
Exhibit A



August 13, 2019

Honorable Jared Huffman
House of Representatives
1630 Longworth House Office Building
Washington, D.C. 20515

Re: Opposition to H.R. 1312 as currently drafted

Dear Congressman Huffman,

We are writing on behalf of the following 7 federally recognized tribes located in northwestern California to express our shared concerns regarding H.R. 1312: Big Lagoon Rancheria, Blue Lake Rancheria, Bear River Band of the Rohnerville Rancheria, Hoopa Valley Tribe, Resighini Rancheria, Tolowa Dee-ni Nation, and Cher-Ae Heights Indian Community of the Trinidad Rancheria. Last year, six of the seven foregoing tribes signed a joint letter stating their concerns and opposition to a substantively similar bill (H.R. 3847). That bill addressed federal land management of shared ancestral territory of many tribes located in northwestern California, but was biased in favor of one tribe to the detriment of the other tribes. Disappointingly, these tribes received no response from your office and no effort was made to develop revisions to the bill to address their concerns. This year, despite substantial and reasonable opposition to this proposal having been expressed by numerous neighboring tribes, you reintroduced the legislation, now H.R. 1312, without making any substantive changes to address the concerns of those tribes. We therefore must oppose HR 1312 for the same reasons that the tribes opposed HR 3847 last year.

California is home to 109 federally recognized Indian tribes. Our traditional and customary practices depend upon irreplaceable tribal cultural resources and related natural resources located within the state. Many of the tribes in the State have overlapping ancestral homelands and share interests in cultural sites and natural resources. As such, the federal government plays a significant role in managing some of the land areas within California on which these cultural sites and natural resources overlap. In this culturally rich environment, the federal government must work cooperatively and collaboratively with the tribes to protect these irreplaceable cultural resources and related natural resources. As a matter of federal law, each tribe has equal standing with regard to our government-to-government relationship with the United States and the privileges and immunities we enjoy as federally recognized tribes.¹ It remains vitally important that federal land

¹ Section 16 of the Indian Reorganization Act (IRA) as amended in 1994 (25 U.S.C. § 5123(f) and (g) formerly codified as 25 U.S.C. § 476 (f) and (g)) states that "... Departments and agencies of the United States are prohibited

management agencies recognize the interests and rights pertaining to and shared by each tribe, so that these agencies may implement the law in a fair and unbiased manner, and bestow similarly situated tribes with equal protection under the laws.

We appreciate your recognition of the need to encourage and require federal land management agencies to enter into cooperative agreements with Indian tribes, and to treat tribes as cooperating agencies for the purposes of NEPA. However, federal law already provides opportunities for Tribes to enter into cooperative agreements with federal land management agencies, and NEPA already provides opportunities for Tribes to engage in federal actions as cooperating agencies. Legislation that mandates this for a single Indian Tribe is unnecessary and appears prejudicial.

It is imperative that federal legislation treat similarly situated tribes equally, in accordance with the express terms of Section 16 of the IRA, and fundamental principles of federal Indian law and the United States Constitution. H.R. 1312 unnecessarily pits one tribe against another in a manner that is of great concern to tribes throughout California.² Rather than pitting one tribe against another, as H.R. 1312 currently does, we request that you revise the bill to foster a process that is equally respectful of the rights of all federally recognized tribes when federal agencies engage tribes regarding NEPA, resource management plans, and other matters related to cultural sites and natural resources within federal land management areas.

Similar to last year's bill, H.R. 1312 would grant only the Yurok Tribe rights and benefits with regard to broadly and ambiguously defined federally managed lands, which include irreplaceable cultural and natural resources that are of significant interest to multiple similarly situated tribes. Although the order of the sections has been changed in H.R. 1312, the substance of the provisions that would provide disparate treatment to similarly situated tribes remain identical. For example, Section 5(e)(4) would congressionally confirm a 2006 cooperative agreement between the Yurok Tribe and the Department of the Interior, which purports to apply to broadly defined lands "both within the Yurok Reservation as well as the [Klamath Basin], upstream river, and Pacific Ocean resources subject to the jurisdiction or authorities of various [Department of the Interior] agencies and bureaus." The bill would also require the Redwood National Park to enter into a cooperative agreement with only the Yurok Tribe for "system unit natural resource protection" (H.R. 3847, § 5(e)(1)), and it would encourage the National Forest Service to enter into cooperative agreements only with the Yurok Tribe in areas beyond the reservation (H.R. 3847, § 5(e)(2)). It would also require the Park Service to treat the Yurok Tribe as a State or local government agency for the purposes of cooperative management agreements

from promulgating any regulation or making any decision or determination that classifies, enhances, or diminishes, the privileges and immunities available to an Indian tribe relative to other federal recognized tribes by virtue of their status as Indian tribes."

² With regard to H.R. 1312, the Southern California Tribal Chairmen's Association, representing 20 tribes in southern California, expressed the Association's support for federally recognized tribes to come together on land use agreements and tribal solutions in resolving tribal regional legislation on federal land management issues, but opposes legislation that pits one tribe against another.

under 54 U.S.C. 101703 (H.R. 3847, § 5(e)(3)), and grant the Yurok Tribe cooperating agency status for the National Environmental Protection Act (NEPA) processes undertaken for major federal actions that “may affect the revised Yurok Reservation” (H.R. 3847, § 5(c)). Finally, section 7 of H.R. 1312 would ratify and confirm the governing documents of the Yurok Tribe when there is already a federal process in place. Again, federal law already provides opportunities for Tribes to enter into cooperative agreements with federal land management agencies and NEPA already provides opportunities for Tribes to engage in federal actions as cooperating agencies. The Indian Self-Determination and Education Assistance Act (ISDEAA) allows for Tribes to enter into funding agreements with Department of the Interior (DOI) agencies, and the Secretary of the Interior approves and confirms Tribal governing documents. Thus, this legislation is unnecessary as the Yurok Tribe presently has the opportunities to work with federal agencies in the manner they desire.

Through this bill, the United States would convey rights and privileges pertaining to the management of federal lands and the natural and cultural resources located on those lands, solely to the Yurok Tribe even though these lands and resources are located within the overlapping and shared ancestral territory of many similarly situated tribes. These provisions violate the bedrock principles set forth in Section 16 of the IRA, already established federal law, and the United States Constitution.

We urge you to engage with the federally recognized tribes located within the area that would be affected by H.R. 1312 to develop revisions to the bill to address the need for enhanced cooperation between federal land management agencies and all the tribes in this region of California. However, until the bill is modified to treat similarly situated tribes equally, we must oppose the bill. Thank you for your attention to our concerns, and we look forward to discussing these matters with you in the future.

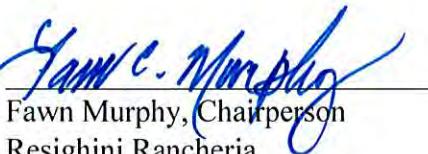
Sincerely,



Garth Sundberg, Chairman
Cher-Ae Heights Indian Community
of the Trinidad Rancheria



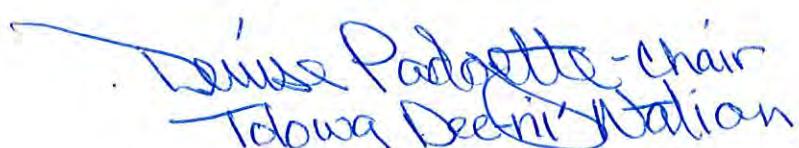
Virgil Moorehead, Chairman
Big Lagoon Rancheria



Fawn Murphy, Chairperson
Resighini Rancheria



Byron Nelson Jr., Chairman
Hoopa Valley Tribe



Honorable Jared Huffman

August 13, 2019

Page 4

Claudia Brundin
Claudia Brundin, Chairwoman
Blue Lake Rancheria

Barry Bernard
Barry Bernard, Chairman
Bear River Rancheria

See Previous Page jpc

Denise Padgett, Chairperson
Tolowa Dee-ni' Nation



July 12, 2018

Honorable Jared Huffman
House of Representatives
1630 Longworth House Office Building
Washington, D.C. 20515

Sent Via Electronic Mail

Re: Concerns Regarding H.R. 3847

Dear Congressman Huffman,

We are writing on behalf of the following six federally recognized tribes located in northwestern California to express our shared concerns regarding H.R. 3847 (the “Yurok Lands Act”): Cher-Ae Heights Indian Community of the Trinidad Rancheria, Big Lagoon Rancheria, Resighini Rancheria, Hoopa Tribe, Blue Lake Rancheria, and Wiyot Tribe. We appreciate your recognition of the federal laws authorizing federal land management agencies to work cooperatively with federally recognized Indian tribes, and the need to encourage or direct those agencies to undertake cooperative activities with tribes. H.R. 3847 addresses several matters involving land management agencies that are of significant concern to many federally recognized tribes in the region, but because it only extends rights and benefits to one tribe, we must oppose the bill.

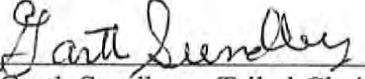
As you know, the northwest corner of California is home to no less than 12 federally recognized Indian tribes, and numerous tribal cultural resources and related natural resources, on which many of our traditional and customary practices depend. This region is also the home of large federal managed land areas, which affect these cultural and natural resources. In this culturally rich environment, it is important that the federal government work cooperatively and collaboratively with the tribes to enhance the protection of our cultural resources and related natural resources. Further, many of the tribes in this region have overlapping ancestral homelands and share interests in cultural sites and natural resources. As a matter of federal law, we also have equal standing with regard to our government-to-government relationship with the United States and our privileges and immunities as federally recognized tribes. Thus, it is important that federal land management agencies recognize the complexity of the interests and rights shared by the tribes, and that they implement the law in a fair and unbiased manner.

H.R. 3847 would grant the Yurok Tribe rights and benefits with regard to broadly and ambiguously defined federally managed lands, which include cultural and natural resources that are of significant interests to multiple tribes. For example, Section 3(e)(4) would congressionally confirm a 2006 cooperative agreement between the Yurok Tribe and the Department of the Interior, which purports to apply to broadly defined lands “both within the Yurok Reservation as well as the [Klamath Basin], upstream river, and Pacific Ocean resources subject to the jurisdiction or authorities of various [Department of the Interior] agencies and bureaus.” The bill would also require the Redwood National Park to enter into a cooperative agreement for “system unit natural resource protection” (H.R. 3847, § 3(e)(1)), and it would encourage the National Forest Service to enter into cooperative agreements with the Yurok Tribe in areas beyond the reservation (H.R. 3847, § 3(e)(2)). It would also require the Park Service to treat the Yurok Tribe as a State or local government agency for the purposes of cooperative management agreements under 54 U.S.C. 101703 (H.R. 3847, § 3(e)(3)), and grant the Yurok Tribe cooperating agency status for the National Environmental Protection Act (NEPA) processes undertaken for major federal actions that “may affect the revised Yurok Reservation” (H.R. 3847, § 3(c)).

As noted above, we appreciate your recognition of the need to encourage and require federal land management agencies to enter into cooperative agreements with Indian tribes, and to treat tribes as cooperating agencies for the purposes of NEPA. However, by limiting those provisions to only one tribe, H.R. 3847 is biased against the other federally recognized tribes, which have similar interests in those same lands and resources. By treating federally recognized Indian tribes unequally, these provisions run contrary to the bedrock principles that each federally recognized Indian tribe stands equal to other federally recognized tribes in its relationship with the United States. *See* 25 U.S.C. §5123 (f) and (g)).

We would welcome the opportunity to work with you on a bill that addresses the need for enhanced cooperation between federal land management agencies and all the tribes in this region of California, but, as drafted, H.R. 3847 is biased in favor of one tribe to the detriment of our tribes, and we must oppose the bill. Thank you for your attention to our concerns, and we look forward to discussing these matters with you in the future.

Sincerely,



Garth Sundberg, Tribal Chairman
Cher-Ae Heights Indian Community
of the Trinidad Rancheria

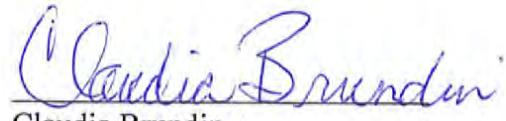


Virgil Moorehead
Big Lagoon Rancheria

Honorable Jared Huffman
March 23, 2018
Page 3


Fawn Murphy
Resighini Rancheria


Ryan Jackson
Hoopa Valley Tribe


Claudia Brundin
Blue Lake Rancheria


Ted Hernandez
Wiyot Tribe

February 28, 2019

Southern California
TRIBAL CHAIRMEN'S
Assoc., Inc.



Honorable Jared Huffman
House of Representatives
1630 Longworth House Office Building
Washington, D.C. 20515

RE: Concerns Regarding H.R. 1312

Dear Congressman Huffman:

The Southern California Tribal Chairmen's Association, Inc. (SCTCA) was established to support Tribal Sovereignty of Southern California Tribal Nations and collaborate and advocate for all Tribal Nations in California.

SCTCA was established in 1972, and is the oldest and largest Native American Tribal Government organization in California, among the Northern and Central Tribal Chairmen's Associations.

SCTCA sets high standards that Tribally Federally recognized Tribal Governments need important agreements between Tribal Nations that share privileges and immunities as equal sovereign nations, within all Tribal Legislation, federal, state and counties.

SCTCA strongly supports Tribally Federally recognized Tribal Governments shared laws and rights in regional land management. Tribal Nations connections in federal lands that are historical, equally shared, although very complex issues between Tribes, because of the values and usage of cultural resources and natural resources. The many Tribal Nations have carryout their traditional health and healing ceremonies and customary practices differently in their regions for hundreds of centuries, as recognized by the U.S. Government, State of California and 58 Counties in California.

SCTCA has seen and experienced the usage of overlapping territories of federal lands to Tribes. SCTCA recognizes as well as encourages, that the federally recognized Tribes, come together on cooperating with land use agreements between all Tribal Nations. SCTCA supports Tribes coming together on the Yurok Land Legislation (HR 1312).

SCTCA supports the federally recognized Tribes solutions in resolving the Tribal regional legislation on federal land management issues. We oppose legislation and any other act which develop into a position that pits one tribe against another.

Sincerely

A blue ink signature of Robert Smith.

Robert Smith
SCTCA Chairman of the Board

A blue ink signature of Bo Mazzetti.

Bo Mazzetti
SCTCA Vice President

A blue ink signature of Denis Turner.

