

Hoopa Valley Tribal Council

Hoopa Valley Tribe

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FOR IMMEDIATE RELEASE

HOOPA VALLEY TRIBE

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707 499-6143

Biden's Justice Department Revives Trump Administration Assault on Tribal Water Rights. Hoopa Valley Tribe's Trinity River Fishery Once Again Falls Prey to Central Valley Water Barons.

Subordinate officials in the Biden Administration's Justice and Interior Departments announced today that they will defend the Trump administration's water policies that imperil the rights of the Hoopa Valley Tribe in California's Trinity River basin and ignore overwhelming evidence of financial misconduct that will cost the Federal Taxpayers at least \$400 million (see attached).

"The cruel indifference of the Trump Administration's corruption has reached our homeland," said Hoopa Valley Tribal Chairman Byron Nelson, Jr. "Left unchecked, it will destroy the fishery on which our people have relied as the foundation of our culture, religion and economy since time immemorial."

"We are calling on Secretary Haaland to fulfill the federal trust responsibility to our people and rein in the reckless and destructive practices that still afflict the Department of the Interior," said Hoopa Tribal Fisheries Director, Michael Orcutt.

Here is what happened. In the 1950s, accompanied by promises to protect the Trinity River, the federal government dammed the Trinity River, destroyed vast stretches of salmon habitat, decimated salmon populations, and diverted water to industrial agricultural corporations in California's Central Valley 400 miles from Hoopa (see attached map).

The dams on the Trinity River generate electricity and irrigate arid lands, including the Westlands Water District, a sprawling desert the size of Rhode Island. The District includes land that the Bureau of Reclamation and the State of California have known for more than a half century could not be practicably irrigated because of poorly drained soils that had high concentrations of naturally occurring toxins.

In the decades since, use of Trinity water to irrigate Westlands and elsewhere in the Central Valley has leached toxins, poisoned land, polluted water and genetically deformed Pacific Flyway wildfowl. Meanwhile, Reclamation's Central Valley Project contractors have reaped billions from federal subsidies and profiteering associated with the Trinity's irrigation and power development.

By 1992, galvanized by the shocking environmental destruction and urged by numerous interests seeking environmental justice and fiscal responsibility, including Hoopa, Congress passed the Central Valley Project Improvement Act. Over the objections of Project contractors, Congress made environmental

restoration a formal purpose of the Project, on a par with water development. It specified environmental restoration activities and made the Project contractors pay for them as a cost of doing business. The CVPIA imposed an explicit trust responsibility on the Bureau of Reclamation for restoration of Hoopa's fishery resources. The CVPIA also required revision of all Project contracts to reflect this change in the law. For decades, Westlands and other contractors waged a prolonged, but for the most part losing, war against the CVPIA, including against the restoration of Hoopa's Trinity River fishery.

This is where the Trump Administration comes in. Of all the candidates President Trump could have chosen to be Secretary of the Interior, he selected Westlands' long-time attorney, David Bernhardt. In his tenure, Secretary Bernhardt did three things. First, he instructed the Bureau of Reclamation to engage in fraudulent federal cost accounting that, if unchecked by the Biden Administration, will—by the contractors' own admission—wipe out at least \$400 million in environmental restoration and other Project cost obligations that they owe to the Federal Treasury. That money would be vital to the President's infrastructure plan. Hoopa documented that fraud and submitted its evidence to the Department, the Office of Management and Budget, and Congress in the past two months.

Second, perhaps concerned that he might need a hedge against the potential failure of his accounting scheme, Secretary Bernhardt ordered a set of memoranda from the Bureau of Reclamation, the Fish and Wildlife Service, and the Solicitor's Office to conclude, against all facts¹ and law, that the CVPIA's environmental restoration, including Trinity River fishery restoration, was complete so that certain restoration costs to the contractors could be reduced further. Secretary Bernhardt signed off on that conclusion on January 19, 2021.

