

ORIGINAL
FILED
JUL 15 1982
WILLIAM L. WHITTAKER
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE HOOPA VALLEY TRIBE, a federally-)	
recognized Indian tribe,)	
)	
Plaintiff,)	CIVIL NO.
)	C-81-3094 MHP
v.)	
)	
JAMES G. WATT, Secretary of the)	
Interior; KENNETH L. SMITH, Assistant)	ORDER OF
Secretary for Indian Affairs; WILLIAM)	DISMISSAL
E. FINALE, Sacramento Area Director,)	
Bureau of Indian Affairs; WILSON)	
BARBER, JR., Superintendent, Northern)	
California Agency, Bureau of Indian)	
Affairs; and THE UNITED STATES OF)	
AMERICA,)	
)	
Defendants.)	
)	

Upon joint motion of the parties who have entered a Stipulation rendering further litigation of this suit unnecessary and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED that this action shall be dismissed pursuant to the terms of the Stipulation between the parties which is incorporated herein by reference and according to the provisions of Rule 41(a)(2). Rule 41(a)(2) provides for the voluntary dismissal of an action by order of the court upon such terms and conditions as the court deems proper. Such dismissal

1 shall therefore be with prejudice except to the limited extent
2 that plaintiff is hereby granted leave to file an application
3 for attorneys' fees and costs pursuant to the provisions of the
4 Equal Access to Justice Act, 28 U.S.C. § 2412, within thirty days
5 of the entry of this order and that, if such application is not
6 filed within that time, that upon defendants' motion the remain-
7 ing balance of the case will be dismissed with prejudice.

8 This order shall be deemed a final judgment for purposes of
9 28 U.S.C. § 2412 (Equal Access to Justice Act).

10 Dated this 15th day of July, 1982.

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13 MARILYN WALL PATEL
14 United States District Judge
15 Northern District of California
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31 ORDER OF DISMISSAL
p. 2

#2142

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8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10

11	THE HOOPA VALLEY TRIBE, a federally-)	
	recognized Indian tribe,)	
12)	
	Plaintiff,)	Civil No. C-81-3094 MHP
13)	
	v.)	
14)	
	JAMES G. WATT, Secretary of the)	
15	Interior; KENNETH L. SMITH,)	<u>STIPULATION</u>
	Assistant Secretary for Indian)	
16	Affairs; WILLIAM E. FINALE,)	
	Sacramento Area Director, Bureau)	
17	of Indian Affairs; WILSON BARBER,)	
	JR., Superintendent, Northern)	
18	California Agency, Bureau of Indian)	
	Affairs; and THE UNITED STATES OF)	
19	AMERICA,)	
)	
20	Defendants.)	

21
 22 WHEREAS, this case began on July 24, 1981 with the
 23 filing of the complaint of the Hoopa Valley Tribe against the
 24 United States of America and certain federal officials. The case
 25 arose out of an action by the Bureau of Indian Affairs declining
 26 the Hoopa Valley Tribe's application to perform stream clearance work
 27 on the Trinity River and its tributaries pursuant to the Indian
 28 Self-Determination Act, Pub. L. 93-638, 25 U.S.C. §450, et seq.;

29 WHEREAS, simultaneous with the filing of the complaint,
 30 the Hoopa Valley Tribe moved for a temporary restraining order
 31 restraining the Bureau of Indian Affairs from expending, transferring,
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EXHIBIT A

1 or otherwise disposing of certain stream clearance funds, which
2 order was granted on July 24, 1981;

3 WHEREAS, following the issuance of the temporary
4 restraining order, the Hoopa Valley Tribe proceeded with their motion
5 for preliminary injunction, which was heard on August 4, 1981 and at
6 the close of that hearing allowed;

7 WHEREAS, subsequent to the two hearings and issuance of
8 the preliminary injunction by the Court on August 4, 1981 the parties
9 commenced negotiations to achieve a final resolution of this litigation;
10 and, whereas those negotiations have been successfully concluded, the
11 parties will stipulate as hereinafter provided in order that this
12 dispute may be resolved;

