

10-17803/10-17878

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**BIG LAGOON RANCHERIA, a Federally  
Recognized Indian Tribe,**

Plaintiff and Appellee/Cross-  
Appellant,

v.

**STATE OF CALIFORNIA,**

Defendant and  
Appellant/Cross-Appellee.

On Appeal from the United States District Court  
for the Northern District of California

No. CV 09-1471 CW (JCS)

Hon. Claudia Wilken, District Judge

**APPELLANT/CROSS-APPELLEE STATE OF  
CALIFORNIA'S EXCERPTS OF RECORD,  
VOLUME III**

KAMALA D. HARRIS

Attorney General of California

SARA J. DRAKE

Senior Assistant Attorney General

RANDALL A. PINAL

Deputy Attorney General

State Bar No. 192199

110 West A Street, Suite 1100

San Diego, CA 92101

P.O. Box 85266

San Diego, CA 92186-5266

Telephone: (619) 645-3075

Fax: (619) 645-2012

Email: Randy.Pinal@doj.ca.gov

*Attorneys for Appellant/Cross-Appellee*

*State of California*

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# Exhibit KK

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 SARA J. DRAKE  
 Acting Senior Assistant Attorney General  
 3 RANDALL A. PINAL  
 Deputy Attorney General  
 4 State Bar No. 192199  
 110 West A Street, Suite 1100  
 5 San Diego, CA 92101  
 P.O. Box 85266  
 6 San Diego, CA 92186-5266  
 Telephone: (619) 645-3075  
 7 Fax: (619) 645-2012  
 E-mail: Randy.Pinal@doj.ca.gov  
 8 Attorneys for Defendant State of California

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 OAKLAND DIVISION

14 **BIG LAGOON RANCHERIA, a Federally**  
**Recognized Indian Tribe,**  
 15  
 Plaintiff,  
 16  
 v.  
 17  
 18 **STATE OF CALIFORNIA,**  
 Defendant.  
 19

CV 09-1471 CW (JCS)

**DECLARATION OF RANDALL A.  
 PINAL IN SUPPORT OF DEFENDANT'S  
 MOTION CONTINUE FACT  
 DISCOVERY COMPLETION DATE**

Date: April 8, 2010  
 Time: 2 p.m.  
 Courtroom: 2  
 Judge: The Honorable Claudia Wilken  
 Trial Date: n/a  
 Action Filed: April 3, 2009

22 I, Randall A. Pinal, declare as follows:

23 1. I am an attorney at law duly admitted to practice before this Court and the courts of  
 24 the State of California. I am a Deputy Attorney General employed by the California Attorney  
 25 General's Office, and I represent Defendant State of California (State) in the above-entitled  
 26 matter. I make this declaration of my own personal knowledge, and, if called as a witness, I  
 27 could and would testify competently thereto.

1           2. Attached as **Exhibit A** is a true and correct copy of a subpoena duces tecum served  
2 on the United States Department of the Interior, Bureau of Indian Affairs (BIA) Pacific Regional  
3 Office on December 18, 2009.

4           3. Attached as **Exhibit B** is a true and correct copy of a subpoena duces tecum served on  
5 the BIA Northern California Agency on December 18, 2009.

6           4. Attached as **Exhibit C** is a true and correct copy of a subpoena duces tecum served  
7 on the United States Department of the Interior, Assistant Secretary—Indian Affairs (Assistant  
8 Secretary) on December 22, 2009.

9           5. The subpoenas in Exhibits A through C are identical and seek documents concerning  
10 the State's affirmative defense in this case that Plaintiff Big Lagoon Rancheria (Big Lagoon or  
11 Tribe) is not entitled to injunctive relief compelling the State to negotiate a compact authorizing  
12 class III gaming on land taken in trust for Big Lagoon after October 17, 1988, because Big  
13 Lagoon is not eligible to be a beneficiary of a trust conveyance pursuant to the Indian  
14 Reorganization Act, 25 U.S.C. § 465 (IRA).

15           6. Responses to the subpoenas in Exhibits A through C were due by January 8, 2010, far  
16 enough in advance to allow the State to review the documents and conduct any necessary  
17 depositions before February 26, 2010.

18           7. At minimum, the State intends to depose a person most knowledgeable from Big  
19 Lagoon concerning the Tribe's history as it relates to the State's affirmative defense described in  
20 paragraph 5 above. Other deponents will be identified once the State receives and reviews  
21 documents identified in the subpoenas in Exhibits A through C.

22           8. To date, the State has not received any objections or documents in response to the  
23 subpoenas in Exhibits A through C.

24           9. Having received no documents by the response deadline, I twice called the Assistant  
25 Secretary's Office and left voicemails for Sequoyah Simermeyer on January 29, 2010, and  
26 February 5, 2010. Jim Porter, United States Department of Interior, Solicitor's Office, Division  
27 of Indian Affairs, previously advised me that Mr. Simermeyer was the appropriate contact in the  
28

1 Assistant Secretary's Office for document subpoenas. The purpose of my calls was to inquire  
2 about the Assistant Secretary's efforts to comply with the subpoena.

3 10. Attached as **Exhibit D** is a true and correct copy of a letter I faxed to the Assistant  
4 Secretary on February 19, 2010.

5 11. On February 26, 2010, Mr. Porter responded by e-mail to the letter I faxed to the  
6 Assistant Secretary in Exhibit D. Attached as **Exhibit E** is a true and correct copy of the e-mail I  
7 received from Mr. Porter. This is the first response I received from the Assistant Secretary to the  
8 subpoena in Exhibit C.

9 12. On February 26, 2010, I left a voicemail with Mr. Porter to ascertain when the State  
10 may expect to receive the documents identified in the subpoena in Exhibit C.

11 13. After repeated inquiries into the status of the BIA's response to the subpoenas in  
12 Exhibits A and B, Karen Koch, Assistant Regional Solicitor for the Department of the Interior,  
13 telephoned me to discuss the subpoenas for the first time on January 21, 2010.

14 14. As a courtesy, the State extended the date for the BIA Pacific Regional Office and  
15 Northern California Agency to respond to the subpoenas to January 29, 2010. Attached as  
16 **Exhibit F** is a true and correct copy of a letter I wrote to Ms. Koch concerning our discussion  
17 about the subpoenas on January 21, 2010.

18 15. On January 28, 2010, Ms. Koch asked the State to withdraw its subpoenas because  
19 the Assistant Secretary had ordered the BIA Pacific Regional Director to make a determination  
20 concerning Big Lagoon's eligibility to have land taken into trust for its benefit under the IRA.  
21 Attached as **Exhibit G** is a true and correct copy of an e-mail chain between me and Ms. Koch  
22 concerning the BIA's request for the State to withdraw the subpoenas in Exhibits A and B.

23 16. On February 5, 2010, the State declined to withdraw the subpoenas in Exhibits A and  
24 B. (See Exhibit G.)

25 17. I called Ms. Koch again on February 10, 2010, to discuss when the BIA expected to  
26 comply with the subpoenas in Exhibits A and B. At Ms. Koch's request, the State narrowed the  
27 scope of its subpoenas in Exhibits A and B. Attached as **Exhibit H** is a true and correct copy of  
28

1 an e-mail chain between me and Ms. Koch concerning our discussion on February 10, 2010, and  
2 the State's narrowing of the scope of its subpoenas in Exhibits A and B.

3 18. To date, the BIA has not yet indicated when it expects to comply with the subpoena,  
4 and has expressed that some documents may be withheld as privileged, despite the State's  
5 possible argument that the BIA waived any objections by failing to timely respond to the  
6 subpoenas. (See Exhibit H.) Therefore, if and when the BIA complies with the subpoenas, the  
7 State may be required to take further action to enforce the subpoenas, depending upon the  
8 response.

9 19. Attached as **Exhibit I** is a true and correct copy of a Notice of Subpoenas Duces  
10 Tecum served upon Big Lagoon on December 16, 2009.

11 20. Attached as **Exhibit J** is a true and correct copy of Big Lagoon's Response to the  
12 State's First Set of Interrogatories. In response to Interrogatories five through thirteen, Big  
13 Lagoon stated that "documents sought by Defendant pursuant to subpoenas duces tecum directed  
14 to the [BIA] Pacific Regional Office and Northern California Agency should contain additional  
15 information from which the answer to this interrogatory may be discovered or ascertained."

16 I declare under penalty of perjury of the laws of the United States of America that the  
17 foregoing is true and correct, and that this declaration was executed on February 26, 2010, in San  
18 Diego, California.

19  
20 s/Randall A. Pinal  
21 RANDALL A. PINAL  
22 Deputy Attorney General

23 SA2009309375  
24 80436110.doc

# Exhibit KK-A



# Exhibit A

AOSS (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

EASTERN

DISTRICT OF

CALIFORNIA

BIG LAGOON RANCHERIA

**SUBPOENA IN A CIVIL CASE**

V.

STATE OF CALIFORNIA

Case Number:<sup>1</sup> Misc.

N.D. Cal. No. CV-09-1471

TO: Custodian of Records (Attn: Dale Risling)  
Pacific Regional Office  
Bureau of Indian Affairs  
United States Department of the Interior

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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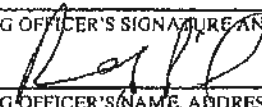
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See Attachment.

PLACE California Attorney General's Office, 1300 I Street, 15h Floor, Sacramento, CA, 95814, Attn: Linda Thorpe	DATE AND TIME 1/8/2010 10:00 am
---	------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) 	DATE 12/16/2009
--	--------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Randall A. Pinal, 110 West A Street, Suite 1100, San Diego, CA, 92101, (619) 645-3075

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_ DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within its limits provided by clause (ii) of subparagraph (c)(3)(A).

### ATTACHMENT

Pursuant to Federal Rule of Civil Procedure 45, the State of California, defendant in *Big Lagoon Rancheria v. State of California*, U.S. District Court, Northern District of California, No. CV-09-1471-CW, hereby commands the custodian of records for the United States Department of the Interior, Bureau of Indian Affairs, Pacific Regional Office (BIA Pacific Region) to produce for inspection and copying the items specifically listed below that are in its possession, custody or control. The production of said items for inspection and copying shall take place at 10:00 a.m. on January 8, 2010, at the California Attorney General's Office, 1300 I Street, 15th Floor, Sacramento, California, 95814. Alternatively, on or before the date and time indicated above, the custodian of records may serve legible photocopies of the responsive items on the State's counsel, provided that the BIA Pacific Region retains the originals or copies from which such reproduction was made until the final disposition of this action.

The production shall be pursuant to Federal Rule of Civil Procedure 45, and in accordance with the definitions set forth below.

### DEFINITIONS

1. "9 ACRES" shall mean the real property acquired by the United States on July 10, 1918, for the right of use and occupancy of Jim "Lagoon" Charley and his family, and such other Indians as the Secretary of Interior may see fit to settle on the tract.

2. "11 ACRES" shall mean the real property acquired by the United States on July 20, 1994, to be held in trust for the BIG LAGOON RANCHERIA, more particularly described in the records of Humboldt County, California as Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township. EXCEPTING THEREFROM that portion thereof, described as follows:

BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running then Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon; thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13; thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

3. "BLA" shall mean the Department of the Interior, Bureau of Indian Affairs.

4. "BIG LAGOON RANCHERIA" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Big Lagoon Rancheria of Smith River Indians, or the Big Lagoon Rancheria.

5. "CALIFORNIA RANCHERIA ACT" shall mean the California Rancheria Act, Pub.L. No. 85-671, 72 Stat. 619 (1958) (as amended by Pub.L. No. 88-419, 78 Stat. 390 (1964)).

6. "DOCUMENT" shall mean original (unless otherwise indicated) or duplicate writings, recordings, and/or photographs as defined in Federal Rule of Evidence 1001, and further includes, without limitation, any handwriting, typewriting, printing, photostating, photographing and any other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, images, sounds, or symbols, or combinations of them. It includes, without limitation, notes, memoranda, letters, reports, telegrams, telexes, publications, contracts, summaries, analyses, compilations, tabulations, studies, transcripts, and recordings (including, without limitation, electronic recordings on audiotape, videotape, computer disks, hard drives, flash drives or other electronic media storage devices, internal memory, magnetic tape, CD-ROM, electronic mail/messages, and attachments thereto). It further includes, without limitation, all file copies, all other nonconforming copies, no matter how prepared (therefore including electronic nonconforming copies), and all draft

proposals in connection with such document, whether used or not. It further includes the files, folders, notebooks, and/or binders in which any such document is maintained.

7. "LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES" shall mean the BIA's list of "Indian Tribal Entities That Have a Government-to-government Relationship with the United States," 44 Fed.Reg. 7235 (Feb. 6, 1979), and each list of federally recognized Indian tribes subsequently published by the BIA in the Federal Register, including, without limitation, each list of "Indian Entities Recognized and Eligible to Receive Services from the United States," as published in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

8. "OCCUPY" shall mean to use or reside in or on.

9. "PERTAINING TO" shall mean in whole or in part consisting, containing, concerning, embodying, identifying, stating, consisting of, relating to, referring to, dealing with, responding to, reflecting, supporting, connected with, commenting on, discussing, showing, describing, mentioning, analyzing, evidencing, or having any logical or factual connection with the matter referred to.

10. "YUOK TRIBE" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Yurok Tribe of the Hoopa Valley Reservation, or the Yurok Tribe of the Yurok Reservation.

11. All references to the singular include the plural, and all references to the plural include the singular. All references to the masculine gender include the feminine and neuter genders and vice versa.

12. Each word used in these definitions and demands has the meaning ascribed to it in the Random House Webster's College Dictionary (1995), unless otherwise herein defined.

**DOCUMENTS TO BE PRODUCED**

Demand for Production No. 1:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 2:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 3:

Each DOCUMENT PERTAINING TO the lincal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 4:

Each DOCUMENT PERTAINING TO the lincal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 5:

Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.

Demand for Production No. 6:

Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 7:

Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 8:

Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 9:

Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.

Demand for Production No. 10:

Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.

Demand for Production No. 11:

Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.



Demand for Production No. 12:

Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUROK TRIBE.

Demand for Production No. 13:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

Demand for Production No. 14:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 15:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 16:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 17:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

Demand for Production No. 18:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 19:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 20:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 21:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

Demand for Production No. 22:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 23:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 24:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 25:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe.

Demand for Production No. 26:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 27:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 28:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 29:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.

Demand for Production No. 30:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 31:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 32:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 33:

Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

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RANDALL A. PINAL, ESQ. (SBN 192199)  
OFFICE ATTORNEY GENERAL (SAN DIEGO)  
110 WEST A STREET, SUITE 1100, CONT# 09-8485  
SAN DIEGO CA 92101  
619-645-2001  
Attorney for: STATE OF CALIFORNIA

Ref. No. : 0614013-01  
Atty. File No.: 12104428SA2009309375

UNITED STATES DISTRICT COURT, NO. DISTRICT OF CA  
NORTHERN JUDICIAL DISTRICT

PLAINTIFF : BIG LAGOON RANCHERIA  
DEFENDANT : STATE OF CALIFORNIA

Case No.: CV-09-1471  
PROOF OF SERVICE

Hearing date : January 8, 2010 Time :10:00 AM Dept./Div. : .

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the LETTER DATED DECEMBER 18, 2009; SUBPOENA IN A CIVIL CASE
3. a. Party served : CUSTODIAN OF RECORDS (ATTN: DALE RISLING) PACIFIC REGIONAL OFFICE  
BUREAU OF INDIAN AFFAIRS UNITED STATES DEPARTMENT OF THE INTERIOR  
b. Person served : DALE RISLING, (AUTHORIZED AGENT FOR SERVICE)
4. Address where the party was served 2800 COTTAGE WAY  
SACRAMENTO, CA 95825 (Business)
5. I served the party  
a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on December 18, 2009 (2) at: 03:10 PM
6. Witness fees were not demanded and were not paid.
7. Person who served papers  
a. JOHN D. HOUSTON  
b. KNOX ATTORNEY SERVICE, INC.  
2250 Fourth Avenue  
San Diego, California 92101  
c. 619-233-9700  
d. Fee for service: \$117.75  
e. I am:  
(3) a registered California process server  
(i) an independent contractor  
(ii) Registration No.: 508  
(iii) County: YOLO, CA

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 22, 2009

Signature:   
JOHN D. HOUSTON

# Exhibit KK-B

# Exhibit B

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
UNITED STATES DISTRICT COURT

NORTHERN

DISTRICT OF

CALIFORNIA

BIG LAGOON RANCHERIA

SUBPOENA IN A CIVIL CASE

V.

STATE OF CALIFORNIA

Case Number: CV 09-1471 CW

TO: Custodian of Records  
Northern California Agency  
Bureau of Indian Affairs  
United States Department of the Interior

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------


YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See Attachment.

PLACE California Attorney General's Office, 1300 I Street, 15h Floor, Sacramento, CA, 95814, Attn: Linda Thorpe	DATE AND TIME 1/8/2010 10:00 am
---	------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) 	DATE 12/16/2009
--	--------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Randall A. Pinal, 110 West A Street, Suite 1100, San Diego, CA, 92101, (619) 645-3075
---

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

If action is pending in district other than district of issuance, state district under case number.

Exhibit B - 000015

ER-317



**PROOF OF SERVICE**

DATE	PLACE
<b>SERVED</b>	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on	DATE	SIGNATURE OF SERVER
		ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

## ATTACHMENT

Pursuant to Federal Rule of Civil Procedure 45, the State of California, defendant in *Big Lagoon Rancheria v. State of California*, U.S. District Court, Northern District of California, No. CV-09-1471-CW, hereby commands the custodian of records for the United States Department of the Interior, Bureau of Indian Affairs, Northern California Agency (BIA Northern California Agency) to produce for inspection and copying the items specifically listed below that are in its possession, custody or control. The production of said items for inspection and copying shall take place at 10:00 a.m. on January 8, 2010, at the California Attorney General's Office, 1300 I Street, 15th Floor, Sacramento, California, 95814. Alternatively, on or before the date and time indicated above, the custodian of records may serve legible photocopies of the responsive items on the State's counsel, provided that the BIA Northern California Agency retains the originals or copies from which such reproduction was made until the final disposition of this action.

The production shall be pursuant to Federal Rule of Civil Procedure 45, and in accordance with the definitions set forth below.

### DEFINITIONS

1. "9 ACRES" shall mean the real property acquired by the United States on July 10, 1918, for the right of use and occupancy of Jim "Lagoon" Charley and his family, and such other Indians as the Secretary of Interior may see fit to settle on the tract.

2. "11 ACRES" shall mean the real property acquired by the United States on July 20, 1994, to be held in trust for the BIG LAGOON RANCHERIA, more particularly described in the records of Humboldt County, California as Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township. EXCEPTING THEREFROM that portion thereof, described as follows:

BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running then Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon; thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13; thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

3. "BIA" shall mean the Department of the Interior, Bureau of Indian Affairs.

4. "BIG LAGOON RANCHERIA" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Big Lagoon Rancheria of Smith River Indians, or the Big Lagoon Rancheria.

5. "CALIFORNIA RANCHERIA ACT" shall mean the California Rancheria Act, Pub.L. No. 85-671, 72 Stat. 619 (1958) (as amended by Pub.L. No. 88-419, 78 Stat. 390 (1964)).

6. "DOCUMENT" shall mean original (unless otherwise indicated) or duplicate writings, recordings, and/or photographs as defined in Federal Rule of Evidence 1001, and further includes, without limitation, any handwriting, typewriting, printing, photostating, photographing and any other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, images, sounds, or symbols, or combinations of them. It includes, without limitation, notes, memoranda, letters, reports, telegrams, telexes, publications, contracts, summaries, analyses, compilations, tabulations, studies, transcripts, and recordings (including, without limitation, electronic recordings on audiotape, videotape, computer disks, hard drives, flash drives or other electronic media storage devices, internal memory, magnetic tape, CD-ROM, electronic mail/messages, and attachments thereto). It further includes, without limitation, all file copies, all other nonconforming copies, no matter how prepared (therefore including electronic nonconforming copies), and all draft

proposals in connection with such document, whether used or not. It further includes the files, folders, notebooks, and/or binders in which any such document is maintained.

