

California WaterFix  
Change Petition Hearing  
Part 2

Rebuttal Testimony of  
Tom Stokely on behalf of LAND  
and PCFFA/IFR

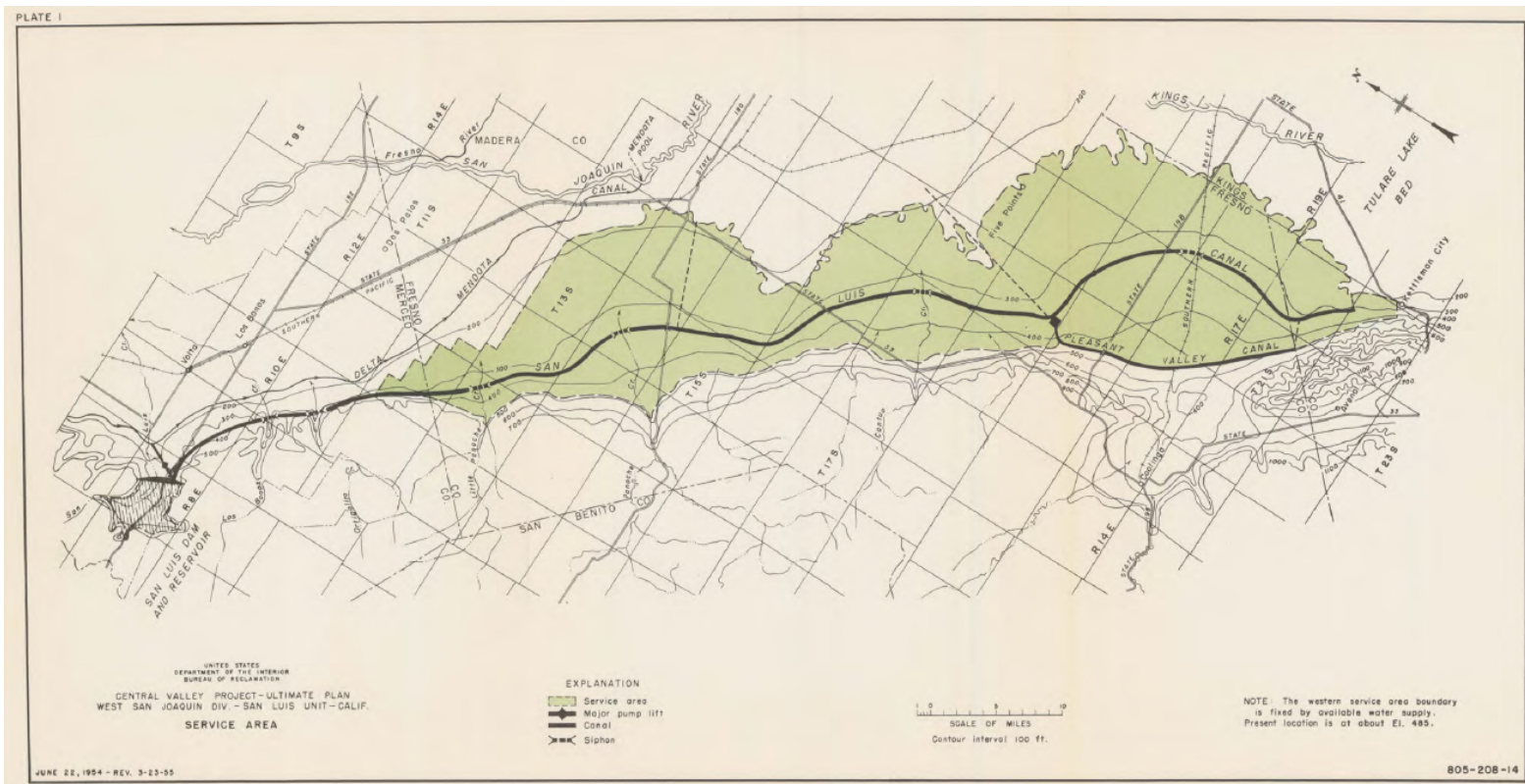
# Issues for my rebuttal testimony

- Rebutting Jose Gutierrez, WWD-15 and WWD-17
- Westlands' claim of 600,000 acres to be irrigated with 1.4 million AF is inflated and is larger than Congress' specific authorization for the San Luis Unit.
- Westlands has no permanent guarantee of its existing CVP water contract amount. Westlands is using an expired 1963 water contract with the Bureau of Reclamation to claim more water as an 'entitlement.'
- Refutation of Mr. Gutierrez' assertion that area of origin principles have not been applied by Reclamation, the SWRCB and the courts to CVP contracts and other policies .

