

Hoopa Valley Tribal Council

Hoopa Valley Tribe

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For Immediate Release

February 6, 2023

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Pressure Grows on Biden Administration to Set Aside Illegal Trump Era Water Contract with California's Massive Westlands Water District

Sierra Club and Center for Biological Diversity Cite California Supreme Court, Federal Law, Tribal Rights, and Biden Policy in Call to Rewrite Contract for 1.15 Million Acre Feet of Central Valley Project Water

In a stinging rebuke to the Biden Administration's Bureau of Reclamation, two major stewards of California's environment called on the Interior Department's chief lawyer to set aside an illegal contract for the lion's share of water from the federal Central Valley Project.

Expressing incredulity at the inaction of the Biden Administration, a February 5 letter from the Sierra Club of California and the Center for Biological Diversity points out what the Hoopa Valley Tribe has claimed for years, and all have known for months--the contract that Westlands negotiated with the Trump Administration's political team violated numerous state and federal laws and the contract itself.

Working with the Trump administration, Westlands wound up with a permanent water contract for roughly double the amount of water used by Los Angeles residents annually. David Bernhardt, who was Interior Secretary during the Trump administration, spent 10 years as a lobbyist for Westlands Water District before leading the Interior Department. Westlands managed to secure the contract without the legally required environmental reviews and controls.

The California Supreme Court refused to validate this illegal contract, however the Biden administration has yet to strike the illegal contract and return to the drawing board.

Hoopa Valley Tribe Chairman Joe Davis applauded the groups' action, "We thank the Sierra Club and Center for Biological Diversity. As their letter states, the Westlands four-year California court case is over, the decision is final, the current form of the contract cannot be validated."

What is missing from the contract are terms by which Westlands would comply with environmental restoration requirements and repay its share of more than \$400 million in present and future environmental restoration costs.

"The Bureau of Reclamation devastated California's salmon fisheries, including ours on the Trinity River, where we have had our homeland for thousands of years," said Vice Chairman Everett Colegrove.

"The Sierra Club and the Center for Biological Diversity got it just right," said Council Member Isaac Bussell, adding that "It is time for the Department of the Interior to follow the law by voiding the contract that has been denied validation by the California state courts and carry out federal law and President Biden's policy in a new contract that protects the Hoopa Valley Tribe, the Trinity River and its fishery resources that our people have relied on since time immemorial."

Attachments:

- Sierra Club/CBD Letter to Interior Solicitor Anderson (February 5, 2024)
- Hoopa Valley Tribe Counsel Letter to Interior Solicitor Anderson (December 6, 2023)
- Map
- Photograph of Trinity River



February 5, 2024

Hon. Robert Anderson, Solicitor via E-mail
 U.S. Department of the Interior
 1849 C Street NW
 Washington, D.C. 20240

Re: *Hoopa Valley Tribe v. U.S. Bureau of Reclamation*: Request for Meeting re denial of Validation of Westlands Water District's WIIN Act Contract

Dear Solicitor Anderson:

Sierra Club California and the Center for Biological Diversity do not understand why the Department of the Interior has not voided the WIIN Act contract between the United States and the Westlands Water District (Contract No. 14-06-200-495A-IRI-P) as requested by the Hoopa Valley Tribe in their letter to you of December 6, 2023. Apparently, in addition to the Hoopa Valley Tribe letter of December 6, 2023, they also raised the issue in an August 21, 2023, meeting.

The Court of Appeal decision referred to by the Hoopa Valley Tribe is, *Westlands Water District v. All Persons Interested* (2023) 95 Cal.App.5th 98. That is the final decision affirming the trial court's judgment *denying* validation of the Westlands contract. The California Supreme Court *denied* Westlands' petition for review on November 29, 2023. The case is over; the decision is final; the current form of the contract cannot be validated. As the Hoopa Valley Tribe says, pursuant to Article 47, the contract is not and cannot be binding on the United States. That is also the law. Federal law mandates in pertinent part, "That no contract with an irrigation district under this section and [sections 512](#) and [513](#) of this title shall be binding on the United States until the proceedings on the part of the district for the authorization of the

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execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid.” (43 U.S.C. § 511.)

