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NORTHERN DISTRICT OF CALIFORNIA  
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NORTHERN DISTRICT OF CALIFORNIA

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United States District Court  
For the Northern District of California

HOOPA VALLEY INDIAN TRIBE,	)	
	)	No. C-02-0041 SC
Plaintiff,	)	
	)	ORDER RE: CROSS-
v.	)	MOTIONS FOR SUMMARY
	)	<u>JUDGMENT</u>
MICHAEL RYAN, Northern Area	)	
Manager, Bureau of Reclamation;	)	
GALE NORTON, Secretary of the	)	
Interior; and THE UNITED STATES OF	)	
AMERICA,	)	
	)	
Defendants.	)	

I. INTRODUCTION

This case involves a dispute about the nature of certain actions to be taken by the Bureau of Reclamation ("the Bureau") to restore the Trinity River. The Hoopa Valley Indian Tribe ("the Tribe") argues that those actions are being taken "for the benefit of Indians because of their status as Indians." It therefore seeks summary judgment that the Bureau is obliged, pursuant to the Indian Self-Determination and Education Assistance Act ("ISDEEA"; 25 U.S.C. §§ 450 - 458bbb-2), to enter into contracts allowing the Tribe to perform those restoration actions. The Bureau contends that the actions are not subject to the ISDEEA's mandatory contracting provisions and has moved for summary judgment in its favor.

1     **II.    BACKGROUND**

2             **A.    The Trinity River**

3             The Trinity River, an approximately 100-mile long river  
4             located in northwestern California, once contained thriving salmon  
5             runs. AR at 126; id. at 141. Those runs supported commercial and  
6             recreational fisheries and provided a cultural center and vital  
7             source of sustenance for the Hoopa and Yoruk tribes, both of which  
8             have reservations on or near the lower reaches of the river.<sup>1</sup> See  
9             id at 141.

10            In the 1950s, Congress approved the diversion of a  
11            substantial portion of the Trinity River's flow to the adjacent  
12            Sacramento River drainage. Pub. L. No. 84-386, 59 Stat. 719  
13            (1955); AR at 141. In approving the transfer, Congress appears to  
14            have believed that the remaining Trinity River flows could  
15            continue to sustain the river's wildlife. AR at 141; see Pub. L.  
16            No. 84-386, 59 Stat. 719 (1955). Following the diversion,  
17            however, the anadromous fisheries in the river suffered, and the  
18            river has been the subject of restoration efforts ever since. AR  
19            at 141-42.

20            The restoration efforts were authorized by a series of  
21            Congressional acts. The 1955 act that authorized the initial  
22            water transfer directed the Secretary of the Interior "to adopt  
23            appropriate measures to insure the preservation and propagation of  
24            fish and wildlife...." Pub. L. No. 84-386, 59 Stat. 719. Two  
25            later acts, the first passed in 1980 and the second in 1984,

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26  
27            <sup>1</sup>The Yoruk Tribe's reservation is on the Klamath River  
28            downstream of that river's confluence with the Trinity River.

1 authorized specific restoration projects to compensate for the  
2 effects of the diversion. Pub. L. No. 96-335, 94 Stat. 1062  
3 (1980); Pub. L. No. 98-541, 98 Stat. 2721 (1984). The 1992 Central  
4 Valley Project Improvement Act ("the CVPIA") also provided for  
5 restoration efforts, as did the 1996 amendments to the 1984 act.  
6 Pub. L. No. 1023-575, §§ 3401-12, 106 Stat. 4600; Trinity River  
7 Basin Fish and Wildlife Management Reauthorization Act of 1995,  
8 Pub. L. No. 104-143, 110 Stat. 1338 (1996). Most recently, in  
9 2000, the Department of the Interior released its Record of  
10 Decision ("ROD") for its environmental impact statement for the  
11 Trinity River restoration effort. AR at 141-66.

12 The Congressional acts and the Record of Decision indicate  
13 that the restoration efforts are being taken partly to comply with  
14 other environmental laws, partly to benefit other users, and  
15 partly to satisfy the federal government's trust obligations to  
16 the Hoopa Valley and Yoruk tribes. The 1955 and 1980 acts do not  
17 explicitly identify the Hoopa Valley Tribe as a beneficiary, and  
18 the 1984 act, although it grants the Tribe a seat on a task force  
19 that was to oversee the restoration efforts, provides no other  
20 indication that the restoration effort was taken specifically to  
21 benefit the tribe. The Department of the Interior has  
22 acknowledged, however, that fulfilling trust obligations to the  
23 Hoopa Valley and Yoruk tribes was a primary motivation for these  
24 and later acts. AR at 148. Later acts made these purposes  
25 explicit.

