

## **Comments and Responses to Comments on EA/Final EIR**

## *Comments and Responses to Comments on the EA/Draft EIR*

### *2.1 Introduction*

Comments received on the EA/Draft EIR do not indicate new significant impacts or “significant new information” that would require recirculation of the EA/Draft EIR pursuant to the CEQA *Guidelines* Section 15088.5. Because no new significant environmental issues were raised during the 45-day comment period for the EA/Draft EIR, the Regional Water Board, the CEQA Lead Agency, directed that an EA/Final EIR be prepared.

### *2.2 List of Commenters*

Table 2-1 identifies local property owners and representatives of agencies and organizations who submitted comments on the EA/Draft EIR:

TABLE 2-1. Commenters on Canyon Creek EA/Draft EIR

Commenter	Individual or Signatory	Agency/Affiliation	Date Prepared	Date Received
1	Pennie Yingling Ann Humphreys	Local property owners Conner Creek Site	March 20, 2006	March 20, 2006
2	Mark Stopher for Donald B. Koch	<b>California Department of Fish and Game</b>	March 24, 2006	March 24, 2006
3	Becky D. Sheehan Kronick, Moskoviz, Tiedemann & Girard	San Luis & Delta-Mendota Water Authority and Westlands Water District	March 27, 2006	March 27, 2006
4	John W. Hayward	Nor Rel Muk Nation	January 26, 2006	January 26, 2006
5*	Howard McConnell	Yurok Tribe	N/A	April 14, 2006

Note: Responsible and trustee agencies under CEQA are noted with **bold** text.

\*Letter of support. No response required.

### *2.3 Comments and Responses to Comments*

The five letters commenting on the EA/Draft EIR are reproduced on the following pages. Immediately following each of the comment letters are the responses to each. No response is provided to the letter written by the Yurok Tribe because the letter expressed support for the project and does not require a reply.

To assist in referencing comments and responses, each commenter has been assigned a number and each specific comment a letter of the alphabet. Responses are coded to correspond to the codes used in the margin

of the comment letters. Where changes to the EA/Draft EIR text result from responding to comments, those changes are included in Chapter 3 of this EA/Final EIR. Comments that present opinions about the project or that raise issues not directly related to the substance of the EA/Draft EIR are noted without a detailed response.

1

March 20, 2006



Trinity River Restoration Program  
P.O. Box 1300  
Weaverville, CA 96048

Attention: Brandt Gutermuth  
Environmental Specialist

Ref: Environmental Assessment/Draft Environmental Impact Report  
for the Canyon Creek Suite of Rehabilitation Sites: Trinity River Mile 73 to 78

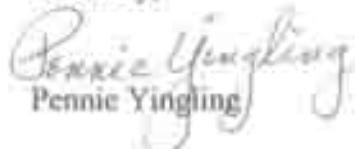
Dear Mr. Gutermuth:

Thank you so much for meeting with us at our respective properties on March 15. We think it was useful for you to see the changes wrought by the weather over the past few months since it has made us rethink our positions regarding our properties on the right bank of the river. a

In the above referenced report, at the Connor Creek site, we are encouraging the addition of R-1 and R-2 Riverine Rehabilitation Areas as designated on the Proposed Action to Alternative 1. b

We will be interested to see the forthcoming changes.

Sincerely,

  
Pennie Yingling

  
Ann Humphreys

*This page intentionally left blank.*

## Response to Comment Letter 1

Comment letter 1 contains two distinct comments. The following is a summary of the comments and responses to the comments:

**Comment 1a.** This comment acknowledges a meeting between local landowners and Reclamation staff on March 15, 2006 to observe the erosion caused by high 2006 Trinity River flows on the landowners' properties. This comment also indicates that the landowners had reconsidered their objection to riverine activities at the Conner Creek Rehabilitation Site.

**Comment 1b.** In this comment, landowners Pennie Yingling and Ann Humphreys encourage Reclamation to select the Proposed Action, including riverine activities at R-1 and R-2 at the Conner Creek Rehabilitation Site. This comment removes the former controversy concerning activities at the Conner Creek site and provides the basis for revising the significance of Impact 3.14-1 from "significant and unavoidable" to "less than significant" at the Conner Creek Rehabilitation Site. Section 3.14 (Aesthetics) has been revised to reflect these comments. The revisions are included in Chapter 3 of this EA/Final EIR.

