Secretary's authority in the 1955 Act to "adopt appropriate measures to insure the preservation . . . of fish."

E. Indian Law Canons of Construction Support the Secretary's Action.

When the Court is faced with two possible constructions of a statute, the "choice between them must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: 'Statutes are to be construed liberally in favor of Indians, with ambiguous provisions interpreted to their benefit.'" *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992) (quoting *Montana v. Blackfeet Tribe*, 471 U.S. 759, 767-68 (1985)). Here, the Secretary acted under the first proviso of Section 2 of the 1955 Act to preserve fish that are tribal trust resources. Thus, the Court must construe the authorization in the first proviso of Section 2 in the light most favorable to the Tribe. *Escondido Mutual Water Company v. FERC*, 692 F.2d 1223, 1236 (9th Cir. 1983) (liberally construing Section 4(e) of the Federal Power Act [FPA] in favor of Indian tribe, although FPA as a whole was not enacted to benefit Indian tribes).

The 1955 Act authorized development of the TRD and the diversion of water out of the Trinity River. 1955 Act, § 1. As Congress was aware, the lower twelve miles of the Trinity River and the entirety of the lower-Klamath River flow through Indian lands that were set aside by the federal government to provide fish for the Indians. *Parravano*, 70 F.3d at 541-42, 545-46. In hearings preceding authorization of the TRD, Congress received testimony from tribal representatives objecting to the TRD and explaining that “if the water is taken out of the two rivers [Trinity and Klamath] there would not be enough water left to allow the salmon and steelhead to spawn.” *H. Subcomm. On Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 83rd Cong., at 71-72 (April 16, 1954). Another tribal representative testified that the Hoopa Tribe was located “right at the mouth of the Trinity River” and requested a survey of the Tribe’s water resources and needs prior to any authorization of out-of-basin diversion. *Id.*

Congress included language in Section 2 of the 1955 Act to ensure preservation and protection of fish downstream of the TRD including the trust fishery resources of downstream Indian tribes. This Court must “presume that Congress intended to exercise its power in a manner consistent with the federal trust obligation” to the downstream Indian tribes. *Washington Dep’t of Ecology v. U.S. EPA*, 752 F.2d 1465, 1469-70 (9th Cir. 1985) (conclusion that agency

construction of statute is reasonable “is buttressed by well-settled principles of federal Indian law”).

The Secretary has previously interpreted the 1955 Act, § 2, as providing authority and direction to protect Indian rights. ER 740-753. The Secretary explained in 1981 that “there are responsibilities arising from congressional enactments, which are augmented by the federal trust responsibility to the Hupa and Yurok tribes, that compel restoration of the river’s salmon and steelhead resources to pre-project levels.” ER 753. The congressional enactment referred to in the 1981 Secretarial Order is the 1955 Act, § 2. ER 743. Congress confirmed the Secretary’s federal trust responsibilities to protect and restore the Tribe’s fishery resources in the CVPIA, § 3406(b)(23). Any ambiguity regarding the Secretary’s authority to preserve fish downstream of the TRD must be resolved in favor of the Tribe and protection of fishery trust resources.

F. The District Court Erred By Not Affording Any Deference to the Secretary’s Interpretation.

The first proviso of Section 2 of the 1955 Act, by its own terms, supports the action taken by the Secretary to preserve anadromous fish from harm or possible death as they migrate through the lower-Klamath River to their natal spawning grounds. Because Congress clearly vested the Secretary with broad authority to preserve fish, that is the end of the matter and the Secretary’s action must be affirmed. *Chevron*, 467 U.S. at 842-43 (“If the intent of Congress is clear, that is

the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”). To the extent the language is ambiguous, the District Court erred by failing to give any deference to the Secretary’s interpretation of her authority under the Act. ER 68-72. Deference to the Secretary’s interpretation is also supported by the Indian canons of construction discussed in Section VII(E) above.

Under *Chevron*, if Congress has not spoken directly to the issue or the statutory language is otherwise ambiguous, the reviewing court must defer to the agency’s interpretation so long as the agency’s answer is based on a permissible construction of the statute. *Chevron*, 467 U.S. at 843. An agency’s interpretation will be permissible unless it is “arbitrary, capricious, or manifestly contrary to the statute.” *Id.* at 844. *Chevron* deference applies to agency interpretations where “Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.” *Mead*, 533 U.S. at 227. Formal notice-and-comment rulemaking, as occurred in *Chevron*, is not a prerequisite to granting *Chevron* deference to an agency decision. “Delegation of such authority may be shown in a variety of ways, as by an agency’s power to engage in adjudication or notice-and-comment rulemaking, or by some other indication of a comparable congressional intent.” *Id.*

The Secretary is charged with broad authority to implement and interpret her responsibilities under the 1955 Act. 1955 Act, § 2. Congress left a gap for the Secretary to fill and vested her with authority to decide what measures are appropriate to preserve fish under prevailing conditions. *Id.* Here, the Secretary issued advance notice of her interpretation in a Draft EA (which was consistent with prior interpretations of the 1955 Act) and she reviewed comments on the proposed action pursuant to NEPA before making a final decision. ER 228-240. The process undertaken here is more formal, and more likely to “foster . . . fairness and deliberation” than in *Mead*, a case that “reviewed an agency interpretation contained in a single letter ruling whose precedential force was limited to the letter’s recipient” *Village of Barrington, Illinois v. Surface Transp. Board*, 636 F.3d 650, 659 (D.C. Cir. 2011), quoting *Mead*, at 230, 233.

Other courts have afforded *Chevron* deference to agency actions that are informal, but provide adequate process to ensure informed and reasoned decision-making. In *Barrington*, the D.C. Circuit afforded *Chevron* deference to an agency decision in an informal review proceeding that included procedures of public notice, receipt and review of comments, and public hearings. *Id.*; *Humane Society of the United States v. Bryson*, 924 F. Supp. 2d 1228, 1244-45 (D. Or. 2013) (granting *Chevron* deference to agency interpretation made during review of application for authorization to take species under Marine Mammal Protection Act,

where agency interpretation was preceded by public notice and comment); *Decker v. U.S. Forest Service*, 780 F. Supp. 2d 1170, 1176 (D. Colo. 2011) (granting agency’s legal interpretation in EA *Chevron* deference, because “it was generated through a sufficiently formal process, one which importantly included opportunity for public comment”).¹² Similarly, the Secretary’s interpretation of her authority to preserve fish is entitled to *Chevron* deference and must be upheld as a permissible construction of the authority provided by the 1955 Act.

Even if *Chevron* deference does not apply, the Secretary’s interpretation is due significant deference pursuant to *Skidmore*, 323 U.S. 134 (1944). Pursuant to *Skidmore*, the weight that a court gives the agency’s interpretation is a function of the interpretation’s thoroughness, rational validity, and consistency with prior and subsequent pronouncements. *Wilderness Soc’y*, 353 F.3d at 1068. Other relevant factors include “the ‘logic and expertness’ of an agency decision, the care used in reaching the decision, as well as the formality of the process used.” *Id.*;

Pronsolino, 291 F.3d at 1133 (“substantial deference” owed to agency where issue

¹² In *Decker*, the Court cited to *Wilderness Soc’y v. United States Fish & Wildlife Serv.*, 316 F.3d 913, 922 (9th Cir. 2003) (finding that permit issued after preparation of an EA and FONSI merited *Chevron* deference), an opinion that was vacated and reversed by this Court sitting *en banc* at 353 F.3d 1051 (9th Cir. 2003). In its *en banc* opinion in *Wilderness Soc’y*, the Court did not directly address whether an agency’s legal interpretation in an EA could never be afforded *Chevron* deference as the Court determined in that case: (1) that the agency’s interpretation was in direct conflict with the relevant statute; and (2) that the agency’s interpretation of law in the context of issuing a permit was not an action that carries the force of law under *Chevron*. 353 F.3d at 1067-68.

involves “complicated, science-driven statute for which the [agency] has delegated regulatory authority”); *Lands Council v. McNair*, 537 F.3d 981, 993 (9th Cir. 2008) (“particularly deferential” or “most deferential” review where agency is “making predictions, within its [area of] special expertise, at the frontiers of science”). “The most important considerations are whether the agency’s interpretation is consistent and contemporaneous with other pronouncements of the agency and whether it is reasonable given the language and purpose of the Act.” *Delaware Dep’t of Natural Resources and Environmental Control v. U.S. Army Corps of Engineers*, 685 F.3d 259, 284 (3d Cir. 2012). The Secretary’s interpretation of her authority here, i.e., that she could direct water releases into the Trinity River for the purpose of preserving fish from harm while they migrated upstream through the lower-Klamath River, is consistent with prior interpretations of the Secretary’s authority under the 1955 Act.

In 1979, Solicitor Krulitz confirmed that “Congress [in the 1955 Act, § 2] specifically provided that in-basin flows (in excess of a statutorily prescribed minimum) determined by the Secretary to be necessary to meet in-basin needs take precedence over needs to be served by out-of-basin diversion.” 1979 Opinion, ER 135-136. The 1979 Opinion expresses Congress’ recognition of and decision to protect the fishery and other in-basin needs from demands by the CVP and out-of-basin diversion. *Id.* The 1979 Opinion supports an expansive interpretation of the

provisos in Section 2 of the 1955 Act and is consistent with the Secretary's interpretation of her authority and mandate to release water into the Trinity River for the purpose of preserving fish from harm or possible death during their upstream migration.

In 1981, the Secretary relied on the authority of the 1955 Act to increase fishery releases primarily for the purpose of protecting the fishing rights of Indians who live and fish along the Trinity and the lower-Klamath River. ER 738-753.

The Secretary stated, at ER 742:

The Hupa and Yurok Indians have rights to fish from the Trinity and Klamath Rivers and to adequate water to make their fishing rights meaningful. These rights are tribal assets which the Secretary, as trustee, has an obligation to manage for the benefit of the tribes. The Secretary may not abrogate these rights even if the benefit to a portion of the public from such an abrogation would be greater than the loss to the Indians.

Following the 2002 fish kill, the Secretary released water from the TRD for the purpose of preventing recurrence of fish-kill conditions in 2003 and 2004 and again in each of 2012-2015. ER 178-179. At no point has the Secretary or the Solicitor ever taken the position that the Secretary is prohibited from using the authority of the first proviso of Section 2 of the 1955 Act to take action to preserve fish as they migrate through the lower-Klamath River back to their natal spawning grounds, including those on the Trinity River. The Secretary's interpretation is

further supported by her obligation to protect tribal trust resources. The District Court erred by affording no deference to the Secretary.¹³

G. The District Court Erroneously Based Its Interpretation of the 1955 Act, and Its Conclusion That the Secretary Lacked Authority To Implement the FARs, on Isolated, Ambiguous, and Unpersuasive Sentences Taken From the TRFES, an Agency Scientific Report.

After reviewing the statute’s plain language (which the Court found ambiguous), the statutory purpose and context (which the Court found non-dispositive), the legislative history (which the Court found inconclusive), the related statutes (which the Court found to address the distinct issue of “restoration”), and the Secretary’s own interpretation of the 1955 Act (which the Court improperly disregarded), the District Court reached the erroneous conclusion that “there is simply no logical support for an alternative interpretation of the 1955 Act that affords Federal Defendants authority beyond that set forth in the 1984 Act and CVPIA § 3406(b)(23).” ER 76. To support this conclusion, the Court did not rely upon statutory language, legislative history, or Indian law canons of construction. Instead, the Court erroneously placed dispositive reliance on isolated statements made in the TRFES, a scientific report jointly authored by the USFWS

¹³ In determining whether to afford the Secretary’s interpretation deference under *Skidmore*, the District Court focused on statements taken from the Executive Summary of the TRFES. ER 70-72. The Court erred by relying on non-binding statements in a report co-authored by federal and tribal scientists. The statements from the TRFES relied on by the Court also do not support the conclusion that the Court reached. *See* Section VII(G) *infra*.

and the Tribe. The TRFES, as the Court acknowledged, was not “intended as a formal statement of agency opinion as to the interpretation of these laws.” ER 76. Yet, the Court wrongly proceeded to afford dispositive weight to statements in that study. Even if the TRFES were relevant for purposes of statutory interpretation, the Court misconstrued the statements in the TRFES.

In its ruling, the District Court nullified the Secretary’s authority in the 1955 Act by relying primarily on one sentence from the TRFES, which states:

This report [the TRFES] provides recommendations to the Secretary of the Interior to *fulfill fish and wildlife protection mandates of the 1955 Act*, the 1981 Secretarial Decision, 1984 Trinity River Basin Fish and Wildlife Management Act, 1991 Secretarial Decision, the 1992 Central Valley Project Improvement Act, and the federal trust responsibility to restore and maintain the Trinity River fishery resources (emphasis in opinion).

ER 72. The Court opined that “these passages are strong indicators that the authors of the TRFES, which included the FWS and the Hoopa, believed that the TRFES (and by analogy the resulting TRROD) in fact fulfilled the fish and wildlife protection mandates of the 1955 Act.” *Id.* Later, in its final analysis of the 1955 Act, the Court concluded (without citation) that “the Court agrees with the logic set forth in the TRFES that the TRFES itself (and the resulting TRROD) represent the culmination and embodiment of the Secretary’s responsibilities under the 1955 Act, the 1984 Act, and CVPIA § 3406(b)(23).” ER 76. The Court erred in relying

on these statements from the TRFES as its basis for nullifying the authority of a sixty-year old Act that Congress itself has never repealed or amended.

Assuming *arguendo* that it were appropriate for the Court to place dispositive (or any) weight on an agency field office science report (jointly authored by the Tribe) for the purpose of interpreting statutes or the authority provided to the Secretary by Congress, the statement relied on by the Court does not support the conclusion reached. The Court relied heavily on the use of the word “fulfill” by the TRFES authors. The word “fulfill” has multiple ordinary meanings that do not support the Court’s analysis. One definition of “fulfill” in Webster’s Dictionary is “to put into effect.” Another is “to measure up to.” Measures taken towards restoration of fish and fish habitat in the ROD (as recommended by the TRFES) are in furtherance of and support the Secretary’s obligation to preserve and protect fish. However, the authors’ use of the word “fulfill” in the TRFES does not mean that those measures were the sole, exclusive, and final acts that the Secretary could ever take towards preservation and propagation of fish under the authority of the 1955 Act.

It would be a gross overstatement and oversimplification to find that the agency recommendations in the TRFES were intended to supersede and displace all of the Secretary’s trust and statutory obligations (past, present, and future), which are supported by a statutory framework that stretches across four decades

and entails multiple requirements for preservation and propagation of the fishery in addition to restoration. The TRFES was derived from Congress' and the Secretary's recognition of the need to repair the unanticipated damage resulting from the TRD and to restore the fishery to its pre-TRD status.

Most significant, there is no support in the relevant statutes for the District Court's interpretation. The subsequent acts including the 1984 Act and the CVPIA addressed topics of restoration distinct from the fish preservation mandate of the 1955 Act. Those acts did not repeal, expressly or implicitly, the 1955 Act authority. Thus, the Secretary retained broad authority to take appropriate actions to preserve fish from the threat of another fish-kill during their upstream migration through the lower-Klamath River.

H. The Secretary's Obligation to Protect Tribal Trust Resources Further Supports the Secretary's Authority Under the 1955 Act to Take Action to Preserve Fish From Harm.

The Tribe has federally protected fishing rights in the Trinity and Klamath Rivers. *Parravano*, 70 F.3d at 544-546; *Blake v. Arnett*, 663 F.2d 906 (9th Cir. 1981). The Supreme Court has long recognized "the distinctive obligation of trust" that binds the government in its dealings with Indian people. *Seminole Nation v. United States*, 316 U.S. 286 (1942). This Court has "read the [trust] obligation to extend to any federal government action." *Hoopa Valley Indian Tribe v. Ryan*, 415 F.3d 986, 992-93 (9th Cir. 2005).

“The United States, as a trustee for the Tribes, has a responsibility to protect their rights and resources.” *Patterson*, 204 F.3d at 1213-14. In *Patterson*, a dispute between Indian tribes and irrigators of the Klamath Basin regarding flows in the Klamath River, this Court held:

Because Reclamation maintains control of the Dam, it has a responsibility to divert the water and resources needed to fulfill the Tribes’ rights, rights that take precedence over any alleged rights of the Irrigators. Accordingly, we hold that the district court did not err in concluding that Reclamation has the authority to direct operation of the Dam to comply with Tribal water requirements.

The holding in *Patterson* affirming the Secretary’s authority to operate water projects to protect tribal rights is not unique. *Joint Board of Control v. United States*, 832 F.2d 1127, 1131-32 (9th Cir. 1987) (affirming BIA’s authority and responsibility as trustee for the Indian tribe to operate federal water project in manner that established stream flow and pool levels necessary to protect tribal fishery); *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F. Supp. 252, 256-57 (D.D.C. 1972) (Secretary has trust duty “to assert his statutory and contractual authority to the fullest extent possible” in order to preserve water for Indian tribe). These rulings are consistent with the federal government’s interpretation of its trust responsibility to the Tribe. ER 97 (“Reclamation must exercise its statutory and contractual authority to the fullest extent to protect the tribal fisheries”); ER 111 (“Interior . . . must ensure that their actions are consistent with the trust obligations of the United States to the Tribes”).

The Secretary did not rely on her trust responsibility to the Tribe as an independent, stand-alone, basis for her actions here. The Secretary relied on authority provided under the first proviso of Section 2 of the 1955 Act. Yet, the Secretary's actions under the 1955 Act were necessitated and supported by her obligation to protect and preserve the Tribe's fish resources. The 2002 fish-kill had a devastating effect on the tribal fishery in that year and subsequent years. When conditions replicate those that existed in 2002, the Secretary is compelled to act to prevent recurrence of such a devastating destruction of tribal trust resources. The Secretary cited her obligation to the Tribe in the EA and FONSI. ER 198, 206, 224-225. By taking action under the 1955 Act to preserve fish, the Secretary was acting consistent with her responsibility to exercise her statutory and contractual authority to the fullest extent to protect tribal fisheries.

VIII. CONCLUSION

The Tribe requests that this Court rule that the Secretary has statutory authority, pursuant to the first proviso of Section 2 of the 1955 Act, to release water from the TRD into the Trinity River for the purpose of preserving fish from harm or death during their upstream migration through the lower-Klamath River. The District Court's judgment and ruling that the Secretary lacked statutory authority under the first proviso to implement the FARs should be reversed.

Respectfully submitted this 18th day of December, 2015.

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IX. CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because: this brief contains 13,997 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Respectfully submitted this 18th day of December, 2015.

MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE,
A Professional Corporation

/s/ Thomas P. Schlosser

Thomas P. Schlosser

X. STATEMENT OF RELATED CASES

In addition to the Hoopa Valley Tribe, other parties to the District Court proceeding have filed appeals to this Court of the District Court's Final Judgment and Memorandum Decision. Those appeals are: (1) Ninth Circuit Case No. 14-17506 (filed by Federal Defendants on December 22, 2014); (2) Ninth Circuit Case No. 14-17515 (filed by Yurok Tribe on December 22, 2014); and (3) Ninth Circuit Case No. 14-17539 (filed by Plaintiffs on December 23, 2014). Appellants Sally Jewell et al, Hoopa Valley Tribe, and Yurok Tribe jointly filed a single Excerpts of Record relating to their three respective appeals.

A case previously heard in this Court which relates to the present case is *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853 (9th Cir. 2004).

Another related case, which addresses the Secretary's authority under proviso 2 of Section 2 of the 1955 Act and other sources of legal authority for the FARs, is currently pending in the United States District Court for the Eastern District of California, which is *San Luis & Delta-Mendota Water Authority v. Jewell*, Case No. 15-cv-01290-LJO-GSA (E.D. Cal.) (case filed August 21, 2015).

Respectfully submitted this 18th day of December, 2015.

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A Professional Corporation

 /s/ Thomas P. Schlosser
Thomas P. Schlosser

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 18, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system on December 18, 2015.

Executed this 18th day of December, 2015, at Seattle, Washington.

MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE,
A Professional Corporation

s/ *Thomas P. Schlosser*
Thomas P. Schlosser

**ADDENDUM TO
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**Trinity River Division Central Valley Project Act,
Pub. L. No. 84-386, 69 Stat. 719 (1955)**

69 STAT.]

PUBLIC LAW 386—AUG. 12, 1955

719

Public Law 386

CHAPTER 872

AN ACT

To authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws.

August 12, 1955
[H. R. 4663]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to and an integral part of the Central Valley project, California, the Trinity River division consisting of a major storage reservoir on the Trinity River with a capacity of two million five hundred thousand acre-feet, a conveyance system consisting of tunnels, dams, and appurtenant works to transport Trinity River water to the Sacramento River and provide, by means of storage as necessary, such control and conservation of Clear Creek flows as the Secretary determines proper to carry out the purposes of this Act, hydroelectric powerplants with a total generating capacity of approximately two hundred thirty-three thousand kilowatts, and such electric transmission facilities as may be required to deliver the output of said powerplants to other facilities of the Central Valley project and to furnish energy in Trinity County: *Provided,* That the Secretary is authorized and directed to continue to a conclusion the engineering studies and negotiations with any non-Federal agency with respect to proposals to purchase falling water and, not later than eighteen months from the date of enactment of this Act, report the results of such negotiations, including the terms of a proposed agreement, if any, that may be reached, together with his recommendations thereon, which agreement, if any, shall not become effective until approved by Congress. The works authorized to be constructed shall also include a conduit or canal extending from the most practicable point on the Sacramento River near Redding in an easterly direction to intersect with Cow Creek, with such pumping plants, regulatory reservoirs, and other appurtenant works as may be necessary to bring about maximum beneficial use of project water supplies in the area.

Central Valley
project, Calif.
Trinity River
division.

43 USC 371 note.

Sec. 2. Subject to the provisions of this Act, the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available: *Provided,* That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty cubic feet per second for the months July through November and the flow of Clear Creek below the diversion point at not less than fifteen cubic feet per second unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; the Secretary shall also allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the

15 USC 661-666c.

costs of constructing the Trinity River development and of operating and maintaining the same, such costs to be non-reimbursable: *Provided further*, 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.

Sec. 3. The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for the other purposes specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable.

Report to Congress.

Sec. 4. Contracts for the sale and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws: *Provided*, That a first preference, to the extent of 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Trinity County, California, for use in that county, who are ready, able and willing, within twelve months after notice of availability by the Secretary, to enter into contracts for the energy: *Provided further*, That Trinity County preference customers may exercise their option on the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than eighteen months prior to said date.

Payments to Trinity County, Calif.

Sec. 5. The Secretary is authorized to make payments, from construction appropriations, to Trinity County, California, of such additional costs of repairing, maintaining, and constructing county roads as are incurred by it during the period of actual construction of the Trinity River division and as are found by the Secretary to be properly attributable to and occasioned by said construction. The Secretary is further authorized and directed to pay to Trinity County annually an in-lieu tax payment out of the appropriations during construction and from the gross revenues of the project during operation an amount equal to the annual tax rate of the county applied to the value of the real property and improvements taken for project purposes in Trinity County, said value being determined as of the date such property and improvements are taken off the tax rolls. Payments to the public-school districts in the project area affected by construction activities shall be made pursuant to existing law.

Payments to public-school districts.

69 STAT.]

PUBLIC LAW 388—AUG. 12, 1955

721

Sec. 6. There are hereby authorized to be appropriated for construction of the Trinity River division \$225,000,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein, and, in addition thereto, such sums as may be required to carry out the provisions of section 5 of this Act and to operate and maintain the said development.

Approved August 12, 1955.

Appropriation.

Public Law 387

CHAPTER 873

AN ACT

To reemphasize trade development as the primary purpose of title I of the Agricultural Trade Development and Assistance Act of 1954.

August 12, 1955
[S. 2253]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 108 (b) of the Agricultural Trade Development and Assistance Act of 1954 is amended by striking out "\$700,000,000" and inserting in lieu thereof "\$1,500,000,000. This limitation shall not be apportioned by year or by country, but shall be considered as an objective as well as a limitation, to be reached as rapidly as possible so long as the purposes of this Act can be achieved within the safeguards established."

Agricultural
trade development.
68 Stat. 456.
7 USC 1703 (b).

Sec. 2. Section 108 of such Act is amended by adding the following: "The Secretary of Agriculture is also authorized to determine the nations with whom agreements shall be negotiated, and to determine the commodities and quantities thereof which may be included in the negotiations with each country after advising with other agencies of Government affected and within broad policies laid down by the President for implementing this Act."

68 Stat. 457.
7 USC 1706.

Approved August 12, 1955.

Public Law 388

CHAPTER 874

AN ACT

To amend the Federal Property and Administrative Services Act of 1949 to make temporary provision for making payments in lieu of taxes with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments.

August 12, 1955
[H. R. 6182]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the table of contents contained in the first section of the Federal Property and Administrative Services Act of 1949 is hereby amended by inserting immediately below "Sec. 605. Effective date." the following:

Federal property
transferred from
RFC.
63 Stat. 377; 64
Stat. 583.
40 USC 471 note.

"TITLE VII—PROPERTY TRANSFERRED FROM THE RECONSTRUCTION
FINANCE CORPORATION

"Sec. 701. Declaration of Policy.

"Sec. 702. Definitions.

"Sec. 703. Property transferred by the Reconstruction Finance Corporation.

"Sec. 704. Limitations.

"Sec. 705. Effective date."

