

April 14, 2024

Mark Lee Greenblatt
Office of Inspector General
U.S. Department of the Interior
Attention: Intake Management Unit
1849 C Street, NW.
MS 4428
Washington, DC 20240

Subject: Conflict Of Interest Complaint- Trinity Management Council/Trinity River
Restoration Program/Bureau of Reclamation

To Whom It May Concern:

We write to you as landowners, business owners and residents of Trinity County, California. We enthusiastically support funding restoration programs for the Trinity River's salmon and steelhead runs. Trinity River salmonids are central to the economy, history – indeed, culture – of Trinity County.

We do *not*, however, support the so-called restoration efforts currently promulgated by the Trinity Management Council (TMC) and administered by the Bureau of Reclamation (USBR).

We are the disenfranchised public in these procedures, and we have exhausted all administrative remedies. We are therefore forced to write to the Inspector General for both equity and efficacy in Trinity River salmonid restoration initiatives. The managing entities of this program – the Department of Interior (DOI), TMC and USBR – are *the* problem, not part of the solution. They have failed to respond to recommendations and make changes to the Trinity River Restoration Program (TRRP) that would allow it to achieve its avowed goals.

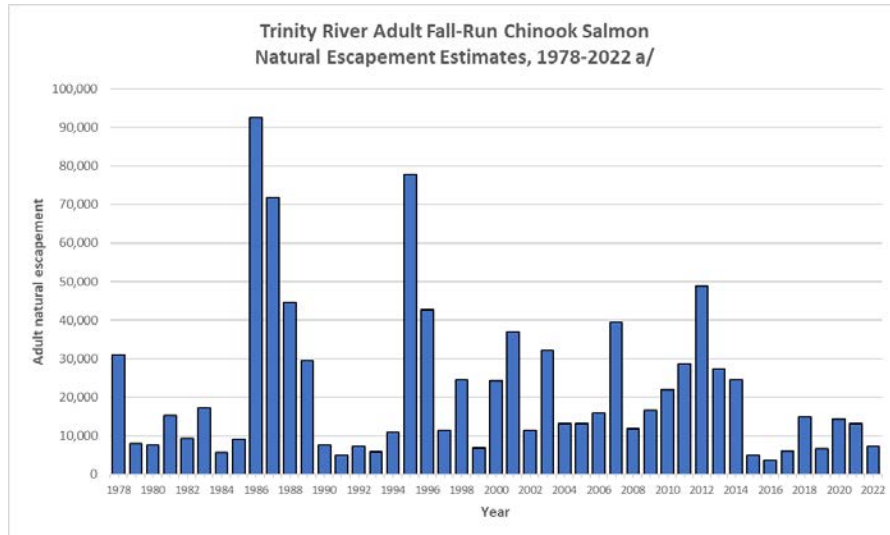
The 2000 Trinity River Record of Decision (2000 ROD) designated the TMC to act as a de facto Board of Directors for the TRRP. While the TMC is considered advisory to the Interior Secretary, it actually calls the shots for budgetary matters, science issues, and Trinity River annual flows. The Trinity Adaptive Management Working Group (TAMWG), a federal advisory committee established in the 2000 ROD, was dissolved in 2017. This completely eliminated public involvement, with no recourse provided for policy reform. The TRRP and TMC appear wholly disinterested in public participation and have purposefully limited input.

The TMC's lack of conflict-of-interest policies has resulted in a complete loss of public confidence and the wasteful and unreasonable expenditure of public funds intended for river restoration. Federal, state, local, and tribal members of the TMC vote on an annual budget (with periodic adjustments); this provides funding for their salaries, their tribes, and their agencies. In most cases, the funds (sometimes millions of dollars) are provided under no-bid contracts or grants that have little or no apparent oversight from the funding agency, the U.S. Bureau of Reclamation.

The conflict of interest inherent in this arrangement is both obvious and shameful. The public has not been well-served by this lack of oversight and accountability and the likely violations of federal and state law. To date, more than \$300 million in public funds have been spent under the TRRP. Meanwhile, the fishery has declined precipitously during the 23 years that have passed since the 2000 Trinity Record of Decisionⁱ was signed.

The public perception of the TRRP is abysmal. It is viewed as a total failure, harmful, and a “make work” program for TMC member agencies and tribes with no legitimate opportunity for public involvement. An example of the utter failure of the TRRP is the complete closure of the 2023 and 2024 commercial and recreational salmon fishing seasons, a decision that was driven in part by low returns of Trinity River Chinook salmon.