The current Administration is devoted to the foundational principle of our country that we have a government of laws not rulers. Here, pursuant to the rule of law, the California courts have finally and conclusively denied validation of the Westlands contract. So, it is time for the Department of the Interior to void the Westlands contract and as requested by the Hoopa Valley Tribe proceed to develop a new contract that complies with federal law and the government’s trust responsibilities to the Tribe.

The Hoopa Valley Tribe explained that the Westlands WIIN Act Contract fails “to include terms and conditions to protect the Hoopa Valley Tribe, the Trinity River, and the fishery resources that Hoopa and its people have relied on since time immemorial.” (Hoopa Valley Tribe letter, p. 2 December 6, 2023.)

President Biden issued the *Executive Order on Revitalizing Our Nation’s Commitment to Environmental Justice for All*, on April 21, 2023. (Executive Order 14096, 88 Fed.Reg. 25251, April 26, 2023.) Of particular importance here is section 1, Policy, of the President’s Executive Order which commands in pertinent part that, “The Federal Government must also continue to respect Tribal sovereignty and support self-governance by ensuring that Tribal Nations are consulted on Federal policies that have Tribal implications. *In doing so, we must recognize, honor, and respect the different cultural practices--including subsistence practices, ways of living, Indigenous Knowledge, and traditions--in communities across America.*” (88 Fed.Reg. 25252.) (Emphasis added.) The Hoopa Valley Tribe is a federally recognized Tribal Nation. (89 Fed.Reg. 944-948, January 8, 2024.)

It is time for the Department of the Interior to follow the law by voiding the contract that has been denied validation by the California state courts. It is time for the Department to carry out the policy mandated by the President’s Executive Order by developing a contract to include terms and conditions to protect the Hoopa Valley Tribe, the Trinity River, and the fishery resources that Hoopa and its people have relied on since time immemorial.

The contact for this letter is E. Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com . We will do our best to answer any questions you may have.

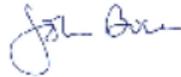
Sincerely,



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Sierra Club California*



*Erin Wooley, Senior Policy Strategist
Sierra Club California*



*John Buse, Senior Counsel
Center for Biological Diversity*

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December 6, 2023

Via E-mail (robert.anderson@sol.doi.gov)

Hon. Robert Anderson
 Solicitor
 U.S. Department of the Interior
 1849 C Street NW
 Washington, D.C. 20240

Re: *Hoopa Valley Tribe v. U.S. Bureau of Reclamation*: Request for Meeting re Denial of Validation of Westlands Water District's WIIN Act Contract

Dear Solicitor Anderson:

On behalf of the Hoopa Valley Tribe, we are writing to renew the Hoopa Valley Tribe's longstanding request that the Department of the Interior (Interior) void Contract No. 14-06-200-495A-IR1-P (Contract) between the United States and the Westlands Water District (Westlands) and re-negotiate contract terms that comply with federal law.

On August 7, 2023, the Court of Appeals of the State of California affirmed the denial of Westlands' request for validation of its Contract. On November 29, 2023, the California Supreme Court denied Westlands' petition to review the Court of Appeals' decision. The California validation proceedings have concluded. The Contract is not validated and the judicial rulings denying validation are now final. The denial of validation means that the Contract is not binding on the United States. In an August 21, 2023, meeting, Hoopa requested Interior's position on the Court of Appeals' decision denying validation and what action Interior intended to take regarding Westlands' WIIN Act contracts in light of that decision. Hoopa has not yet received an answer.