Denis Turner, SCTCA Secretary

Exhibit B

+

DEPARTMENT OF THE INTERIOR

REPORT

OF THE

COMMISSIONER OF INDIAN AFFAIRS

TO THE

SECRETARY OF THE INTERIOR

FOR THE FISCAL YEAR

ENDED JUNE 30

1915



WASHING...
1915

TABLE 29.—*Allotments approved by the department during the fiscal year ended June 30, 1915, and made in the field.*

States and tribes or reservations.	Approved by the department.		Made in the field.	
	Number.	Acreage.	Number.	Acreage.
Total.....	4,535	671,546	6,473	850,094
Arizona.....	14	140	1,492	14,920
Colorado River.....	14	140	1,492	14,920
Pima (Gila River).....				
California.....	1	160	1	10
Yuma.....	1	160	1	10
Public domain.....				
Mahan: Fort Hall.....	1,784	338,910		
Michigan: L'Anse and Vieux Desert.....	2	120		
Minnesota.....	148	6,154		
Fond du Lac.....	143	5,748		
Leech Lake.....	1	91		
Nett Lake (Boise Fort).....	4	315		
Montana.....	413	51,342	192	61,440
Fort Peck.....	413	51,342	192	61,440
Turtle Mountain (public domain).....				
Nebraska.....	3	164		
Omaha.....	2	120		
Santee.....	1	44		
Nevada: Moapa River.....	117	605		
North Dakota.....	278	46,539	788	206,155
Fort Berthold.....	213	36,165	788	206,155
Standing Rock.....	65	10,374		
Turtle Mountain (public domain).....				
Oklahoma: Fort Sill, Apache.....	7	859		
Oregon: Warm Springs.....	1	160		
South Dakota.....	403	69,190	1,470	261,093
Cheyenne River.....	287	50,487		
Crow Creek.....	113	18,063		
Pine Ridge.....			574	117,733
Rosebud.....	3	640	896	143,360
Utah: Uintah and Ouray.....			1	50
Washington.....	1,364	157,203	2,291	282,615
Colville.....			2,291	282,615
Yakima.....	1,364	157,203		
Wyoming: Shoshone.....			238	23,811

TABLE 30.—*Lands purchased for Indians in California to June 30, 1915.*

Band.	County.	Number of Indians.	Acres.	Amount paid.
Total.....		3,479	6,783.51	\$144,470.46
San Manuel.....	San Bernardino.....	56	5.13	1,795.50
Do.....	do.....	56	7.50	200.00
Trinidad.....	Humboldt.....	43	60.00	1,198.40
Rumsey.....	Yolo.....	48	75.00	2,000.00
Pechanga, or Temecula.....	Riverside.....	179	235.00	6,650.00
Eas Coyotes.....	San Diego.....	165	160.00	800.00
Mopland.....	Mendocino.....	120	630.00	5,750.00

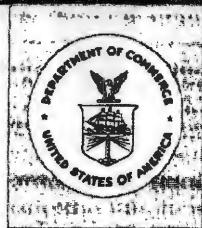
Exhibit C

05442

Federal and State Indian Reservations and Indian Trust Areas

COASTAL ZONE
INFORMATION CENTER

U. S. Dept. of Commerce



U. S. DEPARTMENT OF COMMERCE

Property of CSC Library

Federal and State Indian Reservations and Indian Trust Areas

**COASTAL ZONE
INFORMATION CENTER**

**U. S. DEPARTMENT OF COMMERCE
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413**



**U. S. DEPARTMENT OF COMMERCE
Frederick B. Dent, Secretary**

SEP 9 1981

**E93.M6553 1974
1036679**

TRINIDAD RANCHERIA

Humboldt County, CALIFORNIA

Yurok Tribe

Tribal Headquarters: Trinidad, California 95570

**Federal
Reservation**

Population: 26 (BIA 8/69)

LAND STATUS

Total Area: 54.60 acres

Trinidad Rancheria was established by the Secretary of the Interior in 1917. Acts of June 6, 1906, and others appropriated funds for purchase of lands for California Indians. Presently, the rancheria is in the process of being terminated under the Rancheria Act, Public Law 85-671, as amended by Public Law 88-419. There are 26 Indians residing on or adjacent to the reservation.

(BIA Sacramento Area Office—January 1970.)

GOVERNMENT

The tribe is governed by a five-member business committee elected for 2-year staggered terms.

Vital Statistics

Additional data
unavailable

Exhibit D

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
MEMORANDUM

DATE: November 29, 2016

TO: Fish and Game Commission members

CC: Valerie Termini, Executive Director

FROM: Michael Yaun, Legal Counsel *MY*

SUBJECT: Reading Rock State Marine Conservation Area rulemaking amendment

This memo addresses several legal issues underlying the Commission's upcoming decision on whether or not to amend Section 632 of Title 14 of the California Code of Regulations. The amendment, if approved as the published rulemaking notice indicates, would lift the special protections for the Reading Rock Marine Conservation Area that were created in 2012 for two tribes: Resighini Rancheria and Cher-Ae Heights Indian Community of the Trinidad Rancheria.

Framework for tribal exemptions under the MLPA

Prior to 2012, the coastal waters in the area of Reading Rock were governed by general state law with respect to take of marine species. Under that general state law, the Yurok Tribe, Resighini Rancheria, and the Cher-Ae Heights Indian Community of the Trinidad Rancheria were not treated any differently under state law from one another or from the general state population.

In 2012, the Commission adopted amendments to Section 632 of Title 14 of the California Code of Regulations (Section 632) for North Coast Region. Relevant to the current issue, that adoption created Marine Protected Areas and established special protections for each of those areas. Paragraph (b)(6) identified the Reading Rock State Marine Conservation Area, applying area specific regulations, and creating certain limitations including stating that the areas-specific regulations did not apply to the Yurok Tribe. Paragraph (a)(11) of the section clarifies that the tribal exemption exempts members of identified tribe from the area-specific restrictions. Under Section 632, the general public may not take marine resources within the Reading Rock State Marine Conservation Area.

When the 2012 amendments were originally noticed, the tribal exemption in paragraph (b)(6) identified the Yurok Tribe, the Resighini Rancheria, and the Cher-Ae Heights Indian Community of the Trinidad Rancheria. All three tribes

had submitted factual records supporting this exemption. After adopting the 2012 amendments without including the Resighini Rancheria or the Cher-Ae Heights Indian Community of the Trinidad Rancheria, both of those tribes requested that the Commission grant them the exemption as originally noticed.

Equal protection

The proposed amendment and the existing exemption for the Yurok Tribe create an exemption that treats the tribes listed in the regulatory exemption differently from the general public. The California Constitution provides that: "A person may not be . . . denied equal protection of the laws."¹ The Fourteenth Amendment to the United States Constitution similarly states: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."² These provisions "have been generally thought... to be substantially equivalent."³

"The equality guaranteed by the equal protection clauses of the federal and state Constitutions is equality under the same conditions, and among persons similarly situated."⁴ Thus, laws may make "reasonable classifications of persons and other activities, provided the classifications are based upon some legitimate object to be accomplished."⁵ "A prerequisite to a meritorious equal protection claim is a showing that the state has treated two or more similarly situated groups in an unequal manner."⁶ If the parties are not "similarly situated" with respect to the legitimate purposes of the law, "an equal protection claim fails at the threshold."⁷

Ancestral connection to reading rock

The first part of the equal protection test is determining whether people are similarly situated. In this instance both the Resighini Rancheria and the Cher-Ae Heights Indian Community of the Trinidad Rancheria have submitted a factual record indicating historic ancestral use of the area within the Reading Rock Marine Conservation Area. Singling out these tribes based on those factual

¹ Cal. Const., art. I, § 7, subd. (a).

² U.S. Const., 14th Amend.

³ *People v. Wilkinson*, 33 Cal.4th 821, 836-837 (2004).

⁴ *Adams v. Commission on Judicial Performance*, 8 Cal.4th 630, 659 (1994); see also *In re Eric J.* 25 Cal.3d 522, 531 (1979) [the concept of equal protection encompasses the proposition "that persons similarly situated with respect to the legitimate purpose of the law receive like treatment."].

⁵ *Commission on Judicial Performance, supra*, 8 Cal.4th at p. 659; see also *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) ["The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike."].

⁶ *Pederson v. Superior Court*, 105 Cal.App.4th 931, 940 (2003), citing *In re Eric J., supra*, 25 Cal.3d at p. 530.

⁷ *People v. Adams*, 115 Cal.App.4th 243, 262 (2004).

records could be a basis for determining that the tribal members are not similarly situated with other members of the public.

Political versus racial

The current regulatory structure of Section 632 applies the tribal take exemption to all members of listed tribes. If the exemption is determined to be distinguishing between similarly situated groups of people, then the second step in equal protection analysis is to determine the appropriate standard of scrutiny to apply to a classification.⁸ At a minimum, a classification must be rationally related to a legitimate governmental purpose.⁹ A classification will be upheld where the law neither burdens a fundamental right nor targets a suspect class as long as there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.¹⁰ Laws that accord differential treatment to members of federally recognized tribes are generally considered to reflect political classifications and therefore do not burden a fundamental right nor target a suspect class.¹¹ The Yurok tribe, the Resighini Rancheria and the Cher-Ae Heights Indian Community of the Trinidad Rancheria are all federally recognized tribes.¹² If a classification allowing tribal members exclusive authority to fish and gather in marine conservation areas is granted to the tribes as federally recognized government entities, a court would likely uphold the decision so long as the Commission could identify any rational basis for the decision.

Based on the above analysis of constitutional guarantees of equal protection, the Commission has a sound basis under both prongs of the judicially applied test to adopt the proposed regulation.

The three tribes have equal footing as tribes

The Yurok Tribe is identified in name as a tribe and has a reservation, while the other two tribes discussed in this memo are linked to the formation of Rancherias. All Federally recognized tribes have equal status under federal law as sovereign nations.¹³ As noted above, all three tribes are federally recognized tribes.¹⁴ The fact that two of the tribes were originally organized as Rancherias and the third was immediately recognized as a tribe in name with a reservation

⁸ *Pederson, supra*, 105 Cal.App 4th at 940.

⁹ *Wilkinson, supra*, 33 Cal.4th at p. 836

¹⁰ *Flynt v. California Gambling Control Com'n*, 104 Cal.App.4th 1125 (2002).

¹¹ *Morton v. Mancari*, 417 U.S. 535, 553-554 (1974); *Means v. Navajo Nation*, 432 F.3d 924, 934 (9th Cir. 2005); *Flynt, supra*, 104 Cal.App.4th at 1141.

¹² 81 FR 5019 (Bureau of Indian Affairs published list of 566 Federally recognized tribes).

¹³ 25 U.S.C. §5123 (f), (g), and (h).

¹⁴ 81 FR 5019 (Bureau of Indian Affairs published list of 566 Federally recognized tribes).

should not be viewed as an indication of hierarchy or the basis of a need to treat the tribes differently.

All three recognized as Yurok people

The factual record presented by the Resighini Rancheria and the Cher-Ae Heights Indian Community of the Trinidad Rancheria rely on ancestral use of the Reading Rock Marine Conservation Area by Yurok people. Historic native villages of Yurok people were located on the northern California coast from Wilson Creek (which is north of the mouth of the Klamath River) to the Little River (which is just south of Trinidad Head).¹⁵ Congress identified Indians living on what is now the Yurok Reservation, the Resighini Rancheria, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and Big Lagoon Rancheria all as being "historically of Yurok origin".¹⁶ Based on that congressional determination, the Commission can give credit to the connection made by the tribes to the ancestral use.

Jesse Short cases and Hoopa Yurok Settlement Act

The Commission received several comments about the impact of the Short line of cases and the Commission's proposed action being inconsistent with the holding of one or more of those cases. The Short cases however specifically dealt with rights to revenues related to harvest on what was at the time the Hoopa reservation.¹⁷ More importantly, the Hoopa Yurok settlement Act¹⁸ "nullified the Short rulings"¹⁹ Finally, the Hoopa Yurok settlement Act itself was an act with the primary purpose of "partition[ing] certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians [and] to clarify the use of tribal timber proceeds."²⁰ The Act did require members of the Resighini Rancheria and Cher-Ae Heights Indian Community of the Trinidad Rancheria to make binding selections that affected future rights. However, those elections dictated what rights would be retained stemming out of membership in the Yurok Tribe and property rights tied to the newly formed Yurok Reservation and the Hoopa Reservation.²¹

The family members of the historic Yurok village near Reading Rock have living ancestors that still reside in that area; those currently living ancestors are Yurok

¹⁵ *Short v. United States*, 202 Ct. C. 870, 886 (1973).

¹⁶ Senate Report No. 100-564, Section 11 (Report accompanying the Hoopa-Yurok Settlement Act).

¹⁷ *Karuk Tribe v. Ammon*, 209 F.3d 1366, 1372 (Fed. Cir. 2000).

¹⁸ Public Law 100-580, 102 STAT. 2924 (1988) (codified at 25 U.S.C. §§ 1300i-1300i-11)

¹⁹ *Karuk Tribe, supra*, 209 F.3d at 1372.

²⁰ Hoopa Yurok Settlement Act, Public Law 100-580, 102 STAT. 2924 (1988).

²¹ 25 U.S.C. 1300i-5 (stating that opting out of tribal membership was "solely as a mechanism to resolve the complex litigation and other special circumstances of the Hoopa Valley Reservation and the tribes of the reservation").

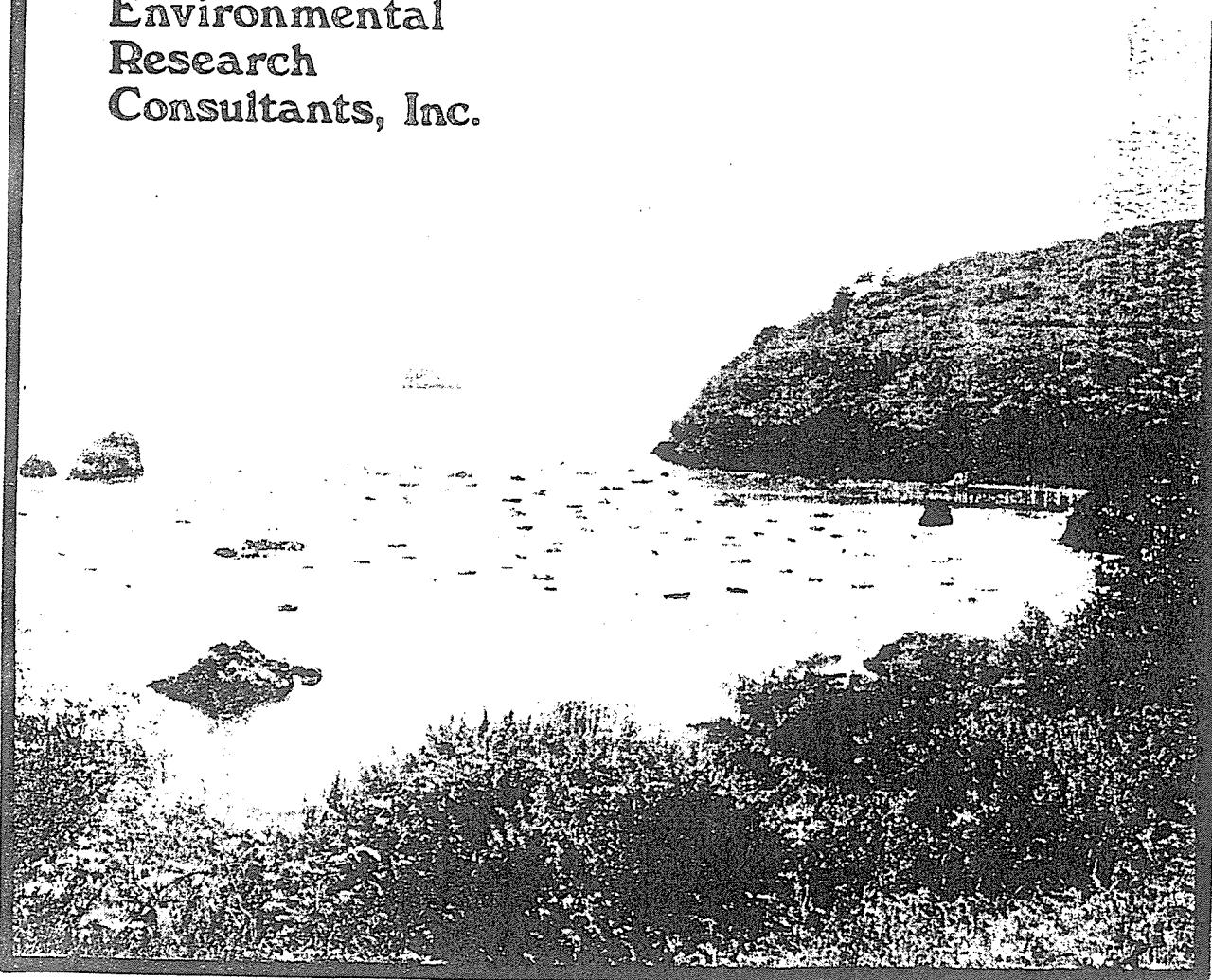
Tribe members.²² While this identifies an additional connection to the Reading Rock Marine Conservation Area by the Yurok Tribe not articulated by the other two tribes, it does not diminish the other two tribes' connection to that area. Therefore the Commission would not fail to meet the test for equal protection articulated above.