*This page intentionally left blank.*

**DEPARTMENT OF FISH AND GAME**<http://www.dfg.ca.gov>601 Locust Street  
Redding, CA 96001  
(530) 225-2300

2

March 24, 2006

Mr. Brandt Gutermuth, Environmental Specialist  
Trinity River Restoration Program  
United States Department of the Interior – Bureau of Reclamation  
Post Office Box 1300  
Weaverville, California 96001

**Canyon Creek Suite of Rehabilitation Sites: River Mile 73-78  
Environmental Assessment/Draft Environmental Impact Report (EA/DEIR)**

Dear Mr. Gutermuth:

The Department of Fish and Game (DFG) has reviewed the subject EA/DEIR. The document examines the environmental issues, alternatives and impacts associated with proposed mechanical channel and bank modifications on the Trinity River at four sites between Junction City and Helena: Conner Creek site, Valdor Gulch site, Elkhorn site and Pear Tree Gulch site. The proposed action is the second project developed in response to the mechanical channel rehabilitation component of the Department of the Interior's 2000 Record of Decision for restoration of Trinity River anadromous fish populations. DFG offers the following comments in our role as trustee agency under the California Environmental Quality Act (CEQA).

DFG concurs with the selection of the Proposed Action. We believe the project will have positive benefits toward restoration of salmon and steelhead habitat by reconnecting the river to its historical floodplain and providing much needed rearing habitat for juvenile salmonids.

The document discusses the significance of impacts to riparian vegetation communities in two sections, at Impact 3.7-1 (page 3.7-38) and at Impact 3.7-2 (page 3.7-40). At Impact 3.7-1, impacts to (losses of) wetlands and riparian vegetation are considered significant. Permanent impacts to jurisdictional riparian wetlands are estimated at 6.24 acres for the Proposed Action. Revegetation of riparian areas is proposed as mitigation, however, no replacement ratio, level of effort or monitoring success criteria are established. Impact 3.7-2 indicates that the loss of upland plant communities under the Proposed Action will be less than significant. Permanent losses of montane riparian vegetation are estimated at 20.24 acres, or 21 % of the total montane riparian vegetation among the four sites. No mitigation is proposed, however, once again a replanting effort is suggested (page

a

b



3.7-41) with no replacement ratio, level of effort or monitoring success criteria.

DFG considers any loss of riparian vegetation as potentially significant and worthy of mitigation. At a minimum, an appropriate mitigation goal should be 1:1 replacement of all montane riparian habitat permanently impacted by the project. This can occur through a combination of natural recruitment and active revegetation. We would support a mitigation approach that relied on planting "islands" or "pods" of riparian vegetation if (coupled with natural recruitment) it lead to a 1:1 replacement of montane riparian habitat. We recommend that performance be assessed over a five year period. Monitoring measures can be developed that rely on sampling and fixed point photographs to minimize costs.

On March 15, 2006 you supplied Environmental Scientist Bruce Webb with text and table revisions of Impacts 3.7-1 and 2, including revised Tables 3.7-6 and 3.7-7. You explained these revisions are the result of redefining the montane riparian component as being above the 6,600 cfs 1.5 year recurrence flow level under the ROD, rather than including the riparian vegetation currently existing below that level due to pre-ROD flows. However, this approach incorrectly defines the baseline condition for CEQA review. The baseline condition to correctly analyze losses of riparian habitat is the current pre-project condition, not the hypothetical vegetation which would exist if a 6,600 cfs ROD flow existed before the current vegetation communities developed. Irrespective of the baseline condition, redefining the montane riparian losses per the revised Table 3.7-7 would still cause an 8.4% reduction in the montane riparian vegetation which, as stated above, DFG feels merits a minimum 1:1 replacement.

The document states at Impact 3.7-6 that the Proposed Action and Alternative 1 could have significant impacts on little willow flycatcher (*Empidonax traillii brewsteri*) and states at Impact 3.7-9 that the Proposed Action and Alternative 1 could have significant impacts on California yellow warbler (*Dendroica petechia brewsteri*) and yellow-breasted chat (*Icteria virens*). Both impact discussions rely on previous Mitigation Measure 3.7-1 to reduce nesting and foraging habitat impacts because there will be no net loss of riparian habitat. (Please note that the discussion of Impact 3.7-9 incorrectly references Mitigation Measure 3.7-3.) However, as discussed above, the revegetation commitment contained in Mitigation Measures 3.7-1 and 3.7-2 lacks the specificity to conclude that there will be no net loss, and lacks a clear adaptive approach to increase revegetation efforts based on clear success criteria.

