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NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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THE HOOPA VALLEY TRIBE, a
federally-recognized Indian
tribe,

Plaintiff,

vs.

JAMES G. WATT,
Secretary of the Interior;
KENNETH L. SMITH, Assistant
Secretary for Indian Affairs;
WILLIAM E. FINALE, Sacramento
Area Director, Bureau of
Indian Affairs;
WILSON BARBER, JR., Super-
intendent, Northern California
Agency, Bureau of Indian Affairs,
and THE UNITED STATES OF AMERICA,

Defendants.

NO. C-81-3094-MHP

PRELIMINARY INJUNCTION
RE: 1981 TRINITY RIVER
STREAM CLEARANCE CONTRACT

The Court has fully reviewed and carefully considered the motion of plaintiff Hoopa Valley Tribe, the supporting and opposing memoranda, affidavits and attachments thereto, the documentary and testimonial evidence and oral arguments offered in open court at hearings held on August 4, 1981, on aspects relevant to the present motion.

Based on all the evidence in this case the Court Finds, Holds, and Orders as follows:

FINDINGS OF FACT

1. Historically salmon, steelhead, and other anadromous fish runs of the Klamath-Trinity River Systems have been a substantial means of subsistence of the Indians of the Hoopa Valley Indian Reservation. They have also played a significant role in the ceremonial aspects of the Hoopas lives. These practices continue at the present time. However the abundance of these runs has been greatly reduced in recent years by

1 heavy ocean fishing and adverse environmental conditions.

2 2. The United States Fish and Wildlife Service and
3 the Trinity River Basin Fish and Wildlife Task Force have
4 examined environmental problems in the Klamath-Trinity River
5 System and tributaries and have recommended an intense,
6 rehabilitation program involving stream cleanup, log jam
7 removal, diversion screening and habitat restoration as soon
8 as possible. See Final Report Hoopa Valley Indian Reserva-
9 tion: Inventory of Reservation Waters, Fish Rearing
10 Feasibility Study and a Review of the History and Status of
11 Anadromous Fishery Resources of the Klamath River Basin
12 (U.S. Fish and Wildlife Service, Arcata, California, March 19,
13 1979) at 39, 56-57, 76-77; Affidavit of R. Ulibarri at 2-3.

14 3. The Bureau of Indian Affairs has set aside \$90,000
15 to be obligated before September 30, 1981, for removal of
16 man-made and natural obstructions in the Trinity River and
17 its tributaries on the Hoopa Valley Indian Reservation. Both
18 the Sacramento Area Director and the Superintendent, Northern
19 California Agency, of the Bureau of Indian Affairs have stated
20 their belief that stream clearance work on the Hoopa Valley
21 Reservation is urgent in order to protect fish runs spawning
22 in 1981 and future years.

23 4. On April 3, 1981, the Northern California Agency,
24 Bureau of Indian Affairs, received an application from the
25 Hoopa Valley Business Council of the Hoopa Valley Tribe to
26 contract with the Bureau of Indian Affairs under Public Law
27 93-638, the Indian Self-Determination Act, to perform the
28 stream clearance program to remove obstructions from the
29 Trinity River and its tributaries on the Hoopa Valley
30 Reservation.

31 5. On June 3, 1981, Wilson Barber, Jr., Superintendent,
32 Northern California Agency, Bureau of Indian Affairs

1 recommended approval of the Hoopa application. Mr. Barber
2 found that the work proposed to be performed by the Hoopas would
3 add to the enhancement of fishery resources of the Klamath-
4 Trinity River System.

5 6. On June 4, 1981, William E. Finale, Area Director,
6 Sacramento Area office, Bureau of Indian Affairs rejected the
7 proposed contract application because it was not accompanied
8 by a written resolution from the governing body of the Yurok
9 Indians. No other reasons have been given for denial of the
10 application.

11 7. On June 11, 1981, the Hoopa Valley Tribe filed an
12 administrative appeal from the rejection of Mr. Finale. On
13 July 2, 1981, the Tribe, through counsel, filed a petition for
14 emergency review by Assistant Secretary of Interior--Indian
15 Affairs, Kenneth L. Smith. The Tribe's appeals have been
16 rejected by the Department of the Interior.