**Trinity River Basin Fish and Wildlife Management Act,
Pub. L. No. 98-541, 98 Stat. 2721 (1984)**

PUBLIC LAW 98-541—OCT. 24, 1984

98 STAT. 2721

Public Law 98-541
98th Congress

An Act

To provide for the restoration of the fish and wildlife in the Trinity River Basin, California, and for other purposes.

Oct. 24, 1984

[H.R. 1438]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Conservation,
Fish and fishing,
Wildlife.

FINDINGS

SECTION 1. The Congress finds that—

(1) the construction of the Trinity River division of the Central Valley project in California, authorized by the Act of August 12, 1955 (69 Stat. 719), has substantially reduced the streamflow in the Trinity River Basin thereby contributing to damage to pools, spawning gravels, and rearing areas and to a drastic reduction in the anadromous fish populations and a decline in the scenic and recreational qualities of such river system;

(2) the loss of land areas inundated by two reservoirs constructed in connection with such project has contributed to reductions in the populations of deer and other wildlife historically found in the Trinity River Basin;

(3) the Act referred to in paragraph (1) of this section directed the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") to take appropriate actions to ensure the preservation and propagation of such fish and wildlife and additional authority was conferred on the Secretary under the Act approved September 4, 1980 (94 Stat. 1062), to take certain actions to mitigate the impact on fish and wildlife of the construction and operation of the Trinity River division;

(4) activities other than those related to the project including, but not limited to, inadequate erosion control and fishery harvest management practices, have also had significant adverse effects on fish and wildlife populations in the Trinity River Basin and are of such a nature that the cause of any detrimental impact on such populations cannot be attributed solely to such activities or to the project;

(5) a fish and wildlife management program has been developed by an existing interagency advisory group called the Trinity River Basin Fish and Wildlife Task Force; and

(6) the Secretary requires additional authority to implement a basin-wide fish and wildlife management program in order to achieve the long-term goal of restoring fish and wildlife populations in the Trinity River Basin to a level approximating that which existed immediately before the start of the construction of the Trinity River division.

98 STAT. 2722

PUBLIC LAW 98-541—OCT. 24, 1984

TRINITY RIVER BASIN FISH AND WILDLIFE MANAGEMENT PROGRAM

SEC. 2. (a) Subject to subsection (b), the Secretary shall formulate and implement a fish and wildlife management program for the Trinity River Basin designed to restore the fish and wildlife populations in such basin to the levels approximating those which existed immediately before the start of the construction referred to in section 1(1) and to maintain such levels. The program shall include the following activities:

(1) The design, construction, operation, and maintenance of facilities to—

(A) rehabilitate fish habitats in the Trinity River between Lewiston Dam and Weitchpec;

(B) rehabilitate fish habitats in tributaries of such river below Lewiston Dam and in the south fork of such river; and

(C) modernize and otherwise increase the effectiveness of the Trinity River Fish Hatchery.

(2) The establishment of a procedure to monitor (A) the fish and wildlife stock on a continuing basis, and (B) the effectiveness of the rehabilitation work.

(3) Such other activities as the Secretary determines to be necessary to achieve the long-term goal of the program.

(b)(1) The Secretary shall use the program described in section 1(5) of this Act as a basis for the management program to be formulated under subsection (a) of this section. In formulating and implementing such management program, the Secretary shall be assisted by an advisory group called the Trinity River Basin Fish and Wildlife Task Force established under section 3.

(2) In order to facilitate the implementation of those activities under the management program over which the Secretary does not have jurisdiction, the Secretary shall undertake to enter into a memorandum of agreement with those Federal, State, and local agencies, and the Indian tribe, represented on the Task Force established under section 3. The memorandum of agreement should specify those management program activities for which the respective signatories to the agreement are primarily responsible and should contain such commitments and arrangements between and among the signatories as may be necessary or appropriate to ensure the coordinated implementation of the program.

(3) To the extent not provided for under a memorandum of agreement entered into under paragraph (2), the Secretary shall coordinate the activities undertaken under such management program with the activities of State and local agencies, and the activities of other Federal agencies, which have responsibilities for managing public lands and natural resources within the Trinity River Basin.

Establishment.

TRINITY RIVER BASIN FISH AND WILDLIFE TASK FORCE

SEC. 3. (a) There is established the Trinity River Basin Fish and Wildlife Task Force (hereinafter in this Act referred to as the "Task Force") which shall be composed of fourteen members as follows:

(1) One officer or employee of the California Department of Fish and Game to be appointed by the administrative head of such department.

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(2) One officer or employee of the California Department of Water Resources to be appointed by the administrative head of such department.

(3) One member or employee of the California Water Resources Control Board to be appointed by such board.

(4) One officer or employee of the California Department of Forestry to be appointed by the administrative head of such department.

(5) One officer or employee of the United States Fish and Wildlife Service to be appointed by the Secretary.

(6) One officer or employee of the United States Bureau of Reclamation to be appointed by the Secretary.

(7) One officer or employee of the United States Bureau of Land Management to be appointed by the Secretary.

(8) One officer or employee of the United States Bureau of Indian Affairs to be appointed by the Secretary.

(9) One officer or employee of the United States Forest Service to be appointed by the Secretary of Agriculture.

(10) One officer or employee of the United States Soil Conservation Service to be appointed by the Secretary of Agriculture.

(11) One officer or employee of the United States National Marine Fisheries Service to be appointed by the Secretary of Commerce.

(12) One individual to be appointed by the board of supervisors of Humboldt County, California.

(13) One individual to be appointed by the board of supervisors of Trinity County, California.

(14) One individual to be appointed by the Hoopa Tribe of the Hoopa Valley Indian Reservation, California.

Any vacancy on the Task Force shall be filled in the manner in which the original appointment was made.

(b) If any member of the Task Force who was appointed to the Task Force as an officer or employee of a United States department or agency or as an officer or employee of a California State department or board leaves such office or employment, he may continue as a member of the Task Force for not longer than the end of the fourteen-day period beginning on the date he leaves such office or employment.

(c)(1) Members of the Task Force who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Task Force.

(2) No moneys authorized to be appropriated under this Act may be used to pay any member of the Task Force for service on the Task Force or to reimburse any agency or governmental unit for the pay of any such member for such service.

AUTHORIZATION OF APPROPRIATIONS

SEC. 4. (a) Subject to subsection (b), there are authorized to be appropriated—

(1) after fiscal year 1985, and to remain available until October 1, 1995, for design and construction under the management program formulated under section 2(a), \$33,000,000, adjusted appropriately to reflect any increase or decrease in the engineering cost indexes applicable to the types of construction involved between (A) the month of May 1982, and (B) the date of enactment of any appropriation for such construction; and

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- (2) for the cost of operations, maintenance, and monitoring under that management program, \$2,400,000 for each of the fiscal years in the ten-year period beginning on October 1, 1985.
- (b) No moneys appropriated under subsection (a) may be expended, and no moneys may be expended for carrying out Grass Valley Creek activities, after September 30, 1984, until the Secretary receives assurances satisfactory to him that—
- (1) the State of California and the counties of Humboldt and Trinity in California will pay during each fiscal year (on the basis of such shares as the State and the counties mutually agree upon) to the Treasury of the United States an amount equal to 15 per centum of the total amount of money that is expended during that year (A) from appropriations made under subsection (a), and (B) for carrying out Grass Valley Creek activities; and
- (2) the public utilities, water districts, and other direct purchasers of water and power from the Trinity River division of the Central Valley project referred to in section 1(1) will pay (on the basis of such shares as are determined by the Secretary) to the Treasury of the United States, within such period of time and in such increments as are satisfactory to the Secretary, an amount equal to 50 per centum of the total amount of money that is expended (A) from appropriations made under subsection (a), and (B) for carrying out Grass Valley Creek activities.
- (c) No moneys appropriated under subsection (a) may be expended for any construction described in section 2(a)(1)(A) below the confluence of Grass Valley Creek and the Trinity River until the construction of the debris dam referred to in subsection (d)(1) is completed.
- (d) For purposes of this section, the term "Grass Valley Creek activities" means the following activities authorized by the Act of September 4, 1980 (94 Stat. 1062):
- (1) The construction of the Grass Valley Creek debris dam.
- (2) The construction, operation, and maintenance of the sand dredging system in Grass Valley Creek.

Approved October 24, 1984.

LEGISLATIVE HISTORY—H.R. 1438:

HOUSE REPORT No. 98-1085, Pt. 1 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 98-647 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Sept. 24, considered and passed House.
Oct. 4, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 43 (1984):
Oct. 24, Presidential statement.

**Klamath River Basin
Conservation Restoration Area Act,
Pub. L. No. 99-552, 100 Stat. 3080 (1986), codified as 16 U.S.C. 460ss**

100 STAT. 3080

PUBLIC LAW 99-552—OCT. 27, 1986

Public Law 99-552
99th Congress

An Act

Oct. 27, 1986
[H.R. 4712]

To provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

16 USC 460ss.

SECTION 1. FINDINGS.

The Congress finds that—

- (1) the Klamath and Trinity Rivers have been placed under the California and National Wild and Scenic Rivers Systems to protect their outstanding anadromous fishery values;
- (2) the Klamath and Trinity Rivers provide fishery resources necessary for Indian subsistence and ceremonial purposes, ocean commercial harvest, recreational fishing, and the economic health of many local communities;
- (3) floods, the construction and operation of dams, diversions and hydroelectric projects, past mining, timber harvest practices, and roadbuilding have all contributed to sedimentation, reduced flows, and degraded water quality which has significantly reduced the anadromous fish habitat in the Klamath-Trinity River System;
- (4) overlapping Federal, State, and local jurisdictions, inadequate enforcement of fishery harvest regulations, and ineffective fishery management have historically hampered fishery conservation efforts and prevented the Federal Government and the State of California from fulfilling their responsibilities to protect the rivers' anadromous fishery values;
- (5) the Klamath-Trinity fall chinook salmon populations have declined by 80 percent from historic levels and steelhead trout have also undergone significant reductions;
- (6) Klamath River Basin Fisheries Resource Plan has been developed by the Secretary acting through the Bureau of Indian Affairs;
- (7) the Klamath Salmon Management Group, a group of agencies with fishery management responsibility, has established, in cooperation with the users of the Klamath-Trinity River Basin fishery resources, a sound framework for the future coordination of fishery harvest management;
- (8) a new Klamath-Trinity River Basin Management authority, composed of the Klamath Salmon Management Group and representatives of users of the fishery resources of the Klamath-Trinity River Basin, is needed to ensure more effective long-term coordination of the Klamath-Trinity River fisheries under sound conservation and management principles that ensure adequate spawning escapement; and
- (9) the Secretary has the authority to implement a restoration program only in the Trinity River Basin and needs additional authority to implement a restoration program in cooperation with State and local governments to restore anadromous fish

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populations to optimum levels in both the Klamath and Trinity River Basins;

SEC. 2. KLAMATH RIVER BASIN CONSERVATION AREA; FISHERY RESOURCES RESTORATION PROGRAM. 16 USC 460ss-1.

(a) **ESTABLISHMENT OF KLAMATH RIVER BASIN CONSERVATION AREA.**—The Secretary shall designate the anadromous fish habitats and resources of the Klamath River basin as the Klamath River Basin Conservation Area (hereafter in this Act referred to as the "Area").

(b) **KLAMATH RIVER BASIN CONSERVATION AREA RESTORATION PROGRAM.**—

(1) **ESTABLISHMENT.**—The Secretary shall, in consultation with the task force established under section 4, formulate, establish, and implement a 20-year program to restore the anadromous fish populations of the Area to optimum levels and to maintain such levels. The program shall be based on the Klamath River Basin Fisheries Resource Plan referred to in section 1(6) and shall be known as the Klamath River Basin Conservation Area Restoration Program.

(2) **PROGRAM ACTIVITIES.**—In carrying out the objectives of the program, the Secretary, in cooperation with the task force established under section 4, shall—

(A) monitor and coordinate research evaluating the Area anadromous fish populations and administer and evaluate the success of activities described in subparagraph (B); and

Research and development.

(B) take such actions as are necessary to—

(i) improve and restore Area habitats, and to promote access to blocked Area habitats, to support increased run sizes;

(ii) rehabilitate problem watersheds in the Area to reduce negative impacts on fish and fish habitats;

(iii) improve existing Area hatcheries and rearing ponds to assist in rebuilding the natural populations;

(iv) implement an intensive, short-term stocking program to rebuild run sizes while maintaining the genetic integrity and diversity of Area subbasin stocks; and

(v) improve upstream and downstream migration by removal of obstacles to fish passage and the provision of facilities for avoiding obstacles.

(3) **RESTORATION WORK.**—To the extent practicable, any restoration work performed under paragraph (2)(B) shall be performed by unemployed—

Indians.

(A) commercial fishermen;

(B) Indians; and

(C) other persons whose livelihood depends upon Area fishery resources.

(4) **MEMORANDUM OF AGREEMENT.**—In order to facilitate the implementation of any activity described in paragraph (2) over which the Secretary does not have jurisdiction, the Secretary shall enter into a memorandum of agreement with the Federal, State, and local agencies having jurisdiction over such activities, and the Area Indian tribes. The memorandum of agreement shall specify the program activities for which the respective signatories to the agreement are responsible and shall contain such provisions as are necessary to ensure the coordinated implementation of the program.

Contracts.
State and local governments.
Indians.

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16 USC 460ss-2. SEC. 3. KLAMATH FISHERY MANAGEMENT COUNCIL.

(a) **ESTABLISHMENT.**—There is established a Klamath Fishery Management Council (hereafter in this Act referred to as the "Council").

(b) **FUNCTIONS.**—

(1) The Council shall—

(A) establish a comprehensive long-term plan and policy, that must be consistent with the goals of the program, for the management of the in-river and ocean harvesting that affects or may affect Klamath and Trinity River basin anadromous fish populations;

(B) make recommendations, that must be consistent with the plan and policy established under subparagraph (A) and with the standards in paragraph (2)—

(i) to the California Fish and Game Commission regarding in-river and offshore recreational harvesting regulations,

(ii) to the Oregon Department of Fish and Wildlife regarding offshore recreational harvesting regulations,

(iii) to the Pacific Fishery Management Council regarding ocean harvesting regulations,

(iv) to the Bureau of Indian Affairs regarding regulations for harvesting in the Area by non-Hoopa Indians, and

(v) to the Hoopa Valley Business Council regarding regulations for harvesting in the Area by members of the Hoopa Indian Tribe; and

(C) conduct public hearings on any regulation referred to in subparagraph (B) (i) through (v).

(2) Any recommendation made by the Council under paragraph (1)(B) regarding harvesting regulations shall—

(A) be based upon the best scientific information available;

(B) minimize costs where practicable, and avoid unnecessary duplication of regulations;

(C) take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and

(D) be designed to achieve an escapement that preserves and strengthens the viability of the Area's natural anadromous fish populations.

(c) **MEMBERSHIP AND APPOINTMENT.**—The Council is composed of 11 members as follows:

(1) A representative, who shall be appointed by the Governor of California, of each of the following:

(A) The commercial salmon fishing industry.

(B) The in-river sportfishing community.

(C) The offshore recreational fishing industry.

(D) The California Department of Fish and Game.

(2) A representative of the Hoopa Indian Tribe who shall be appointed by Hoopa Valley Business Council.

(3) A representative, who shall be appointed by the Secretary, of each of the following:

(A) The non-Hoopa Indians residing in the Area.

(B) The Department of the Interior.

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- (4) A representative, who shall be appointed by the Secretary of Commerce, of each of the following—
- (A) The National Marine Fisheries Service.
 - (B) The Pacific Fishery Management Council.
- (5) A representative, who shall be appointed by the Governor of Oregon, of each of the following:
- (A) The commercial salmon fishing industry.
 - (B) The Oregon Department of Fish and Wildlife.
- (d) **CONSULTATION REQUIREMENT.**—The appointments required under subsection (c) shall be made in consultation with the appropriate users of Area anadromous fish resources.
- (e) **QUALIFICATIONS.**—Council members shall be individuals who are knowledgeable and experienced in the management and conservation, or the recreational or commercial harvest, of the anadromous fish resources in Northern California.
- (f) **TERMS.**—
- (1) **IN GENERAL.**—The term of a member is 4 years.
 - (2) **SERVICE.**—Members of the Council serve at the pleasure of the appointing authority.
 - (3) **VACANCIES.**—Any vacancy on the Council shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.
- (g) **TRANSACTION OF BUSINESS.**—
- (1) **DECISIONS OF COUNCIL.**—All decisions of the Council must be by unanimous vote of all of the members.
 - (2) **CHAIRMAN.**—The Council shall elect a Chairman from among its members.
 - (3) **MEETINGS.**—The Council shall meet at the call of the Chairman or upon the request of a majority of its members.
- (h) **STAFF AND ADMINISTRATION.**—
- (1) **ADMINISTRATIVE SUPPORT.**—The Secretary and the Director of the California Department of Fish and Game shall provide the Council with such administrative and technical support services as are necessary for the effective functioning of the Council.
 - (2) **INFORMATION.**—The Secretary and the Director of the California Department of Fish and Game shall furnish the Council with relevant information concerning the Area.
 - (3) **ORGANIZATION.**—The Council shall determine its organization, and prescribe the practices and procedures for carrying out its functions under subsection (b).
- (i) **FEDERAL OR STATE EMPLOYEES.**—Any Council member who is an officer or employee of the United States or the State of California at the time of appointment to the Council shall cease to be a Council member within 14 days after the date on which he ceases to be so employed.
- (j) **EXPENSES.**—
- (1) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for the Council, Council members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in the

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Government service are allowed travel expenses under section 5703 of title 5 of the United States Code.

(2) **LIMITATION ON SPENDING AUTHORITY.**—No money authorized to be appropriated under section 6 may be used to reimburse any agency or governmental unit (whose employees are Council members) for time spent by any such employee performing Council duties.

16 USC 460as-3.

SEC. 4. KLAMATH RIVER BASIN FISHERIES TASK FORCE.

(a) **ESTABLISHMENT.**—There is established a Klamath River Basin Fisheries Task Force (hereafter in this Act referred to as the "Task Force").

(b) **FUNCTIONS.**—The Task Force—

(1) shall assist the Secretary in the formulation, coordination, and implementation of the program;

(2) shall assist, and coordinate its activities with, Federal, State, and local governmental or private anadromous fish restoration projects within the Area;

(3) shall conduct any other activity that is necessary to accomplish the objectives of the program; and

(4) may act as an advisor to the Council.

(c) **MEMBERSHIP AND APPOINTMENT.**—The Task Force is composed of 12 members as follows:

(1) A representative, who shall be appointed by the Governor of California, of each of the following:

(A) The commercial salmon fishing industry.

(B) The in-river sport fishing community.

(C) The California Department of Fish and Game.

(2) A representative of the Hoopa Indian Tribe who shall be appointed by the Hoopa Valley Business Council.

(3) A representative of the Department of the Interior who shall be appointed by the Secretary.

(4) A representative of the National Marine Fisheries Service who shall be appointed by the Secretary of Commerce.

(5) A representative of the Department of Agriculture who shall be appointed by the Secretary of Agriculture.

(6) A representative of the Oregon Department of Fish and Wildlife who shall be appointed by the Governor of Oregon.

(7) One individual who shall be appointed by the Board of Supervisors of Del Norte County, California.

(8) One individual who shall be appointed by the Board of Supervisors of Siskiyou County, California.

(9) One individual who shall be appointed by the Board of Supervisors of Humboldt County, California.

(10) One individual who shall be appointed by the Board of Supervisors of Trinity County, California.

(d) **COUNCIL MEMBERSHIP NOT A BAR TO TASK FORCE APPOINTMENT.**—An individual who is a member of the Council is not ineligible for appointment as a member of the Task Force.

(e) **TERMS.**—

(1) **IN GENERAL.**—The term of a member of the Task Force is 4 years.

(2) **SERVICE.**—Members of the Task Force serve at the pleasure of the appointing authorities.

(3) **VACANCIES.**—Any vacancy on the Task Force shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the

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expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(f) TRANSACTION OF BUSINESS.—

(1) **DECISIONS OF TASK FORCE.**—All decisions of the Task Force must be by unanimous vote of all the members.

(2) **CHAIRMAN.**—The members of the Task Force shall select a Chairman from among its members.

(3) **MEETINGS.**—The Task Force shall meet at the call of the Chairman or upon the request of a majority of its members.

(g) STAFF AND ADMINISTRATION.—

(1) **ADMINISTRATIVE SUPPORT.**—The Secretary and the Director of the California Department of Fish and Game shall provide the Task Force with the administrative and technical support services necessary for the effective functioning of the Task Force.

(2) **INFORMATION.**—The Secretary and the Director of the California Department of Fish and Game shall furnish the members of the Task Force with relevant information concerning the Area.

(3) **ORGANIZATION.**—The Task Force shall determine its organization, and prescribe the practices and procedures for carrying out its functions under subsection (b).

(h) **MEMBERS WHO ARE FEDERAL OR STATE EMPLOYEES.**—Any Task Force member who is an officer or employee of the United States or the State of California at the time of appointment to the Task Force shall cease to be a member of the Task Force within 14 days of the date on which he ceases to be so employed.

(i) **LIMITATION ON SPENDING AUTHORITY.**—No money authorized to be appropriated under section 6 may be used to reimburse any Task Force member or agency or governmental unit (whose employees are Task Force members) for time spent by any such employee performing Task Force duties.

SEC. 5. ENFORCEMENT.

(a) **MEMORANDUM OF AGREEMENT.**—In order to strengthen and facilitate the enforcement of Area fishery harvesting regulations, the Secretary shall enter into a memorandum of agreement with the California Department of Fish and Game. Such agreement shall specify the enforcement activities within the Area for which the respective agencies of the Department of Interior and the California Department of Fish and Game are responsible and shall contain such provisions as are necessary to ensure the coordinated implementation of Federal and State enforcement activities.

Contracts.
California.
State and local
governments.
16 USC 460ss-4.

SEC. 6. APPROPRIATIONS.

(a) **AUTHORIZATION.**—There are authorized to be appropriated to the Department of the Interior during the period beginning October 1, 1986, and ending on September 30, 2006, \$21,000,000 for the design, construction, operation, and maintenance of the program. Monies appropriated under this subsection shall remain available until expended or October 1, 2006, whichever first occurs.

16 USC 460ss-5.

(b) COST-SHARING.—

(1) 50 percent of the cost of the development and implementation of the program must be provided by one or more non-Federal sources on a basis considered by the Secretary to be

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Gifts and
property.
Real property.

timely and appropriate. For purposes of this subsection, the term "non-Federal source" includes a State or local government, any private entity, and any individual.

(2) In addition to cash outlays, the Secretary shall consider as financial contributions by a non-Federal source the value of in kind contributions and real and personal property provided by the source for purposes of implementing the program. Valuations made by the Secretary under this paragraph are final and not subject to judicial review.

Voluntarism.

(3) For purposes of paragraph (2), in kind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies.

Regulations.

(4) The Secretary shall by regulation establish—
(A) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as in kind contributions; and
(B) the standards under which the Secretary will determine the value of in kind contributions and real and personal property for purposes of paragraph (2).

State and local
governments.

(5) The Secretary may not consider the expenditure, either directly or indirectly, with respect to the program of Federal moneys received by a State or local government to be a financial contribution by a non-Federal source to carry out the program.

16 USC 460ss-6.

SEC. 7. DEFINITIONS.

As used in this Act—

(1) The term "program" means the Klamath River Basin Conservation Area Restoration Program established under section 2(b).

(2) The term "Secretary" means the Secretary of the Interior.

Approved October 27, 1986.

LEGISLATIVE HISTORY—H.R. 4712:

HOUSE REPORTS: No. 99-894, Pt. 1 (Comm. on Merchant Marine and Fisheries).

CONGRESSIONAL RECORD, Vol. 132 (1986):

Sept. 30, considered and passed House.

Oct. 3, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):

Oct. 27, Presidential statement.

**Central Valley Project Improvement Act,
Pub. L. No. 102-575, §§ 3401-12, 106 Stat. 4600, 4706-31 (1992)**

the project, that are used solely for the purpose of serving the respective district's lands and which the Secretary determines are necessary to enable the respective district to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, jointly, upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the respective district assume responsibility for operating and maintaining their portion of the project.

SEC. 3302. LIMITATION.

Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

SEC. 3303. EFFECT OF ACT ON OTHER LAWS.

Nothing in this title shall affect any right, title, interest or claim to land or water, if any, of the Ysleta del Sur Pueblo, a federally recognized Indian Tribe.

**TITLE XXXIV—CENTRAL VALLEY PROJECT
IMPROVEMENT ACT**

Central Valley
Project
Improvement
Act.
Water supply.
California.

SEC. 3401. SHORT TITLE.

This title may be cited as the "Central Valley Project Improvement Act".

SEC. 3402. PURPOSES.

The purposes of this title shall be—

(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;

(b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;

(c) to improve the operational flexibility of the Central Valley Project;

(d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;

(e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;

(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

SEC. 3403. DEFINITIONS.