San Luis Act of 1960, Public Law 86-488, (p 1, LAND-230)

*“Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembles That (a) for the principal purpose of furnishing water for the irrigation of approximately five hundred thousand acres of land in Merced, Fresno, and Kings Counties, California, hereinafter referred to as the Federal San Luis unit service area,...”*

# Feasibility Report- San Luis Unit Service Area



LAND 297

## RAINBOW REPORT, PAGE 51 (LAND-296)

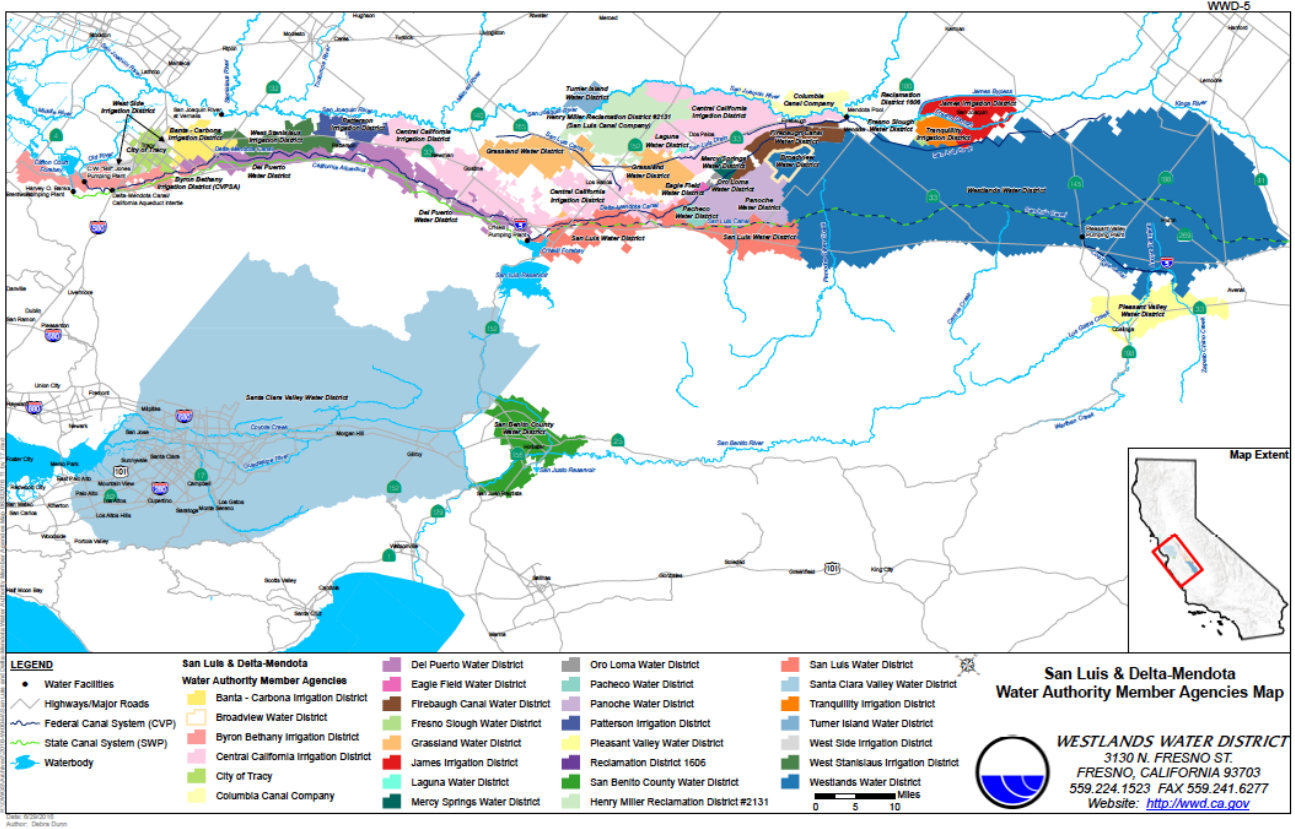
A memorandum to the files was attached to this memorandum which further discussed the size of the Westlands Water District at the time of authorization. The memorandum described Westlands as follows:

