

3.10 Tribal Trust

The United States has a trust responsibility to protect and maintain rights reserved by, or granted to, federally recognized tribes and individual Indians by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. The trust responsibility requires that all federal agencies, including Reclamation, take all actions reasonably necessary to protect Indian trust assets.

Indian trust assets are legal interests in property held in trust by the federal government for federally recognized Indian tribes or individual Indians. “Assets” are anything owned that has monetary value. “Legal interest” means there is a property interest for which there is a legal remedy, such as compensation or injunction if there is improper interference. Indian trust assets do not include things in which a tribe or individual Indians have no legal interest.

Indian trust assets can be real property, physical assets, or intangible property rights, such as a lease or a right to use something. Indian trust assets cannot be sold, leased, or otherwise alienated without the approval of the United States. While most Indian trust assets are located on-reservation, they can also be located off-reservation. Examples of things that can be Indian trust assets are land, minerals, hunting and fishing rights, water rights, and instream flows.

3.10.1 AFFECTED ENVIRONMENT/ENVIRONMENTAL SETTING

The need to restore and maintain the natural production of anadromous fish in the Trinity River mainstem originates partly from the federal government’s trust responsibility to protect the fishery resources of the region’s Indian tribes. The Trinity River Basin Fish and Wildlife Restoration Act of 1984 (Public Law 98-541) expressly acknowledges tribal interest in the basin’s fishery resources by declaring that the measure of successful restoration of the Trinity River fishery includes the “ability of dependent tribal...fisheries” to participate fully, through enhanced in-river “harvest opportunities, in the benefits of restoration.” In addition, the 1992 CVPIA specifically recognizes the federal trust responsibility in regard to the Trinity River fishery. The project could potentially affect anadromous fish, non-anadromous fish, water, wildlife, vegetation, and overall riverine health. These impacts could consequently affect the sociocultures and economies of tribes.

This section focuses principally on the interests of the Hoopa Valley and Yurok Tribes since, of the Indian tribes of the Klamath/Trinity Region, their interests could be the most directly affected by the project. It should be understood, however, that potential project impacts are pertinent to the Karuk and Klamath people as well, since they share a common regional heritage.

Regional Setting

The United States’ recognition of the importance of rivers and fish to the Indian people of the Klamath/Trinity Region is exemplified by the very shape and location of the lands first set aside for their reservations. The Secretary’s own instructions at the time were “to select these reservations from such ‘tracts of land adapted as to soil, climate, water privileges, and timber, to the comfortable and permanent

accommodation of the Indians” (U.S. Fish and Wildlife Service et al. 2000). In 1855, Indian Agent S. Whipple, when speaking of the Yurok, noted that, “The river is abundantly supplied with Salmon. A fine large fish quite easily taken by the Indians and which is very properly regarded by the Indian as his staff of life” (U.S. Fish and Wildlife Service et al. 2000).

In that same year, President Pierce established the Klamath River Reservation. The reservation (not to be confused with the Klamath Reservation in Oregon) was designated as a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River for a distance of approximately 20 miles. This reservation was created entirely within the aboriginal territory of the Yurok. Although the federal government’s intent was to eventually move all the region’s Indians onto the Klamath River Reservation, only some Yurok and Tolowa were moved. Flooding along the Klamath River in 1862 led to the closing of the area’s Indian Bureau office and contributed to the erroneous belief that the reservation had been abandoned, though it was still occupied by the Yurok (U.S. Fish and Wildlife Service et al. 2000).

On August 21, 1864, the DOI issued a proclamation and instructions that established the Hoopa Valley Reservation on the Trinity River pursuant to legislation enacted by Congress that same year. The reservation is 12 miles square and bisected by 15 miles of the river (it has often been called the Square or the 12-mile Square). In 1876, President Grant issued an Executive Order formally establishing the boundaries of the Hoopa Valley Reservation, and provided that the land contained within those boundaries “be withdrawn from public sale, and set apart in California by act of Congress approved April 8, 1864” (U.S. Fish and Wildlife Service et al. 2000).