7. "LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES" shall mean the BIA's list of "Indian Tribal Entities That Have a Government-to-government Relationship with the United States," 44 Fed.Reg. 7235 (Feb. 6, 1979), and each list of federally recognized Indian tribes subsequently published by the BIA in the Federal Register, including, without limitation, each list of "Indian Entities Recognized and Eligible to Receive Services from the United States," as published in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

8. "OCCUPY" shall mean to use or reside in or on.

9. "PERTAINING TO" shall mean in whole or in part consisting, containing, concerning, embodying, identifying, stating, consisting of, relating to, referring to, dealing with, responding to, reflecting, supporting, connected with, commenting on, discussing, showing, describing, mentioning, analyzing, evidencing, or having any logical or factual connection with the matter referred to.

10. "YUROK TRIBE" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Yurok Tribe of the Hoopa Valley Reservation, or the Yurok Tribe of the Yurok Reservation.

11. All references to the singular include the plural, and all references to the plural include the singular. All references to the masculine gender include the feminine and neuter genders and vice versa.

12. Each word used in these definitions and demands has the meaning ascribed to it in the Random House Webster's College Dictionary (1995), unless otherwise herein defined.

**DOCUMENTS TO BE PRODUCED**

Demand for Production No. 1:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 2:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 3:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 4:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 5:

Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.

Demand for Production No. 6:

Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 7:

Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 8:

Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 9:

Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.

Demand for Production No. 10:

Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.

Demand for Production No. 11:

Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.

Demand for Production No. 12:

Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUOK TRIBE.

Demand for Production No. 13:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

Demand for Production No. 14:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 15:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 16:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 17:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

Demand for Production No. 18:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 19:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 20:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 21:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

Demand for Production No. 22:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 23:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.



Demand for Production No. 24:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 25:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe.

Demand for Production No. 26:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 27:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 28:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 29:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.

Demand for Production No. 30:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 31:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 32:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 33:

Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

SA2009309375  
80411449.doc

RANDALL A. PINAL, ESQ.  
OFFICE ATTORNEY GENERAL (SAN DIEGO)  
110 WEST A STREET, SUITE 1100, CONT# 09-8485  
SAN DIEGO CA 92101  
619-645-2001  
Attorney for: STATE OF CALIFORNIA

Ref. No. : 0614015-01  
Atty. File No.: 12104428SA2009309375

UNITED STATES DISTRICT COURT, NO. DISTRICT OF CA  
NORTHERN JUDICIAL DISTRICT

PLAINTIFF : BIG LAGOON RANCHERIA  
DEFENDANT : STATE OF CALIFORNIA

Case No.: CV 09-1471 CW  
PROOF OF SERVICE

Hearing date: January 8, 2010 Time: 10:00 AM Dept./Div.:

1. ~~At the time of service I was at least 18 years of age and not a party to this action.~~
2. I served copies of the LETTER DATED DECEMBER 16, 2009; SUBPOENA IN A CIVIL CASE
3. a. Party served : CUSTODIAN OF RECORDS NORTHERN CALIFORNIA AGENCY BUREAU OF INDIAN AFFAIRS UNITED STATE DEPARTMENT OF THE INTERIOR  
b. Person served : REBECCA WASSON, AUTHORIZED AGENT (AMER. INDIAN/F/55YRS/6'0"/180LBS/BLACK HR)
4. Address where the party was served 1900 CHURN CREEK ROAD SUITE 300 REDDING, CA 96002-0292 (Business)
5. I served the party  
a. by personal service. I personally delivered the documents listed in Item 2 to the party or person authorized to receive service of process for the party (1) on December 18, 2009 (2) at 02:00 PM
6. Witness fees were not demanded and were not paid.
7. Person who served papers  
a. DUANE SHOEMAKER  
b. KNOX ATTORNEY SERVICE, INC.  
2250 Fourth Avenue  
San Diego, California 92101  
c. 619-233-9700  
d. Fee for service: \$117.75  
e. I am:  
(3) a registered California process server  
(i) an independent contractor  
(ii) Registration No.: 152  
(iii) County: San Diego

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 22, 2009

Signature: \_\_\_\_\_

DUANE SHOEMAKER

# Exhibit KK-C

# Exhibit C

SAO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

**BIG LAGOON RANCHERIA**

**SUBPOENA IN A CIVIL CASE**

**V.**

**STATE OF CALIFORNIA**

Case Number:<sup>1</sup> Misc.  
N.D. Cal. No. CV-09-1471

TO: United States Department of the Interior  
Assistant Secretary of Indian Affairs  
Custodian of Records  
Attention: Sequoyah Simermeyer

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------


YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See Attachment.

PLACE Office of Governor Arnold Schwarzenegger, 134 Hall of the States, 444 North Capitol Street NW, Washington D.C., 20001	DATE AND TIME 1/8/2010 10:00 am
---	------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) 	DATE 12/16/2009
--	--------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Randall A. Pinal, 110 West A Street, Suite 1100, San Diego, CA, 92101, (619) 645-3075

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unwritten expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

### ATTACHMENT

Pursuant to Federal Rule of Civil Procedure 45, the State of California, defendant in *Big Lagoon Rancheria v. State of California*, U.S. District Court, Northern District of California, No. CV-09-1471-CW, hereby commands the custodian of records for the United States Department of the Interior, Assistant Secretary—Indian Affairs (Assistant Secretary) to produce for inspection and copying the items specifically listed below that are in his possession, custody or control. The production of said items for inspection and copying shall take place at 10:00 a.m. on January 8, 2010, at the office of Governor Arnold Schwarzenegger, 134 Hall of the States, 444 North Capitol Street NW, Washington D.C., 20001. Alternatively, on or before the date and time indicated above, the custodian of records may serve legible photocopies of the responsive items on the State's counsel, provided that the Assistant Secretary retains the originals or copies from which such reproduction was made until the final disposition of this action.

The production shall be pursuant to Federal Rule of Civil Procedure 45, and in accordance with the definitions set forth below.

### DEFINITIONS

1. "9 ACRES" shall mean the real property acquired by the United States on July 10, 1918, for the right of use and occupancy of Jim "Lagoon" Charley and his family, and such other Indians as the Secretary of Interior may see fit to settle on the tract.

2. "11 ACRES" shall mean the real property acquired by the United States on July 20, 1994, to be held in trust for the BIG LAGOON RANCHERIA, more particularly described in the records of Humboldt County, California as Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township. EXCEPTING THEREFROM that portion thereof, described as follows:



BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running then Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon; thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13; thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

3. "BIA" shall mean the Department of the Interior, Bureau of Indian Affairs.

4. "BIG LAGOON RANCHERIA" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Big Lagoon Rancheria of Smith River Indians, or the Big Lagoon Rancheria.

5. "CALIFORNIA RANCHERIA ACT" shall mean the California Rancheria Act, Pub.L. No. 85-671, 72 Stat. 619 (1958) (as amended by Pub.L. No. 88-419, 78 Stat. 390 (1964)).

6. "DOCUMENT" shall mean original (unless otherwise indicated) or duplicate writings, recordings, and/or photographs as defined in Federal Rule of Evidence 1001, and further includes, without limitation, any handwriting, typewriting, printing, photostatting, photographing and any other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, images, sounds, or symbols, or combinations of them. It includes, without limitation, notes, memoranda, letters, reports, telegrams, telexes, publications, contracts, summaries, analyses, compilations, tabulations, studies, transcripts, and recordings (including, without limitation, electronic recordings on audiotape, videotape, computer disks, hard drives, flash drives or other electronic media storage devices, internal memory, magnetic tape, CD-ROM, electronic mail/messages, and attachments thereto). It further includes, without limitation, all file copies, all other nonconforming copies, no matter how prepared (therefore including electronic nonconforming copies), and all draft

proposals in connection with such document, whether used or not. It further includes the files, folders, notebooks, and/or binders in which any such document is maintained.

7. "LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES" shall mean the BIA's list of "Indian Tribal Entities That Have a Government-to-government Relationship with the United States," 44 Fed.Reg. 7235 (Feb. 6, 1979), and each list of federally recognized Indian tribes subsequently published by the BIA in the Federal Register, including, without limitation, each list of "Indian Entities Recognized and Eligible to Receive Services from the United States," as published in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

8. "OCCUPY" shall mean to use or reside in or on.

9. "PERTAINING TO" shall mean in whole or in part consisting, containing, concerning, embodying, identifying, stating, consisting of, relating to, referring to, dealing with, responding to, reflecting, supporting, connected with, commenting on, discussing, showing, describing, mentioning, analyzing, evidencing, or having any logical or factual connection with the matter referred to.

10. "YUOK TRIBE" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Yurok Tribe of the Hoopa Valley Reservation, or the Yurok Tribe of the Yurok Reservation.

11. All references to the singular include the plural, and all references to the plural include the singular. All references to the masculine gender include the feminine and neuter genders and vice versa.

12. Each word used in these definitions and demands has the meaning ascribed to it in the Random House Webster's College Dictionary (1995), unless otherwise herein defined.

**DOCUMENTS TO BE PRODUCED**

Demand for Production No. 1:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 2:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 3:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 4:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 5:

Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.

Demand for Production No. 6:

Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 7:

Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 8:

Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 9:

Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.

Demand for Production No. 10:

Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.

Demand for Production No. 11:

Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.

Demand for Production No. 12:

Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUOK TRIBE.

Demand for Production No. 13:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

Demand for Production No. 14:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 15:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 16:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 17:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

Demand for Production No. 18:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 19:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 20:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 21:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

Demand for Production No. 22:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 23:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 24:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 25:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe,

Demand for Production No. 26:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 27:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 28:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 29:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.

Demand for Production No. 30:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 31:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 32:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 33:

Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

SA2009309375

80411420.doc



RANDALL A. PINAL, ESQ. (SBN 192199)  
OFFICE ATTORNEY GENERAL (SAN DIEGO)  
110 WEST A STREET, SUITE 1100, CONT# 09-8485  
SAN DIEGO CA 92101

619-645-2001  
Attorney for : STATE OF CALIFORNIA

Ref. No. : 0614011-01  
Atty. File No.: 12104428SA2009309375

UNITED STATES DISTRICT COURT, NO. DISTRICT OF CA  
NORTHERN JUDICIAL DISTRICT

PLAINTIFF : BIG LAGOON RANCHERIA  
DEFENDANT : STATE OF CALIFORNIA

Case No.: CV-09-1471  
PROOF OF SERVICE

Hearing date : January 8, 2010 Time :10:00 AM Dept./Div. : .

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the LETTER DATED DECEMBER 16, 2009; SUBPOENA IN A CIVIL CASE
3. a. Party served : UNITED STATES DEPARTMENT OF THE INTERIOR ASSISTANT SECRETARY OF INDIAN AFFAIRS CUSTODIAN OF RECORDS ATTENTION: SEQUOYAH SIMERMEYER  
b. Person served : ROBIN BREEDMAN  
(AUTHORIZED TO ACCEPT SERVICE)
4. Address where the party was served 1849 C STREET, NORTH WEST  
WASHINGTON, DC 20240 (Business)
5. I served the party  
a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on December 22, 2009 (2) at: 01:49 PM
6. Witness fees were not demanded and were not paid.
7. **Person who served papers**  
a. CHRISTIAN MILES  
b. KNOX ATTORNEY SERVICE, INC.  
2250 Fourth Avenue  
San Diego, California 92101  
c. 619-233-9700  
d. Fee for service: \$175.75  
e. I am:  
(3) a registered California process server  
(i) an independent contractor  
(ii) Registration No.: 152  
(iii) County: San Diego

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
SEE ATTACHED NOTARIZED AFFIDAVIT

Date: January 6, 2010

Signature: \_\_\_\_\_  
CHRISTIAN MILES

**AFFIDAVIT OF PROCESS SERVER**

**United States District Court**

**District Of Columbia**

**Big Lagoon Rancheria**

Attorney:

Plaintiff

Randall A. Pinal  
110 West A St., #1100  
San Diego, CA. 92101

vs.

**State of California**

Defendant

Case Number: Misc. N.D. Cal No. CV-09-1471

Court / Appearance Date: 01-08-2010  
Court Time: 10:00 am

Legal documents received by Knox Services on December 18th, 2009 at 2:15 PM to be served upon Custodian of Records, Assistant Secretary for Indian Affairs U.S. Department of the Interior at 1849 C St., NW, Washington, DC. 20240

I, Christian Miles, swear and affirm that on December 22nd, 2009 at 1:49 PM, I did the following:

Served Government Agency by delivering a conformed copy of this Letter dated December 16, 2009; Subpoena in a Civil Case, to Robin Friedman as Authorized Agent of the within named agency, to wit: U.S. Department of the Interior and informing that person of the contents of the documents.

**Description of Person Accepting Service:**

Sex: Male Age: 50 Height: 5'5 Weight: 160 Skin Color: White Hair Color: Black & Bald Glasses: Y

**Supplemental Data Appropriate to this Service:**

I declare under penalty of perjury that the foregoing information contained in this affidavit is true and correct and that I am a professional process server over the age of 18 and have no interest in the above legal matter.



Christian Miles  
Process Server

Knox Services  
2250 Fourth Avenue  
San Diego, CA 92101

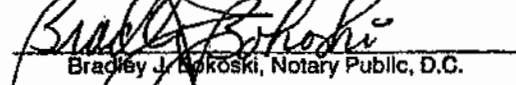
(619) 233-9700

Internal Job ID: 0000029374

Reference Number: 0614011

District of Columbia: SS  
Subscribed and Sworn to before me,

this 23<sup>rd</sup> day of DECEMBER, 2009



Bradley J. Bokoski, Notary Public, D.C.  
My commission expires October 14, 2014



# Exhibit KK-D

# Exhibit D



EDMUND G. BROWN JR.  
Attorney General

State of California  
DEPARTMENT OF JUSTICE

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

February 19, 2010

*Via facsimile (202) 208-5320 and  
FedEx Overnight Mail*

Custodian of Records  
Assistant Secretary—Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

RE: *Touhy* Request and Related Subpoena Duces Tecum  
Big Lagoon Rancheria v. State of California  
U.S. District Court, Northern District of California, Case No. CV 09-1471 CW (JCS)

Dear Custodian of Records:

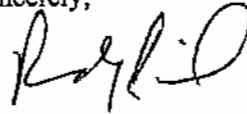
On December 22, 2009, the State of California served you with a *Touhy* request and related subpoena duces tecum for documents necessary for its defense in the above-entitled action. The subpoena commanded the Assistant Secretary—Indian Affairs to produce certain documents to the Office of Governor Arnold Schwarzenegger, 134 Hall of the States, 444 North Capitol Street, N.W., Washington, D.C., 20001 by January 8, 2010.

Having received no documents by the production deadline, I twice called the Assistant Secretary's Office and left voicemails for Sequoyah Simermeyer on January 29, 2010, and February 5, 2010. Jim Porter, Solicitor's Office, Division of Indian Affairs, previously advised me that Mr. Simermeyer was the appropriate contact in the Assistant Secretary's Office for document subpoenas. As indicated in my voicemails, the purpose of my calls was to inquire about the Assistant Secretary's efforts to comply with the subpoena. To date, we have received no response to the subpoena or my follow-up calls. This letter reiterates my previous inquiry as to whether the Assistant Secretary intends to voluntarily comply with the discovery subpoena.

Custodian of Records  
February 19, 2010  
Page 2

Please provide a written response to this letter by the close of business on February 22, 2010, indicating when you will properly serve the documents identified in the subpoena. While the State prefers to avoid judicial intervention on this matter, continued lack of any response will necessitate the State filing a motion to compel.

Sincerely,



RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:

SA2009309375  
80433870.doc

\*\*\*\*\*  
 \* P.01 \*  
 \* TRANSACTION REPORT \*  
 \* FEB-19-2010 FRI 12:33 PM \*  
 \* FOR: DEPT OF JUSTICE ATTYGEN 6198452012 \*  
 \* SEND \*  
 \* DATE START RECEIVER TX TIME(L) PAGES TYPE NOTE M# DP \*  
 \* FEB-19 12:32 PM 912022085320 27 (1) 3 FAX TX OK 982 \*  
 \* TOTAL : 27S PAGES: 3 \*  
 \*\*\*\*\*

EDMUND G. BROWN JR.  
 Attorney General

State of California  
 DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

**IMPORTANT/CONFIDENTIAL:** This communication is intended only for the use of the individual or entity to which it is addressed. This message contains information from the State of California's Attorney General's Office, which may be privileged, confidential, and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

DATE: February 19, 2010 TIME: 12:31 PM NO. OF PAGES: 3  
 (including Fax Cover Sheet)

TO:

NAME: Custodian of Records  
 OFFICE: Assistant Secretary—Indian Affairs  
 U.S. Department of the Interior  
 LOCATION: Washington, DC  
 FAX NO.: (202) 208-5320 PHONE NO.: (202) 208-7163

FROM:

NAME: Randall A. Pinal, Deputy Attorney General  
 OFFICE: Indian and Gaming Law Section  
 LOCATION: San Diego  
 FAX NO.: (619) 645-2012 PHONE NO.: (619) 645-3075

MESSAGE/INSTRUCTIONS

Re: Big Lagoon Rancheria v. State of California

Please see attached letter.

SA2009109375  
 20413912.doc

Case#01019-cv-0114771-CJM Document#688-72 Filed 02/26/10 Page 56 of 63

4351  
500

fedex.com 1.800.GoFedEx 1.800.463.3339

# FedEx US Airbill

Express

FedEx Tracking Number

8704 9461 9773

Sender's Copy

1 From Sender's name and address  
Date 1-19-10 Sender's FedEx Account Number 2548-1269-2  
Sender's Name Randy Pinal DAG Phone (619) 645-2001

Company ATTY GENERAL DEPT OF JUSTICE

Address 110 W A ST STE 225

City SAN DIEGO State CA ZIP 92101-3711

2 Your Internal Billing Reference 12104-428-9A2009309375

3 To Recipient's Name Custodian of Records Phone 202 208-7163

Company U.S. Dept. of the Interior  
Asst. Secretary - Indian Affairs

Address 1849 C ST, N.W.

City Washington State DC ZIP 20240

041202027



## 4a Express Package Service

FedEx Priority Overnight  
 FedEx Standard Overnight  
 FedEx 2Day  
 FedEx Express Saver

## 4b Express Freight Service

FedEx 1Day Freight  
 FedEx 2Day Freight  
 FedEx 3Day Freight

## 5 Packaging

FedEx Envelope  
 FedEx Pak  
 FedEx Box  
 FedEx Tube  
 Other

## 6 Special Handling and Delivery Signature Options

SATURDAY Delivery  
 No Signature Required  
 Direct Signature  
 Indirect Signature  
 Does this shipment contain dangerous goods?  
 No  Yes  
 Dry Ice  
 Cargo Aircraft Only

## 7 Payment

Bill to:  Sender  Recipient  Third Party  Credit Card  Cash/Check

Total Packages: 1 Total Weight: 0.00 Total Declared Value: 0.00

553

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

Exhibit D - 000045  
ER-349



# Exhibit KK-E

# Exhibit E

**Randy Pinal - Subpoena in Big Lagoon Rancheria**

---

**From:** "Porter, James" <James.Porter@sol.doi.gov>  
**To:** "randy.pinal@doj.ca.gov" <randy.pinal@doj.ca.gov>  
**Date:** 2/26/2010 7:39 AM  
**Subject:** Subpoena in Big Lagoon Rancheria

---

Hi Randy,

Yesterday, Mr. Simermeyer brought me your letter of February 19. I'm sorry that you haven't gotten meaningful response so far.