26 The CVPIA, for example, contains more detailed discussion of  
27 its intended beneficiaries. One of the act's general purposes was  
28

1 to "protect, restore, and enhance fish, wildlife, and associated  
2 habitats in the Central Valley and Trinity River Basins of  
3 California." Pub. L. No. 1023-575, § 3406(b), 106 Stat. 4600.  
4 More specifically, § 3406(b)(23) of the act directed the Secretary  
5 of the Interior, "in order to meet Federal trust responsibilities  
6 to protect the fishery resources of the Hoopa Valley Tribe, and to  
7 meet the fishery restoration goals of the Act of October 24, 1984,  
8 Public Law 98-541," to provide certain releases of instream flow  
9 to the Trinity River. The act also directed the Secretary, "after  
10 consultation with the Hoopa Valley Tribe," to complete a Trinity  
11 River Flow Evaluation Study. Id. If the Secretary and the Tribe  
12 concurred in the study's recommendations, the Secretary was then  
13 to implement any recommendations for increased flow. Id.

14 In 1996, Congress amended the 1984 Act and added more  
15 specific discussion of intended beneficiaries. Trinity River  
16 Basin Fish and Wildlife Management Reauthorization Act of 1995,  
17 Pub. L. No. 104-143, 110 Stat. 1338 (1996). As amended, the act  
18 states that "Trinity Basin fisheries restoration is to be measured  
19 not only by returning adult anadromous fish spawners, but by the  
20 ability of dependant tribal, commercial, and sport fisheries to  
21 participate fully, through enhanced in-river and ocean harvest  
22 opportunities, in the benefits of restoration." It also states  
23 that

24 the Secretary requires additional authority to implement  
25 a management program, in conjunction with other  
26 appropriate agencies, to achieve the long-term goals of  
27 restoring fish and wildlife populations in the Trinity  
28 River Basin, and, to the extent these restored  
populations will contribute to ocean populations of

1 adult salmon, steelhead, and other anadromous fish, such  
2 management program will aid in the resumption of  
3 commercial, including ocean harvest, and recreational  
4 fishing opportunities.

5 The 2000 Record of Decision also discusses the multiple  
6 purposes of the restoration effort, mentioning both other  
7 environmental obligations and the importance of the fishery and  
8 the restoration effort to the Hoopa Valley and Yurok tribes. In a  
9 typical passage, it states that "the necessity for [the  
10 recommended] actions results from the various statutory  
11 obligations of the Department as well as the federal trust  
12 responsibility to the Hoopa Valley and Yurok Indian Tribes." AR  
13 at 142.

14 B. The ISDEAA

15 The ISDEAA allows tribes to administer programs that  
16 otherwise would be administered by the federal government. Under  
17 Title I of the ISDEAA, if a proposed contract falls within one of  
18 five specific categories, the Secretary of the Interior or the  
19 Secretary of Health and Human Services must, upon request of the  
20 affected tribe, enter into a Self-Determination Contract with that  
21 tribe. 25 U.S.C. § 450f(a). The scope of fifth of those  
22 categories, which includes programs "for the benefit of Indians  
23 because of their status as Indians," is at issue in this  
24 litigation. Id. § 450f(a)(1)(E).

25 Section IV of the ISDEAA allows tribes to enter into Annual  
26 Funding Agreements ("AFAs") with the Secretary of the Interior.  
27 25 U.S.C. § 458cc. AFAs are broader in scope than the more  
28

1 specific Self-Determination Contracts governed by 25 U.S.C. §  
2 450f(a), and multiple Self-Determination Contracts may fall under  
3 the umbrella of a single AFA. Under § 450cc(c), the Secretary may  
4 enter into AFAs with tribes for activities "which are of special  
5 geographic, historical, or cultural significance to the  
6 participating Indian tribe requesting the compact." Under §  
7 450cc(b)(2), the Secretary *must* enter into AFAs for "programs,  
8 services, functions, and activities, or portions thereof... that  
9 are otherwise available to Indian tribes or Indians," so long as  
10 the AFAs do not provide a preference for one tribe over another.  
11 The Department's implementing regulations clarify that an activity  
12 that is "otherwise available to Indian tribes or Indians" is an  
13 activity subject to the mandatory contracting provisions of §  
14 450f(a). 25 C.F.R. §§ 1000.124, 1000.2. Thus, the ISDEAA  
15 requires the Secretary to enter into AFAs for activities that  
16 could be contracted under § 450f(a), including activities taken  
17 "for the benefit of Indians because of their status as Indians."

