

**Testimony of Troy Fletcher, Yurok Tribe, regarding H.R. 2733, the Trinity River
Restoration Fund Act 0/2007, September 18, 2007**

On behalf of the Yurok Tribe, I respectfully submit the following written testimony for consideration by the U.S. House of Representatives, Committee on Natural Resources, September 18, 2007, hearing regarding the Trinity River Restoration Fund Act of 2007, H.R. 2733. I come to you today to express the Tribe's support for the proposed Act, so that the Record of Decision (ROD) regarding the restoration of the Trinity River may be fully implemented and the restoration of the our fishery realized.

My name is Troy Fletcher, a Policy Analyst for the Yurok Tribal Council, and a Yurok Tribal member. I have been involved with fish and water policy issues of the Klamath-Trinity Basin for nearly two decades.

The fishery of the Trinity River, the largest tributary to the Klamath River, is integral to the Yurok way of life for subsistence, ceremonial and commercial purposes. The importance of the fishery to Yurok People was recognized by the Federal Government in the late 1800's, when our reservation boundaries were delineated as a two mile strip of land along the lower 44 miles of the Klamath River. As Justice Blackmun observed in *Mattz v. Arnett*, the original Klamath River Reservation, the precursor to the current Yurok Reservation, "abounded in salmon and other fish" and was in all ways "ideally suited for the Yuroks" (412 U.S. at 487).

The Trinity River joins the Klamath near the upper end of the Yurok Reservation. Therefore, all Trinity River spring and fall-run Chinook salmon, coho salmon, steelhead, lamprey, and green sturgeon migrate through the 44-mile Yurok Reservation on their journey from the ocean to the Trinity River. The Yurok Tribe is the largest harvester of Klamath Basin fish populations, including those of the Trinity River. On average, the Yurok Tribe harvests 87% of the Tribal allocation of fall Chinook; the most abundant run of fish remaining in the basin. Pre-season, we are allocated 40% of the total harvest (including ocean commercial and sport fisheries, as well as in-river non-tribal and tribal fisheries) of Klamath-Trinity Basin fall Chinook; by far the largest allocation of Klamath-Trinity fall Chinook. The Yurok People's reliance upon Trinity River fish exceeds that of any other group.

One of the Tribe's highest priorities is to protect and preserve the resources of the river, and in particular, to restore the anadromous fish runs to levels that can sustain Yurok people. When the original Klamath Reservation was established in 1855, the rivers were filled with abundant stocks of salmon, steelhead, eulachon, lamprey, and green sturgeon. Today, the population of fish in the Klamath-Trinity Basin is a small fraction of historic levels. Some species of fish have gone extinct, while others are in serious peril. Nevertheless, anadromous fish continue to form the core of the Yurok Tribal way of life.

The Yurok Tribe is pursuing its fishery restoration goals through a fishery management and regulatory program, participation in inter-agency management forums to reach long

term solutions to Klamath-Trinity Basin problems, and when necessary, litigation. The Tribe has devoted a large portion of scarce funding and other resources to fishery management and regulation. The Tribe has enacted a fisheries ordinance to ensure that the fishery is managed responsibly and in a sustainable manner and has a longstanding record of resource protection. The Tribe's fisheries department is well-respected and is recognized as a leader in fisheries management in the Klamath/Trinity Basin. The Yurok Tribal Council and the Tribal members they represent are well-known and respected for taking and supporting responsible actions to protect fisheries resources.

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The fishing rights of the Yurok Tribe are well-established as a matter of federal law. The Yurok Reservation, created pursuant to an 1855 Executive Order, was established within the Yurok Tribe's aboriginal homeland primarily to provide a territory in which the Tribe's fishing-based culture and way of life could thrive and continue to exist. This fact has been recognized repeatedly since the Reservation was established -- by the Departments of the Interior and Commerce, the United States Supreme Court, the lower federal courts, and the California courts. *See, e.g., Mattz v. Arnett*, 412 U.S. 481, 487 (1973); *Donnelly v. United States*, 228 U.S. 243, 259 (1913); *Parravano v. Masten*, 70 F.3d 539, 545-46 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 2546 (1996); *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981).