As used in this title—

(a) the term "anadromous fish" means those stocks of salmon (including steelhead), striped bass, sturgeon, and American shad that ascend the Sacramento and San Joaquin rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in San Francisco Bay or the Pacific Ocean;

(b) the terms "artificial propagation" and "artificial production" mean spawning, incubating, hatching, and rearing fish in a hatchery or other facility constructed for fish production;

(c) the term "Central Valley Habitat Joint Venture" means the association of Federal and State agencies and private parties established for the purpose of developing and implementing the North American Waterfowl Management Plan as it pertains to the Central Valley of California;

(d) the terms "Central Valley Project" or "project" mean all Federal reclamation projects located within or diverting water from or to the watershed of the Sacramento and San Joaquin rivers and their tributaries as authorized by the Act of August 26, 1937 (50 Stat. 850) and all Acts amendatory or supplemental thereto, including but not limited to the Act of October 17, 1940 (54 Stat. 1198, 1199), Act of December 22, 1944 (58 Stat. 887), Act of October 14, 1949 (63 Stat. 852), Act of September 26, 1950 (64 Stat. 1036), Act of August 27, 1954 (68 Stat. 879), Act of August 12, 1955 (69 Stat. 719), Act of June 3, 1960 (74 Stat. 156), Act of October 23, 1962 (76 Stat. 1173), Act of September 2, 1965 (79 Stat. 615), Act of August 19, 1967 (81 Stat. 167), Act of August 27, 1967 (81 Stat. 173), Act of October 23, 1970 (84 Stat. 1097), Act of September 28, 1976 (90 Stat. 1324) and Act of October 27, 1986 (100 Stat. 3050);

(e) the term "Central Valley Project service area" means that area of the Central Valley and San Francisco Bay Area where water service has been expressly authorized pursuant to the various feasibility studies and consequent congressional authorizations for the Central Valley Project;

(f) the term "Central Valley Project water" means all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(g) the term "full cost" has the meaning given such term in paragraph (3) of section 202 of the Reclamation Reform Act of 1982;

(h) the term "natural production" means fish produced to adulthood without direct human intervention in the spawning, rearing, or migration processes;

(i) the term "Reclamation laws" means the Act of June 17, 1902 (82 Stat. 388) and all Acts amendatory thereof or supplemental thereto;

(j) the term "Refuge Water Supply Report" means the report issued by the Mid-Pacific Region of the Bureau of Reclamation of the U.S. Department of the Interior entitled Report on Refuge Water Supply Investigations, Central Valley Hydrologic Basin, California (March 1989);

(k) the terms "repayment contract" and "water service contract" have the same meaning as provided in sections 9(d)

and 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1195), as amended;

(l) the terms "Restoration Fund" and "Fund" mean the Central Valley Project Restoration Fund established by this title; and

(m) the term "Secretary" means the Secretary of the Interior.

SEC. 3404. LIMITATION ON CONTRACTING AND CONTRACT REFORM.

(a) **NEW CONTRACTS.**—Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:

(1) the provisions of subsections 3406(b)–(d) of this title are met;

(2) the California State Water Resources Control Board concludes the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82 (1986) and determines the means of implementing its decision, including the obligations of the Central Valley Project, if any, and the Administrator of the Environmental Protection Agency shall have approved such decision pursuant to existing authorities; and

(3) at least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving its responsibilities for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as finally established and approved by relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.

(b) **EXCEPTIONS TO LIMIT ON NEW CONTRACTS.**—The prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts executed pursuant to section 305 of Public Law 102-250 or section 206 of Public Law 101-514 or to one-year contracts for delivery of surplus flood flows or contracts not to exceed two years in length for delivery of class II water in the Friant Unit. Notwithstanding the prohibition in the Energy and Water Development Appropriations Act of 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962, to enter into a long-term contract in accordance with the Reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county's water distribution system and a contract with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of the San Joaquin Valley National Cemetery, California.

(c) **RENEWAL OF EXISTING LONG-TERM CONTRACTS.**—Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from

the Central Valley Project for a period of twenty-five years and may renew such contracts for successive periods of up to 25 years each.

(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in said contracts a provision requiring payment of the charge mandated in subsection 3406(c) and subsection 3407(b) of this title and all other modifications needed to comply with existing law, including provisions of this title. This title shall be deemed "applicable law" as that term is used in Article 14(c) of contracts renewed by the Secretary since January 1, 1988.

(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.

(3) In order to encourage early renewal of project water contracts and facilitate timely implementation of this title, the Secretary shall impose on existing contractors an additional mitigation and restoration payment of one and one-half times the annual mitigation and restoration payment calculated under subsection 3407(d) of this title for every year starting October 1, 1997 or January 1 of the year following the year in which the environmental impact statement required under section 3409 is completed, whichever is sooner, and ending on the effective date of the renewed contract payable prior to the renewal of such contract, to be covered to the Restoration Fund: *Provided, however,* That this paragraph shall not apply to contracts renewed after January 1, 1988, and prior to the date of enactment of this title or, in the event the environmental impact statement required by section 3409 is not completed by October 1, 1997, to any holder of a contract in existence on the date of enactment of this title who enters into a binding agreement with the Secretary prior to October 1, 1997, to renew its contract immediately upon completion of that environmental impact statement, if such contract has not expired prior to such date.

SEC. 3405. WATER TRANSFERS, IMPROVED WATER MANAGEMENT AND CONSERVATION. Contracts.

(a) **WATER TRANSFERS.**—In order to assist California urban areas, agricultural water users, and others in meeting their future

water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian tribe, or private nonprofit organization for project purposes or any purpose recognized as beneficial under applicable State law. Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.

(1) **CONDITIONS FOR TRANSFERS.**—All transfers to Central Valley Project water authorized by this subsection shall be subject to review and approval by the Secretary under the conditions specified in this subsection. Transfers involving more than 20 percent of the Central Valley Project water subject to long-term contract within any contracting district or agency shall also be subject to review and approval by such district or agency under the conditions specified in this subsection:

(A) No transfer to combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.

(B) All water under the contract which is transferred under authority of this subsection to any district or agency which is not a Central Valley Project contractor at the time of enactment of this title shall, if used for irrigation purposes, be repaid at the greater of the full-cost or cost of service rates, or, if the water is used for municipal and industrial purposes, at the greater of the cost of service or municipal and industrial rates.

(C) No transfers authorized by this subsection shall be approved unless the transfer is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon.

(D) No transfer authorized by this subsection shall be approved unless the transfer is consistent with State law, including but not limited to provisions of the California Environmental Quality Act.

(E) All transfers authorized by this subsection shall be deemed a beneficial use of water by the transferor for the purposes of section 8 of the Act of June 17, 1902, 32 Stat. 390, 43 U.S.C. 372.

(F) All transfers entered into pursuant to this subsection for uses outside the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's

total costs associated with the development and negotiation of the transfer.

(G) No transfer authorized by this subsection shall be considered by the Secretary as conferring supplemental or additional benefits on Central Valley Project water contractors as provided in section 203 of Public Law 97-293 (43 U.S.C. 390(cc)).

(H) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary has determined, consistent with paragraph 3405(a)(2) of this title, that the transfer will not violate the provisions of this title or other Federal law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations or fish and wildlife obligations under this title because of limitations in conveyance or pumping capacity.

(I) The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.

(J) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no significant long-term adverse impact on groundwater conditions in the transferor's service area.

(K) The Secretary shall not approve a transfer unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no unreasonable impact on the water supply, operations, or financial conditions of the transferor's contracting district or agency or its water users.

(L) The Secretary shall not approve a transfer if the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, unless the Secretary determines pursuant to findings setting forth the basis for such determination that such adverse effects would be more than offset by the benefits of the proposed transfer. In the event of such a determination, the Secretary shall develop and implement alternative measures and mitigation activities as integral and concurrent elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer.

(M) Transfers between Central Valley Project contractors within countries, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs (A) and (I) of this paragraph.

(2) REVIEW AND APPROVAL OF TRANSFERS.—All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:

(A) Decisions on water transfers subject to review by a contracting district or agency or by the Secretary shall

be rendered within ninety days of receiving a written transfer proposal from the transferee or transferor. Such written proposal should provide all information reasonably necessary to determine whether the transfer complies with the terms and conditions of this subsection.

(B) All transfers subject to review by a contracting district or agency shall be reviewed in a public process similar to that provided for in section 226 of Public Law 97-293.

(C) The contracting district or agency or the Secretary shall approve all transfers subject to review and approval by such entity if such transfers are consistent with the terms and conditions of this subsection. To disapprove a transfer, the contracting district or agency or the Secretary shall inform the transferee and transferor, in writing, why the transfer does not comply with the terms and conditions of this subsection and what alternatives, if any, could be included so that the transfer would reasonably comply with the requirements of this subsection.

(D) If the contracting district or agency or the Secretary fails to approve or disapprove a proposed transfer within ninety days of receiving a complete written proposal from the transferee or transferor, then the transfer shall be deemed approved.

(3) Transfers executed after September 30, 1999 shall only be governed by the provisions of subparagraphs 3405(a)(1)(A)-(C), (E), (G), (H), (I), (L), and (M) of this title, and by State law.

(b) **METERING OF WATER USE REQUIRED.**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so equipped. The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.

(c) **STATE AND FEDERAL WATER QUALITY STANDARDS.**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall be responsible for compliance with all applicable State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated within its boundaries. This subsection shall not affect or alter any legal obligation of the Secretary to provide drainage services.

(d) **WATER PRICING REFORM.**—All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered

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into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:

(1) the first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall not be less than the applicable contract rate;

(2) the second rate tier shall apply to that quantity of water over 80 percent and under 90 percent of the contract total and shall be at a level halfway between the rates established under paragraphs (1) and (3) of this subsection;

(3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and

(4) the Secretary shall charge contractors only for water actually delivered.

The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced: *Provided*, That such waiver shall apply only if such habitat values can be assured consistent with the purposes of this title through binding agreements executed with or approved by the Secretary.

(e) **WATER CONSERVATION STANDARDS.**—The Secretary shall establish and administer an office of Central Valley Project water conservation best management practices that shall, in consultation with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.

(1) Criteria developed pursuant to this subsection shall be established within six months following enactment of this title and shall be reviewed periodically thereafter, but no less than every three years, with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices. The criteria shall include, but not be limited to agricultural water suppliers' efficient water management practices developed pursuant to California State law or reasonable alternatives.

(2) The Secretary, through the office established under this subsection, shall review and evaluate within 18 months following enactment of this title all existing conservation plans submitted by project contractors to determine whether they meet the conservation and efficiency criteria established pursuant to this subsection.

(3) In developing the water conservation best management practice criteria required by this subsection, the Secretary shall take into account and grant substantial deference to the recommendations for action specific to water conservation and drainage source reduction proposed in the Final Report of the

San Joaquin Valley Drainage Program, entitled A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley (September 1990).

(f) **INCREASED REVENUES.**—All revenues received by the Secretary as a result of the increased repayment rates applicable to water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund.

SEC. 3406. FISH, WILDLIFE AND HABITAT RESTORATION.

(a) **AMENDMENTS TO CENTRAL VALLEY PROJECT AUTHORIZATIONS.**—Act of August 26, 1937.—Section 2 of the Act of August 26, 1937 (chapter 832; 50 Stat. 850), as amended, is amended—

(1) in the second proviso of subsection (a), by inserting “and mitigation, protection, and restoration of fish and wildlife” after “Indian reservations,”;

(2) in the last proviso of subsection (a), by striking “domestic uses;” and inserting “domestic uses and fish and wildlife mitigation, protection and restoration purposes;” and by striking “power” and inserting “power and fish and wildlife enhancement;”

(3) by adding at the end the following: “The mitigation for fish and wildlife losses incurred as a result of construction, operation, or maintenance of the Central Valley Project shall be based on the replacement of ecologically equivalent habitat and shall take place in accordance with the provisions of this title and concurrent with any future actions which adversely affect fish and wildlife populations or their habitat but shall have no priority over them.”; and

(4) by adding at the end the following: “(e) Nothing in this title shall affect the State’s authority to condition water rights permits for the Central Valley Project.”

California.

(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. 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:

(1) develop within three years of enactment and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967–1991; *Provided*, That this goal shall not apply to the San Joaquin River between Friant Dam and the Mendota Pool, for which a separate program is authorized under subsection 3406(c) of this title; *Provided further*, That the programs and activities authorized by this section shall, when fully implemented, be deemed to meet the mitigation, protection, restoration, and enhancement purposes established by subsection 3406(a) of this title; *And provided further*, That in the course of developing and implementing

this program the Secretary shall make all reasonable efforts consistent with the requirements of this section to address other identified adverse environmental impacts of the Central Valley Project not specifically enumerated in this section.

(A) This program shall give first priority to measures which protect and restore natural channel and riparian habitat values through habitat restoration actions, modifications to Central Valley Project operations, and implementation of the supporting measures mandated by this subsection; shall be reviewed and updated every five years; and shall describe how the Secretary intends to operate the Central Valley Project to meet the fish, wildlife, and habitat restoration goals and requirements set forth in this title and other project purposes.

(B) As needed to achieve the goals of this program, the Secretary is authorized and directed to modify Central Valley Project operations to provide flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish, except that such flows shall be provided from the quantity of water dedicated to fish, wildlife, and habitat restoration purposes under paragraph (2) of this subsection; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. Instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the United States Fish and Wildlife Service after consultation with the California Department of Fish and Game.

(C) The Secretary shall cooperate with the State of California to ensure that, to the greatest degree practicable, the specific quantities of yield dedicated to and managed for fish and wildlife purposes under this title are credited against any additional obligations of the Central Valley Project which may be imposed by the State of California following enactment of this title, including but not limited to increased flow and reduced export obligations which may be imposed by the California State Water Resources Control Board in implementing San Francisco Bay/Sacramento-San Joaquin Delta Estuary standards pursuant to the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal.App.3d 82 (1986), and that, to the greatest degree practicable, the programs and plans required by this title are developed and implemented in a way that avoids inconsistent or duplicative obligations from being imposed upon Central Valley Project water and power contractors.

(D) Costs associated with this paragraph shall be reimbursable pursuant to existing statutory and regulatory procedures.

(2) upon enactment of this title dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts

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to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act. For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928-1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met.

(A) Such quantity of water shall be in addition to the quantities needed to implement paragraph 3406(d)(1) of this title and in addition to all water allocated pursuant to paragraph (23) of this subsection for release to the Trinity River for the purposes of fishery restoration, propagation, and maintenance; and shall be supplemented by all water that comes under the Secretary's control pursuant to subsections 3406(b)(3), 3408(h)-(i), and through other measures consistent with subparagraph 3406(b)(1)(B) of this title.

(B) Such quantity of water shall be managed pursuant to conditions specified by the United States Fish and Wildlife Service after consultation with the Bureau of Reclamation and the California Department of Water Resources and in cooperation with the California Department of Fish and Game.

(C) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors; *Provided further*, That nothing in this subsection or subsection 3406(e) shall require the Secretary to operate the project in a way that jeopardizes human health or safety.

(D) If the quantity of water dedicated under this paragraph, or any portion thereof, is not needed for the purposes of this section, based on a finding by the Secretary, the Secretary is authorized to make such water available for other project purposes.

(3) develop and implement a program in coordination and in conformance with the plan required under paragraph (1) of this subsection for the acquisition of a water supply to supplement the quantity of water dedicated to fish and wildlife purposes under paragraph (2) of this subsection and to fulfill the Secretary's obligations under paragraph 3406(d)(2) of this title. The program should identify how the Secretary intends to utilize, in particular the following options: improvements in or modifications of the operations of the project; water banking; conservation; transfers; conjunctive use; and temporary and permanent land fallowing, including purchase, lease, and option of water, water rights, and associated agricultural land.

(4) develop and implement a program to mitigate for fishery impacts associated with operations of the Tracy Pumping Plant. Such program shall include, but is not limited to improvement or replacement of the fish screens and fish recovery facilities and practices associated with the Tracy Pumping Plant. Costs associated with this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California. The reimbursable share of funding for this and other facility repairs, improvements, and construction shall be allocated among project water and power users in accordance with existing project cost allocation procedures.

(5) develop and implement a program to mitigate for fishery impacts resulting from operations of the Contra Costa Canal Pumping Plant No. 1. Such program shall provide for construction and operation of fish screening and recovery facilities, and for modified practices and operations. Costs associated with this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(6) install and operate a structural temperature control device at Shasta Dam and develop and implement modifications in CVP operations as needed to assist in the Secretary's efforts to control water temperatures in the upper Sacramento River in order to protect anadromous fish in the upper Sacramento River. Costs associated with planning and construction of the structural temperature control device shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(7) meet flow standards and objectives and diversion limits set forth in all laws and judicial decisions that apply to Central Valley Project facilities, including, but not limited to, provisions of this title and all obligations of the United States under the "Agreement Between the United States and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated May 20, 1985, as well as Public Law 99-546.

(8) make use of short pulses of increased water flows to increase the survival of migrating anadromous fish moving into and through the Sacramento-San Joaquin Delta and Central Valley rivers and streams.

(9) develop and implement a program to eliminate, to the extent possible, losses of anadromous fish due to flow fluctuations caused by the operation of any Central Valley Project storage or re-regulating facility. The program shall be patterned where appropriate after the agreement between the California Department of Water Resources and the California Department of Fish and Game with respect to the operation of the California State Water Project Oroville Dam complex.

(10) develop and implement measures to minimize fish passage problems for adult and juvenile anadromous fish at

the Red Bluff Diversion Dam in a manner that provides for the use of associated Central Valley Project conveyance facilities for delivery of water to the Sacramento Valley National Wildlife Refuge complex in accordance with the requirements of subsection (d) of this section. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(11) rehabilitate and expand the Coleman National Fish Hatchery by implementing the United States Fish and Wildlife Service's Coleman National Fish Hatchery Development Plan, and modify the Keswick Dam Fish Trap to provide for its efficient operation at all project flow release levels and modify the basin below the Keswick Dam spillway to prevent the trapping of fish. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 50 percent shall be reimbursed as main project features and 50 percent shall be considered a nonreimbursable Federal expenditure.

(12) develop and implement a comprehensive program to provide flows to allow sufficient spawning, incubation, rearing, and outmigration for salmon and steelhead from Whiskeytown Dam as determined by instream flow studies conducted by the California Department of Fish and Game after Clear Creek has been restored and a new fish ladder has been constructed at the McCormick-Saeltzer Dam. Costs associated with channel restoration, passage improvements, and fish ladder construction required by this paragraph shall be allocated 50 percent to the United States as a nonreimbursable expenditure and 50 percent to the State of California. Costs associated with providing the flows required by this paragraph shall be allocated among project purposes.

(13) develop and implement a continuing program for the purpose of restoring and replenishing, as needed, spawning gravel lost due to the construction and operation of Central Valley Project dams, bank protection projects, and other actions that have reduced the availability of spawning gravel and rearing habitat in the Upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam, and in the American and Stanislaus Rivers downstream from the Nimbus and Goodwin Dams, respectively. The program shall include preventive measures, such as re-establishment of meander belts and limitations on future bank protection activities, in order to avoid further losses of instream and riparian habitat. Costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(14) develop and implement a program which provides for modified operations and new or improved control structures at the Delta Cross Channel and Georgiana Slough during times when significant numbers of striped bass eggs, larvae, and juveniles approach the Sacramento River intake to the Delta Cross Channel or Georgiana Slough. Costs associated with

implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(15) construct, in cooperation with the State of California and in consultation with local interests, a barrier at the head of Old River in the Sacramento-San Joaquin Delta to be operated on a seasonal basis to increase the survival of young outmigrating salmon that are diverted from the San Joaquin River to Central Valley Project and State Water Project pumping plants and in a manner that does not significantly impair the ability of local entities to divert water. The costs associated with implementation of this paragraph shall be reimbursed in accordance with the following formula: 37.5 percent shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(16) establish, in cooperation with independent entities and the State of California, a comprehensive assessment program to monitor fish and wildlife resources in the Central Valley to assess the biological results and effectiveness of actions implemented pursuant to this subsection. 37.5 percent of the costs associated with implementation of this paragraph shall be reimbursed as main project features, 37.5 percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(17) develop and implement a program to resolve fishery passage problems at the Anderson-Cottonwood Irrigation District Diversion Dam as well as upstream stranding problems related to Anderson-Cottonwood Irrigation District Diversion Dam operations. Costs associated with implementation of this paragraph shall be allocated 50 percent to the United States as a nonreimbursable expenditure and 50 percent to the State of California.

(18) if requested by the State of California, assist in developing and implementing management measures to restore the striped bass fishery of the Bay-Delta estuary. Such measures shall be coordinated with efforts to protect and restore native fisheries. Costs associated with implementation of this paragraph shall be allocated 50 percent to the United States and 50 percent to the State of California. The United States' share of costs associated with implementation of this paragraph shall be nonreimbursable.

(19) reevaluate existing operational criteria in order to maintain minimum carryover storage at Sacramento and Trinity River reservoirs to protect and restore the anadromous fish of the Sacramento and Trinity Rivers in accordance with the mandates and requirements of this subsection and subject to the Secretary's responsibility to fulfill all project purposes, including agricultural water delivery.

(20) participate with the State of California and other Federal agencies in the implementation of the on-going program to mitigate fully for the fishery impacts associated with operations of the Glenn-Colusa Irrigation District's Hamilton City Pumping Plant. Such participation shall include replacement of the defective fish screens and fish recovery facilities associ-

ated with the Hamilton City Pumping Plant. This authorization shall not be deemed to supersede or alter existing authorizations for the participation of other Federal agencies in the mitigation program. Seventy-five percent shall be considered a nonreimbursable Federal expenditure, and 25 percent shall be paid by the State of California.

(21) assist the State of California in efforts to develop and implement measures to avoid losses of juvenile anadromous fish resulting from unscreened or inadequately screened diversions on the Sacramento and San Joaquin rivers, their tributaries, the Sacramento-San Joaquin Delta, and the Suisun Marsh. Such measures shall include but shall not be limited to construction of screens on unscreened diversions, rehabilitation of existing screens, replacement of existing non-functioning screens, and relocation of diversions to less fishery-sensitive areas. The Secretary's share of costs associated with activities authorized under this paragraph shall not exceed 50 percent of the total cost of any such activity.

(22) provide such incentives as the Secretary determines to be appropriate or necessary, consistent with the goals and objectives of this title, to encourage farmers to participate in a program, which the Secretary shall develop, under which such farmers will keep fields flooded during appropriate time periods for the purposes of waterfowl habitat creation and maintenance and for Central Valley Project yield enhancement; *Provided*, That such incentives shall not exceed \$2,000,000 annually, either directly or through credits against other contractual payment obligations, including the pricing waivers authorized under subsection 3405(d) of this title; *Provided further*, That the holder of the water contract shall pass such incentives through to farmers participating in the program, less reasonable contractor costs, if any; *And provided further*, That such water may be transferred subject to section 3405(a) of this title only if the farmer waives all rights to such incentives. This provision shall terminate by the year 2002.

(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, Public Law 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 three hundred and forty thousand 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 United States 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.

If the Secretary and the State of California determine that long-term natural fishery productivity in all Central Valley Project controlled rivers and streams resulting from implementation of this section exceeds that which existed in the absence of Central Valley Project facilities, the costs of implementing those measures which are determined to provide such enhancement shall become credits to offset reimbursable costs associated with implementation of this subsection.

(c) **SAN JOAQUIN AND STANISLAUS RIVERS.**—The Secretary shall, by not later than September 30, 1996:

(1) develop a comprehensive plan, which is reasonable, prudent, and feasible, to address fish, wildlife, and habitat concerns on the San Joaquin River, including but not limited to the streamflow, channel, riparian habitat, and water quality improvements that would be needed to reestablish where necessary and to sustain naturally reproducing anadromous fisheries from Friant Dam to its confluence with the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Such plan shall be developed in cooperation with the California Department of Fish and Game and in coordination with the San Joaquin River Management Program under development by the State of California; shall comply with and contain any documents required by the National Environmental Policy Act and contain findings setting forth the basis for the Secretary's decision to adopt and implement the plan as well as recommendations concerning the need for subsequent Congressional action, if any; and shall incorporate, among other relevant factors, the potential contributions of tributary streams as well as the alternatives to be investigated under paragraph (2) of this subsection. During the time that the Secretary is developing the plan provided for in this subsection, and until such time as Congress has authorized the Secretary to implement such plan, with or without modifications, the Secretary shall not, as a measure to implement this title, make releases for the restoration of flows between Gravelly Ford and the Mendota Pool and shall not thereafter make such releases as a measure to implement this title without a specific Act of Congress authorizing such releases. In lieu of such requirement, and until such time as flows of sufficient quantity, quality and

timing are provided at and below Gravelly Ford to meet the anadromous fishery needs identified pursuant to such plan, if any, entities who receive water from the Friant Division of the Central Valley Project shall be assessed, in addition to all other applicable charges, a \$4 per acre-foot surcharge for all Project water delivered on or before September 30, 1997; a \$5 per acre-foot surcharge for all Project water delivered after September 30, 1997 but on or before September 30, 1999; and a \$7 per acre-foot surcharge for all Project water delivered thereafter, to be covered into the Restoration Fund.

(2) in the course of preparing the Stanislaus River Basin and Calaveras River Water Use Program Environmental Impact Statement and in consultation with the State of California, affected counties, and other interests, evaluate and determine existing and anticipated future basin needs in the Stanislaus River Basin. In the course of such evaluation, the Secretary shall investigate alternative storage, release, and delivery regimes, including but not limited to conjunctive use operations, conservation strategies, exchange arrangements, and the use of base and channel maintenance flows, in order to best satisfy both basin and out-of-basin needs consistent, on a continuing basis, with the limitations and priorities established in the Act of October 23, 1962 (76 Stat. 173). For the purposes of this subparagraph, "basin needs" shall include water supply for agricultural, municipal and industrial uses, and maintenance and enhancement of water quality, and fish and wildlife resources within the Stanislaus River Basin as established by the Secretary's June 29, 1981 Record of Decision; and "out-of-basin" needs shall include all such needs outside of the Stanislaus River Basin, including those of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and those of the San Joaquin River under paragraph (1) of this subsection.