By way of background, state law, federal law, and the terms of the Contract require Westlands "*promptly* after the execution of [the Contract]" to provide the United States with a final validation decree.¹

¹ Article 47 of the Contract provides:

The Bureau of Reclamation (Reclamation) and Westlands executed the Contract on February 28, 2020. However, more than three and a half years later, Westlands has failed to obtain validation. In fact, California state courts have on multiple occasions denied validation of the Contract. In its August 7, 2023 ruling, the Court of Appeals of the State of California affirmed those decisions, observing that Westlands had made “strained arguments”, submitted “materially incomplete” contract documents, made references to documents that “did not exist”, and that the Contract was “not sufficiently definite to be binding and enforceable.”

As you know, the Hoopa Valley Tribe has sued Reclamation (as well as the Secretary and the Interior Department as a whole) on grounds that the Westlands WIIN Act Contract is substantively unlawful for its failure to include terms and conditions to protect the Hoopa Valley Tribe, the Trinity River, and the fishery resources that Hoopa and its people have relied on since time immemorial. The Central Valley Project Improvement Act (CVPIA), Section 3404(c)(2) requires Reclamation to incorporate all requirements of existing law, which include the numerous statutes, regulations, and orders that are designed to protect Hoopa and the Trinity River resources and which encompass the Law of the Trinity River. The WIIN Act expressly preserves these requirements of the CVPIA and requires that they be adhered to in the negotiation and execution of WIIN Act contracts. Federal law, including CVPIA section 3406(b)(23), imposes a fiduciary trust obligation on the United States to negotiate and include these protective terms and conditions in the WIIN Act contracts. Because the WIIN Act contracts are permanent, failure to include the required terms and conditions in the WIIN Act contracts means that the Contract will pose a permanent threat to Hoopa’ sovereignty, its fishery, and its very existence going forward.

In addition, the Contract, as well as other WIIN Act contracts, unlawfully fails to include terms requiring Westlands, not the Federal taxpayer, to repay and prospectively pay the costs of implementing the CVPIA. In the case of Trinity River restoration, those costs are to be collected annually as operation and maintenance expenditures. The failure to require these payments in the WIIN Act contracts will cost the United States hundreds of millions (currently estimated in excess of \$340 million) of accrued but uncollected CVPIA implementation costs as well as future implementation costs. While Westlands is not solely responsible for this total amount, the Contract, like all WIIN Act contracts, unlawfully excuses Westlands of its cost share.

In October 2021, Hoopa met with you and requested that the Secretary direct Reclamation to void and withdraw from the Contract in order to commence a new negotiation of contract terms to comply with federal law and the trust responsibility to the Tribe. The appellate decisions affirming denial of validation establish that Westlands materially breached terms of the Contract that require validation and violated state substantive law in the process. In order to meet federal trust responsibilities to Hoopa established in CVPIA section 3406(b)(23), Hoopa is persuaded that the Secretary is obligated to void the Contract and re-negotiate terms that comply

Promptly after the execution of this amended Contract, the Contractor will provide to the Contracting Officer a certified copy of a final decree of a court of competent jurisdiction in the State of California, confirming the proceedings on the part of the Contractor for the authorization of the execution of this amended Contract. This amended Contract shall not be binding on the United States until the Contractor secures a final decree.

with federal law, including the Law of the Trinity River, to ensure restoration of the Trinity River and fulfillment of Hoopa's property rights in the Trinity River fishery.

To be clear, the outcome Hoopa seeks would not leave Westlands, or any contractor, without access to Central Valley Project water supplies. Rather, once the Secretary voids the Contract, Hoopa expects Reclamation to reinstate the CVPIA interim renewal contract that preceded the Contract, until a new long-term contract pursuant to CVPIA section 3404(c)(2) with appropriate terms and conditions can be negotiated and executed between Westlands and the United States.

In light of the foregoing and the urgency of the matter, we renew Hoopa's inquiry and request to meet and confer with you as soon as possible.