Mitigation Measure 3.7-6a provides that potential impacts to little willow flycatcher (*Empidonax traillii brewsteri*) will be avoided or minimized if construction is

scheduled to avoid the June 15 to July 31 nesting season. DFG believes the nesting avoidance period should be June 1 to July 31.

Thank you for the opportunity to comment on the EA/DEIR. If you have any questions regarding our comments, please contact Environmental Scientist Bruce Webb at (530) 225-2675.

Sincerely,



 **DONALD B. KOCH**  
Regional Manager

cc: Messrs. Mark Stopher, Neil Manji, Craig Martz, Steven Turek, Bruce Webb  
California Department of Fish and Game  
601 Locust Street  
Redding, California 96001

*This page intentionally left blank.*

## Response to Comment Letter 2

This comment letter contains seven distinct comments. Following are the responses to those comments.

**Comment 2-a.** Reclamation and the Regional Water Board acknowledge that Impact 3.7-1 identifies a significant impact to jurisdictional waters and riparian habitat. Although Table 3.7-6 in the EA/Draft EIR accurately shows the impacts to jurisdictional waters, it has been revised to include impacts to riparian habitat. Table 3.7-7 has also been revised to show the impacts to riparian habitat in conjunction with other Wildlife Habitat Relationships (WHR) habitat types. In addition, Figures 3.7-3a-d have been revised to depict the location of riparian impacts (montane riparian) in accordance with the aforementioned tables. The revised tables and figures are included in Chapter 3 of this document. In response to this comment, Mitigation Measure 3.7-1 [shown as Mitigation Measure 15 in Chapter 4 of this EA/Final EIR]<sup>1</sup> has been revised to incorporate changes requested by the commenter.

**Comment 2-b.** See response to Comment 2-a.

**Comment 2-c.** The baseline condition used to estimate impacts to upland habitat, including montane riparian habitat, has been revised. The revised baseline condition is based on the habitat types present and their extent during low-flow conditions on the Trinity River rather than the 6,600 cfs 1.5-year recurrence flow level under the ROD (see Chapter 3, revised Table 3.7-7 and Revised Figures 3.7-1a-d). In addition, habitat dominated by bricklebrush has been reclassified as barren, rather than riparian. Impacts to riparian habitat (i.e., montane riparian habitat) are discussed under Impact 3.7-1 and are considered significant. Revised Mitigation Measure 3.7-1 [shown as Mitigation Measure 15 in Chapter 4] has been developed to ensure that no net loss of riparian habitat would occur as a result of channel rehabilitation projects implemented under the auspices of the TRRP.

**Comment 2-d.** See response to Comment 2-a.

**Comment 2-e.** The discussion of Impact 3.7-9 has been corrected to refer to Mitigation Measure 3.7-1b [shown as Mitigation Measure 15a in Chapter 4] as discussed in response to comment 2-a.

**Comment 2-f.** In response to this comment, Mitigation Measure 3.7-1 [shown as Mitigation Measure 15 in Chapter 4] has been revised to reflect changes requested by the commenter. Response to Comment 2-a provides additional information on this topic.

**Comment 2-g.** The nesting avoidance period for the little willow flycatcher has been extended. The avoidance period is from June 1 to July 31, as suggested by CDFG.

---

<sup>1</sup> Bracketed wording “[ ]” indicates text that was not included in the original response letter to CDFG

*This page intentionally left blank.*

March 27, 2006

VIA FACSIMILE: 530-623-5944

VIA EMAIL: [bgutermuth@mp.usbr.gov](mailto:bgutermuth@mp.usbr.gov).

Brandt Gutermuth  
P.O. Box 1300  
Weaverville, CA 96093

Re: Environmental Assessment / Environmental Impact Report for Canyon  
Creek Suite of Rehabilitation Sites: Trinity River Run Mile 73 to 78

Dear Mr. Gutermuth:

This letter is written on behalf of the San Luis & Delta-Mendota Water Authority ("Water Authority") and Westlands Water District ("Westlands"). The Water Authority and Westlands appreciate this opportunity to comment on the Environmental Assessment and Environmental Impact Report for the Canyon Creek Suite of Rehabilitation Sites: Trinity River Run Mile 73 to 78 ("Canyon Creek EA/EIR"). Westlands is a California water district with a contractual right to receive Central Valley Project ("CVP") water from the Bureau of Reclamation ("Reclamation"). Westlands provides water for the irrigation of approximately 600,000 acres on the west side of the San Joaquin Valley in Fresno and Kings Counties. The Water Authority consists of 32 water agencies providing service for agricultural, urban, and wildlife management purposes in the western San Joaquin valley, San Benito and Santa Clara counties. The Authority's members deliver water to more than 1.3 million acres of the nation's most productive farm lands, 1.7 million California residents, and over 150,000 acres of some of the State's most important wildlife refuges in the Pacific Flyway.