(d) CENTRAL VALLEY REFUGES AND WILDLIFE HABITAT AREAS.—

In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the purposes of this title, the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; on the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California.

(1) Upon enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 2 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report and two-thirds of the water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. Such water shall be provided through long-term contractual agreements with appropriate parties and shall be supplemented by the increment of water provided for in paragraph (1) of this subsection; *Provided*, That the Secretary shall be obligated to provide such water whether or not such long-term contractual

agreements are in effect. In implementing this paragraph, the Secretary shall endeavor to diversify sources of supply in order to minimize possible adverse effects upon Central Valley Project contractors.

(2) Not later than ten years after enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 4 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. The quantities of water required to supplement the quantities provided under paragraph (1) of this subsection shall be acquired by the Secretary in cooperation with the State of California and in consultation with the Central Valley Habitat Joint Venture and other interests in cumulating increments of not less than ten percent per annum through voluntary measures which include water conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such activities which do not require involuntary reallocations of project yield.

(3) All costs associated with implementation of paragraph (1) of this subsection shall be reimbursable pursuant to existing law. Incremental costs associated with implementation of paragraph (2) of this subsection shall be fully allocated in accordance with the following formula: 75 percent shall be deemed a nonreimbursable Federal expenditure; and 25 percent shall be allocated to the State of California for recovery through direct reimbursements or through equivalent in-kind contributions.

(4) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under paragraph (1) of this subsection up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors. For the purpose of shortage allocation, the priority or priorities applicable to the increment of water provided under paragraph (2) of this subsection shall be the priority or priorities which applied to the water in question prior to its transfer to the purpose of providing such increment.

(5) The Secretary is authorized and directed to construct or to acquire from non-Federal entities such water conveyance facilities, conveyance capacity, and wells as are necessary to implement the requirements of this subsection; *Provided*, That such authorization shall not extend to conveyance facilities in or around the Sacramento-San Joaquin Delta Estuary. Associated construction or acquisition costs shall be reimbursable pursuant to existing law in accordance with the cost allocations set forth in paragraph (3) of this subsection.

(6) The Secretary, in consultation with the State of California, the Central Valley Habitat Joint Venture, and other interests, shall investigate and report on the following supplemental actions by not later than September 30, 1997: Reports.

(A) alternative means of improving the reliability and quality of water supplies currently available to privately owned wetlands in the Central Valley and the need, if any, for additional supplies; and

(B) water supply and delivery requirements necessary to permit full habitat development for water dependent wildlife on one hundred and twenty thousand acres supplemental to the existing wetland habitat acreage identified in Table 8 of the Central Valley Habitat Joint Venture's "Implementation Plan" dated April 19, 1990, as well as feasible means of meeting associated water supply requirements.

(e) **SUPPORTING INVESTIGATIONS.**—Not later than five years after the date of enactment of this title, the Secretary shall investigate and provide recommendations to the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House on the feasibility, cost, and desirability of developing and implementing each of the following, including, but not limited to, the impact on the project, its users, and the State of California:

(1) measures to maintain suitable temperatures for anadromous fish survival in the Sacramento and San Joaquin rivers and their tributaries, and the Sacramento-San Joaquin Delta by controlling or relocating the discharge of irrigation return flows and sewage effluent, and by restoring riparian forests;

(2) opportunities for additional hatchery production to mitigate the impacts of water development and operations on, or enhance efforts to increase Central Valley fisheries; *Provided*, That additional hatchery production shall only be used to supplement or to re-establish natural production while avoiding adverse effects on remaining wild stocks;

(3) measures to eliminate barriers to upstream and downstream migration of salmonids in the Central Valley, including but not limited to screening programs, barrier removal programs and programs for the construction or rehabilitation of fish ladders on tributary streams;

(4) installation and operation of temperature control devices at Trinity Dam and Reservoir to assist in the Secretary's efforts to conserve cold water for fishery protection purposes;

(5) measures to provide for modified operations and new or improved control structures at the Delta Cross Channel and Georgiana Slough to assist in the successful migration of anadromous fish; and

(6) other measures which the Secretary determines would protect, restore, and enhance natural production of salmon and steelhead trout in tributary streams of the Sacramento and San Joaquin Rivers, including but not limited to the Merced, Mokelumne, and Calaveras Rivers and Battle, Butte, Deer, Elder, Mill, and Thomas Creeks.

(f) **REPORT ON PROJECT FISHERY IMPACTS.**—The Secretary, in consultation with the Secretary of Commerce, the State of California, appropriate Indian tribes, and other appropriate public and private entities, shall investigate and report on all effects of the Central Valley Project on anadromous fish populations and the fisheries, communities, tribes, businesses and other interests and entities that have now or in the past had significant economic, social or cultural association with those fishery resources. The Sec-

retary shall provide such report to the Committee on Energy and Natural Resources of the Senate and the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives not later than two years after the date of enactment of this title.

(g) ECOSYSTEM AND WATER SYSTEM OPERATIONS MODELS.—

The Secretary, in cooperation with the State of California and other relevant interests and experts, shall develop readily usable and broadly available models and supporting data to evaluate the ecologic and hydrologic effects of existing and alternative operations of public and private water facilities and systems in the Sacramento, San Joaquin, and Trinity River watersheds. The primary purpose of this effort shall be to support the Secretary's efforts in fulfilling the requirements of this title through improved scientific understanding concerning, but not limited to, the following:

(1) a comprehensive water budget of surface and ground-water supplies, considering all sources of inflow and outflow available over extended periods;

(2) related water quality conditions and improvement alternatives, including improved temperature prediction capabilities as they relate to storage and flows;

(3) surface-ground and stream-wetland interactions;

(4) measures needed to restore anadromous fisheries to optimum and sustainable levels in accordance with the restored carrying capacities of Central Valley rivers, streams, and riparian habitats;

(5) development and use of base flows and channel maintenance flows to protect and restore natural channel and riparian habitat values;

(6) implementation of operational regimes at State and Federal facilities to increase springtime flow releases, retain additional floodwaters, and assist in restoring both upriver and downriver riparian habitats;

(7) measures designed to reach sustainable harvest levels of resident and anadromous fish, including development and use of systems of tradeable harvest rights;

(8) opportunities to protect and restore wetland and upland habitats throughout the Central Valley; and

(9) measures to enhance the firm yield of existing Central Valley Project facilities, including improved management and operations, conjunctive use opportunities, development of offstream storage, levee setbacks, and riparian restoration.

All studies and investigations shall take into account and be fully consistent with the fish, wildlife, and habitat protection and restoration measures required by this title or by any other State or Federal law. Seventy-five percent of the costs associated with implementation of this subsection shall be borne by the United States as a nonreimbursable cost; the remaining 25 percent shall be borne by the State of California.

(h) The Secretary shall enter into a binding cost-share agreement with the State of California with respect to the timely reimbursement of costs allocated to the State in this title. Such agreement shall provide for consideration of the value of direct reimbursements, specific contributions to the Restoration Fund, and water, conveyance capacity, or other contributions in-kind that would supplement existing programs and that would, as determined

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by the Secretary, materially contribute to attainment of the goals and objectives of this title.

SEC. 3407. RESTORATION FUND.

(a) **RESTORATION FUND ESTABLISHED.**—There is hereby established in the Treasury of the United States the "Central Valley Project Restoration Fund" (hereafter "Restoration Fund") which shall be available for deposit of donations from any source and revenues provided under sections 3404(c)(3), 3405(f), 3406(c)(1), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b)(4)–(6), (10)–(18), and (20)–(22) of this title. Moneys donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Such sums as are necessary, up to \$50,000,000 per year (October 1992 price levels), are authorized to be appropriated to the Secretary to be derived from the Restoration Fund to carry out programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of this title. Any funds paid into the Restoration Fund by Central Valley Project water and power contractors and which are also used to pay for the projects and facilities set forth in section 3406(b), shall act as an offset against any water and power contractor cost share obligations that are otherwise provided for in this title.

(c) **MITIGATION AND RESTORATION PAYMENTS BY WATER AND POWER BENEFICIARIES.**—

(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual mitigation and restoration payments, in addition to the charges provided for or collected under sections 3404(c)(3), 3405(a)(1)(C), 3405(f), and 3406(c)(1) of this title, consisting of charges to direct beneficiaries of the Central Valley Project under subsection (d) of this section in order to recover a portion or all of the costs of fish, wildlife, and habitat restoration programs and projects under this title.

(2) The payment described in this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can be reasonably expected to equal the amount appropriated each year, subject to subsection (d) of this section, and in combination with all other receipts identified under this title, to carry out the purposes identified in subsection (b) of this section; *Provided*, That, if the total amount appropriated under subsection (b) of this section for the fiscal years following enactment of this title does not equal \$50,000,000 per year (October 1992 price levels) on an average annual basis, the Secretary shall impose such charges in fiscal year 1998 and in each fiscal year thereafter, subject to the limitations in subsection (d) of this section, as may be required to yield in fiscal year 1998 and in each fiscal

year thereafter total collections equal to \$50,000,000 per year (October 1992 price levels) on a three-year rolling average basis for each fiscal year that follows enactment of this title.

(d) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.—

(1) In assessing the annual payments to carry out subsection (c) of this section, the Secretary shall, prior to each fiscal year, estimate the amount that could be collected in each fiscal year pursuant to subparagraphs 2(A) and (B) of this subsection. The Secretary shall decrease all such payments on a proportionate basis from amounts contained in the estimate so that an aggregate amount is collected pursuant to the requirements of paragraph (c)(2) of this section.

(2) The Secretary shall assess and collect the following mitigation and restoration payments, to be covered to the Restoration Fund, subject to the requirements of paragraph (1) of this subsection:

(A) The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under paragraph (c)(2) of this subsection; *Provided*, That such additional payments shall not exceed \$30,000,000 (October 1992 price levels) on a three-year rolling average basis; *Provided further*, That such additional annual payments shall be allocated so as not to exceed \$6 per acre-foot (October 1992 price levels) for agricultural water sold and delivered by the Central Valley Project, and \$12 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project; *Provided further*, That the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years, taking into account the benefits resulting from implementation of this title; *Provided further*, That the Secretary shall impose an additional annual charge of \$25 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund; *And Provided further*, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title, the Secretary shall reduce the sums described in paragraph (c)(2) of this section to \$35,000,000 per year (October 1992 price levels) and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to \$15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in

the same proportion, measured over a ten-year rolling average, as water and power users' respective allocations for repayment of the Central Valley Project.

(e) **FUNDING TO NON-FEDERAL ENTITIES.**—If the Secretary determines that the State of California or an agency or subdivision thereof, an Indian tribe, or a nonprofit entity concerned with restoration, protection, or enhancement of fish, wildlife, habitat, or environmental values is able to assist in implementing any action authorized by this title in an efficient, timely, and cost effective manner, the Secretary is authorized to provide funding to such entity on such terms and conditions as he deems necessary to assist in implementing the identified action.

(f) **RESTORATION FUND FINANCIAL REPORTS.**—The Secretary shall, not later than the first full fiscal year after enactment of this title, and annually thereafter, submit a detailed report to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate, and the Committee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries, and the Committee on Appropriations of the House of Representatives. Such report shall describe all receipts to and uses made of monies within the Restoration Fund and the Restoration Account during the prior fiscal year and shall include the Secretary's projection with respect to receipts to and uses to be made of the funds during the next upcoming fiscal year.

SEC. 3406. ADDITIONAL AUTHORITIES.

(a) **REGULATIONS AND AGREEMENTS AUTHORIZED.**—The Secretary is authorized and directed to promulgate such regulations and enter into such agreements as may be necessary to implement the intent, purposes and provisions of this title.

(b) **USE OF ELECTRICAL ENERGY.**—Electrical energy used to operate and maintain facilities developed for fish and wildlife purposes pursuant to this title, including that used for groundwater development, shall be deemed as Central Valley Project power and shall, if reimbursable, be repaid in accordance with Reclamation law at a price not higher than the lowest price paid by or charged to other Central Valley Project contractors.

(c) **CONTRACTS FOR ADDITIONAL STORAGE AND DELIVERY OF WATER.**—The Secretary is authorized to enter into contracts pursuant to Reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private nonprofit organization for the exchange, impoundment, storage, carriage, and delivery of Central Valley Project and non-project water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose, except that nothing in this subsection shall be deemed to supersede the provisions of section 103 of Public Law 99-546 (100 Stat. 3051).

(d) **USE OF PROJECT FACILITIES FOR WATER BANKING.**—The Secretary, in consultation with the State of California, is authorized to enter into agreements to allow project contracting entities to use project facilities, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carry-over storage of irrigation and other water for drought protection, multiple-benefit credit-storage operations, and other purposes. The use of such water shall be consistent with and subject to State law. All or a portion of the water provided

for fish and wildlife under this title may be banked for fish and wildlife purposes in accordance with this subsection.

(e) **LIMITATION ON CONSTRUCTION.**—This title does not and shall not be interpreted to authorize construction of water storage facilities, nor shall it limit the Secretary's ability to participate in water banking or conjunctive use programs.

(f) **ANNUAL REPORTS TO CONGRESS.**—Not later than September 30 of each calendar year after the date of enactment of this title, the Secretary shall submit a detailed report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. Such report shall describe all significant actions taken by the Secretary pursuant to this title and progress toward achievement of the intent, purposes and provisions of this title. Such report shall include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes and provisions of this title.

(g) **RECLAMATION LAW.**—This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof.

(h) **LAND RETIREMENT.**—

(1) The Secretary is authorized to purchase from willing sellers land and associated water rights and other property interests identified in paragraph (h)(2) which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.

(2) The Secretary is authorized to purchase, under the authority of paragraph (h)(1), and pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary—

(A) would, if permanently retired from irrigation, improve water conservation by a district, or improve the quality of an irrigation district's agricultural wastewater and assist the district in implementing the provisions of a water conservation plan approved under section 210 of the Reclamation Reform Act of 1982 and agricultural wastewater management activities developed pursuant to recommendations specific to water conservation, drainage source reduction, and land retirement contained in the final report of the San Joaquin Valley Drainage Program (September, 1990); or

(B) are no longer suitable for sustained agricultural production because of permanent damage resulting from severe drainage or agricultural wastewater management problems, groundwater withdrawals, or other causes.

(i) **WATER CONSERVATION.**—

(1) The Secretary is authorized to undertake, in cooperation with Central Valley Project irrigation contractors, water conservation projects or measures needed to meet the requirements of this title. The Secretary shall execute a cost-sharing agreement for any such project or measure undertaken. Under such agreement, the Secretary is authorized to pay up to 100 percent of the costs of such projects or measures. Any water saved

by such projects or measures shall be governed by the conditions of subparagraph 3405(a)(1) (A) and (J) of this title, and shall be made available to the Secretary in proportion to the Secretary's contribution to the total cost of such project or measure. Such water shall be used by the Secretary to meet the Secretary's obligations under this title, including the requirements of paragraph 3406(b)(3). Such projects or measures must be implemented fully by September 30, 1999.

(2) There are authorized to be appropriated through the end of fiscal year 1998 such sums as may be necessary to carry out the provisions of this subsection. Funds appropriated under this subsection shall be a nonreimbursable Federal expenditure.

(j) **PROJECT YIELD INCREASE.**—In order to minimize adverse effects, if any, upon existing Central Valley Project water contractors resulting from the water dedicated to fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary shall, not later than three years after the date of enactment of this title, develop and submit to the Congress, a least-cost plan to increase, within fifteen years after the date of enactment of this title, the yield of the Central Valley Project by the amount dedicated to fish and wildlife purposes under this title. The plan authorized by this subsection shall include, but shall not be limited to a description of how the Secretary intends to use the following options:

- (1) improvements in, modification of, or additions to the facilities and operations of the project;
- (2) conservation;
- (3) transfers;
- (4) conjunctive use;
- (5) purchase of water;
- (6) purchase and idling of agricultural land; and
- (7) direct purchase of water rights.

Such plan shall include recommendations on appropriate cost-sharing arrangements and shall be developed in a manner consistent with all applicable State and Federal law.

(k) Except as specifically provided in this title, nothing in this title is intended to alter the terms of any final judicial decree confirming or determining water rights.

SEC. 3409. ENVIRONMENTAL REVIEW.

Not later than three years after the date of enactment of this title, the Secretary shall prepare and complete a programmatic environmental impact statement pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing this title, including all fish, wildlife, and habitat restoration actions and the potential renewal of all existing Central Valley Project water contracts. Such statement shall consider impacts and benefits within the Sacramento, San Joaquin, and Trinity River basins, and the San Francisco Bay/Sacramento-San Joaquin River Delta Estuary. The cost of the environmental impact statement described in this section shall be treated as a capital expense in accordance with Reclamation law.

SEC. 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 appro-

priated under this title shall remain available until expended without fiscal year limitation.

SEC. 3411. COMPLIANCE WITH STATE WATER LAW AND COORDINATED OPERATIONS AGREEMENT.

(a) Notwithstanding any other provision of this title, the Secretary shall, prior to the reallocation of water from any purpose of use or place of use specified within applicable Central Valley Project water rights permits and licenses to a purpose of use or place of use not specified within said permits or licenses, obtain a modification in those permits and licenses, in a manner consistent with the provisions of applicable State law, to allow such change in purpose of use or place of use.

(b) The Secretary, in the implementation of the provisions of this title, shall fully comply with the United States' obligations as set forth in the "Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" dated May 20, 1985, and the provisions of Public Law 99-546; and shall take no action which shifts an obligation that otherwise should be borne by the Central Valley Project to any other lawful water rights permittee or licensee.

SEC. 3412. EXTENSION OF THE TEHAMA-COLUSA CANAL SERVICE AREA.

The first paragraph of section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended by the Act of August 19, 1967 (81 Stat. 167), and the Act of December 22, 1980 (94 Stat. 3339), authorizing the Sacramento Valley Irrigation Canals, Central Valley Project, California, is further amended by striking "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or" and inserting "Tehama, Glenn, Colusa, Solano, and Napa Counties, those portions of Yolo County within the boundaries of Colusa County Water District, Dunnigan Water District, Yolo-Zamora Water District, and Yolo County Flood Control and Water Conservation District, or".

TITLE XXXV—THREE AFFILIATED TRIBES AND STANDING ROCK SIOUX TRIBE EQUITABLE COMPENSATION PROGRAM, NORTH DAKOTA

Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act.

SEC. 3501. SHORT TITLE.

This title may be cited as the "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act".

SEC. 3502. DEFINITIONS.

As used in this title, the term—

- (1) "Secretary" means the Secretary of the Interior;
- (2) "Three Affiliated Tribes" means the Mandan, Hidatsa, and Arikara Tribes that reside on the Fort Berthold Indian Reservation, a Federal reservation established by treaty and agreement between the Tribes and the United States;
- (3) "Standing Rock Sioux Tribe" means the members of the Great Sioux Nation that reside on the Standing Rock Indian Reservation, established by treaty between the Tribe and the United States; and

**Trinity River Basin Fish and Wildlife Management Act of 1996,
Pub. L. No. 104-143, 110 Stat. 1339 (1996)**

PUBLIC LAW 104-143—MAY 15, 1996

**TRINITY RIVER BASIN FISH AND WILDLIFE
MANAGEMENT REAUTHORIZATION ACT OF
1995**

110 STAT. 1338

PUBLIC LAW 104-143—MAY 15, 1996

Public Law 104-143
104th Congress

An Act

May 15, 1996
[H.R. 2243]

To amend the Trinity River Basin Fish and Wildlife Management Act of 1984, to extend for three years the availability of moneys for the restoration of fish and wildlife in the Trinity River, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Trinity River
Basin Fish and
Wildlife
Management
Reauthorization
Act of 1995.
California.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995”.

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—

(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.

(a) OCEAN FISH LEVELS.—Section 2(a) 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. 2722), as amended, is amended—

(1) in the matter preceding paragraph (1)—

(A) by inserting “, in consultation with the Secretary of Commerce where appropriate,” after “Secretary”; and

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(B) by adding the following after “such levels.”: “To the extent these restored fish and wildlife populations will contribute to ocean populations of adult salmon, steelhead, and other anadromous fish, such management program is intended to aid in the resumption of commercial, including ocean harvest, and recreational fishing activities.”

(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;”.

(c) TRINITY RIVER FISH HATCHERY.—Paragraph (1)(C) of such section (98 Stat. 2722) is amended by inserting before the period the following: “, so that it can best serve its purpose of mitigation of fish habitat loss above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin”.

(d) ADDITION OF INDIAN TRIBES.—Section 2(b)(2) of such Act (98 Stat. 2722) is amended by striking “tribe” and inserting “tribes”.

SEC. 4. ADDITIONS TO TASK FORCE.

(a) IN GENERAL.—Section 3(a) 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. 2722), as amended, is amended—

(1) by striking “fourteen” and inserting “nineteen”;

(2) by striking “United States Soil Conservation Service” in paragraph (10) and inserting “Natural Resources Soil and Conservation Service”; and

(3) by inserting after paragraph (14) the following:

“(15) One individual to be appointed by the Yurok Tribe.

“(16) One individual to be appointed by the Karuk Tribe.

“(17) One individual to represent commercial fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the Pacific Coast Federation of Fishermen’s Associations.

“(18) One individual to represent sport fishing interests, to be appointed by the Secretary after consultation with the Board of Directors of the California Advisory Committee on Salmon and Steelhead Trout.

“(19) One individual to be appointed by the Secretary, in consultation with the Secretary of Agriculture, to represent the timber industry.”.

(b) COORDINATION.—Section 3 of such Act (98 Stat. 2722) is further amended by adding at the end thereof the following new subsection:

“(d) Task Force actions or management on the Klamath River from Weitchpec downstream to the Pacific Ocean shall be coordinated with, and conducted with the full knowledge of, the Klamath River Basin Fisheries Task Force and the Klamath Fishery Management Council, as established under Public Law 99-552. The Secretary shall appoint a designated representative to ensure such coordination and the exchange of information between the Trinity River Task Force and these two entities.”.

(c) REIMBURSEMENT.—Section 3(c)(2) of such Act (98 Stat. 2723) is amended by adding at the end the following: “Members of the Task Force who are not full-time officers or employees of the United States, the State of California (or a political subdivision thereof),

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or an Indian tribe, may be reimbursed for such expenses as may be incurred by reason of their service on the Task Force, as consistent with applicable laws and regulations.”

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to actions taken by the Trinity River Basin Fish and Wildlife Task Force on and after 120 days after the date of the enactment of this Act.

SEC. 5. APPROPRIATIONS.

(a) EXTENSION OF AUTHORIZATION.—Section 4(a) 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. 2723), as amended, is amended—

(1) in paragraph (1), by striking “October 1, 1995” and inserting in lieu thereof “October 1, 1998”; and

(2) in paragraph (2), by striking “ten-year” and inserting in lieu thereof “13-year”.

(b) IN-KIND SERVICES; OVERHEAD; AND FINANCIAL AND AUDIT REPORTS.—Section 4 of such Act (98 Stat. 2724) is amended—

(1) by designating subsection (d) as subsection (h); and

(2) by inserting after subsection (c) the following new subsections:

“(d) The Secretary is authorized to accept in-kind services as payment for obligations incurred under subsection (b)(1).

“(e) Not more than 20 percent of the amounts appropriated under subsection (a) may be used for overhead and indirect costs. For the purposes of this subsection, the term ‘overhead and indirect costs’ means costs incurred in support of accomplishing specific work activities and jobs. Such costs are primarily administrative in nature and are such that they cannot be practically identified and charged directly to a project or activity and must be distributed to all jobs on an equitable basis. Such costs include compensation for administrative staff, general staff training, rent, travel expenses, communications, utility charges, miscellaneous materials and supplies, janitorial services, depreciation and replacement expenses on capitalized equipment. Such costs do not include inspection and design of construction projects and environmental compliance activities, including (but not limited to) preparation of documents in compliance with the National Environmental Policy Act of 1969.

“(f) Not later than December 31 of each year, the Secretary shall prepare reports documenting and detailing all expenditures incurred under this Act for the fiscal year ending on September 30 of that same year. Such reports shall contain information adequate for the public to determine how such funds were used to carry out the purposes of this Act. Copies of such reports shall be submitted to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

“(g) The Secretary shall periodically conduct a programmatic audit of the in-river fishery monitoring and enforcement programs under this Act and submit a report concerning such audit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.”

(c) AUTHORITY TO SEEK APPROPRIATIONS.—Section 4 of such Act, as amended by subsection (b) of this section, is further amended by inserting after subsection (h) the following new subsection:

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“(i) Beginning in the fiscal year immediately following the year the restoration effort is completed and annually thereafter, the Secretary is authorized to seek appropriations as necessary to monitor, evaluate, and maintain program investments and fish and wildlife populations in the Trinity River Basin for the purpose of achieving long-term fish and wildlife restoration goals.”.

SEC. 6. NO RIGHTS AFFECTED.

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 further amended by inserting at the end thereof the following:

“PRESERVATION OF RIGHTS

“SEC. 5. Nothing in this Act shall be construed as establishing or affecting any past, present, or future rights of any Indian or Indian tribe or any other individual or entity.”.

SEC. 7. SHORT TITLE OF 1984 ACT.