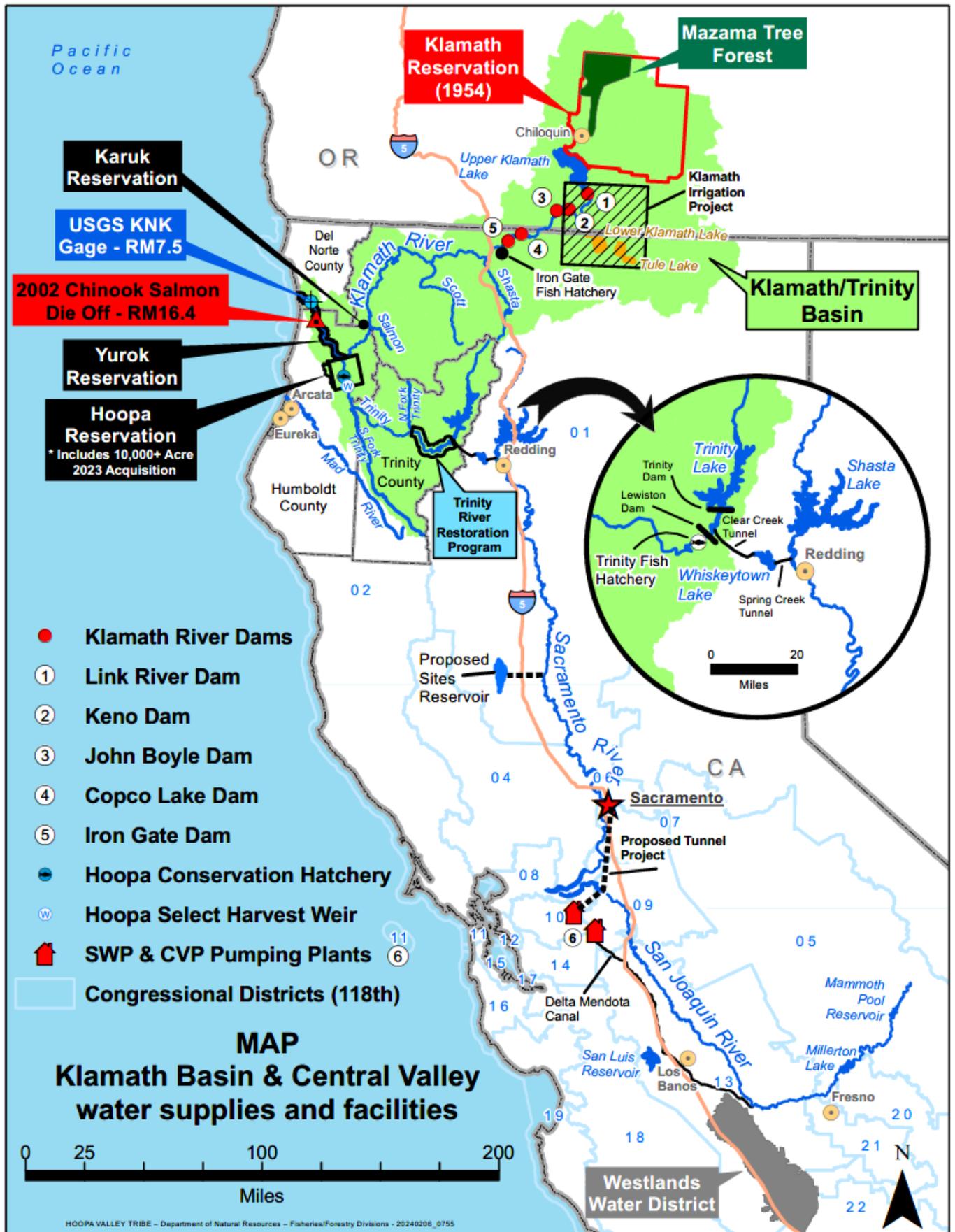
Sincerely,

MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE

/s/ Thane Somerville

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Thomas Schlosser
Attorneys for Hoopa Valley Tribe

Cc: Hoopa Valley Tribal Chairman Joe Davis
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Senator Alex Padilla
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Trinity River