



Hoop Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

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Clifford Lyle Marshall, Sr.
Chairman

October 23, 2007

Delivery By Facsimile and USPS

Hon. Dianne Feinstein
331 Hart Building
United States Senate
Washington, D.C. 20510

Hon. Barbara Boxer
112 Hart Building
United States Senate
Washington, D.C. 20510

Hon. George Radanovich
2367 Rayburn Building
House of Representatives
Washington, D.C. 20515

Hon. Grace F. Napolitano
1610 Longworth Building
Washington, D.C. 20515

Hon. Dennis A. Cardoza
435 Cannon Building
Washington, D.C. 20515

Hon. Jim Costa
1314 Longworth Building
Washington, D.C. 20515

Hon. Joe Baca
1527 Longworth Building
Washington, D.C. 20515

Hon. Jerry McNerney
312 Cannon Building
Washington, D.C. 20515

Hon. George Miller
2205 Rayburn Building
Washington, D.C. 20515

Hon. Mike Thompson
231 Cannon Building
Washington, D.C. 20515

Re: Trinity River Restoration (H.R. 2733) and the San Joaquin River Settlement (S. 27/H.R. 24)

Ladies and Gentlemen:

On behalf of the Hoopa Valley Tribe, I am writing to you as sponsors and cosponsors of the referenced legislation now pending in the 110th Congress regarding restoration of California's Trinity and San Joaquin Rivers. From our perspective, the San Joaquin settlement is at cross purposes with Trinity River restoration. We need your assistance to ensure that the Federal government's prior commitment and trust responsibility for Trinity River restoration are not sacrificed to the San Joaquin settlement. Following are a brief summary of the status of the Trinity River restoration program and our requested actions to secure its future success.

The Trinity River Division of the Central Valley Project was completed in 1963. Subsequent excessive diversions of the Trinity River's annual flows to generate billions of dollars of benefits to interests in California's Central Valley led to a documented eighty percent decline in fishery populations in the Trinity River. This damage was in direct violation of the requirements of the law that authorized the Trinity River Division to protect area-of-origin rights, including fishing

rights, in the Trinity basin. After decades of work in Congress and with successive Administrations, as well as exhaustive scientific restoration studies, the Tribe and the Secretary of the Interior concurred in the Trinity River Restoration Record of Decision (ROD) in December 2000.

Bureaucratic delays, opposition to the ROD--including litigation by Central Valley Project contractors, the Bureau of Reclamation's subordination of federal trust responsibilities to Central Valley interests, and annual budget decisions of the Bureau of Reclamation to request far less funding for Trinity River restoration than is needed, have resulted in failure to implement the ROD and restore the fishery.

There are real and immediate consequences to this conduct. Our tribal fishery is failing because of a collapse of the fish populations in the Klamath and Trinity Rivers. Last year, the Department of Commerce declared a formal fishery disaster along the north coast. Commercial and sport fishing charters can barely make a living, and our cash-strapped county governments are not able to give them relief.

The San Joaquin settlement (S. 27/H.R. 24) is the latest blow to Trinity River restoration. The San Joaquin settlement was developed in secret negotiations without participation by our Tribe or any other Trinity River basin interest. The Federal negotiators for the San Joaquin settlement entirely ignored their trust responsibility for the Trinity River fishery. As a result, if enacted in its current form, the San Joaquin legislation will further reduce Trinity River funding and delay fulfilling the United States' trust responsibilities to the Tribe.

We brought the adverse impacts of the San Joaquin settlement on Trinity restoration to the attention of many of you and your staff and Department of the Interior officials when the details of the settlement were made public in late 2006. They acknowledged the impacts and, at the request of Senator Feinstein, agreed to: (1) review and confirm the full cost of implementing the Trinity ROD; and (2) draft legislation that would make funding reliably available for Trinity River restoration. That legislation eventually took the form of H.R. 2733, a bill introduced by Congressman Mike Thompson and cosponsored by Congressman George Miller.

At the September 18 hearing on H. R. 2733, we felt betrayed when the Administration announced it would not support H.R. 2733, even though it had supported a virtually identical funding mechanism for San Joaquin River restoration in the San Joaquin legislation. Among the reasons for the Administration's position were provisions in the H.R. 2733 legislation that purportedly would:

- “make it harder for Reclamation to respond to future restoration priorities for rivers and waterways within the CVP”;
- “bypass[] the appropriations process”;
- make “all CVP Restoration Fund decisions . . . subordinate to the legislated funding levels for the Trinity River Restoration Program”;
- “reduce the discretion of the executive branch to manage the funds and resources committed for mitigation and restoration activities throughout the CVP.”

