

## 3.10 Tribal Trust

### 3.10.1 AFFECTED ENVIRONMENT/ENVIRONMENTAL SETTING

The need to restore and maintain the natural production of anadromous fish in the Trinity River mainstem originates partly from the federal government's trust responsibility to protect the fishery resources of the region's Indian tribes. The Trinity River Basin Fish and Wildlife Restoration Act of 1984 (Public Law 98-541) expressly acknowledges the tribal interest in the Basin's fishery resources by declaring that the measure of successful restoration of the Trinity River fishery includes the "ability of dependent tribal... fisheries" to participate fully, through enhanced in-river "harvest opportunities, in the benefits of restoration." In addition, the 1992 CVPIA specifically recognizes the federal trust responsibility in regard to the Trinity River fishery. The proposed Project could potentially impact anadromous fish, non-anadromous fish, water, wildlife, vegetation, and overall riverine health. These impacts could consequently affect the sociocultures and economies of the tribes.

This section focuses principally on the interests of the Hoopa Valley and Yurok Tribes since, of the Indian tribes of the Klamath/Trinity Region, their interests would be the most directly affected by the project. It should be understood, however, that the impacts are pertinent to the Karuk and Klamath people as well since they share a common regional heritage.

#### Regional Setting

The United States' recognition of the importance of rivers and fish to the Indian people of the Klamath/ Trinity Region is exemplified by the very shape and location of the lands first set aside for their reservations. The Secretary's own instructions at the time were, "to select these reservations from such 'tracts of land adapted as to soil, climate, water privileges, and timber, to the comfortable and permanent accommodation of the Indians'" (USFWS et al. 2000a). In 1855, Indian Agent S. Whipple, when speaking of the Yurok, noted that, "The river is abundantly supplied with Salmon. A fine large fish quite easily taken by the Indians and which is very properly regarded by the Indian as his staff of life" (USFWS et al. 2000a).

In that same year, President Pierce established the Klamath River Reservation. The reservation (not to be confused with the Klamath Reservation in Oregon) was designated as a strip of territory commencing at the Pacific Ocean and extending one mile in width on each side of the Klamath River for a distance of approximately 20 miles. This reservation was created entirely within the aboriginal territory of the Yurok. Although the federal government's intent was to eventually move all the region's Indians onto the Klamath River Reservation, only some Yurok and Tolowa were moved. Flooding along the Klamath River in 1862 led to the closing of the area's Indian Bureau office and contributed to the erroneous belief that the reservation had been abandoned, though it was still occupied by the Yurok (USFWS et al. 2000a).

On August 21, 1864, the DOI issued a proclamation and instructions that established the Hoopa Valley Reservation on the Trinity River pursuant to legislation enacted by Congress that same year. The reservation is 12 miles square and bisected by 15 miles of the river (it has often been called the Square or the 12-mile Square). In 1876 President Grant issued an Executive Order formally establishing the boundaries of the Hoopa Valley Reservation, and provided that the land contained within those boundaries, "be withdrawn from public sale, and set apart in California by act of Congress approved April 8, 1864" (USFWS et al. 2000a).

Efforts soon began to provide a single contiguous homeland for the region's Indian people by connecting the Klamath River Reservation to the Hoopa Valley Reservation. Paris Folsom, a Special Agent for the DOI, proposed that the two reservations be connected in his "Report of Special Agent on Conditions and Needs of Non-Reservation Klamath Indians," sent to the Commissioner of Indian Affairs in 1885.

In 1891, President Harrison extended the Hoopa Valley Reservation from the mouth of the Trinity River to the ocean, thereby encompassing and including the Hoopa Valley Reservation, the original Klamath River Reservation, and the connecting strip between. By that time, as a result of the Dawes Act of 1887, much of the Klamath River Reservation and extension lands (the 20-mile strip that connected the two reservations is commonly referred to as the "Connecting Strip" or "Extension") not already claimed as allotments by resident Indians had been opened up to non-Indian settlement.