The graph below clearly demonstrates the total failure of the TRRP to restore Trinity River Fall Chinook:



Source: CDFW Klamath Basin Megatable 2022. Accessed <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=122850&inline>

The conflicts of interest cited above undercut proper implementation of Adaptive Management as required in the 2000 Trinity River Record of Decision and hinders restoration of the Trinity River’s fisheries.

The failure to implement Adaptive Management is due directly to these conflicts of interest and lack of public involvement. Moreover, several reports commissioned by USBR have identified TRRP’s poor performance and the existing conflicts of interest; they are hardly a recent revelation. But despite the hundreds of thousands of dollars spent on these reports, DOI and USBR have done nothing to rectify these conflicts of interest. These reports include a “TRRP Refinements” report by Headwaters (2018)ⁱⁱ, the “Trinity River Situation Assessment” by CDR Associates (2008)ⁱⁱⁱ and the “Trinity River Restoration Program Evaluation Final Report” by the Trinity Management Council Subcommittee (2004)^{iv}. Additionally, the TMC has ignored the Science Advisory Board (SAB) on numerous occasions.

In short, the TMC has ignored internal and external programmatic review, scientific review and public sentiment and comment while purposefully flaunting state and federal law.

Some of the recommendations and findings from the reports follow:

CDR Situation Assessment, 2008 recommendations, page 25:

“Addressing perceived or actual conflicts of interest of TMC members; especially if they are involved in making decisions on TRRP budgetary issues that may result in direct financial benefit for their respective organizations.”

Page 26:

“Eliminate any perceived or actual conflict of interest a TMC Chair might have by broadening the pool of possible Chair candidates. Chairs could be selected from TMC members who are not likely to have specific programmatic or financial interests in the outcome of TMC decisions. At points where the TMC is deliberating a point in which the Chair has a vested programmatic or financial interest, the TMC Chair could recuse himself/herself or rotate out of the role of Chair while a specific issue is discussed.”

Page 27:

If the TMC applies some of the procedural options above and finds that they do not result in a more functional TMC, more serious structural changes may have to be considered by either the TMC or the DOI. Some options that may need to be considered include:

- Require a TMC member with a specific programmatic or financial interest in the outcome of a decision by that body to recuse themselves from voting on that issue.*
- Enlarge the number of voting members on the TMC to provide for a representation of a broader number of interests, and to increase the number of disinterested parties who could vote on programmatic or financial issues where other TMC members have a direct interest.*

This could involve adding some other government entities (the Bureau of Land Management, the Natural Resource Management Agency, or Humboldt County) or some members of TAMWG. If members of TAMWG were added to the TMC, consideration should be given to dissolving TAMWG, as its functions would probably be duplicative to the newly constituted TMC.

The 2018 Headwaters Report included findings that speak directly to these troubling issues:

Page 9:

“Q: How does the TRRP handle the issue of “conflict of interest”?

A: *This was a significant concern noted by nearly all interviewees. Interviewees stated that TMC members are voting on budgets that benefit their agencies/entities*

in staffing, construction projects, and monitoring and see this as a significant conflict of interest. The concept of base funding (mentioned above) was noted as one possible remedy, but there was significant concern raised by multiple interviewees that this conflict of interest in the budget, how money is allocated to projects, and how decisions are made about this allocation is a potential fatal flaw for the TRRP.”

“Q: Has the TRRP ever been audited?”

A: A significant number of interviewees believed that an audit of the TRRP should be done to account for how the money has been spent and the results of those expenditures. It was apparent this issue was raised not in the sense of financial malfeasance, but rather as means to increase transparency about TRRP spending and associated results. Several interviewees stated that nobody at the state or federal level is asking the TRRP to show results against goals or milestones, or to account for how federal dollars have been spent over many years. Many interviewees wanted more transparency regarding the amount of funds that go to agency/entity salaries versus how much TRRP funding goes to restoration construction projects, overall implementation, and program science.”

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“Q: How well does the Trinity Management Council (TMC) function?”

“Several interviewees noted that the TMC seems to make technical decisions on TRRP implementation and evaluation based on the budget and not on program science.”

“The culture of the TMC is viewed as one that rewards “bad behavior” of its members.”