As federal water contractors for the Central Valley Project ("CVP"), the Water Authority and Westlands have an interest in the appropriate use of the Central Valley Project Improvement Act ("CVPIA") Restoration Fund. While the Canyon Creek EA/EIR is silent as to the source of the funding for this project, the budget for the Trinity River Mainstem Fishery Restoration Program ("Restoration Program") identifies the CVPIA as a major source of funding for the program, including the mechanical restoration component that is being implemented through the approval of the Canyon Creek project. <http://www.trrp.net>. The CVPIA section that addresses fishery restoration on the Trinity River is CVPIA section 3406(b)(23). That section, however, only addresses certain identified activities to increase flows in the Trinity River, which are activities that have been completed and never included physical restoration activities. The

CVPIA does not otherwise authorize the use of the Restoration Fund for the Canyon Creek project or any other Trinity River mechanical restoration project.

a

The Water Authority and Westlands have concerns related to the California Environmental Quality Act ("CEQA") compliance for the Canyon Creek Suite of Rehabilitation Sites. Trinity County served as the CEQA lead agency for the final Trinity River Mainstem Fishery Restoration Program Environmental Impact Statement / Environmental Impact Report ("Restoration Program EIS/EIR") in 2000. The County of Trinity, however, has never certified the Restoration Program EIS/EIR, or any other CEQA compliance document for the Restoration Program. The Canyon Creek project is part of that larger program. By proceeding with parts of the program without completing the program level review, the state and local agencies involved are piecemealing the CEQA review.

CEQA applies to discretionary approvals of "projects" that may cause significant adverse environmental impacts. Pub. Res. Code § 21080(d). CEQA and its implementing regulatory Guidelines broadly define the term "project" to mean "the whole of an action, which has the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." 14 Cal. Code Regs., § 15378(a) (emphasis added). Thus, the term "project" is defined as the whole activity to be carried out and "which may be subject to several discretionary approvals by governmental agencies" but "does not mean each separate governmental approval." 14 Cal. Code Regs., § 15378(c). Thus, the North Coast Regional Water Quality Control Board ("Regional Board"), and the other state and local agencies, may not narrow the scope of their environmental impact analysis by defining the "project" in terms of small sub-set of discretionary approvals, when the action approved is admittedly a necessary part of a much larger "project" whose significant adverse environmental impacts go far beyond those attributable to just the narrowly defined action being approved.

b

The Regional Board, as the lead agency for the Canyon Creek Suite of Restoration Projects, cannot justifiably take the position that it may now proceed with project level implementation of the Restoration Program because the Regional Board cannot change the decision made in the program record of decision signed by the federal government in 2000. Restoration Program EA/EIR p. 1-2. The series of discretionary approvals required to implement the Restoration Program trigger CEQA review, and that is why an EIR was prepared for the entire program. Trinity County apparently believes that the program EIR is flawed and therefore did not certify it. Nonetheless, the Restoration Program is a project that must be the subject of a single EIR before individual mechanical restoration projects may proceed.

The Regional Board's failure to properly identify the project has led to improper "piecemealing" or "segmentation" of CEQA compliance for the Restoration Program. CEQA's mandate requires that environmental considerations not become submerged by chopping a large

Brandt Gutermuth  
March 27, 2006  
Page 3

project into many little ones – each with a minimal potential impact on the environment. *See e.g., Bozung, et. al. v. Local Agency Formation Commission of Ventura County, et. al.* (1975) 13 Cal.3d. 263, 283-284. *See also*, Cal. Code of Regs., tit. 14, § 15165 (identical to predecessor section 15069 that court in *Bozung* identified as codifying prohibition against piecemealing CEQA review). By drafting individual CEQA documents for the various mechanical restoration projects, like the Canyon Creek EA/EIR, the Regional Board is improperly piecemealing CEQA compliance because it is chopping the impacts of the Restoration Program into small pieces that do not accurately account for the impacts of the whole project. b