Efforts soon began to provide a single contiguous homeland for the region’s Indian people by connecting the Klamath River Reservation to the Hoopa Valley Reservation. Paris Folsom, a Special Agent for the DOI, proposed that the two reservations be connected in his “Report of Special Agent on Conditions and Needs of Non-Reservation Klamath Indians,” sent to the Commissioner of Indian Affairs in 1885.

In 1891, President Harrison extended the Hoopa Valley Reservation from the mouth of the Trinity River to the ocean, thereby encompassing and including the Hoopa Valley Reservation, the original Klamath River Reservation, and the connecting strip between. By that time, as a result of the Dawes Act of 1887, much of the Klamath River Reservation and extension lands (the 20-mile strip that connected the two reservations is commonly referred to as the “Connecting Strip” or “Extension”) not already claimed as allotments by resident Indians had been opened up to non-Indian settlement. This led to checkerboard ownership of the Yurok portions of both the Extension and former Klamath River Reservation. Through various means, several timber companies quickly consolidated and heavily logged much of this land.

From 1891 through 1988, the Hoopa Valley Reservation was composed of the Hoopa Valley Square, the Extension, and the original Klamath River Reservation. In 1988, Congress, under the Hoopa-Yurok Settlement Act, separated the Hoopa Valley Reservation into the present Yurok Reservation (a combination of the original Klamath River Reservation and Extension) and Hoopa Valley Reservation. Figure 3.10-1 shows the current reservation boundaries.

Indian Federally Reserved Rights

By first creating reservations “for Indian purposes,” the United States sought to provide the Hoopa Valley and Yurok Tribes with the opportunity to remain mostly self-sufficient, exercise their rights as sovereigns, and maintain their traditional ways of life (U.S. Fish and Wildlife Service 2000). Implicit in this objective was an expectation that the federal government would protect the Tribes and their resources, a protection that extended beyond reservation borders.

The United States has a trust responsibility to protect tribal trust resources. In general, this tribal trust responsibility requires that the United States protect tribal fishing and water rights, which are held in trust for the benefit of the tribes (U.S. Department of the Interior 1995). This trust responsibility is one held by all federal agencies. For the project, Reclamation is obligated to ensure that project operations do not interfere with the tribes’ senior water rights. Pursuant to its trust responsibility and consistent with its other legal obligations, Reclamation must also prevent activities under its control that would adversely affect Tribal fishing rights, even when those activities take place off-reservation.

Federally Reserved Indian Fishing Rights

Salmon, steelhead, sturgeon, and lamprey that spawn in the Trinity River pass through the Hoopa Valley and Yurok Reservations and are harvested in tribal fisheries. The fishing traditions of these tribes stem from practices that far pre-date the arrival of non-Indians. Accordingly, when the federal government established what are today the Hoopa Valley and Yurok Indian Reservations on the Trinity and lower Klamath Rivers, it reserved for the benefit of the Indian tribes of those reservations a right to the fish resources in the rivers running through them. The Yurok and Hoopa Valley Tribes’ federally reserved fishing rights entitle them to take fish for ceremonial, subsistence, and commercial purposes. The United States has long recognized the rights of the Hoopa Valley and Yurok Tribes of the Klamath/Trinity River basin to fish. The federal government, as trustee, has an affirmative obligation to manage federally reserved Indian rights for the benefit of federally recognized Indian tribes. Federally reserved Indian fishing rights are vested property rights held in trust by the United States for the benefit of the Indians. These rights have been acknowledged and confirmed by the executive, legislative, and judiciary branches of the federal government in a number of authorities including: (1) Secretarial Issue Document on Trinity River Fishery Mitigation, issued January 14, 1981; (2) Opinion of the Solicitor of the DOI re: Fishing Rights of the Yurok and Hoopa Valley Tribes (M-36979: October 4, 1993); (3) the CVPIA (3406 (b) (23)); and (4) *Parravano v. Babbitt*, 837 F. Supp. 1034 (N.D. Calif. 1993), 861 F. Supp. 914 (N.D. Calif. 1994), affirmed 70 F.3d 539 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996).