The Department will handle your subpoena duces tecum as if it were a FOIA request. It is possible that your subpoena is in the right hands already, but in order for me to efficiently pursue this matter, would it be possible for you to email me your document request? (You'll have to decide whether your file is too large to email).

Feel free to call me.

Best regards,

Jim

James W. Porter  
Attorney-Advisor  
Tribal Government and Alaska  
Division of Indian Affairs  
Office of the Solicitor, Department of Interior  
1849 C Street, N.W. Washington, D.C. 20240  
Mail stop 6518  
202-208-5349 (phone)  
202-208-4115 (fax)  
[James.Porter@sol.doi.gov](mailto:James.Porter@sol.doi.gov)

*This e-mail (including attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you receive this e-mail in error, please notify the sender immediately and destroy all copies. Thank you.*

# Exhibit KK-F

# Exhibit F



EDMUND G. BROWN JR.  
Attorney General

State of California  
DEPARTMENT OF JUSTICE

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Final@doj.ca.gov

January 22, 2010

Via facsimile (916) 978-5694 and overnight mail

Karen D. Koch, Assistant Regional Solicitor  
Office of the Regional Solicitor  
Pacific Southwest Region  
2800 Cottage Way, E-1712  
Sacramento, California 95825

RE: Subpoenas Duces Tecum and *Touhy* Requests  
Big Lagoon Rancheria v. State of California  
United States District Court, Northern District of California, Case No. CV 09-1471 CW

Dear Ms. Koch:

Thank you for talking with me yesterday about the subpoenas duces tecum that the State of California served upon the Bureau of Indian Affairs' (BIA) Pacific Regional Office (Regional Office) and Northern California Agency in the above-entitled matter. You indicated that although Ms. Carmen Facio of the Regional Office had provided you with a copy of the subpoena served upon the Regional Office, the Regional Solicitor's Office had not received copies of the subpoenas and related *Touhy* requests. As I indicated, and subsequently confirmed with our staff, we mailed courtesy copies of both subpoenas and *Touhy* requests to Mr. Daniel G. Shillito, Regional Solicitor on December 18, 2009, the same day the documents were personally served on staff at the Regional Office and Northern California Agency. None of our mailings were returned. In any event, as you requested, enclosed are courtesy copies of the subpoenas and *Touhy* requests.

Although responses to the subpoenas were due by January 8, 2010, and we received nothing, we are willing to continue the response date to January 29, 2010, a full six weeks after the subpoenas were served upon the Regional Office and Northern California Agency. By granting this extension, the State does not waive any claims or rights it may have to take appropriate action to enforce the subpoenas.

As indicated in the *Touhy* requests, we hope the BIA will grant the State a discretionary fee waiver pursuant to 43 C.F.R. § 2.20(a)(6). If that request is denied, the State can submit a separate request for a waiver of fees under 43 C.F.R. § 2.19. Also, as we discussed yesterday, I

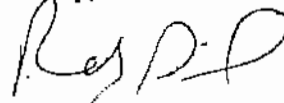
Karen D. Koch, Assistant Regional Solicitor  
January 22, 2010  
Page 2

am available to confer with you and BIA staff about the possibility of narrowing the scope of documents sought by the subpoenas. To further alleviate any potential burden on the BIA, we would be pleased to send a paralegal to your office to review the files and makes copies or have a copy service do the copying.

In addition, the Big Lagoon Rancheria has responded in formal discovery in this case that the documents sought in the State's subpoenas to the BIA should contain additional information from which the answers to several of our interrogatories may be derived or ascertained. Given that the Tribe has referred the State to information contained within the documents in the BIA's possession that are the subject of the State's subpoenas, we look forward to the BIA's production of the requested documents.

Thank you for your consideration. Please contact me if you have any questions or comments.

Sincerely,



RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:

Enclosures

SA2009309375  
80425201.doc



EDMUND G. BROWN, JR.  
Attorney General

State of California  
DEPARTMENT OF JUSTICE

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

December 16, 2009

Custodian of Records  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

RE: *Touhy* Request and Related Subpoena Duces Tecum  
Big Lagoon Rancheria v. State of California  
United States District Court, Northern District of California, Case No. CV 09-1471 CW

Dear Custodian of Records:

The State of California (State) is a defendant in *Big Lagoon Rancheria v. State of California*, United States District Court, Northern District of California, No. CV 09-1471 CW (*Big Lagoon*). In that case, plaintiff Big Lagoon Rancheria (Big Lagoon or Rancheria) asserts that the State has negotiated a tribal-state class III gaming compact in bad faith. Concurrent with this letter, the State has issued you a subpoena duces tecum for documents necessary for its defense in *Big Lagoon*. It is our understanding that before the Department of the Interior will comply with a subpoena in a case in which the United States is not a party, the subpoena must be accompanied by a written request in compliance with the Department's so-called *Touhy* regulations. By submitting this *Touhy* request, the State does not waive any claims or rights it may have to take appropriate action on the subpoena issued you concurrently with this letter.

I. *Touhy* Request

A. Identification of Documents (43 C.F.R. § 2.84(a))

The requested records are set forth in the accompanying subpoena duces tecum issued you with this letter. For your convenience, the documents sought by the subpoena are restated here (capitalized words and phrases are defined in the subpoena):



Custodian of Records  
December 16, 2009  
Page 2

1. Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.
2. Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.
3. Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.
4. Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.
5. Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.
6. Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.
7. Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.
8. Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.
9. Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.
10. Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.
11. Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.

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12. Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUROK TRIBE.

13. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

14. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

15. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

16. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

17. Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

18. Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

19. Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

20. Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

21. Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

22. Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

23. Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Custodian of Records  
December 16, 2009  
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24. Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

25. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe.

26. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

27. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

28. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

29. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.

30. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

31. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

32. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

33. Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

**B. Relevance (43 C.F.R. § 2.84(b))**

The documents are relevant to the State's defense in *Big Lagoon*. In that action, the State has asserted as a defense to Big Lagoon's allegations of bad faith negotiation the fact that it is not in the public interest to consider the land where Big Lagoon proposes to locate a Gaming Facility eligible lands within the meaning of the Indian Gaming Regulatory Act, 18 U.S.C. §§

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1166-1168, 25 U.S.C. §§ 2701-2721 (IGRA), because under the United States Supreme Court decision in *Carciari v. Salazar*, 129 S.Ct. 1058 (2009) the Secretary of the Interior lacked the authority to acquire that land in trust for Big Lagoon. The State is, therefore, entitled to conduct discovery into the status of the relationship between Big Lagoon and the United States at the time the Indian Reorganization Act, 25 U.S.C. § 461 et seq. was enacted as evidenced by documents involving the history of that relationship.

**C. Parties (43 C.F.R. § 2.84(c))**

In *Big Lagoon*, the State is the defendant and Big Lagoon is the plaintiff. Big Lagoon is the beneficiary of various programs and services provided by the Department's Bureau of Indian Affairs. The State does not participate in programs or receive services provided by the Department.

**D. Records are Unavailable Elsewhere (43 C.F.R. § 2.84(d))**

The State seeks official Department records, preferably authenticated, which no other source can provide. The State has requested in formal discovery that Big Lagoon produce similar documents; however, Big Lagoon can produce only those documents in its possession. There is no guarantee that the Department has provided Big Lagoon with all documents responsive to the subpoena, and, if it has, that Big Lagoon has retained, or will produce, without objection, the responsive documents.

**E. Compliance with 43 C.F.R. § 2.88 (43 C.F.R. § 2.84(g))**

This *Touhy* Request complies with 43 C.F.R. § 2.88 because, as indicated, the State is unable to obtain authenticated copies of the documents from another source. *See* 43 C.F.R. § 2.88(a). In this instance, record production is appropriate under Federal Rule of Civil Procedure 45 and the related subpoena duces tecum issued to you pursuant to that rule. *See id.* § 2.88(b). The State is unaware of any impediment that producing the requested documents would present to the Department conducting its official business. *See id.* § 2.88(c)(1). Document production would not require the Department to take sides in *Big Lagoon* or in any way render it partial in conducting business with Big Lagoon or the State and its officers and agents. *See id.* § 2.88(c)(2). The substance of Big Lagoon's action against the State does not involve the Department's mission or programs, and the State does not immediately foresee any need to include the Department in litigating that action, *see id.* § 2.88(c)(3); however, the Department is required to comply with the decisions of the United States Supreme Court and the State merely seeks documents related to that responsibility.

In addition, the parties in *Big Lagoon* are tribal and state governments. Therefore, there is no risk of spending the Department's time for a private purpose. *See id.* § 2.88(c)(4). The potential for similar requests is negligible as this request is being made for the limited purpose of allowing the State to present a defense in *Big Lagoon*, and it is based upon facts limited to Big Lagoon alone. *See id.* § 2.88(c)(5). At this point, the State is unaware whether any of the

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December 16, 2009  
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requested documents include privileged or protected matters as none have been identified or asserted. *See id.* § 2.88(c)(6). The State is willing to discuss these matters with the Department should the need arise. Last, the State is unaware of any circumstances under which producing the requested documents would impose an undue burden on the Department, *see id.* § 2.88(c)(7); however, the State remains willing to discuss such concerns should they arise.

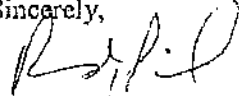
## II. Costs

If the costs related to processing this *Touhy* Request exceed \$30, *see* 43 C.F.R. § 2.16(b)(2) & Appendix C to Part 2, the State requests a discretionary fee waiver pursuant to 43 C.F.R. § 2.20(a)(6). If that request is denied, the State will submit a separate request for a waiver of fees under 43 C.F.R. § 2.19.

## III. Conclusion

As the Department's *Touhy* regulations are not intended to impede appropriate disclosure to the State, *see* 43 C.F.R. § 2.80(e), we look forward to your production of the requested documents. If additional information or clarification is necessary, please contact me directly at the telephone number, e-mail address or fax number listed above. Thank you for your consideration.

Sincerely,

  
RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:ra

cc. Dale Risling, Acting Regional Director  
Daniel G. Shillito, Regional Solicitor

SA2009309375  
80411029.doc

U.S. District Court (Rev. 12-06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

EASTERN

DISTRICT OF

CALIFORNIA

BIG LAGOON RANCHERIA

**SUBPOENA IN A CIVIL CASE**

V.

STATE OF CALIFORNIA

Case Number: Misc.

N.D. Cal. No. CV-09-1471

TO: Custodian of Records (Attn: Dale Rising)  
Pacific Regional Office  
Bureau of Indian Affairs  
United States Department of the Interior

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See Attachment.

PLACE

California Attorney General's Office, 1300 I Street, 15th Floor, Sacramento, CA, 95814, Attn: Linda Thorpe

DATE AND TIME

1/8/2010 10:00 am

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

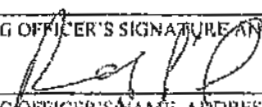
PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE



12/16/2009

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Randall A. Pinal, 110 West A Street, Suite 1100, San Diego, CA, 92101, (619) 645-3075

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

If action is pending in district other than district of issuance, state district under case number.

Exhibit F - 000057

**ER-363**

**PROOF OF SERVICE**

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on	DATE	SIGNATURE OF SERVER
		ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENA**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(3) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) **CONTEMPT.** Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

### ATTACHMENT

Pursuant to Federal Rule of Civil Procedure 45, the State of California, defendant in *Big Lagoon Rancheria v. State of California*, U.S. District Court, Northern District of California, No. CV-09-1471-CW, hereby commands the custodian of records for the United States Department of the Interior, Bureau of Indian Affairs, Pacific Regional Office (BIA Pacific Region) to produce for inspection and copying the items specifically listed below that are in its possession, custody or control. The production of said items for inspection and copying shall take place at 10:00 a.m. on January 8, 2010, at the California Attorney General's Office, 1300 I Street, 15th Floor, Sacramento, California, 95814. Alternatively, on or before the date and time indicated above, the custodian of records may serve legible photocopies of the responsive items on the State's counsel, provided that the BIA Pacific Region retains the originals or copies from which such reproduction was made until the final disposition of this action.

The production shall be pursuant to Federal Rule of Civil Procedure 45, and in accordance with the definitions set forth below.

### DEFINITIONS

1. "9 ACRES" shall mean the real property acquired by the United States on July 10, 1918, for the right of use and occupancy of Jim "Lagoon" Charley and his family, and such other Indians as the Secretary of Interior may see fit to settle on the tract.

2. "11 ACRES" shall mean the real property acquired by the United States on July 20, 1994, to be held in trust for the BIG LAGOON RANCHERIA, more particularly described in the records of Humboldt County, California as Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township. EXCEPTING THEREFROM that portion thereof, described as follows:



BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running then Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon; thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13; thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

3. "BIA" shall mean the Department of the Interior, Bureau of Indian Affairs.

4. "BIG LAGOON RANCHERIA" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Big Lagoon Rancheria of Smith River Indians, or the Big Lagoon Rancheria.

5. "CALIFORNIA RANCHERIA ACT" shall mean the California Rancheria Act, Pub.L. No. 85-671, 72 Stat. 619 (1958) (as amended by Pub.L. No. 88-419, 78 Stat. 390 (1964)).

6. "DOCUMENT" shall mean original (unless otherwise indicated) or duplicate writings, recordings, and/or photographs as defined in Federal Rule of Evidence 1001, and further includes, without limitation, any handwriting, typewriting, printing, photostating, photographing and any other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, images, sounds, or symbols, or combinations of them. It includes, without limitation, notes, memoranda, letters, reports, telegrams, telexes, publications, contracts, summaries, analyses, compilations, tabulations, studies, transcripts, and recordings (including, without limitation, electronic recordings on audiotape, videotape, computer disks, hard drives, flash drives or other electronic media storage devices, internal memory, magnetic tape, CD-ROM, electronic mail/messages, and attachments thereto). It further includes, without limitation, all file copies, all other nonconforming copies, no matter how prepared (therefore including electronic nonconforming copies), and all draft

proposals in connection with such document, whether used or not. It further includes the files, folders, notebooks, and/or binders in which any such document is maintained.

7. "LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES" shall mean the BIA's list of "Indian Tribal Entities That Have a Government-to-government Relationship with the United States," 44 Fed.Reg. 7235 (Feb. 6, 1979), and each list of federally recognized Indian tribes subsequently published by the BIA in the Federal Register, including, without limitation, each list of "Indian Entities Recognized and Eligible to Receive Services from the United States," as published in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

8. "OCCUPY" shall mean to use or reside in or on.

9. "PERTAINING TO" shall mean in whole or in part consisting, containing, concerning, embodying, identifying, stating, consisting of, relating to, referring to, dealing with, responding to, reflecting, supporting, connected with, commenting on, discussing, showing, describing, mentioning, analyzing, evidencing, or having any logical or factual connection with the matter referred to.

10. "YUROK TRIBE" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Yurok Tribe of the Hoopa Valley Reservation, or the Yurok Tribe of the Yurok Reservation.

11. All references to the singular include the plural, and all references to the plural include the singular. All references to the masculine gender include the feminine and neuter genders and vice versa.

12. Each word used in these definitions and demands has the meaning ascribed to it in the Random House Webster's College Dictionary (1995), unless otherwise herein defined.

DOCUMENTS TO BE PRODUCED

Demand for Production No. 1:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 2:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 3:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 4:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 5:

Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.

Demand for Production No. 6:

Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 7:

Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 8:

Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 9:

Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.

Demand for Production No. 10:

Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.

Demand for Production No. 11:

Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.

Demand for Production No. 12:

Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUOK TRIBE.

Demand for Production No. 13:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

Demand for Production No. 14:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 15:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 16:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 17:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

Demand for Production No. 18:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 19:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 20:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 21:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

Demand for Production No. 22:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 23:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 24:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 25:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe.

Demand for Production No. 26:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 27:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 28:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 29:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.

Demand for Production No. 30:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 31:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time an agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 32:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 33:

Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

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EDMUND G. BROWN JR.  
Attorney General

State of California  
DEPARTMENT OF JUSTICE

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

December 16, 2009

Custodian of Records  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Northern California Agency  
1900 Churn Creek Road, Suite 300  
Redding, California 96002-0292

RE: *Touhy* Request and Related Subpoena Duces Tecum  
Big Lagoon Rancheria v. State of California  
United States District Court, Northern District of California, Case No. CV 09-1471 CW

Dear Custodian of Records:

The State of California (State) is a defendant in *Big Lagoon Rancheria v. State of California*, United States District Court, Northern District of California, No. CV 09-1471 CW (*Big Lagoon*). In that case, plaintiff Big Lagoon Rancheria (Big Lagoon or Rancheria) asserts that the State has negotiated a tribal-state class III gaming compact in bad faith. Concurrent with this letter, the State has issued you a subpoena duces tecum for documents necessary for its defense in *Big Lagoon*. It is our understanding that before the Department of the Interior will comply with a subpoena in a case in which the United States is not a party, the subpoena must be accompanied by a written request in compliance with the Department's so-called *Touhy* regulations. By submitting this *Touhy* request, the State does not waive any claims or rights it may have to take appropriate action on the subpoena issued you concurrently with this letter.

I. *Touhy* Request

A. Identification of Documents (43 C.F.R. § 2.84(a))

The requested records are set forth in the accompanying subpoena duces tecum issued you with this letter. For your convenience, the documents sought by the subpoena are restated here (capitalized words and phrases are defined in the subpoena):

Custodian of Records  
December 16, 2009  
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1. Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.
2. Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.
3. Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.
4. Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.
5. Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.
6. Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.
7. Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.
8. Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.
9. Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.
10. Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.
11. Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.

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12. Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUROK TRIBE.

13. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

14. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

15. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

16. Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

17. Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

18. Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

19. Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

20. Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

21. Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

22. Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

23. Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

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24. Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

25. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe.

26. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

27. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

28. Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

29. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.

30. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

31. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

32. Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

33. Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

**B. Relevance (43 C.F.R. § 2.84(b))**

The documents are relevant to the State's defense in *Big Lagoon*. In that action, the State has asserted as a defense to Big Lagoon's allegations of bad faith negotiation the fact that it is not in the public interest to consider the land where Big Lagoon proposes to locate a Gaming Facility eligible lands within the meaning of the Indian Gaming Regulatory Act, 18 U.S.C. §§

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1166-1168, 25 U.S.C. §§ 2701-2721 (IGRA), because under the United States Supreme Court decision in *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009) the Secretary of the Interior lacked the authority to acquire that land in trust for Big Lagoon. The State is, therefore, entitled to conduct discovery into the status of the relationship between Big Lagoon and the United States at the time the Indian Reorganization Act, 25 U.S.C. § 461 et seq. was enacted as evidenced by documents involving the history of that relationship.

**C. Parties (43 C.F.R. § 2.84(c))**

In *Big Lagoon*, the State is the defendant and Big Lagoon is the plaintiff. Big Lagoon is the beneficiary of various programs and services provided by the Department's Bureau of Indian Affairs. The State does not participate in programs or receive services provided by the Department.

**D. Records are Unavailable Elsewhere (43 C.F.R. § 2.84(d))**

The State seeks official Department records, preferably authenticated, which no other source can provide. The State has requested in formal discovery that Big Lagoon produce similar documents; however, Big Lagoon can produce only those documents in its possession. There is no guarantee that the Department has provided Big Lagoon with all documents responsive to the subpoena, and, if it has, that Big Lagoon has retained, or will produce, without objection, the responsive documents.