Moreover, the Administration testified that there was no need for H.R. 2733 because the existing funding policy is adequate to the need and the Trinity program is progressing satisfactorily. Our Tribe categorically disagrees with those representations and has documented for many of you and your staff on numerous occasions the basis for that disagreement.

The Administration, however, supports features in H.R. 24/S. 27 that have precisely the effects on Trinity River restoration and all other Central Valley Project Improvement Act restoration program activities that the Administration testified would be caused by enactment of H.R. 2733. The Administration's testimony contradicts the information it provided to Senator Feinstein in response to her specific request for a determination of the funding need for Trinity restoration. The Administration's contrary positions are irreconcilable and adversely affect our vested property rights in the Trinity River fishery that the United States holds in trust for our Tribe.

In meetings, phone conversations, and correspondence with you and your staff, we have asked that the following actions be taken to protect our rights and the interests of the commercial and sport fishing industry in northern California and southern Oregon.

1. Introduce H.R. 2733 in the Senate and secure enactment in the 110th Congress (see my July 3, 2007, letter to Senators Feinstein and Boxer).
2. Amend H.R. 24/S. 27 to eliminate impacts on Trinity River restoration (see my July 3, 2007, letter to the Chairs of the Senate Energy and Natural Resources Committee and the House Natural Resources Committee).
3. Work with Senate appropriators to redirect to the Trinity River restoration program in FY 2008 the \$7.5 million in CVP Restoration Funds that would have been authorized to be deposited in the proposed San Joaquin Restoration Fund to be established by H.R. 24/S. 27 had those bills been enacted in FY 2007 (see tribal attorney's September 6, 2007, email correspondence with John Watts (Senator Feinstein's staff) on this topic).
4. Furnish the Tribe a "seat at the table" in the discussion of the San Luis drainage resolution concept, which includes proposals that could have a major adverse impact on future collections from CVP water contractors for Trinity River restoration.
5. Support implementation of section 3404(c)(2) of the CVPIA which requires CVP long-term contracts to include commitments by contractors to pay the costs of environmental restoration.
6. Ensure that the Bureau of Reclamation honors its 1959 area-of-origin contract with Humboldt County pursuant to the 1955 Trinity River Division authorizing legislation that provides for the annual release for beneficial use of 50,000 acre feet of water from the Trinity River Division by Humboldt County and downstream uses in the Klamath River basin.
7. Request the Bureau of Reclamation to resume the CVPIA Program Activity Review (CPAR) to establish completion criteria, performance goals and a report on restoration progress (the CPAR is more than a year overdue).
8. Request the Secretary promptly to implement the interdisciplinary science consultation provisions of Trinity ROD.

9. Insure timely, reliable funding is made available in legislation to the Tribe on an annual basis to carry out the Tribe's partnership role with the with the Secretary in ROD implementation pursuant to section 3406(b)(23) of the CVPIA.

Add to that list our request to discontinue the secret negotiations for amendments to H.R. 24/S. 27, which we have just learned the San Joaquin Settlement parties, including our federal trustee, are conducting at this time with certain members of Congress.

As to the second of the nine items, the proposed amendments to H.R. 24/S. 27 to eliminate collateral impacts on Trinity River restoration, representatives in Congress, environmental groups, water and power contractors, and Administration officials are asking the Tribe not to pursue them. We have considered the request at length and the Tribal Council has made a decision to advise you that the Tribe will do so only upon a clear and binding commitment by the Administration and the Congress that Trinity River restoration will be fully funded at the levels set forth in the funding table prepared by the Department in consultation with our Tribe dated February 26, 2007. Regrettably, the Administration's September 18 testimony on H.R. 2733 makes clear it will not give us that commitment. So long as that remains the Administration's position, we have no alternative other than to oppose any legislation which would compromise full funding and timely implementation of the Trinity River Restoration Program.

In conclusion, the Redding Record Searchlight--a Central Valley newspaper that traditionally has not aligned with Trinity basin interests--editorialized on September 22, 2007, about Trinity funding in a way that summarizes our Tribe's view of this matter:

What's a promise without the follow-through? A lie . . . Write the federal commitment to the Trinity into law and guarantee a steady stream of money until the work is done.

We request a meeting with you, the Administration, and our Tribe to address our concerns and secure the commitments we need. Thank you for your attention to our concerns.

Sincerely,



Clifford Lyle Marshall
Chairman

cc: Secretary of the Interior
Natural Resources Defense Council
Friant Division Long-Term Contractors