“The TMC was generally noted by interviewees as being resistant to change and unable/unwilling to implement the recommendations of previous TRRP reviews (TMC Subcommittee Report, CDR Situation Assessment, etc.).”

“Some interviewees believe the TMC should operate as a Board of Directors for the TRRP, but there is a sense that TMC partners are too conflicted to fulfill that role.”

“Several interviewees stated an observation that the TMC does not listen to the Trinity River Adaptive Management Working Group (TAMWG) or consider their input important, and the TMC only gives the appearance of taking public comment and input.”

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“Q: What is the public perception of the TRRP?”

A: There was a clear consensus among interviewees that the public perception of the TRRP is poor.”

“Q: What is the TRRP’s view of adaptive management?”

A: ...TRRP science is viewed by many as being a lower priority in the budget than construction projects. Many interviewees described science (or adaptive management) as receiving what is left over in the budget after construction projects are funded.

...Generally, there was agreement among the interviewees that the TRRP is not operating under an agreed-to Adaptive Management Plan.”

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“Decision-making not shared – While the TMC is the decision-making body for the TRRP and its membership does include a variety of Tribal, federal, state, and local partners, questions remain about relative balance between TMC members and the influence each entity has on TRRP decisions. The TAMWG serves as a sounding board for stakeholders, but that group does not have a vote at the TMC level, so those stakeholders are not really part of the decisionmaking process. It is not clear why the stakeholder group is labeled an “Adaptive Management Working Group” since adaptive management needs to be part of the overall structure of the TRRP and stakeholders need to be part of TRRP decision-making. ...Additionally, the TAMWG has now been rendered “administratively inactive” by the Department of Interior thus completely isolating stakeholder input from the functions of the TRRP and propagating further divisions among TRRP interests.”

Decision-making process – “There is significant internal concern within the TRRP about issues of “conflict of interest”, how TRRP money is distributed to Program projects and to Program entities, and how this all influences TRRP decision-making and progress. TMC decisions are formalized via voting through a super-majority process that requires six out of eight votes to move something forward, often leaving one or two entities (often the same entities time and time again) disaffected with the decisions made by the TMC and forcing them to take actions outside of the regular TRRP process. This perpetuates feelings of mistrust and suspicion about what decisions are made and why.”

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“Role of ED and ED Office – ...It is difficult for the ED and Program staff to play an “honest broker” role implementing the TRRP and delivering information to the TMC for decision-making when those individuals are all employees of agencies and entities that sit at the decision-making table as members of the TMC – this is a problem in nearly all large-scale river restoration/adaptive management programs across the U.S., housed both in Reclamation and in the Corps of Engineers.”

The 2007 “Trinity River Situation Assessment” by CDR Associates contained the following related finding:

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“While functioning well internally, TAMWG may be somewhat duplicative of the advisory role prescribed to the TMC. While composed of somewhat different

members and stakeholders than those of the TMC, some of whom are also government agencies, it primarily represents non-governmental interests. The creation of two advisory committees, the TMC and TAMWG appears to have been an effort to create a more manageable “decision making body.” However, the result may be a duplication of roles and the creation two advisory bodies.”

Recommendations Page 25

“Addressing perceived or actual conflicts of interest of TMC members; especially if they are involved in making decisions on TRRP budgetary issues that may result in direct financial benefit for their respective organizations.”

Procedural Options Page 26

“Eliminate any perceived or actual conflict of interest a TMC Chair might have by broadening the pool of possible Chair candidates. Chairs could be selected from TMC members who are not likely to have specific programmatic or financial interests in the outcome of TMC decisions. At points where the TMC is deliberating a point in which the Chair has a vested programmatic or financial interest, the TMC Chair could recuse himself/herself or rotate out of the role of Chair while a specific issue is discussed.”

“Allow the Chair to step out of his or her role and turn this function over to another TMC member, if the TMC is deliberating or deciding on an issue where the Chair either has strong views or a substantive or financial interest.”

Structural Options, Page 27

“If the TMC applies some of the procedural options above and finds that they do not result in a more functional TMC, more serious structural changes may have to be considered by either the TMC or the DOI. Some options that may need to be considered include:

- Require a TMC member with a specific programmatic or financial interest in the outcome of a decision by that body to recuse themselves from voting on that issue.*
- Enlarge the number of voting members on the TMC to provide for a representation of a broader number of interests, and to increase the number of disinterested parties who could vote on programmatic or financial issues where other TMC members have a direct interest.*

This could involve adding some other government entities (the Bureau of Land Management, the Natural Resource Management Agency, or Humboldt County) or some members of TAMWG. If members of TAMWG were added to the TMC, consideration should be given to dissolving TAMWG, as its functions would probably be duplicative to the newly constituted TMC.”