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 by section 6 of this Act, is further amended by adding at the end the following:

“SHORT TITLE

“SEC. 6. This Act may be cited as the ‘Trinity River Basin Fish and Wildlife Management Act of 1984’.”.

Trinity River
Basin Fish and
Wildlife
Management Act
of 1984.

Approved May 15, 1996.

LEGISLATIVE HISTORY—H.R. 2243:

HOUSE REPORTS: No. 104-395 (Comm. on Resources).

SENATE REPORTS: No. 104-253 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD:

Vol. 141 (1995): Dec. 12, considered and passed House.

Vol. 142 (1996): May 3, considered and passed Senate.



H.R. Rep. No. 602, 84th Cong., 1st Sess. (1955)

84TH CONGRESS }
1st Session }

HOUSE OF REPRESENTATIVES {

REPORT
No. 602

**AUTHORIZING THE SECRETARY OF THE INTERIOR TO CON-
STRUCT, OPERATE, AND MAINTAIN THE TRINITY RIVER DI-
VISION, CENTRAL VALLEY PROJECT, CALIFORNIA, UNDER
FEDERAL RECLAMATION LAWS**

MAY 19, 1955.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed.

Mr. ENGLE, from the Committee on Interior and Insular Affairs,
submitted the following

R E P O R T

[To accompany H. R. 4663]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 4663) to authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 9, following the word "to" insert the word "and".

Page 2, line 13, following the word "County", change the period to a colon and add the following:

Provided, That the Secretary is authorized and directed to continue to a conclusion the engineering studies and negotiations with any non-Federal agency with respect to proposals to purchase falling water and, not later than 18 months from the date of enactment of this Act, report the results of such negotiations, including the terms of a proposed agreement, if any, that may be reached, together with his recommendations thereon, which agreement, if any, shall not become effective until approved by Congress.

Page 3, following line 20, add the following new section 3.

Sec. 3. The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public-land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for the other purposes

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specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committee on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable.

Page 3, line 21, renumber "SEC. 3." to read "SEC. 4."

Page 4, line 11, strike the word "six" and insert in lieu thereof the word "eighteen".

Page 4, line 12; renumber "SEC. 4." to read "SEC. 5."

Page 5, line 22, renumber "SEC. 5." to read "SEC. 6."

Page 6, line 4, strike the numeral "4" and insert in lieu thereof the numeral "5".

PURPOSE

This bill would reauthorize the Trinity River division of the Central Valley project, California, to provide for modifications in both the physical plan and the operating plan. Construction of this addition to the Central Valley project would be for the primary purpose of meeting the most urgent need for irrigation water in the Sacramento and San Joaquin River Basins and for the additional purpose of supplying electric energy to meet the expanding power needs in northern California.

HISTORY OF PRESENT PROPOSAL

The Trinity River project was authorized under the 1939 Reclamation Act by a finding that it met the rigid requirements of that act, filed by Secretary of the Interior Chapman on January 2, 1953. Secretary Douglas McKay on February 17, 1955, approved the Trinity River project and recommended its construction in a supplemental report. Commissioner of Reclamation Dexheimer, in his testimony before the House Committee on Interior and Insular Affairs on April 13, 1955, recommended immediate commencement of construction of the Trinity River project. The State engineer of California, in his official comments on April 9, 1953, approved the project report and urged its immediate authorization and construction. The Governor of California, Goodwin Knight, on April 14, 1955, wired the House Committee on Interior and Insular Affairs reaffirming the State's official position in support of the immediate commencement of construction.

Since 1942 more than \$572,000 has been spent by the Bureau of Reclamation in planning and preliminary engineering related to construction of the project, and the current budget submitted by the President contains an additional \$400,000 for continuing the advanced planning for this project.

The Trinity development has been under study by various agencies, including the State of California and the Federal Power Commission, since 1923. It was included in the California State water plan in 1931. In 1942 the Bureau of Reclamation started intensive study looking toward the authorization and construction of the project. The feasibility report was completed in 1951 and is the basis of action.

TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT 3

taken by Secretary of the Interior Chapman which is referred to hereinbefore.

The present bill, herein reported on, in addition to its sponsorship by the Secretary of the Interior, by Governor Goodwin Knight of California and by the State water agency, is coauthored in bills for a similar purpose by Congressmen Hagen, Sisk, and Moss and by Senators Kuchel and Knowland of California.

Detailed studies subsequent to authorization of the Trinity River division have resulted in the Department of the Interior recommending certain modifications in the physical plan for the development. The present plan, including the recent modifications recommended by the Department and the resulting changes in the project economic and repayment aspects, is described in the Department's supplemental report dated July 1954.

The Irrigation and Reclamation Subcommittee of the 83d Congress held field hearings on the Trinity project in Redding, Calif., in April 1954. Additional hearings were held on April 13, 14, and 15, and on May 3 and 16 of this year in Washington on the legislation herein reported.

This bill would authorize the plan of development which the Department now recommends and, in addition, sets out certain operating requirements and provides for financial assistance to Trinity County in meeting costs attributable to the construction activities in the area.

NEED FOR THE TRINITY PROJECT

In the words of California's Governor Knight:

Immediate authorization and construction of the Trinity River project is required to forestall increasing economic losses due to water shortages.

In the words of Commissioner of Reclamation Dexheimer:

The Trinity River division is urgently needed to supply additional water to the Central Valley project for use in both the Sacramento and San Joaquin River Basins.

The Central Valley project, as presently authorized and under construction, must have additional water for a firm supply under full development. The need for this additional water is developing rapidly and if this need is to be met in time to forestall serious losses, the construction of the Trinity project must be undertaken immediately.

Along the west side of the San Joaquin Valley, where a portion of the Trinity water is proposed to be used, the water situation is rapidly reaching a critical stage. Large areas are experiencing an alarming drop in the ground-water table and will go out of production in a very few years unless additional water supplies are imported to the area.

There is also a real need for the electric power and energy which will be made available from the Trinity River division to meet the ever-expanding power demands in northern California.

The committee concludes from the reports of the Department of the Interior and the State of California and from the testimony given the committee during its hearings on the project that there is immediate need for supplementary sources of irrigation water supply for the Central Valley and for increased electric capacity in northern California.

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PLAN OF DEVELOPMENT

The Trinity River division, in Trinity and Shasta Counties in northwestern California, consists of Trinity dam, reservoir, and powerplant; Lewiston diversion dam, reservoir, and powerplant; Towerhouse tunnel, powerplant, and diversion dam; and Matheson tunnel and powerplant. The general plan proposes the diversion of water from the Trinity River Basin into the Sacramento River Basin of the Central Valley. Trinity Reservoir on the Trinity River would be the major storage facility, having a capacity of 2,500,000 acre-feet. Lewiston Reservoir, a short distance downstream from Trinity Reservoir, would reregulate the flows from Trinity Reservoir for diversion eastward through Towerhouse tunnel and for downstream uses, especially for fish purposes. The diverted water would flow through Towerhouse tunnel and drop through Towerhouse powerplant into Clear Creek. Towerhouse diversion dam on Clear Creek just below the powerplant would divert water through Matheson tunnel from which it would drop through Matheson powerplant and into the existing Keswick Reservoir on the Sacramento River. The works authorized would also include irrigation facilities to serve approximately 20,000 acres east of Redding.

The Trinity River division would be integrated physically with the Central Valley project and its operation would be coordinated with that of other features of the Central Valley project. Under the plan of development and operation an average of 704,000 acre-feet of Trinity River water would be diverted annually to the Sacramento River Basin. This amount, when coordinated with the operation of the Central Valley project system, would provide about 1,190,000 acre-feet of water for additional use in the Central Valley. Of this 1,190,000 acre-feet, about 665,000 acre-feet would be used annually, under the plan, to meet the ultimate needs of the Sacramento canals service area, comprising about 200,000 acres, and about 525,000 acre-feet annually would be available for use on lands of the west side of the San Joaquin Valley. The total installed hydroelectric power capacity proposed in the plan would be 233,000 kilowatts, which would increase the Central Valley project energy by over 1 billion kilowatt-hours annually.

The fishery resources of the Trinity River are an asset to the Trinity River Basin as well as to the whole north coastal area. Accordingly, the Trinity River development has been planned with a view to maintaining and improving fishery conditions. The legislation requires that the project be operated so as to insure the preservation and propagation of fish and wildlife and sets out minimum flows to be maintained below the Trinity diversion point and below the Clear Creek diversion point.

With respect to the transmountain diversion of water from the Trinity River Basin to the Central Valley, the committee notes that such diversion is approved by the State of California. The committee notes also that both the State and the Bureau of Reclamation conclude that there is available for importation from the Trinity River, water that is surplus to the present and future water requirements of the Trinity and Klamath River Basins, and that surplus water, in the amount proposed in the Trinity division plan, can be diverted from the Trinity River to the Central Valley without detrimental

TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT 5

effect to the fishery resources. The committee believes it unnecessary to await the final results of studies presently underway to determine precisely the future water requirements in the Klamath River Basin before going ahead with this relatively small diversion compared to the average amount wasting to the Pacific Ocean from the basin each year.

ECONOMIC ASPECTS

The estimated cost of the Trinity River division, including the irrigation facilities east of Redding, is about \$225 million. For all practical purposes, all of this amount would be reimbursable. Only \$215,000 for recreational facilities and \$47,000 for fish-protection facilities would be nonreimbursable. About \$68 million is allocated to irrigation and about \$156.5 million is allocated to power. The Trinity River division would be integrated financially with the authorized features of the Central Valley project. Under the repayment plan, the power allocation would be completely repaid by 1988 or within 26 years after the last power unit was placed in operation. All reimbursable costs allocated to irrigation would be repaid within 50 years including development period.

The economic justification for the Trinity River division has been determined by comparing annual benefits from the development with annual Federal costs. This economic analysis indicates that the development would be an outstanding one from an economic standpoint. The primary benefits alone exceed the costs in a ratio of 1.86 to 1, and when indirect benefits are included, the benefit-cost ratio becomes 3.31 to 1.

POWER COMPANY'S PROPOSAL

The Pacific Gas & Electric Co. has submitted to the Department and to the committee a proposal whereby the company would construct the power facilities and pay the Federal Government annually for the falling water.

The Department of the Interior has made no final recommendation on the Pacific Gas & Electric proposal because the engineering and economic studies, together with the negotiations incident to that proposal, are incomplete. The committee, therefore, inserted language in this bill directing the Department of the Interior to continue its studies and negotiations, and to report the result thereof to the Congress not later than 18 months after enactment, together with its recommendations thereon.

TRINITY COUNTY BENEFITS

The legislation authorizes payments to Trinity County for additional costs of Government attributable to construction activities in the county, and authorizes an annual in-lieu taxpayment equal to the loss of taxes to the county. The committee believes that these payments, although not normally authorized for reclamation projects, are warranted in this instance. The Federal Government owns approximately 90 percent of the land area in Trinity County and the county would, without question, be unduly burdened by the construction activities in the area and the loss of tax revenues.

6 TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT**ANALYSIS OF THE BILL**

Section 1 of the bill gives its purpose and scope. It sets out the works which would be authorized to be constructed. The language is sufficiently broad to permit modification in the conveyance-system plan including storage on Clear Creek if final studies indicate such modification would improve project feasibility and permit development of additional lands in Shasta County. The power facilities are authorized to be constructed by the Federal Government. However, a proviso is included, which authorizes and directs the Secretary to continue to a conclusion the negotiations with the Pacific Gas & Electric Co. with respect to its proposal for the purchase of falling water and to report to the Congress within 18 months the results of such negotiations together with his recommendations thereon. Any agreement which may be reached could not become effective until approved by the Congress. In the absence of such approval, Federal construction of the power facilities could proceed.

Section 2 of the bill provides that the Trinity River division be integrated and coordinated with other features of the Central Valley project from both a financial and an operational standpoint. With respect to the project operation, section 2 also requires the Secretary to adopt appropriate measures to insure the preservation and propagation of fish and wildlife and sets out certain minimum flow requirements during certain months to accomplish this. Section 2 further provides that allocations of cost to the preservation and propagation of fish and wildlife shall be nonreimbursable.

Section 3 of the bill gives the Secretary authority to plan, construct, and operate minimum basic facilities for recreational and other related purposes. This section authorizes the Secretary to withdraw public lands that are necessary for the construction of such facilities and to dispose of these lands to Federal, State, or local governmental agencies upon terms and conditions that will best promote their development and operation in the public interest. However, no lands may be acquired solely for the purposes of this section, other than access to project lands, the maintenance of public health and safety, and the protection of public property thereon without further authorization by the Congress. The cost of constructing and operating these basic facilities would be nonreimbursable.

Section 4 of the bill provides for marketing the electric energy attributable to the Trinity River division in accordance with the power preferences expressed in Federal reclamation laws, except that a first preference to the extent of 25 percent of the energy is given to preference customers in Trinity County. These Trinity County preference customers may exercise their right to this energy when it first becomes available or upon the same date in each successive fifth year thereafter, providing they give written notice of their intention to take the energy not less than 18 months prior to said date.

Section 5 of the bill authorizes payments to Trinity County of additional costs of government incurred during the period of construction that are attributable to the construction activities in the area, including the cost for (1) Police, hospital, and welfare facilities; (2) repair, maintenance, and replacement of existing roads; and (3) establishment of new roads. Section 5 also authorizes the Secretary to pay to Trinity County annually an in-lieu taxpayment equal to the

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loss in taxes to Trinity County from real property and improvements taken for project purposes.

Section 6 of the bill sets out the amount authorized to be appropriated for construction of the Trinity River division.

DEPARTMENT'S REPORT

The Department's report on the Trinity River division is included in its report on H. R. 105, a bill to authorize both the Trinity River division and the San Luis unit of the West San Joaquin division of the Central Valley project. The report on H. R. 105, so far as it pertains to the Trinity River division, can be considered as the Department's report on H. R. 4663. The report follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., April 12, 1955.

Hon. CLAIR ENGLE,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.*

MY DEAR MR. ENGLE: You have requested a report from this Department on H. R. 105, a bill to authorize the Secretary of the Interior to construct, operate, and maintain as additions to the Central Valley project, California, the Trinity River division and the San Luis unit of the West San Joaquin division.

As an interim response to this request, there are enclosed copies of our proposed report on the Trinity River division, Central Valley project, California, dated January 19, 1955, and of two attachments to that report entitled "Supplementary Report, Trinity River Division, Central Valley Project, California" and "Addendum to Supplementary Report * * * Trinity River Division, Central Valley Project, California" dated March 1954 and January 1955, respectively. These documents are now before officials of the States of California and Oregon and of various Federal agencies for review. After their review has been completed and the comments received have been considered here, we will be in a position to advise you more fully than we now can with respect to the Trinity River division portion of H. R. 105. Our final report on the portion of the bill dealing with the San Luis unit of the West San Joaquin division of the project will necessarily be somewhat further delayed. A planning report on that development is now in preparation. Until it has been completed and reviewed by the State of California and by interested Federal agencies, we will not be in a position to do more than furnish a sketch of this proposed development to your committee.

The physical plan for development of the Trinity River division is set forth in the attached report thereon. It is unnecessary, therefore, to repeat it here. Suffice it to say that the works which would be authorized if H. R. 105 is enacted in its present form are, for the most part, those contemplated in our report. One exception is the Redding-Cow Creek works covered in H. R. 105, page 2, lines 16 to 23. Detailed investigations on the feasibility of these proposed works have not been made. We can only report at this time that such studies as have been made indicate that to provide water service to the area involved at a price the water users could afford to pay would require a considerable but as yet indeterminate amount of financial assistance. Another possible exception is the single-purpose hydroelectric works of the Trinity division. A firm conclusion has not yet been reached on the relative merits of Federal construction and of non-Federal construction of these works. If it should be concluded that it would be more desirable for these works to be undertaken by a non-Federal agency than by the Government, or to leave the question of the proper construction agency to be decided later, the text of H. R. 105 could be amended accordingly.

The need for the additional water supplies which construction of the Trinity division, either under its existing authorization (H. Doc. 53, 83d Cong.) or under the enlarged authorization contemplated in H. R. 105 and in our report of January 19 is emphasized by the congressional authorization of the Sacramento Valley canals as part of the Central Valley project (act of September 26, 1950, 64 Stat. 1036). It is anticipated that full development of the Sacramento canals unit, which is now under construction, will require diverted Trinity River division water. This was pointed out in the Department's report on the unit (H. Doc. No. 73, 83d Cong.) wherein it was stated that " * * * the Trinity River division works

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are required as a physical means of providing the water supply needed over the long run for the Sacramento canals unit" (p. vii) and that " * * * the Sacramento canals unit has engineering feasibility on the basis that the Trinity River division, upon which the canals unit is dependent for a firm water supply * * * will be authorized and constructed" (p. xi). In addition the importance of imported water to the San Joaquin River Basin, where large areas are experiencing an alarming drop in the ground-water table as a result of pumping, cannot be over-emphasized.

The following listing shows those facilities which in the presently proposed plan are different from the plan on which the existing authorization was based. All features not listed are essentially the same under the two plans.

Feature	New plan	Previous plan
Trinity Reservoir capacity.....acre-feet..	2,500,000	1,800,000
Trinity powerplant, installed capacity.....kilowatt-hours..	90,000	75,000
Steam plant and subsidiary transmission facilities.....do.....	None	70,000

The changes in the facilities from those previously recommended have resulted from additional information and from suggestions made by public agencies which commented on the earlier report. On an average annual basis, the somewhat expanded plan would divert 704,000 acre-feet of Trinity River water to the Sacramento River Basin. When coordinated with the Central Valley project system, it would provide 1,190,000 acre-feet for additional use in the Central Valley project. (Comparable figures for the previous plan are 660,000 acre-feet and 1,010,000 acre-feet, respectively.) Of these 1,190,000 acre-feet, 665,000 acre-feet would be used to meet the ultimate needs of 205,400 net acres in the authorized Sacramento canals unit of the Central Valley project and 525,000 acre-feet would be available for use on other lands in the Central Valley such as those of the potential San Luis unit. The new total installed hydroelectric power capacity contemplated by H. R. 105 and our report would be 233,000 kilowatts as compared to 218,000 kilowatts under the old plan. It is expected that this larger installed capacity of 233,000 kilowatts will increase the Central Valley project energy by 1,067 million kilowatt-hours annually.

The Trinity River division would be integrated physically and financially with the Central Valley project. All reimbursable costs would be repaid within 50 years after the last feature of the division is constructed. The estimated cost of the Trinity River division based on January 1954 prices is \$219,280,000, assuming that the Federal Government builds the power facilities. Under the alternative plan for non-Federal construction of these facilities, the Government's cost of constructing the Trinity River division is estimated at approximately \$154,400,000. Substantially these entire amounts would be reimbursable. Both of them include \$215,000 for minimum recreation facilities which we recommended be provided at Trinity and Lewiston Reservoirs but they do not include the amounts required for the acquisition of approximately 1,200 acres of land adjacent to the reservoir areas primarily for recreation purposes and principally in connection with the provision of the minimum facilities. They also include \$47,000 for fish-protection facilities. Both of these items should be treated as nonreimbursable. Further consideration will be given to the fish and wildlife allocation at the time of preparation of the definite plan report in light of the applicable policies and provisions of the act of August 14, 1946 (60 Stat. 1080).

Public hearings have disclosed the large majority of California interests recognize the value of adding the Trinity River division to the Central Valley project and are anxious that the division be constructed. The few opposed interests who reside downstream in the Klamath River Basin are concerned over their future water needs. Our studies, however, indicate that the proposed diversion would utilize only a small percentage of the water now wasting into the Pacific Ocean from the Klamath River watershed. These studies also disclose that the relatively small amount of water that would be diverted would not affect future development of either the Trinity River Basin or the Klamath River Basin downstream since water in those areas would be more than adequate to satisfy future needs. The Trinity division's ratio of primary benefits to total cost is 1.86 to 1. Total benefits resulting from the development would outweigh the cost in a ratio of 3.31 to 1.

The fishery resources of Trinity River are an asset to the Trinity River Basin as well as the whole northern coastal area. Accordingly, the Trinity River

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development has been and should be planned with a view to maintaining and improving fishery conditions. The schedule of water releases for Trinity River flow below Lewiston diversion dam and for Clear Creek flow below towerhouse diversion dam used in House Document No. 53, 83d Congress, was recommended by the Fish and Wildlife Service and accepted by this Department. House Document No. 147, 83d Congress, indicates that the California Department of Fish and Game concurs, in substance, in that recommendation.

The flows set out in House Document No. 53, however, are not the same as those prescribed in section 2 of H. R. 105. The flow schedule proposed by the Fish and Wildlife Service is predicated on the seasonal needs of the fishery resources. Since flows should vary in accordance with estimated requirements, the Service-proposed flow schedule is preferable to the flat minimum flow requirement for the months of July through November below Lewiston diversion dam prescribed in H. R. 105, and it is desirable that the minimum flows adopted by the Department for other periods of the year be incorporated in the legislation. Room should also be left in any legislation that is enacted for modification in the light of experience. Since the Secretary of the Interior will necessarily be charged with overall responsibility for the project, including particularly its financial aspects, it is our belief that it must also be his responsibility to determine, in accordance with statutory standards laid down by Congress and after consultation with appropriate State officials, what modification if any should be made. We suggest, therefore, that the language of the proviso beginning on page 3, line 24 of the bill be modified to read as follows:

"Provided, That the Secretary is authorized and directed to adopt, with respect to the Trinity River division, measures which, in his judgment, are appropriate to insure the preservation and propagation of fish and wildlife including, but not limited to, the maintenance of the flow of the Trinity River below Lewiston diversion dam and the flow of Clear Creek below Tower House diversion dam in accordance with schedules set forth on pages 77 and 79 of House Document No. 53, 83d Congress, unless, after consultation with the California Fish and Game Commission, he determines that different flows would be adequate for maintenance of fish life and the propagation thereof. The Secretary shall allocate to the preservation and propagation of fish and wildlife an appropriate share of the cost of constructing the Trinity River development, as provided in the act of August 14, 1946 (60 Stat. 1080), and of operating and maintaining the same, such costs to be nonreimbursable and nonreturnable."

In view of the inclusion of basic recreational facilities in the Trinity River plan, it is suggested that a new section be added to H. R. 105 after its present section 3 to read as follows:

"Sec. ____ The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division and the San Luis unit projects, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for the other purposes specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable."

Section 3 of the bill deals with a preferred right on the part of customers in Trinity County to purchase a portion of the increased output of the Central Valley project made possible by the Trinity River development powerplants. If the San Luis unit is authorized, the energy available for commercial sale from the Central Valley project power system, even including a Government-built Trinity power development, will be decreased below its output without Trinity and San Luis. This decrease will result from the use of energy for San Luis pumping loads. In this circumstance, the preference expressed in section 3 of

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the bill will be meaningless. If, on the other hand, the San Luis unit is not constructed, there will be a significant increase in the amount of power available for commercial sale and the preference will be important. From an administrative viewpoint, the provision giving Trinity County preference customers a right to exercise an option to purchase project power in each successive fifth year upon 6 months' prior notice would impose restrictions on alternative sales to other markets at firm rates. The 6 months' notice provision should, we believe, be changed to not less than 30 months in order that interim purchasers of power could be provided adequate notice in which to arrange for power from alternative sources.

Section 4 of the bill would, in addition to authorizing appropriations for construction of the Trinity River development, provide that such appropriations and gross revenues from the development shall be available and used for in-lieu-of-tax payments to Trinity County and for payments to the county for certain additional costs of Government, including police, school, hospital, and welfare facilities and for the repair, maintenance, and replacement of roads and establishment of new roads. We question the wisdom of some of the items and the desirability of imposing on the Trinity development terms more onerous than or different from those generally applying to other reclamation projects.

More particularly, it appears to us that the matter of payments to Trinity County in lieu of taxes should await consideration by the Congress of general legislation establishing Federal policy with respect to payments to States and local governments on account of real property and improvements thereon. Such legislation is proposed in various bills now pending before the Congress. It will be possible at that time to weigh the general question of the benefits of Federal construction activities to local communities against their added costs. Similarly, we question the provisions of section 4 insofar as they would charge to the Trinity River development, and thus to California water and power users, the cost of new roads that are not required for project purposes or to replace existing roads damaged or destroyed by the project. Such a requirement would extend the liability of the United States beyond the present requirements of law.

While, as has already been indicated, we are currently preparing a feasibility report on the San Luis unit and cannot recommend its authorization at this time, it may be helpful to your committee to have a sketch of our present information with respect to it.

Our studies to date indicate that, as an addition to the Central Valley project, the San Luis unit is feasible both from an engineering and financial viewpoint. Its water supply would be obtained in part from surplus winter flows of the Sacramento and San Joaquin Rivers that now waste into the ocean and in part from water made available as a result of the Trinity River diversion.

New Federal facilities as presently contemplated would consist of the San Luis Dam, Reservoir, and pumping plant, San Luis Canal, Pleasant Valley pumping plant, Pleasant Valley Canal, relift pumps, and necessary electric transmission system.

San Luis Reservoir, the principal storage facility for the San Luis unit, would be filled primarily by pumping water from the Delta-Mendota Canal during winter months. Water stored in San Luis Reservoir and pumped directly into San Luis Canal would be used to supply 440,000 acres of productive land on the west side of the San Joaquin Valley. Much of this area is now in urgent need of additional water supply because of the rapid lowering of existing ground-water supplies. Urgently needed municipal water would also be made available by this development.

It is currently estimated that the required Federal expenditure for the San Luis unit would amount to approximately \$229 million, all of which would be reimbursable. Through financial integration with the Central Valley project, the enlarged project would show payout of all reimbursable features within 50 years after completion of construction of the San Luis features.