Finally, the Water Authority and Westlands question the absence of Department of Fish and Game (“DFG”) permitting for the project. Canyon Creek EA/EIR at p. 1-21. While the federal government is involved in this project, the Canyon Creek Suite of Rehabilitation Sites are on private property. The owners of the private lands included in this project are subject to the authority of the DFG. The owners of the private lands are also subject to the permitting requirements of Trinity County, including Trinity County’s requirements for Floodplain Development Permits and Encroachment Permits. The Canyon Creek EA/EIR, therefore inappropriately assumes that the only state permit that is required for the Canyon Creek Suite of Projects is a section 401 permit from the Regional Board. c

Thank you for the opportunity to comment. Based on the issues raised in these comments, the project should not go forward without much broader CEQA review.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

Becky D. Sheehan

BDS/ll

cc: Thomas Birmingham  
Dan Nelson  
Diane Rathman  
Ara Azhderian



*This page intentionally left blank.*

### Response to Comment Letter 3

This comment letter contains three distinct comments. Following are the responses to those comments.

**Comment 3-a.** The source of funding for project implementation is beyond the scope of analysis required by the National Environmental Policy Act and California Environmental Quality Act (NEPA/CEQA). Both acts require full and open disclosure of environmental consequences prior to agency action, and this has been documented in the subject EA/EIR. The source of funding used to implement the Canyon Creek project (or other projects) may change during the planning process for a variety of administrative reasons that have no bearing on potential environmental impacts that may result from project implementation. The Water Authority and Westlands may address funding concerns at a public comment meeting of the Trinity Management Council.

**Comment 3-b.** This argument assumes that the State had a discretionary approval over the flow component of the Programmatic EIS/EIR, which was not the case once the County of Trinity decided to not pursue a public trust petition before the State Water Resources Control Board (State Water Board). Higher releases from Lewiston Dam resulted from the application of federal law (CVPIA § 3406(b)(23(A))) and are implemented by the U.S. Bureau of Reclamation in accordance with its 2000 Record of Decision (ROD). The Canyon Creek Project is independent from the flow increases, which the commenter acknowledges is an activity already taking place. The Canyon Creek EIR adequately addresses the impacts from the project, including cumulative impacts, and does not rely on the Programmatic EIS/EIR.

Title 14, California Code of Regulations, section 15069 provides:

“Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but should in either case comment on the combined effect.” The Canyon Creek EIR complies with this provision.

Individual state, regional, or local agencies subject to CEQA are acting consistent with state law in choosing to prepare individual CEQA documents focusing on the impacts that follow from their undertaking, rather than a virtually state-wide impact assessment that was appropriate under NEPA for the 2000 ROD. When work commenced on the Draft Trinity River Mainstem Fishery Restoration Environmental Impact Statement/Report (DEIS/EIR), Trinity County was contemplating re-initiating a 1990 public trust petition before the State Water Board, and was considering pursuing that petition independent of the federal government’s separate actions. This possible state action on a public trust petition was the only proposed action subject to CEQA that implicated what might be called “system-wide” impacts, as opposed to localized impacts occurring solely along the Trinity River. The DEIS/EIR explained the possible role of the State Water Board as follows:

CEQA requires that this DEIS/EIR propose mitigation measures for each significant effect of the project subject to the approval of an agency governed by California law, even where the mitigation measure cannot be adopted by the “lead agency” (Trinity County for this project), but can only be imposed by another responsible agency. At present, it is unclear whether the SWRCB will function as a responsible agency. As the CEQA lead agency, however, Trinity County has decided that the EIR portion of the EIS/EIR must be sufficient for any future action taken by the SWRCB, should it get involved in some fashion. For this reason, the DEIS/EIR must contemplate action by the SWRCB. Many of the proposed mitigation measures could ultimately be within the jurisdiction of the SWRCB.

SWRCB involvement remains a possibility because, following completion of the Record of Decision, Trinity County may re-initiate a 1990 petition to the SWRCB related to Water Right Orders 90-05 and 91-01. The petition may request amendment of Reclamation’s seven Trinity River water permits for protection of the Trinity River basin public trust resources through increased minimum instream and implementation of Trinity River water quality objectives, as well as implementation of feasible mitigation measures identified in the DEIS/EIR.

(DEIS/EIR, pp. 1-2 to 1-3.)