In its final 2017 letter to the TMC before its dissolution, the TAMWG summed up the TMC’s conflicts of interest and posited a sound solution:

“The self-dealing nature of the TMC whereby member entities can vote on their own funding and block motions to do otherwise because of supermajority voting rules is inherently corrupt. The TMC consistently rejects many of the TAMWG’s recommendations and doesn’t even give the TAMWG Chair a vote on the TMC, leading to tremendous frustration by TAMWG members. The TAMWG favors dissolving the TAMWG and merging it with the TMC, similar to the old Trinity River Task Force. It is duplicative and wasteful for staff and other participants to have two different groups discussing the same issues.”

We are unaware of TRRP/TMC/USBR compliance with 2 C.F.R. § 200.112 for the Trinity River Restoration Program. 2 C.F.R. § 200.112 states *“The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.”*

The U.S. Department of Justice’s Office of Justice Programs Federal Conflicts of Interest Guide Sheet describes conflict of interest irregularities as either “conflict in fact” or “conflict in appearance”.^v The TMC has both a “conflict in fact” and a “conflict in appearance.” The results of these conflicts include but are not limited to the following:

- A. The public’s confidence in the integrity of the TRRP has been affected negatively.
- B. The TMC has lost independence and objectivity in the eyes of the public.
- C. Though required to do so by their federal grantee status, TMC members have failed to meet their responsibility for the decisions, approval, recommendations, or disapproval of the following people or groups:
 1. The organization in which they are serving as an officer, director, trustee, partner, or employee.
 2. Any person or organization with whom they are negotiating; has an arrangement concerning prospective employment; has a financial interest; or for other reason, is unable to conduct an unbiased transaction.

The budget and budget alterations are regularly voted on by TMC members who represent organizations that directly receive no-bid contracts or grants from the USBR. The conflicts of interest inherent in this process result in multiple negative outcomes, including:

1. Inflated costs for projects that would cost significantly less on other river systems. An example: the downstream salmon smolt outmigrant rotary screw traps. If this project were put out to bid, hundreds of thousands of dollars a year would be saved.
2. TRRP has funded evaluations of some of their scientific monitoring projects by independent contractors and their Science Advisory Board but has not implemented some of their recommendations – such as rotary screw traps – because they would decrease the amount of project funding received by TMC member agencies.^{vi}
3. TRRP has revisited restoration sites at significant cost before implementing other projects, thus delaying the completion of all identified restoration sites, underfunding watershed restoration efforts, and substantially increasing the cost to the TRRP.
4. TRRP has failed to properly implement restoration projects in an environmentally sound manner for the sole purpose of maximizing profits.

An example is the TRRP's herculean efforts to extirpate non-native brown trout in the Trinity River (because they eat young salmon and steelhead.) The Trinity River Hatchery also limits production of steelhead to minimize the "take" of threatened Coho salmon. The Trinity River Hatchery recently released several hundred spawned-out steelhead into Carrville Pond to avoid the "take" of Coho. These practices that speak to admirable goals to protect threatened Coho salmon but are completely inconsistent with other actions by the TRRP and its contractors/grantees.

In 2023 the Yurok Corporation was under contract to the USBR to construct the Oregon Gulch Project; in the course of its work, it released hundreds to thousands of non-native piscivorous catfish, sunfish and bass into the Trinity River by draining nearby ponds. By law, the Yurok Corporation^{vii} should have electro-fished or netted these invasive fish before draining the ponds to the river; but this essential procedure apparently would have diminished profits. Instead, the Yurok Corporation released harmful, invasive, and non-native fish into the Trinity River, with the TRRP claiming it wasn't a problem because the fish would die the following winter.

This skewed logic failed to acknowledge the pond-draining was an illegal action that violated state and federal law, and that it was exacerbated by the fact that it occurred prior to the fall release of young fish from the Trinity River Hatchery, many of which were undoubtedly consumed by the exotic fish. Some of the native and hatchery fish consumed were certainly Coho salmon, a federally and state listed threatened species; thus, this act constituted an unpermitted "take" of a listed species. NOAA Fisheries and the California Department of Fish and Wildlife, both TMC member agencies, turned a blind eye to this illegal and harmful act.