13 WHEREAS, the Court, having preliminarily determined
14 that historically salmon, steelhead, and other anadromous fish runs
15 of the Klamath-Trinity River Systems have been a substantial means of
16 subsistence of the Indians of the Hoopa Valley Indian Reservation
17 which have played a significant role in ceremonial aspects of the
18 Hoopas' lives in practices which continue to the present time; and
19 that various factors, including ocean fishing and adverse environ-
20 mental conditions, have combined to impact and greatly reduce the
21 abundance of the runs;

22 WHEREAS, the United States Fish and Wildlife Service in
23 the Trinity River Basin Fish and Wildlife Task Force have examined
24 environmental problems in the Klamath-Trinity River Systems and
25 tributaries and recommended an intense rehabilitation program in-
26 volving stream cleanup, log jam removal, diversion, screening, and
27 habitat restoration as soon as possible; See Final Report Hoopa
28 Valley Indian Reservation: Inventory of Reservation Waters, Fish
29 Rearing Feasibility Study and a Review of the History and Status of
30 Anadromous Fishery Resources of the Klamath River Basin (United States
31 Fish and Wildlife Service, Arcata, California, March 19, 1979) at

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EXHIBIT A

1 29, 56-57, 76-77; Affidavit of R. Ulibarri at 2-3;

2 WHEREAS, the Bureau of Indian Affairs set aside
3 \$90,000 to be obligated before September 30, 1981 for removal of
4 man-made and natural obstructions in the Trinity River and its
5 tributaries on the Hoopa Valley Indian Reservation; and, whereas
6 both the Area Sacramento Director and the Superintendent, Northern
7 California Agency, of the Bureau of Indian Affairs have stated their
8 belief that stream clearance work on the Hoopa Valley Reservation
9 is urgent in order to protect fish runs spawning in 1981 and future
10 years;

11 WHEREAS, on April 3, 1981 the Northern California Agency,
12 Bureau of Indian Affairs, received an application from the Hoopa
13 Valley Tribe to contract with the Bureau of Indian Affairs under
14 Pub.L. 93-638, the Indian Self-Determination Act, to perform the
15 stream clearance program to remove stream obstructions in the
16 Trinity River and its tributaries on the Hoopa Valley Reservation;

17 WHEREAS, on June 3, 1981, Wilson Barber, Jr.,
18 Superintendent, Northern California Agency, Bureau of Indian Affairs,
19 recommended approval of the Hoopa application and found that the
20 work proposed to be performed by the Hoopa would add to the enhance-
21 ment of fishery resources of the Klamath-Trinity River System;

22 WHEREAS, on June 4, 1981, William E. Finale, Area
23 Director, Sacramento Area Office, Bureau of Indian Affairs, rejected
24 the proposed contract application because it was not accompanied by
25 a written resolution from the governing body of the Yurok Tribe
26 giving no other reasons for denial of the application;

27 WHEREAS, on June 11, 1981, Hoopa Valley Tribe filed an
28 administrative appeal from the rejection of Mr. Finale and on July
29 2, 1981, the Tribe, through its counsel, filed a petition for
30 emergency review by Assistant Secretary of Interior -- Indian
31 Affairs, Kenneth L. Smith -- which appeals were rejected by the

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EXHIBIT A

1 Department of the Interior;

2 WHEREAS, on or about July 14, 1981 the Bureau of Indian
3 Affairs published notices soliciting requests for proposals from
4 any entity to perform stream clearance work under a "buy Indian" con-
5 tract (See, 25 U.S.C.§47) on Trinity River tributaries within the
6 Hoopa Valley Reservation which announcements stated that bids would
7 be open and the contract awarded on or about July 30, 1981 and which
8 solicitation was intended to utilize the authorized stream clearance
9 funds sought by plaintiff and to exhaust funds sought by plaintiff
10 and to exhaust funds available for that work during Fiscal Year 1981;

