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March 11, 2009

David W. Harder
U.S. Department of Justice
Byron Rogers Federal Building
1961 Stout St., 8th Floor
Denver, CO 80294

Re: Deletion of Hoopa Valley Tribe from Klamath Basin Restoration Agreement

Dear Mr. Harder:

Thank you for your message of March 10 concerning the parties' further work on sections of the Klamath Basin Restoration Agreement ("KBRA") that are of interest to the Hoopa Valley Tribe. The changes you have discussed with Klamath Water Users and other parties are insufficient to obtain Hoopa approval. Instead, we insist that all direct or implied references to the Hoopa Valley Tribe be deleted from the KBRA. This includes KBRA sections 1.1, 1.4, 15.3.2, 15.3.7 and 33.1.1.

When KBRA Draft #11 was published in January 2008, Hoopa Tribal Chairman Marshall wrote to Ed Sheets (for distribution to other KBRA participants) indicating that the Tribe could not approve the KBRA. The KBRA lacks mandatory dam removal provisions, will produce water flows in the mainstem Klamath that violate the Tribe's priority water rights affirmed in the 1995 and 1997 Solicitor's Opinions, and will frustrate the tribal livelihood based on fisheries, rights affirmed in the 1993 Solicitor's Opinion. The KBRA lacks a drought plan and yet demands assurances that Hoopa tribal rights will not be asserted, a claim waiver Hoopa will not approve. Since then, we have tried, without success, to negotiate changes that would address these flaws.

On January 25, 2009, Phil Detrich, U.S. Fish and Wildlife Service Klamath Issues Coordinator, notified KBRA participants that because the Department of Interior is not yet fully staffed and because there "is a need for Department review of policy positions in the draft Klamath Basin Restoration Agreement and the Hydropower Agreement in Principle," the Department had asked that meetings be canceled. Since then, and despite our requests to be included, secret negotiations have continued. Indeed, a new version of the KBRA was prepared by Mr. Steve Richardson, PacifiCorp counsel, and circulated among selected parties a few weeks ago. Your message confirms the continuation of negotiations from which Hoopa has been excluded.

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The United States has fiduciary obligations to the Hoopa Valley Tribe as well as to others. We ask your assistance in clarifying that the Tribe is not a party to the KBRA, is not bound by KBRA provisions, and that the KBRA drafts will be changed to avoid any direct or indirect adverse impacts to Hoopa. We earnestly hope that the new Administration's policy review will rectify the flawed process that has produced the KBRA and the AIP and make it possible for the Hoopa Valley Tribe to join a new effort focused on river restoration.

Sincerely yours,

MORISSET, SCHLOSSER & JOZWIAK



Thomas P. Schlosser
Attorneys for the Hoopa Valley Tribe

cc: Hon. Ken Salazar
Robert Laidlaw
John Bezdek
Ed Sheets
Carl Ullman
Scott Williams
Paul Simmons