This led to checkerboard ownership of the Yurok portions of both the Extension and former Klamath River Reservation. Through various means, several timber companies quickly consolidated and heavily logged much of this land.

From 1891 through 1988, the Hoopa Valley Reservation was comprised of the Hoopa Valley Square, the Extension, and the original Klamath River Reservation. In 1988, Congress, under the Hoopa-Yurok Settlement Act, separated the Hoopa Valley Reservation into the present Yurok Reservation (a combination of the original Klamath River Reservation and Extension) and Hoopa Valley Reservation. **Figure 3.10-1** shows the current reservation boundaries.

### **Indian Reserved Rights**

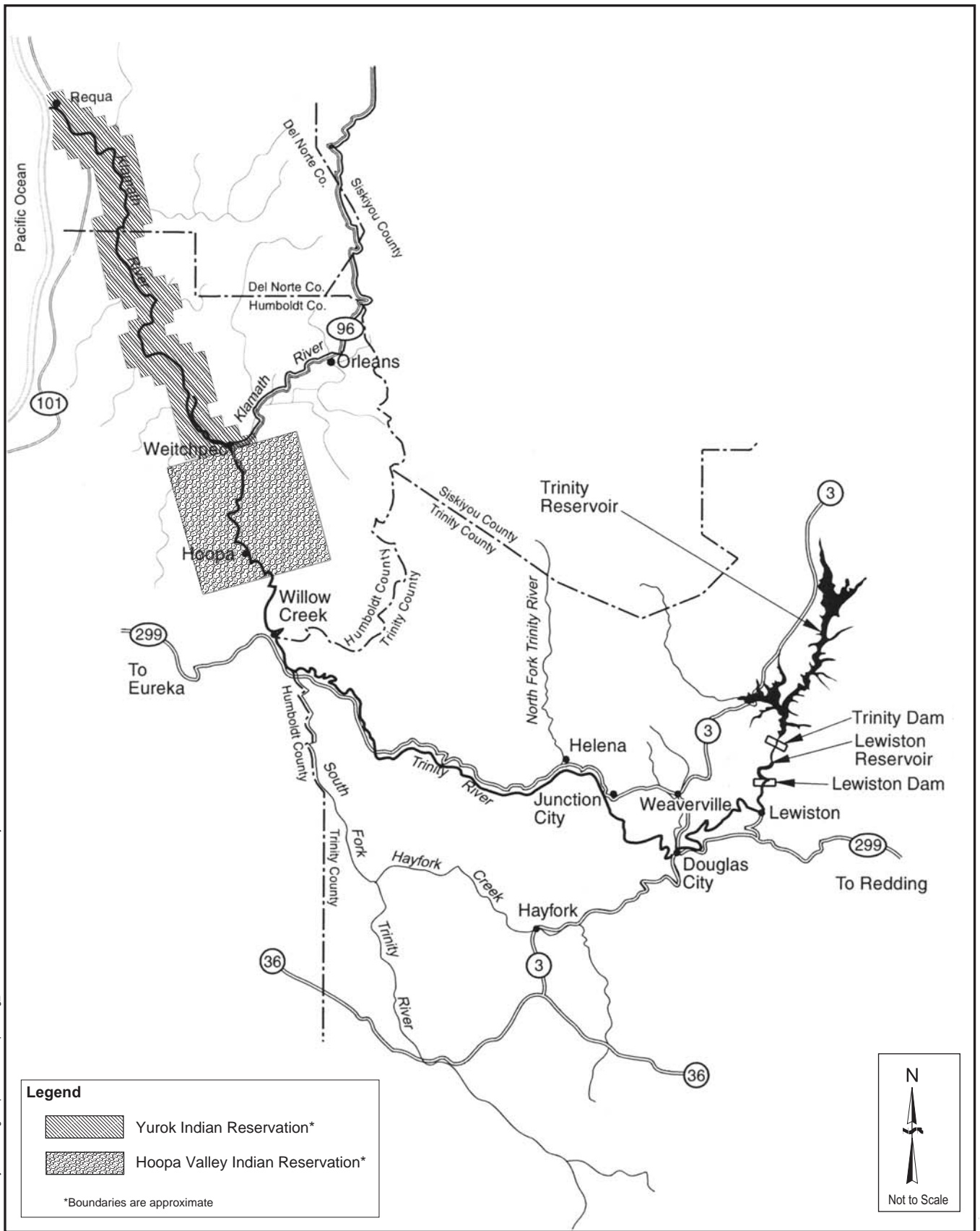
By first creating reservations "for Indian Purposes," the United States sought to provide the Hoopa Valley and Yurok Tribes with the opportunity to remain mostly self-sufficient, exercise their rights as sovereigns, and maintain their traditional ways of life (USFWS et al. 2000a). Implicit in this objective was an expectation that the federal government would protect the tribes and their resources (a protection that extended beyond reservation borders).