The Yurok Tribe's right to harvest fish on the Klamath River is protected and guaranteed by federal law. The Ninth Circuit Court of Appeals confirmed that the executive orders that created the Yurok Reservation vested the Yurok Tribe with "federally reserved fishing rights." *Parravano v. Masten*, 70 F.3d 539, 541 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996). The same court has aptly observed that the salmon fishery of the Yurok Tribe is "not much less necessary to the existence of the Indians than the atmosphere they breathed." *Blake v. Arnett, supra*, at 909. The Solicitor of the Department of the Interior has determined that the Yurok Tribe is entitled to a sufficient quantity of fish to support a moderate standard of living, or 50% of the Klamath fishery harvest in any given year, whichever is less. Memorandum from Solicitor to Secretary of the Interior, No. M-36979, October 4, 1993. The right includes fishing for subsistence, commercial and cultural purposes. As the court in *Parravano* noted, the purpose of the Yurok Reservation was to enable the Yurok people to continue their fishing way of life. The River and its fish are undeniably the cultural heart of the Yurok people.

In addition to case law, the Trinity River Basin Fish and Wildlife Management Act, P.L. 98-541 b(23) supports the goal of restoring fish populations for harvest benefits as a result of Trinity River Restoration. P.L. 98-541 states;

"Trinity Basin fisheries restoration is to be measured not only by returning adult anadromous fish spawners, but by the ability of dependent tribal, commercial, and sport fisheries to participate fully through enhanced in-river and ocean harvest opportunities, in the benefits of restoration;"

The Yurok Tribe strongly supports the Trinity River Restoration Fund Act of 2007 (H.R. 2733) introduced by Congressman Mike Thompson and co-sponsored by Congressman

George Miller. The legislation would provide a critical new funding authority and a stable funding source for timely implementation of all components of the December 2000 Trinity River Record of Decision (ROD), including; infrastructure improvements, river channel rehabilitation, fine and coarse sediment management, river flow management, watershed restoration and Adaptive Environmental Assessment and Management (AEAM).

Although Congress has committed to the restoration of the Trinity River through numerous acts and legislation, culminating in the passage of the 2000 Trinity River ROD, inadequate funding for implementation of the ROD has been an impediment. As a result, implementation of the ROD, and restoration of its fish populations is behind schedule. The proposed legislation will help provide a dedicated funding source at the levels necessary to ensure full and timely implementation of the Trinity River ROD.

We are particularly supportive of the legislation because it will provide authorization for full funding for both implementation activities (on-the-ground restoration) and the supporting AEAM program (adaptive science) necessary to assess the progress and success of the Trinity River Restoration Program (TRRP). In addition, this legislation will provide authorization for funding the watershed component of the ROD, which has been funded at less than 3% of the necessary funding. Adequate and stable funding for restoration of the Trinity River will compliment and enhance on-going fishery restoration efforts in the larger Klamath River basins.

The Trinity River has the opportunity to become a national model of a restored river basin ecosystem. Despite water diversions and severe reductions in Chinook salmon and coho salmon and steelhead populations, the Trinity River remains the largest tributary to the Klamath River and one of the most important anadromous fish producing rivers in Northern California. We are already seeing the success of higher flows that are a result of partial implementation of the ROD, through greatly improved steelhead runs. Full implementation of the Trinity River ROD is critical to restoring and maintaining fish populations in the Klamath Basin and along the North Coast as well as the industries and communities dependent upon them, including dependent tribal fisheries.

I want to make it clear that the Yurok Tribe does NOT oppose HR 24, the San Joaquin Restoration Settlement Act. The Yurok Tribe believes that restoration of the Trinity and San Joaquin river ecosystems need not be mutually exclusive. Since both rivers contribute money to the CVP through sales of water and power, it is appropriate that they both receive CVPIA restoration funding for fishery restoration activities. Each river has its own unique set of circumstances and the Yurok Tribe does not feel it's appropriate to insert ourselves now into a 20 year legal battle on the San Joaquin River that we have not been involved with. The Yurok Tribe believes that restoration of both the Trinity and San Joaquin rivers can be achieved without jeopardizing the funding support needed to implement long-term restoration and management actions.

In summary, the Yurok Tribe strongly supports passage of this legislation, which would authorize full funding for implementation of the ROD regarding the restoration of the

Trinity River. The destruction of the Trinity River fishery resource has taken several decades and been quite dramatic, therefore the authorization for a substantial commitment of funding is necessary to restore this great river. The Yurok Tribe encourages the Committee on Natural Resources to honor the federal trust responsibility to provide a sustainable, long-term fishery for the benefit of the Yurok people. We urge your support of the Trinity River Restoration Fund Act of 2007 (H.R. 2733) and ask that you take the necessary action to move this important piece of legislation through your committee and help enact this important bill into law.