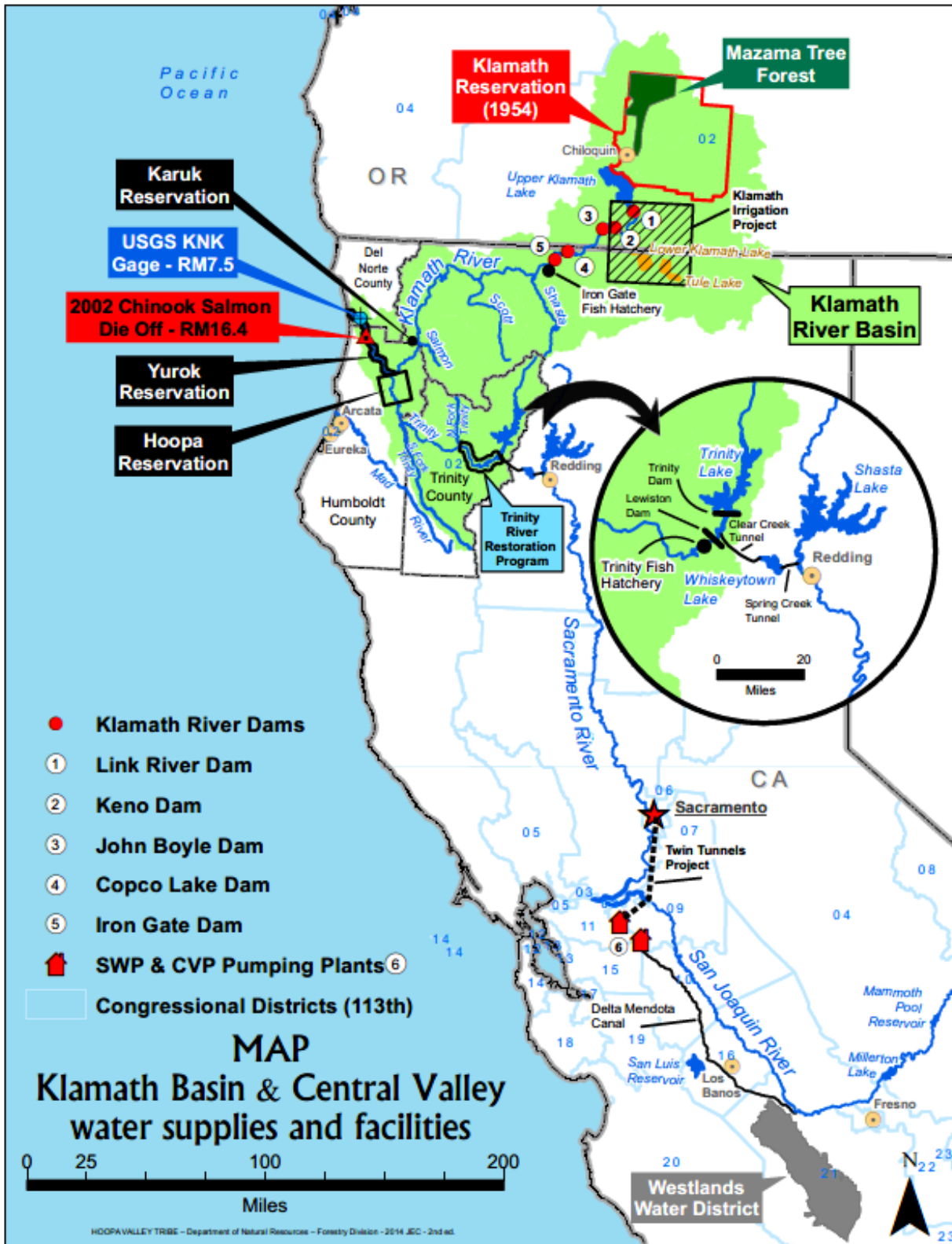
Third, Secretary Bernhardt ordered the approval of new water contracts for Westlands and others that violated numerous cost and environmental protection provisions established in the CVPIA and other federal law, including essential protections for Hoopa's fishery.

Hoopa sued the Trump Administration about all of this; the case is in a California federal court. In March, the Court asked the Biden Administration whether it wants to remain Hoopa's adversary in this case. The Administration had to make up its mind by today. "Those staffers made the wrong decision," said Chairman Nelson. Because of today's action, the Biden Administration now stands in the shoes of the Trump Administration. "We are confident that once Secretary Haaland reviews what happened today she will see that this attack on Hoopa is really an attack on all Indian Country and those who seek the environmental justice promised by President Biden," said Orcutt.

Hoopa has proposed settlement terms to the Biden Administration. "We have every expectation that Secretary Haaland will reverse her staff's action and join with us to make a decision that is fair and equitable to all," said Chairman Nelson.

"Secretary Haaland has lived her commitment to honor tribal nations and strengthen their economies," said Orcutt. "We will welcome her leadership on this critical issue for our people and California's environment."

We also appreciate that Cong. Jared Huffman (CA D-2) and Cong. Katie Porter (CA D-45) sounded the alarm about the persistence of Trump's destructive policies in their May 8, 2021, letter to Secretary Haaland." Orcutt added.



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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA**

HOOPA VALLEY TRIBE,

Plaintiff,

v.

UNITED STATES BUREAU OF
 RECLAMATION; DAVID BERNHARDT,
 in his official capacity as Secretary of the
 Interior; BRENDA BURMAN, in her
 official capacity as Commissioner of the
 United States Bureau of Reclamation;
 ERNEST CONANT, in his official capacity
 as U.S. Bureau of Reclamation California-
 Great Basin Regional Director; and UNITED
 STATES DEPARTMENT OF THE
 INTERIOR

Defendants.

Case No. 1:20-cv-01814-DAD-EPG

FEDERAL DEFENDANTS' STATUS REPORT

On March 4, 2021, the Court entered a Minute Order requiring the Federal Defendants to notify the Court whether or not they wished to continue to pursue their motion to dismiss in light of the recent change of administration. In response to the Court's Order, the Federal Defendants moved for a 60-day stay. The Court granted the motion to stay, and gave the Federal Defendants

until May 12, 2021 to file a status report detailing whether they wish to continue pursuing their motion to dismiss.

The Federal Defendants intend to defend this case and two other closely related cases: *North Coast Rivers Alliance v. United States Department of the Interior*, No. 1:16-cv-00307-DAD-SKO (hereinafter, "North Coast") and *Center for Biological Diversity v. United States Bureau of Reclamation*, No. 1:20-cv-00706-DAD-EPG (hereinafter, "CBD"). Therefore, the Federal Defendants are not withdrawing their pending motion to dismiss and will be filing a motion to consolidate this case with the *North Coast* and *CBD* cases in the near future.

Dated: May 12, 2021

Respectfully submitted,

JEAN E. WILLIAMS
Acting Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

/s/ J. Scott Thomas
JEFFREY SCOTT THOMAS
Trial Attorney
U.S. Department of Justice
Counsel of Record for the Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all parties.

/s/ J. Scott Thomas
JEFFREY SCOTT THOMAS