The United States has a trust responsibility to protect tribal trust resources. In general, this tribal trust responsibility requires that the United States protect tribal fishing and water rights, which are held in trust for the benefit of the tribes (DOI 1995). This trust responsibility is one held by all federal agencies. For the proposed Project, the BOR is obligated to ensure that project operations do not interfere with the Tribes' senior water rights. Pursuant to its trust responsibility and consistent with its other legal obligations, the BOR must also prevent activities under its control that would adversely affect Tribal fishing rights, even when those activities take place off-reservation.

### ***Fishing Rights***

Salmon, steelhead, sturgeon, and lamprey that spawn in the Trinity River pass through the Hoopa Valley and Yurok Reservations and are harvested in tribal fisheries. The fishing traditions of these tribes stem from practices that far pre-date the arrival of non-Indians. Accordingly, when the federal government established what are today the Hoopa Valley and Yurok Indian Reservations on the Trinity and lower Klamath Rivers, it reserved for the benefit of the Indian tribes of those reservations a right to the fish resources in the rivers running through them. The Yurok and Hoopa Valley Tribes' fishing rights entitle them to take fish for ceremonial, subsistence, and commercial purposes. The United States has long recognized the rights of the tribes of the Klamath/Trinity River Basin to fish. The federal

10006 - Trinity River Bridge Replacement/Graphics/Fig\_3.10-1.ai 03/25/03 VB Source: Trinity River Draft EIR



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Trinity River Bridges Project

**Figure 3.10-1**  
**Trinity Basin Indian Reservations**

government, as trustee, has an affirmative obligation to manage tribal rights and resources for the benefit of the tribes. Tribal fishing rights are vested property rights held in trust by the United States for the benefit of the Indians. These rights have been acknowledged and confirmed by the executive, legislative, and judiciary branches of the federal government in a number of authorities including: (1) Secretarial Issue Document on Trinity River Fishery Mitigation, issued January 14, 1981; (2) Opinion of the Solicitor of the DOI re: Fishing Rights of the Yurok and Hoopa Valley Tribes (M-36979: October 4, 1993); (3) the CVPIA (3406 (b) (23)); and (4) *Parravano v. Babbitt*, 837 F. Supp. 1034 (N.D. Calif. 1993), 861 F. Supp. 914 (N.D. Calif. 1994), affirmed 70 F.3d 539 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996). In most cases, tribal fishing rights cannot be supplanted by state or federal regulation. The above referenced 1993 solicitor's opinion: (1) reaffirms the historic and legal basis of the reserved fishing rights of the Hoopa Valley and Yurok Tribes; (2) acknowledges the federal government's cognizance of the importance of fish to these Indians at the time it first established reservations on their behalf; (3) concludes that the tribes' reserved fishing rights entitle them to what is necessary to support a moderate standard of living, or 50 percent of the harvestable share of the Klamath-Trinity Basin fishery, whichever is less; (4) recognizes that under the current depleted condition of the fishery, a 50 percent allocation does not adequately meet the tribes' needs; and (5) argues that it was the degree of the Hoopa Valley and Yurok Tribes' dependence on fisheries at the time their reservations were first created or expanded, and not the tribes' specific uses of the fish, that is relevant in quantifying their fishing rights.