"The attached map shows the overlapping of Westlands Water District and the San Luis service area. There are 496,000 gross acres in the service area and 400,000 in the district. Of these, 284,000 acres are common to both: 212,000 acres are in the service area above (west of) the district, and 116,000 acres are in the district below (east of) the service area." <sup>23</sup>

Another memorandum from the Regional Director to the Commissioner, dated May 8, 1959, delineates the acreage as follows:<sup>24</sup>

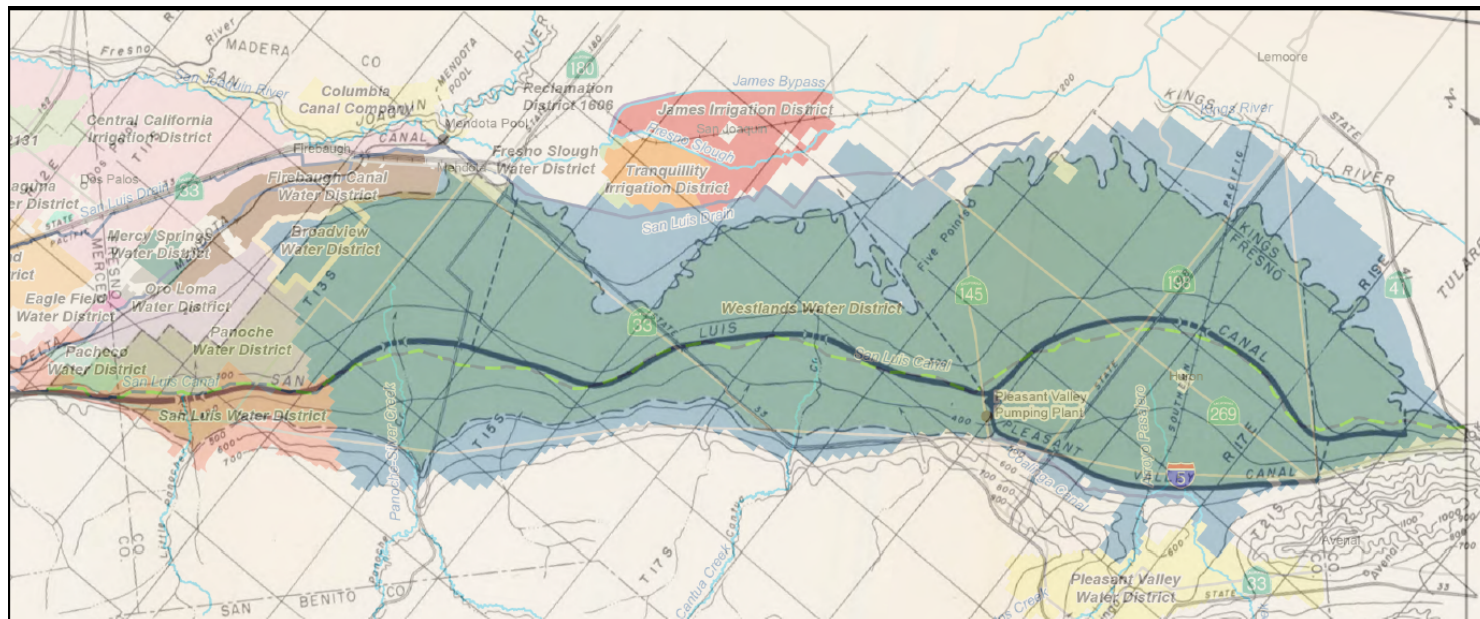
San Luis Unit service area ..	496,000	acres
Westlands Water District ...	400,000	acres
Area Common to Both Unit and District .....	284,000	acres
Area Within District but Outside Unit .....	116,000	acres