18 C. Actions Leading to this Litigation

19 In 2001, the Tribe approached the Bureau of Reclamation with  
20 a proposed scope of work for portions of the fiscal year 2002  
21 Trinity River restoration efforts. The Tribe described 19  
22 proposed activities, all of which it believed were "Indian  
23 Programs" eligible for self-determination contracting under the  
24 ISDEAA. AR at 68-77. It requested that Bureau enter into a self-  
25 governance agreement with the Tribe that would grant the tribe  
26 authority over those specific projects. Id.

1           The Bureau responded with a letter agreeing that the Tribe  
2 participated in some of its restoration-related activities because  
3 of its status as a tribe and/or because of a grant of authority  
4 from Congress, and therefore was eligible for self-determination  
5 contracting for those activities. The Bureau also stated, however  
6 that the Tribe's participation in other activities was due to its  
7 geographic, historic, and cultural ties to the river, not due to  
8 its status as a tribe, and that for those activities the Tribe was  
9 eligible only for discretionary contracts pursuant to Section IV  
10 of the ISDEAA. AR at 65-66.

11           Further letters and discussions ensued, with the Tribe  
12 continuing to urge that all proposed activities were subject to  
13 the mandatory contracting provisions and the Bureau continuing to  
14 disagree. On December 3, 2001, Reclamation responded to the  
15 Tribe's Last Best Offer and reiterated its position that only two  
16 of the nineteen proposed activities were eligible for mandatory  
17 contracting. Following this rejection, the Tribe filed its  
18 complaint. The complaint asks the Court to rule that five  
19 activities--basic sediment transport modeling; channel  
20 rehabilitation site physical monitoring; channel rehabilitation  
21 site biological monitoring; Trinity River Mainstem outmigrant  
22 monitoring; and participation on the Channel Restoration Sub-  
23 Committee--are projects undertaken "for the benefit of Indians  
24 because of their status as Indians" and thus are eligible to be  
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1 included in a mandatory AFA.<sup>2</sup>

2 **III. LEGAL STANDARD**

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4 Summary judgment is proper only when there is no genuine  
5 issue of material fact and, when viewing the evidence in the light  
6 most favorable to the nonmoving party, the movant is clearly  
7 entitled to prevail as a matter of law. Fed. R. Civ. P. 56(c);  
8 Cleary v. News Corp., 30 F.3d 1255, 1259 (9th Cir. 1994).

9 **IV. DISCUSSION**

10  
11 Despite its complicated history and legal background, this  
12 case involves no factual disputes and boils down to a  
13 straightforward legal question. The Tribe clearly has been an  
14 intended and important beneficiary of Trinity River restoration  
15 efforts. It also clearly is not the only intended beneficiary of  
16 those efforts. The question this case presents, then, is whether  
17 a program undertaken partly to benefit an Indian tribe and partly  
18 to benefit others is a program "for the benefit of Indians because  
19 of their status as Indians" under the ISDEAA. The Court holds  
20

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21 <sup>2</sup>There appears to be some confusion between the parties about  
22 which restoration actions are at issue in these summary judgment  
23 motions. The Tribe's complaint lists the five actions discussed  
24 above, but in its reply brief the Tribe stated that it was seeking  
25 summary judgment with respect to fourteen of the programs,  
26 functions, services, or activities contained in its FY 2000 last  
27 best offer. The Court decides this motion on the basis of the  
28 Tribe's assertion that it seeks summary judgment with respect to  
fourteen activities, but the outcome does not depend upon the  
number of activities in question. Whether the Tribe seeks summary  
judgment with respect to five actions or fourteen, the actions in  
question all pertain to the restoration of the Trinity River as a  
whole, and the underlying legal issue remains the same.



1 that it is not.