Today, the reserved fishing right includes the right to harvest quantities of fish that the Indians require to maintain a moderate standard of living, unless limited by the 50 percent allocation. Specifically, the tribes have a right to harvest all trust species of Klamath and Trinity River fish for their subsistence, ceremonial, and commercial needs. Tribal harvest of these species is guided by conservation requirements outlined in carefully developed tribal harvest management plans.

### **Water Rights**

In addition to fish, the tribes have reserved rights to water. The concept of reserved rights in general, and Indian reserved water rights specifically, originated just after the start of the 20th century with *Winters v. United States*, 207 U.S. 564 (1908). The ruling in this case, commonly referred to as the Winters Doctrine, states that when the federal government established a reservation, it implicitly reserved a quantity of water necessary to fulfill the purposes of said reservation. Generally, all original documents related to the establishment of reservations—treaty, executive order, or statute—indicate, at a minimum, that the purpose of the reservations is to provide a permanent home for the tribe(s) in question. In cases where reservations have been created with specific language stating or implying reserved fishing, hunting, gathering, or other rights, the *Winters* Doctrine has been interpreted to mean that adequate water supplies for these purposes have been reserved (even in addition to more general uses - see *U.S. v. Adair*, 723 F.2d 1410 [9th Cir. 1983]).

The DOI solicitor's office reaffirmed these rights with respect to the BOR's activities, stating that: "BOR is obligated to ensure that project operations not interfere with the Tribes' senior water rights. This is dictated by the doctrine of prior appropriations as well as BOR's trust responsibility to protect tribal trust resources" (DOI 1995). Furthermore, the solicitor's office notes that the Secretary, "through BOR, must operate reclamation projects consistent with vested, fairly implied senior Indian water rights" (DOI 1997). Further, absent a "completed adjudication or other determination of the senior water rights," projects must be "operated based on the best available information."

**Rights to Wildlife and Vegetation Resource**

While the focus of the legal history surrounding Indian rights to resources has mostly focused on water and fisheries, it is important to recognize that other resources such as wildlife and vegetation are extremely important to the tribes and no less reserved. In the case of the Hoopa Valley and Yurok Tribes, the decline in the health of the region’s rivers has limited the availability of grasses and other plants important to traditional basketry, art, and medicine. Thus, while anadromous fish are the focus of the Trinity River Mainstem Restoration Program, other trust assets such as vegetation also fall under the umbrella of the federal government’s trust responsibility and, accordingly, need to be considered in the decision-making process.

**Potentially Impacted Indian Trust Assets**

Indian tribes of the Klamath/Trinity Region have firmly established federally protected rights to numerous natural resources. These general resource groupings represent culturally important Indian trust assets. A partial list of trust assets is presented in **Table 3.10-1**. While each tribe has its own uses for the species/resources presented, the table provides a general summary of what these uses are.

<b>Asset</b>	<b>Primary Uses by Tribes</b>
<b><i>Fish<sup>a</sup></i></b>	
Fall chinook salmon	Subsistence, ceremonial, commercial
Spring chinook salmon	Subsistence, ceremonial, commercial
Summer steelhead	Subsistence, ceremonial, commercial
Fall steelhead	Subsistence, ceremonial, commercial
Winter steelhead	Subsistence, ceremonial, commercial
Coho salmon	Subsistence, ceremonial, commercial
Pacific lamprey	Subsistence, ceremonial, commercial
Sturgeon	Subsistence, ceremonial, commercial
Eulachon	Subsistence, ceremonial, commercial
<b><i>Vegetation</i></b>	
Willow shoots	Basketry, ceremonial
Cottonwood	Basketry
Wild grape	Basketry
Bulrush	Basketry
Hazel sticks	Basketry and weaving, ceremonial
Tules	Medicine
Spearmint	Medicine, subsistence
Blackberries	Subsistence
Water	Subsistence, ceremonial, commercial, medicine
<b><i>Wildlife</i></b>	
Bear	Subsistence
Bald eagle	Ceremonial