²² Testimony at October 19, 2016 Commission meeting by representatives of the Yurok Tribe.

Exhibit E

City of Trinidad General Plan

**Environmental
Research
Consultants, Inc.**



CITY OF TRINIDAD

GENERAL PLAN

The Trinidad General Plan was prepared with financial assistance from the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, under the provisions of the Federal Coastal Zone Management Act of 1972.

64. A formal pedestrian trail system should be marked out around Trinidad. The system should include the beaches, the existing Trinidad Beach State Park trails, and ascend the bluff at Galindo Street to provide convenient pedestrian access from Edwards Street to the harbor, the Old Wagon Road from Wagner Street to Parker Creek Trail, the private road extending from Scenic Drive along the east branch of Parker Creek to the beach, and the beach extending south easterly from Parker Creek to the City limits. (Refer to the Circulation Plan map for delineation of the trail system.) The system should be advertised in visitor information and mapped at the visitor information center.
65. The city shall require an open space easement or similar agreement to assure public use of designated trails and to protect the natural character of Special Environment areas when approving permits for allowable development. Such agreements shall cover the portions of the lot which need not be disturbed by proposed structures and appurtenant uses. If funds are available the city should obtain such agreements on already developed lots in the Special Environment area and should obtain the degree of public control over lands designated as Open Space needed to protect scenic, cultural and natural resources.
- Trinidad will be
66. ~~The portion of Trinidad Head not needed by the Coast Guard should be transferred to the City of Trinidad. The area should be kept in its natural state with hiking trails and vista points. Public vehicular access should only be allowed as far as the existing harbor overlook.~~
- Amended Ord 166 12-12-84
67. The College Cove parking area at the north end of Trinidad Beach State Park should be improved and restrooms provided. Trails to the beach and to the northwest corner of the park should be improved.
68. The city should retain its ownership along Mill Creek east of the freeway as open space.
69. Within the Tsurai Study Area, shown on Plate 1B, the State Historic Preservation Officer, in cooperation with the lineal descendants of Tsurai and the Northwest Indian Cemetery Protective Association, shall investigate and establish definitive boundaries around Tsurai. There shall be no disturbance, vegetative removal or construction, except for a protective fence around the burial ground, on lands designated as Open Space within the Tsurai Study Area without the approval of the lineal descendants of Tsurai, Trinidad Rancheria, City of Trinidad, and the State Historic Preservation Officer. Lands designated as Special Environment within the Study Area may be developed as provided in the Special Environment regulations provided the State Historic Preservation Officer is consulted and reasonable measures are required to mitigate any adverse impacts on this cultural resource.
70. In areas open to the public, adequate litter control programs should be provided.

Exhibit F

[Senate]
[Page S]

<http://www.gpo.gov/>

[Congressional Record: May 19, 1994]

TECHNICAL CORRECTIONS ACT OF 1994

Mr. FORD. Madam President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1654, a bill to make certain technical corrections.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 1654) entitled ``An Act to make certain technical corrections'', do pass with the following amendment:

SECTION 1. NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1992.

(a) Environmental Costs.--Section 7(e) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186 et seq.) is amended by adding at the end thereof the following new sentences: ``All costs of environmental compliance and mitigation associated with the Compact, including mitigation measures adopted by the Secretary, are the sole responsibility of the United States. All moneys appropriated pursuant to the authorization under this subsection are in addition to amounts appropriated pursuant to the authorization under section 7(b)(1) of this Act, and shall be immediately available.''.

(b) Authorizations.--The first sentence of section 4(c) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374; 106 Stat. 1186 et seq.) is amended to read as follows: ``Except for authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B) and 7(e), the authorization of appropriations contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section.''.

(c) Effective Date.--The amendments made by this section shall be considered to have taken effect on September 30, 1992.

SEC. 2. SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992.

(a) Amendment.--Section 3704(d) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (Public Law 102-575) is amended by deleting ``reimbursable'' and inserting in lieu thereof ``nonreimbursable''.

(b) Effective Date.--The amendment made by subsection (a) shall be considered to have taken effect on October 30, 1992.

SEC. 3. TRIBALLY CONTROLLED COMMUNITY COLLEGES.

The part of the text contained under the heading ``BUREAU OF INDIAN AFFAIRS'', and the subheading ``operation of indian

programs'', in title I of the Department of the Interior and Related Agencies Appropriations Act, 1994, which reads ``Provided further, That any funds provided under this head or previously provided for tribally-controlled community colleges which are distributed prior to September 30, 1994 which have been or are being invested or administered in compliance with section 331 of the Higher Education Act shall be deemed to be in compliance for current and future purposes with title III of the Tribally Controlled Community Colleges Assistance Act.'' is amended by deleting ``section 331 of the Higher Education Act'' and inserting in lieu thereof ``section 332(c)(2)(A) of the Higher Education Act of 1965''.

SEC. 4. WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985.

Section 7 of the White Earth Reservation Land Settlement Act of 1985 (25 U.S.C. 331, note) is amended by adding at the end thereof the following:

``(f)(1) The Secretary is authorized to make a one-time deletion from the second list published under subsection (c) or any subsequent list published under subsection (e) of any allotments or interests which the Secretary has determined do not fall within the provisions of subsection (a) or (b) of section 4, or subsection (c) of section 5, or which the Secretary has determined were erroneously included in such list by reason of misdescription or typographical error.

``(2) The Secretary shall publish in the Federal Register notice of deletions made from the second list published under subsection (c) or any subsequent list published under subsection (e).

``(3) The determination made by the Secretary to delete an allotment or interest under paragraph (1) may be judicially reviewed in accordance with chapter 7 of title 5, United States Code, within 90 days after the date on which notice of such determination is published in the Federal Register under paragraph (2). Any legal action challenging such a determination that is not filed within such 90-day period shall be forever barred. Exclusive jurisdiction over any legal action challenging such a determination is vested in the United States District Court for the District of Minnesota.''.

SEC. 5. AMENDMENTS.

Section 1(c) of the Act entitled ``An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes'', approved September 9, 1988 (102 Stat. 1594), is amended as follows:

(1) delete ``9,811.32'' and insert in lieu thereof ``9,879.65''; and
 (2) delete everything after ``5 8 17 All 640.00'' and insert in lieu thereof the following:

``6	8	1	SW\1/4\SW\1/4\, W\1/2\SE\1/4\SW\1/4\	53.78
``6	8	1	S\1/2\E\1/2\, SE\1/4\SW\1/4\	9.00
``6	7	8	Tax lot 800	5.55
-----				9,879.65''.

Mr. FORD. Madam President, I move that the Senate concur in the House amendments with two further amendments that I now send to the desk on behalf of Senators McCain and Inouye, and I ask unanimous consent that the amendments be agreed to en bloc, and that the motions to reconsider en bloc be laid upon the table; and, further that any statements

as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to as follows:

The amendment is as follows:

(Purpose: To clarify provisions of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992)

On page 1, strike all of Section 1 and insert in lieu thereof the following:

(a) Environmental Costs.--Section 7 of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186 et seq.) is amended by adding the following new subsections (f) and (g) and redesignating the succeeding subsections accordingly:

``(f) Environmental Costs.--All costs associated with the Tongue River Dam Project for environmental compliance mandated by federal law and fish and wildlife mitigation measures adopted by the Secretary are the sole responsibility of the United States. Funds for such compliance shall be appropriated pursuant to the authorization in subsection (e), and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act. The Secretary is authorized to expend not to exceed \$625,000 of funds appropriated pursuant to subsection (e) for fish and wildlife mitigation costs associated with Tongue River-Dam construction authorized by the Act, and shall be in addition to funds appropriated pursuant to section 7(b)(1) of the Act.

``(g) Reimbursement to State.--The Secretary shall reimburse Montana for expenditures for environmental compliance activities, conducted on behalf of the United States prior to enactment of this subsection (g), which the Secretary determines to have been properly conducted and necessary for completion of the Tongue River Dam Project. Subsequent to enactment of this subsection (g), the Secretary may not reimburse Montana for any such environmental compliance activities undertaken without the Secretary's prior approval.''

(b) Authorizations.--The first sentence of section 4(c) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374; 106 Stat. 1186 et seq.) is amended to read as follows: ``Except for authorizations contained in subsections 7(b)(1)(A), 7(B)(1)(B), and the authorization for environmental compliance activities for the Tongue River Dam Project contained in subsection 7(e), the authorization of appropriations contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section.''

(c) Effective Date.--The amendments made by this section shall be considered to have taken effect on September 30, 1992.

amendment no. 1737

The amendment is as follows:

(Purpose: To prohibit regulations that classify, enhance, or diminish the privileges and immunities of an Indian tribe relative to other

at the end of the following new subsections:

``(f) Privileges and Immunities of Indian Tribes;
Prohibition on New Regulations.--Departments or agencies of

1934, (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the

virtue of their status as Indian tribes.

``(g) Privileges and Immunities of Indian Tribes; Existing Regulations.--Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on the date of enactment of this Act and that classifies, enhances, or diminishes the

Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.''.

Mr. McCAIN. Madam President, I am pleased to join the chairman of the Committee on Indian Affairs, Senator Inouye, in offering an amendment to S. 1654, a bill to make certain technical corrections. The purpose of this amendment is to clarify provisions of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992.

Not long after enactment of the settlement act, representatives of the State of Montana and the Interior Department found themselves in disagreement over their respective responsibilities for costs of compliance with environmental laws and fish and wildlife mitigation under the terms of a water rights compact signed by the State, the tribe, and the Department, and under the language of the settlement act (Public Law 102-374, 106 Stat. 1186 et seq.).

Article VI(C) of the water rights compact states that ``The Secretary of the Interior shall comply with all aspects of the National Environmental Policy Act and the Endangered Species Act and other applicable environmental acts and regulations in implementing this Compact''. Accordingly, the Congress, in section 7(e) of the settlement act, authorized ``such sums as are necessary to carry out all necessary environmental compliance associated with the water rights compact entered into by the Northern Cheyenne Tribe, the State of Montana, and the United States, including mitigation measures adopted by the Secretary''.

The centerpiece of the settlement is the Tongue River Dam Project, which includes repairing the dam to cure safety defects and enlarging it to provide additional water for the Northern Cheyenne Tribe. The bulk of the contemplated environmental compliance and fish and wildlife mitigation is associated with this project. However, because funds for the project are authorized under section 7(b) of the settlement act, the Department and Montana were unclear as to what work would be considered funded under that section and what would be funded under section 7(e).

In 1993, the Senate passed S. 1654, which included language intended to clarify the language of the settlement act. Section 1 of S. 1654 was drafted to accomplish three purposes, described in Senate Report 103-191 as to make clear that first, ``all costs of environmental compliance and mitigation associated with the compact, including mitigation measures adopted by the Secretary, are the sole

responsibility of the United States''; second, ``section 7(e)

authorized in section 7(b)(1) for the Tongue River Dam Project''; and, third, ``section 7(e) funds can be expended prior to the Montana water court's issuance of a settlement decree''.

Subsequent to the Senate's action, the administration, while agreeing to sole responsibility for environmental compliance associated with the Tongue River Dam Project, expressed concern that the new language might preclude the Secretary from seeking third party, nontribal cost-sharing for environmental compliance and mitigation for development projects on the Northern Cheyenne Reservation, unrelated to the Tongue River Dam Project, that would use water secured to the tribe under the compact.

House of Representatives failed to produce agreement prior to the House passing the bill and returning it to the Senate.

staffs of the Committee on Indian Affairs and the House Natural Resource Committee to develop an amendment that would resolve the major issues in disagreement. I am pleased to state that the amendment Chairman Inouye and I offer today achieves that end.

Our amendment makes clear that the costs associated with the Tongue River Dam Project for environmental compliance mandated by Federal law and fish and wildlife mitigation measures adopted by the Secretary of the Interior are the sole responsibility of the United States.

The amendment limits the amount of money authorized by the settlement act which the Secretary may spend on fish and wildlife mitigation associated with the Tongue River Dam Project to \$625,000. It further provides that these funds, as well as funds for compliance with Federal environmental laws, are authorized by section 7(e) and are in addition to funds authorized for the Tongue River Dam Project in section 7(b)(1).

The amendment authorizes the Secretary to reimburse Montana for expenditures of State funds for environmental compliance activities undertaken prior to enactment of the amendment. The Secretary is required to reimburse the State only for those compliance activities that the Secretary determines have been properly conducted and are necessary for completion of the Tongue River Dam Project. Subsequent to enactment of this amendment, the Secretary could not reimburse Montana for environmental compliance activities undertaken without his prior approval.

The amendment also corrects references in section 4(c) of the settlement act to reflect the intent of Congress and the settlement parties that, except for a total of \$1,400,000 authorized for the Tongue River Dam Project for fiscal year 1993 and 1994, and the funds authorized under section 7(e) for environmental compliance, no funds could be appropriated for the project until the Montana water court enters and approves a settlement decree.

I would like to emphasize that the amendment neither adds to nor eliminates or reduces any existing authorization of appropriations in the settlement act, nor does it provide any new authorization of appropriations for any purpose.

The amendment leaves intact the language in 7(e) of the settlement authorizing such sums necessary for the Secretary to comply with applicable environmental law associated with implementing the compact. The Secretary can rely on this authority to request necessary funds in cases such as where the Northern Cheyenne Tribe seeks to use its right to water in Yellowtail Reservoir, or to develop facilities for irrigated agriculture, or to develop coal or other minerals on the reservation. Such requests would necessarily be within the discretion of the Secretary, and of course, the relevant congressional appropriations committees.

I would like to make the point that neither the language of the existing section 7(e) nor the language of the amendment would preclude the Secretary from following existing policy and practice of requiring nontribal third parties involved in development of a tribe's natural

resources to contribute to the costs of environmental compliance or fish and wildlife mitigation.

the Montana delegation, the State of Montana, and the leadership of the Northern Cheyenne Tribe. Today we received from the Department of the Interior a letter, cleared by the Office of Management and Budget, expressing the administration's support for the amendment.

The Northern Cheyenne Indian reserved water rights settlement, together with the water rights compact it ratifies, are major accomplishments that reflect great credit on the tribal, State, and Federal representatives who negotiated and assembled them. Having been involved in efforts to achieve several such settlements in my State of Arizona, I can attest to the aggravation and difficulty that the settlement process entails.