We are informed that there is a particular urgency for your committee to have this report and that hearings on the Trinity River division will commence April 13. In view thereof, this report is being submitted prior to clearance through the Bureau of the Budget and we are not in a position to advise you concerning its relation to the program of the President.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

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SUMMARY OF CONCLUSIONS AND RECOMMENDED ACTION

The Committee on Interior and Insular Affairs concludes that the Trinity River division, as it would be authorized by enactment of H. R. 4663, as amended, is physically and economically feasible, that it is urgently needed and that construction should be undertaken at the earliest possible date. The committee recommends that H. R. 4663, as amended, be enacted.



S. Rep. No. 1154, 84 Cong., 1st Sess. (1955)

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STATEMENT OF POLICY

The committee suggests special attention to the following proviso, on page 2, beginning on line 13, of the bill:

Provided, That the Secretary is authorized and directed to continue to a conclusion the engineering studies and negotiations with any non-Federal agency with respect to proposals to purchase falling water and, not later than eighteen months from the date of enactment of this Act, report the results of such negotiations, including the terms of a proposed agreement, if any, that may be reached, together with his recommendations thereon, which agreement, if any, shall not become effective until approved by Congress.

In retaining this proviso in the bill, the committee states the following policy considerations as reflecting its conclusions with respect to the authorization and direction to the Secretary of the Interior set forth therein:

1. The engineering studies to be concluded should include (a) the proposed revisions in certain features to increase the power-generating potential to determine their effect on the basic concept of the Trinity division for increasing irrigation water supplies for the Central Valley project; (b) the feasibility of the increased capacity engineeringwise, economically and financially, for Federal installation and operation integrated with the Central Valley project, including the increased revenue and any other pertinent factors for purposes of comparison.
2. The inclusion of the proviso in the bill is in no respect to be considered a commitment on the part of the Congress to the sale of falling water or to any arrangement other than that of construction and operation of the entire project, including the power features, by the United States as authorized in the bill.
3. The proviso is in no sense to be understood as an authorization to waive, in any negotiation for the sale of falling water, any preference in the sale or transmission of power as expressed in section 5 of the Flood Control Act of 1944, in the Reclamation Project Act of 1939 or in any other law.
4. The negotiations referred to shall not be confined to any one non-Federal agency and either publicly owned or privately owned utilities shall have the opportunity to present proposals as the basis for negotiations.
5. The studies and reports are to be objective and factual without any preconceived result being sought. Any report or recommendation of the Secretary to Congress shall be accompanied by basic engineering, financial, or other technical reports, together with the findings of responsible officials of the Bureau of Reclamation, untrammelled by questions of high policy to be recommended to or considered by the Congress. The committee expects to be advised currently of the progress of the studies, reports, and findings as completed, and the progress of negotiations.

The committee concludes that, on the basis of the expert testimony at its hearing, that the Trinity division is feasible, from an engineering, economic, and financial standpoint, as proposed to be integrated with the Central Valley project for power and irrigation water purposes. It is in line with the California State water plan, adopted nearly 25 years ago. Therefore, any proposal that Congress should authorize a departure from the long-standing concept of federally constructed and operated multiple-purpose projects that have been found feasible by established standards will be carefully scrutinized.

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PROPOSAL OF PACIFIC GAS & ELECTRIC CO.

The committee heard a statement from the Pacific Gas & Electric Co. whereby the company offered to purchase or lease the falling water to be developed by the Trinity project for the purpose of the production of power, to construct the power facilities and pay the Federal Government annually a stipulated price. The power company's proposal was predicated on certain readjustments of the physical plan of the project so that the power-generating capacity would be substantially increased.

The same, or a similar, proposal had been submitted to the Department of the Interior which has stated that it is not in a position to make a final recommendation, pending the completion of engineering and economic studies, as well as negotiations incident to consideration of the proposal which have not been completed. It was in recognition of the proposal of the Pacific Gas & Electric Co. that the committee retained the proviso referred to heretofore in this report and which prompted the statement of policy hereinbefore set forth.

BACKGROUND OF PRESENTLY PROPOSED BILL

The Trinity River division was authorized under the Reclamation Project Act of 1939 by a finding of feasibility filed by Secretary of the Interior Oscar L. Chapman on January 2, 1953, with clearance from the President, Harry S. Truman. On February 7, 1955, Secretary of the Interior Douglas McKay approved the Trinity River project and recommended its construction in a supplemental report. The Commissioner of Reclamation, W. A. Dexheimer, in testimony before both the House and Senate Committees on Interior and Insular Affairs, recommended immediate initiation of construction of the Trinity project. The State engineer of California, commenting officially on the project under date of April 9, 1953, approved the project report of the Bureau of Reclamation and urged immediate authorization and construction. Hon. Goodwin Knight, Governor of California, wired the Senate Committee on Interior and Insular Affairs, as he had done similarly to the House committee, reaffirming the official position of the State of California in support of the immediate initiation of construction of the Trinity division.

In the Public Works Appropriation Act for fiscal year 1956, there was included \$1,000,000 in the construction and rehabilitation item for the Bureau of Reclamation to initiate construction of the Trinity division as soon as Congress authorized the work. Full disclosure of the Trinity division data had been made to both the House and Senate Appropriations Committees. This presentation was the basis for the rather unusual action in making an appropriation for construction before reauthorization legislation was completed. The budget estimates for fiscal year 1956 had included an additional \$400,000 for continuing advance planning of the Trinity division on which the Bureau of Reclamation, since 1942, had expended a total of \$572,000.

HISTORY OF TRINITY DEVELOPMENT

Intense study of the Trinity development has been carried on by various agencies of the State of California, as well as the Federal Power Commission and the Bureau of Reclamation. The California State

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water plan, adopted in 1931, included the Trinity development. The Bureau of Reclamation in the early forties began an intensive study looking to authorization and construction of the division. A feasibility report, completed in 1951, was the basis of the finding of Secretary of the Interior Chapman, authorizing the development as a division of the Central Valley project. H. R. 4663 embodies the Trinity features originally embraced in S. 178, sponsored in the Senate by Senators Knowland and Kuchel. S. 178 also proposed the authorization of the San Luis West Side division in the San Joaquin Valley, but by reason of delayed completion of the project report on the San Luis development, hearings and action were deferred without prejudice, and the committee recommends the enactment of H. R. 4663, relating only to the Trinity phases of the Central Valley project.

Certain modifications in the physical plan for the development of the Trinity River division have resulted from more detailed investigations subsequent to the original authorization in 1952. The basic features of the original plan are retained, but the recommended proposal includes recent modifications recommended by the Department of the Interior, together with resulting changes in the project's economic and repayment aspects, as described in the Department's supplemental report under date of July 1954. In addition to authorizing the plan of development now recommended by the Department, H. R. 4663 sets out certain operating requirements for the protection of existing water and other rights. It also provides for financial assistance to Trinity County in connection with meeting costs that are anticipated to result from construction activities in the area.

TRINITY DIVISION URGENTLY NEEDED

Additional water sources are required to provide a firm supply for the Central Valley project as presently authorized and under construction, as well as for contemplated expansion. The tremendous increase in population in the State of California, together with expanding demands for agricultural products produced under irrigation in the State, have accentuated the need for additional irrigation water supplies that have been developing rapidly. To meet this critical situation, immediate construction of the Trinity project must be undertaken.

While the committee at this time did not consider the San Luis West Side development in the San Joaquin Valley, it does recognize that the water situation in that area has already reached a critical stage that is threatening the agricultural economy of this vital sector. A portion of the Trinity water is proposed to be used in this area where an alarming recession in the ground water table has increased water costs. Even pumping with ground lifts has not removed the threat to substantial areas which will undoubtedly go out of production in a few years unless additional water for irrigation is brought into that area.

DESCRIPTION OF THE TRINITY DIVISION

In Trinity and Shasta Counties in northwestern California, the Trinity River division consists of Trinity Dam, Reservoir, and powerplant; Lewiston diversion dam, reservoir, and powerplant; Tower House Tunnel, powerplant, and diversion dam; and Matheson Tunnel

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and powerplant. The purpose of the division is the diversion of water from the Trinity River Basin into the Sacramento River Basin of the Central Valley. The major storage facility would be Trinity Reservoir on the Trinity River, with a capacity of 2,500,000 acre-feet. A short distance downstream from Trinity Reservoir, Lewiston Reservoir would reregulate the flows from Trinity Reservoir eastward through Tower House Tunnel and for downstream uses, primarily for fish purposes. The water from Trinity Reservoir would be diverted into Clear Creek through Tower House Tunnel and Tower House powerplant. On Clear Creek, just below the powerplant, Tower House diversion dam would divert water through Matheson Tunnel into Matheson powerplant and thence into the existing Keswick Reservoir on the Sacramento River. The authorization of these works would also include irrigation facilities to serve approximately 20,000 acres east of Redding.

Operation of the Trinity River division would be coordinated with that of other features of the Central Valley project, and would be physically integrated with that project. An average of 704,000 acre-feet of Trinity River water would be diverted annually to the Sacramento River Basin under the plan of development and operation of this project. When coordinated with the operation of the Central Valley project system, this amount would provide about 1,190,000 acre-feet of water for additional use in the Central Valley. About 665,000 acre-feet of this amount would be used annually to meet the ultimate needs of the Sacramento canals service area, which comprise approximately 200,000 acres, and about 525,000 acre-feet annually would be available for use on land of the west side of the San Joaquin Valley. Two hundred and thirty-three thousand kilowatts of installed hydroelectric power capacity proposed in the plan would increase the Central Valley project energy by over 1 billion kilowatt-hours annually.

An asset to the Trinity River Basin, as well as to the whole north coastal area, are the fishery resources of the Trinity River. The development of the Trinity River was planned with a view to maintaining and improving fishery conditions. The legislation sets out minimum flows to be maintained below the Trinity diversion point and below the Clear Creek diversion point, and requires that the project be operated so as to insure the preservation and propagation of fish and wildlife.

The committee notes that the transmountain diversion of water from the Trinity River Basin to the Central Valley has the approval of the State of California. The findings of both the State of California and the Bureau of Reclamation are that water surpluses to the present and future requirements of the Trinity and Klamath Basins are available for diversion in the volume proposed in the Trinity division plan. This water can be diverted from the Trinity River to the Central Valley without detrimental effect on the fishery resources. While final studies have not been completed to determine precisely the future water requirements in the Klamath River Basin, the committee concurs in the view expressed on page 5 of the House Committee Report No. 602 that it is not necessary to await conclusions in this respect before authorizing construction of the Trinity division because of the relatively limited diversions planned compared to the average volume of water wasting to the Pacific Ocean from the basin each year.

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ECONOMIC ASPECTS

The estimated cost of the Trinity River division including power installations and irrigation facilities east of Redding are approximately \$225 million. With the exception of proposed allocation of \$215,000 for recreational facilities and \$47,000 for fish protection, the entire amount would be reimbursable. Of the allocations to reimbursable features, upward of \$68 million is assigned to irrigation and \$156.5 million to power.

The Trinity River division would be integrated financially, as well as in the operation of the power and irrigation facilities, with the authorized features of the Central Valley project. The repayment plan provides that the power allocations would be completely repaid with interest within 26 years, or by 1988, after the last power unit is placed in operation. The entire amount of the reimbursable costs allocated to irrigation is to be repaid within 50 years, including any development period.

Economic analysis of the proposed Trinity division shows that the development would be outstanding from an economic standpoint. Primary benefits are in the ratio of 1.86 to 1. The benefit cost ratio, when indirect benefits are included, is 3.31 to 1.

ASSISTANCE TO TRINITY COUNTY

The United States owns approximately 90 percent of the land area in Trinity County. The limited resources of the county government, the committee finds, would be heavily taxed as a result of construction activities by the United States. The county would unquestionably be heavily burdened by construction activities in the area and there would also be loss of tax revenues. In recognition of this prospective situation, H. R. 4663 authorizes payments to Trinity County for additional costs attributable to the construction activities in connection with the Trinity division, and also authorizes an annual in-lieu repayment equal to the loss of taxes to the county.

ANALYSIS OF THE BILL

Section 1 outlines the purpose and scope of the measure, including the construction features to be authorized. Modification in the conveyance-system plan, including storage on Clear Creek, would be permitted if final investigations indicate the project's feasibility would be improved, and development of additional lands in Shasta County permitted. As heretofore pointed out the power facilities are authorized to be constructed by the Federal Government, although as stated there is a proviso which authorizes and directs the Secretary of the Interior to continue and bring to a conclusion negotiations with the Pacific Gas & Electric Co. with respect to its proposal for the purchase of falling water. The language is sufficiently broad to permit negotiations with any other public or private utility company that might desire to make the proposal. Congressional approval and authorization of any agreement is required. In the meantime, construction of the facilities should proceed to the extent that funds are available and, in the absence of congressional approval, installation of the power facilities would proceed. Section 2 provides for

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the integration and coordination of the Trinity division with other features of the Central Valley project both from a financial and operational standpoint. In project operation section 2 requires the Secretary of the Interior to adopt appropriate measures for the protection and propagation of fish and wildlife. Minimum flow requirements during certain months of the year to achieve these results are set forth. Nonreimbursable allocations of cost to the preservation and propagation of fish and wildlife are provided. In section 3 the Secretary of the Interior is authorized to provide and operate minimum basic facilities for recreation and other related purposes. It also authorizes the Secretary to withdraw public lands necessary for construction of the division and to dispose of these lands to Federal, State, or local governmental agencies upon terms and conditions that will best permit their development. No lands, however, may be acquired solely for the purpose of the development except for access to public lands, the maintenance of public health and safety, and the protection of public property, with the further authorization by Congress. Costs incident to constructing and operating these basic facilities would be nonreimbursable.

Section 4 of the bill provides for marketing the electric energy attributable to the Trinity River division in accordance with the power preferences expressed in Federal reclamation laws, except that a first preference to the extent of 25 percent of the energy is given to preference customers in Trinity County. These Trinity County preference customers may exercise their right to this energy when it first becomes available or upon the same date in each successive fifth year thereafter, providing they give written notice of their intention to take the energy not less than 18 months prior to said date.

Section 5 of the bill authorizes payments to Trinity County of additional costs of government incurred during the period of construction that are attributable to the construction activities in the area, including the cost for (1) police, hospital, and welfare facilities; (2) repair, maintenance, and replacement of existing roads; and (3) establishment of new roads. Section 5 also authorizes the Secretary to pay to Trinity County annually an in-lieu taxpayment equal to the loss in taxes to Trinity County from real property and improvements taken for project purposes.

Section 6 of the bill sets out the amount authorized to be appropriated for construction of the Trinity River division.

EXECUTIVE REPORTS

A report of the Department of the Interior on the Trinity River division is included in its report on S. 178, dated May 4, 1955. This bill, when introduced as a companion measure to H. R. 105 undertook to authorize both the Trinity River division and the San Luis unit of the West San Joaquin development of the Central Valley project. The report on S. 178 is considered as the Department's report on H. R. 4663 so far as it pertains to the Trinity River division of the Central Valley project.

Comments of the Bureau of the Budget, dated January 27, 1955, follow the report of the Department of the Interior.

The Interior Department report is as follows:

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TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., May 4, 1955.

HON. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR SENATOR MURRAY: You have requested a report from this Department on S. 178, a bill to authorize the Secretary of the Interior to construct, operate, and maintain as additions to the Central Valley project, California, the Trinity River division and the San Luis unit of the West San Joaquin division.

As an interim response to this request, there are enclosed copies of our proposed report on the Trinity River division, Central Valley project, California, dated January 19, 1955, and of two attachments to that report entitled "Supplementary Report, Trinity River Division, Central Valley Project, California" and "Addendum to Supplementary Report * * * Trinity River Division, Central Valley Project, California" dated March 1954, and January 1955, respectively. These documents are now before officials of the States of California and Oregon and of various Federal agencies for review. After their review has been completed and the comments received have been considered here, we will be in a position to advise you more fully than we now can with respect to the Trinity River division portion of S. 178. Our final report on the portion of the bill dealing with the San Luis unit of the West San Joaquin division of the project will necessarily be somewhat further delayed. A planning report on that development is now in preparation. Until it has been completed and reviewed by the State of California and by interested Federal agencies, we will not be in a position to do more than furnish a sketch of this proposed development to your committee.

The physical plan for development of the Trinity River division is set forth in the attached report thereon. It is unnecessary, therefore, to repeat it here. Suffice it to say that the works which would be authorized if S. 178 is enacted in its present form are, for the most part, those contemplated in our report. One exception is the Redding-Cow Creek works covered in S. 178, page 2, lines 16-22. Detailed investigations on the feasibility of these proposed works have not been made. We can only report at this time that such studies as have been made indicate that to provide water service to the area involved at a price the water users could afford to pay would require a considerable but as yet indeterminate amount of financial assistance. Another possible exception is the single-purpose hydroelectric works of the Trinity division. A firm conclusion has not yet been reached on the relative merits of Federal construction and of non-Federal construction of these works. If it should be concluded that it would be more desirable for these works to be undertaken by a non-Federal agency than by the Government, or to leave the question of the proper construction agency to be decided later, the text of S. 178 could be amended accordingly.

The need for the additional water supplies which construction of the Trinity division, either under its existing authorization (H. Doc. 53, 83d Cong.) or under the enlarged authorization contemplated in S. 178 and in our report of January 19 is emphasized by the congressional authorization of the Sacramento Valley canals as part of the Central Valley project (act of September 26, 1950, 64 Stat. 1036). It is anticipated that full development of the Sacramento canals unit, which is now under construction, will require diverted Trinity River division water. This was pointed out in the Department's report on the unit (H. Doc. 73, 83d Cong.) wherein it was stated that "* * * the Trinity River division works are required as a physical means of providing the water supply needed over the long run for the Sacramento canals unit" (p. vii) and that "* * * the Sacramento canals unit has engineering feasibility on the basis that the Trinity River division, upon which the canals unit is dependent for a firm water supply * * * will be authorized and constructed" (p. xi). In addition the importance of imported water to the San Joaquin River Basin, where large areas are experiencing an alarming drop in the ground water table as a result of pumping, cannot be overemphasized.

The following listing shows those facilities which in the presently proposed plan are different from the plan on which the existing authorization was based. All features not listed are essentially the same under the two plans.

Feature	New plan	Previous plan
Trinity Reservoir capacity.....acre-feet.....	2,500,000	1,200,000
Trinity powerplant, installed capacity.....kilowatts.....	90,000	75,000
Steam plant and subsidiary transmission facilities.....do.....	None	70,000

TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT

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The changes in the facilities from those previously recommended have resulted from additional information and from suggestions made by public agencies which commented on the earlier report. On an average annual basis, the somewhat expanded plan would divert 704,000 acre-feet of Trinity River water to the Sacramento River Basin. When coordinated with the Central Valley project system, it would provide 1,190,000 acre-feet for additional use in the Central Valley project. (Comparable figures for the previous plan are 660,000 acre-feet and 1,010,000 acre-feet, respectively.) Of these 1,190,000 acre-feet, 665,000 acre-feet would be used to meet the ultimate needs of 205,400 net acres in the authorized Sacramento canals unit of the Central Valley project and 525,000 acre-feet would be available for use on other lands in the Central Valley such as those of the potential San Luis unit. The new total installed hydroelectric power capacity contemplated by S. 178 and our report would be 233,000 kilowatts as compared to 218,000 kilowatts under the old plan. It is expected that this larger installed capacity of 233,000 kilowatts will increase the Central Valley project energy by 1,067 million kilowatt-hours annually.

The Trinity River division would be integrated physically and financially with the Central Valley project. All reimbursable costs would be repaid within 50 years after the last feature of the division is constructed. The estimated cost of the Trinity River division based on January 1954 prices, is \$219,280,000, assuming that the Federal Government builds the power facilities. Under the alternative plan for non-Federal construction of these facilities, the Government's cost of constructing the Trinity River division is estimated at approximately \$154,400,000. Substantially these entire amounts would be reimbursable. Both of them include \$215,000 for minimum recreation facilities which we recommended be provided at Trinity and Lewiston reservoirs but they do not include the amounts required for the acquisition of approximately 1,200 acres of land adjacent to the reservoir areas primarily for recreation purposes and principally in connection with the provision of the minimum facilities. They also include \$47,000 for fish protection facilities. Both of these items should be treated as nonreimbursable. Further consideration will be given to the fish and wildlife allocation at the time of preparation of the definite plan report in light of the applicable policies and provisions of the act of August 14, 1946 (60 Stat. 1080).

Public hearings have disclosed the large majority of California interests recognize the value of adding the Trinity River division to the Central Valley project and are anxious that the division be constructed. The few opposed interests who reside downstream in the Klamath River Basin are concerned over their future water needs. Our studies, however, indicate that the proposed diversion would utilize only a small percentage of the water now wasting into the Pacific Ocean from the Klamath River watershed. These studies also disclose that the relatively small amount of water that would be diverted would not affect future development of either the Trinity River Basin or the Klamath River Basin downstream since water in those areas would be more than adequate to satisfy future needs. The Trinity division's ratio of primary benefits to total cost is 1.86 to 1. Total benefits resulting from the development would outweigh the cost in a ratio of 3.31 to 1.

The fishery resources of Trinity River are an asset to the Trinity River Basin as well as the whole northern coastal area. Accordingly, the Trinity River development has been and should be planned with a view to maintaining and improving fishery conditions. The schedule of water releases for Trinity River flow below Lewiston diversion dam and for Clear Creek flow below Tower House diversion dam used in House Document No. 53, 83d Congress, was recommended by the Fish and Wildlife Service and accepted by this Department. House Document No. 147, 83d Congress, indicates that the California Department of Fish and Game concurs, in substance, in that recommendation.

The flows set out in House Document No. 53, however, are not the same as those prescribed in section 2 of S. 178. The flow schedule proposed by the Fish and Wildlife Service is predicated on the seasonal needs of the fishery resources. Since flows should vary in accordance with estimated requirements, the Service-proposed flow schedule is preferable to the flat minimum flow requirement for the months of July through November below Lewiston diversion dam prescribed in S. 178, and it is desirable that the minimum flows adopted by the Department for other periods of the year be incorporated in the legislation. Room should also be left in any legislation that is enacted for modification in the light of experience. Since the Secretary of the Interior will necessarily be charged with overall responsibility for the project, including particularly its financial aspects, it is our belief that it must also be his responsibility to determine, in accordance with

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statutory standards laid down by Congress and after consultation with appropriate State officials, what modification if any should be made. We suggest, therefore, that the language of the proviso beginning on page 3, line 23, of the bill be modified to read as follows:

"*Provided*, That the Secretary is authorized and directed to adopt, with respect to the Trinity River division, measures which, in his judgment, are appropriate to insure the preservation and propagation of fish and wildlife including, but not limited to, the maintenance of the flow of the Trinity River below Lewiston diversion dam and the flow of Clear Creek below Tower House diversion dam in accordance with schedules set forth on pages 77 and 79 of House Document Numbered 53, Eighty-third Congress, unless, after consultation with the California Fish and Game Commission, he determines that different flows would be adequate for maintenance of fish life and the propagation thereof. The Secretary shall allocate to the preservation and propagation of fish and wildlife an appropriate share of the cost of constructing the Trinity River development, as provided in the Act of August 14, 1946 (60 Stat. 1080), and of operating and maintaining the same, such costs to be nonreimbursable and nonreturnable."

In view of the inclusion of basic recreational facilities in the Trinity River plan, it is suggested that a new section be added to S. 178 after its present section 3 to read as follows:

"*Sec. —* The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division and the San Luis unit projects, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for the other purposes specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable."

Section 3 of the bill deals with a preferred right on the part of customers in Trinity County to purchase a portion of the increased output of the Central Valley project made possible by the Trinity River development powerplants. If the San Luis unit is authorized, the energy available for commercial sale from the Central Valley project power system, even including a Government-built Trinity power development, will be decreased below its output without Trinity and San Luis. This decrease will result from the use of energy for San Luis pumping loads. In this circumstance, the preference expressed in section 3 of the bill will be meaningless. If, on the other hand, the San Luis unit is not constructed, there will be a significant increase in the amount of power available for commercial sale and the preference will be important. From an administrative viewpoint, the provision giving Trinity County preference customers a right to exercise an option to purchase project power in each successive fifth year upon 6 months' prior notice would impose restrictions on alternative sales to other markets at firm rates. The 6 month's notice provision should, we believe, be changed to not less than 30 months in order that interim purchasers of power could be provided adequate notice in which to arrange for power from alternative sources.

Section 4 of the bill would provide that appropriations for construction of the Trinity River development and gross revenues from the development shall be available and used for in-lieu-of-tax payments to Trinity County and for payments to the county for certain additional costs of government, including police, school, hospital, and welfare facilities and for the repair, maintenance, and replacement of roads and establishment of new roads. We question the wisdom of some of the items and the desirability of imposing on the Trinity development terms more onerous than or different from those generally applying to other reclamation projects.

TRINITY RIVER DIVISION, CENTRAL VALLEY PROJECT 11

More particularly, it appears to us that the matter of payments to Trinity County in lieu of taxes should await consideration by the Congress of general legislation establishing Federal policy with respect to payments to States and local governments on account of real property and improvements thereon. Such legislation is proposed in various bills now pending before the Congress. It will be possible at that time to weigh the general question of the benefits of Federal construction activities to local communities against their added costs. Similarly, we question the provisions of section 4 insofar as they would charge to the Trinity River development, and thus to California water and power users, the cost of new roads that are not required for project purposes or to replace existing roads damaged or destroyed by the project. Such a requirement would extend the liability of the United States beyond the present requirements of law.

