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11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 HOOPA VALLEY TRIBE,) Civ. No. 1:20-cv-1814-JLT-EPG
14)
15 Plaintiff,)
16) PLAINTIFF HOOPA VALLEY
17 v.) TRIBE’S NOTICE OF MOTION
18) AND MOTION FOR
19) PRELIMINARY INJUNCTION
20 UNITED STATES BUREAU OF)
21 RECLAMATION; DEBRA ANNE HAALAND,)
22 in her official capacity as Secretary of the) Date: January 20, 2023
23 Interior; MARIA CAMILLE CALIMLIM) Time: 9:00 AM
24 TOUTON, in her official capacity as) Courtroom: 4 – 7th Floor, Fresno
25 Commissioner of the United States Bureau of) Hon. Jennifer L. Thurston
26 Reclamation; ERNEST A. CONANT, in his)
official capacity as United States Bureau of)
Reclamation California-Great Basin Regional)
Director; and UNITED STATES)
DEPARTMENT OF THE INTERIOR)
Defendants.)

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD

2 PLEASE TAKE NOTICE that, on January 20, 2023, at 9:00 AM, in Courtroom 4 of the
3 above-entitled Court, located at 2500 Tulare Street, Fresno, California, the Plaintiff Hoopa
4 Valley Tribe (“Plaintiff” or “Hoopa”), pursuant to Rule 65 of the Federal Rules of Civil
5 Procedure, Local Rule 231, and all other applicable rules, will and hereby does apply and move
6 for a preliminary injunction enjoining the Defendants from implementing the Trinity River
7 Winter Flow Variability Project (WFV Project) in the absence of the concurrence of the Hoopa
8 Valley Tribe. Hoopa’s concurrence is mandated by Section 3406(b)(23) of the Central Valley
9 Project Improvement Act (CVPIA), Public Law 102-575 (1992).

10 Defendants were scheduled to implement the WFV Project as early as December 15,
11 2022. Plaintiff’s counsel advised Defendants’ counsel that Plaintiff intended to seek a temporary
12 restraining order to enjoin implementation. Following conferrals between Plaintiff’s and
13 Defendants’ representatives that occurred between December 12 and December 16, 2022,
14 Defendants have committed as follows: “[the Interior Department/Defendants] commit to give
15 [Hoopa] at least 5 business days notice before any decision is made with respect to the Trinity
16 River (sic) Council’s vote to recommend the winter flows, and at least 10 business days notice
17 before the implementation of any such decision.” Declaration of Thane Someville, Exh. 7.
18 While Defendant’s commitment to defer any implementation of the WFV Project for a minimum
19 of 15 business days (3 full weeks) after providing written notice to Plaintiff relieves Plaintiff of
20 the need to file for a TRO at this time, the specter of implementation of the WFV Project in
21 absence of Hoopa concurrence and corresponding irreparable harm remains. Thus, Plaintiff
22 seeks this preliminary injunction.¹

23 This Motion for Preliminary Injunction is made on the grounds that Plaintiff has
24 demonstrated a strong likelihood of success on the merits of its claim that the Defendants have
25

26 ¹ Plaintiff reserves its right to seek a TRO in the event circumstances change that warrant more immediate relief.

1 violated the statutory delegation of sovereignty contained in CVPIA § 3406(b)(23) by approving
2 the WFV Project, which will result in significant modifications of flows mandated by CVPIA §
3 3406(b)(23) and the 2000 Trinity River Record of Decision (ROD), without the required
4 concurrence of the Hoopa Valley Tribe. This claim regarding “Violation of Hoopa’s Delegated
5 Sovereignty in CVPIA” is raised in the Ninth Claim for Relief of Plaintiff’s First Amended and
6 Supplemental Complaint for Declaratory and Injunctive Relief, ECF #97, filed 10/31/22.
7 Defendants’ approval of the WFV Project without Hoopa’s concurrence, as required by CVPIA
8 section 3406(b)(23) is “arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with law,” “in excess of statutory jurisdiction, authority, or limitations,” and/or
10 “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (C), (D).

11 Hoopa will suffer irreparable harm unless Defendants are restrained from implementing
12 the Trinity River WFV Project because once such water is released, it will be unavailable for use
13 to implement the flows that are mandated by CVPIA § 3406(b)(23) and the ROD. Declaration of
14 Michael Orcutt; Declaration of Joe Davis. Hoopa will also suffer irreparable harm to its
15 sovereignty as reflected in CVPIA section 3406(b)(23). The balance of hardships and the public
16 interest strongly favors injunctive relief.

17 Hoopa bases its Motion for Preliminary Injunction on this notice of motion and motion,
18 the accompanying memorandum in support of the Motion for Preliminary Injunction, and the
19 supporting declarations of Joe Davis, Michael Orcutt, and Thane Somerville, all of which are
20 filed and served herewith, its First Amended and Supplemental Complaint for Declaratory and
21 Injunctive Relief (Ninth Claim for Relief) (Dkt. #97, filed 10/31/22), all pleadings and papers on
22 file in this action, and such other matters as may be presented to the Court at the time of hearing.

23 Plaintiff’s counsel certifies that they have satisfied required meet and confer requirements
24 in advance of filing this motion. Declaration of Thane Somerville. Counsel for Plaintiff
25 notified Defendants’ counsel, via video conference call on December 12, 2022, of Hoopa’s intent
26 to file Motions for TRO and Preliminary Injunction. *Id.* Between December 13 and December

1 15, Plaintiff's and Defendants' representatives and counsel exchanged correspondence regarding
2 the injunction motions. Declaration of Thane Somerville. On December 15, 2022, Defendants'
3 counsel sent an email committing that: "[the Interior Department/Defendants] commit to give
4 [Hoopa] at least 5 business days notice before any decision is made with respect to the Trinity
5 River (sic) Council's vote to recommend the winter flows, and at least 10 business days notice
6 before the implementation of any such decision." Declaration of Thane Somerville. Plaintiff's
7 and Defendants' representatives and legal counsel conferred again on the morning of December
8 16, 2022 and Defendants' counsel again confirmed that no action would be taken by Defendants
9 to implement the WFV Project for a minimum of 15-business days (3 full weeks) following
10 delivery of a written notice from Defendants to the Tribe. *Id.*

11 Hoopa submits this Motion for Preliminary Injunction on the papers described above.
12 However, Hoopa requests an opportunity to present live testimony at a hearing on this motion if
13 the Court concludes that material facts are in dispute and that resolution of the conflict will
14 determine the outcome on the motion, or if relief would be denied based on the written evidence
15 and argument alone. Hoopa expects a hearing, if necessary, may take 2-3 hours.

16 Because counsel for both Plaintiff and Defendants are located out-of-state, Plaintiff
17 proposes that any hearing on this motion be conducted virtually or telephonically if possible.

18 DATED this 16th day of December, 2022.

19 MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE

20 /s/ Thane D. Somerville

21 Thane D. Somerville WSBA #31468

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Thane D. Somerville
Thane D. Somerville