



# HOOPA VALLEY TRIBAL COUNCIL

## Hoopa Valley Tribe

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Chairman Ryan Jackson

9 March 2018

Agenda Item E.2.a  
Supplemental Tribal Report 3  
March 2018

Barry A. Thom  
Regional Administrator  
US Department of Commerce, NOAA  
National Marine Fisheries Service  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
Portland, OR 97232-1274

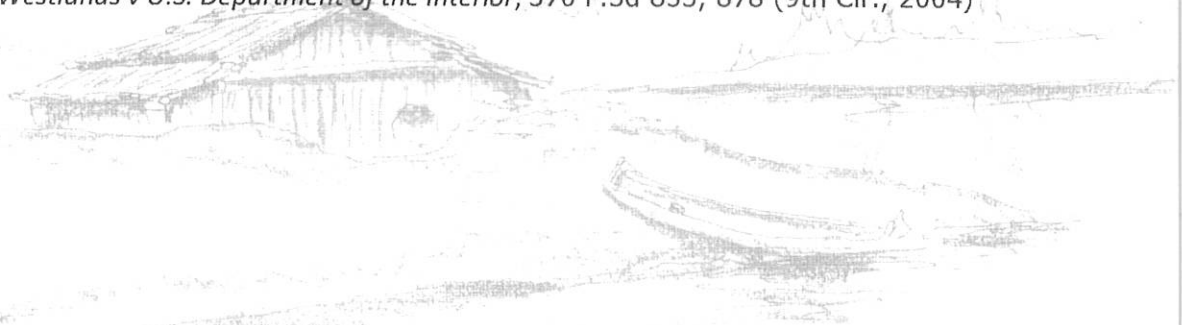
Dear Mr. Thom:

The Hoopa Valley Tribe (Tribe) once again requests that the National Marine Fisheries Service (NMFS) recognize and respect our senior fish and water rights than has been shown in the past, including by your letter dated February 22, 2018, in which you incorrectly state that we were only entitled to 163 fall Chinook in 2017. While the Hoopa Valley and Yurok Tribes have a U.S. Constitutionally protected property right to one-half of the harvestable production of each fish species from the Klamath and Trinity River systems, no formal inter-tribal fish allocation agreement on any species between the Tribes exists. The constant threats to the Tribe's senior rights by NMFS are beyond the Agency's legal authority and are unacceptable.

As you know, the actions that caused the lowest returning number of Klamath River fall chinook on record are the result of actions supported or taken by Federal agencies, including arbitrarily setting aside the peer-reviewed Hardy II Klamath River flow schedules in favor of those adopted for the Klamath Basin Restoration Agreement (KBRA). The Tribe's scientific analysis of those KBRA flows developed by NMFS, U.S. Fish and Wildlife Service, the States of Oregon and California, and the Yurok Tribe demonstrated that they would be detrimental to fish survival.

As the Tribe's scientific analysis predicted, returning adults were put in jeopardy by the KBRA flows, diseases quickly emerged from degraded water quality, juvenile fish infection rates among multiple species were significantly elevated, and in February, 2018, the Federal Court declared the KBRA flows violated the Endangered Species Act. This tragic damage to our fishery thus was both predictable and predicted and Federal agencies are directly responsible for it.

Both Reclamation and tribal trust law protects Hoopa fishing rights. NMFS and other Federal agencies have a trust responsibility for those rights and we have acted to enforce them. In 2004, the 9<sup>th</sup> Circuit Court of Appeals in *Westlands v U.S. Department of the Interior*, 376 F.3d 853, 878 (9th Cir., 2004) stated:



*Twenty years have passed since Congress passed the first major Act calling for restoration of the Trinity River and rehabilitation of its fish populations, and almost another decade has elapsed since Congress set a minimum flow level for the River to force rehabilitative action. Flow increases to the River have been under study by the Department of the Interior since 1981. Restoration of the Trinity River fishery, and the ESA-listed species that inhabit it...are unlawfully long overdue.*

In February, 2017, the Ninth Circuit Court of Appeals further ruled in *San Luis & Delta-Mendota Water Auth. v. Haugrud*, 848 F.3d 1216, 1231-1232 (9th Cir., 2017):

*In addition, the statute provides that the directives of section 3406 (b) (23) were meant to “meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984.”...We also find significant section 3406 (b)(23)’s reference to the Hoopa Valley Tribe – and its exclusion of all other tribes.*

Rather than continuing to ignore and erode the legitimacy of the Tribe’s fishing rights, it would be more fruitful to address the causes of the continuing declines of Klamath/Trinity fish populations. In response to your inquiry for what the Tribe expects in 2018, we suggest the following:

1. The Departments of Interior and Commerce formally support the Klamath-Basin wide comprehensive approach for water, fishery and watershed/habitat management outlined in the Joint Directorate proposal that the Tribe has been recommending for the past several years.
2. That NMFS at all levels work with the Tribe in the updating of the Sacramento BiOp that clearly manages for and protects the senior obligations under Reclamation and trust responsibilities to fulfill the obligations of the Trinity River first before allowing diversions to the Central Valley.
3. Cease and desist with the hatchery fish kill policy in the Trinity River Fish Hatchery that has now preempted the ability to collect the minimum Coho salmon egg take requirements and impeded the Tribe’s ability to harvest hatchery Coho stocks until the legal restoration requirements for Trinity River fish can be accomplished.
4. Immediately approve the Hoopa harvest weir permit that has been pending in the Arcata Office for 3 years in order to provide for Hoopa fish harvest on otherwise available fish stocks. In addition, make the necessary adjustment in Coho take in the ocean and in-river take permits to allow for half the available Coho to be harvested in the Hoopa fishery, as provided by the *Parravano* harvest sharing legal requirements.
5. Work with the Tribe to implement the listed recommendations under the authority contained in Secretarial Executive Order 3206, pertaining to coordination of Tribal reserved rights and recognition of tribal treaty obligations and flexible management to protect them.
6. Conduct regular meetings with Tribal representatives to address the further depressed Klamath fish stocks as a result of the problems from the KBRA management activities.
7. Recent petition to list spring Chinook in Klamath Basin is regarded with much concern by the Tribe. If a decision is made by NMFS that this stock should be listed as either endangered or threatened, this determination would have yet again, a disproportionate effect upon our people. We seek an early opportunity to engage with you on this matter.

I thank you for your engagement on these issues of vital importance to the Tribe and look forward to collaborating further with your office in resolving them.

Sincerely,



Ryan Jackson  
Chairman

