TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER
DEPARTMENT: UTILITIES
DATE: SEPTEMBER 23, 2002
CMR: 397:02
SUBJECT: UTILITIES ADVISORY COMMISSION RECOMMENDATION ON TRINITY RIVER RESTORATION LITIGATION AND SCHEDULING THE COUNCIL’S CONSIDERATION OF THIS ISSUE

RECOMMENDATION
Staff recommends that the City Council agendize for October 21, 2002 consideration of whether to support the Northern California Power Agency (NCPA’s) litigation against the Department of Interior regarding the adequacy of the Record of Decision on the method of Trinity River fisheries restoration, in order to provide its NCPA commissioner, Council Member Bern Beecham, with the direction on whether or not to support an appeal, if one is proposed, of the action coming from the judge’s ruling, when it becomes available on this issue.

PROJECT DESCRIPTION
On August 5, 2002 the City Council discussed the Trinity River flow environmental impact statement litigation (CMR 360:02). At that meeting the City Council directed the Utilities Advisory Commission (UAC) to work with staff to develop a deeper understanding of the issues related to this litigation and return to the City Council with a recommendation regarding a negotiation position.

Staff provided information related to the litigation at the September 4, 2002 Utilities Advisory Commission meeting. NCPA staff and consultants as well as opposition groups were invited to that meeting and made presentations. A representative of Environmental Defense was given the opportunity to rebut the facts and arguments presented.
NCPA described its history of seeking a collaborative solution to Trinity River fisheries restoration based on taking incremental steps and monitoring the consequences, both intended and unintended. More actions would be implemented in pursuit of meeting restoration targets.

Dr. Mike Harvey, an independent consultant hired by NCPA to review the Trinity River EIS said that the significant missing component in the Environmental Impact Statement (EIS) that lead to the Record of Decision (ROD) was the lack of a hydraulic model to indicate the consequences of the flows. Dr. Harvey indicated the importance of matching the ratios of gravel injection with water flows to maintain a healthy river for the fish. He indicated the peak flows would scour the river and move gravel down the river to fill in the deep pools that are habitat for the fish. To replenish the gravel, the ROD flows would require an average of 20 truck loads per day all year during wet years.

Paul Bratovitch, another independent consultant hired by NCPA to review the Trinity River EIS outlined 3 things for the UAC:

1) There is significant uncertainty with regard to how the Trinity River fisheries will respond to the ROD flows and the altered river, given the new 1997 theoretical construct of healthy alluvial river attributes. The responsible approach would be a program of incremental, science-based improvements and subsequent monitoring of effects.

2) The four runs of Salmon and Steelhead on the Trinity River are not in peril. Returning fish populations are estimated at 39,000 fish, compared to prior to dam construction estimates of 18,000 fish.

3) The potentially significant adverse impacts on endangered fish in the Sacramento River from the ROD. The EIS says that the Central Valley Project could be re-operated to accommodate the loss of cold Trinity water that is now used to control river temperatures for endangered fish. Mr. Bratovitch pointed out that what is envisioned is an unexamined and significant loss of flexibility in operating the CVP to accommodate restoration in the Sacramento River and Bay Delta fisheries.

Sprek Rosecranz of Environmental Defense spoke against the recommendation to support NCPA’s litigation. He pointed out that the only reason NCPA cared about the Trinity River ROD was because it has an adverse impact on hydropower production.

The UAC voted (4-0 vote with Commissioner Dawes absent) to support the Northern California Power Agency (NCPA) pursuit of due process litigation against the Department of Interior (DOI) to supplement the Trinity River Environmental Impact Statement (EIS).
DISCUSSION

In recommending the timing of the Council’s consideration of this issue, staff took into consideration the August 20, 2002 hearing on motions for summary judgement. Judge Wanger can rule on them at any time. Parties would then have 60 days to file appeals at the 9th Circuit Court of Appeals. The NCPA commission would need to decide its action within that 60 day window. Staff anticipates that the Council will want to take action on whether to support an appeal of the judge’s decision prior to NCPA’s commission vote on whether to pursue an appeal. Staff is hoping to schedule Council consideration after the judge’s ruling and before NCPA’s commission meeting to vote on possible appeal.

Without knowing when the judge will rule, staff suggests Council ask staff to agendize the item for Council decision tentatively on October 21, 2002. That timing increases the likelihood that Council will have benefit of the judge’s ruling by then. This also gives Palo Alto Planning Department staff time to review the environmental impact of any staff recommendation as requested by Council Member Kishimoto.

Alternatively, Council could move in accordance with the UAC’s recommendation to support the NCPA pursuit of due process litigation against the Department of Interior to supplement the Trinity River Environmental Impact Statement.

RESOURCE AND ENVIRONMENTAL IMPACT

While the recommendation to schedule the Council consideration of this issue has no resource impact, there will be an analysis of both the resource and environmental impact provided with the staff report prepared for the October 21, meeting.

POLICY IMPLICATIONS

This recommendation is consistent with the Council approved Utilities Strategic Plan to implement programs that improve the quality of the environment by following due process in an attempt to improve the global environmental solution of a complex problem.

ATTACHMENTS

A: Draft minutes excerpt from September 4, 2002 Utilities Advisory Commission meeting regarding Trinity.
B: Staff’s September 4, 2002 report to the Utilities Advisory Commission on Trinity