<b>Asset</b>	<b>Primary Uses by Tribes</b>
Blue heron	Ceremonial
Mallard	Ceremonial

<sup>a</sup> While many of the fish listed are not currently commercially harvested by the tribes of the region, historically, all these trust species were used for commercial purposes, and the tribes continue to have the right for commercial harvest.

Sources: Hoopa Valley, Karuk, and Yurok Tribes

### **Cultural Environment**

Native uses of natural resources, and the cultural significance of those resources, developed over many centuries. Since time immemorial, native people have lived in the heavily forested drainages of the Klamath and Trinity Rivers and adjacent streams in Northwestern California. Over the centuries, they learned to efficiently utilize the natural bounty of their territories; hunting, fishing, and gathering were the foundation of their societies. Tribes in the area included: the Chilula, Hoopa Valley, Nongatl, Tsnungwe, and Whilkut speaking Athabascan languages; the Chimariko, Karuk, and Shasta speaking Hokan languages; the Wintun speaking a Penutian language, and the Wiyot and Yurok speaking Algonkian languages.

Some of these tribes, such as the Chilula, no longer exist. Others, including the Chimariko and Wintu, have never been officially recognized by the United States as a distinct and sovereign people. In fact, amongst the Indian peoples still present within the region, only the Hoopa Valley, Karuk, Klamath, and Yurok Tribes have received this recognition.

The aboriginal lands of the Hupa people are centered on the drainages of the Hoopa Valley of the Trinity River. The aboriginal lands of the Yurok were generally centered on the Klamath River drainage from the mouth of the river at the Pacific Ocean up to and including Slate Creek Drainage. Yurok ancestral territory also extends up the Trinity River to Tank Creek and includes the village of Oslegoits, six miles from the Trinity's confluence with the Klamath.

There have always been strong social, cultural, and economic ties among the tribes of the Klamath/Trinity Basin; ties based in large part on a shared reliance on the region's rivers and associated resources, particularly salmon. This reliance extends well beyond subsistence and commerce to the cultural and social fabric of their societies; as evidenced by their traditional, ceremonial, and spiritual ways of life that focus and center on the rivers and the fish, wildlife, and vegetation they support. For Indians of the Klamath/ Trinity Region, the interaction and identification with the natural environment so defines their cultures, lifestyles, and religions, that its degradation has had a profoundly devastating impact.

### **Local Setting**

#### **Salt Flat**

Based on consultation with the Tribes and the BOR, the Salt Flat Bridge project study area contains Trust resources, including fish, vegetation and wildlife. While no specific use of this site has been identified, however the Trinity River provides a valuable corridor that connects these resources to the Hoopa Valley and Yurok Tribes.

### ***Bucktail***

Based on consultation with the Tribes and the BOR, the Salt Flat Bridge project study area contains Trust resources, including fish, vegetation and wildlife. While no specific use of this site has been identified, however the Trinity River provides a valuable corridor that connects these resources to the Hoopa Valley and Yurok Tribes.

### ***Poker Bar***

Based on consultation with the Tribes and the BOR, the Salt Flat Bridge project study area contains Trust resources, including fish, vegetation and wildlife. While no specific use of this site has been identified, however the Trinity River provides a valuable corridor that connects these resources to the Hoopa Valley and Yurok Tribes.

### ***Biggers Road***

Based on consultation with the Tribes and the BOR, the Salt Flat Bridge project study area contains Trust resources, including fish, vegetation and wildlife. While no specific use of this site has been identified, however the Trinity River provides a valuable corridor that connects these resources to the Hoopa Valley and Yurok Tribes.