In most cases, federally reserved Indian fishing rights cannot be supplanted by state or federal regulation. The above-referenced 1993 Solicitor’s opinion: (1) reaffirms the historic and legal basis of the federally reserved fishing rights of the Hoopa Valley and Yurok Tribes; (2) acknowledges the federal government’s cognizance of the importance of fish to these Indians at the time it first established reservations on their behalf; (3) concludes that the tribes’ federally reserved fishing rights entitle them to harvest quantities of fish on their reservations sufficient to support a moderate standard of living, or 50 percent of the harvestable share of the Klamath-Trinity basin fishery, whichever is less; (4) recognizes that under the

current depleted condition of the fishery, a 50 percent allocation does not adequately meet the tribes' needs; and (5) argues that it was the degree of the Hoopa Valley and Yurok tribes' dependence on fisheries at the time their reservations were first created or expanded, and not the tribes' specific uses of the fish, that is relevant in quantifying their federally reserved fishing rights.

Today, the reserved fishing right includes the right to harvest quantities of fish that the Indians require to maintain a moderate standard of living, unless limited by the 50 percent allocation. Specifically, the tribes have a right to harvest all trust species of Klamath and Trinity River fish for their subsistence, ceremonial, and commercial needs. Tribal harvest of these species is guided by conservation requirements outlined in carefully developed tribal harvest management plans.

Water Rights

In addition to fish, the tribes have reserved rights to water. The concept of reserved rights in general, and Indian reserved water rights specifically, originated just after the start of the 20th Century with *Winters v. United States*, 207 U.S. 564 (1908). The ruling in this case, commonly referred to as the *Winters Doctrine*, states that when the federal government established a reservation, it implicitly reserved a quantity of water necessary to fulfill the purposes of said reservation. Generally, all original documents related to the establishment of reservations—treaty, executive order, or statute—indicate, at a minimum, that the purpose of the reservations is to provide a permanent home for the tribe(s) in question. In cases where reservations have been created with specific language stating or implying reserved fishing, hunting, gathering, or other rights, the *Winters Doctrine* has been interpreted to mean that adequate water supplies for these purposes have been reserved (even in addition to more general uses; see *U.S. v. Adair*, 723 F.2d 1410 [9th Cir. 1983]).

The DOI Solicitor's office reaffirmed these rights with respect to Reclamation's activities, stating that "Reclamation is obligated to ensure that project operations not interfere with the Tribes' senior water rights. This is dictated by the doctrine of prior appropriations as well as Reclamation's trust responsibility to protect tribal trust resources" (U.S. Department of the Interior 1995). Furthermore, the Solicitor's office notes that the Secretary, "through Reclamation, must operate reclamation projects consistent with vested, fairly implied senior Indian water rights" (U.S. Department of Interior 1995). Further, absent a "completed adjudication or other determination of the senior water rights," projects must be "operated based on the best available information."

Rights to Wildlife and Vegetation Resource

While the focus of the legal history surrounding Indian rights to resources has concentrated on water and fisheries, it is important to recognize that other resources, such as wildlife and vegetation, are extremely important to the tribes, and the tribes have assessed that these are no less reserved. In the case of the Hoopa Valley and Yurok Tribes, the decline in the health of the region's rivers has limited the availability of grasses and other plants important to traditional basketry, art, and medicine. Thus, while anadromous fish are the focus of the TRRP, other trust assets such as vegetation are embodied in the federal government's trust responsibility and, accordingly, need to be considered in the decision-making process.