**E. Compliance with 43 C.F.R. § 2.88 (43 C.F.R. § 2.84(g))**

This *Touhy* Request complies with 43 C.F.R. § 2.88 because, as indicated, the State is unable to obtain authenticated copies of the documents from another source. *See* 43 C.F.R. § 2.88(a). In this instance, record production is appropriate under Federal Rule of Civil Procedure 45 and the related subpoena duces tecum issued to you pursuant to that rule. *See id.* § 2.88(b). The State is unaware of any impediment that producing the requested documents would present to the Department conducting its official business. *See id.* § 2.88(c)(1). Document production would not require the Department to take sides in *Big Lagoon* or in any way render it partial in conducting business with Big Lagoon or the State and its officers and agents. *See id.* § 2.88(c)(2). The substance of Big Lagoon's action against the State does not involve the Department's mission or programs, and the State does not immediately foresee any need to include the Department in litigating that action, *see id.* § 2.88(c)(3); however, the Department is required to comply with the decisions of the United States Supreme Court and the State merely seeks documents related to that responsibility.

In addition, the parties in *Big Lagoon* are tribal and state governments. Therefore, there is no risk of spending the Department's time for a private purpose. *See id.* § 2.88(c)(4). The potential for similar requests is negligible as this request is being made for the limited purpose of allowing the State to present a defense in *Big Lagoon*, and it is based upon facts limited to Big Lagoon alone. *See id.* § 2.88(c)(5). At this point, the State is unaware whether any of the

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requested documents include privileged or protected matters as none have been identified or asserted. *See id.* § 2.88(c)(6). The State is willing to discuss these matters with the Department should the need arise. Last, the State is unaware of any circumstances under which producing the requested documents would impose an undue burden on the Department, *see id.* § 2.88(c)(7); however, the State remains willing to discuss such concerns should they arise.

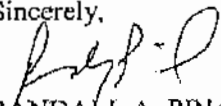
## II. Costs

If the costs related to processing this *Touhy* Request exceed \$30, *see* 43 C.F.R. § 2.16(b)(2) & Appendix C to Part 2, the State requests a discretionary fee waiver pursuant to 43 C.F.R. § 2.20(a)(6). If that request is denied, the State will submit a separate request for a waiver of fees under 43 C.F.R. § 2.19.

## III. Conclusion

As the Department's *Touhy* regulations are not intended to impede appropriate disclosure to the State, *see* 43 C.F.R. § 2.80(e), we look forward to your production of the requested documents. If additional information or clarification is necessary, please contact me directly at the telephone number, e-mail address or fax number listed above. Thank you for your consideration.

Sincerely,

  
RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:ra

cc. Dale Risling, Acting Regional Director  
Daniel G. Shillito, Regional Solicitor

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AO 88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

NORTHERN

DISTRICT OF

CALIFORNIA

BIG LAGOON RANCHERIA

**SUBPOENA IN A CIVIL CASE**

V.

STATE OF CALIFORNIA

Case Number:<sup>1</sup> CV 09-1471 CW

TO: Custodian of Records  
 Northern California Agency  
 Bureau of Indian Affairs  
 United States Department of the Interior

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

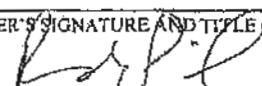
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See Attachment.

PLACE California Attorney General's Office, 1300 I Street, 15th Floor, Sacramento, CA, 95814, Attn: Linda Thorpe	DATE AND TIME 1/8/2010 10:00 am
---	------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	12/16/2009

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Randall A. Pinal, 110 West A Street, Suite 1100, San Diego, CA, 92101, (619) 645-3075

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE OF SERVER \_\_\_\_\_

ADDRESS OF SERVER \_\_\_\_\_

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an untrained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).



## ATTACHMENT

Pursuant to Federal Rule of Civil Procedure 45, the State of California, defendant in *Big Lagoon Rancheria v. State of California*, U.S. District Court, Northern District of California, No. CV-09-1471-CW, hereby commands the custodian of records for the United States Department of the Interior, Bureau of Indian Affairs, Northern California Agency (BIA Northern California Agency) to produce for inspection and copying the items specifically listed below that are in its possession, custody or control. The production of said items for inspection and copying shall take place at 10:00 a.m. on January 8, 2010, at the California Attorney General's Office, 1300 I Street, 15th Floor, Sacramento, California, 95814. Alternatively, on or before the date and time indicated above, the custodian of records may serve legible photocopies of the responsive items on the State's counsel, provided that the BIA Northern California Agency retains the originals or copies from which such reproduction was made until the final disposition of this action.

The production shall be pursuant to Federal Rule of Civil Procedure 45, and in accordance with the definitions set forth below.

### DEFINITIONS

1. "9 ACRES" shall mean the real property acquired by the United States on July 10, 1918, for the right of use and occupancy of Jim "Lagoon" Charley and his family, and such other Indians as the Secretary of Interior may see fit to settle on the tract.

2. "11 ACRES" shall mean the real property acquired by the United States on July 20, 1994, to be held in trust for the BIG LAGOON RANCHERIA, more particularly described in the records of Humboldt County, California as Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township. EXCEPTING THEREFROM that portion thereof, described as follows:

BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running then Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon; thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13; thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

3. "BIA" shall mean the Department of the Interior, Bureau of Indian Affairs.

4. "BIG LAGOON RANCHERIA" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Big Lagoon Rancheria of Smith River Indians, or the Big Lagoon Rancheria.

5. "CALIFORNIA RANCHERIA ACT" shall mean the California Rancheria Act, Pub.L. No. 85-671, 72 Stat. 619 (1958) (as amended by Pub.L. No. 88-419, 78 Stat. 390 (1964)).

6. "DOCUMENT" shall mean original (unless otherwise indicated) or duplicate writings, recordings, and/or photographs as defined in Federal Rule of Evidence 1001, and further includes, without limitation, any handwriting, typewriting, printing, photostating, photographing and any other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, images, sounds, or symbols, or combinations of them. It includes, without limitation, notes, memoranda, letters, reports, telegrams, telexes, publications, contracts, summaries, analyses, compilations, tabulations, studies, transcripts, and recordings (including, without limitation, electronic recordings on audiotape, videotape, computer disks, hard drives, flash drives or other electronic media storage devices, internal memory, magnetic tape, CD-ROM, electronic mail/messages, and attachments thereto). It further includes, without limitation, all file copies, all other nonconforming copies, no matter how prepared (therefore including electronic nonconforming copies), and all draft

proposals in connection with such document, whether used or not. It further includes the files, folders, notebooks, and/or binders in which any such document is maintained.

7. "LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES" shall mean the BIA's list of "Indian Tribal Entities That Have a Government-to-government Relationship with the United States," 44 Fed.Reg. 7235 (Feb. 6, 1979), and each list of federally recognized Indian tribes subsequently published by the BIA in the Federal Register, including, without limitation, each list of "Indian Entities Recognized and Eligible to Receive Services from the United States," as published in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

8. "OCCUPY" shall mean to use or reside in or on.

9. "PERTAINING TO" shall mean in whole or in part consisting, containing, concerning, embodying, identifying, stating, consisting of, relating to, referring to, dealing with, responding to, reflecting, supporting, connected with, commenting on, discussing, showing, describing, mentioning, analyzing, evidencing, or having any logical or factual connection with the matter referred to.

10. "YUROK TRIBE" shall mean the Indian tribe identified on the BIA's LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES as the Yurok Tribe of the Hoopa Valley Reservation, or the Yurok Tribe of the Yurok Reservation.

11. All references to the singular include the plural, and all references to the plural include the singular. All references to the masculine gender include the feminine and neuter genders and vice versa.

12. Each word used in these definitions and demands has the meaning ascribed to it in the Random House Webster's College Dictionary (1995), unless otherwise herein defined.

DOCUMENTS TO BE PRODUCED

Demand for Production No. 1:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 2:

Each DOCUMENT PERTAINING TO any agency of the United States authorizing any person to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 3:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 9 ACRES from January 1, 1918, to the date of this demand for production.

Demand for Production No. 4:

Each DOCUMENT PERTAINING TO the lineal descendants of each person authorized by any agency of the United States to OCCUPY the 11 ACRES from July 20, 1994, to the date of this demand for production.

Demand for Production No. 5:

Each DOCUMENT PERTAINING TO BIA's placement of BIG LAGOON RANCHERIA on the LIST OF FEDERALLY RECOGNIZED INDIAN TRIBES.

Demand for Production No. 6:

Each DOCUMENT PERTAINING TO the termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 7:

Each DOCUMENT PERTAINING TO the distributees of BIG LAGOON RANCHERIA'S assets upon termination of BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 8:

Each DOCUMENT PERTAINING TO the BIA's decision to classify BIG LAGOON RANCHERIA as a federally recognized Indian tribe or tribal entity entitled to receive services from the United States after such status had been terminated pursuant to the CALIFORNIA RANCHERIA ACT.

Demand for Production No. 9:

Each DOCUMENT PERTAINING TO the Hoopa-Yurok Settlement Act, Pub.L. No. 100-580, § 11, 102 Stat. 2935, 25 U.S.C. § 1300i-10, including, without limitation, the circumstances surrounding or leading to the enactment of the statute.

Demand for Production No. 10:

Each DOCUMENT PERTAINING TO the membership of BIG LAGOON RANCHERIA.

Demand for Production No. 11:

Each DOCUMENT PERTAINING TO a constitution for BIG LAGOON RANCHERIA.

Demand for Production No. 12:

Each DOCUMENT PERTAINING TO the relationship between BIG LAGOON RANCHERIA and the YUROK TRIBE.

Demand for Production No. 13:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and his status as a member of an Indian tribe.

Demand for Production No. 14:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 15:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 16:

Each DOCUMENT PERTAINING TO the person commonly known as Jim "Lagoon" Charley and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 17:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and her status as a member of an Indian tribe.

Demand for Production No. 18:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 19:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 20:

Each DOCUMENT PERTAINING TO the person known as Lila Williams and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 21:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and his status as a member of an Indian tribe.

Demand for Production No. 22:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 23:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 24:

Each DOCUMENT PERTAINING TO the person known as Tom Williams and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 25:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and her status as a member of an Indian tribe.

Demand for Production No. 26:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether the Indian tribe of which she was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 27:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 28:

Each DOCUMENT PERTAINING TO the person known as Beverly Moorehead and whether at any time any agency of the United States granted her, or any of her lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 29:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and his status as a member of an Indian tribe.



Demand for Production No. 30:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether the Indian tribe of which he was a member, if any, was under federal jurisdiction in 1934.

Demand for Production No. 31:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 9 ACRES.

Demand for Production No. 32:

Each DOCUMENT PERTAINING TO the person known as Ted Moorehead and whether at any time any agency of the United States granted him, or any of his lineal descendants, authority to OCCUPY the 11 ACRES.

Demand for Production No. 33:

Each DOCUMENT PERTAINING TO the BIA's understanding of the phrase "under Federal jurisdiction" as it is used in the Indian Reorganization Act, ch. 576, § 19, 48 Stat. 988, 25 U.S.C. § 479.

SA2009309375  
80411449.doc

TRANSACTION REPORT

P. 01

JAN-22-2010 FRI 04:53 PM

FOR: DEPT OF JUSTICE ATTYGEN 6196452012

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HILL LOCKYER  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

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DATE: January 22, 2010 TIME: 4:48 PM NO. OF PAGES: 37  
(Including Fax Cover Sheet)

TO:

NAME: Karen D. Koch, Assistant Regional Solicitor  
OFFICE: Office of the Regional Solicitor  
LOCATION: Sacramento  
FAX NO.: (916) 878-5694 PHONE NO.:

FROM:

NAME: Rosario Asensio, LS  
OFFICE: Office of the Attorney General  
LOCATION: San Diego  
FAX NO.: (618) 645-2012 PHONE NO.: (618) 645-2192

MESSAGE/INSTRUCTIONS

RE: Big Lagoon Rancheria v. State of California  
United States District Court, Northern District of California, Case No. CV 09-1471 CW

Attached: Subpoenas Duces Tecum and Touhy Requests

Case# 039-cv-01471-CW Document 18-1 Filed 02/22/10 Page 3 of 3

1600

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2 Your Internal Billing Reference 121044208A2009309575

3 To  
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 Company Office of the Regional Solicitor  
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# Exhibit KK-G

# Exhibit G

**Randy Pinal - RE: FW: Big Lagoon Rancheria litigation**

---

**From:** Randy Pinal  
**To:** Karen Koch  
**Date:** 2/5/2010 3:46 PM  
**Subject:** RE: FW: Big Lagoon Rancheria litigation  
**CC:** Sara Drake

---

Karen:

I apologize for the delayed response but the State will not withdraw its Touhy requests and subpoenas duces tecum issued to the BIA Northern California Agency and Pacific Regional Office in Big Lagoon v. State of California. As I indicated in our previous discussion, I would be more than happy to discuss with you or BIA staff any suggestions for modifying the requests.

Randy

>>> "Koch, Karen" <Karen.Koch@sol.doi.gov> 1/28/2010 2:49 PM >>>

Sure. Based on the direction from the Assistant Secretary regarding review of the Tribe's jurisdictional status, would you anticipate modifying or withdrawing your Touhy request and subpoena seeking BIA records for use in your litigation with the State? - K

---

**From:** Randy Pinal [mailto:Randy.Pinal@doj.ca.gov]  
**Sent:** Thursday, January 28, 2010 5:13 PM  
**To:** Koch, Karen  
**Subject:** Re: FW: Big Lagoon Rancheria litigation

Thank you.

>>> "Koch, Karen" <Karen.Koch@sol.doi.gov> 1/28/2010 2:10 PM >>>

Attached is the memorandum.

---

**From:** Koch, Karen  
**Sent:** Thursday, January 28, 2010 5:09 PM  
**To:** 'Randy.Pinal@doj.ca.gov'  
**Subject:** Big Lagoon Rancheria litigation

Randy,

Attached is a memorandum from the Assistant Secretary directing the BIA to request a remand from the IBIA of the October 2, 2009 decision to take land into trust for the Big Lagoon Rancheria. We will file a request for remand with the IBIA tomorrow. Please call me if you have any questions. - Karen

Karen D. Koch  
Assistant Regional Solicitor  
Pacific Southwest Regional Office  
916-978-5687 (fax: 5694)

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# Exhibit KK-H

# Exhibit H



**Randy Pinal - RE: Big Lagoon Rancheria v. State of California**

---

**From:** "Koch, Karen" <Karen.Koch@sol.doi.gov>  
**To:** 'Randy Pinal' <Randy.Pinal@doj.ca.gov>  
**Date:** 2/26/2010 12:00 PM  
**Subject:** RE: Big Lagoon Rancheria v. State of California  
**CC:** "Dutschke, Amy" <Amy.Dutschke@bia.gov>, "Facio, Carmen" <Carmen.Facio@bia.gov>, "Lincoln, Shirley" <Shirley.Lincoln@BIA.GOV>, "Akins, Virgil" <Virgil.Akins@bia.gov>, "Risling, Leonard" <Dale.Risling@bia.gov>

---

Hi Randy, I was out sick yesterday. I just forwarded your email and will respond after coordination with my clients. - K

---

**From:** Randy Pinal [mailto:Randy.Pinal@doj.ca.gov]  
**Sent:** Thursday, February 25, 2010 8:27 PM  
**To:** Koch, Karen  
**Subject:** RE: Big Lagoon Rancheria v. State of California

Karen:

Any word on the BIA's response to my February 11 e-mail? Currently, the discovery cutoff in the underlying action is tomorrow, February 26, 2010. The district court's local rules require motions to compel to be filed within seven days after discovery cutoff, which means I may have to file a motion to enforce the subpoenas issued to the BIA by March 5, 2010.

Randy

>>> "Koch, Karen" <Karen.Koch@sol.doi.gov> 2/11/2010 11:37 AM >>>

Sounds good. I will let you know what we come up with as soon as possible. - K

---

**From:** Randy Pinal [mailto:Randy.Pinal@doj.ca.gov]  
**Sent:** Thursday, February 11, 2010 2:35 PM  
**To:** Koch, Karen  
**Subject:** RE: Big Lagoon Rancheria v. State of California

Thank you, Karen. Because you indicate that you have forwarded my e-mail to your clients, I will not duplicate your efforts by also sending them a copy by facsimile.

Randy

>>> "Koch, Karen" <Karen.Koch@sol.doi.gov> 2/11/2010 11:29 AM >>>

Randy,

Thank you for your email, which I've forwarded to my clients in BIA, who are estimating the time that will be required to search and copy records relevant to the narrowed request. As we discussed, some of the requested records are privileged due to privacy concerns, so the requests and production will also have to be reviewed to determine whether documents must be withheld on those grounds.

Unfortunately, as we also discussed, due to numerous privacy concerns associated with searching and copying documents that may include private information concerning multiple individuals and tribes, we cannot reduce the time requirements associated with searching and copying by allowing a paralegal from your office to assist with this effort.

The Department will consider whether to grant your request for documents in light of the *Touhy* requirements at 43 CFR 2.88, and will particularly consider whether the time required for searching, copying, and reviewing may affect the BIA's ability to conduct official business unimpeded. The fact that you have narrowed your request will factor into this decision.

The Department will consider the State's request for a discretionary fee waiver once an assessment of the scope of searching, copying, and reviewing the records is completed, in light of your narrowed request, and will provide a response to your request as quickly as possible.

- Karen

---

**From:** Randy Pinal [mailto:Randy.Pinal@doj.ca.gov]  
**Sent:** Thursday, February 11, 2010 1:48 PM  
**To:** Koch, Karen  
**Cc:** Shillito, Daniel  
**Subject:** Big Lagoon Rancheria v. State of California

Karen:

Thank you for talking to me yesterday about the subpoenas duces tecum that the State served on the BIA Pacific Regional Office and Northern California Agency in Big Lagoon Rancheria v. State of California on December 18, 2009. This e-mail confirms that Document Request #9 in both subpoenas seeks documents that pertain only to the Special Considerations section of the Hoopa-Yurok Settlement Act codified at 25 U.S.C. § 1300i-10, and not the entire Act. The State can narrow the request further to include documents that pertain to 25 U.S.C. § 1300i-10, subdivision (b), and the option given to Big Lagoon Rancheria members to vote to merge with the Yurok Tribe.

With respect to the State's request for a fee waiver, you indicated BIA Pacific Regional Office staff have spent three hours preparing documents responsive to the subpoenas and that BIA is willing to waive fees for an hour of that time. Presumably, this waiver would be granted pursuant to 43 C.F.R. § 2.20(a)(6). As I indicated, however, due to the current economic climate the State is in the unfortunate position of having extremely limited financial resources at this time, making payment of fees in this instance problematic. Nonetheless, the requested documents are essential to the State's defense in the above-entitled lawsuit, which turns, in part, on the status of the United States' relationship with Big Lagoon when Congress enacted the Indian Reorganization Act in 1934. We also believe a fee waiver may be warranted under 43 C.F.R. § 2.19. Because we were able to narrow the scope of Document Request #9, and remain willing to work with the BIA to narrow the scope of any other requests and provide the assistance of our paralegal to help alleviate any potential burden on the BIA in responding to the subpoenas, we request BIA reconsider the discretionary fee waiver under 43 C.F.R. § 2.20(a)(6). If that request is denied, then please provide me with a fee estimate, which will help inform our decision whether to request a fee waiver under 43 C.F.R. § 2.19.

Please let me know if your understanding of our conversation is different, or if you have any other questions or comments. As I do not have e-mail addresses for the Regional Director of the Pacific Regional Office or the Superintendent of the Northern California Agency, I will copy them with this e-mail by facsimile. Thank you for your consideration.

Randy

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# Exhibit LL

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 SARA J. DRAKE  
 Acting Senior Assistant Attorney General  
 3 RANDALL A. PINAL  
 Deputy Attorney General  
 4 State Bar No. 192199  
 110 West A Street, Suite 1100  
 5 San Diego, CA 92101  
 P.O. Box 85266  
 6 San Diego, CA 92186-5266  
 Telephone: (619) 645-3075  
 7 Fax: (619) 645-2012  
 E-mail: Randy.Pinal@doj.ca.gov  
 8 *Attorneys for Defendant State of California*

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

12 **BIG LAGOON RANCHERIA, a Federally**  
 13 **Recognized Indian Tribe,**

14 Plaintiff,

15 v.

