



Westlands Water District

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October 3, 2014

This notice contains important information about the following:

- **District Court Decision on the Merits of Trinity River Litigation**

District Court Decision on the Merits of Trinity River Litigation

It is generally not my practice to issue statements regarding decisions in litigation in which Westlands Water District is involved. However, recent press reports concerning the October 1, 2014, District Court decision on the merits of the Trinity River litigation have been so inaccurate that I am compelled to let you know the District's perspective on this ruling. In this litigation, Westlands Water District and the San Luis & Delta-Mendota Water Authority challenged "flow augmentation releases" from the Trinity River Division for the benefit of salmon migrating up the lower Klamath River in the late summer and early fall of 2012 and 2013.

Under the Court's ruling, Westlands prevailed on the most important issue. The Court found that the only statute cited by the Bureau of Reclamation for taking these actions, the 1955 Act authorizing construction of the Trinity River Division, does not authorize Reclamation to make releases for the benefit of fish in the lower Klamath River. It is correct that the Court ruled against the District on other claims: on an ESA claim, the Court ruled that the District lacks standing; on the District's NEPA claim, the Court ruled that the claim was moot because the challenged actions were already completed; and on the District's claim that the releases were inconsistent with the CVP's water rights because the lower Klamath River is outside of the permitted place of use, the Court ruled that under California water law, an appropriator is free to abandon water previously diverted to storage. Had the District won on these other claims, Reclamation would be required to do further environmental review and seek amendments to its water appropriation permits before making such releases in the future. There is some benefit in requiring such review. But it is likely that despite such review, Reclamation could ultimately proceed with similar releases in the future, if it desired. By contrast, Reclamation cannot cure the claim on which the District prevailed, that Reclamation lacks authority under the 1955 Act to make the releases at all.

Therefore, unless Reclamation can cite some other statutory authority, which in the District's view does not exist, to make releases from the Trinity River Division for the benefit of salmon in the lower Klamath River, the judgment in this case would preclude such releases in the future. It is for this reason that the Hoopa Valley Tribe described the Court's ruling as a "tragic outcome" in its press release on this decision.

If you have any questions regarding this matter, please contact me at your convenience.

Thomas Birmingham
General Manager

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