I commend all of the parties involved for their good will and cooperation, and join them in the hope and belief that adoption of this amendment, together with the other agreements required by compact and by the settlement act, will clear the way for expedited work on Tongue River Dam and full implementation of the Northern Cheyenne settlement.

Madam President, I am pleased to offer an amendment to S. 1654, a bill to make certain technical corrections. The amendment I am offering will amend section 16 of the Indian Reorganization Act of 1934 [IRA] and it is cosponsored by my good friend, the chairman of the Committee on Indian Affairs, Senator Inouye.

This amendment is similar to S. 2017, which Senator Inouye and I introduced on April 14, 1994. The purpose of the amendment is to clarify that section 16 of the Indian Reorganization Act was not intended to authorize the Secretary of the Department of the Interior to create categories of federally recognized Indian tribes. In the past year, the Pascua Yagui Tribe of Arizona has brought to our attention the fact that the Department of the Interior has interpreted section 16 to authorize the Secretary to categorize or classify Indian tribes as being either created or historic. According to the Department, created tribes are only authorized to exercise such powers of self-governance as the Secretary may confer on them.

After careful review, I can find no basis in law or policy for the manner in which section 16 has been interpreted by the Department of the Interior. One of the reasons stated by the Department for distinguishing between created and historic tribes is that the created tribes are new in the sense that they did not exist before they organized under the IRA. At the same time, the Department insists that it cannot tell us which tribes are created and which are historic because this is determined through a case-by-case review.

All of this ignores a few fundamental principles of Federal Indian law and policy. Indian tribes exercise powers of self-governance by reason of their inherent sovereignty and not by virtue of a delegation of authority from the Federal Government. In addition, neither the Congress nor the Secretary can create an Indian tribe where none previously existed. Congress itself cannot create Indian tribes, so there is no authority for the Congress to delegate to the Secretary in this regard. Not only is this simple common sense, it is also the law as enunciated by the Federal courts.

The recognition of an Indian tribe by the Federal Government is just that--the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations. Over the years, the Federal Government has extended recognition to Indian tribes through treaties, executive orders, a course of dealing, decisions of the Federal courts, acts of Congress and administrative action. Regardless of the method by which recognition was extended, all Indian tribes enjoy the same relationship with the United States and exercise the same inherent authority. All that section 16 was intended to do was to provide a mechanism for the tribes to interact with other governments in our Federal system in a form familiar to those governments through tribal adoption and Secretarial approval of tribal

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constitutions for those Indian tribes that choose to employ its provisions.

Clearly the interpretation of section 16 which has been developed by the Department is inconsistent with the principle policies underlying the IRA, which were to stabilize Indian tribe governments and to encourage self-government. These policies have taken on additional vitality in the last 20 years as the Congress has repudiated and repealed the policy of termination and enacted the Indian Self-Determination and Education Assistance Act and the Tribal Self-Governance Demonstration Project. The effect of the Department's interpretation of section 16 has been to destabilize Indian tribal governments and to hinder self-governance of the Department's unilateral and often arbitrary decisions about which powers of self-governance a tribal government can exercise.

Mr. INOUYE. Madam President, will my good friend, the distinguished vice chairman of the Committee on Indian Affairs yield for the purpose of a colloquy on the amendment?

Mr. McCAIN. I would be pleased to engage in a colloquy on the amendment with the chairman of the Committee on Indian Affairs.

Mr. INOUYE. I thank the Senator. I have reviewed section 16 of the Indian Reorganization Act [IRA] and have reached the conclusion that on its face it does not authorize or require the Secretary to establish classifications between tribes or to categorize them based on their powers of self-governance. As the legal scholar Felix Cohen noted in his 1942 Handbook on Federal Indian Law, the IRA--``had little or no effect upon the substantive powers on tribal self-government vested in the various Indian tribes.'' I believe that the Federal courts have also consistently construed the IRA to have had no substantive effect on inherent tribal sovereign authority.

Apparently, the Department of the Interior began making this distinction on the basis of whether reservations had been established for those tribes that were removed from their aboriginal homesteads by the Federal Government. Tribes for whom reservations were established in areas to the west of their traditional lands suddenly became created tribes, even though such tribes had existed for hundreds of years prior to the arrival of Europeans on this continent. Strangely, although the Department was apparently making this distinction amongst tribes, it appears that the Department never notified the affected tribes or the Congress of their new status. Had they done so, we would have acted to correct this unauthorized arbitrary and unreasonable differentiation of tribal status long ago.

The amendment which we are offering to section 16 will make it clear that the Indian Reorganization Act does not authorize or require the Secretary to establish classifications between Indian tribes. As my good friend, the Senator from Arizona has noted, the Department cannot even tell us how many Indian tribes have been placed in each classification. As I understand it, our amendment would void any past determination by the Department that an Indian tribe is created and would prohibit any such determinations in the future. Is that also the understanding of the Senator from Arizona?

Mr. McCAIN. The Senator from Hawaii is correct. I would also state that our amendment is intended to prohibit the Secretary or any other Federal official from distinguishing between Indian tribes or classifying them based not only on the IRA but also based on any other Federal law. We have been advised that other agencies of the Federal Government may have developed distinctions or classifications between federally recognized Indian tribes based on information provided to those agencies by the Department of the Interior. In addition, we have been advised that the Secretary of the Interior may have carried these erroneous classifications into decisions authorized by other Federal statutes such as sections 2 and 9 of title 25 of the United States Code. Accordingly, our amendment to section 16 of the IRA is intended to address all instances where such categories or classifications of

Indian tribes have been applied and any statutory basis which may have been used to establish, ratify or implement the categories or classifications.

Mr. INOUYE. I thank the Senator. I also believe that our amendment will correct any instance where any federally recognized Indian tribe has been classified as ``created'' and that it will prohibit such classifications from being imposed or used in the future. Our amendment makes it clear that it is and has always been Federal law and policy that Indian tribes recognized by the Federal Government stand on an equal footing to each other and to the Federal Government. That is, each federally recognized Indian tribe has the same governmental status as other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States. Each federally recognized Indian tribe is entitled to the same privileges and immunities as other federally recognized tribes and has the right to exercise the same inherent and delegated authorities. This is true without regard to the manner in which the Indian tribe became recognized by the United States or whether it has chosen to organize under the IRA. By enacting this amendment to section

governments that the Congress thought it was providing 60 years ago when the IRA was enacted. I thank the vice chairman of the Committee on

Mr. McCAIN. I thank the chairman of the Committee on Indian Affairs for his assistance on this legislation. I certainly agree with all of his remarks. I would like to add just a few comments. First, our amendment will also remove what appears to be a substantial barrier to the full implementation of the policies of self-determination and self-governance. It is my expectation that the Department will act as promptly as possible after enactment of this amendment to seek out and notify every Indian tribe which has been classified or categorized as ``created'' that the classification no longer applies and to take any

Lastly, Madam President, I want to express my gratitude to the Pascua Yaqui Tribe of Arizona for bringing this matter to our attention and for providing the leadership necessary to focus the attention of the Congress and other Indian tribal governments on a solution. I would note for my colleagues that the Committee on Indian Affairs has reported H.R. 734 to the Senate for its consideration. This bill would amend the legislation which extended Federal recognition to the Pascua Yaqui Tribe to prohibit the Department of the Interior from classifying the tribe as ``created.'' H.R. 734 also enables the Tribe to complete the process of enrolling its members and authorizes several studies intended to assist the tribe in providing basic services and developing their tribal economy. H.R. 734 will soon be before the Senate and I urge all of my colleagues to support this long overdue legislation.

Mr. BAUCUS. Madam President, the Senate will soon consider S. 1654, technical amendments proposed by the Senate Indian Affairs Committee, which includes technical amendments to the Northern Cheyenne-Montana Water Rights Compact. I urge my colleagues to support this legislation.

The Northern Cheyenne-Montana Water Rights Compact was ratified by the Montana Legislature in June of 1991. Federal legislation ratifying this compact passed the Congress in September of 1992. The compact quantifies the Northern Cheyenne Tribe's water rights and provides for the enlargement and seriously needed repair of the dangerously deteriorated Tongue River Dam in Montana.

Legislation that passed the Congress in 1992 required technical correction to allow the Department of the Interior to reimburse the State of Montana for environmental compliance and fish and wildlife mitigation work associated with the rehabilitation of Tongue River Dam.

The purpose of these amendments is to clarify the relationships and responsibilities among the parties to this compact as they relate to environmental compliance and mitigation. It should be stated that these amendments, like the Northern Cheyenne-Montana compact, are the result of extensive negotiations among the Northern Cheyenne Tribe, the State

of Montana and the Federal Government. It is my understanding that all parties have agreed to these technical corrections.

I encourage the parties to continue their efforts to work cooperatively together to implement the compact and allow the Northern Cheyenne Tribe to develop their water resources and to proceed with the critical task of expansion and safety improvement of the Tongue River Dam. I want to thank the able staff of the Senate Indian Affairs Committee for their assistance with this effort. I offer my support for these amendments and encourage my colleagues to do the same.

Exhibit G

We, the members of the Yurok Tribe, also known historically as the Pohlik-lah, Ner-er-ner, Petch-ik-lah, or Klamath River Indians, hereby adopt this constitution and establish our tribal government.

PREAMBLE

Our people have always lived on this sacred and wondrous land along the Pacific Coast and inland on the Klamath River, since the Spirit People, Wo-ge' made things ready for us and the Creator, Ko-won-no-ekc-on Ne-ka-nup-ceo, placed us here. From the beginning, we have followed all the laws of the Creator, which became the whole fabric of our tribal sovereignty. In times past and now Yurok people bless the deep river, the tall redwood trees, the rocks, the mounds, and the trails. We pray for the health of all the animals, and prudently harvest and manage the great salmon runs and herds of deer and elk. We never waste and use every bit of the salmon, deer, elk, sturgeon, eels, seaweed, mussels, candlefish, otters, sea lions, seals, whales, and other ocean and river animals. We also have practiced our stewardship of the land in the prairies and forests through controlled burns that improve wildlife habitat and enhance the health and growth of the tan oak acorns, hazelnuts, pepperwood nuts, berries, grasses and bushes, all of which are used and provide materials for baskets, fabrics, and utensils.

For millennia our religion and sovereignty have been pervasive throughout all of our traditional villages. Our intricate way of life requires the use of the sweathouse, extensive spiritual training, and sacrifice. Until recently there was little crime, because Yurok law is firm and requires full compensation to the family whenever there is an injury or insult. If there is not agreement as to the settlement, a mediator would resolve the dispute. Our Indian doctors, Keg-ae, have cared for our people and treated them when they became ill. In times of difficulty village headmen gather together to resolve problems affecting the Yurok Tribe.

Our people have always carried on extensive trade and social relations throughout our territory and beyond. Our commerce includes a monetary system based on the use of dentalium shells, Terk-n-term and other items as currency. The Klamath River was and remains our highway, and we from time beginning utilized the river and the ocean in dugout canoes, Alth-way-och, carved from the redwood by Yurok craftsmen, masterpieces of efficiency and ingenuity and have always been sold or traded to others outside the tribe. Our people come together from many village* to perform ceremonial construction of our fish dams, Lohg-en. Our traditional ceremonies -- the Deerskin Dance, Doctor Dance, Jump Dance, Brush Dance, Kick Dance, Flower Dance and others -- have always drawn hundreds, and sometimes thousands, of Yuroks and members of neighboring tribes together for renewal, healing, and prayer. We also have always traveled to the North and East to the high mountains on our traditional trails to worship the Creator at our sacred sites, -- Doctor Rock, Chimney Rock, Thkla-mah (the stepping stones for ascent into the sky world), and many others.

October 22, 1993

Ratified: November 19, 1993

Constitution of the Yurok Tribe

This whole land, this Yurok country, stayed in balance, kept that way by our good stewardship, hard work, wise laws, and constant prayers to the Creator.

Our social and ecological balance, thousands and thousands of years old, was shattered by the invasion of the non-Indians. We lost three-fourths or more of our people through unprovoked massacres by vigilantes and the intrusion of fatal European diseases. The introduction of alcohol weakened our social structure, as did the forced removal of our children to government boarding schools, where many were beaten, punished for speaking their language, and denied the right to practice their cultural heritage. After goldminers swarmed over our land we agreed to sign a "Treaty of Peace and Friendship" with representatives of the President of the United States in 1851, but the United States Senate failed to ratify the treaty. Then in 1855, the United States ordered us to be confined on the Klamath River Reserve, created by Executive Order, (pursuant to the Act of March 3, 1853 10 Stat. 226,238) within our own territory.

In 1864 a small part of our aboriginal land became a part of the Hoopa Valley Indian Reservation which was set apart for Yuroks and other Indians in Northern California. This became known as the 12-mile "Square." In 1891, a further small part of our aboriginal land was added when "The Extension" to the Hoopa Valley Indian Reservation was set aside by executive order authorized by the 1864 statute, which created the Hoopa Valley Indian Reservation. This statutory reservation extension extended from the mouth of the Klamath River, including the old Klamath River Reserve, about 50 miles inland and encompassed the river and its bed, along with one mile of land on both sides of the river.

But even this small remnant of our ancestral land was not to last for long. In the 1890's individual Indians received allotments from tribal land located in the Klamath River Reserve portion of the Hoopa Valley Reservation and almost all of the remainder of the Reserve was declared "surplus" and opened for homesteading by non-Indians. The forests were logged excessively and the wildlife was depleted. Even the great salmon runs went into deep decline due to overfishing and habitat destruction. In the mid 1930's the State of California attempted illegally to terminate traditional fishing by Yurok people, the river's original -- and only -- stewards from Bluff Creek to the Pacific Ocean. Our fishing rights were judicially reaffirmed in the 1970's and the 1980's after many legal and physical battles.

Throughout the first 140 years of our tribe's dealings with the United States, we never adopted a written form of government. We had not needed a formal structure and were reluctant to change. The United States had decimated the Yurok population, land base, and natural resources and our people were deeply distrustful of the federal government.

October 22, 1993

Ratified: November 19, 1993

Constitution of the Yurok Tribe

Yet we, the Yurok people, know that this is the time to exercise our inherent tribal sovereignty and formally organize under this Constitution. We do this to provide for the administration and governance of the modern Yurok Tribe that has emerged, strong and proud, from the tragedies and wrongs of the years since the arrival of the non-Indians into our land. Our sacred and vibrant traditions have survived and are now growing stronger and richer each year.

The Yurok Tribe is the largest Indian tribe in California, and while much land has been lost, the spirit of the Creator and our inherent tribal sovereignty still thrives in the hearts and minds of our people as well as in the strong currents, deep canyons, thick forests, and high mountains of our ancestral lands.

Therefore, in order to exercise the inherent sovereignty of the Yurok Tribe, we adopt this Constitution in order to:

- 1) Preserve forever the survival of our tribe and protect it from forces which may threaten its existence;
- 2) Uphold and protect our tribal sovereignty which has existed from time immemorial and which remains undiminished;
- 3) Reclaim the tribal land base within the Yurok Reservation and enlarge the Reservation boundaries to the maximum extent possible within the ancestral lands of our tribe and/or within any compensatory land area;
- 4) Preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on, forever;
- 5) Provide for the health, education, economy, and social wellbeing of our members and future members;
- 6) Restore, enhance, and manage the tribal fishery, tribal water rights, tribal forests, and all other natural resources; and
- 7) Insure peace, harmony, and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government.