16 **STATE OF CALIFORNIA,**

17 Defendant.

CV 09-1471 CW (JCS)

**DECLARATION OF RANDALL A.  
 PINAL IN SUPPORT OF DEFENDANT'S  
 MOTION TO CONTINUE FACT  
 DISCOVERY COMPLETION DATE**

Date: March 17, 2010  
 Time: 9:30 a.m.  
 Courtroom: A, 15th Floor

Federal Building  
 450 Golden Gate Avenue  
 San Francisco, CA 94102

Judge: The Honorable Joseph C. Spero  
 Trial Date: n/a  
 Action Filed: April 3, 2009

22 I, Randall A. Pinal, declare as follows:

23 1. I am an attorney at law duly admitted to practice before this Court and the courts of  
 24 the State of California. I am a Deputy Attorney General employed by the California Attorney  
 25 General's Office, and I represent Defendant State of California (State) in the above-entitled  
 26 matter. I make this declaration of my own personal knowledge, and, if called as a witness, I  
 27 could and would testify competently thereto.

1           2.     On March 4, 2010, I received from the United States Department of the Interior,  
2 Bureau of Indian Affairs (BIA) Pacific Regional Office, documents that purport to respond to the  
3 subpoena duces tecum in this action that the State served on the BIA Pacific Regional on  
4 December 18, 2009.

5           3.     The documents produced by the BIA Pacific Regional Office are incomplete and I am  
6 reviewing them to determine whether any disputes that may arise between the State and the BIA  
7 Pacific Regional Office could be resolved informally, or if further action is necessary to enforce  
8 the subpoena issued to that office.

9           4.     Karen Koch, Assistant Regional Solicitor for the Department of the Interior,  
10 represents the BIA Pacific Regional Office and has requested additional information from the  
11 State as her client considers a further response to the State's subpoena. The State is preparing a  
12 response, which will be provided to Ms. Koch on or before March 17, 2010.

13           5.     To date, the State has not received documents from the BIA Northern California  
14 Agency or the United States Department of the Interior, Assistant Secretary—Indian Affairs that  
15 respond to the subpoenas duces tecum in this action that the State served on those offices on  
16 December 18, 2009, and December 22, 2009, respectively.

17           6.     Attached as **Exhibit K** is a true and correct copy of Plaintiff Big Lagoon Rancheria's  
18 (Big Lagoon) First Set of Requests for Production of Documents to the State, served on October  
19 28, 2009.

20           7.     Attached as **Exhibit L** is a true and correct copy of the State's Request for Production  
21 of Documents (Set One) Propounded to Big Lagoon, served on November 16, 2009.

22           8.     Attached as **Exhibit M** is a true and correct copy of the State's Interrogatories (Set  
23 One) Propounded to Big Lagoon, served on November 16, 2009.

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9. Attached as **Exhibit N** is a true and correct copy of the State's Request for Admissions (Set One) Propounded to Big Lagoon, served on November 16, 2009.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on March 10, 2010, in San Diego, California.

s/Randall A. Pinal  
RANDALL A. PINAL  
Deputy Attorney General

SA2009309375  
80439321.doc

# Exhibit MM





## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

IN REPLY REFER TO:  
**Real Estate Services**

MAR - 3 2010

### VIA FEDERAL EXPRESS

Randall A. Pinal  
Deputy Attorney General  
State of California  
Department of Justice  
110 West A Street, Suite 1100  
San Diego, California 92101

Dear Mr. Pinal:

In response to the State's Touhy Request, enclosed from our Real Estate Services Division are copies of the below-listed documents.

1. File No. 40142-1917 (313) pertaining to the purchase of the Big Lagoon Rancheria.
2. Deed to the United States of America dated July 10, 1918.
3. File pertaining to the fee-to-trust application by the Big Lagoon Rancheria for approximately 11.00 acres (APN 517-131-10).
4. June 14, 1948 notes re Big Lagoon occupants.
5. February 25, 1949 notes re Big Lagoon occupants.
6. Summary of notes from file circa 1951.
7. Memorandum dated September 23, 1954 re Big Lagoon trespass.
8. Memorandum dated January 29, 1955 re Big Lagoon trespass.
9. Memorandum dated June 30, 1967 re meeting with Mr. and Mrs. Thomas Williams and Mr. and Mrs. Ted Moorehead pertaining to development of distribution plan.
10. July 21, 1967 letter to Thomas Williams re need to request a distribution plan.
11. August 1, 1967 transmittal of July 28, 1967 request for a distribution plan.
12. September 18, 1967 Advertising Order w/attached Public Notice re intention to hold election on the Big Lagoon Rancheria distribution plan.
13. November 30, 1967 letter to Georgia Pacific Corporation re access road.
14. December 7, 1967 letter to Pacific Gas & Electric re extension of electrical services.
15. December 15, 1967 letter to the Commissioner transmitting the distribution plan.
16. Plan for the Distribution of the Assets of the Big Lagoon Rancheria approved January 3, 1968.
17. January 15, 1968 memorandum re posting of distribution plan.
18. January 16, 1968 letter from Georgia Pacific re access easement.
19. January 18, 1968 letter to Georgia Pacific.
20. January 18, 1968 memorandum to Area Director, subject: Big Lagoon Rancheria.
21. August 9, 1968 BIA memorandum to Area Real Property Officer.
22. August 13, 1968 memorandum to Area Director from Real Property Officer.
23. August 14, 1968 memorandum to Area Director from Area Road Engineer.
24. November 6, 1968 memo to File, subject: Big Lagoon Rancheria.

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ER-406

25. February 6, 1969 letter to Georgia Pacific re access road.
26. June 6, 1969 letter to California Indian Legal Services (CILS).
27. December 18, 1969 letter to BIA from CILS.
28. December 30, 1969 letter to CILS from Acting Area Director.
29. March 25, 1970 letter from California Indian Legal Services re need for services and condemnation of houses on Big Lagoon.
30. March 25, 1970 letter from California Indian Legal Services to Indian health Area Office re need for water and sanitation facilities.
31. April 3, 1970 letter to CILS requesting written request re withdrawal of request for termination.
32. April 7, 1970 letter from CILS to BIA clarifying request for water and sanitation.
33. May 1, 1970 letter to CILS from BIA re proceeding with services.
34. Letter from Theodore Moorehead and Thomas Williams received on June 12, 1970.
35. June 24, 1970 letter from Gerald Griffith re survey costs.
36. June 29, 1970 letter to Griffith & Associates w/approved purchase order for survey.
37. September 9, 1970 letter to Mr. and Mrs. Theodore Moorehead re BIA request for funds.
38. September 14, 1970 letter of the Commissioner of Indian Affairs from Sacramento Area Director requesting funds for Big Lagoon.
39. October 29, 1970 letter to BIA from CILS.
40. December 17, 1970 letter to CILS from BIA re boundary survey.
41. August 7, 1979 memorandum to Sacramento Area Director re Revocation of Distribution Plan for Big Lagoon.
42. Federal Register Notice dated August 1, 1979 -- Revocation of Plan for the Distribution of Assets and of Continuance of Federal Trust Relationship.
43. Mutual Termination of Lease and Lease No. 200273-95-20 (Virgil Moorehead).
44. Residential Lease No. 200321-98-48 (Virgil Moorehead).
45. Residential Lease No. 200355-07-57 (Roger Lara).
46. Aerial photo and Big Lagoon boundary map.

Other than the two approved residential leases, we have no record of other Rancheria occupants. We are aware that there are other Big Lagoon members residing on the existing trust lands; however, their occupation is by tribal land assignment which does not require Secretarial approval.

Questions regarding these enclosures may be directed to Camen Facio, Realty Officer, at (916) 978-6062.

Sincerely,

  
Acting Regional Director

Enclosures

cc: Karen Kochr, Asst. Regional Solicitor w/o enclosures  
Chairman, Big Lagoon Rancheria w/o enclosures  
Irene Gutierrez, Baker & McKenzie, LLP w/enclosures (for Big Lagoon)

ER-407

47 |

52

**FedEx** US Airbill  
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**0215**

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**2 Your Internal Billing Reference** J00420 R6C40

**3 To**  
Recipient's Name Randall A. Pinal Phone 519 645-3075

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 **FedEx 2Day** Second business day. Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  **FedEx Express Saver** Third business day. Secondary Delivery NOT available.

**4b Express Freight Service** \*\* To most locations. **Packages over 150 lbs.**

**FedEx 1Day Freight** Next business day. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  **FedEx 2Day Freight** Second business day. Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  **FedEx 3Day Freight** Third business day. Saturday Delivery NOT available.

**5 Packaging** \* Declared value (each 500)

FedEx Envelope\*  FedEx Pak\*  **FedEx Box**  FedEx Tube  Other

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 **No Signature Required** Package may be left without obtaining a signature for delivery.  **Direct Signature** Someone at recipient's address may sign for delivery. Fee applies.  **Indirect Signature** If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

**Does this shipment contain dangerous goods?**

**No**  **Yes** As per a tagged Shipper's Declaration.  **Yes** Shipper's Declaration not required.  **Dry Ice** Dry Ice 3, UN 1845  **Cargo Aircraft Only**

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**Sender** Account in Section 7 will be billed.  **Recipient**  **Third Party**  **Credit Card**  **Cash/Check**

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# Exhibit NN



## United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY  
REFER TO:

April 7, 2010

Randall A. Pinal  
Deputy Attorney General  
State of California, Department of Justice  
110 West A Street, Suite 1100  
San Diego, CA 92186-5266

Subject: *Touhy* Request and Subpoenas Duces Tecum;  
Big Lagoon Rancheria v. State of California, U.S. District Court,  
N.D. California, Case No. CV 09-1471 CW

Dear Mr. Pinal:

This letter responds to your letter of December 16, 2009, regarding a *Touhy* request and a related subpoena duces tecum directed to the Bureau of Indian Affairs (BIA) Pacific Regional Office and Northern California Agency in the subject proceeding. This response also addresses your request for a discretionary fee waiver pursuant to 43 CFR § 2.20(a)(6).

Your correspondence indicates the State of California is a defendant in *Big Lagoon Rancheria v. State of California*, United States District Court, Northern District of California, No. CV 09-1471 CW, wherein Big Lagoon Rancheria (the "Tribe") alleges violations of the Indian Gaming Regulatory Act. Your letter indicates that the subpoena duces tecum is "for documents necessary for [the State's] defense in *Big Lagoon*." Since the United States is not a party to the proceedings before the U.S. District Court, the Department of the Interior's *Touhy* regulations at 43 CFR §§ 2.80-2.90 provide the means by which the documents may be obtained under these circumstances. See *United States ex rel. Touhy v. Ragen et al*, 340 U.S. 462 (1951).

The *Touhy* regulations govern testimony of Department employees and production of documents. The regulations provide that it is the Department's general policy not to allow its employees to testify or to produce Department records either upon request or by subpoena. 43 C.F.R. § 2.81. The regulations at 43 CFR § 2.84 provide that, in order for a request to be considered, a written request for a Department employee's testimony or Department records must:

- (a) Identify the employee or record;
- (b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;
- (c) Identify the parties to your proceeding and any known relationships they

*Touhy* Request and Subpoenas Duces Tecum; Big Lagoon Rancheria v. State of California

- have to the Department's mission or programs;
- (d) Show that the desired records or testimony are not reasonably available from any other source;
- (e) Show that no record could be provided and used in lieu of employee testimony;
- (f) Provide the substance of the testimony expected of the employee; and
- (g) Explain why you believe your *Touhy* request complies with 43 CFR § 2.88.

If a *Touhy* request is complete, the regulations at 43 CFR § 2.88 require the Department to consider:

- (a) Your ability to obtain the testimony or records from another source;
- (b) The appropriateness of the record production under the relevant regulations of procedure and substantive law, including the Freedom of Information Act and the Privacy Act, and;
- (c) Our ability to:
  - (1) Conduct our official business unimpeded;
  - (2) Maintain impartiality in conducting our business;
  - (3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;
  - (4) Avoid spending public employee's time for private purposes;
  - (5) Avoid the negative cumulative effects of granting similar requests;
  - (6) Ensure that privileged or protected matters remain confidential;
  - (7) Avoid undue burden on us.

In order to be granted, a *Touhy* request must contain a statement that the requester will pay the Department's costs associated with fulfilling the request, if it is granted. 43 CFR § 2.82(b)(2). As you noted in your request, the regulations also provide for waivers of the duty to reimburse the federal government for costs of production, under certain circumstances. Your request entitles you to 100 pages of photocopies and two free hours of search fees before charges are incurred. 43 CFR § 2.17.

By correspondence dated March 3, 2010, the BIA Regional Real Estate Service Division provided copies of responsive documents. The BIA determined that the time and expense thus far spent searching, reviewing, and copying the records was not excessively burdensome and has therefore considered your request for a discretionary fee waiver due to the State's "extremely limited financial resources". The BIA has agreed to grant a discretionary fee waiver for the search, review, and copying costs that were so far incurred in excess of 2 hours and 100 pages, pursuant to 43 CFR §2.20(a)(6). This discretionary fee waiver extends to records that will be provided to you by the BIA Regional Tribal Operations Division.

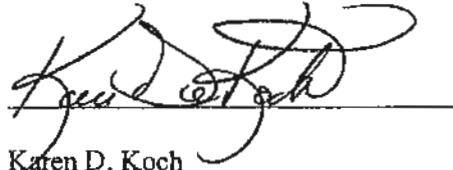
*Touhy* Request and Subpoenas Duces Tecum; Big Lagoon Rancheria v. State of California

Finally, with respect to item number 9 of your request, we appreciate that you have narrowed the scope of your request to only one section of the Hoopa-Yurok Settlement Act. Unfortunately, this will still require the BIA to search through approximately 30 filing cabinets for responsive information. Also, as we discussed previously, since the records concerning this Act relate to multiple tribes and individuals, the BIA cannot allow a member of your staff to search, review, and copy the records due to privacy concerns. The time required for agency staff to search, review, and copy responsive records in 30 filing cabinets would predictably be so large as to constitute a significant burden on agency resources. Moreover, it is not evident that records pertaining to the Hoopa-Yurok Settlement Act are relevant to the subject litigation. Accordingly, we reject your request number 9, as narrowed to Section 11 of the Hoopa-Yurok Settlement Act, as both irrelevant and burdensome; further, the cost of responding to it would greatly exceed \$30, a cost we do not presume we would waive.

Sincerely,

Daniel G. Shillito  
Regional Solicitor

By:

  
Karen D. Koch  
Assistant Regional Solicitor

cc: Acting Regional Director, Bureau of Indian Affairs  
Superintendent, Northern California Agency

# Exhibit 00





IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

APR 16 2010

Randall A. Pinal, Esq.  
State of California, Department of Justice  
110 West A Street, Suite 1100  
San Diego, CA 92186-5266

Subject: *Touhy* Request and Subpoenas Duces Tecum;  
Big Lagoon Rancheria v. State of California, U.S. District Court,  
N.D. California, Case No. CV 09-1471 CW

Dear Mr. Pinal:

This letter responds to your letter of December 16, 2009, regarding a *Touhy* request and a related subpoena duces tecum directed to the Bureau of Indian Affairs (BIA) Pacific Regional Office and Northern California Agency in the subject proceeding. This response also addresses your request for a discretionary fee waiver pursuant to 43 CFR § 2.20(a)(6).

Your correspondence indicates the State of California is a defendant in *Big Lagoon Rancheria v. State of California*, United States District Court, Northern District of California, No. CV 09-1471 CW, wherein Big Lagoon Rancheria (the "Tribe") alleges violations of the Indian Gaming Regulation Act. Your letter indicates that the subpoena duces tecum is "for documents necessary for [the State's] defense in *Big Lagoon*." Since the United States is not a party to the proceedings before the U.S. District Court, the Department of the Interior's *Touhy* regulations at 43 CFR § 2.80-2.90 provide the means by which the documents may be obtained under these circumstances. See *United States ex rel. Touhy v. Ragen et al*, 340 U.S.

1. *Touhy* Request – You have identified a list of document items the Bureau of Indian Affairs, Pacific Region, may have in our possession. Our Tribal Operations Branch will be responding to certain items corresponding to membership, federally recognized status, or other items pertaining to enrollment of members:

Item Number 5 – Copy of the latest Federally Recognized listing dated August 11, 2009, listing Big Lagoon Tribe as a Federal Recognized Entity. Six pages.

Item 10 - We have conducted a thorough search of our Tribal Operations files and were unable to locate any records responsive to your request. This is not a refusal to disclose documents, but rather a notification that there are no documents to disclose.

TAKE PRIDE  
IN AMERICA 

ER-414

Item Number 11 - Copy of the Constitution of the Big Lagoon Rancheria dated May 14, 1986. 13 pages.

Item Numbers 13, 16 - We have conducted a thorough search of our Tribal Operations files and were unable to locate any records responsive to your request. This is not a refusal to disclose documents, but rather a notification that there are no documents to disclose.

Item Numbers 17, 18, - Lila Williams, 21, 22, Tom Williams, 25, 26, Beverly Moorehead, and 29, 30, Ted Moorehead are all identified as an Indian persons however we do not have any records stating that they were members of a Federal Recognized Tribe. *May be subject to the Privacy Act.*

Questions regarding these enclosures may be directed to Shirley Lincoln, Tribal Operations Specialist, at (916) 978-6063.

Sincerely,



Acting Regional Director

Enclosure

cc: Karen Koch, Assist. Regional w/o enclosures  
Chairman, Big Lagoon Rancheria w/o enclosures  
Irene Gutierrez, Baker & McKenzie, LLLP w/enclosure (for Big Lagoon)

# Exhibit PP



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
1849 C STREET N.W., MS-6554  
WASHINGTON, DC 20240

Randall A. Pinal  
Deputy Attorney General  
State of California Department of Justice  
110 West A Street, Suite 1100  
San Diego, CA 92101

Re: State of California's *subpoena duces tecum* and request for Department records pursuant to 43 C.F.R. subpart H in Big Lagoon Rancheria v. State of California, Case No. CV 09-1471 CW (N. D. Cal.).

Dear Mr. Pinal:

This letter is in response to your letter of December 16, 2009, regarding the above-referenced matter. You requested documents that may be relevant to the state's defense against the Big Lagoon Rancheria, which has sued California in federal court, alleging a violation of certain provisions of the Indian Gaming Regulation Act. This Department has assessed the State's request and assembled documents responsive to that request.

### APPLICABLE LAW

Because your request is for "official records . . . for use in Federal . . . judicial . . . proceedings" 43 C.F.R. § 2.80a(4), we are bound to comply with the Department's regulations governing the release of such documents ("Touhy regulations"). Pursuant to 43 C.F.R. § 2.80(a), the Touhy regulations control our response to your *subpoena duces tecum* exactly as it does our response to your Touhy request: "This subpart describes how the Department of the Interior . . . responds to requests or subpoenas . . ." I would further note that 43 C.F.R. § 2.81(b) directs that "no Department employee may testify or produce records in any proceeding to which this subpart applies unless authorized by the Department under §§ 2.80 through 2.90."

In order to be granted, a Touhy Request must contain a statement that the requester will pay the Department's costs associated with fulfilling the Request, if it is granted. 43 C.F.R. § 2.82(b)(2). Yet, as you noted in your request, the regulations also provide for waivers of the duty to reimburse the federal government for costs of production, under certain circumstances. While not conceding that waivers apply in this case, the cost of identifying the responsive documents located here at main Interior (enclosed herewith) has not exceeded the \$30 that the State is willing to pay.

