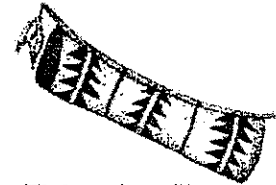




HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe
Post Office Box 1348 Hoopa, California 95546
PH (530) 625-4211 • FX (530) 625-4594
www.hoopa-nsn.gov



Chairman Byron Nelson, Jr.

March 24, 2020

Ernest A. Conant, Regional Director
Bureau of Reclamation, Interior Region 10
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Bureau of Reclamation's duty expressly to protect fisheries resources of the Hoopa Valley Tribe in proposed repayment contract with Westlands Water District

Dear Mr. Conant:

In Contract No. 14-06-200-495A-XXX, the Bureau of Reclamation proposes to use Section 4011 of the WIIN Act of 2016 to permanently contract with Westlands Water District for delivery of up to 1,150,000 acre-feet of water annually. We formally objected to this proposed contract in a letter to you, dated December 16, 2019 (A copy of our letter is enclosed). We have neither received a response from you nor, to our knowledge have appropriate changes been made in the proposed contract. We are again notifying you of our formal objection to the proposed contract, and we urge you to use the recent ruling of the Superior Court for Fresno County in *Westlands Water District v. All Persons Interested*, No. 19CECG03887, as an opportunity to rectify this omission.

The Hoopa Valley Tribe has long urged inclusion of specific references to CVPIA § 3406(b)(23) and trust responsibility in the contracts. This is a prudent step to avoid future disputes with this litigious contractor about the applicability of such provisions. Hoopa requests the Regional Director to include the following language in water delivery contracts:

All water deliveries pursuant to this Contract are limited by and subordinate to the Secretary's fiduciary duty, referred to in Section 3406(b)(23) of the Central Valley Project Improvement Act, to meet instream fishery flow requirements and operating criteria of the Trinity River Restoration Record of Decision (2000); the restoration standards imposed by the 1984 Act referred to in (b)(23), as amended; the Interior Solicitor Krulitz's 1979 Grasslands opinion on the priorities of the 1955 Trinity Division Act provisos; the Memorandum from Solicitor to Secretary (M-37030) re Trinity River Division Authorization's 50,000 Acre-Foot Proviso and the 1959 Contract between the Bureau of Reclamation and Humboldt County (December 23, 2014); and the Bureau of Reclamation's Record of Decision re

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Long-Term Plan to Protect Adult Salmon in the Lower Klamath River Final Environmental Impact Statement (2017).

Judge Simpson's ruling in the Superior Court validation action noted above pointed out that the Water Code authorizes validation of completed contracts, not proposed ones. He noted that essential terms of the repayment contract are missing, such as the amount of repayment to be made. The Trinity River provisions we seek are another essential term.

The Regional Director's ongoing failure to comply with the provisions of CVPIA § 3404(c)(1) and (2) jeopardizes our property rights under the law of the Trinity River and the integrity of the federal government's trust responsibility specifically established for our benefit in § 3406(b)(23) of the CVPIA and elsewhere. All new CVP contracts, including any pursuant to the WIIN Act must explicitly incorporate and require Westlands to: (1) comply or not otherwise interfere with the Secretary's fishery restoration, preservation, and propagation responsibilities on the Trinity River; and (2) to commit to include in its operation and maintenance payments pursuant to CVPIA § 3406(b)(23) the costs of Trinity River fishery restoration. The Secretary of the Interior, in consultation with the Hoopa Valley Tribe and Senator Dianne Feinstein, determined the annual costs of the restoration program to be \$16.4 million (October 2007 price levels) through construction and \$11.2 million (October 2007 price levels) annually thereafter. See <https://bit.ly/2rfaDiT>. The proposed contract is entirely inadequate to meet this clear statutory directive. Now is the time to insert the essential terms that we have proposed.

Thank you for your personal participation and for your consideration.

Sincerely,

HOOPA VALLEY TRIBAL COUNCIL



Byron Nelson Jr., Chairman

cc. Hon. Brenda Berman