October 22, 1993

Ratified: November 19, 1993

Constitution of the Yurok Tribe

ARTICLE I - TERRITORY , JURISDICTION AND AUTHORITY

SECTION 1 - Ancestral Lands

The Ancestral Lands of the Yurok Tribe extend unbroken along the Pacific Ocean coast (including usual and customary off-shore fishing areas) from Damnation Creek, its northern boundary, to the southern boundary of the Little River drainage basin, and unbroken along the Klamath River, including both sides and its bed, from its mouth upstream to and including the Bluff Creek drainage basin. Included within these lands are the drainage basin of Wilson Creek, the drainage basins of all streams entering the Klamath River from its mouth upstream to and including the Bluff Creek and Slate Creek drainage basins, including the village site at Big Bar (except for the drainage basin upstream from the junction of Pine Creek and Snow Camp Creek), and the Canyon Creek (also known as Tank Creek) drainage basin of the Trinity River, the drainage basins of streams entering the ocean or lagoons between the Klamath River and Little River (except for the portion of the Redwood Creek drainage basin beyond the McArthur Creek drainage basin, and except for the portion of the Little River drainage basin which lies six miles up from the ocean). Our Ancestral Lands include all submerged lands, and the beds, banks and waters of all the tributaries within the territory just described. Also included within the Ancestral Lands is a shared interest with other tribes in ceremonial high country sites and trails as known by the Tribe, as well as the Tribes usual and customary hunting, fishing and gathering sites. The Ancestral Lands are depicted on the "Map of Yurok Ancestral Lands", on file in the Yurok Tribal Offices.

SECTION 2 - Territory

The territory of the Tribe consists of all Ancestral Lands, and specifically including, but not limited to, the Yurok Reservation and any lands that may hereafter be acquired by the Tribe, within or without Ancestral Lands.

SECTION 3 - Jurisdiction

The jurisdiction of the Yurok Tribe extends to all of its member wherever located, to all persons throughout its territory, and within its territory, over all lands, waters, river beds, submerged lands, properties, air space, minerals, fish, forests, wildlife, and other resources, and any interest therein now or in the future.

SECTION 4 - Authority of Tribal Government

This Constitution is a delegation of specific tribal authority from the Yurok People to the Tribe's governing bodies and this Constitution hereby reserves to the people all authority not delegated to

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the Tribe's governing bodies. Members of the governing bodies shall have no authority to act inconsistent with the objectives enumerated in the Preamble to this Constitution.

SECTION 5 - Tribal Offices

It shall be the goal of the Tribe to establish its primary tribal offices within our Ancestral Lands.

ARTICLE II-Membership

SECTION 1-Base Membership Roll

Those persons on the Settlement Roll who made or were deemed to have made an election pursuant to the Yurok Tribal Membership Option shall constitute the base membership roll of the Yurok Tribe.

SECTION 2 - Yurok Tribal Membership Roll

After approval of the Yurok Tribal Constitution, a revised Yurok Tribal Membership Roll shall be prepared and periodically updated, that shall include all those persons on the Base Membership Roll and persons who apply for membership and meet the following criteria:

- a) Has a biological parent who is an enrolled member of the Yurok Tribe, and
- b) Possesses at least one-eighth (1/8) degree of Indian Blood. Indian Blood is defined as all U.S. Native American Indian or Alaskan Natives.

SECTION 3 - Tribal Membership Based Upon Extraordinary Circumstances

In extraordinary circumstances, a person may be determined to be eligible for membership in the Yurok Tribe. For purposes of this subsection, "extraordinary circumstances" shall be defined to include:

- a) Applicant must possess at least one-eighth (1/8) degree of Indian Blood (as defined in Article 11, Section 2), and be
- b) A full or half sibling of an allottee of land on the Yurok Reservation with the same qualifying ancestry, and lineal descendants of such persons, or
- c) Any adopted person whose biological parents would have qualified, or would have qualified if alive for the Yurok Membership Roll, or

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- d) Allottees of the Yurok Reservation, and lineal descendants of such persons, when that applicant and lineal ancestors have not been enrolled members of another Tribe.

SECTION 4 - Limitations on Membership

- a) No person who exercised the lump sum buy-out option under 25 USC Section 13OOi,5(d) shall qualify for membership in the Yurok Tribe.
- b) The Yurok Tribe does not allow "Dual Enrollment". No person who is a member of any other Federally Recognized Indian Tribe, shall qualify for membership or remain in the Yurok Tribe, unless he or she has relinquished in writing his or her membership in such other Tribe.
- c) No person who is a lineal descendant of a present or former member of another Tribe and who is without a parent enrolled with the Yurok Tribe shall qualify for membership in the Yurok Tribe.

ARTICLE III - Election of Yurok Tribal Council

SECTION 1 - Election

The Yurok Tribal Council shall consist of: nine (9) members: a Tribal Chairperson, a Vice-Chairperson and seven (7) Council Members. The Chairperson and the Vice-Chairperson shall be elected at-large by the eligible voters of the Tribe. The other seven (7) Council Members shall be elected by Districts, with the eligible voters in each of the seven (7) Districts electing one Council member to represent the District.

SECTION 2 - Council Districts

There shall be seven (7) Districts, described as follows:

WEITCHPEC DISTRICT - This includes all Ancestral Lands located upriver of Coon Creek on the Klamath River. Included within the District are the ancestral villages of Otsepor, Lo'olego, Weitspus, Pekwututl, Ertlerger, Wahsekw, Kenek, Tsetskw, and Kenekpul.

PECWAN DISTRICT - This includes all Ancestral Lands downriver, including Coon Creek, on the Klamath River from the Weitchpec District to and including Blue Creek on the north side of the river and Ah Pah Creek and its drainage area on the south side of the river. included within the

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District are the ancestral villages of Merip, Wa'asel, Kepel, Murekw, Himetl, Kohtskuls, Keihkes, Meta, Sregon, Yohter, Pekwan, Kolotep, Wohtek, Wohkero, Serper, Ayotl, Nagetl, and Erner.

REQUA DISTRICT - This includes all ancestral Lands located downriver on the Klamath River from the Pecwan District and north of the center line of the Klamath River. Included within the District are the ancestral villages Tlemekwetl, Stawen, Sa'aitl, Ho'pau, Omenok, Amenok, Tmeri, Rekwoi, and Omen.

ORICK DISTRICT - This includes all Ancestral Lands located downriver on the Klamath River from the Pecwan District and south of the center line of the Klamath River. Included within the District are the ancestral villages of Turip, Wohkel, Otwego, Wetlkwau, Osegen, Espau, Sikwets, Orek, Tsahpekw, Hergwer, Tsotskwi, Pa'ar, Oslokw, Keihkem, Ma'ats, Opyuweg, Tsurau, Sumeg and Metskwo.

NORTH DISTRICT - This includes all land north of the Ancestral Lands, east of the Pacific Ocean, west of a north-south line passing through Chimney Rock and within 60 miles of the Ancestral Lands.

EAST DISTRICT - This includes all land east of the Ancestral Lands, east of a north-south line passing through Chimney Rock, east of the generally north-south mountain ridge passing through Schoolhouse Peak, and within 60 miles of the Ancestral Lands.

SOUTH DISTRICT - This includes all land south of the Ancestral Lands, east of the Pacific Ocean, west of the generally north-south mountain ridge passing through Schoolhouse Peak, and within 60 miles of the Ancestral Lands.

SECTION 3 - Terms of Office

- A) The terms of office for the Chairperson, vice Chairperson, and the Council Members shall be three (3) years, except that in the first election, the terms of office for Council Members shall be staggered and determined as follows:
 - 1) The candidate receiving the highest percentage of votes in his/her District shall be elected for a three (3) year term;
 - 2) The candidates receiving the second, third and fourth highest percentages of the votes in their respective districts shall be elected for two (2) year terms;
 - 3) The remaining three (3) candidates shall be elected for one (1) year terms;
 - 4) In the event of a tie among or between the candidates who, by reason of the percentage of votes received in the candidates; respective districts, would be entitled to serve an Initial term of more than one (1) year; any such tie shall be broken by the

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tied candidates drawing of lots to determine which candidates shall be entitled to serve an initial term of more than one year.

- B) Each Tribal Officer and Council Member shall be inaugurated as the first order of business at the first regular Council meeting following his/her election and his/her term shall commence upon inauguration.

SECTION 4 - Voter Registration

Each member of the Yurok Tribe, who has attained the age of eighteen (18) upon the date of election shall be eligible to vote, provided that person has registered to vote. Each eligible Voter shall choose to register in one (1) of seven Districts; provided the eligible voter is a resident of a District, he/she must register within that District or if the eligible voter is not a resident within a District, he/she shall choose to register in the North, South or East District. An eligible voter must register when they move into or out of a District, pursuant to Section 4 of this Article, within ninety (90) days before the next regularly scheduled Council election.

SECTION 5 - General Qualifications for office

- a) No person who is a candidate for or elected to any Tribal office, or is to be or has been appointed by the Yurok Council to any position of trust shall, at the time of candidacy, election or appointment have been convicted of any violent felony or crime of moral turpitude within ten (10) years of the date of election or appointment, and every candidate for election or appointment to any Tribal office or position who ever has been convicted of any felony or crime of moral turpitude shall, upon announcement of his/her candidacy or application for appointment, fully disclose to the Yurok Council the fact and date of each such conviction, the court in which the conviction was entered, the offense for which convicted, the sentence imposed and the place and manner in which the sentence was served or otherwise discharged.
- b) Any person who, upon or subsequent to announcing his/her candidacy for election to any Tribal office or applying for any appointed position of trust, is formally charged with, but not yet convicted of, any crime of violence or moral turpitude, shall disclose to the Tribal Council and/or the Election Committee the fact of such prosecution upon becoming aware of the pendency thereof.
- c) Any person required to make disclosure of a criminal conviction or prosecution hereunder who fails to do so within thirty (30) days may be barred or removed from the office or appointed position for which the person was a candidate when the required disclosure was not made.
- d) Any elected Tribal officer or appointed Tribal official who is formally charged with a violent felony or crime of moral turpitude while in office shall be immediately suspended from

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office, effective with the date of initiation of such prosecution. If said officer or official is acquitted or the prosecution is terminated without a conviction, and provided that upon such termination of prosecution the term of office to which the officer or official was elected or appointed has not yet expired, the officer or official shall be reinstated to serve the remainder of his/her term of office or appointment.

SECTION 6 - Qualifications for Tribal Chairperson and Vice-Chairperson

The Tribal Chairperson and Vice-Chairperson must be Tribal Members of at least thirty (30) years of age upon election, and must actually reside and maintain their principle residence within 60 miles of the Tribal territory for at least one (1) year prior to election and remain in residence throughout the term of office.

SECTION 7 - Qualifications for Council Member Representing A District

A Council Member must be a Tribal Member of at least twenty-five (25) years of age upon election, must be registered with and actually reside and maintain their principle residence within the District when elected, and must remain an actual resident of the District throughout the term of office.

SECTION 8 - Primary election

A primary election shall be conducted in October of each year, for each office that the term is to expire. Voting shall be by secret ballot. Absentee ballots shall be available upon written request by eligible voters and mailed in a timely manner to such voters. Those running for office who receive more than 50 percent of the ballots cast for the office shall be elected.

SECTION 9 - Run-off Elections

When positions remain unfilled after the primary election, then a run-off election shall be conducted in November following the primary election. Voting shall be by secret ballot. Absentee ballots shall be available upon written request by eligible voters and mailed in a timely manner to such voters. The run-off shall be between the two candidates receiving the most votes in the primary election. The candidate receiving the most votes in the run-off election for each position shall be elected.

SECTION 10 - Filling of Vacant Positions

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If, subsequent to his/her election, the Tribal Chairperson, Vice-Chairperson, or any member of the Tribal Council resigns, dies, or becomes permanently or indefinitely incapacitated, as determined by the Yurok Tribal Council, the Yurok Tribal Council shall declare the office vacant. If the vacancy occurs during the first year of the term to which the elected official was elected, the Yurok Tribal Council shall fill the vacancy for the unexpired portion of said term by appointing the person who received the next highest number of votes in said election, providing the candidate received at least thirty (30) percent of the total votes cast. If the elected official to be replaced was unopposed in said election, or if the candidate receiving the next highest number of votes did not receive at least thirty (30) percent of the total votes cast for that office, or if the vacancy occurs more than one (1) year prior to the expiration of the term, the vacancy shall be filled by a special election called and conducted pursuant to Section 10 of this Article.

ARTICLE IV -DUTIES AND POWERS OF THE YUROK COUNCIL

SECTION 1-Tribal Chairperson

The Chairperson shall be the chief executive officer of the Tribe, and in that capacity shall have the following authority and duties:

- a) To preside over all meetings of the Yurok Tribal Council and the Tribal Voting Membership, and to vote only in case of a tie;
- b) To call special meetings of the Yurok Tribal Council or the Tribal Voting Membership as necessary with the request of Council members or Tribal members as provided in this Constitution;
- c) To faithfully implement and enforce the legislative enactments and policies of the Yurok Tribe;
- d) To execute such contracts, agreements, and other documents on behalf of the Yurok Tribe as have been duly authorized by the Yurok Tribal Council in the exercise of authority delegated by this Constitution, or by the Tribal Voting Membership;
- e) To act as the principal spokesperson and representative for the Yurok Tribe in its dealings with all other governmental and non-governmental entities, or to delegate such duties to other Tribal officers or officials as may be authorized by the Yurok Tribal Council;
- f) To appoint persons to serve in unelected positions within the executive or judicial branches of the Tribal government and to advisory committees that have been created by the Yurok Tribal Council, with the advice and consent of the Yurok Tribal Council, and otherwise to implement such personnel policies and procedures as may be established by the Yurok Tribal Council. Efforts will be made to balance representation of the Advisory Committees between on and off Reservation.

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- g) To take such actions, including removal and/or barring of persons from Tribal lands, as may be necessary to safeguard the health and/or safety of the Yurok Tribe or its natural resources from imminent danger pending action by the Yurok Tribal Council, provided, however, that the Chairperson first shall have attempted to convene a special meeting of the Yurok Tribal Council on the issue. If such emergency action was not preceded by a meeting of the Yurok Tribal Council authorizing such action, the Tribal Chairperson shall, within forty-eight (48) hours after taking such action, convene a special meeting of the Yurok Tribal Council at which the only item of business shall be responding to the emergency. If the Yurok Tribal Council declines to ratify the Chairperson's emergency action, or if no meeting is held within the time allowed therefore, said action shall cease to have any force or effect upon the earlier of the Yurok Tribal Council's vote not to ratify such action or the expiration of forty-eight (48) hours after the action.
- h) To prepare and present to the Yurok Tribal Council for approval, no later than one hundred and twenty (120) days prior to the beginning of each fiscal year, a proposed annual Tribal financial plan that sets forth in detail the then current assets of the Yurok Tribe, the sources and amounts of all anticipated Tribal revenues for the year, and a Tribal budget for said year.