The regulation at 43 C.F.R. § 2.84, also requires that, in order to be considered, a Touhy Request must:

- (a) Identify the employee or record;
- (b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;
- (c) Identify the parties to your proceeding and any known relationships they have to the Department's mission or programs;
- (d) Show that the desired testimony or records are not reasonably available from any other source;
- (e) Show that no record could be provided and used in lieu of employee testimony;
- (f) Provide the substance of the testimony expected of the employee; and
- (g) Explain why you believe your request complies with 43 C.F.R. § 2.88.

If a Touhy Request is complete, the regulation at 43 C.F.R. § 2.88 requires the Department to consider:

- (a) Your ability to obtain the testimony or records from another source;
- (b) The appropriateness of the record production under the relevant regulations of procedure and substantive law, including the Freedom of Information Act and the Privacy Act; and
- (c) Our ability to:
  - (1) Conduct our official business unimpeded;
  - (2) Maintain impartiality in conducting our business;
  - (3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;
  - (4) Avoid spending public employee's time for private purposes;
  - (5) Avoid the negative cumulative effects of granting similar requests;
  - (6) Ensure that privileged or protected matters remain confidential;
  - (7) Avoid undue burden on us.

#### DISCUSSION

You have presented a written request for official documents of the Department of the Interior. Your request falls short of the Department's Touhy regulations in some particulars. As already discussed, your request does not contain "a statement that you agree to pay the costs of duplication"; but, as has also been discussed, we will not reject consideration of your requests on that point.

Your Touhy request does not satisfy the requirement found at 43 C.F.R. § 2.84(d), because you have not established – or claimed – that the tribe cannot provide the requested documents. You assert that you have submitted a discovery request, but go on to note merely that the tribe might not have the documents.

It may be that in the time since you submitted your Touhy request you have received a dispositive response from the tribe; but neither the fact that the tribe might not have the sought-for documents, nor any statement by the Tribe that the Department does have the documents, meets the regulatory burden on you to show that the documents are not reasonably available elsewhere. Put another way, the Tribe's statement that BIA has the records is not the same as the Tribe's statement that it does not have the records. Without an affirmative statement that the Tribe does not have the requested documents, you have not met your burden of showing that you cannot get the requested documents from some other source.

You have also not clearly established that your requests will not impose an undue burden on the United States (43 C.F.R. § 2.88(c)(7)). In particular, the volume of documents potentially responsive to your request #9 (for "each documents pertaining to the Hoopa-Yurok Settlement Act . . . including . . . the circumstances surrounding or leading to the enactment of the statute") would predictably be so large as to constitute an undue burden. Further, you do not explain how documents pertaining to the Hoopa-Yurok Settlement Act have any relevance to the assessment of how *Carrieri* affects Big Lagoon Rancheria. Therefore we reject your request #9 as both irrelevant and burdensome; further, that the cost of responding to it would greatly exceed \$30, a cost we do not presume we would waive.

#### DOCUMENTS PRODUCED

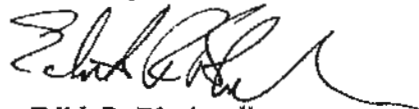
The Pacific Regional Office of the BIA is working on a response to your requests for information about assignments of parcels of the Big Lagoon Rancheria to particular people. Please note, however, that the Privacy Act may preclude release of documents naming specific people without redaction.

The following documents are enclosed and represent the documents in the possession of the Department that are responsive to your request.

1. Folder of material relevant to the plan of distribution of the assets of Big Lagoon Rancheria in 1968, pursuant to the Rancheria Act of 1958 (72 Stat. 619), as amended in 1964 by 78 Stat. 390.
2. 25 C.F.R. part 242 (1965).

Please contact Jim Porter, Attorney-Adviser, if you have any further comments or questions on this matter.

Sincerely,



Edith R. Blackwell  
Associate Solicitor

From: Origin ID: AUKA (202) 208-4216  
Nyoka Pyles  
Department of the Interior/DIA  
1849 C Street NW  
Mail Stop 6542  
Washington, DC 20240



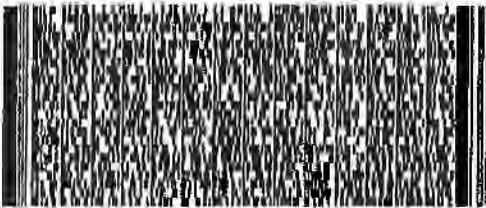
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**Randell A. Pinal**  
Department of Justice State of Call  
110 W A ST STE 1100  
DEPUTY ATTORNEY GENERAL  
SAN DIEGO, CA 92101



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# Exhibit QQ





**EDMUND G. BROWN JR.**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

May 27, 2010

*Via e-mail and FedEx*

Dale Risling  
Acting Regional Director  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

RE: Subpoena Duces Tecum and *Touhy* Request  
Big Lagoon Rancheria v. State of California  
U.S. District Court, Northern District of California, Case No. CV 09-1471 CW (JCS)

Dear Mr. Risling:

I write in response to your March 3, 2010 letter concerning the subpoena duces tecum and *Touhy* request that the State of California served on the Bureau of Indian Affairs (BIA) Pacific Regional Office in the above-entitled matter. Thank you for providing some responsive documents; however, the State requests further responses and clarification of certain aspects of your letter.

Specifically, it is unclear whether the documents were produced as they are kept in the ordinary course of business, or whether, to comply with Federal Rule of Civil Procedure 45(d)(1)(a), they should be organized and labeled to correspond to the categories in the subpoena. Further, the response failed to identify or include any electronically stored information, as demanded by the subpoena. Indeed, it is unclear whether the Pacific Regional Office has produced all responsive documents, including electronically stored information, that are locatable after a diligent search of all locations where such materials might plausibly exist, or whether the Pacific Regional Office withheld any documents for any reason, including any purported privilege or protection from disclosure. Also, the State is uncertain whether your March 3, 2010 letter is also intended to respond to the subpoena issued to the BIA Northern California Agency, or whether a separate response is forthcoming.

In addition, the State requests further explanation of your comments concerning current occupants of the Big Lagoon Rancheria. You stated:

**ER-422**

Dale Risling  
May 27, 2010  
Page 2

Other than the two approved residential leases, we have no record of other Rancheria occupants. We are aware that there are other Big Lagoon members residing on the existing trust lands; however, their occupation is by tribal land assignment which does not require Secretarial approval.

Your acknowledgement that the BIA Pacific Regional Office is "aware that there are other Big Lagoon members residing on the existing trust lands," suggests that there may be documents in your office's possession, custody or control that pertain to the substance of the agency's awareness. Indeed, the subpoena demands documents pertaining to those members, including their identification (*see, e.g.*, Demand for Production No. 10), duration of residency and authority for occupation (*see, e.g.*, Demand for Production Nos. 15-16, 19-20, 23-24, 27-28, 31-32).

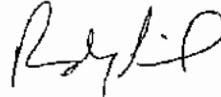
The State further notes that by letter received on April 30, 2010, Department of the Interior, Associate Solicitor Edith R. Blackwell advised the State that the BIA Pacific Regional Office is working on a response to the State's request for information concerning assignments of parcels of the Big Lagoon Rancheria to particular people. The State has not yet received this information or any related documents. Please provide these documents as soon as possible.

For the limited purpose of the BIA responding to the State's subpoenas in this action, the Court has continued the discovery cut-off date to May 31, 2010. Because May 31 is a holiday, please provide the requested clarification, information and responsive documents by **June 1, 2010**. As I discussed today with Assistant Regional Solicitor Karen Koch and Attorney-Advisor Jim Porter at the Solicitor's Office in Washington, D.C., given the unresolved status of the State's outstanding subpoenas, the State wishes to initiate the procedures for resolving this discovery dispute with the BIA. Toward that end, this letter serves as notice of an in-person meeting to take place with your lead trial counsel at the California Attorney General's Office, 1300 I Street, Sacramento, California, at 10:30 a.m. on **June 14, 2010**.

Dale Rising  
May 27, 2010  
Page 3

The State hopes that through further correspondence and discussions it can resolve the present discovery dispute as efficiently as possible without judicial intervention; however, given the current deadlines, a timely response from the BIA is critical.

Sincerely,



RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:ra

cc: James W. Porter, Attorney-Advisor, Office of the Solicitor (via e-mail and FedEx)  
Karen D. Koch, Assistant Regional Solicitor (via e-mail and FedEx)  
Carmen Facio, Acting Regional Director & Realty Officer (via e-mail and FedEx)

SA2009309375  
80464430.doc

# Exhibit RR

**EDMUND G. BROWN JR.**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

May 27, 2010

*Via e-mail and FedEx*

Karen D. Koch  
Assistant Regional Solicitor  
U.S. Department of the Interior  
Office of the Regional Solicitor  
Pacific Southwest Region  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

RE: Subpoenas Duces Tecum and *Touhy* Requests  
Big Lagoon Rancheria v. State of California  
U.S. District Court, Northern District of California, Case No. CV 09-1471 CW (JCS)

Dear Ms. Koch:

I write in response to your April 7, 2010 letter concerning the subpoenas duces tecum and *Touhy* requests that the State of California served on the Bureau of Indian Affairs (BIA) Pacific Regional Office and Northern California Agency in the above-entitled matter. Thank you very much for granting the State's requested fee waiver. The State appreciates the time BIA staff has dedicated to responding to the subpoenas and the courtesy is tremendously helpful to the State given its extremely limited financial resources.

In response to the State's Demand for Production No. 9, you indicated that the BIA Pacific Regional Office and Northern California Agency "reject" the demand, as narrowed to Section 11 of the Hoopa-Yurok Settlement Act, because you believe it is irrelevant, burdensome and the cost of responding would exceed an amount that the BIA might otherwise consider waiving. Your clients, however, have not timely objected to the subpoenas or filed motions to quash or modify the subpoenas. *See* Fed. R. Civ. P. 45(c)(2)-(3). Moreover, it does not appear that the BIA Pacific Regional Office or Northern California Agency have complied with the Federal Rules of Civil Procedure's requirements for withholding subpoenaed information under a claim that it is privileged or otherwise protected. *See* Fed. R. Civ. P. 45(d)(2)(A)(ii). Accordingly, it appears that any objections have been waived.

The State, however, is sensitive to your asserted privacy concerns and is willing to enter into a confidentiality agreement or stipulate to a protective order to accommodate your concerns.

Karen D. Koch  
May 27, 2010  
Page 2

Such an agreement would significantly limit, if not eliminate, BIA staff time dedicated to responding to Demand for Production No. 9. In any event, for reasons stated in my March 10, 2010 e-mail to you, the State disagrees with your assertion that the documents in Demand for Production No. 9, as subsequently narrowed by the State, are irrelevant.

The State further notes that by letter received on April 30, 2010, Department of the Interior, Associate Solicitor Edith R. Blackwell advised the State that the BIA Pacific Regional Office is working on a response to the State's request for information concerning assignments of parcels of the Big Lagoon Rancheria to particular people. The State has not yet received this information or any related documents. Please provide these documents as soon as possible.

For the limited purpose of the BIA responding to the State's subpoenas in this action, the Court has continued the discovery cut-off date to May 31, 2010. Because May 31 is a holiday, please provide the requested clarification, information and responsive documents by **June 1, 2010**. As discussed today with you and Attorney-Advisor Jim Porter at the Solicitor's Office in Washington, D.C., given the unresolved status of the State's outstanding subpoenas, the State wishes to initiate the procedures for resolving this discovery dispute with the BIA. Toward that end, this letter serves as notice of an in-person meeting to take place with the BIA's lead trial counsel at the California Attorney General's Office, 1300 I Street, Sacramento, California, at 10:30 a.m. on **June 14, 2010**. The State hopes that through further correspondence and discussions it can resolve the present discovery dispute as efficiently as possible without judicial intervention; however, given the current deadlines, a timely response from the Assistant Secretary is critical.

Sincerely,



RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:ra

cc: James W. Porter, Attorney-Advisor, Office of the Solicitor (via e-mail and FedEx)  
Dale Risling, Acting Regional Director (via e-mail and FedEx)  
Carmen Facio, Acting Regional Director & Realty Officer (via e-mail and FedEx)

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# Exhibit SS



*EDMUND G. BROWN JR.*  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

May 27, 2010

*Via e-mail and FedEx*

Carmen Facio  
Acting Regional Director  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

RE: Subpoenas Duces Tecum and *Touhy* Requests  
Big Lagoon Rancheria v. State of California  
U.S. District Court, Northern District of California, Case No. CV 09-1471 CW (JCS)

Dear Ms. Facio:

I write in response to your April 16, 2010 letter concerning the subpoenas duces tecum and *Touhy* requests that the State of California served on the Bureau of Indian Affairs (BIA) Pacific Regional Office and Northern California Agency in the above-entitled matter. Thank you for providing some responsive documents; however, the State requests further responses and clarification of certain aspects of your letter.

Specifically, your response failed to identify or include any electronically stored information, as demanded by the subpoena. Indeed, it is unclear whether the BIA Pacific Regional Office and Northern California Agency have produced all responsive documents, including electronically stored information, that are locatable after a diligent search of all locations where such materials might plausibly exist, or whether the Pacific Regional Office and Northern California Agency withheld any documents for any reason, including any purported privilege or protection from disclosure.

The State responds to your itemized comments concerning specific document demands as follows. **Demand for Production No. 5** seeks "Each document pertaining to BIA's placement of Big Lagoon Rancheria on the list of federally recognized Indian tribes." You responded by producing only a copy of the latest listing of federally recognized entities published in the Federal Register. But the subpoena broadly defines the phrases "document" and "pertaining to" to require the BIA to produce more than simply a copy of the most recent publication in the Federal Register—it requires the BIA to produce each document pertaining to Big Lagoon



Carmen Facio  
May 27, 2010  
Page 2

Rancheria's placement on any list of federally recognized Indian tribes, not just the most recent list, and each document that precedes the Tribe's placement on each list, including, without limitation, documents explaining or discussing whether or why the Tribe qualifies for placement on the list. Please indicate when the State can expect to receive further documents responsive to this demand.

**Demand for Production No. 10** seeks each document pertaining to Big Lagoon Rancheria's membership. The State is surprised by the response that the BIA Pacific Regional Office and Northern California Agency are unable to locate *any* records pertaining to tribal membership. It would seem difficult for the United States to fulfill its trust obligation to Big Lagoon Rancheria and its members if the BIA cannot locate any documents that, at minimum, identify who the members might be. We presume that if the response is accurate, an authorized representative for the BIA Pacific Regional Office and Northern California Agency will attest under oath that after a thorough search of all available records the BIA has no documents pertaining to Big Lagoon Rancheria's membership. If your response is inaccurate, please provide further documents responsive to this demand.

**Demand for Production No. 11** seeks "[e]ach document pertaining to a constitution for Big Lagoon Rancheria." In response, you produced a copy of the Tribe's 1986 Constitution. As with Demand for Production No. 5, Demand for Production No. 11 seeks, and requires the BIA to produce, more than simply the end product. It requires the BIA to produce each document that falls within the subpoena's broad definition of "pertaining to" the Tribe's Constitution. Please provide further documents responsive to this demand.

**Demand for Production No. 13** seeks documents pertaining to Jim "Lagoon" Charley and his status as a member of an Indian tribe, and **Demand for Production No. 16** seeks documents pertaining to whether the United States ever authorized Jim "Lagoon" Charley or any of his lineal descendants to occupy the 11-acre parcel. You responded that no such documents exist. As above, we presume that an authorized representative for the BIA Pacific Regional Office and Northern California Agency will attest under oath that after a thorough search of all available records the BIA has no responsive documents.

In response to **Demand for Production Nos. 17, 18, 21, 22, 25, 26, 29 and 30**, you indicate that Lila Williams, Tom Williams, Beverly Moorehead and Ted Moorehead "are all identified as Indian persons" but the BIA Pacific Regional Office and Northern California Agency does not have any records indicating that the identified individuals were members of a federally recognized Indian tribe. This response is inconsistent with documents you provided in response to Demand for Production No. 5, where Big Lagoon Rancheria is identified on the list of federally recognized Indian tribes, and Demand for Production No. 11, where the Tribe's 1986 Constitution identifies Beverly Moorehead as the Tribe's Secretary. In addition, by letter dated March 3, 2010, Acting Regional Director Dale Risling provided the State with various documents responsive to the State's subpoena to the BIA Pacific Regional Office, including, among others, a January 29, 1955 memorandum identifying Mrs. Thomas Green Williams, also known as Lila Williams, as "an unallotted and unassigned Yurok Indian." Given these

Carmen Facio  
May 27, 2010  
Page 3

inconsistencies, please confirm whether your response to Demand for Production Nos. 17, 18, 21, 22, 25, 26, 29 and 30 is accurate. In addition, please provide each document within the BIA Pacific Regional Office's and Northern California Agency's possession, custody or control that pertains to the assertion in your response that the identified individuals "are all identified as Indian persons." To the extent you suggest that some of this information "[m]ay be subject to the *Privacy Act*" (original italics), please identify the Act and specific provision that you believe protects against disclosure, and provide the information required by Federal Rule of Civil Procedure 45(d)(2)(A)(ii). Given the BIA Pacific Regional Office's and Northern California Agency's untimely responses to the State's subpoenas in this action, it appears that any objections or claims of privilege or protection have been waived.

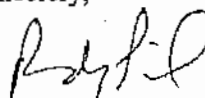
The State further notes that by letter received on April 30, 2010, Department of the Interior, Associate Solicitor Edith R. Blackwell advised the State that the BIA Pacific Regional Office is working on a response to the State's request for information concerning assignments of parcels of the Big Lagoon Rancheria to particular people. The State has not yet received this information or any related documents. Please provide these documents as soon as possible.

For the limited purpose of the BIA responding to the State's subpoenas in this action, the Court has continued the discovery cut-off date to May 31, 2010. Because May 31 is a holiday, please provide the requested clarification, information and responsive documents by **June 1, 2010**. As I discussed today with Assistant Regional Solicitor Karen Koch and Attorney-Advisor Jim Porter at the Solicitor's Office in Washington, D.C., given the unresolved status of the State's outstanding subpoenas, the State wishes to initiate the procedures for resolving this discovery dispute with the BIA. Toward that end, this letter serves as notice of an in-person meeting to take place with your lead trial counsel at the California Attorney General's Office, 1300 I Street, Sacramento, California, at 10:30 a.m. on **June 14, 2010**.

Carmen Facio  
May 27, 2010  
Page 4

The State hopes that through further correspondence and discussions it can resolve the present discovery dispute as efficiently as possible without judicial intervention; however, given the current deadlines, a timely response from the BIA is critical.

Sincerely,



RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:ra

cc: James W. Porter, Attorney-Advisor, Office of the Solicitor (via e-mail and FedEx)  
Karen D. Koch, Assistant Regional Solicitor (via e-mail and FedEx)  
Dale Risling, Acting Regional Director (via e-mail and FedEx)

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# Exhibit TT

EDMUND G. BROWN JR.  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-3075  
Facsimile: (619) 645-2012  
E-Mail: Randy.Pinal@doj.ca.gov

May 27, 2010

Via e-mail and FedEx

Jim Porter  
Attorney-Advisor  
Solicitor's Office, Division of Indian Affairs  
1849 C Street, N.W.  
Mail Stop 6518  
Washington, D.C. 20240

RE: Subpoena Duces Tecum and *Touhy* Request  
Big Lagoon Rancheria v. State of California  
U.S. District Court, Northern District of California, Case No. CV 09-1471 CW (JCS)

Dear Mr. Porter:

I write in response to Associate Solicitor Elizabeth R. Blackwell's undated letter<sup>1</sup> concerning the subpoena duces tecum and *Touhy* request that the State of California served on the Department of the Interior, Assistant Secretary—Indian Affairs in the above-entitled matter on December 22, 2009. As we discussed on May 25, 2010, the responsive documents identified in Ms. Blackwell's letter were not included; however, thank you for faxing them to me on May 25.