While, as has already been indicated, we are currently preparing a feasibility report on the San Luis unit and cannot recommend its authorization at this time, it may be helpful to your committee to have a sketch of our present information with respect to it.

Our studies to date indicate that, as an addition to the Central Valley project, the San Luis unit is feasible both from an engineering and financial viewpoint. Its water supply would be obtained in part from surplus winter flows of the Sacramento and San Joaquin Rivers that now waste into the ocean and in part from water made available as a result of the Trinity River diversion.

New Federal facilities as presently contemplated would consist of the San Luis Dam, Reservoir, and pumping plant, San Luis Canal, Pleasant Valley pumping plant, Pleasant Valley Canal, relift pumps, and necessary electric transmission system.

San Luis Reservoir, the principal storage facility for the San Luis unit, would be filled primarily by pumping water from the Delta-Mendota Canal during winter months. Water stored in San Luis Reservoir and pumped directly into San Luis Canal would be used to supply 440,000 acres of productive land on the west side of the San Joaquin Valley. Much of this area is now in urgent need of additional water supply because of the rapid lowering of existing ground water supplies. Urgently needed municipal water would also be made available by this development.

It is currently estimated that the required Federal expenditure for the San Luis unit would amount to approximately \$229 million, all of which would be reimbursable. Through financial integration with the Central Valley project, the enlarged project would show payout of all reimbursable features within 50 years after completion of construction of the San Luis features.

The views of the Bureau of the Budget with respect to present enactment of a Trinity River-San Luis bill are expressed in the attached letter dated April 28 on H. R. 105, a companion measure to S. 178.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., April 28, 1955.

The honorable the SECRETARY OF THE INTERIOR.
(Attention Mr. Elmer F. Bennett, 6041 Interior Building.)

MY DEAR MR. SECRETARY: This will acknowledge Assistant Secretary Aandahl's letter of April 12, 1955, transmitting copies of a report which has been submitted to the House Interior and Insular Affairs Committee on H. R. 105, to authorize the Secretary of the Interior to construct, operate, and maintain as additions to the Central Valley project, California, the Trinity River division and the San Luis unit of the West San Joaquin division.

In the absence of final reports on the proposed Trinity River division and San Luis unit and in the absence of a report on the partnership possibilities for the Trinity River division, which it is understood the Department has been exploring, the Bureau of the Budget is not in a position to make a satisfactory evaluation of the proposed Federal developments. While there is no objection to the action of the Department in submitting to the chairman of the House Interior and Insular Affairs Committee a report which it considered appropriate, it is requested that you now advise the chairman that the Bureau of the Budget recommends, in view of the above, that action on this bill by the Congress be deferred until the

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final project reports have been submitted under established procedures and the partnership possibilities of the Trinity River division have been fully explored. Furthermore, there are certain provisions in the bill and certain recommendations in your report which involve policy issues on which the administration's position has not yet been determined. Deferral of action on the bill will permit further consideration of these matters.

Sincerely yours,

ROGER W. JONES,
Assistant Director for Legislative Reference.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., January 27, 1955.

HON. JAMES E. MURRAY,
*Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: This will acknowledge Mr. Stewart French's letter of January 17, 1955, requesting the views of the Bureau of the Budget on S. 178, to authorize the Secretary of the Interior to construct, operate, and maintain as additions to the Central Valley project, California, the Trinity River division and the San Luis unit of the West San Joaquin division.

It is our understanding that the Secretary of the Interior is preparing project reports on these proposed developments, including engineering and economic feasibility of the projects, detailed estimates of cost and benefits, and sufficient other pertinent information necessary for a complete understanding of the justification and necessity for the work.

In the absence of such final reports from the Secretary of the Interior, the Bureau of the Budget is not in a position to make a satisfactory evaluation of these projects at this time. Therefore, it is recommended that the committee take no action on S. 178 until project reports have been submitted to the committee under the established procedures.

Sincerely yours,

DONALD R. BELCHER, *Assistant Director.*

**Hearing on H.R. 123, *H. Subcomm. On Irrigation and Reclamation
of the Comm. on Interior and Insular Affairs,*
83rd Cong., at 1, 11, 71-72 (April 16, 1954)**

TRINITY RIVER DEVELOPMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON
IRRIGATION AND RECLAMATION

U.S. CONGRESS. HOUSE. OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS

SECOND SESSION

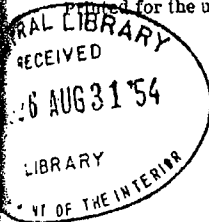
ON

H. R. 123

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO
CONSTRUCT, OPERATE, AND MAINTAIN THE TRINITY
RIVER DEVELOPMENT, CENTRAL VALLEY PROJECT, CALI-
FORNIA, UNDER FEDERAL RECLAMATION LAWS

APRIL 16, 1954
REDDING, CALIF.

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TRINITY RIVER DEVELOPMENT

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and planting is taken care of, it is only a matter of a short period of time until the natural propagation of fish that are planted will increase and become more abundant as time goes on. That is my firm belief.

At the present time, Trinity Alps Resort caters to approximately 500 guests during the season. I am speaking personally, as an individual. However, I have been authorized by the Northern County Resort Owners' Association also to speak for them. My views are representative of the views of all the members of that association. I believe, gentlemen, that is all I have to say unless there is any question.

Congressman ENGLE. Just one observation: The language of the present bill—and we are not dealing specifically with the bill today—but the language of the bill provides that the Secretary of the Interior is instructed to take all necessary steps for the maintenance and propagation of fish life in the Trinity River. It doesn't specifically tell the Secretary to build a hatchery, but whatever is necessary to maintain and propagate the fish life in the Trinity River, he is, by the legislation, if it is enacted, instructed to do.

Chairman HARRISON. Thank you very much.

The next witness will be Mr. George Fleharty.

GEORGE FLEHARTY. Mr. Chairman, members of the committee, I am appearing in behalf of the Redding Chamber of Commerce and Shasta County. We of Shasta County wish to welcome you to our area and want you to know we appreciate the fact you have taken valuable time away from your Easter holidays to be with us and give us your consideration as to the feasibility of Trinity project.

The people of this county request your consideration of the project on the basis of its being the soundest business investment the Federal Government could make in western water development. Every acre-foot of water that could be developed from the project has a ready customer. Both public and private power agencies stand ready to purchase the power developed. Therefore, we appear before you today as a county united in the belief that the Trinity River division project is a sound business investment, in addition to being a tremendous step forward in development of our western country.

I would like to file resolutions in support of the project from the Shasta County Board of Supervisors, the Redding Chamber of Commerce, and the Fall River Valley Chamber of Commerce. In addition to these, resolutions will be sent to the committee later from the Council of the City of Redding, the Northern California Supervisors Association, and the Burney Chamber of Commerce.

Chairman HARRISON. Without objection, the resolutions which have been presented will be received and made a part of the record. No objections being heard, so ordered.

RESOLUTION

Resolved, That the Redding Chamber of Commerce of the city of Redding, State of California, respectfully urges upon the Congress of the United States the immediate construction of the Trinity River division of Central Valley project.

Resolved, That the said Redding Chamber of Commerce further urges the Congress of the United States to enact and incorporate into the enabling legislation establishing said project adequate provision for the protection and preservation of the rights of Shasta and Trinity Counties and the other counties of origin, to their prior right to such water which now exists under the laws of the State of California, including the following specific provisions:

1. That in order to meet future growth of the area of origin, such legislation provide that all municipalities or other public or municipal districts which now

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and will remain as such. Sometimes, as Clair says, cooperation is a two-way street, and we can defeat our own purposes by being too eager and too selfish to hold on to things that are not rightfully ours.

Now in 1947 in the middle of a very violent public meeting in Arcata at which I was present, I called Jim Carr in Chico—and he will verify what I am going to tell. He was home just out of the hospital, and if you will excuse me for a direct quote, I said to him, "What the hell's going on over there with our water?" I rode him pretty hard and he told me as soon as he got out of his sickbed he would come to Humboldt County with a staff of engineers and at a time and place the Bureau of Reclamation would present the facts of the Trinity project to the people of Humboldt County. He came there and we had an attendance of some 250 people, certainly the largest attendance ever to meet on the project. The Bureau had those maps, they outlined the project, Mayor Hamm served as chairman of the meeting. After the meeting the city of Arcata went on record as endorsing the Trinity River project. The Board of Supervisors of Humboldt County appointed a water committee of which I was a member serving with Senator Quinn, Robert Matthews, and others.

In 1950 Mr. Marshall Jones, regional manager of the Bureau at Chico who is here, suggested that we ask for a study, and that is the study that they are telling the people here present that the Federal Government is wasting Federal funds doing in our area. That study was not to study the Trinity River diversion. That was to make a resource survey, a water survey of the area and certainly in terms of utilization in our area, and the end product of this survey to be a project in our area in which we can utilize our own water resources.

I can remember that my father, who was an engineer, back in 1924 went up to Dunsmuir and did preliminary surveys on that project, and he told me that was the finest water and power project he had ever seen. I talked to Vern Hanson, the man in charge of the survey in Arcata, no less than 10 days ago, and he told me the words of my father in 1924 were just about as true now as they were then; and that while they didn't have the figures in terms of heavy industrial use in our area it was indicated that project is economically feasible.

There we could store a million acre-feet. We would utilize the Mad River and we would divert the Trinity River, we would divert the south fork of the Trinity River to our watershed. That is the reason I haven't been violently opposed to diversion of the Trinity River. We are going to have to come some day before a Congress and ask that we divert the Trinity River.

The point that I am going to bear out is that Humboldt County, certainly not all of us, are opposing this project. We have Redwood Creek alone that has a runoff of a million acre-feet a year. If this subcommittee will protect our interests and see that we have funds to develop our water over there, and if possible we can have a minimum of 200 second-feet flow down that river, and some funds to help us develop our projects over there, I am sure we would be amply taken care of. That certainly is my position, and that is the position of many many good citizens of Humboldt County. Thank you.

Chairman HARRISON. Is Mr. Robert Lake in the room representing the Hoopa Indians? Who represents the Hoopa Indians?

A REPRESENTATIVE. Gentlemen, I am representing the general council of the Hoopa Indians. We would like a complete survey of this water-diversion project before it is started. Like these other

gentlemen before me, we have large resources down there. We would like to have that survey made. I believe they said there has been surveys, but I have never seen any yet. I believe we should have that first.

Chairman HARRISON. That is the position of your tribe, is that right?

REPRESENTATIVE. Yes; we are right at the mouth of the Trinity River. We are pressed for time, and I would like to see the rest of the people get a chance to talk.

Chairman HARRISON. The Yurok Indians are represented by Princess Lowana Brantner.

Princess LOWANA BRANTNER. My name is Princess Lowana Brantner. I represent the Yurok Tribe, lower Klamath strip. With me is Edgar McLoughlin, of Witshepec, who represents the upper Klamath strip.

I have come a long way for the opportunity to talk to you for only a limited time. There is a lot we, the Yurok Indians, don't understand about the Trinity River diversion.

I would like to state about four important reasons why the Yurok Indians don't believe that any water should be taken out of the Trinity River.

The first is: When Oregon takes the water out of the Klamath River to irrigate the Chiloquin Indian Reservation, Tule Lake, and Butte Valley, we wonder how much water would be left in the Klamath River.

Second, Indian timber, logging companies, and the Forest Service have a vast stand of timber that is being logged off. The Indians work for these logging companies, making their livelihood. Those logs have to be rafted down the river to Klamath. There are no roads, and if there is not enough water, the logging companies have to close down. There are days during the summer months when there is not sufficient water.

Third, we would like a complete study of our mineral and other resources on the Lower Klamath Basin. Gold has been found on the upper Klamath River and on the Trinity River, and if other mineral is found, we would need the water in both rivers to develop our resources.

Fourth, if the water is taken out of the two rivers there would not be enough water left to allow the salmon and steelhead to spawn. The Copco Dam has ruined the spawning grounds for thousands of salmon. During the summer months, along the banks of the Klamath River you can see dead trout by the hundreds—the water being low and warm.

I want to express my sincere appreciation for appearing before your honorable group in behalf of my people who have lived and been a part of northern California since the white man arrived on the American Continent.

Chairman HARRISON. The next witness will be Mrs. Pauline Davis, State assemblywoman.

Mrs. PAULINE DAVIS. Mr. Chairman, gentlemen of this committee, I know that you must be weary and the time is getting late, so I will just take a moment of your time.

I represent seven of the largest northern California counties in the State. All of these seven counties are counties of origin. As I

**Hearing on H.R. 4663, *H. Subcomm. On Irrigation and Reclamation
of the Comm. on Interior and Insular Affairs*,
84th Cong., at 1, 8-11, 26-27, 104-106, 169-172 (April 13-15, 1955)**

TRINITY RIVER PROJECT, CALIFORNIA

WEDNESDAY, APRIL 13, 1955

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IRRIGATION AND RECLAMATION OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D. C.

The subcommittee met at 10 a. m. in the committee room of the House Committee on Interior and Insular Affairs, Hon. Wayne N. Aspinall (chairman of the subcommittee) presiding.

Mr. ASPINALL. The Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs will now be in session for the consideration of H. R. 4663, introduced by our chairman, Mr. Engle, to authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws.

(The bill is as follows:)

[H. R. 4663, 84th Cong., 1st sess.]

A BILL To authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to an integral part of the Central Valley project, California, the Trinity River division consisting of a major storage reservoir on the Trinity River with a capacity of two million five hundred thousand acre-feet, a conveyance system consisting of tunnels, dams, and appurtenant works to transport Trinity River water to the Sacramento River and provide, by means of storage as necessary, such control and conservation of Clear Creek flows as the Secretary determines proper to carry out the purposes of this Act, hydroelectric powerplants with a total generating capacity of approximately two hundred thirty-three thousand kilowatts, and such electric transmission facilities as may be required to deliver the output of said powerplants to other facilities of the Central Valley project and to furnish energy in Trinity County. The works authorized to be constructed shall also include a conduit or canal extending from the most practicable point on the Sacramento River near Redding in an easterly direction to intersect with Cow Creek, with such pumping plants, regulatory reservoirs, and other appurtenant works as may be necessary to bring about maximum beneficial use of project water supplies in the area.

Sec. 2. Subject to the provisions of this Act, the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available: *Provided*, That the Secretary is authorized and directed to adopt appropriate

STATEMENTS OF CLYDE H. SPENCER, REGIONAL DIRECTOR, BUREAU OF RECLAMATION, SACRAMENTO, CALIF.; AND A. N. MURRAY, REGIONAL PLANNING ENGINEER, BUREAU OF RECLAMATION, SACRAMENTO, CALIF.

Mr. SPENCER. I have the only statement, Mr. Chairman.

Mr. ASPINALL. Unless there is objection we shall hear the statement by Mr. Spencer in full and reserve our questioning for Mr. Spencer and Mr. Murray to the end of Mr. Spencer's statement. Hearing no objection, it is so ordered.

We are glad to have you gentlemen before our committee. You may be seated and you may proceed with your statement, Mr. Spencer.

Mr. SPENCER. Mr. Chairman, with the committee's permission I would like to make a brief introductory statement outlining the way in which the Trinity River project fits in as a logical next step in the development of the water resources of the Central Valley Basin. After the statement I would be pleased to answer any questions that the committee may have.

The Central Valley project was first authorized as a Federal Reclamation project by the Congress in 1937, act of August 26, 1937, (50 Stat. 850). The initial features of the Central Valley project are shown on this map, and consist of Shasta and Keswick dams and powerplants, the Delta Cross-Channel, Contra Costa Canal, and Delta-Mendota Canal, and Friant Dam, Friant-Kern Canal and Madera Canal in the San Joaquin Valley. Backbone transmission lines adequate to convey the output of Shasta and Keswick plants to the vicinity of Tracy where our largest pumping load is located also were authorized. These works are now completed and in operation.

In 1940, project was reauthorized by Congress to provide for construction of distribution systems, which are now completed or under construction.

Friant Dam, Friant-Kern Canal, and Madera Canal, located on the San Joaquin River, were designed to regulate and convey San Joaquin River water to areas of serious water shortage on the east side of that valley. Friant Dam also provides space for flood control. Since owners of a large area on the lower west side of the San Joaquin Valley had already established rights to use of San Joaquin River water, before water could be impounded at Friant, it was necessary to construct a conveyance facility to bring Sacramento River water to Mendota Pool at the end of the Delta-Mendota Canal as a substitute supply. The Delta-Mendota Canal serves this purpose. In the late fall, winter and spring months, water for that canal is obtained from natural flow entering the Sacramento-San Joaquin Delta. During the summer months this is supplemented by releases of storage from Shasta Reservoir. Shasta Dam, Reservoir, and powerplant, and the companion Keswick Dam and powerplant are the principal initial project features in the Sacramento Valley.

In addition to the important San Joaquin Valley irrigation service, the initially authorized features of the project make possible a large amount of new irrigation in the Sacramento Valley, improve navigation along the Sacramento River, control floods, and hold ocean salinity back from the delta area.

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TRINITY RIVER PROJECT, CALIFORNIA

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By the time World War II ended, it was obvious that the then authorized features of the project were hopelessly inadequate to meet the very large demands for water brought about by California's and the Nation's increasing population. The Congress therefore authorized the American River development in October of 1949 (63 Stat. 852), which incorporated into the Central Valley project, Folsom Dam and Reservoir, Folsom powerplant, Sly Park project, and Nimbus Dam, Reservoir, and powerplant, together with a high voltage transmission line to connect the American River plants to the backbone Central Valley project lines at Elverta. These works are under construction now and are scheduled to be completed in 1955.

In September of 1950, the Congress again authorized additional works as parts of the Central Valley project when the Sacramento canals unit was added to the project (64 Stat. 1036). These canals will convey water to approximately 205,000 acres of land in the Sacramento Valley. Design work on the canals is now in progress. We anticipate initiating construction as soon as the formation of irrigation districts, now under way, moves ahead so that adequate repayment contracts can be secured.

The committee will note that in four separate enactments—in 1937, 1940, 1949, and 1950—the Congress has authorized construction of major dams, canals, powerplants, and pumping plants to aid in progressive development of Central Valley water resources. The present hearing is one of many which this and other committees of the Congress have held to consider ways of expanding the project to meet the chronic water shortage in this area.

From 1942 to 1950 the Bureau of Reclamation carried out a substantial project planning program in the Trinity River project as a possible part of the Central Valley project. These studies were consummated in reports which are presented in House Document 53, 83d Congress, 1st session. In that document, the former Secretary of the Interior presented to the Congress a finding of feasibility made pursuant to section 9 (a) of the 1939 Reclamation Act, as amended. Comments of the State of California on the Secretary's proposed report are set forth in House Document 147, 83d Congress, 1st session. In transmitting the views of the State of California on the report, the Director of Public Works of the State viewed the Trinity River unit as engineeringly and economically feasible and recommended it be constructed at the earliest practicable date.

Based on our thorough investigations, it seems to me that the Trinity River unit is a logical addition to the Central Valley project in the development of the water resources of the Central Valley Basin. The basic elements of the plan are simple. They are the same as those proposed by previous investigators, including the State division of water resources, the Federal Power Commission, and the Corps of Engineers. The area involved is shown on this map of the north coastal area of California.

The Klamath River Basin, of which the Trinity is a part, is one of the largest basins in California from the standpoint of water availability. Studies of the State Division of Water Resources of California show that nearly 40 percent of all the runoff of the entire State occurs in the Klamath River Basin. Annual precipitation in the area often reaches 80 to 100 inches.

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A nearly infinite number of routes exist through which water can be conveyed from a large reservoir on the Trinity River to the Sacramento River watershed. The plan presented in my report of July 1954, to the Commissioner is a sound one, is workable, and demonstrates feasibility. Obviously it may change in detail as further field investigations show ways of improving the project or saving on costs. The features suggested consist of a dam and reservoir on the Trinity above Lewiston with a capacity of 2,500,000 acre-feet to conserve and regulate Trinity River flows; a small dam at Lewiston through which all water needed downstream can be released, while at the same time serving as a diversion dam to turn surplus water toward the Sacramento Valley on the east; 2 tunnels to convey the surplus water; 4 powerplants at appropriate points to take advantage of the 1,500-foot drop between the Trinity and Sacramento Rivers; and backbone transmission lines to carry the power to the south. Water entering the Sacramento River would be brought in above the existing Keswick Reservoir, thus increasing the output of Keswick powerplant without any additional expense.

Operation of the Trinity River division would permit, on an average annual basis, the diversion of over 700,000 acre-feet of Trinity water to the Sacramento River Basin which, when coordinated with the Central Valley project system, would provide an additional 1,190,000 acre-feet of water on an irrigation schedule for use in the Central Valley project. Of this quantity, 665,000 acre-feet would be used annually to meet the ultimate needs of 205,000 net acres in the authorized Sacramento canals unit of the Central Valley project and 525,000 acre-feet annually would be available for use on other lands in the Central Valley. The total installed hydroelectric power capacity proposed in the report would be 233,000 kilowatts, which will yield an increase in Central Valley project energy of 1,067 million kilowatt-hours annually.

In proposing a project which would take water from one of the coastal basins and bring it into the Central Valley Basin, we have been acutely aware of the importance of not depriving the basin of origin of water which it needs now or will ever need. Our plans contemplate making available ample water to meet the needs of the Trinity River Basin. One important local water need is for an adequate supply of water of favorable temperature for fish life. In planning the project, we have relied upon detailed studies by the Fish and Wildlife Service, which have been reviewed carefully by the State fish and game commission, in arriving at quantities of water which should be released to flow on down the channel of the Trinity River for preservation of fish. These releases, incidentally, will meet any consumptive requirements within the downstream basins. The basic operating criterion has been one of meeting these minimum downstream requirements as a first order of priority; all other requirements have been made secondary.

Planned operating criteria are such that extreme low-water flows throughout the lower Trinity and Klamath Rivers would be improved, while water would be stored in Trinity Reservoir or diverted to the Sacramento only at times when large quantities are flowing in the lower Trinity from other sources. Historically, the minimum flow of the Trinity at Lewiston gage has been as low as 23 cubic feet per second

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and has been below 100 cubic feet per second for many weeks at a time; planned operations would provide absolute minimums at Lewiston of 100 cubic feet per second, and during parts of each year the minimum would rise to 300 cubic feet per second. H. R. 4663 might require that about 11,000 acre-feet annually bypass the Towerhouse and Matheson powerplants in addition to the total agreed to by the fishery experts. From the standpoint of project revenues we prefer that the planned release schedule be maintained on Clear Creek, and that the annual Trinity River total release not be exceeded.

Our studies indicate that the proposed diversion would utilize only a small percentage of the water now wasting into the Pacific Ocean from the Klamath River watershed. These studies also disclose that the relatively small amount of water that will be diverted will not affect future development of either the Trinity River Basin or the Klamath Basin downstream as water in those two areas would be more than adequate to satisfy future needs.

The estimated cost of the Trinity River division based on January 1954 prices is \$219,282,000, all of which is reimbursable except \$215,000 for minimum recreational facilities recommended at Trinity and Lewiston Reservoirs and \$47,000 for fish protection facilities, both of which would be nonreimbursable.

The Trinity division would be a sound investment for the country in view of the favorable ratio of primary benefits alone to total cost of 1.86 to 1. Total benefits resulting from the development would outweigh the cost in a ratio of 3.31 to 1.

For the project including the Trinity River division, our analyses show that the projected power rates will assure repayment of costs allocated to commercial power in 1989 with interest at 3 percent, and without using that interest for repayment purposes. Costs allocated to irrigation will be repaid by 2013 with aid of about \$66 million in power revenues after the power investment has been repaid. Costs allocated to municipal water service will be repaid by 2005 with interest at 2½ percent. By 2013, the year repayment would be secured on the last feature constructed, about \$170 million will have been earned surplus to interest and repayment.

In April of 1954, a representative of the Pacific Gas & Electric Co. testified at a hearing of this committee in Redding, Calif., and presented a company offer to construct the power facilities proposed in the original departmental report. As a result of this offer, a study was made of the possibility of Federal construction of the storage and water conveyance features and of selling falling water to a non-Federal agency which would construct all power generating and transmission features. Results of this study are presented in my report of January 6 to the Commissioner and incorporated also in his report of January 19 covering the Trinity River division to the Secretary. The Secretary adopted the Commissioner's report as his proposed report on the Trinity River development, and forwarded it to the Governor of California for comments. Copies of the reports have been furnished to the committee.

On January 13, I received a letter from Mr. N. R. Sutherland, vice president and general manager of the Pacific Gas & Electric Co., which spelled out in somewhat more detail the rather general offer presented to the committee at Redding in April 1954:

to repeal that section of the 1939 act. It may be repealed, but it is not any good, anyway.

Mr. Dawson. There is no provision in your bill to permit of elasticity to enter into agreements with the Pacific Gas & Electric for the development of power. I notice your bill provides simply for the Government to go ahead and develop the power, and I am wondering would it be advisable to modify the bill to give them the authority to go ahead and conclude other negotiations, or turn down and accept them, as they so desire?

Mr. Engle. The bill would have to be amended in order to make it possible, for the Secretary of the Interior to enter into a contract for the sale of this falling water. This bill would authorize the Federal Government to build the project. I have inquired as to whether or not the Secretary currently has the authority to enter into contracts for the sale of falling water, and I am advised by Mr. Dexheimer—and he will probably comment on that at a later time—that they do have the power to do that but not in this particular case without a new finding and authorization.