Potentially Affected Indian Trust Assets

Indian tribes of the Klamath/Trinity Region have firmly established federally protected rights to numerous natural resources. These general resource groupings represent culturally important Indian trust assets. A partial list of trust assets is presented in Table 3.10-1. While each tribe has its own uses for the species and resources listed, the table provides a general summary of what these uses are.

TABLE 3.10-1.
PARTIAL LIST OF KLAMATH/TRINITY REGION TRIBAL ASSETS

Asset	Primary Uses by Tribes
<i>Aquatic Resources^a</i>	
Water	Subsistence, ceremonial, commercial, medicine
Fall Chinook salmon	Subsistence, ceremonial, commercial
Spring Chinook salmon	Subsistence, ceremonial, commercial
Summer steelhead	Subsistence, ceremonial, commercial
Fall steelhead	Subsistence, ceremonial, commercial
Winter steelhead	Subsistence, ceremonial, commercial
Coho salmon	Subsistence, ceremonial, commercial
Pacific lamprey	Subsistence, ceremonial, commercial
Sturgeon	Subsistence, ceremonial, commercial
Eulachon	Subsistence, ceremonial, commercial
<i>Terrestrial Resources</i>	
Willow shoots	Basketry, ceremonial
Cottonwood	Basketry
Wild grape	Basketry
Bulrush	Basketry
Hazel sticks	Basketry and weaving, ceremonial
Tules	Medicine
Spearmint	Medicine, subsistence
Blackberries	Subsistence
Bear	Subsistence
Bald eagle	Ceremonial
Blue heron	Ceremonial
Mallard	Ceremonial

^aWhile many of the fish listed are not currently commercially harvested by the tribes of the region, all these trust species were historically used for commercial purposes and the tribes continue to have the right for commercial harvest.

Cultural Environment

Native uses of natural resources and the cultural significance of those resources have developed over many centuries. Since time immemorial, native people have lived in the heavily forested drainages of the Klamath and Trinity rivers and adjacent streams in northwestern California. Over time, they learned to efficiently use the natural bounty of their territories; hunting, fishing, and gathering were the foundation of their societies. Tribes in the area included the Chilula, Hoopa Valley, Nongatl, Tsnungwe, and Whilkut, which spoke Athabascan languages; the Chimariko, Karuk, and Shasta, which spoke Hoka

languages; the Wintun, which spoke a Penutian language; and the Wiyot and Yurok, which spoke Algonkian languages.

Some of these tribes, such as the Chilula, no longer exist. Others, including the Chimariko and Wintu, have not been officially recognized by the United States as a distinct and sovereign people. In fact, among the Indian peoples still present within the region, only the Hoopa Valley, Karuk, Klamath, and Yurok Tribes have received this recognition.

The aboriginal lands of the Hupa people are centered on the drainages of the Hoopa Valley of the Trinity River. The aboriginal lands of the Yurok were generally centered on the Klamath River drainage from the mouth of the river at the Pacific Ocean up to and including the Slate Creek drainage. Yurok ancestral territory also extends up the Trinity River to Tank Creek and includes the village of Oslegoits, 6 miles from the Trinity's confluence with the Klamath.

There have always been strong social, cultural, and economic ties among the tribes of the Klamath/Trinity basin, based in large part on a shared reliance on the region's rivers and associated resources, particularly salmon. This reliance extends well beyond subsistence and commerce to the cultural and social fabric of their societies, as evidenced by their traditional, ceremonial, and spiritual ways of life that focus and center on the rivers and the fish, wildlife, and vegetation they support. For Indians of the Klamath/Trinity Region, the interaction and identification with the natural environment so defines their cultures, lifestyles, and religions that its degradation has had a profoundly devastating impact.

Local Setting

Based on consultation with the Tribes and Reclamation, the rehabilitation sites contain Trust resources, including fish, vegetation, and wildlife. While no specific use of these sites by the Tribes has been identified, the Trinity River provides a valuable corridor that connects these resources to the Hoopa Valley and Yurok Tribes.