In late 2000, the federal lead agencies finalized their NEPA documents and adopted a Record of Decision (“ROD”) directing the Bureau of Reclamation to restore the Trinity River fishery by implementing up to 11,000 cubic feet per second flow releases from Lewiston Dam, floodplain infrastructure improvements, channel rehabilitation projects, fine and coarse sediment management, and watershed restoration; however, the County chose not to pursue its public trust petition, which, if approved by the State, would have made the flow commitments in the ROD an enforceable mandate under state water rights law. The increased flows, as currently mandated under federal law, are within the scope of the Bureau of Reclamation’s already existing water rights, thus, no state water right action was required. Because the County chose not to pursue its public trust petition, there was no need for a programmatic CEQA document, and certification of the Programmatic EIR was no longer necessary.

The flow increases and mechanical restoration have always been separate and distinct components of the Restoration Program. For example, while Westlands pursued its NEPA lawsuit in federal court against the flow increase, the district court ordered that all non-flow measures be implemented. (Westlands Water District, et al. v. United States Department of the Interior (9th Cir. 2004) 376 F.3d 853, 868.) All of the alternatives analyzed in the Programmatic EIS/EIR incorporated non-flow habitat rehabilitation and fishery management measures to aid in the recovery. “The main difference between the six reasonable alternatives is the volume of yearly instream flow to the Trinity River.” (Id.) This underscores the natural distinction between these types of projects. The proposed flow increase had its own set of discrete and different impacts that were adequately addressed by the federal agency with jurisdiction over that decision. Moreover, mechanical restoration activities are not a “necessary precedent” for other components of the federal ROD to proceed. In fact, the federal flow increases are already in effect, and therefore may be considered part of the existing baseline in any CEQA analysis.

The EIR prepared for the Canyon Creek Suite of Rehabilitation Sites is the second CEQA document prepared for physical channel rehabilitation activities under the auspices of the Trinity River Restoration Program. One reason that the Canyon Creek Project was originally selected for early implementation in the program was because of the project's independence from the need for ROD flows for long-term self maintenance. The sites within the Canyon Creek suite are expected to have a high likelihood of self maintenance with or without implementation of ROD releases. Consequently, it was determined that the Canyon Creek suite of sites would at a minimum develop site-specific benefits for fisheries and wildlife, and these benefits would be meaningful, regardless of implementation of the remainder of the channel rehabilitation component of the ROD.

The Canyon Creek Project is one of several similar mechanical restoration projects. As such, the Regional Water Board has discretion to prepare one EIR for all its restoration projects, or one for each project, so long as it comments on the combined effect. Detailed mitigation monitoring and reporting requirements, required under CEQA, were incorporated into the Hocker Flat demonstration project, the first TRRP channel rehabilitation project completed in November 2005. Similar procedures, intended to identify and to minimize adverse environmental effects, have been and will continue to be implemented for the Canyon Creek suite of restoration sites in the fall of 2006. Project impacts have been reduced to less than significant through the inclusion of such methods. The cumulative impacts of restoring many channel rehabilitation sites have been and will continue to be considered, and baseline information is constantly being collected to accurately identify, evaluate and mitigate any potential cumulative effects. As included within the Canyon Creek Suite EA/EIR, each new set of channel rehabilitation site environmental documents will include a cumulative effects section to address potential impacts that may result when the proposed action and its impacts are added to other past, present, or reasonably foreseeable future actions. The cumulative effects will be considered in both the NEPA and CEQA processes for such actions.

**Comment 3-c.** This is incorrect. The Canyon Creek EIR identifies CEQA responsible agencies and discloses the discretionary approvals, permits and authorizations that may be required prior to implementing the proposed project. The California Department of Fish and Game (DFG) is identified as a responsible and trustee agency on the first page of the Executive Summary. Page ES-6 identifies Trinity County Ordinances (Floodplain Management) under the list of discretionary approvals required. In addition, a brief review of required permits and approvals is provided on page 1-19 of the EA/Draft EIR. Page 1-20 also identifies the requirement for an encroachment permit from California Department of Transportation (Caltrans). Finally, page 5-6 of the EA/Draft EIR provides a discussion of the role of state agencies with respect to this project.