Preliminarily, the State requests further responses and clarification of certain aspects of Ms. Blackwell's letter. Specifically, it is unclear whether the documents were produced as they are kept in the ordinary course of business, or whether, to comply with Federal Rule of Civil Procedure 45(d)(1)(a), they should be organized and labeled to correspond to the categories in the subpoena. Further, the response failed to identify or include any electronically stored information, as demanded by the subpoena. Indeed, it is unclear whether the Assistant Secretary has produced all responsive documents, including electronically stored information, that are locatable after a diligent search of all locations where such materials might plausibly exist, or whether the Assistant Secretary withheld any documents for any reason, including any purported privilege or protection from disclosure.

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<sup>1</sup> The California Attorney General's Office received the letter by FedEx on April 30, 2010.

Jim Porter  
May 27, 2010  
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Ms. Blackwell claims that the State failed to comply with the Department of the Interior's *Touhy* regulations, in part, because the State has not affirmatively demonstrated that the documents are not reasonably available elsewhere. *See* 43 C.F.R. § 2.84(d). As the State has advised the Bureau of Indian Affairs (BIA) Pacific Regional Office and Northern California Agency—which, as you know, have been served with the same subpoenas—Big Lagoon Rancheria has responded in formal discovery in the underlying matter that answers to certain interrogatories may be found in documents sought by the State's subpoenas to the Department of the Interior. Nonetheless, Ms. Blackwell wrote that a statement by the Tribe that the Department of the Interior has the records is not the same as a statement from the Tribe that the Tribe does not have the records, and, therefore, the State has not met its burden of showing that it cannot get the requested documents from some other source.

The purpose of Ms. Blackwell's comments on this point is unclear, as she produced certain responsive documents. In addition, the comments seem to exalt the Department's *Touhy* regulations over the Federal Rules of Civil Procedure. But the statutory authority for *Touhy* regulations, 5 U.S.C. § 301, is simply a "housekeeping statute" regulating agency procedures; it does not create a privilege for the government to withhold subpoenaed information. *Exxon Shipping Co. v. United States Dep't of the Interior*, 34 F.3d 774, 778 (9th Cir. 1994). Moreover, given the Assistant Secretary's untimely response to the State's subpoena, and failure to seek a protective order or move to modify or quash the subpoena, *see* Fed. R. Civ. P. 45(c)(2)-(3), it appears that any objections have been waived.

Ms. Blackwell further asserts that the State has not clearly established that its requests will not impose an undue burden on the United States. *See* 43 C.F.R. § 2.88(c)(7). Again, if the Assistant Secretary believed the subpoena imposed an undue burden, then the proper course was to seek a protective order, or move to modify or quash the subpoena, which has not happened. Nonetheless, the State will address Ms. Blackwell's particular comments concerning the size and relevance of Demand for Production No. 9.

Ms. Blackwell states that Demand for Production No. 9 would potentially yield a large volume of documents that would constitute an undue burden on the Department. Demand for Production No. 9 seeks documents pertaining to a very specific provision of the Hoopa-Yurok Settlement Act, not the entire Act. Indeed, by my e-mail to you on March 1, 2010, the State further narrowed the scope of Demand for Production No. 9 to include only documents that pertain to the option given to Big Lagoon Rancheria members to vote to merge with the Yurok Tribe, as codified in the Special Considerations section of the Hoopa-Yurok Settlement Act at 25 U.S.C. § 1300i-10(b). Please advise whether this eliminates Ms. Blackwell's concerns about the scope of Demand for Production No. 9.

Ms. Blackwell also asserts that the State has not explained how documents pertaining to the Hoopa-Yurok Settlement Act are relevant to the assessment of how the Supreme Court's decision in *Carcieri v. Salazar*, 129 S. Ct. 1058 (2009), affects Big Lagoon Rancheria. Part I(B) of the *Touhy* request explains why the requested documents are relevant to the State's defense in the underlying action. The Tribe alleges that, in violation of the Indian Gaming Regulatory Act

Jim Porter  
May 27, 2010  
Page 3

(IGRA), the State has failed to negotiate a class III gaming compact in good faith. IGRA provides that in determining whether a state has negotiated in good faith, the court may consider the public interest. 25 U.S.C. § 2710(D)(7)(B)(iii)(I). The State has asserted an affirmative defense that it is not in the public interest to consider the land where Big Lagoon Rancheria proposes to locate a gaming facility as eligible lands within the meaning of IGRA, because, under *Carcieri*, the Secretary of the Interior lacked authority to acquire that land in trust for Big Lagoon Rancheria. Therefore, the State is entitled to conduct discovery into the status of the relationship between Big Lagoon Rancheria and the United States when Congress enacted the Indian Reorganization Act, as evidenced by documents involving the history of that relationship.

In the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-10(b), Congress gave Big Lagoon Rancheria the option of voting to merge with the Yurok Tribe. It is necessary to the State's defense to understand why Congress presented Big Lagoon Rancheria with that option, and obtain documents, if any, within the Department of the Interior's possession, custody, or control that inform, analyze, review or discuss Congress' action in that regard.

Also, the State has demanded the Assistant Secretary produce documents pursuant to a subpoena issued under Federal Rule of Civil Procedure 45. The standard for production under that rule is not limited to relevant documents, which appears to be the Department of the Interior's standard under its *Touhy* regulations, 42 C.F.R. § 2.84(b), but also documents that are likely to lead to the discovery of admissible evidence, *see, e.g., Alexander v. Fed. Bureau of Investigation*, 186 F.R.D. 21, 38 (D.D.C. 1998). The State is unaware of any authority that allows the Department of the Interior to impose by administrative fiat a standard in this instance that is different or stricter than that established by Congress. If any exists, please let me know.

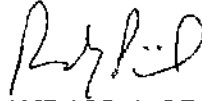
Ms. Blackwell further notes that the BIA Pacific Regional Office is working on a response to the State's request for information concerning assignments of parcels of the Big Lagoon Rancheria to particular people. The State has not yet received this information or any related documents. Please confirm when the State can expect receipt.

For the limited purpose of the Department of the Interior responding to the State's subpoenas in this action, the Court has continued the discovery cut-off date to May 31, 2010. Because May 31 is a holiday, please provide the requested clarification, information and responsive documents by **June 1, 2010**. As discussed today with you and Assistant Regional Solicitor Karen Koch, given the unresolved status of the State's outstanding subpoenas, the State wishes to initiate the procedures for resolving this discovery dispute with the Assistant Secretary. Toward that end, I will be meeting in person in Sacramento, California, with lead trial counsel for the BIA Pacific Regional Office and Northern California Agency at 10:30 a.m. on **June 14, 2010**. Please let me know if you are able to participate in this meeting by telephone.

Jim Porter  
May 27, 2010  
Page 4

The State hopes that through further correspondence and discussions it can resolve the present discovery dispute as efficiently as possible without judicial intervention; however, given the current deadlines, a timely response from the Assistant Secretary is critical.

Sincerely,



RANDALL A. PINAL  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

RAP:ra

cc: Edith R. Blackwell, Associate Solicitor (via FedEx)  
Karen D. Koch, Assistant Regional Solicitor (via e-mail and FedEx)

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80464873.doc



# Exhibit UU

**Randy Pinal - RE: Big Lagoon Rancheria v. California; document subpoenas**

---

**From:** Randy Pinal  
**To:** James Porter; Juan (USACAN) 3 Walker; Karen.Koch@sol.doi.gov; Wyneva (USADC) Johnson  
**Date:** 6/25/2010 6:56 PM  
**Subject:** RE: Big Lagoon Rancheria v. California; document subpoenas  
**CC:** Patty Brandt; Sylvia Cates

---

Thanks, Juan. Just so we're clear, the State granted the continuance at your request. We'll talk after I have had a chance to review the BIA's response that I received today, and the further response that you've indicated I will receive on July 2d.

Randy

>>> "Walker, Juan (USACAN) 3" <Juan.Walker@usdoj.gov> 6/24/2010 1:51 PM >>>

Randy,

Per our conversation yesterday, I'm sending you this e-mail to confirm that you have continued the date for the government's responses regarding these subpoenas until COB, June 25<sup>th</sup>, 2010, except for the information related to the Hoopa-Yurok Settlement Act. Since the government will not be able to search the records related to the Hoopa-Yurok Settlement Act prior to June 30, 2010, the government will provide a response related to the Hoopa-Yurok Settlement Act by COB on July 2. Let's plan to meet and confer after July 2<sup>nd</sup> to discuss whether further action will be necessary.

Sincerely,

Juan

---

**Juan D. Walker**  
Special Assistant United States Attorney  
U.S. Attorney's Office, N. Dist. Calif.      Tel: (415) 436-6915  
450 Golden Gate Ave., 9th Floor              Fax: (415) 436-6748  
San Francisco, CA 94102-3495                [juan.walker@usdoj.gov](mailto:juan.walker@usdoj.gov)

---

**From:** Randy Pinal [mailto:[Randy.Pinal@doj.ca.gov](mailto:Randy.Pinal@doj.ca.gov)]  
**Sent:** Thursday, June 17, 2010 6:10 PM  
**To:** James Porter; Karen.Koch@sol.doi.gov; Walker, Juan (USACAN) 3; Johnson, Wyneva (USADC)  
**Cc:** Patty Brandt; Sylvia Cates  
**Subject:** Big Lagoon Rancheria v. California; document subpoenas

All:

Thank you for meeting with me, Sylvia Cates and Patty Brandt on June 14, 2010, to discuss the document subpoenas that the State of California served on the BIA Pacific Regional Office, BIA Northern California Agency and the Assistant Secretary—Indian Affairs. This e-mail confirms our agreement at the meeting that each subpoenaed party will provide a written response to the State's May 27, 2010 letter, and that counsel will reconvene on June 28, 2010, to discuss whether further action is necessary. Please provide the written responses by close of business on June 24, 2010, to ensure the June 28 meeting is productive. Further, at the subpoenaed parties' request, the State agreed not to take any action to enforce the subpoenas before July 9, 2010.

As indicated in the State's May 27 letters and discussed during the meeting, there are questions whether the subpoenaed parties have produced all responsive documents, including electronically stored information, that are locatable after a diligent search of all locations where such materials might plausibly exist, and whether any documents have been withheld. The subpoenaed parties indicated they would review their files to respond to these questions and, if no responsive documents exist, provide a sworn statement to that effect. The statement should describe the files in your possession, custody or control, the nature of your search, and indicate for each demand for production of documents whether you produced all responsive documents, were unable to locate responsive documents, or located but did not produce certain responsive documents. At minimum, for any responsive documents withheld from production as privileged or protected, the subpoenaed party must comply with Federal Rule of Civil Procedure 45(d)(2)(A).

In addition to responding to the State's May 27 letter, Jim Porter indicated he would follow up with staff in the Washington D.C. office to ascertain whether any documents responsive to Demand for Production Nos. 5 and 9 are located there. If the foregoing does not correctly summarize our agreement, please advise me immediately.

On a related matter, it came to my attention today, via the attached e-mail, that staff at the BIA Pacific Regional Office refused to produce application folder numbers for various individuals identified on the 1968 California Judgment Enrollment, claiming the information is protected by the Privacy Act. The National Archives in San Bruno maintains the application folders, which total about 540 linear feet of documents, containing the documents sought by the State. But the BIA Pacific Regional Office has not yet provided Archives with the index to the application folders, making it nearly impossible to search and locate public documents available in those folders without the index. Moreover, it does not appear that a file folder number falls within the Privacy Act, and it is difficult to imagine how Privacy Act protections can be asserted over documents that are no longer in the BIA's possession, custody or control. Even so, Archives staff have indicated to the State that they will determine whether and to what extent the Privacy Act applies to our requests, if at all, principally because they, and not the BIA, are in possession, custody and control of the documents. To be clear, the State did not request the information described in first paragraph of the attached e-mail; it seeks only application folder numbers for specific individuals. At minimum, the requested information is encompassed by Demand for Production Nos. 1, 3, 15 and 17-32 of the document subpoenas. Please include in your written response an explanation why the requested information is being withheld.

Thank you.

Randy Pinal

**CONFIDENTIALITY NOTICE:** This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

# Exhibit VV



IN REPLY  
REFER TO:

## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Pacific Southwest Region  
2800 Cottage Way  
Room E-1712  
Sacramento, California 95825-1890

June 24, 2010

Randall A. Pinal, Esq.  
State of California, Department of Justice  
110 West A Street, Suite 1100  
San Diego, CA 92186-5266

Subject: *Touhy* Request and Subponas Duces Tecum;  
Big Lagoon Rancheria v. State of California, N.D. California; CV 09-1471 CW

Dear Mr. Pinal:

The following summarizes the Bureau of Indian Affairs, Pacific Region, response to the subject *Touhy* request and subpoenas duces tecum, with responses to each item in the subpoena explained below:

Items 1-4: The U.S. lacks authority to determine who does or does not occupy Indian land other than leasing authority; the Region provided the only records concerning residential leases. There are also tribal land assignments pertaining to the properties held in trust that BIA has no involvement with because assignments are determined by tribes.

Item 5: The BIA provided a copy of the latest list of federally recognized tribes. This information is publicly available and the list is published every few years. The State can find the lists published in Federal Register notices. The Region is not responsible for determining whether a tribe receives federal recognition – such determination is made by the Central Office in Washington.

Item 6: Documents were provided concerning "termination" under the California Rancheria Act pursuant to the March 3, 2010 transmission from Carmen Facio.

Item 7: Information from BIA files was provided regarding distribution of Tribal assets. See letter dated March 3, 2010 to Randy Pinal from Carmen Facio, Realty Officer.

Item 8: The Region is not involved with decisions regarding federal recognition of tribes and had no documents concerning this issue.

Item 9: Request number 9 was narrowed to section 11(b) of the Hoopa-Yurok Settlement Act, which concerns an option for the Big Lagoon Rancheria to merge with the Yurok Tribe. The BIA believes it may have information concerning a vote on Section 11 of the Hoopa-Yurok

*Touhy* Request and Subpoenas Duces Tecum; Big Lagoon Rancheria v. California, N.D. California; CV 09-1471 CW

Settlement Act, but the information concerning that section of the Act is not delineated from information in some 30 filing cabinets located in the offices of the Northern California Agency that concern the Act overall. Individuals familiar with those files are no longer in the Northern California Agency office, but Amy Dutschke, Deputy Regional Director – Trust, for the BIA Pacific Region, previously worked in the office and is familiar with the files. She will be in the Northern California Agency office on June 30th, and will search and review the files at that time. No one else familiar with the files will be available in the office before that date.

Item 10: BIA does not maintain membership information concerning tribes. There are Census Rolls of Indians that were compiled on three different occasions: 1928-33; 1950; 1972. There are also Distribution Judgment Rolls for all California Tribes that were compiled in order to distribute the proceeds of litigation that resulted in payments to Indians. If the BIA is asked to determine tribal affiliations, they will use these rolls. However, as sovereign entities, tribes have the right to determine and maintain their own membership lists, and the BIA no longer maintains such lists and has returned those that it did maintain, except for lists concerning tribes that have specifically delegated authority to the BIA to resolve tribal membership issues – Big Lagoon is not one of those tribes.

Item 11: The BIA provided a copy of the Tribe's Constitution. Currently there is no requirement that BIA approve tribal constitutions, although tribes may require BIA approval in their constitutions – Big Lagoon has not sought BIA approval of its constitution.

Item 12: The Big Lagoon Tribe is responsible for conducting its own affairs, including any interactions with the Yurok Tribe. The BIA will search the Hoopa-Yurok files maintained in Northern California for documents concerning section 11 of the Hoopa-Yurok Settlement Act.

Item 13-16: The BIA Pacific Region produced File No. 40142-1917 (313), which contains several documents concerning Jim "Lagoon" Charley. See letter dated March 3, 2010 to Randy Pinall from Carmen Facio, Realty Officer, item number "1". The cover page for these documents is marked "Caution!". No files were located which were specifically maintained under the name "Jim 'Lagoon' Charley".

Item 17-20: Records concerning Lila Williams: The BIA was not able to locate records other than census records concerning this individual. Enrollment information contained in the census records is considered to be personal, private information, and therefore may not be released except upon consent of the individual.

Item 21-24: Records concerning Tom Williams: The BIA was not able to locate records other than census records concerning this individual. Enrollment information contained in the census records is considered to be personal, private information, and therefore may not be released except upon consent of the individual.

Item 25-28: Records concerning Beverly Moorehead: No responsive records concerning this individual were located.

*Touhy* Request and Subponas Duces Tecum; Big Lagoon Rancheria v. California, N.D. California; CV 09-1471 CW

Item 29-32: Records concerning Ted Moorehead: No responsive records concerning this individual were located.

Item 33: The BIA Pacific Region has no records responsive to this request.

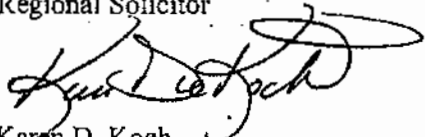
Please note that the documents that were provided consist of all records maintained by the BIA, including any responsive emails.

In communications subsequent to the delivery of the subject *Touhy* request and subpoena, you asked about the release of archive index numbers. Archive index numbers are maintained in systems of records that may be located by an individual's name, and consequently are protected pursuant to the Privacy Act. Numbers associated with individuals who are deceased, or who are more than 100 years old (and presumed deceased) may be released, but individual consent to release is otherwise required in order for numbers to be released by the BIA.

Declarations executed by Carmen Facio, Regional Realty Specialist, and Shirley Lincoln, Regional Tribal Operations Specialist, are being forwarded to you after delivery of this correspondence. The declarations indicate that these BIA officials made reasonable inquiry and undertook a reasonable search of agency records in an effort to comply with the subpoena.

Sincerely,

Daniel G. Shillito  
Regional Solicitor



Karen D. Koch  
Assistant Regional Solicitor

cc: Acting Regional Director, BIA  
Juan Walker, US DOJ

# Exhibit WW



**Randy Pinal - response to subpoena in Big Lagoon**

---

**From:** "Porter, James" <James.Porter@sol.doi.gov>  
**To:** 'Randy Pinal' <Randy.Pinal@doj.ca.gov>, "Koch, Karen" <Karen.Koch@sol.doi.gov>, "wyneva.johnson@usdoj.gov" <wyneva.johnson@usdoj.gov>, "Walker, Juan (USACAN) 3" <Juan.Walker@usdoj.gov>  
**Date:** 6/25/2010 3:38 PM  
**Subject:** response to subpoena in Big Lagoon  
**CC:** "Keep, Scott" <SCOTT.KEEP@sol.doi.gov>  
**Attachments:** 11 pages from AIRR.pdf; 1953 House Report extracts.pdf; 11 pages from AIRR.pdf; 1953 House Report extracts.pdf

---

Randy et al:

I have received and reviewed documents supplied by BIA in response to California's subpoena. I will now try to transmit them to Randy via email. Some of the documents are pretty large. I'm tempted to use a bunch of separate emails to accomplish this task.

The vast majority of documents were provided by the American Indian Records Repository -- 649 pages of imaged documents. In my review, I found that few of them were really responsive to any subpoena request. I have prepared a table of the documents, showing merely date (when known) and the barest description, plus the page number in the data set.

I also have the few documents that were produced by BIA and SOL here at main interior.

It is my representation that the document request was distributed to relevant office of Indian Affairs, and I am providing all the relevant material I received in response.

