



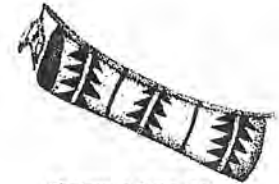
## HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe

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Chairman Ryan Jackson

November 1, 2017

### By E-Mail

Honorable John McCain, Chair  
Honorable Jack Reed, Ranking Member  
Armed Services Committee  
United States Senate  
228 Russell Building  
Washington, D.C. 20510

Honorable Mac Thornberry, Chair  
Honorable Adam Smith, Ranking Member  
Armed Services Committee  
U.S. House of Representatives  
2216 Rayburn Building  
Washington, DC 20515

Re: **Opposition to Inclusion of HR 1769, the San Luis Unit Drainage Resolution Act, into the National Defense Authorization Act for FY 2018**

Dear NDAA Conferees:

The Hoopa Valley Tribe strongly opposes H.R. 1769, the San Luis Unit Drainage Resolution Act, and is alarmed to learn today that a clandestine effort is underway to include it in the National Defense Authorization Act (NDAA). We urge you to reject its inclusion in the NDAA. We assume that the purported nexus of H.R. 1769 to the NDAA is section 6(c) of the bill which provides for a water service contract for the Lemoore Naval Air Station. As we understand it there is existing water service to the Lemoore Naval Air Station, so there is nothing about H.R. 1769 proceeding through regular order that will impair national defense. To advance H.R. 1769 outside regular order in the House (the bill has not been introduced in the Senate) is particularly egregious. H.R. 1769 is not germane to the Armed Services Committee; upon introduction, it was referred only to the Natural Resources Committee. Moreover, CBO reported that H.R. 1769 has PayGo impacts of \$309 million over the 2017-2027 period. House Report No. 115-349 at 18.

In addition to its adverse fiscal impacts, this bill represents a grave a risk to the integrity of the Hoopa Valley Tribe's rights and interests under existing federal reclamation law and the federal trust responsibility to the Hupa people.

In its present form, H.R. 1769 puts at risk property rights to water established by federal reclamation and state water laws more than a half century ago for the Hoopa Valley Tribe and California's economically depressed North Coast communities. The Hoopa Valley of the Trinity River has been the home of the Hupa people and the center of our culture and religion since time immemorial. (See attached map.)

The San Luis Unit would not exist without the dams, reservoirs and power plants of the Central Valley Project's (CVP) Trinity River Division (TRD), the only source of imported water to the Central Valley and an essential source of hydroelectric power to deliver water to the San Luis Unit. The TRD diverts water and power for use up to 400 miles from our reservation. We are interested in the drainage settlement for a number of reasons.<sup>1</sup>

- In its current form, H.R. 1769 leaves unresolved excessive diversion of Trinity River water to the Central Valley by the Bureau of Reclamation, in violation of congressional limits established in the 1950s. Those limits are intended to ensure that water needed by Trinity Basin communities and Indian reservations would not be taken from the Trinity River Basin to the Central Valley.
- The San Luis Unit contractors have waged a decades-long war against our water rights to TRD water supplies. Today, San Luis Unit contractors have two pending cases in federal courts against the United States and the Tribe about the allocation of TRD water.<sup>2</sup> Neither of those cases would be settled by this legislation.
- The Department of Justice has consistently insisted on certainty and finality in water settlements. Leaving the San Luis Unit contractors post settlement free to continue their efforts to seize the TRD water supplies promised by federal law to us would be a damaging breach of federal litigation settlement policy and the trust responsibility to the Hupa people.

It is important to recognize that we have raised these issues for more than a decade, ever since the drainage settlement was proposed. The Tribe's May 24, 2016 testimony to the House Natural Resources Committee on the virtually identical drainage settlement legislation in the 114<sup>th</sup> Congress (H.R. 4366), which was not enacted, sets out in detail: (1) the Tribe's opposition to drainage settlement; and (2) proposed amendments to the bill that would:

(a) Confirm with certainty and finality the rights of the Hoopa Valley Tribe to waters of the TRD both for economic development and for the restoration, preservation and propagation of fishery resources that the United States holds in trust;

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<sup>1</sup> Congressman Jim Costa, a cosponsor of H.R. 4366, stated at the markup of H.R. 4366 in the Natural Resources Committee (<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401325> minute 6:30, November 15, 2016):

There may be concerns raised by folks on the dais or outside stakeholders, however . . . these concerns all speak to specific terms of the agreements, not whether the agreement should move forward at all, or whether the United States has a liability, which they do, to the people, the farmers, the farm communities, and the farm workers in the San Luis Unit. These are primarily discussion about outside entities trying to influence a negotiation to which they are not a party.

Notwithstanding, Cong. Costa's statement, protecting the Hoopa Valley Tribe's rights and interests in the TRD water that will be the basis for the drainage settlement is essential to a certain, comprehensive, fair and final outcome.

<sup>2</sup> San Luis & Delta-Mendota Water Authority v. Jewell and the Hoopa Valley Tribe, Case No. 1:15cv-01290-LJO-EPG (E.D. Calif.); San Luis & Delta-Mendota Water Authority v. Jewell and the Hoopa Valley Tribe, Case No. 14-17493 (9<sup>th</sup> Cir.).

(b) Provide standards and programs for fishery restoration, preservation and propagation; and

(c) Assist with economic development and socio-cultural renewal of the Hoopa Valley Tribe after a half century of federal management of Klamath water resources that subordinated prior rights of the Hoopa Valley Tribe to TRD water for the benefit of CVP water and power contractors, particularly those in the San Luis Unit.

Officials in the Department of the Interior have knowingly and willfully disregarded the rights of the Hoopa Valley Tribe and California's North Coast communities in negotiating the San Luis Unit settlement. We request that Congress disapprove H.R. 1769 in its present form and instead be guided by Supreme Court Justice Hugo Black's admonition that "great nations, like great men, should keep their word."

Sincerely,



Ryan Jackson, Chairman

CC: All Senate and House Conferee Committee members