5. Rodney Vigil, an employee of the Yurok Corporation, was fired for posting photos to Facebook of the non-native fishes' release to the river. Not only does Mr. Vigil's dismissal prove that the TRRP and the Yurok Corporation were aware their action violated the law, but it is clear that they had no intention of informing the public of the release of these non-native fish and were embarrassed by Mr. Vigil's disclosure. The environmental documents prepared for the project completely failed to disclose this impact on the required state permit or federal take permit, nor did they cite appropriate mitigation measures.



Catfish released into the Trinity River in August 2023. Photos: Rodney Vigil

6. Another example is the release of hydraulic oil onto a Trinity River gravel bar by the Yurok Corporation. Rodney Vigil provided the photo below and gave this description:



7. The TRRP's grantees and contractors fail to abide by the law and the policies and directives of the TMC and the USBR because of their proclivity for profit over the

proper and ethical pursuit of their mission. An example occurred in 2021. Though the scientific recommendation for Lewiston Hatchery is the addition of 0 - 500 cubic yards of spawning gravel during critically dry years, the TMC had not approved the placement of such gravel in 2021, which met extreme drought criteria. ^{.viii} However, to maximize profits, the Yurok Corporation placed 5,000 cubic yards of gravel in the river at the Hatchery – and it did so prior to approval of the TMC and without public notice. There were no negative ramifications for the contractor, who presumably was paid for the full 5,000 cubic yards, even though they did not have TMC approval. The river was unnecessarily disturbed and muddied in the process, and the benefit to salmon was “inconsequential”^{ix} according to the TRRP’s own expert.



2021 Lewiston Hatchery Gravel Placement. Photo: Jerilyn Smith

8. The TRRP’s propensity for profit over lawful activity is further exemplified by its failure to abide by traffic laws during the transport of gravel from the Oregon Gulch Project; this practice was a de facto money-saving policy, and has been described by Lonnie Boles in Facebook (see <https://www.facebook.com/groups/524930456504164/permalink/614143330916209/>). The link shows a video of a Yurok Corporation gravel truck failing to stop at State Highway 299, resulting in a very dangerous situation and what Mr. Boles described as a physical confrontation initiated by the truck driver when Boles complained about his unsafe driving.
9. Public participation in the TRRP officially ended in November of 2017 when the Interior Department effectively disbanded the Federal Advisory Committee, the TAMWG. Previous recommendations from the TAMWG and consultants to include the public as a voting member of the TMC were consistently rejected. TMC members clearly enjoy their exemption from the Federal Advisory Committee Act

(FACA) and have consistently opposed efforts to create a Federal Advisory Committee wherein the public, tribes and agencies work together for restoration per the procedures of the former Trinity River Basin Fish and Wildlife Task Force authorized by Public Law 98-541^x. Following the dismantling of public participation in the TRRP, the TMC even voted to implement closed session meetings to deal with contract issues, thus keeping the members' self-dealing and unpopular activities hidden^{xi} from public scrutiny. An exemption from FACA should not preclude disclosure of actions approved during closed sessions, conflicts of interest, and recusal.

10. Watershed Restoration activities were authorized by the Trinity ROD to the amount of \$1.8 million/year in 1999 dollars. However, watershed funding has been limited to a maximum of \$500,000/year by the TMC. These funds are currently administered by the Fish and Wildlife Foundation under a competitive bidding process. The competitive nature of the funding process doesn't sit well with some TMC members who get no bid contracts and grants under the current system. This results in extremely limited funding for watershed restoration, as voted on by the TMC. Watershed restoration projects are not as large as main stem projects, and require a great deal of landowner cooperation, thereby limiting easy profits such as multi-million-dollar main stem "restoration" projects.

In summary, the TRRP and TMC are rife with violations of state and federal law, conflicts of interest, poor performance and lack of contractual control by federal contract managers. Because of these issues, the public— while enthusiastically supporting Trinity River restoration – has lost confidence in the ability of the TMC to effectively manage the TRRP. The public perception is that hundreds of millions of dollars have been wasted with few if any benefits and documented harm to the river and its fish.

