

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

Anthony Rendon, Chair

AB 1914 (Chesbro) – As Amended: April 21, 2014

SUBJECT: Water permits: Trinity River Record of Decision

SUMMARY: Requires the State Water Resources Control Board (State Water Board) to conform water permits that would affect the Trinity River, excluding its tributaries, to the instream flow requirements in the Federal Record of Decision for the Trinity River (Trinity ROD). Specifically, this bill:

- 1) Requires the State Water Board, when approving an application for a water permit or an application for a renewal or amendment of a water permit that affects the Trinity River, excluding its tributaries, to conform the use of that permit to the minimum instream flows established by the Trinity ROD and:
 - a) Adopt the Trinity River temperature water quality objectives from the North Coast Water Quality Control Plan (WQCP) as standard permit terms and conditions; and,
 - b) Adopt minimum cold water carryover storage operational criteria to ensure compliance with the WQCP.
- 2) Specifies that the State Water Board shall reserve jurisdiction over any existing permit affecting the Trinity River, excluding tributaries, and apply the WQCP water quality objectives and cold water carryover storage terms and conditions.
- 3) States that nothing in this bill shall diminish, impair, or otherwise affect any type of area of origin water rights or other water rights protections.

EXISTING LAW vests the State Water Board with authority to administer appropriative water rights permits and requires State Water Board approval of any modification to a water rights permit including a change in the point of diversion, place of use, or purpose of use of an appropriative water right.

FISCAL EFFECT: Unknown

COMMENTS: The Bureau of Reclamation (Reclamation) has failed to amend its appropriative water rights permits, issued by the State Water Board, to be consistent with the Trinity River Record of Decision (Trinity ROD) it signed over 13 years ago. Because of that inaction, this bill seeks to protect the minimum instream flows established in the Trinity ROD by requiring the State Water Board to conform water permits that could affect the Trinity River, excluding its tributaries, to conform those permits to the Trinity ROD.

Although much of California's water supply originates in the Sacramento River Valley, that supply is augmented by water from federal Central Valley Project (CVP) facilities outside of the Sacramento River watershed that are located on the other side of the Trinity Alps in the Trinity River watershed in northwest California. Trinity River water is diverted through the Trinity Alps

via a tunnel and sent down the Sacramento River and through the Sacramento-San Joaquin Delta for delivery to CVP contractors as far south as the San Joaquin Valley.

The Trinity River Diversion (TRD) was authorized by an act of Congress in 1955 however at that time the Secretary of the Interior was also specifically authorized and directed to "... adopt appropriate measures to insure the preservation and propagation of fish and wildlife." At that time it was believed that there was an average of 704 thousand acre-feet of water that was surplus to the present and future needs of the Trinity River Basin that could be exported to the Central Valley "without detrimental effect on the fishery resources." Reclamation completed the TRD in 1964.

Unfortunately, TRD changes to the Trinity River altered the quantity and quality of habitat for salmon and steelhead. The habitat above the dams was entirely lost, and the remaining in-river habitat was severely degraded. Following construction of the dams, pools that were once deep and used by adult salmonids filled with sand. During summer, water temperatures reached lethal levels for juveniles and smolts, and gently sloping banks necessary for fry and juveniles were eliminated by riparian berms, and much of the spawning gravel was scoured away. Remaining spawning gravel was choked with sand.

December 19, 2000 the U.S. Department of Interior (DOI) adopted the Trinity ROD. The Trinity ROD was adopted after 20 years of studies and requires a variable flow regime to mimic more natural flows; channel rehabilitation; sediment management; watershed restoration; infrastructure improvements, adaptive environmental assessment and monitoring; and environmental compliance and mitigation. The ROD is the formal decision by the Secretary of the Interior to restore and maintain the Trinity River's anadromous fishery resources, based on the best available scientific information, while also continuing to provide CVP water supplies for beneficial uses and power generation. The Trinity ROD was required by the statutory obligations of the DOI as well as federal trust responsibilities to the Hoopa Valley and Yurok Indian Tribes.

Supporting arguments: The author states that this bill is needed to "simply conform state water rights with the federal Trinity River [ROD], which is consistent with federal law. The author states that this bill would require the State Water Board "to determine adequate cold water carryover storage in Trinity Reservoir to meet Trinity River temperature objectives and incorporate those requirements into [Reclamation's] water right." Supporters state that the "current reality is that approximately half of the Trinity River's water is already allocated to in-basin uses and maintenance of water quality, therefore it should be reflected in the Bureau of Reclamation's water right permits."

Opposing arguments: Opponents state that this bill would "result in millions of dollars of additional power costs to the residents of Trinity County" by "dramatically scaling back the amount of water that runs through the Trinity River Division hydropower units, thereby eliminating an inexpensive and abundant supply of clean power." Opponents also believe it would be "a mistake to enshrine current scientific opinion in state law at a time with the science of restoring the Trinity fishery is evolving" and state that this "could prevent more effective measures from being implemented in the future."

REGISTERED SUPPORT / OPPOSITION:

Support

California Water Impact Network

Opposition

Trinity Public Utilities District

Analysis Prepared by: Tina Cannon Leahy / W., P. & W. / (916) 319-2096