The Trinity Management Council (TMC) was established in accordance with the 2000 ROD. DFG is an active member of the TMC and provides technical and procedural input to the TRRP. In consultation with technical, legal and policy experts, DFG has determined that the agency is not required to prepare, and subsequently authorize a Streambed Authorization Agreement, pursuant to Fish and Game Code section 1600 for federal projects – which are fundamentally authorized, funded by and carried out on behalf of the federal government. As the project proponent, Reclamation acts on the behalf of the federal government, not on the behalf of the private landowners whose properties will be impacted. The extent of the private landowner's interest in the action is limited to providing a right of entry to conduct the restoration project. The private property owners have no individualized interest in the conduct or outcome of the restoration action. Any

permitting requirements are the responsibility of and are met by the federal government. The Water Authority and Westlands may raise the issue of DFG's interpretation of its responsibilities under section 1600 of the Fish and Game Code to that agency.



# Nor Rel Muk Nation

January 26, 2006

Brandt Gutermuth  
Bureau of Reclamation  
Trinity River Restoration Program  
P.O. Box 1300  
Weaverville, CA 96093

RE: HABITAT RESTORATION PROJECTS ON THE TRINITY RIVER, TRINITY  
COUNTY, CALIFORNIA

Dear Brandt,

Enclosed is a copy of the Nor Rel Muk Nation's response to the BOR letter of inquiry received in our office on December 15, 2005 for your information and/or records.

Thank you for meeting with me yesterday, and clarifying this project for me; if you have any questions, or require anything further, please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "John W. Hayward".

John W. Hayward  
Tribal Chairman  
Hm. (530) 266-3271



# Nor Rel Muk Nation

January 26, 2006

Mr. Patrick Welch  
Regional Archeologist  
United States Department of the Interior  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

RE: HABITAT RESTORATION PROJECTS ON THE TRINITY RIVER, TRINITY  
COUNTY, CALIFORNIA

Dear Mr. Welch,

This letter is sent in direct response to the BOR letter received in our Tribal Office on December 15, 2005, regarding the planning to continue the Trinity River Restoration Program with a series habitat improvement projects along Trinity River between Junction City, California and the confluence with the North Fork of the Trinity River. The four project sites include Conner Creek, Valdor Gulch, Elk Horn, and Pear Tree.

At this time the Nor Rel Muk Nation requests that a representative from the Tribe be on site during the required initial study to comply with the California Environmental Quality Act requirements, to assist in the determination and identification of significant cultural resources within the project period, per our unique knowledge of this portion of Nor Rel Muk ancestral territory. a

At such time as any significant cultural resources are determined and/or identified through the initial study, the Tribe hereby requires that a certified (paid) Nor Rel Muk Cultural Resource Monitor be on site during project work at these particular sensitive cultural areas. b


The Nor Rel Muk Nation is the only Tribe in Trinity and Shasta Counties that hosts a group of trained, and certified Tribal Cultural Resource Monitors for project monitoring activities such as stated above. Our team of nine monitors received training from the Native American Heritage Commission, Office of Historic Preservation, Bureau of Land Management, US Forest Service, Tuolumne Band of Me-wok Indians, and the Society of California Archeologists, in October of 2004. The Society of California Archeologists, Shasta College, and the Nor Rel Muk Nation provided the necessary certification, as noted above.

The Nor Rel Muk Nation, although not currently Federally recognized, maintains our status as a State recognized Tribe through the Native American Heritage Commission, as well as maintaining a formal traditional Tribal government throughout time. The project area in question is within our traditional ancestral territory, and we remain the most knowledgeable about the cultural resources the lay within this project period.

The Tribe also requests information as to the BOR process for the handling and disposition of artifacts and cultural resources identified and located within the project period, in the event that any of these items are found during the project work? As the project area lies within our traditional ancestral territory, the Tribe requests that any such artifacts and/or cultural material is returned to the Nor Rel Muk Nation for final disposition and/or re-burial as determined by the Cultural Leaders and Elders of the Tribe.

Thank you in advance for your attention to this very important matter, if you have any questions, or require anything further, please do not hesitate to contact me at any time.

Sincerely,



John W. Hayward  
Tribal Chairman  
Hm. (530) 266-3271



*This page intentionally left blank.*

**Response to Comment Letter 4**

This comment letter contains four distinct comments. Following are the responses to those comments.