Potential Remedies

1. Determine if USBR and TRRP participants have adhered to 2 C.F.R. § 200.112, i.e.: "The Federal awarding agency must establish conflict of interest policies for Federal awards." Have the non-Federal entities disclosed in writing any potential conflict of interest to the federal awarding agency or pass-through entity in accordance with applicable federal awarding agency policy? If so, request copies and make them publicly available. If not, why?
2. Conduct a comprehensive review of the TRRP restoration projects (instream and watershed) by an independent panel led by a senior Department of Interior scientist who has no affiliation with TRRP activities.
3. Conduct a thorough forensic audit of all funding spent by the TRRP, including compliance and deliverables with the USBR contracts/grants that have been made since the inception of the TRRP (~ 2001).
4. Revisit and implement structural, management and conflict of interest recommendations from previous evaluations and reports. Include the "fixer" idea - someone within Interior to oversee and implement unbiased scientific program management and priorities to ensure the TMC follows adaptive management and avoids conflicts of interest. This option could include cessation of funding for mainstem projects and restricting funding for watershed restoration activities to the Fish and Wildlife Foundation until conflict-of-interest issues are resolved.

5. Unilaterally impose conflict of interest Rules into the TMC bylaws. This option would also require Interior Secretary approval because the TMC is not capable of self-imposing conflict of interest rules.
6. Eliminate the TMC and replace it with a Federal Advisory Committee consisting of the public, stakeholders, agencies, and Tribes. This alternative would require voting recusal from participants with potential conflicts of interest. This option would also require Interior Secretary approval and full compliance with the requirements of FACA.

A response is requested.

Sincerely,

Jerilyn Smith, Trinity River Coalition
jerilynsmith49@gmail.com
530-395-9981

Trinity River Watershed Alliance
trinityriverwatershedalliance@gmail.com

Scott Stratton
scott@trinityriveradventures.com
(530) 515-3876

North Coast Outfitters
Bruce McGregor
NorthCoastOutfitters@yahoo.com
415-596-3488

Mario Guel
mariojguel@gmail.com
408-838-6047

NorCalFlyGuides
brian@norcalflyguides.com
Brian Clemens
530-354-3740

Darren Victorine
trinityriverfly@gmail.com
530-623-2251

ⁱ USDI (U.S. Department of Interior). 2000. Record of decision, Trinity River mainstem fishery restoration final environmental impact statement/environmental impact report. . U.S. Department of Interior, Washington D.C., Washington D.C. Available: <https://www.trrp.net/library/document?id=227>.

ⁱⁱ Headwaters Corporation. 2018. TRRP refinements. Report for the Trinity River Restoration Program (TRRP). Headwaters Corporation, Kearney, Nebraska. Available: www.trrp.net/library/document?id=2422

ⁱⁱⁱ Moore, C. W. and J. L. Graham. 2008. Trinity River Restoration Program Situation Assessment. CDR Associates. Available: <https://www.trrp.net/library/document?id=2296>

^{iv} TMC Subcommittee (2004) Trinity River Restoration Program Evaluation Final Report. Available: <https://www.trrp.net/library/document?id=1257>.

^v U.S Department of Justice, Office of Justice, Conflict of Interest Guide Sheet, Available: [www.ojp.gov › tfsc › tfsc_guide_sheet_conflict_of_interest_508](http://www.ojp.gov/tfsc/tfsc_guide_sheet_conflict_of_interest_508)

^{vi} See Andrews, E; Korman, J; Merigliano, M; and Stalnaker, C (2006) Review Comments on: Trinity River Restoration Program Integrated Assessment Plan Version 0.9 – November 1, 2006. Available: <https://www.trrp.net/library/document?id=1206>.

^{vii} California Fish and Game Code Section 6400- “It is unlawful to place, plant, or cause to be placed or planted, in any of the waters of this State, any live fish, any fresh or salt water animal, or any aquatic plant, whether taken without or within the State, without first submitting it for inspection to, and securing the written permission of, the department.” To the best of our knowledge, no such permit was issued.

^{viii} Buxton, T. 2021. Implementation plan for gravel additions to the Trinity River at the hatchery reach near Lewiston Dam. Trinity River Restoration Program, Weaverville, California. Available: <https://www.trrp.net/library/document?id=2603>.

^{ix} Buxton, T. 2021. Ibid, page 1

^x See Section 3 of the Trinity River Basin Fish and Wildlife Management Act. Accessed: <https://www.govinfo.gov/app/details/COMPS-3016>

^{xi} See Section 600(d) on page 5 of the Bylaws of the Trinity Management Council, March 2023. Accessed: <https://www.trrp.net/library/document/?id=2616>