

two biological opinions as well as the effects on power in light of the California energy crisis were not adequately analyzed in the EIS/EIR. The lead agencies published a NOI on March 25, 2002, announcing plans to produce the SEIS/SEIR and soliciting public input and comment on the process. A scoping meeting was held in Redding, California on May 9, 2002. On December 10, 2002, the court released a Memorandum Decision and Order regarding Cross-motions for Summary Judgment. That memorandum provided detailed direction regarding the preparation of the SEIS/SEIR that was not available for the previous scoping effort, including direction on the purpose statement for the SEIS/SEIR, alternatives to be considered in the SEIS/SEIR, and a timeline for completion of the SEIS/SEIR, although an appeal is pending. The Federal agencies have decided that the purposes of the National Environmental Policy Act (NEPA) will be furthered by preparing to address these issues in the SEIS/SEIR and are soliciting public input and comment on this process.

The primary objective of the Program is to meet Federal trust responsibilities for tribal fishery resources and restore the fisheries in the Trinity River basin to the level that existed prior to the construction of the Trinity River Division (TRD) of the CVP. These actions are authorized by the Act of August 12, 1955, 69 Stat. 719; the Trinity River Basin Fish and Wildlife Management Act, Pub. L. 98-541 (1984), as amended, and the Central Valley Project Improvement Act, Pub. L. 102-575, Title XXXIV (1992) (CVPIA). The FWS and Reclamation are the Federal co-leads for purposes of complying with NEPA, along with the Hoopa Valley Tribe which is also acting in a co-lead capacity. Trinity County functions as the state lead agency for purposes of complying with the California Environmental Quality Act (CEQA).

The purpose for the November 2000 EIS/EIR was to restore and maintain the natural production of anadromous fish on the Trinity River mainstem downstream of Lewiston Dam. The purpose of the SEIS/SEIR has been amended, consistent with court orders on the Program.

The revised purpose for the SEIS/SEIR is to restore and maintain the natural production of anadromous fish in the Trinity River basin downstream of Lewiston Dam, including fishery restoration to pre-TRD levels, and to meet the U.S. Government's tribal trust obligations. Secondary consideration is given to: (a) Meeting the other restoration goals of the Act of October

24, 1984, Pub. L. 98-541, as amended, and (b) Achieving a reasonable balance among competing demands for use of CVP water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

The SEIS/SEIR will update information on alternatives described in the October 2000 EIS/EIR. These alternatives include: Existing Conditions, No Action, Mechanical Restoration, Percent Inflow (modified to address the court's concerns), Flow Evaluation, and Maximum Flow. It is anticipated that two additional alternatives will also be evaluated; a 70 Percent Inflow Alternative and a Lower Flow Alternative that seeks to use lesser amounts of water in conjunction with non-flow related restoration actions.

In 1980, the FWS completed an EIS which estimated fish population reductions of 60 to 80 percent since completion of the TRD and estimated the loss of fishery habitats in the Trinity River to be 80 to 90 percent. The 1980 EIS concluded that insufficient streamflows represented the most critical limiting factor for the restoration of the fishery. Based on this EIS, the Secretary issued a decision in 1981 which increased flows on an interim basis and directed the completion of a scientific study to assess the instream flows and other measures needed to restore the Trinity River fishery.

In 1983, an EIS on the Trinity River Basin Fish and Wildlife Management Program was prepared by the FWS (U.S. Fish and Wildlife Service, 1983). The environmental document analyzed habitat restoration actions, watershed rehabilitation, and improvements to the Trinity River Salmon and Steelhead Hatchery (TRSSH). The EIS clarified that the hatchery's purpose was to mitigate for the loss of the 109 miles of habitat upstream of Lewiston Dam; whereas, the restoration and rehabilitation projects were explicitly designed to increase natural fish production below the dam.

In 1984, the Trinity River Basin Fish and Wildlife Management Act (Pub. L. 98-541) was enacted. It formalized the existence of the Trinity River Basin Fish and Wildlife Task Force (Task Force), and directed the Secretary of the Interior (Secretary) to implement measures to restore fish and wildlife habitat in the Trinity River Basin. The Task Force was directed at implementation of a fish and wildlife management program "to restore natural fish and wildlife populations to levels approximating those which existed immediately prior to the construction of the Trinity Division." In 1996, Congress

reauthorized and amended the original Trinity River Basin Fish and Wildlife Management Act (Pub. L. 104-143). The 1996 amendments clarified that "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 * * *."

In 1992, Congress passed the CVPIA (Pub. L. 102-575, Title XXXIV) in order to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley, including the Trinity River Basin. Specifically, the CVPIA provides at section 3406(b)(23) that "[i]n order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe and meet the fishery restoration goals of Public Law 98-541," the Secretary is directed to complete the Trinity River Flow Evaluation Study (TRFES) initiated pursuant to the 1981 secretarial directive to develop recommendations "based on the best available scientific data, regarding permanent instream fishery flow requirements and TRD operating criteria and procedures for the restoration and maintenance of the Trinity River fishery." The CVPIA also specifically provided for the Secretary to consult with the Hoopa Valley Tribe on the TRFES and, upon the Tribe's concurrence, to implement the restoration recommendations accordingly.

The FWS and the Hoopa Valley Tribe completed the Flow Study in June 1999. The draft EIS/EIR for the Trinity River Mainstem Fishery Restoration Program (TRMFRP) was prepared by the FWS, Reclamation, Trinity County, and the Hoopa Valley Tribe, and was completed in June 1999. The final EIS/EIR was completed in November 2000. A ROD selecting the alternative to be implemented for the TRMFRP was signed by the Secretary, with the concurrence of the Hoopa Valley Tribe, pursuant to section 3406(b)(23) of the CVPIA, and issued in December 2000. However, the EIR was not certified by Trinity County and it is not a finalized document under CEQA.

Subsequent to execution of the ROD, water and power interests in the Central Valley of California amended a previously filed lawsuit against the Federal agencies materially involved in either the decision making process for the ROD or the associated Endangered Species Act approvals for the TRMFRP (Reclamation, FWS, and NMFS), in Federal district court. Plaintiffs sought, and were granted a preliminary