# Westlands' Current Acreage



WWD-5

# Westlands Acreage Expanded without Federal Authorization





## HOUSE AND SENATE COMMITTEE REPORTS ON TRINITY RIVER ACT OF 1955 (CSPA-351, p. 909)

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



# 146,275 ACRES IN WESTLANDS FALLOWED IN 2017 WITH 100% CVP ALLOCATION NOT IN COMPLIANCE FOR ESA MAPPING

adversely affect federally-listed species or critical habitat. For the previous consultation completed for these IRCs (File Number 2015-F-1331), Reclamation provided to the Service land cover change maps and tables comparing data from 2006 with 2011 (based on information from the National Land Cover Database<sup>4</sup>) for WWD, SCVWD and PVWMA. For the current consultation on these IRCs, Reclamation noted in the BA for this action *“that errors were found in those previous maps, such that in some cases, land use was not categorized correctly.”* The BA for this action then concludes, *“Upon inspection and comparison with aerial imagery, no losses of native lands or lands fallowed and untilled for three or more years were found.”* In support of this conclusion, the BA provided **Figure 2** (USBR 2017). No land use change analysis was provided for this consultation.

We note that the WWD annual crop reports (which do record acreages of fallowed lands by year within the district) have documented a significant drop in fallowed acreage in 2017, compared with the past four years. **The fallowed area in WWD in 2017 was 140,477 acres**, in 2016 was 175,901 acres, in 2015 was 212,846 acres, and in 2014 was 206,915 acres (see <http://wwd.ca.gov/news-and-reports/crop-acreage-reports/>). We are unable to determine where the fallowed lands are within WWD with the data provided in the BA (**Figure 2**).

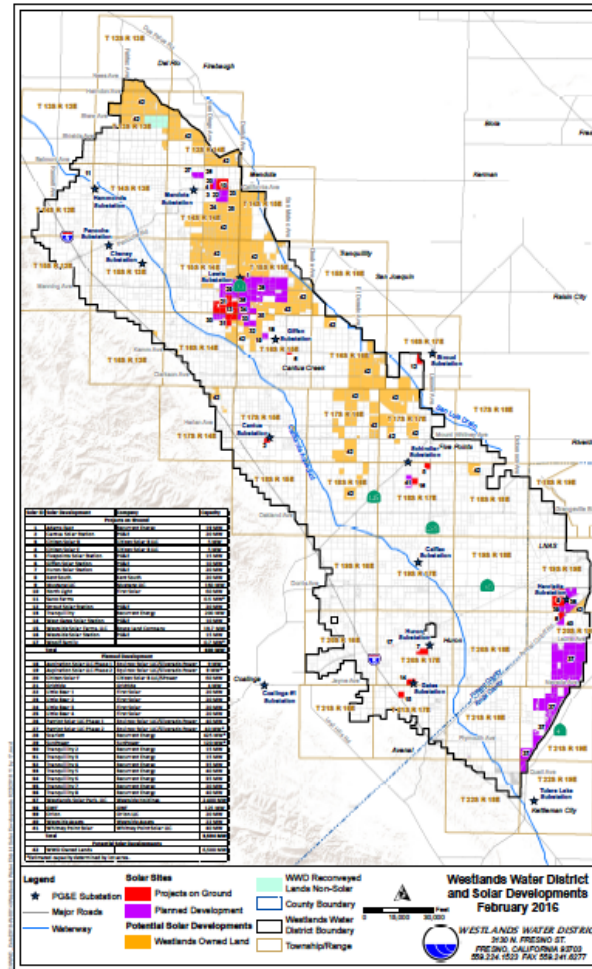
LAND-298, p. 9

USFWS Interim Contract Renewal Consultation for  
San Luis Unit 2/27/18

LAND-293

WESTLANDS SOLAR DEVELOPMENTS

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=210742>



PCFFA-18:

## WESTLANDS' INTERIM CONTRACT RENEWALS MUST CONSIDER CONTRACT NON-RENEWAL (9<sup>TH</sup> CIRCUIT):

*“The EA’s “no action” alternative, which assumed continued interim contract renewal, did not comply with NEPA. A “no action” alternative may be defined as no change from a current management direction or historical practice. 43 C.F.R. § 46.30. But a “no action” alternative is “meaningless” if it assumes the existence of the very plan being proposed.” P. 3*

*“But we do not agree with the district court that the Central Valley Project Improvement Act (“CVPIA”), a part of the Reclamation Projects Authorization and Adjustment Act of 1992, required Reclamation to enter into the interim contracts.” PP. 4-5*

*“We also reject Reclamation’s argument that the contracts themselves mandated renewal. NEPA imposes obligations on agencies considering major federal actions that may affect the environment. An agency may not evade these obligations by contracting around them.” P. 5*

# BARCELLOS JUDGEMENT EXPIRED 12/31/2007

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ENTERED  
DEC 30 1986  
CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
\*\*\*\*\*

BARCELLOS AND WOLFSEN, INC., et al.,  
Plaintiffs,  
v.  
WESTLANDS WATER DISTRICT, et al.,  
Defendants.

WESTLANDS WATER DISTRICT,  
Counterclaimant and Cross-Claimant,  
v.  
BARCELLOS AND WOLFSEN, INC., et al.,  
Counterclaim and Cross-Claim Defendants.

BARCELLOS AND WOLFSEN, INC., et al.,  
Counterclaimants and Cross-Claimants,  
v.

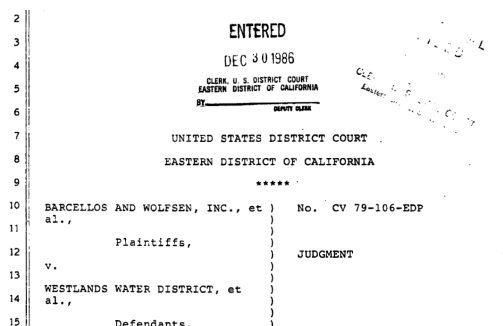
No. CV 79-106-EDP  
JUDGMENT

Page 1 of 56

## 2. Termination of Stipulated Agreement and Duration of Judgment.

The Stipulated Agreement identified in Paragraph 1.29(b) above shall terminate at the end of the month in which this Judgment is entered. This Judgment shall govern the rights and duties of all parties for its term commencing the first day of the month following entry of this Judgment and terminating December 31, 2007, except as otherwise provided in Paragraph 13.3(c) below and Exhibit K of this Judgment.

# BARCELLOS JUDGEMENT DOESN'T ALTER FEDERAL LAW



1  
2  
3  
4  
5

23. Judgment and Stipulation for Compromise Settlement Not a Contract.

Neither this Judgment nor the Stipulation for Compromise Settlement is a contract or an amendment to a contract with the United States as described in Section 203(a) of the 1982 Act.

## *Westlands Water District et al. v. Anderson et al*, Case No. C044714, LAND-292

- P. 214- “Westlands must show that it has a *right* under its contract with the Bureau to the greater amount of water and that the redirection of CVP water to fish and wildlife will interfere with that right. Westlands has not made that showing.”
- Pp. 216-217-“ *Because Westlands has no right to CVP water that Congress directed the Bureau to put to other uses in the Central Valley Project Improvement Act, changes in the Bureau’s permits that will allow the Bureau to comply with the Central Valley Project Improvement Act will not interfere with Westlands’s rights, and therefore the changes will not operate to the injury of Westlands as a legal user of CVP water within the meaning of section 1702.*”