17 8. On or about July 14, 1981, the Bureau of Indian
18 Affairs published notices soliciting requests for proposals
19 from any entity to perform stream clearance work under a
20 "Buy Indian" contract (see 25 U.S.C. § 47) on Trinity River
21 tributaries within the Hoopa Valley Reservation. The
22 announcement stated that bids would be opened and the contract
23 awarded on or about July 30, 1981. This solicitation is
24 intended to utilize the authorized stream clearance funds
25 sought by the plaintiff and is likely to exhaust funds
26 available for that work during fiscal year 1981.

27 9. Yurok Indians occupy or hold rights to some portions
28 of the Hoopa Valley Indian Reservation. The Yurok Indians
29 have no tribal governing body, do not operate under a
30 constitution and do not exercise governmental control over the
31 lives and activities of Yurok Indians, or over a specific
32 territory. The Yurok "Tribe" does not adopt or recognize

1 tribal resolutions.

2 10. The Bureau of Indian Affairs has never required
3 approval of the Yurok Indians in the letting of previous
4 contracts to the Hoopa Valley Tribe under Public Law 93-638.
5

6 CONCLUSIONS OF LAW

7 1. This Court has jurisdiction over this controversy
8 pursuant to 28 U.S.C. §§ 1331, 1361 and 1362. Venue is
9 proper.

10 2. Public Law 93-638, the Indian Self-Determination
11 Act, 25 U.S.C. § 450 et seq. was intended to assure maximum
12 Indian participation in federal programs for and services
13 to Indians and to halt federal domination of Indian service
14 programs. The Act mandates the Secretary of the Interior
15 to enter into self-determination contracts at the request of
16 a tribe or tribal organization. Although a declination
17 procedure has been authorized in the statute the Act places
18 upon the Secretary the burden of proof to show good cause
19 why he should not enter into a requested contract. 25 U.S.C.
20 §§ 450, 450a, 450f; Hearings, October 20 and 28, 1975,
21 Senate Subcommittee on Indian Affairs of the Committee on
22 Interior and Insular Affairs (94 Cong. 1st Sess.).

23 3. Congress has required where more than one tribe
24 would be served by a proposed contract under the Act, each
25 such tribe must give their consent to proposed contracts.
26 25 U.S.C. § 450b(b), (c); H.R. Rep. No. 93-1600 (93rd Cong.
27 2d Sess., December 16, 1974) 24-25; see, Public Law 93-638
28 § 105(a).

29 4. The regulations promulgated under the Indian
30 Self-Determination Act require "an authorizing resolution from
31 each tribal governing body" of the other affected tribes.
32 25 CFR 271.18(a).

1 5. For the purpose of the foregoing provision tribal
2 governing body means the recognized governing body of a tribe.
3 The Yurok Indians do not have a tribal governing body within
4 the meaning of 25 CFR §§ 271.2(p) and 271.18(a) and 25 U.S.C.
5 § 450(b)(c). Therefore, the defendants have conditioned
6 approval of plaintiff's proposed contract on an impossible
7 condition which thwarts the plain meaning and spirit of the
8 Indian Self-Determination Act.

9 6. The Bureau of Indian Affairs does not constitute
10 an agency authorized to approve contracts on behalf of the
11 Yuroks under Public Law 93-638, nor is its approval on behalf
12 of the Yuroks necessary under CFR 271.18 prior to granting a
13 contract submitted under the Indian Self-Determination Act.

14 7. The defendants' refusal to approve the requested
15 reservation stream clearance contract with the Hoopa Valley
16 Business Council of the Hoopa Valley Tribe violates the
17 mandate of the Indian Self-Determination Act and accordingly
18 is arbitrary, capricious, an abuse of discretion, or not
19 otherwise in accordance with law.

20 8. The defendants having based their denial of the
21 application solely on the absence of the approval of the Yurok
22 Indians are deemed to have waived any other objections they
23 may have to the approval of the contract.

24 THEREFORE, IT IS HEREBY ORDERED THAT within ten days
25 following entry of this Order the defendants shall approve the
26 proposed contract with the Hoopa Valley Tribe, as requested in
27 the plaintiff's application dated March 31, 1981, and the
28 defendants are further ordered and directed promptly to fund
29 that contract and fully to perform its obligations under that con-
30 tract in order fully to carry out stream restoration of the Trinity River
31 and its tributaries on the Hoopa Valley Reservation as quickly as is
32 practicable under the circumstances.

IT IS SO ORDERED this 4th day of August, 1981.

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MARILYN HALL PATEL
MARILYN HALL PATEL
United States District Court Judge