SECTION 2 - Vice-Chairperson

The Vice-Chairperson shall have the following authority and duties:

- a) To preside over meetings of the Yurok Tribal Council or Tribal Voting Membership in the absence of the Chairperson;
- b) To act in place of the Chairperson as the spokesperson or representative of the Yurok Tribe upon written delegation by the Chairperson or the Yurok Tribal Council;
- c) To assume the office and duties of the Chairperson upon the Chairperson's death, resignation, or removal, or a determination by a two-thirds (2/3) majority vote of a quorum of the Yurok Tribal Council that the Chairperson has become permanently or indefinitely incapacitated to an extent that prevents the Chairperson from fulfilling the obligations of the office.

SECTION 3 - Other Tribal Officers

The Tribal Secretary shall be elected by the Yurok Tribal Council from among its duly-elected members at the first regular Tribal Council meeting following each annual election, and shall have the following duties and authorities:

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- a) To faithfully prepare and maintain the official records of the proceedings of all meetings of the Tribal Voting Membership and the Yurok Tribal Council;
- b) To certify and maintain custody of all resolutions, legislative enactments, and other official actions of the Yurok Tribal Council and the Tribal Voting Membership;
- c) To send and receive and maintain custody of all official correspondence and documents of the Yurok Tribe;
- d) To act as the custodian and keeper of the seal of the Yurok Tribe.

SECTION 4 - Miscellaneous Other Officers

At its first regular meeting following each annual election, and from time to time thereafter as it may deem appropriate, the Yurok Tribal Council may elect from its members such other officers as it may deem necessary to effectively fulfill its obligations and exercise its authority.

SECTION 5 - Yurok Tribal Council

- a) Except as otherwise reserved to the Tribal Voting Membership by this Constitution, the legislative power of the Yurok Tribe hereby is delegated by the Tribal Voting Membership to the Yurok Tribal Council, and in the exercise thereof the Yurok Tribal Council shall have the authority to enact legislation, rules and regulations not inconsistent with this Constitution to further the objectives of the Yurok Tribe as reflected in the Preamble to this Constitution; administer and regulate affairs, persons and transactions within Tribal Territory; enact civil and criminal laws; promulgate policies regarding elected Tribal officials' and Tribal employees' use, possession or sale of illegal drugs, and the unlawful use or abuse of legal drugs and controlled substances; manage Tribal lands and assets and appropriate and authorize the expenditure of funds owned by or available to the Yurok Tribe; charter and regulate corporations and entities of all kinds; provide for the exclusion of persons and/or entities from Tribal affairs and/or Tribal Territory under appropriate circumstances; and obtain and generate revenue for Tribal purposes through taxation and fees upon income, property, transactions and sales within Tribal Territory; provided however, that laws that affect the fundamental rights of Tribal members, such as taxation of Tribal members, and the Waiver of claims issue shall not be effective until approved in a referendum among the Tribal Voting Membership pursuant to Article XI of this Constitution. Settlement Account Trust Funds, including earned interests, from the Hoopa-Yurok Settlement Act of 1988, shall not be used until the Tribal Council has prepared a proposal for its intended use and received a majority vote of approval from the Tribal Voting Membership.

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- b) The Yurok Tribal Council shall fix and prescribe salaries and allowances for all appointed officials and the employees of the Yurok Tribe.
- c) The Yurok Tribal Council shall prescribe salaries and allowances, if any, for all elected officials of the Tribe. No setting or adjustment of salaries and allowances shall be done without at least thirty (30) days notice that it will be on the Tribal Council agenda. No increase in compensation shall be effective until one (1) year from the date of approval has passed.
- d) The Yurok Tribal Council shall by ordinance provide a system for assuring the reasonable and appropriate access by tribal members to tribal records and meetings.
- e) The Yurok Tribal Council shall by ordinance within 90 days of the election of the first Yurok Tribal Council under this Constitution, prescribe enrollment procedures and establish an Enrollment Committee whose members shall be appointed by the Chairperson with the advice and consent of the Yurok Tribal Council.
- f) The Yurok Tribal Council shall by ordinance prescribe election procedures for Tribal elections. The Yurok Tribal Council shall by Ordinance establish an Election Board whose members shall be appointed by the Chairperson with the advice and consent of the Yurok Tribal Council.
- g) The Yurok Tribal Council shall act upon all appointments requiring its confirmation within thirty (30) days.
- h) The Yurok Tribal Council shall have the authority to act on behalf of the Tribe to acquire, lease, assign, and manage all tribal property, but shall not sell any tribal land, nor lease tribal land for a period of 20 years or more, unless approved by a referendum submitted to the voting membership pursuant to Article XI.
- i) The Yurok Tribal Council shall by ordinances- prescribe a Drug Testing policy for Council Members, a Conflict of Interest policy, and a Mandated Meeting policy for operation of Council business. These ordinances shall be adopted within one (1) year of installation of the Tribal officials elected in the initial Tribal election.
- j) No legislation, ordinance, or other major action shall be enacted unless approved by at least five (5) members of the Yurok Tribal Council, including a vote by the Tribal Chairperson if needed.
- k) The Yurok Tribal council district representatives shall conduct quarterly meetings within their respective districts.

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ARTICLE V - YUROK TRIBAL COUNCIL MEETINGS

SECTION 1 - Frequency

The Yurok Tribal Council shall meet at least once a month. Each meeting will begin and end with a traditional prayer.

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SECTION 2 - Quorum

Six (6) members of the Yurok Tribal Council, or 2/3 of the members if there are vacancies, must be present to constitute a quorum. The Chairperson shall be counted for purposes of constituting a quorum.

SECTION 3 - Special Meetings

The Tribal Chairperson and three (3) Yurok Tribal Council members, may call a special meeting of the Yurok Tribal Council at any time they deem necessary by notifying each Council Member in any expedient way at least twenty-four (24) hours in advance of the meeting. Inability to notify all members after reasonable efforts shall not prevent such special meeting from occurring provided a quorum is present.

SECTION 4 - Public Meetings

All regular and special meetings of the Yurok Tribal Council shall be open to the members of the Yurok Tribe. The Yurok Tribal Council shall provide an opportunity for public comment by Tribal members at each Yurok Tribal Council meeting. The Yurok Tribal Council may meet in executive session upon determination by the Chairperson or an affirmative vote of a majority of the Council Members present that protection of the Yurok Tribe's legal rights, commercial interests and/or privileges against compelled disclosure or the privacy of specific persons requires that specific matters be discussed or voted upon in confidence. All votes, including votes on matters discussed in executive session and the subject of which must remain confidential, shall be by roll call in open session, and all votes shall be a matter of public record.

SECTION 5 - Roll Call Voting

Roll call votes showing how each member of the Yurok Tribal Council voted on all motions shall be recorded in the minutes of the Council. Motions that die of a lack of a second will also be recorded.

SECTION 6 - Consensus

In accordance with Tribal tradition, the Yurok Tribal Council shall attempt to conduct business by consensus whenever possible.

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ARTICLE VI- ANNUAL MEMBERSHIP MEETING

SECTION 1-Annual Membership Meeting

An annual meeting of the Tribal membership shall be held on a Saturday in July or August designated by the Yurok Tribal Council, unless the Yurok Tribal Council directs the Chairperson to give notice of a different date at least sixty (60) days in advance of the alternative meeting date. In addition, the Tribal Chairperson with the consent of the Yurok Tribal Council may call special meetings of the membership with ten (10) days notice when there is a matter of great urgency that requires a meeting of the membership.

SECTION 2 - Powers

The Yurok Tribal Council shall preside over the Annual Membership Meeting and all special meetings. There shall be no binding tribal laws adopted by the membership at the meeting, but the membership, if 20% of the eligible voters are present, may, by majority vote, adopt resolutions setting out goals expressing the sense of the tribal membership. In addition, if 20% of the eligible voters are present, the members may by majority vote propose initiatives that shall be voted upon by the Tribal Voting Membership under the voting provisions of Article XI.

ARTICLE VII - TRIBAL JUSTICE SYSTEM

The judicial power of the Yurok Tribe shall be vested in such Tribal court(s) as may from time to time be established by ordinances) enacted for that purpose. Said ordinances) shall ensure the impartiality and independence of the Judiciary by specifying causes and procedures for removal and prescribing reductions in rates of compensation greater than those that may be applied to the Yurok Tribal Council and/or the Tribal Chairperson; define the jurisdiction of each court created thereunder; specify the manner of selection, term of office and qualifications of judges; and provide for the adoption of the procedures under which each such court shall function. In special circumstances as defined by appropriate ordinance, the Yurok Tribal Council shall sit as a Tribal trial or appellate court. The Tribal judicial system, whenever possible, shall give full recognition and weight to Tribal customs, including traditional methods of mediation and dispute resolution.

ARTICLE VIII - OATH OF OFFICE

All elected and appointed officials shall take the following oath:

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"I, _____, do solemnly swear (or affirm) that I will uphold and defend the Constitution, sovereignty and traditions of the Yurok Tribe, and I will perform the duties of my office with honesty and fidelity.

I further swear (or affirm) that I will devote my best efforts to help the Yurok Tribe achieve its objectives as stated in the Preamble of its Constitution."

ARTICLE IX - BILL OF RIGHTS

In the exercise of its powers of self-government, consistent with its culture and tradition, the Tribe shall not deprive any person within its jurisdiction of the rights reflected in the Indian Civil Rights Act, 25 USC SECTION 1301 et seq.

In addition, the Tribe shall not take any action that would abridge any tribal religious or traditional practices.

ARTICLE X - RECALL OF OFFICIALS

SECTION 1 - Grounds for Recall

Any elected official of the Yurok Tribe shall be subject to recall for willful neglect of duty, corruption in office, habitual drunkenness or use of illegal drugs, incompetency, incapability of performing his/her duties or committing any offense involving moral turpitude, or conduct seriously detrimental to the sovereignty or traditions of the Yurok Tribe while in office.

SECTION 2 - Recall Election

Upon written petition of at least thirty (30) percent of the eligible voters of the Yurok Tribe, presented to and verified by the Election Board (or Yurok Tribal Council until an Election Board is established), a special Tribal Voting Membership election shall be called to consider the recall of the elected official named in the petition. In the case of a Yurok Tribal Council Member serving from a district, the petition requirement shall be at least thirty (30) percent of the eligible voters from the district represented by a Yurok Tribal Council member. A special district membership election shall be called by the Yurok Tribe to consider the recall of the elected official named in the petition. Voting shall be by secret ballot. Absentee ballots shall be available upon written request by eligible voters and mailed in a timely manner to such voters. The election shall be held within sixty (60) days from the date the petition is verified; provided, that any petition

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submitted within four (4) months of the next annual election shall be placed on the ballot of the annual election. The position occupied by the official shall be declared vacant if at least two-thirds (2/3) of those voting (all Yurok voters in the case of the Tribal Chairperson or Vice-Chairperson, or all district voters in the case of Tribal Council Members) support the recall. Vacant positions shall be filled in accordance with ARTICLE III, Section 10.

SECTION 3 - Limits on Recall

No more than one (1) recall election shall be held in any one calendar year with respect to any specific tribal official.

ARTICLE XI-INITIATIVE AND REFERENDUM

SECTION 1-Initiative

The Tribal Voting Membership shall have the right to propose any legislative measure by a petition signed by at least twenty (20) percent of the eligible voters. Each such petition shall be filed with the Election Board (or Yurok Tribal Council until an Election Board is established) at least sixty (60) days prior to the next annual election at which time it shall be placed on the ballot. Voting shall be by secret ballot. Absentee ballots shall be available upon written request by eligible voters and mailed in a timely manner to such voters. If approved by a majority of those participating in the election, the petition shall be in full force and effect immediately.

SECTION 2 - Referendum

The Yurok Tribal Council by approval of at least five (5) members may refer any legislative measure to the Tribal Voting Membership by directing at least thirty (30) days in advance that said measure be placed on the ballot at the next annual election or by calling for a special election. Voting shall be by secret ballot. Absentee ballots shall be available upon written request by eligible voters and mailed in a timely manner to such voters. If approved by a majority of those participating in the election, the referendum shall be in full force and effect immediately

ARTICLE XII - AMENDMENT

SECTION 1 - Amendment Proposed

Amendments to this Constitution may be proposed by the Yurok Tribal Council and shall require at least five (5) affirmative votes, or by a petition containing the entire text of the amendment and signed by not less than twenty (20) percent of the Tribal Voting Membership.

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SECTION 2 - Adoption

Adoption by not less than two-thirds (2/3) of those voting shall be required to amend this Constitution. Amendments shall be effective upon certification of the election results by the Election Board (or Yurok Tribal Council until an Election Board is established).

ARTICLE XIII - SEVERABILITY CLAUSE

In the event that any Article, section or provision of this Constitution is held invalid, it is the intent of the Yurok Tribe that the remaining Articles, sections and provisions of this Constitution shall continue in full force and effect.

ARTICLE XIV - EFFECTIVE DATE AND INITIAL ELECTION

This Constitution shall become effective when approved by an election of the Tribal Voting Membership of the Tribe, conducted by the Secretary of the Interior and/or the Yurok Interim Council. The initial election for Tribal Chairperson, ViceChairperson, and Yurok Tribal Council Members shall occur within one-hundred and twenty days (120) of the ratification of this Constitution. A run-off election, if necessary, shall occur within thirty (30) days of the initial election. The Chairperson, Vice-Chairperson, and the Yurok Tribal Council Members shall take office upon certification of the election by the Election Board.

The Yurok Interim Council. shall provide for an independent Election Board for the primary and run-off election, shall notify Tribal Members of the date to file for candidacy and dates of initial and run-off elections, and shall conduct the election in accordance with ARTICLE III, SECTIONS 1-10, of this Constitution, and shall remain in office until the installation of the tribal officials elected in this tribal election.

******C E R T I F I C A T I O N ******

This is to certify that the Constitutional Amendment CA001 was amended to the Yurok Constitution to Article IV, Section 5 – Duties and Powers of the Yurok Tribal Council. Shall there be an addition of the sentence at the end of the paragraph, “Settlement Account Trust Funds, including earned interest, from the Hoopa Yurok Settlement Act of 1988, shall not be used until the Tribal Council has prepared a proposal for its intended use and received a majority vote of approval from the Tribal Voting Membership.” This amendment was placed on the ballot by an affirmative vote of the Tribal Council and was adopted by a 2/3 vote of the majority in a General Election held on October 11, 2000. The Tribal Member vote was 751 Yes, 111 No which is 87.12% of the 862 voting Tribal Members.