## **3.10.2 ENVIRONMENTAL CONSEQUENCES/IMPACTS AND MITIGATION MEASURES**

The purpose of this section is to evaluate the potential impacts of the alternatives on tribal trust assets, and the subsequent effects those impacts may have on the Indian tribes of the Klamath/Trinity Basin.

### **Methodology**

While the proposed Project is aimed at improving the river's anadromous fisheries, an assessment of how bridge construction may actually impact the Indian tribes of the Klamath/ Trinity Region, and the federal government's trust responsibilities to those tribes, goes beyond numbers of fish. This is not to suggest that the goal of restoring the river's fishery is not relevant to tribal trust concerns, but that tribal values are multi-dimensional. Towards this end, the tribal trust impact analysis focuses on the potential affect of the proposed Project on the health of the Trinity River, as the river's overall health is a primary factor determining not only the availability of fish, but many trust assets including vegetation, water, and wildlife. Thus, increased numbers of Chinook salmon and Pacific lamprey, and the rejuvenation of other trust assets, represents an expected beneficial by-product of improved riverine health. The potential tribal trust impacts were not evaluated on a trust asset by trust asset basis.

### **Significance Criteria**

No specific significance criteria were applied in the evaluation of potential tribal trust consequences, although any modification or change in the quantity or quality of downstream tribal trust assets was evaluated. Notably, nothing in the CEQA expressly requires lead agencies to consider projects' impacts on Tribal Trust Resources as a distinct category of impacts. Instead, with its focus on the physical environment, the CEQA requires agencies to focus on impacts to specific natural or environmental resources, some of which, such as fish and wildlife and water quality, might be indirectly related to Tribal Trust values.

### **Impacts and Mitigation Measures**

**Table 3.10-2** summarizes the potential tribal trust impacts resulting from construction of the proposed Project.

**All Bridge Sites (Salt Flat, Bucktail, Poker Bar, and Biggers Road)**

**Impact 3.12-1:** Implementation of the Trinity River Bridges Project may reduce the quantity or quality of a tribal trust asset. *No Impact for No-Action Alternative, Less than Significant Impact for Project Alternatives (Proposed Action, Alternative 1, and Alternative 2).*

<b>Impact</b>	<b>Project Site</b>	<b>No-Action Alternative</b>	<b>Proposed Action</b>	<b>Alternative 1</b>	<b>Alternative 2</b>
1. Implementation of the Trinity River Bridges Project may reduce the quantity or quality of a tribal trust asset.	Salt Flat	NI	LS	LS	LS
	Bucktail	NI	LS	LS	N/A
	Poker Bar	NI	LS	LS	N/A
	Biggers Road	NI	LS	LS	N/A

## Notes:

LS = Less than Significant  
N/A = Not Applicable

S = Significant

NI = No Impact

SU = Significant Unavoidable

*No-Action Alternative*

Under the No-Action Alternative for the four project sites (Salt Flat, Bucktail, Poker Bar, Biggers Road), none of the proposed construction activities would occur and no impacts to a tribal trust asset would occur.

*All Project Alternatives (Proposed Action; Alternative 1; Alternative 2) for All Bridge Sites*

The Trinity River supports Tribal Trust resources throughout the project study area. Short-term impacts described in Section 3.3.3 (Geology, Fluvial Geomorphology and Soils); Section 3.5.3 (Water Quality); Section 3.6.3 (Fishery Resources); and Section 3.7.3 (Vegetation Wildlife and Wetlands) will occur in conjunction with project implementation. These impacts are expected to be short-term and outweighed by the overall benefits to these tribal trust resources through implementation of the Trinity River Restoration Program.

**Mitigation Measures***All Project Alternatives (No-Action Alternative, Proposed Action; Alternative 1; Alternative 2)*

Since no significant impact was identified for these alternatives, no mitigation is required.

**Significance after Mitigation:** N/A