**Comment 4-a.** An inquiry to the Native American Heritage Commission (NAHC) about the proposed project indicated that you were one of several persons or groups that may have knowledge of cultural resources within the project boundaries. Reclamation contacted everyone on the NAHC list since they may have knowledge of historic properties in or adjacent to the proposed project, pursuant to 36 CFR Part 800.4(a)(3). Copies of these letters are included in Appendix F of the EA/Draft EIR. The field work performed by Reclamation archaeologists did not find any historic properties.

**Comment 4-b.** As discussed in Section 3.11, page 3.11-11, no historic properties were identified during the field work conducted in support of the EA/Draft EIR and the requirement for cultural resource monitors is not anticipated for the proposed project. As a policy, Reclamation does not employ individuals to serve as paid monitors during construction activities.

**Comment 4c.** See response to comment 4a.

**Comment 4d.** Reclamation, as a general policy, collects archeological artifacts only within the context of mitigation projects or during resource significance determinations. Such work would be guided by a treatment plan and/or memorandum of agreement (MOA), negotiated among Reclamation, the State Historic Preservation Officer (SHPO), and other interested parties. The disposition of recovered archeological artifacts would be discussed in the project MOA, and would be, in part, contingent upon approval.

Mitigation Measures 3.11-1a and b described on page 3.11-12 of the EA/Draft EIR specifically address the process Reclamation will adhere to in the event human remains are discovered in conjunction with the proposed project.

*This page intentionally left blank.*



## YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

Phone: (707) 482-1350 • Fax: (707) 482-1372



Doug Schleusner  
Executive Director  
Trinity River Restoration Program  
P.O. Box 1300  
Weaverville, CA. 96093

Dean Pratt  
North Coast Regional  
Water Quality Control Board  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA. 955403

5

Re: Canyon Creek Suite of Rehabilitation Sites, EA/DEIR

Dear Mr. Schleusner:

On behalf of the Yurok Tribe, I'd like to express our support for certification of the Canyon Creek Suite of Channel Restoration Sites EA/DEIR by the Bureau of Reclamation (Reclamation) as required by the National Environmental Protection Act (NEPA). We support the issuance of a Finding of No Significant Impact (FONSI) for Alternative 1 as described and evaluated in the EA/DEIR.

We also wish to express our appreciation to the North Coast Regional Water Quality Control Board (Regional Water Board) for accepting the role of lead California Environmental Quality Act (CEQA) agency on this important restoration action, and encourage the Regional Board to certify the EA/DEIR for CEQA compliance.

As you are aware, the delay of this critical project hinders the full implementation of the Record of Decision (ROD) regarding the restoration of the Trinity River and the fisheries resources it supports. The Yurok Tribe and the fish populations we depend upon have suffered far too long from the habitat degradation caused by the Trinity River Division of the Central Valley Project. Therefore, we support full implementation of all components of the ROD, including "all non-flow measures", such as the Canyon Creek Rehabilitation Project.

The Yurok Tribe has waited for nearly two decades for the best available science to be developed concerning the restoration of the Trinity River, during which time our fisheries resources have continued to decline. The Yurok Tribe believes that implementation of "all non-flow measures" of the ROD, including timely construction of all 24 Phase I channel rehabilitation sites is a critical step towards restoration of Trinity River Basin fish resources.

Construction of the 4 Canyon Creek Channel rehabilitation sites will encourage formation of natural alluvial river processes, such as:

- 1) initiation of natural alternate bar formation with subsequent high flows
- 2) rebuilding of floodplains and point bars
- 3) encouragement of natural side-channel and backwater formation
- 4) promotion of river channel migration
- 5) increased aquatic habitat diversity and complexity for anadromous salmonids

6) increased habitat quantity and quality for rearing juvenile anadromous salmonids including steelhead, chinook salmon and ESA Listed coho salmon.

7) and compliment efforts to restore Trinity River tribal trust fish species.

The Yurok Tribe feels it is of critical importance for timely implementation of the "non-flow" components of the ROD and recommend adoption of Alternative 1 as described in the EA/EIR. In conclusion, the Yurok Tribe requests that Reclamation and the Regional Board to adopt a Finding of No Significant Impact (FONSI) for the proposed Canyon Creek Suite of Channel Restoration Sites project.

If you have any questions please feel free to contact Yurok Fisheries Program Manager, Dave Hillemeier or Senior Fisheries Biologist, Tim Hayden. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Howard McConnell". The signature is fluid and cursive, with the first name "Howard" and last name "McConnell" clearly legible.

Howard McConnell  
Chairman, Yurok Tribe  
P.O. Box 1027  
Klamath, CA 95548