Mr. Dawson. That just relates to falling water.

Mr. Engle. Yes. That is exactly what I am saying. It is the position of the Department currently that they have the authority now to enter into that kind of an arrangement; but in this particular case, since the project has already been authorized by a finding of feasibility, the Interior Department would have to file a new finding of feasibility to take the place of the one now on file with reference to this particular project. And presumably that could be done.

So far as the Governor of California is concerned, he has already taken a position—he says for the Federal Government to build it lock, stock, and barrel; but the Secretary could, as I understand—he could file another report by which he could put into effect the authorization including the P. G. & E. proposal, or at least allow sufficient flexibility in his report to adopt the falling water proposal. Mr. Dexheimer, I assume, is going to comment on that a little later.

Mr. Dawson. Mr. Spencer, I understood you to say that much of the water originating in the area where it will be utilized by this project is now flowing into the Pacific Ocean?

Mr. Spencer. That is correct.

Mr. Dawson. Approximately how much, would you say?

Mr. Murray. The average annual runoff of the Trinity River at Lewiston, which is very close to the main storage dam, is approximately 1,100,000 acre-feet. The runoff at the mouth of the Trinity is about 4 million acre-feet; the runoff of the Klamath River where it runs out into the ocean is over 10 million acre-feet.

So approximately 10 percent of the total runoff of the Klamath River at its mouth originates above Lewiston on the Trinity River, and about 70 percent of that is proposed to be diverted to the Sacramento, while the remaining 30 percent of the Trinity River water would be firmed up in the low-water periods.

Mr. Dawson. In other words, there is no opposition to this project from the people in either California or Washington, substantial opposition, with the exception of some in the Klamath Basin area, who feel they might be deprived of water?

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TRINITY RIVER PROJECT, CALIFORNIA

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Mr. MURRAY. Some of the people in Humboldt County, which lies adjacent to the Pacific Ocean and adjacent to the Klamath River, do object to the project on the grounds that there has not yet been a complete survey of their ultimate water requirements. They have advanced the thought that even the taking of a small portion of the Klamath River for the project might divert water needed in Humboldt County.

Mr. DAWSON. Do you care to comment on whether water would be diverted in that area?

Mr. MURRAY. On the contrary, we believe their position could well be improved through the operation of the project. It would be a very, very small improvement, and it would come from a reduction in a very small amount of high-flood flows in the whole area, and would improve again in the small amount of the low-water flows of the river.

Mr. DAWSON. It would result in stream control which would give them water when they needed it?

Mr. MURRAY. That is our opinion.

Mr. ENGLE. There are 13 million acre-feet of water going to waste in Humboldt Bay. That is more water than is consumed by all of the people and all of the industries of 12 of the larger cities in this country. In short, if you take the 12 largest cities of this Nation, starting with New York and Los Angeles, and take them and all of their industries, inside the boundaries of Humboldt County they could not use up half of the water that is now going to waste in Humboldt Bay. And the diversion of this dribble will not hurt them. As a matter of fact, the project operation will stabilize the flow of water so that during the summertime the steelheads do not get their backs sunburned going up the river.

Mr. DAWSON. That concludes my questions, Madam Chairman.

Mrs. FOSTER. The gentleman from Florida, Mr. Haley.

Mr. HALEY. The gentleman from Florida has no questions.

Mrs. FOSTER. The gentleman from Nevada, Mr. Young.

Mr. YOUNG. Did you say there was no objection to the project from the Klamath area?

Mr. MURRAY. No; I said there had been objection registered by people of Humboldt County who lie adjacent to the Klamath River.

Mr. YOUNG. Referring to the Klamath area shown on that map, that is in Humboldt County, is it?

Mr. MURRAY. No, sir. You mean the entire Klamath area?

Mr. DAWSON. Yes, sir.

Mr. MURRAY. There have been no objections raised from the State of Oregon at all. In fact, they do not consider themselves affected in any way by the project, which lies entirely in the State of California.

Mr. SPENCER. May I make an observation on that?

Mr. YOUNG. Yes.

Mr. SPENCER. We did have at the April hearing, a complaint from some of the Indians from reservations in the Klamath Basin, and I think one or two of those were from the State of Oregon.

Mr. YOUNG. Did you discuss the provisions in here for the protection of fish and wildlife, or is that part of your testimony?

Mr. MURRAY. Briefly it is discussed on page 8.

Mr. YOUNG. I can read that.

That is all I have, Madam Chairman.

TRINITY RIVER PROJECT, CALIFORNIA

FRIDAY, APRIL 15, 1955

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IRRIGATION AND
RECLAMATION OF THE COMMITTEE
ON INTERIOR AND INSULAR AFFAIRS,
Washington, D. C.

The Subcommittee met at 9:45 o'clock, a. m., Hon. Wayne N. Aspinall (chairman) presiding.

Mr. ASPINALL. The Subcommittee on Irrigation and Reclamation will now be in session for the further consideration of H. R. 4663.

The first 15 minutes of today's session will be given to State Senator Edwin J. Regan of the fifth district comprising Shasta and Trinity Counties, Calif., for the presentation of a statement. The Senator was unable to be here yesterday because of flying conditions, I guess, more than anything else.

We are glad to have you with us this morning, Senator Regan. You may proceed with your statement.

STATEMENT OF HON. EDWIN J. REGAN, STATE SENATOR, FIFTH DISTRICT OF CALIFORNIA

Mr. REGAN. Mr. Chairman and members of the committee, for the record, my name is Edwin J. Regan, State Senator from Shasta and Trinity Counties, being the Fifth Senate District of California. I am chairman of the California State Senate Interim Committee on Public Lands and a member of the California Legislative Committee comprised of members both of the Senate and the Assembly of the State of California on the water problems of California. My presentation here today is on behalf of the county of Trinity, particularly, and to emphasize certain features of the legislation and the impact on that county.

I think you are aware that California is now in a serious situation with regard to its water. The interim studies have shown a great differential insofar as California is concerned and those who are studying the problem and who have made the studies to date have said that unless California developed all of the water in the State, both the water which falls on the State and the water to which the State is entitled which flows into the State, California's economy will not be able to grow as is anticipated. Therefore, we must develop all of our sources of water.

The Trinity division, of course, is one of the important water projects in California and can be well integrated into the State program and

Mr. MILLER. I apologize. I will strike my question, if I may, and yield the time.

(Discussion off the record.)

Mr. SISK. I would like, before our distinguished Senator from my State leaves the stand, to commend him on his statement. I know he is a very eloquent spokesman for that area of our great State.

Mr. REGAN. Thank you, Mr. Sisk.

(The telegram and resolution submitted for the record by Mr. Regan are as follows:)

WEAVERVILLE, CALIF., April 12, 1955.

Hon. EDW. J. REGAN, State Senator,

Fifth District, State Capitol Annex, Sacramento, Calif.

The Board of Supervisors of Trinity County in special session assembled on this 12th day of April, 1955, after a hearing of the people of Trinity County recommend that the Eagle bill, H. R. 105, and the Knowland and Kuechel bill, S. 178, be affirmed but amended to include private enterprise participation with the Federal Government in the Trinity River diversion by construction of powerhouses and the distribution facilities.

ARTHUR C. CHOSMAN,

Chairman, Board of Supervisors of Trinity County.

Mr. ASPINALL. The committee is next going to hear from our colleague, Congressman Scudder, who has a short statement to make at this time.

STATEMENT OF HON. HUBERT B. SCUDDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SCUDDER. Mr. Chairman and members of the committee, my name is Hubert B. Scudder and I represent the First Congressional District of the State of California. I appear before the committee in opposition to H. R. 4663 in its present form, which is now under consideration by your committee.

The Trinity River originates in Trinity County, the county east of Humboldt County, which is in my Congressional District. It flows through the northern part of Humboldt County in a northerly direction and joins the Klamath River at the town of Weitchpec, flowing northerly into Del Norte County and empties into the ocean at the town of Requa.

About 15 years ago the Corps of Army Engineers was authorized to make a survey of the water needs of this area. The survey was about 60 percent completed when by Presidential directive during World War II moneys were not made available for such investigations and the lack of funds thereafter caused the engineers to stop their survey.

About 3 years ago, the Board of Supervisors of Humboldt County asked the Bureau of Reclamation to make a survey of water and water needs of the north coast area of California. This survey has been in progress for about 3 years at a very substantial cost to the taxpayers of our country. It is estimated that the report will be completed in about 2 years. Until this report is completed, the potential need of water for expanding industry will not be known.

Therefore the people of Humboldt and Del Norte Counties are concerned as to whether sufficient water will be available to take care of the expanding economy, particularly as it affects the manufacture of wood products.

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TRINITY RIVER PROJECT, CALIFORNIA

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You are aware that the former Secretary of the Interior, Mr. Oscar Chapman, authorized this project by a letter of engineering feasibility some 2 months after his administration had been defeated at the polls, and was a deathbed authorization.

When the Interior Department appropriation bill for fiscal 1955 was under consideration, I appeared before the committee and I desire at this point to insert in the record the statement I made at that time.

MR. ASPINALL. Unless there is objection, it is so ordered.
(The statement above referred to is as follows:)

STATEMENT BY HON. HERBERT B. SCUDDER, MEMBER OF CONGRESS, BEFORE THE HOUSE APPROPRIATIONS INTERIOR SUBCOMMITTEE, FEBRUARY 19, 1954

TRINITY RIVER DIVERSION

Included in the Budget for the Bureau of Reclamation for the fiscal year 1955 is \$100,000 for the Trinity division of the Central Valley project. This amount is listed on the "Schedule of construction program, fiscal year 1954 and 1955" and is included under "Construction program" Trinity division.

The facilities of the Trinity River division are included in the justifications the same as they would be if they were officially authorized features of the project. It is my contention that there are valid questions as to the validity of the authorization.

The Trinity River project was authorized by former Secretary Chapman on January 2, 1953, before receiving the comments of the State of California. There is no record of the comments of the Department of Agriculture and other interested agencies having been received prior to the project authorization by the former Secretary. Ordinarily, comments of the Bureau of the Budget are received on projects of this magnitude before the report thereon is submitted to the Congress. Apparently the comments of the Bureau of the Budget were not submitted in the case of the Trinity project, since they do not appear in House Document 53.

The former Secretary did not make a finding of feasibility for the Trinity project alone as required by section 9 (a) of the Reclamation Act of 1939 but, instead, his finding of feasibility was based on including the Trinity project as part of the Central Valley project. While it may be argued that the former Secretary technically complied with the law, it certainly is apparent that he circumvented the intent of the provisions of section 1 of the Flood Control Act of 1941 which was designed to allow the affected States and other agencies an opportunity to give their views and perhaps objections on proposed projects and to present their views to Congress in cases where the findings of the Secretary might be open to question.

The views and comments of the State of California are included as House Document 147 (83d Cong., 1st sess.). I call the committee's attention to some of the comments in this document:

"3. The project is financially feasible if the electric power and water produced by it are sold at proper and adequate prices to cover the annual costs thereof.

"14. The price basis on which the Bureau of Reclamation bases its irrigation benefits, 1939-44 adjusted for a long-term outlook, is considered satisfactory. In estimating such benefits, however, increase in net income to water users only should be used since indirect irrigation benefits are conjectural and there are no direct means of obtaining payments for such benefits.

"15. Since there are no practicable methods or means of collecting for indirect benefits, and no statutory authority for such collections, only direct benefits, the power and water revenues, should be used in determining the financial feasibility of the Trinity River division project.

"16. There is no statutory authority for the utilization of the interest charge on the capital costs allocated to electric power and municipal and industrial water in paying off the capital cost allocated to irrigation as has been done in the report under review.

"17. Integration of the Trinity River division project with the Central Valley project could financially aid the latter project if proper and adequate rates for

water and electric power made available by the Trinity River division works were established. To accomplish this a rate for the electric power substantially higher than that given in the financial analyses in the report under review would be required.

"* * * Unless the energy were sold at a rate higher than that required for payment of annual charges on the power features, the revenue from power sales could not financially aid the irrigation features, or the Central Valley project. If the operations of the Trinity River division and Central Valley project were integrated."

As I have stated above the \$99,000 requested for the Trinity division is included under "Construction program." On page III 211 of the schedule of construction program contains a footnote—(3) "Includes \$100,000 general investigation funds." It may be assumed from the Bureau's construction program that the \$99,000 item is not to be considered as a strictly construction item but is to be a part of the general investigation funds.

However, the Trinity River division is included as part of the Central Valley project in the detailed proposed program of construction and the Trinity request is distinguishable from other construction requests for the Central Valley project only by a footnote.

It is my contention that the Trinity project should not have been included in the program of the justifications without complete and full explanation being included. Members of his committee might very easily be misled by the manner in which the Trinity requests were presented and, should the program be approved by this committee without comment, there may be those in the Bureau of Reclamation who would claim later that the Trinity project had become authorized by appropriation.

I recommend to this committee that in its report covering appropriations for the Central Valley project it include a clear and positive statement that no funds are being allowed for the Trinity River project, and that should the Bureau of Reclamation want to carry on its general investigations it might do so from funds requested and included in the general investigation fund appropriations.

I would also like to call the committee's attention to the fact that the House has passed H. R. 4551, to amend the Reclamation Project Act of 1930. This bill is designed to prohibit future authorizations by the Secretary of projects costing in excess of \$5 million. This bill is now pending in the Senate. I point this out in order to demonstrate that it is the feeling of the House of Representatives, at least, that projects such as Trinity, which will cost in excess of \$218 million, should be authorized not by any Secretary of the Interior, but only by the Congress.

The above are some of the more or less technical reasons for my thinking that no funds should be earmarked for the Trinity project by this committee. Quite aside from this is the fact that the project proposes to divert water from the north east watershed, which is in my congressional district, to the Sacramento Valley and eventually, possibly, to the San Joaquin valley of California. There may very well be some excess waters in this watershed which might be diverted to other areas which are in need of additional supplemental water. However, this north coast area is growing rapidly. There is increased activity in lumbering and other forest products. Before this Congress commits itself to allowing waters to be exported from this area I would like to be certain that we can be assured that all possible future needs of this area are first taken care of. Some of my people would probably like to appear before the appropriate congressional committee in hearings on this project and testify as to the anticipated future needs of that area. This opportunity should be afforded them before any commitments are made directly or indirectly for allowing the Trinity project to be regarded as authorized.

Mr. SCUDDER. Prior to the consideration of the appropriation bill, the Committee on Interior and Insular Affairs held hearings on H. R. 4551, which passed the House of Representatives on February 2, 1934. The Subcommittee on Appropriations took into consideration the legislative intent of Congress regarding authorization such as the death-bed authorization of Mr. Chapman on this particular project. There were two items in the budget pertaining to the Trinity River project, one for \$100,000 which permitted the continuation of a survey. This I did not object to. There was another item calling for \$99,000 which

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Mr. Sisk. That is all.

Mr. HALEY. Mr. Chairman, I yield back the balance of my time.
Mr. ASPINALL. Thank you, gentlemen, for your contribution to the hearing.

Mr. GEMES. Thank you very much. We are appreciative of this long time you have given us.

Mr. ASPINALL. The Chair at this time calls to the witness table Mr. Richard F. Denbo of the Eureka Chamber of Commerce, Eureka, Calif.

You may proceed with your oral presentation from the statement or as you see fit, Mr. Denbo.

STATEMENT OF RICHARD F. DENBO, MANAGER, EUREKA AND HUMBOLDT COUNTY CHAMBERS OF COMMERCE, EUREKA, HUMBOLDT COUNTY, CALIF.

Mr. Denbo. Mr. Chairman and members of the committee, I represent the Eureka Chamber of Commerce, the Humboldt County Chamber of Commerce, the Humboldt County Board of Supervisors, and the City Council of Eureka. I reside in Eureka, Humboldt County, Calif., and I believe that this is a minority report to the committee.

I not only get lost in these hearings but I have been lost in these buildings ever since I have been here.

Mr. ASPINALL. You are not alone in that respect.

Mr. DENBO. It is worse than the city hall in Eureka.

For many years the problem of water has been one of supreme importance to the people of California. The Bureau of Reclamation has scattered dams and canals over a greater portion of the State.

In 1952, when there had been presented a bill to Congress seeking authority to construct the Trinity River diversion project, the Humboldt County Board of Supervisors, the Humboldt County Chamber of Commerce, the Eureka Chamber of Commerce, and some 70 other organizations protested the Trinity River diversion. The position of these various organizations was reported in a resolution passed by the Board of Supervisors of Humboldt County on June 5, 1952. The position of these various groups today remains the same.

Until such time as there has been a determination of not only the need for Trinity River water, but until the needs of the people of the north coast area now and in the foreseeable future have been determined, Humboldt County will continue its opposition to the development of the Trinity River project.

In Humboldt County remains one of the last great virgin stands of lumber in the entire United States. According to Henry J. Vaux, dean of forestry, California University, there are 60 billion board feet of virgin timber in Humboldt County, Calif. In 1950 the forest industry in Humboldt County provided jobs for 8,700 persons. One person out of every three works directly in some phase of lumber or other wood-using industry. According to the State Labor Department of California, today there are 11,770 persons employed directly in the forest products industry in Humboldt County, Calif.

In 1953 the Board of Supervisors of Humboldt County sent our county agriculture agent on a tour of the United States to visit those areas that had been and were harvesting timber. After 3 months' survey of the areas in the United States from the Atlantic to the Pacific

and from Canada to Maine, the report was given by the agriculture agent. In this report he pointed up conservation, selective logging, and sustained yield; but above all the report maintained that we must conserve forever our water in order to perpetuate the growth of timber and for the remanufacturing of our forest products.

In December of 1954 the Humboldt County Board of Supervisors asked Henry J. Vaux, dean of the School of Forestry of California University to make a report on timber in Humboldt County. The report has now been turned in, in Bulletin 748 from the California Agricultural Experiment Station. This report states:

Humboldt County has never produced any pulpwood. A small amount of timber (8 million board feet per year) has recently been shipped to pulp mills elsewhere in California and an increasing volume of wood residue from saw mills in private plants. The contribution which the pulp industry is likely to make to the future development of the county will thus depend on the prospects for establishing a pulp industry within the area. The possibility of pulping would of course depend on perpetuating the ample water supply now potentially available.

In this same report Dean Vaux states:

The volume of a total residual material is very substantial, approaching 175 million cubic feet of wood in Humboldt County in 1953. Studies of sample logged-over areas indicate that sawlog and veneer material could be salvaged in certain areas but the bulk of logging residues in Humboldt County probably won't be usable until an active market for pulp wood is established in the county.

We have every reason to believe that within the next 1 to 5 years there will be established in Humboldt County, from 1 to 3 pulp plants. In fact, we are almost certain there will be 1 pulp plant under production in 12 months.

Humboldt County harvests approximately 1,200,000 board feet of timber each year. This is enough to construct 120,000 homes yearly; 60,000 are constructed in California each year.

In 1952 the Board of Supervisors of Humboldt County invited the Bureau of Reclamation to make a study of the present and future water needs for Humboldt County. We were assured at that time by those interests who wished to divert the Trinity River that no steps would be taken for this diversion until the final report of the Bureau was made which would definitely establish the present and future water needs of Humboldt County.

The Bureau has a staff of five men, plus office personnel, that have been surveying the water resources of Humboldt County for 3 years. However, it will be 2 years, in 1957, according to the Bureau office located in Eureka, until the final report is finished. It is our contention that Congress should not appropriate any funds for Trinity River diversion until this report is complete. It would seem that the needs of our area are unknown or the Bureau of Reclamation would not maintain an office in Humboldt County.

It is also significant to note that the State of California has authorized \$500,000 for the purpose of investigating the feasibility of establishing a salt water barrier in the upper part of San Francisco Bay to study the feasibility of the development of a tremendous reservoir trapping waters which at present flow into the Pacific Ocean. This flow averages about 30 million acre-feet per year.

H. R. 4663 gives no consideration to the present or future needs of the county of Humboldt or the north coast area of California. It is our contention that this is a power project as the Bureau of Reclamation or the State of California have done nothing to trap the flood-

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waters in the Sacramento area which amount to thousands of acre-feet yearly and overflow a great deal of that particular area in the vicinity of Sacramento. We readily admit that there are several million acre-feet of water that flow into the Pacific each year from the streams of Humboldt and Del Norte Counties; however, many of these streams are 40 or 50 miles in length and according to the Bureau of Reclamation it is not economically feasible to trap this water for irrigation or power.

There are 20,000 acres of agricultural ground in Humboldt County that are in need of irrigation, while 10,000 acres have some type of irrigation at the present moment. However, H. R. 4663 gives no consideration to the needs of water for the people of Humboldt County for agriculture, commerce, or industrial purposes. The north coast area is increasing in population at the rate of 70 percent every 10 years, while the rest of California is increasing at the rate of 50 percent each 10 years.¹

Therefore, the Board of Supervisors of the county of Humboldt, the Humboldt County Chamber of Commerce, the Eureka Chamber of Commerce, and 70 other civic organizations of this area, oppose any diversion of the Trinity River until the Bureau of Reclamation has finished its survey establishing the present and future water needs of our area.

If, however, Congress and this committee in its wisdom should decide to authorize the diversion of the Trinity River at this time, we believe that the Pacific Gas & Electric Co., or some other non-Federal agent should provide the power features, and pay full value for the use of falling water. This working partnership with the Government offers big advantages.

1. It would save the Federal taxpayers \$50 million in capital outlay for the power facilities.

2. Pacific Gas & Electric Co., or some other private enterprise firm, would pay \$3½ million per year for the use of the water. Over the project repayment period, net Government revenues would be \$36 million more than if the Bureau built the power facilities.

3. Pacific Gas & Electric Co., or some other private enterprise firm, would pay in additional taxes during the project repayment period \$70 million to the United States Government and \$65 million to the State and local governments.

4. Pacific Gas & Electric Co., or some other free enterprise firm, would pay more than \$1.3 million in taxes each year to Trinity, Shasta, and Sacramento Valley Counties and to the State of California.

5. By sharing the cost with Pacific Gas & Electric Co., or some other free enterprise utility company, would result in 130,000 more kilowatts of generating capacity, and 5 percent more water for irrigation. Pacific Gas & Electric Co., or free enterprise, would agree to supply low-cost power on an exchange basis for existing and future pumping plants of central California.

The Pacific Gas & Electric Co., during the year 1955, paid taxes to the county of Humboldt equaling \$743,000. They paid to the State of California, taxes of \$104,000,000. Humboldt County's rapid growth has placed a tax burden on its people for highways, schools, plus

¹Source: Department of Natural Resources, State of California.

various other services of government, that can only be borne through free enterprise. It is our contention that the United States Government should encourage free enterprise rather than provide those services such as power that bear the tax burden and keep the wheels of government moving.

We ask your careful consideration of the needs at present and in the future for the uses of water by the people in Humboldt County who bear a considerable part of the tax burden of our State and Nation.

Mr. ASPINALL. Thank you very much, Mr. Donbo. I am sorry we do not have more time, as there might be some questions.

The time set for hearing has expired.

The Chair has a request from Howard Bronson, vice president of the Investors League, Inc., of New York City, to have inserted at this place in the record a statement which indorses the partnership approach to the authorization.

Mr. SISK. Mr. Chairman, reserving the right to object—and I shall not object—I should like to make note of exception with reference to a statement on page 2, wherein he says in this letter that Mr. Dexheimer indicated that private developments of the power features not only would be acceptable but would prove beneficial to the Government. I do not believe Mr. Dexheimer's testimony bears out that statement.

Mr. ASPINALL. Your exception to the paper is in order. It is noted in the hearings and it will be considered when we get into the items.

Without objection the statement will be made a part of the record. (The statement is as follows:)

STATEMENT OF THE INVESTORS LEAGUE, INC., TO THE HOUSE RECLAMATION SUBCOMMITTEE ON THE SUBJECT OF TRINITY RIVER PROJECT IN CALIFORNIA

I am Howard Bronson, vice president of the Investors League, Inc., with headquarters at 175 Fifth Avenue, New York City, N. Y. The league I represent is the largest and most successful organization of investors, with thousands of members who reside in every State of the Union.

I am grateful for the opportunity to appear before this distinguished committee, and to register the support of the Investors League for private development of the power generation and transmission facilities of the Trinity River project in California.

I am not here as a representative of the utility industry, but rather as a spokesman for the investing public; those persons who have contributed in no small measure to building our industrial might to a point of world leadership and as such have created for our citizens the highest standard of living known to man.

We are keenly aware of the importance of this issue, not only as between public or private development of our power resources but also as it applies to our basic concepts of free enterprise. For here is a clear case of a private concern ready, willing, and able to do a job and do it well. We feel quite strongly that they should be allowed the right to do so.

I think President Eisenhower best expressed this viewpoint when in 1952 he stated: "No Federal project, large or small, will be undertaken which the people can actively do or help to do for themselves; no Federal project will be undertaken which can be handled by private enterprise." I know of no better situation to which this statement can apply than the one before you today.

In line with the administration's partnership policy, the report submitted to the Secretary of the Interior by the Reclamation Commission, Mr. Dexheimer, indicated that private developments of the power features not only would be acceptable, but would prove beneficial to the Government.

We thoroughly support this position of private enterprise-Federal Government partnership development of the Trinity River area.

Sound business administration dictates that government should encourage tax-paying enterprises, rather than expand tax-consuming Government projects.

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