Susan Masten, Chairperson
Yurok Tribal Council

October 22, 1993

Ratified: November 19, 1993

Constitution of the Yurok Tribe

ATTEST:

Lori Hodge, Executive Assistant
Yurok Tribal Council

October 22, 1993

Ratified: November 19, 1993

Constitution of the Yurok Tribe

RESOLUTION
OF THE
YUROK TRIBE INTERIM COUNCIL

Resolution No.: 93-62

Date Approved: November 24, 1993

Subject: Certification of Constitution Ratification Election

WHEREAS: The Yurok Interim Council is the governing body of Yurok Tribe as authorized by the Hoopa-Yurok Settlement Act (Public Law 100-580) as amended, and

WHEREAS: A draft of a Constitution for the Yurok Tribe, dated October 22, 1993 has been presented to the membership for ratification on October 23, 1993, and

WHEREAS: The Certified Public Accounting Firm of Anderson, Somerville, Borges and Kerrigan was retained to conduct said ratification election and certify the result, and

WHEREAS: The aforementioned election has been conducted with the ballots to be postmarked not later than November 10, 1993; and a majority of Yurok Tribal members have approved the Constitution of the Yurok Tribe by a vote of seven hundred and twenty two (722) in favor of adoption and five hundred and forty five (545) against adoption, and

WHEREAS: Said election result represents 57% of the voting majority in support of adoption of the Constitution for the Yurok Tribe dated October 22, 1993, now

THEREFORE BE IT RESOLVED:

The results of the Constitution Ratification election have been certified by the Certified Public Accounting firm of Anderson, Somerville, Borges and Kerrigan and that said certification is hereby accepted and approved by the Yurok Interim Tribal Council, and

BE IT FURTHER RESOLVED:

That the Yurok Interim Council, on behalf of the Yurok Tribe, hereby certifies that the Constitution for the Yurok Tribe dated October 22, 1993 is adopted and is now in effect.

October 22, 1993

Ratified: November 19, 1993

Constitution of the Yurok Tribe

CERTIFICATION

This is to certify that this Resolution was approved at a duly called Special Meeting of the Yurok Tribe Interim Council on November 24, 1993, at which a quorum was present and that this Resolution (#93-62) was adopted by a vote of 3 FOR and 0 AGAINST with no abstentions. This Resolution has not been rescinded or amended in any way.



Susie L. Long, Chair
Yurok Tribe Interim Council

ATTEST:



Maria Tripp, Council Member
Yurok Tribe Interim Council



Susan Masten, Council Member
Yurok Tribe Interim Council

Exhibit H

Yurok Ancestral Territory

Although information from land surveys has been used in the creation of this map, in no way does it represent or constitute a land survey. This map is for information and reference purposes only. The Yurok Tribe assumes no liability or responsibility in the use or misuse of this map and the information within.

Oregon

CALIFORNIA

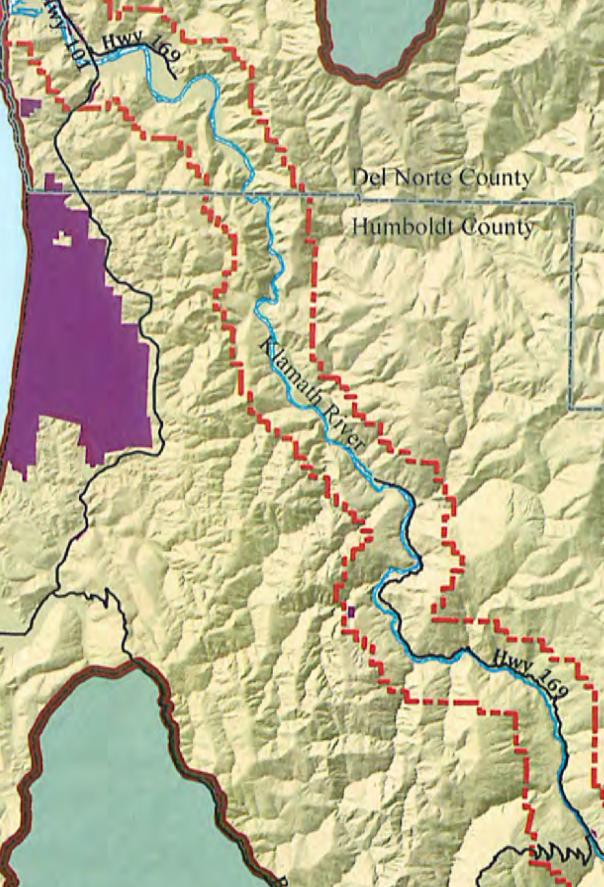
Pacific Ocean

Del Norte County

Humboldt County

Hwy 96

Alamere River



Yurok Tribe GIS Program
May 3, 2016

Major Road

Yurok Reservation

Yurok Ancestral Territory

Yurok Offshore Ancestral Territory

California State Lands

0 2.5 5 10 Miles



Exhibit I



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



April 14, 2016

Amy Dutschke, Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825
Amy.Dutschke@bia.gov

RE: Petitions for land into trust within Yurok Ancestral Territory

Aiy-ye-kwee' Ms. Dutschke,

The Cher-Ae Heights Indian Community of the Trinidad Rancheria ("Trinidad Rancheria") owns six or more parcels of fee land in and around Trinidad Harbor, including Assessor's Parcel Numbers 042-071-001; 042-071-008; 042-071-002; 042-091-008; 042-071-012; and 042-071-013. Recently, the Yurok Tribe became aware that Trinidad Rancheria is preparing a request seeking the conveyance of some or all of these parcels of land into Federal trust status. All of these parcels are located outside of Trinidad Rancheria and within the exterior boundaries of Yurok Ancestral Territory. The Yurok Tribe requests participation in this and any land into trust decision by the Bureau of Indian Affairs ("BIA") and the U.S. Department of the Interior ("Interior") for lands located within the Yurok Ancestral Territory, as defined by Article I, Section 1 of the Constitution of the Yurok Tribe.

The Yurok Tribe maintains a standing objection to the BIA and Interior taking into trust any land for Trinidad Rancheria, or any other Tribe, within Yurok Ancestral Territory. The Yurok Tribe also requests that the BIA and Interior provide prior notification, and allow Yurok Tribal participation, in any future land-to-trust decisions located within the Yurok Ancestral Territory.

Should you have any questions, please contact Interim General Counsel Rebecca McMahon at 707-482-1350 ext. 1426 or email rmcmahon@yuroktribe.nsn.us.

Sincerely,

A handwritten signature in blue ink that reads "Thomas P. O'Rourke".

Thomas P. O'Rourke, Sr.
Chairman

cc:

Cher-Ae Heights Indian Community of the Trinidad Rancheria
Congressman Jared Huffman



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



April 17, 2017

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
Attn: Chad Broussard
2800 Cottage Way
Sacramento, CA 95825

Re: Yurok Tribe Opposition to Trinidad Rancheria's Proposed Trust Acquisition and Objections to Environmental Assessment

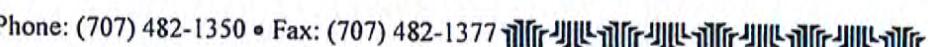
Aiy-ye-kwee' Ms. Dutschke:

This letter serves as a follow up to our April 14, 2016 correspondence to your office opposing the Cher-Ac Heights Indian Community of the Trinidad Rancheria's ("Trinidad Rancheria" or "Rancheria") application to take nine Trinidad Harbor area parcels in Trust ("fee-to-Trust"). We received no response to our previous comments, however, in light of the recently issued Environmental Assessment, which the Yurok Tribe ("Tribe") was not consulted with during the preparation or drafting of, Yurok Tribal Council believes additional comments are necessary at this time.

The Yurok Tribe maintains a standing objection to the Bureau of Indian Affairs ("BIA") and the U.S. Department of the Interior ("Interior") taking into trust any land for Trinidad Rancheria, or any other Tribe, within Yurok Ancestral Territory. All of parcels in the Rancheria's fee-to-Trust application are located outside of Trinidad Rancheria and within the exterior boundaries of Yurok Ancestral Territory, defined by the Yurok Constitution and federal case law. The Yurok Tribe requests participation in this and any land into trust decision by BIA and Interior for lands located within the Yurok Ancestral Territory, as defined by Article I, Section 1 of the Constitution of the Yurok Tribe.

Additionally, the Tribe is deeply concerned that it was not consulted with during the preparation or drafting of the Environmental Assessment ("EA") for the placement of nine Trinidad Harbor area parcels (totaling 9 acres) in Trust for the Rancheria. Due to this omission, the EA is not compliant with the National Historic Preservation Act of 1966 Section 106. The Yurok Tribe THPO has no knowledge of outreach conducted by the Rancheria to the Yurok Tribe Historic Preservation Officer, Mr. Frankie Myers.

As you know, Section 106 of the National Historic Preservation Act of 1966 ("NHPA") requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations



Phone: (707) 482-1350 • Fax: (707) 482-1377

issued by ACHP. The agencies must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (“SHPO”/“THPO”) to consult with during the process. If the agencies’ undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Yurok THPO was not consulted during the preparation of this EA for this fee-to-Trust application.

The parcels the Rancheria is petitioning be placed in trust contain areas of cultural significance to the Yurok Tribe. The area in question is within the Yurok Village of T’Suri. It is the duty of the Yurok Heritage Preservation Officer per the Yurok Tribal Constitution to, “[p]reserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on.” as well as to “[i]nsure peace, harmony and protection of individual human rights among our members and among others who may come within the jurisdiction of our tribal government.” It is also the responsibility of the Yurok THPO to uphold Yurok Tribal Resolution 96-04 to “...preserve important Yurok and Non-Yurok cultural knowledge and protect the many documented archeological and culturally significant sites located with the Yurok Ancestral Territory...”. Among concerns that this fee-to-Trust application bring up include viewshed concerns, Yurok family Village rights, Tribal rights, and more.

Specific to the EA, we share comments and concerns raised by the California Coastal Commission in their letter dated April 6, 2017, however, specifically the Tribe requests a written response to the following points: (1) clarification on the parcels and acreage contemplated be included in the fee-to-Trust application, (2) whether any lands in the fee-to-Trust application would be located below the Mean High Tide and a formal opinion from Interior on whether the BIA has authority to place such lands into Trust for a tribe, (3) more complete details on the proposed interpretive center, and (4) more complete justification on why the “No Project” alternative assumes no stormwater improvements would be made without the proposed alternative. More specifically, the Yurok Tribe has more financial and work force resources. Why would the Yurok Tribe action not be included as an alternative action?

While the Yurok Tribe recognizes fee-to-Trust actions has a benefit to tribal self-determination and sovereignty, we request that the BIA and Interior evaluate the cost of the Rancheria’s, a non-historical Tribe, application has on the rights, privileges, self-determination, and sovereignty of the Yurok Tribe, an historical reservation-based Tribe.

Should you have any questions, please contact General Counsel Amy Cordalis at 707-482-1350 ext. 1356 or email acordalis@yuroktribe.nsn.us.

Sincerely,



Thomas P. O'Rourke, Sr.
Chairman

cc:

Chairman Garth Sundberg, Trinidad Rancheria

Dan Berman, City of Trinidad

Sarah Lindgren, Tsurai Ancestral Society

Congressman Jared Huffman

Senator Kamala Harris

Senator Diane Feinstein

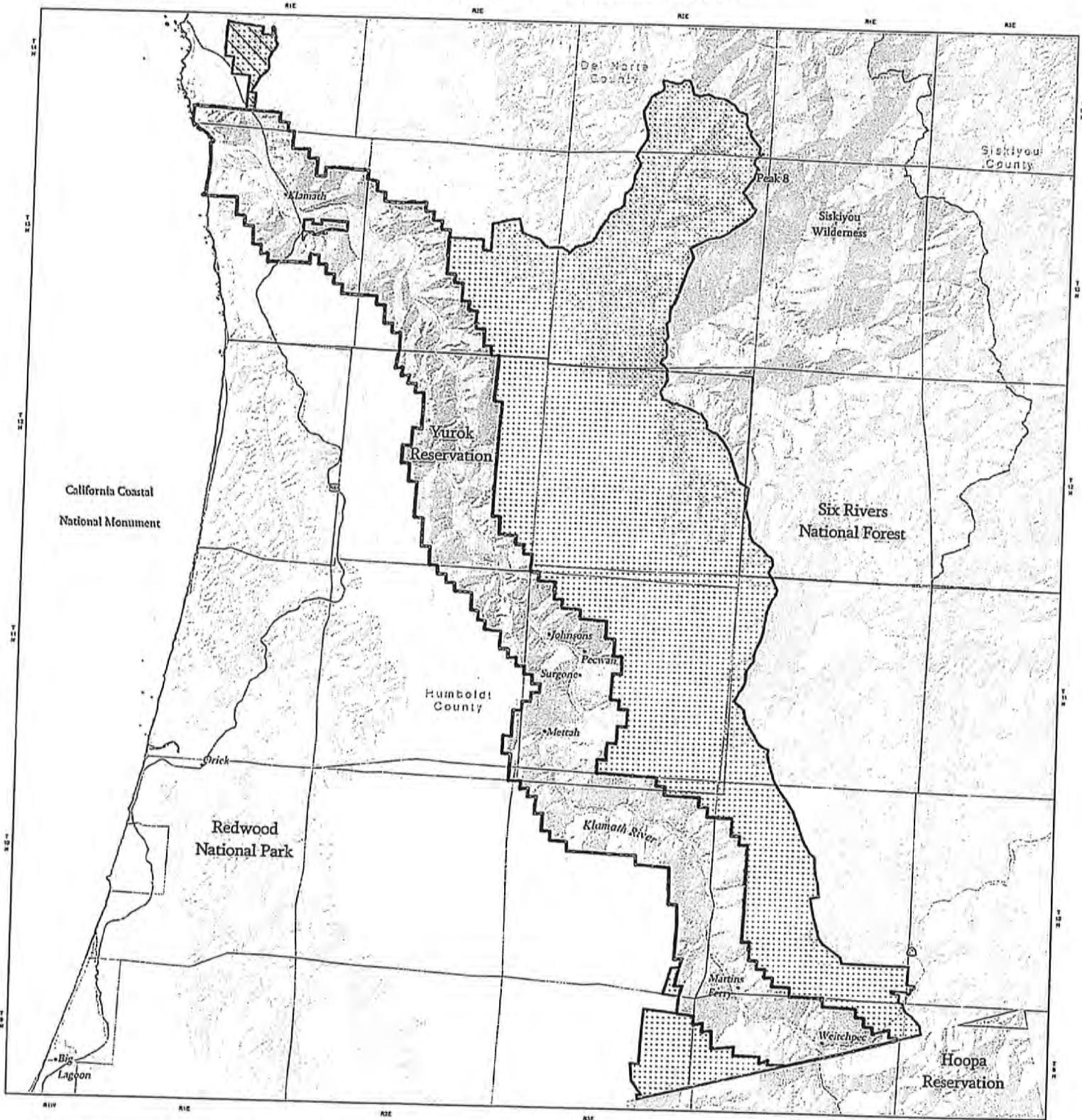
Acting Assistant Secretary – Indian Affairs (AS-IA), Department of the Interior

Exhibit J

Revised Yurok Reservation Boundary

January 24, 2017

This map was prepared at the request of Representative Jared Huffman



- Revised Yurok Reservation Boundary
- Revised Yurok Reservation Additions

- Current Yurok Reservation Boundary

- Resighini Reservation

- Experimental Forest

- County Boundary

- Federal Wilderness Surface Management

- Forest Service

Land Status

Bureau of Land Management

Forest Service

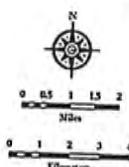
Bureau of Indian Affairs

State

National Park Service

Private/Unclassified

No warranty is made by the Bureau of Land Management (BLM).
The accuracy, reliability, or completeness of these data for individual
use or aggregate use with other data is not guaranteed.