# SWRCB-15- BOR TRINITY RIVER WATER PERMIT 11967

PERMIT No. 11967

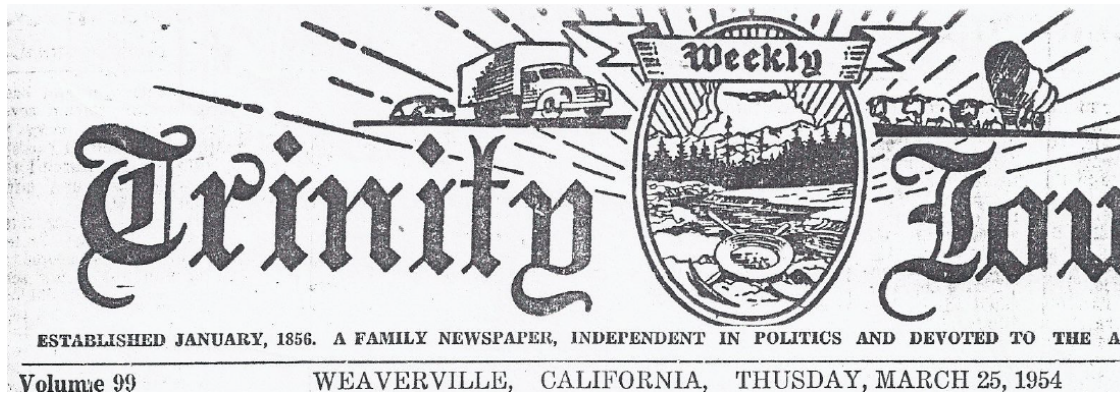
8. Permittee shall at all times bypass or release over, around or through Lewiston Dam the following quantities of water down the natural channel of Trinity River for the protection, preservation and enhancement of fish and wildlife from said dam to the mouth of said stream;

October 1 through October 31	-	200 cfs
November 1 through November 30	-	250 cfs
December 1 through December 31	-	200 cfs
January 1 through September 30	-	150 cfs

Any water released through said Lewiston Dam for use in the fish hatchery now under construction adjacent thereto shall be considered as partial fulfillment of the above schedule.

9. Permittee shall release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users. 20466

10. This permit shall be subject to the prior rights of the county in which the water sought to be appropriated originates to use such water as may be necessary for the development of the county, as provided in Section 10505 of the Water Code of California.



## Trinity County Gets Assurance Of Adequate Water From Dam

REDDING, Calif.—The people of Trinity, Tehama and Shasta counties should take immediate steps to assure that all the water of the Trinity River they can beneficially use will be reserved to meet their present and future needs.

This is the view of Jack W. Rodner, executive secretary of the California Committee for Trinity River Development and manager of the Westlands Water District in the San Joaquin Valley, expressed at a meeting here of the Trinity River Committee of the Redding Chamber of Commerce.

"As desperate as our needs are in the west San Joaquin Valley, we do not want to take a drop of water from the Trinity River until all the water that can be beneficially used in the Trinity and Sacramento areas is definitely reserved for them," he declared.

diverted into the Sacramento River, to provide a steady and sufficient supply to Trinity, Shasta and Tehama counties, firm up the water supply to the Sacramento River area, and take care of the initial development of the San Luis Project in the San Joaquin Valley, with a surplus still running into the ocean," Rodner told the committee. He pointed out that sale of a portion of the water to the San Luis Project area will provide revenue which will make the Trinity River project, with its benefits to the Trinity and Sacramento river areas, economically sound and practical.

Armon Heffington of Weaver-ville, chairman of the California Committee for Trinity River Development, told the Redding committeemen that representatives of the San Joaquin Valley have been invited to join in securing the Trinity River develop-ment.

# 50,000 AF AND OTHER WATER FOR HUMBOLDT COUNTY AND OTHER DOWNSTREAM USERS

---

<sup>1</sup> In the Final EIS, the primary statutory authority for the proposed action was identified as Section 2 of the 1955 Act which provides for specific limitations on the integration of the Trinity River Division with the rest of the Central Valley Project (CVP) and gives precedence to in-basin needs including that “the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife” (Proviso 1) and that “not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream users” (Proviso 2). For the actions implemented in 2012, 2013, and 2014, Reclamation identified Proviso 1 as the primary authority for flow releases. On October 1, 2014, the U.S. District Court for the Eastern District of California ruled that Proviso 1 did not provide authority for releases made in 2012, 2013, and 2014. Reclamation identified both Proviso 1 and 2 as the primary authority for the flow releases in 2015 and 2016. On February 21, 2017, the Ninth Circuit Court of Appeals reversed the District Court’s order regarding Proviso 1, holding that Proviso 1 provided authority for the flow releases. Additional discussion of both Proviso 1 and 2 are included in the Statutory Appendix to the EIS.