2 This holding is based primarily on the Ninth Circuit's  
3 opinion in Navajo Nation v. Department of Health and Human  
4 Services, 325 F.3d 1133 (9th Cir. 2003). That case involved the  
5 Navajo Nation's request for a Self-Determination contract to  
6 administer a welfare program called Temporary Assistance for Needy  
7 Families ("TANF"). Although Congress, in enacting that program,  
8 created provisions allowing tribes to administer funds under the  
9 program, the Ninth Circuit held that "TANF is not a program 'for  
10 the benefit of Indians because of their status as Indians.'" Id.  
11 at 1136. It stated that "programs or services that are 'for the  
12 benefit of Indians because of their status as Indians' must be  
13 federal programs specifically targeted to Indians and not merely  
14 programs that collaterally benefit Indians as part of the broader  
15 population, as is the case with TANF." Id. at 1138.

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17  
18 Citing this "specifically targeted" language, the Tribe  
19 argues that a program is eligible for mandatory contracting so  
20 long as Indians are specifically identified as a beneficiary, even  
21 if they are not the sole beneficiary. In other words, the Tribe  
22 contends that "specifically targeted" does not mean "exclusively  
23 targeted." The phrase "specifically targeted" alone might indeed  
24 be susceptible to such an interpretation, but the Tribe ignores  
25 the context of this statement within the Ninth Circuit's opinion.

26  
27 The Ninth Circuit reached its holding based upon a close  
28

1 reading of the language of ISDEAA § I, which provides that five  
2 categories of contracts, including contracts "for the benefit of  
3 Indians because of their status as Indians," are eligible for  
4 mandatory contracting. It noted that three of the five categories  
5 involved programs created under statutes directed "primarily" or  
6 "solely" at Indian welfare. *Id.* at 1137-38. The Ninth Circuit  
7 found these three categories instructive about the meaning of the  
8 more generally defined fifth category; it concluded that those  
9 first three categories "help delineate the boundaries of programs  
10 that are 'for the benefit of Indians because of their status as  
11 Indians.'" *Id.* at 1137. Thus, when the Ninth Circuit concluded  
12 that the fifth category must involve programs "specifically  
13 targeted" to Indians, *Id.* at 1137, it indicated that the fifth  
14 category, like the first three categories, involved only programs  
15 solely or at least primarily directed at Indians.  
16

17  
18 This interpretation is consistent with the general purposes  
19 of the ISDEAA. The ISDEAA grants Indian tribes greater control  
20 over certain federal programs administered for their benefit,  
21 essentially allowing the tribe a higher degree of self-government.  
22 See 25 U.S.C. § 450a. The act states Congress's commitment to  
23 "the establishment of a meaningful Indian self-determination  
24 policy which will permit an orderly transition from the Federal  
25 domination of programs for, and services to, Indians to effective  
26 and meaningful participation by the Indian people in the planning,  
27

1 conduct, and administration of those programs and services." Id.  
2 § 450a(b). Nothing in the act, however, suggests that tribes  
3 should, upon request, receive authority to control projects that  
4 exist for the benefit of non-tribal entities.

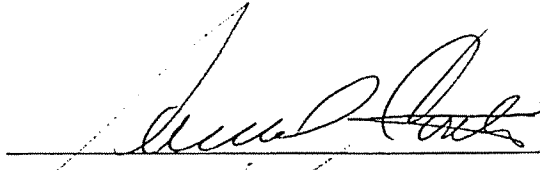
5  
6 Such control is exactly what the Tribe now seeks. The  
7 restoration actions in question all will benefit the public and  
8 other non-tribal entities, and all would be taken pursuant to  
9 statutes and administrative statements that unequivocally state  
10 the importance of other purposes in addition to fulfilling tribal  
11 trust obligations. Some of the statutes mandating those actions  
12 mention the Tribe as an important intended beneficiary, and the  
13 Tribe certainly is a key stakeholder in the river's recovery. It  
14 is not the sole beneficiary, however, and the Bureau is not  
15 obligated to enter into the requested agreement with the Tribe.

16  
17 **V. CONCLUSION**

18 For the foregoing reasons, the Bureau's Motion for Summary  
19 Judgment is GRANTED and the Tribe's Motion for Summary Judgment is  
20 DENIED.

21  
22 IT IS SO ORDERED.

23 Dated: August 14, 2003

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26 UNITED STATES DISTRICT JUDGE