140,000 intended to be plotted at 31" x 44"
Projection: 2011 California State Albers
Datum: North America 1983



Exhibit K



Congressional Research Service

Informing the legislative debate since 1914

MEMORANDUM

May 16, 2017

To: Hon. Jared Huffman
Attention: Scott Rasmussen

From:

Subject: Possible Federal Delegation of Authority Over Non-Indian Land and Non-Indian People to the Yurok Tribe through Ratifying and Confirming Tribal Governing Documents

Introduction

This memorandum is in response to your request for an explanation of how the Yurok Tribe's (Yurok) current authority over non-Indian land and non-Indian people within its tribal reservation would change if Congress were to enact legislation which "ratified and confirmed" the Yurok's existing governing documents, including its tribal constitution. Because no legislation has been proposed, the memorandum generally addresses hypothetical legislation that would "ratify and confirm" the Yurok governing documents. A case that may be relevant to this question is *Bugenig v. Hoopa Valley Tribe*,¹ in which the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) determined that Section 8 of the Hoopa-Yurok Settlement Act (Settlement Act)² which "ratif[ied] and confirm[ed]" the Hoopa Valley Tribe (Hoopa) governing documents. The *Bugenig* court held that the Settlement Act delegated some amount of federal authority over non-Indian land and non-Indian people within the Hoopa tribal reservation to the Hoopa. Therefore, assuming a reviewing court adopts the reasoning of *Bugenig*, it appears that were Congress to enact legislation that "ratified and confirmed" the Yurok's governing documents, Congress could delegate federal authority, as defined by the terms of the governing documents and the limits of federal authority, to the Yurok.

In order to explain the authority that the Yurok could potentially gain were Congress to "ratify and confirm" the Yurok governing documents, this memorandum first describes the inherent tribal authority that the Yurok currently possess over members, Indians who are not members, and non-Indians.³ Then it discusses the Ninth Circuit's opinion in *Bugenig*. The memorandum next analyzes the Yurok constitution to consider the terms under which the Yurok could exercise delegated federal authority were its constitution ratified and confirmed by Congress. Finally, the memorandum explains the effect of P.L.

¹ 266 F.3d 1201 (9th Cir. 2001) (en banc).

² 102 Stat. 2924, 2931 (1988). Generally, the Settlement Act partitioned the Hoopa-Yurok joint reservation; settled damage claims that the Yurok secured against the federal government for the government's failure to equitably distribute logging proceeds from the joint reservation; and recognized the Yurok as a tribe and provided for its organization.

³ I have also sent CRS,R43324 *Tribal Jurisdiction over Non-Members: A Legal Overview*, by Jane M. Smith, which provides more detail on inherent tribal authority.

280, in which Congress delegated to certain states, including California, criminal and civil adjudicatory jurisdiction over Indian reservations, on the inherent tribal authority of the Yurok, whose reservation is located in California.

Inherent Tribal Authority⁴

Tribes generally possess inherent authority over their members and their territory.⁵ The Supreme Court has held that, as a general rule, tribes no longer possess inherent authority to determine their relations with non-Indians, both in criminal and civil matters.⁶ There are two exceptions to this rule in the civil context: first, a tribe may generally exercise authority over non-Indians who have entered consensual relationships with the tribe; second, a tribe may exercise authority over non-Indians on fee land within its reservation when the non-Indians' conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."⁷

The courts have not determined whether tribes may exercise civil authority over Indians who are not members of the tribe.⁸ However, because tribes have criminal authority (concurrent with the federal government) over such non-member Indians under section 1301 of the Indian Civil Rights Act⁹ it is possible that they also have civil authority over non-member Indians.¹⁰ The scope and extent of this concurrent civil authority, however, is unclear.

In sum, as a general rule, the Yurok do not have inherent tribal authority over non-Indian land or people, subject to two exceptions, noted above. The Yurok may have civil jurisdiction over non-member Indians, but this issue remains unresolved by the courts.

Bugenig v. Hoopa Valley Tribe

To assess the effect of legislation that would "ratify and confirm" the Yurok governing documents, it is helpful to examine *Bugenig*. In *Bugenig*, the Ninth Circuit determined that the Settlement Act's ratification and confirmation of the Hoopa governing documents delegated to the Hoopa federal regulatory authority over certain non-Indian fee land.

The facts in *Bugenig* are as follows. The Hoopa constitution provided that the tribe's jurisdiction extended to "all lands within the confines of the Hoopa Valley Reservation boundaries."¹¹ Pursuant to the constitution, the Tribe adopted a timber harvesting plan, which prohibited logging in a buffer zone within

⁴ In *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831), the Supreme Court recognized the tribes as sovereign when it denominated the tribes to be "domestic dependent nations." Inherent tribal authority is the sovereign authority that tribes retain, *Oliphant v. Suquamish*, 435 U.S. 191, 208 (1978), and also such authority that has been divested, which Congress has restored to the tribes. 1-4 FELIX S. COHEN, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 4.03 (Neal Jessup Newton ed. 2015) (hereinafter Cohen). Examples of the latter include limited criminal authority over nonmember Indians, 25 U.S.C. § 1301, and "special domestic violence criminal jurisdiction" over non-Indians, provided certain conditions are met, 25 U.S.C. § 1304.

⁵ *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

⁶ *Oliphant v. Suquamish*, 435 U.S. 191, 208 (1978) (criminal); *Montana v. United States*, 450 U.S. 544 , 565 (1981) (civil). Congress created an exception to this rule in the criminal context for non-Indians who commit dating or domestic violence within the reservation provided certain conditions are met. 25 U.S.C. § 1304.

⁷ *Montana*, 450 U.S. 565-566. As discussed in pages 6 to 10 of the CRS report, courts have construed these exceptions narrowly.

⁸ 1-6 Cohen § 6.01.

⁹ 25 U.S.C. § 1301. In California, under Pub. L. 83-280, the state exercises delegated federal criminal authority over Indian reservations. However, tribes have retained their concurrent inherent criminal authority over their reservations. 1-6 Cohen § 6.04.

¹⁰ 1-4 Cohen § 4.03[3].

¹¹ *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1208 (9th Cir. 2001). quoting Hoopa Valley Tribe constitution, Art. III.

the reservation and around a sacred site.¹² The prohibition applied to logging on any “tribal trust land, trust allotments, and fee land” within the buffer zone.¹³ The plaintiff, who is not Indian, purchased fee land within the buffer zone shortly after the Hoopa adopted the timber harvesting plan.¹⁴ She obtained a permit from the state and began logging on her fee land.¹⁵ When she applied for a tribal permit to haul the logs over reservation land, the Hoopa denied her application and asserted that it had sole regulatory jurisdiction over her land.¹⁶ The Hoopa obtained an injunction against further logging from the tribal court, which was upheld on appeal.¹⁷ The plaintiff filed suit in federal district court arguing that the Hoopa and its courts lack jurisdiction over her land because she is not an Indian and she owns her land in fee.¹⁸ The district court ruled in favor of the Hoopa, finding that, by ratifying and confirming the Hoopa governing documents in the Settlement Act, Congress delegated federal authority to the Tribe to regulate all land within the reservation, regardless of ownership.¹⁹

The Ninth Circuit upheld the district court ruling, but its holding regarding the federal delegation of authority over the plaintiff’s land to the Hoopa was not as broad as the district court’s holding.²⁰ However, the Ninth Circuit squarely stated: “when Congress ‘ratified and confirmed’ the Tribe’s governing documents, it intended to give the Tribe’s [c]onstitution the force of law.”²¹ The court of appeals next turned to the tribal constitution to determine whether it empowered the Hoopa to regulate the plaintiff’s land in the interest of protecting cultural and natural resources. The Ninth Circuit concluded that, under the terms of the constitution, the Hoopa had jurisdiction over all land within the reservation.²² Next, the court reviewed the constitutional powers of the tribal Council, which include the power to:

safeguard and promote the peace, safety, morals, and general welfare of the Hoopa Valley Indians by regulating the conduct or trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the Hoopa Valley Tribe shall be subject to the approval of the Commissioner of Indian Affairs.²³

The court wrote that this subsection “unambiguously contemplates tribal regulation of property upon the reservation, even if the regulation affects ‘non-members.’”²⁴ It further concluded that the Hoopa acted within its constitutional authority in regulating the plaintiff’s land. “In sum, when the tribe passed the ordinance, it was acting pursuant to authority expressly granted by Congress.”²⁵

Next, the court considered whether the federal government had authority over the plaintiff’s land – if it did not, it could not delegate authority over her land to the Hoopa. The Ninth Circuit noted that Congress’s authority over Indian affairs is plenary, though not absolute – it is limited to what is

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1209.

¹⁸ *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1209 (9th Cir. 2001) (en banc).

¹⁹ *Id.*

²⁰ While the district court held that the Settlement Act delegated federal authority to the Hoopa to regulate all land within the reservation, including non-Indian fee land, the Ninth Circuit recognized some limits on the federal authority delegated to the tribe.

²¹ *Id.* at 1213.

²² *Id.*

²³ *Id.* at 1215.

²⁴ *Id.*

²⁵ *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1218 (9th Cir. 2001) (en banc).

"rationally related" to the protection of the Indians.²⁶ The court concluded: "federal jurisdiction within a reservation is not dependent solely on the ownership status of the land in question. Instead, we must (a) examine whether Congress intended to divest itself of all jurisdiction when it authorized allotment of the Reservation, and (b) then determine whether the ordinance is necessary for the protection of the Tribe."²⁷

The court determined that when the Hoopa Valley Reservation was allotted, Congress did not intend to divest itself of jurisdiction.²⁸ The court next examined whether the tribal timber harvesting plan was within the federal authority delegated to the Hoopa by considering whether it was necessary for protection of the tribe. The court viewed the ordinance "holistically as a reasonable means to preserve and protect tribal resources that possess significant historical and religious value."²⁹ The court referenced *United States v. Mazurie*,³⁰ a Supreme Court case that upheld congressional delegation of federal authority to regulate alcohol sales on non-Indian fee land within reservations to tribes, and wrote that it saw "no principled reason why the federal government can prohibit a non-Indian from selling alcohol on land that he owns in fee within a reservation, in order to protect the physical health of an Indian tribe, but cannot prohibit a non-Indian from using such lands so as to put the spiritual health of a tribe at risk."³¹ The court, therefore, concluded that the federal government had the requisite authority over the plaintiff's land to regulate her land in order to protect the spiritual health of the Tribe.³²

Finally, the plaintiff objected that she should not be subject to tribal authority because she is not a member of the tribe. However, the court wrote that she was protected against arbitrary tribal action by the Indian Civil Rights Act and by the fact that, under the Hoopa constitution, any ordinance directly affecting non-members must be approved by the Commissioner of Indian Affairs.³³

The Yurok Constitution and Delegated Federal Authority

To determine whether congressional ratification and confirmation of the Yurok constitution would delegate federal authority over non-Indian fee land and people, it is necessary to examine the Yurok constitution.³⁴ Section 3 defines the Yurok jurisdiction as follows:

The jurisdiction of the Yurok Tribe extends to all of its members wherever located, to all persons throughout its territory,³⁵ and within its territory, over all lands, waters, river beds, submerged lands, properties, air space, minerals, fish, forests, wildlife, and other resources, and any interest therein now or in the future.³⁶

²⁶Id. at 1219.

²⁷ Id. at 1220.

²⁸ Id.

²⁹ Id. at 1222.

³⁰ 419 U.S. 544, 557-558 (1975).

³¹ *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1222 (9th Cir. 2001) (en banc)...

³² Id.

³³ Id.

³⁴The Yurok ratified its constitution on November 19, 1993. Constitution of the Yurok Tribe (hereinafter "Constitution"). CRS used the 1993 version of the constitution available at:

<http://yuroktribe.org/government/councilsupport/documents/Constitution.pdf>. It is unclear if there is a more recent version.

³⁵Under the Yurok's constitution, the tribe's "territory" includes ancestral lands outside its reservation. Constitution, § 2. However, the federal government only has authority over "Indian country" under 18 U.S.C. § 1151. Section 1151 defines Indian country to include reservations, dependent Indian communities, and trust or restricted allotments. Therefore, any federal authority delegated to the tribe would be confined to the tribe's Indian country.

³⁶ Id. at 4.

Section 5 delineates the authority of the Tribal Council, the Yurok governing body, which includes, in relevant part, the authority to: "administer and regulate affairs, persons, and transactions within Tribal Territory; enact civil and criminal laws." Unlike the Hoopa constitution, the Yurok constitution does not specifically address tribal authority over non-Indians.

If legislation were enacted that ratified and confirmed the Yurok's governing documents, the constitution, would appear to acquire the force of law under *Bugenig*. It appears that the Yurok could have the potential to regulate non-Indian fee land and people under certain circumstances. Under section 3 of the constitution, the Yurok's jurisdiction covers all land within its territory, presumably including non-Indian fee land, and all persons within its territory, presumably including non-Indians. The Tribal Council could have the authority to regulate non-Indian fee land and people given that the constitution grants it authority to "enact civil and criminal law." It is unclear whether the absence of a constitutional provision (similar to the Hoopa constitutional provision) that addresses tribal authority over non-Indians would be significant to a finding that the Yurok possessed delegated federal authority over non-Indians. Furthermore, as demonstrated by the court's opinion in *Bugenig*, any exercise of such delegated authority would have to be necessary for the protection of the tribe.

In assessing the import of *Bugenig*, it is important to remember that the court upheld tribal regulation of non-Indian fee land located in a culturally significant area. The case does not appear to stand for the broader proposition that the Hoopa had federal authority to regulate non-Indian fee land throughout the reservation. That question remains unanswered.

The Effect of P.L. 280 on Tribal Civil Jurisdiction

In P.L. 280, Congress delegated to certain states, including California, criminal and civil adjudicatory jurisdiction over Indian reservations.³⁷ Tribes retain concurrent inherent jurisdiction. In *Santa Rosa Band v. King County*, the U.S. Court of Appeals for the Ninth Circuit explained the interaction of state and tribal jurisdiction as follows: "Congress had in mind a distribution of jurisdiction which would make the tribal government over the reservation more or less the equivalent of a county or local government in other areas within the state."³⁸ This arrangement preserves tribal power "to regulate matters of local concern within the area of its jurisdiction."³⁹ Accordingly, it seems that P.L. 280 has no effect on a tribe such as the Yurok's inherent authority.

Conclusion

If Congress were to pass an act comparable to the Settlement Act for the Yurok, which would "ratify and confirm" its governing documents, it is possible that a reviewing court may view this as a delegation of authority over non-Indian land and people. Whether it accomplished this aim in a given situation would depend on the federal government's jurisdiction over the reservation; whether tribal authority, as defined by the constitution, reached the situation; and whether the tribal regulation was necessary for the protection of the tribe.

As mentioned above, the issue of whether tribes have inherent civil jurisdiction over non-member Indians has not been squarely addressed by the courts.⁴⁰ However, it could be argued that such jurisdiction is implied by the reaffirmation of inherent tribal criminal jurisdiction over non-member Indians contained in

³⁷ Pub. L. 83.280; 1-6 Cohen § 6.04.

³⁸ 532 F.2d 655, 663 (9th Cir. 1975).

³⁹ *Id.*

⁴⁰ 1-6 Cohen, §6.01.

25 U.S.C. § 1301. Because, as the court noted in *Bugenig*, the federal government has plenary authority over Indian affairs,⁴¹ a delegation to the Yurok of federal authority would likely include civil jurisdiction over non-member Indians.

Finally, it does not appear that tribes in P.L. 280 states gained or lost any authority as a result of the law.

⁴¹ *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1218 (9th Cir. 2001).