11 WHEREAS, the Yurok Tribe enjoys some beneficial interest
12 in the Hoopa Valley Indian Reservation; and, whereas the Yurok Tribe,
13 has been recognized by the United States, (see the listing in the
14 Federal Register on a list of recognized Indian tribes), although the
15 Yurok Tribe has no tribal governing body, does not operate under a
16 constitution, does not exercise governmental control over the lives
17 and activities of the Yurok Indians or over a specific territory, and
18 does not adopt or recognize tribal resolutions;

19 WHEREAS, The Hoopa Valley Tribe of the Hoopa Valley
20 Indian Reservation is a federally-recognized Indian tribe with a
21 constitution and bylaws approved by the Bureau of Indian Affairs and
22 the Hoopa Valley Business Council is the duly constituted governing
23 body of the Hoopa Valley Tribe; and,

24 WHEREAS, the United States has complied with the terms
25 of the preliminary injunction issued on August 4, 1981;

26 WHEREAS, Pub.L. 93-638, the Indian Self-Determination
27 Act, 25 U.S.C. §450 et seq., was intended to assure maximum tribal
28 government participation in federal programs for and services to
29 Indians and provides for entry into self-determination contracts by
30 the Secretary of the Interior at the request of a tribe or tribal
31 organization, subject to a declination procedure authorized under the

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EXHIBIT A

1 Act; 25 U.S.C. §§450, 450a, 450f; H.Hearings, October 20,28, 1975,
2 Senate Subcommittee on Indian Affairs of the Committee on Interior
3 and Insular Affairs (94th Cong., 1st Sess.);

4 WHEREAS, 25 U.S.C. §§450b(b)(c) provides that, where
5 more than one tribe will be served by a proposed contract under the
6 Act, each such tribe must consent to the proposed contract. [See
7 H.R. Rep. No 93-1600 (93d Cong., 2d Sess., December 16, 1974) at
8 24-25; See Pub. L. 93-638, Section 105(a)];

9 WHEREAS, 25 C.F.R. 271.18(a) promulgated pursuant to the
10 authority of the Indian Self-Determination Act (Pub.L. 93-638) re-
11 quires " an authorizing resolution from each tribal governing body"
12 of the other affected tribes; and the Court having preliminarily
13 determined that BIA is not an agency authorized to approve contracts
14 on behalf of the unorganized Yurok Tribe under Pub. L. 93-638 and
15 25 C.F.R. 271.18(a);

16 WHEREAS, denial of the Hoopa Valley Tribe's application
17 under the Act was based soley on the absence of the approval of
18 the Yurok Tribe,which denial,because of this Court's preliminary find-
19 ing that consent was required only from tribes with organized tribal
20 governing bodies, was not substantially justified under the Indian
21 Self-Determination Act;

22 IT IS HEREBY AGREED, CONSENTED AND STIPULATED AS
23 FOLLOWS:

24 1. Inasmuch as this Court has found that the Indian
25 Self-Determination Act does not require the consent of the unorgan-
26 ized Yurok Tribe because such tribe lacks a tribal governing body
27 within the meaning, as this Court has defined it, of 25 C.F.R. §§
28 271.2(p) and 271.18(a), defendants will not, so long as the Yurok
29 Tribe remains without a tribal governing body, decline to grant
30 contracts to the Hoopa Valley Tribe pursuant to the Indian Self-
31 Determination Act on the ground that there is no resolution con-
32 curring in the award of such contract from the Yurok Tribe;

EXHIBIT A

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2. This action shall be dismissed, except to the limited extent necessary for plaintiff to litigate its request, if any, for attorneys' fees and costs pursuant to the provisions of the Equal Access To Justice Act, 28 U.S.C. §2412; and, it is further agreed, that defendants will not object to plaintiff's filing such a request so long as such filing occurs within thirty days of the entry of this order and that if such filing does not occur within said time, it is also further agreed that that remaining portion of this action shall be dismissed upon motion of defendants.

JOSEPH P. RUSSONIELLO
United States Attorney

DATED: July 13, 1982

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ZIONITZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

DATED: July 14, 1982

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