3.10.2 ENVIRONMENTAL CONSEQUENCES/IMPACTS AND MITIGATION MEASURES

The purpose of this section is to evaluate the potential impacts of the alternatives on tribal trust assets and the subsequent effects those impacts may have on the Indian tribes of the Klamath/Trinity basin.

Methodology

While the project is aimed at improving the river's anadromous fisheries, an assessment of how project construction may actually affect the Indian trust assets of the Hoopa Valley and Yurok Tribes must be performed, as directed in the DOI *Departmental Manual, Part 512, Chapter 2*, and Reclamation's Indian Trust Asset Policy. Toward this end, the Indian trust asset impact evaluation focuses on the potential effect of the project on the health of the Trinity River because the river's overall health is a primary factor in determining the availability of fish and, therefore, the ability of the Hoopa Valley and Yurok Tribes to exercise their federally reserved fishing rights. Thus, increased numbers of Chinook salmon and Pacific lamprey, and the rejuvenation of other trust assets, represent an expected beneficial byproduct of improved riverine health. The potential tribal trust impacts are not evaluated on a trust asset by trust asset basis.

Significance Criteria

No specific significance criteria were applied in the evaluation of potential consequences on tribal trust assets, although any potential modification of, or change in, the quantity or quality of downstream tribal trust assets is evaluated. Notably, nothing in CEQA expressly requires lead agencies to consider projects' impacts on tribal trust resources as a distinct category of impacts. Instead, with its focus on the physical environment, CEQA requires agencies to focus on impacts to specific natural or environmental resources, some of which, such as fish, wildlife, and water quality, might be indirectly related to tribal trust values.

Although CEQA does not expressly require the application of specific significance criteria for potential impacts to Indian trust assets, NEPA requires the evaluation of potential impacts to Indian trust assets as a distinct category. This evaluation assessed the impacts of the project from any modification or change in the value, use, quantity, quality, or enjoyment of downstream Indian trust assets.

Impacts and Mitigation Measures

Table 3.10-2 summarizes potential impacts on Indian trust assets that would result from implementation of the project.

TABLE 3.10-2.
SUMMARY OF TRIBAL TRUST IMPACTS OF THE PROPOSED ACTION, NO-ACTION ALTERNATIVE, AND ALTERNATIVE 1

Impact	Project Site	No-Action Alternative	Proposed Action	Alternative 1	Proposed Action with Mitigation	Alternative 1 with Mitigation
1. Implementation of the project may reduce the quantity or quality of trust assets.	All sites	NI	LS	LS	N/A ¹	N/A ¹

Notes:

LS = Less than Significant S = Significant SU = Significant Unavoidable
NI = No Impact B = Beneficial N/A = Not Applicable

¹Because this potential impact is less than significant, no mitigation is required.

All Sites (Conner Creek, Valdor Gulch, Elkhorn, and Pear Tree Gulch)

Impact 3.10-1: Implementation of the project may reduce the quantity or quality of Indian trust assets.
No Impact for No-Action Alternative, Less-than-Significant Impact for Proposed Action and Alternative 1

No-Action Alternative

Under the No-Action Alternative, the project would not be implemented and no impacts to a tribal trust asset would occur.

Proposed Action and Alternative 1

Under either alternative, the Trinity River would continue to support tribal trust assets. The short-term impacts described in Section 3.3 (Geology, Fluvial Geomorphology, and Soils); Section 3.5 (Water

Quality); Section 3.6 (Fishery Resources); and Section 3.7 (Vegetation Wildlife and Wetlands) would occur if the project is implemented. These impacts are expected to be short-term and to be outweighed by the overall benefits to tribal trust assets through implementation of the TRRP.

Mitigation Measures

No-Action Alternative, Proposed Action, and Alternative 1

Since no significant impact was identified for the alternatives, no mitigation is required.

Significance after Mitigation: N/A