I will be out all next week. If there are urgent matters that must be discussed, contact Scott Keep, my supervisor, at (202) 208-5311 or [Scott.Keep@sol.doi.gov](mailto:Scott.Keep@sol.doi.gov)

James W. Porter  
Attorney-Adviser  
Tribal Government and Alaska  
Division of Indian Affairs  
Office of the Solicitor, Department of the Interior  
1849 C Street, N.W. Washington, D.C. 20240  
Mail stop 6518  
202-208-5349 (phone)  
202-208-4115 (fax)  
[James.Porter@sol.doi.gov](mailto:James.Porter@sol.doi.gov)

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1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 SARA J. DRAKE  
 Senior Assistant Attorney General  
 3 RANDALL A. PINAL  
 Deputy Attorney General  
 4 State Bar No. 192199  
 110 West A Street, Suite 1100  
 5 San Diego, CA 92101  
 P.O. Box 85266  
 6 San Diego, CA 92186-5266  
 Telephone: (619) 645-3075  
 7 Fax: (619) 645-2012  
 E-mail: Randy.Pinal@doj.ca.gov  
 8 *Attorneys for Defendant State of California*

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 OAKLAND DIVISION

12 **BIG LAGOON RANCHERIA, a Federally**  
 13 **Recognized Indian Tribe,**  
 14 Plaintiff,  
 15 v.  
 16 **STATE OF CALIFORNIA,**  
 17 Defendant.

CV 09-1471 CW (JCS)  
**DECLARATION OF PATTY BRANDT  
 IN OPPOSITION TO PLAINTIFF'S  
 MOTION FOR SUMMARY JUDGMENT  
 AND IN SUPPORT OF DEFENDANT'S  
 CROSS-MOTION FOR SUMMARY  
 JUDGMENT**  
 Fed. R. Civ. P. 56  
 Date: August 12, 2010  
 Time: 2 p.m.  
 Dept: 2, Fourth Floor  
 1301 Clay Street  
 Oakland, CA 94612  
 Judge: The Honorable Claudia Wilken  
 Trial Date: Not set  
 Action Filed: 4/3/2009

23  
 24 I, PATTY BRANDT declare:

25 1. I am a Senior Legal Analyst for the State of California currently employed by the  
 26 California Department of Justice.  
 27  
 28

1           2. On June 17, 2010, in the course of my official duties as an employee of the  
2 California Department of Justice, I personally viewed and copied records of the Bureau of Indian  
3 Affairs archived at the National Archives and Records Administration (NARA) located in San  
4 Bruno, California.

5           3. While at the NARA, I viewed on microfiche and copied the following  
6 Applications for Enrollment from 1928. Attached to this declaration are the true and correct  
7 copies of the applications listed below:

8           Lottie Charlie (App. No. 6695), Exhibit A;  
9           Nettie Waukell (App. No. 6147), Exhibit B;  
10          Ida Walker (Waukell) (App. No. 6047), Exhibit C;  
11          George Green (App. No. 4022), Exhibit D;  
12          Theodore Morehead (App. No. 6529), Exhibit E;  
13          Isabel Morehead (App. No. 6530), Exhibit F.

14          4. Additionally, while at the NARA, I viewed the physical files of the California  
15 Judgment Enrollment of 1937-1952 and copied the below listed documents and have attached true  
16 and correct copies of each:

17          Theodore Moorehead, Sr. Application for Enrollment to Share in the California Judgment  
18 Funds (App. No. 26205), Exhibit G;

19          Isabel Moorehead Application for Enrollment to Share in the California Judgment Funds  
20 (App. No. 26206), Exhibit H;

21          Application for Enrollment with the Indians of California for Theodore R. Moorehead dated  
22 June 10, 1949, Exhibit I.

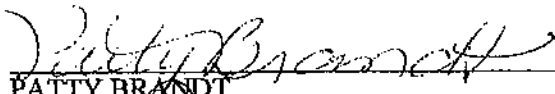
23          5. Also, while at the NARA, I viewed the physical probate files of the Matter of the  
24 Estate of Lottie James Charles and Estate of Harry Waukell, and copied the below listed  
25 documents:

26          Testimony of Nettie Waukell from the probate file of Estate of Harry Waukell, Exhibit J;  
27          Testimony of Minnie Waukell Frank from the probate file of Estate of Harry Waukell,  
28 Exhibit K.

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6. Lastly, while at the NARA, I viewed on microfiche the Twelfth Census of the United States from 1900 and copied the pages indicated the State of California, County of Del Norte, Supervisor's District No. 3, Enumeration District No. 10, Schedule No. 1, Indian Population sheet 3, pages A and B, which true and correct copies are attached as Exhibit L.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct of my personal knowledge, and that I, if called to testify, could and would testify as above set forth; and that this declaration is signed at Sacramento, California, this thirtieth day of June, 2010.

  
PATTY BRANDT

**EXHIBIT A**  
**(Brandt Decl.)**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

Application Number 6695

Application for enrollment  
with the Indians of the State of California under  
the Act of May 18, 1928 (45 Stat. L. 602)

Application Number 6695  
Name Charlie, Lottia

Action taken

The Secretary of the Interior,  
Washington, D. C.

Sir:

I hereby make application for the enrollment of myself (and minor children living on May 18, 1928) as Indians of the State of California in accordance with the provisions of the Act of Congress of May 18, 1928 (45 Stat. L. 602). The evidence of identity is herewith subjoined.

1. State the full names, ages, sex, and dates of birth of yourself and your minor children living on May 18, 1928.

English Names	Indian Names	Ages	Sex	Dates of birth		
				Month	Day	Year
Charlie Lottia	Widow	52	F	5	26	1876
Ed	Son	24	M	5	24	1904
Home	Son	18	M	5	10	1910
Ruben	Son	15	M	5	23	1913
Charles Lottia	Son	8	M	5	20	1920

Approved: August 29, 1928

Residence on May 18, 1928 Humboldt County, California

Post Office Humboldt Humboldt California  
Town or City Box Number or County  
Rural Route Number

Note: Does not live on Trust Lands

Place of birth of yourself and each of your minor children

Humboldt County, California

5. Where have you and your children resided since birth?

Humboldt County, California.

6. Are you married? No. I am a widow.

7. If a married woman, give your name before you were married.

Lottie Mao.

8. Name and exact date of birth (Month, Day, and Year) of your wife (or husband).

1. Jimmie Charlie--- ( Died about 1919 )

2. Andrew Caladre-- Mexican. Not married to him. Age about 50 years

9. Is he (or she) of Indian blood? If so, state the name of the Tribe or Band, and degree of Indian blood.

1. Yes. 1/4 Met-tah Band, Klamath River, Humboldt County, California.

2. No. He is a Mexican.

10. What is your degree of Indian blood and to what Tribe or Band of Indians of the State of California do you belong? Yaw-h-ter Band, Klamath River

1/4 (Yurok) Humboldt County, California.  
Degree of Indian Blood Name of Tribe or Band

11. To what Treaty or Treaties were you or your ancestors a party, and where did you (or they) reside on June 1, 1852? Where and when were said Treaties negotiated?

I do not know.

Give the names of your California Indian Ancestors living on June 1, 1852, through whom you claim, who were parties to any Treaty or Treaties with the United States. If you claim through more than one ancestor, list each ancestor and through each claim separately. State your degree, name, or name of ancestor, setting forth your relationship to them.

Names	Tribe or Band	Relationship by Blood
Billy	Klamath River, Humboldt County, California.	Father

Jane Yaw-h-ter	Klamath River, Humboldt County, California.	Mother
----------------	---	--------

( see Nos 15 and 36 )

13. Give the names of the Chiefs, Captains and Headmen of the Tribe or Band to which your ancestors belonged on June 1, 1852, who executed the Treaty or Treaties herein referred to, if you know them.

I do not know.

14. What lands in the State of California do you claim were taken from you or your California Indian ancestors by the United States without compensation, or which were appropriated by the United States to its own purposes and for which the United States has refused or failed to compensate you?

Humboldt County, California.

15. Give names of your father and mother and your mother's name before her marriage. If either is a white person, so state.

Father English Name Billy Degree of Indian Blood  
Indian Name

Mother English Name Jane Yawmatar Degree of Indian Blood  
Indian Name

Maternal Name Jane

16. Where were they born?

Father Humboldt County, California.

Mother

17. When and where were your parents married?

Humboldt County, California.

18. How were they married, in accordance with the law or by Indian custom?

Indian Custom.



19. Where did they reside after their marriage?

Humboldt County, California.

20. Where did they reside on June 1, 1852, if living at that time?

Humboldt County, California.

21. Dates of death of your father and mother.

Father Long ago Mother About 1919

22. Were you or your minor children or either of your parents ever enrolled for any land or other benefits?

My mother was allotted.

23. If so, give the number of your allotment, state where it is located, and the name of the Indian School or Agency under whose jurisdiction it now is.

Mother's allotment No. Allotted as Jane Mao or Mow.

Humboldt County, California.

Hoopa Valley Indian Agency, Hoopa, California.

24. If enrolled on a Census Roll, state your Census Roll Number on the Census Roll of June 30, 1928, and the name of the Indian School or Agency under whose jurisdiction you are.

Hoopa Valley Indian Agency,

Hoopa, California.

Census Roll No. June 30, 1928.

Name of Indian School or Agency

25. State the amount and kind of property you now own, and what is your occupation.

An undivided interest in inherited lands.

Occupation - Housewife.

Value of property - \$ 150.00

26. State English and Indian names of your grandparents on both father's and mother's side, if possible. If any are white persons so state.

Father's Side

Mother's Side

Names	Degree of Indian Blood	Names	Degree of Indian Blood
EMILSON	4/4	Yah-mao	4/4
TERRELL	4/4	Unknown	4/4

27. Where were they born?

Humboldt County, California.

28. Where did they reside during their lives, and where were they living on June 1, 1852?

Humboldt County, California.

29. To expedite identification, claimants should give the full English and Indian names, if possible, of their paternal and maternal California Indian ancestors back to June 1, 1852, the name of the Tribe or Band to which they belonged and where they resided on that date.

REMARKS

(Under this head the applicant may give any additional information that he believes will assist in proving his claims.)

I solemnly swear that the foregoing statements are true to the best of my knowledge and belief.

(Signature)

Subscribed and sworn to before me this

20th

day of

August 19, 1899.

My commission expires

*[Handwritten Signature]*

AFFIDAVIT

(The following affidavit must be sworn to by two or more witnesses who are well acquainted with the applicant.)

Personally appeared before me ..... Susie Charlie  
and ..... Rosa Stevens ..... who, being duly sworn, on oath depose and  
say that they are well acquainted with ..... Lottie Charlie  
who makes the foregoing application and statements, and have known ..... her  
and her ancestors,  
personally for ..... 45 ..... years and ..... 45 ..... years, respectively; that they know  
that ..... she ..... is of California Indian blood of the degree and lineage stated in  
the above application and that the facts stated with reference to ..... her  
ancestors,  
the parentage of ..... her ..... children, their ages and degree of Indian blood, and  
their places of residence are true; that they know ..... her to be the identical  
person ..... she represents ..... herself to be, and that all statements made by ..... her  
are true, to the best of their knowledge and belief, and that they have no inter-  
est whatever in ..... her ..... claim.

Witnesses to Mark

Signature of Witness

Rosa Stevens

Susie Charlie  
Rosa Stevens

Subscribed and sworn to before me this ..... 29th ..... day of  
August ..... 19..... 29.....

My commission expires

James H. [Signature]  
Examiner of Inheritance

**EXHIBIT B**  
**(Brandt Decl.)**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

Application Number

Application for  
with the Indians of the State of California under  
the Act of May 18, 1928 (45 Stat. L. 602)

The Secretary of the Interior,  
Washington, D. C.

Sir:

I hereby make application for myself (and minor children living on May 18, 1928) as Indians of the State of California in accordance with the provisions of the Act of May 18, 1928 (45 Stat. L. 602). The evidence of identity is herewith submitted.

1. State the full names, ages, sex, and dates of birth of yourself and your minor children living on May 18, 1928.

English Names	Indian Names	Relationship	Sex	Date of Birth	Age
				Month Day Year	
Waukell, Nettie	None	Wife	F	Aug 20 1862	4/4
Waukell, Frank	None	Son	M	Apr 2 1908	4/4
Waukell, Margaret	None	Daughter	F	Mar 17 1909	4/4
Waukell, Ada	None	Daughter	F	Dec 17 1909	4/4

*Hubland, Harry Waukell*

2. Residence on May 18, 1928 Waukell, California
3. Post Office Elmerth, California  
Town or City, Box Number, State
4. Place of birth of yourself and each of your minor children  
At Waukell Indian Village, California

Name Waukell, Nettie  
Application Number 6147

Action taken

Approved, JHA

6. Are you married? Yes

7. If a married woman, give your name before you were married.

Nattie Dava

8. Name and exact date of birth (Month, Day and Year) of your wife (or husband).

Harry Waukell, born 1862

9. Is he (or she) of Indian blood? If so, state the name of the Tribe or Band, and degree of Indian blood.

4/4

Kurok Tribe  
 Humboldt County, Calif.

10. What is your degree of Indian blood? What Tribe or Band of Indians of the State of California do you belong?

4/4

Kurok Tribe  
 Humboldt County, Calif.

Degree of Indian Blood

Name of Tribe or Band

11. To what Treaty or Treaties were you or your ancestors a party, and where did you (or they) reside on June 1, 1852? Where and when were said Treaties negotiated?

Have heard of the treaty, but do not know when or where it was made. ancestors resided in Humboldt County, California, on June 1, 1852.

12. Give the names of your California Indian ancestors living on June 1, 1852, through whom you claim, who were parties to any Treaty or Treaties with the United States. If you claim through more than one ancestor living on that date, set forth each claim separately. Show the descent from said ancestor or ancestors setting forth your relationship to them.

<u>Names</u>	<u>Tribe or Band</u>	<u>Relationship by Blood</u>
<u>Jennie Waukell</u>	<u>Humboldt County, Calif.</u>	<u>Mother</u>
<u>Dava</u>	<u>" "</u>	<u>Father</u>

Jennie Waukell

Humboldt County, Calif. Mother

Dava

" " Father

13. Give the names of the Chiefs, Captains, or other members of the Tribe or Band to which your ancestors belonged on June 1, 1850, and executed the Treaty or Treaties herein referred to, if you know them.

I do not know

14. What lands in the State of California were taken from you or your California Indian ancestors by the United States without compensation, or which were appropriated by the United States for public purposes and for which the United States has refused or failed to compensate you?

In Humboldt, Trinity and Colusa Counties, California.

15. Give names of your father and mother, and your mother's name before her marriage. If either is a white person, give the name of the white person.

Father: English Name: Dave Degree of Indian Blood: 3/4  
Indian Name: Do not know

Mother: English Name: Jennie W. Degree of Indian Blood: 3/4  
Indian Name: Do not know

Maiden Name: Do not know

16. Where were they born?

Father: Yonkell Indian, Humboldt Co., Calif.

Mother: Walthosa Indian, Humboldt Co., Calif.

17. When and where were your parents married?

Married in Humboldt County, Calif. Do not know when.

18. How were they married, in accordance with the laws of the State or by Indian custom?

Indian custom

Humboldt County, California

20. Where did they reside on June 1, 1882, and where were they residing at that time?  
Both resided on Klamath River Humboldt County, California,  
on June 1, 1882.

21. Dates of death of your father and mother?  
Father Do not know Mother 1921, age 83

22. Were you or your minor children or parents ever enrolled for any land or other benefits?  
Yes

23. If so, give the number of your allotment, where it is located, and the name of the Indian School or Agency under whose jurisdiction it now is.  
No. 844H. Allotment on Klamath River in Humboldt County,  
California, under jurisdiction of Klamath Valley Agency, Calif.  
Fee patent issued to me September 10, 1919;

24. If enrolled on a Census Roll, state the Census Roll Number on the Census Roll of June 30, 1928, and the name of the Indian School or Agency under whose jurisdiction you are.  
No. 314 (Lower Klamath Roll) Klamath Valley Agency, Calif.  
Census Roll No. June 30, 1928  
Name of Indian School or Agency

25. State the amount and kind of property owned, and what is your occupation.  
My allotment of 83.93 acres of land. Value \$500.00  
Occupation - Housewife.

26. State English and Indian names of your ancestors on both father's and mother's side, if possible. If any are well known, so state.

Names	Father's Side		Mother's Side	
	Degrees of Indian Blood	Names	Degrees of Indian Blood	Names
Do not know	1/4	Do not know	1/4	Do not know
Do not know	1/4	Do not know	1/4	Do not know



27. Where were they born?

On lower Klamath River in Humboldt County, California.

28. Where did they reside during their lives, and where were they living on June 1, 1852?

Resided on Klamath River in Humboldt County, California, and were residing there on June 1, 1852, and living at that time.

29. To expedite identification, claimant should give the full English and Indian names, if possible, of their paternal and maternal California Indian ancestors back to June 1, 1852, the name of the band or bands to which they belonged and where they resided on that date.

Know of none aside from ones already named.

(Under this head the applicant may give any additional information that he believes will assist in proving his claim.)

I solemnly swear that the foregoing statements by me are true to the best of my knowledge and belief.

(Signature) \_\_\_\_\_

August 19 1852

AFFIDAVIT

(The following affidavit must be sworn to by two or more witnesses who are well acquainted with the applicant.)

Personally appeared before me William H. Haskell  
and Maggie Jones who have duly sworn, on oath depose and say that they are well acquainted with William Haskell who makes the foregoing application and her personally for 30 years and 20 years, respectively; that they know that she is of California Indian her degree and lineage stated in the above application and that the facts with reference to her ancestors, the parentage of her children, the her degree of Indian blood, and their places of residence are true; that her to be the identical person she represents herself to be and that all statements made by her are true, to the best of their knowledge and belief, and that they have no interest whatever in her claim.

Witnesses to Mark

Signature of Witnesses

Subscribed and sworn to before me 20th day of

AUGUST 1929

My commission expires

**EXHIBIT C**  
**(Brandt Decl.)**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

Application Number **6047**

Application for enrollment  
with the Indians of the State of California under  
the Act of May 18, 1928 (45 Stat. L. 602).

The Secretary of the Interior,  
Washington, D. C.

Sir:

I hereby make application for the enrollment of myself (and minor children living on May 18, 1928) as Indians of the State of California in accordance with the provisions of the Act of May 18, 1928 (45 Stat. L. 602). The evidence of identity is hereby submitted.

1. State the full names, ages, sex, and dates of birth of yourself and your minor children living on May 18, 1928.

English Names	Indian Names	Age	Sex	Dates of birth			Deg.
				Month	Day	Year	
Walker, Ida	None	Wife	F.	Aug.	13	1892	4/4
Williams, Blanche	None	Dau.	F.	Dec.	27	1910	1/2
Williams, Thomas	None	Son	M.	Apr.	9	1912	1/2
Walker, Wilma	None	Dau.	F.	Apr.	5	1921	1/2
Walker, Harry	None	Son	M.	Apr.	11	1926	1/2

2. Residence on May 18, 1928 ... Arcata ... Humboldt County, California.

3. Post Office ... Arcata ... Humboldt County, California.  
Town or City, Box Number ... County ... State

Note:--Not living on trust property

4. Place of birth of yourself and each of your children

Harry Walker was born in Humboldt County, California. I was born in Del Norte County, California. I have no other children.

Application Number **6047**  
Name **Walker, Ida**

Action taken

Approved, JHA.

5. Where have you and your children resided since birth?  
Del Norte and Humboldt Counties, California. Never lived  
outside of State of California.

6. Are you married?  Yes

7. If a married woman, give your name before you were married.  
Ida Waukell

8. Name and exact date of birth (Month, Day, and Year) of your wife (or husband).  
Louis Walker, do not know date of birth.

9. Is he (or she) of Indian blood? If so, give the name of the Tribe or Band, and  
degree of Indian blood.  
White

10. What is your degree of Indian blood, and what Tribe or Band of Indians of the  
State of California do you belong?  
4/4  
Turok Tribe  
Del Norte County, Calif.  
Name of Tribe or Band

11. To what Treaty or Treaties were you or your ancestors a party, and where did you  
(or they) reside on June 1, 1852? Where and when were said Treaties negotiated?  
Have heard of the treaty made by ancestors with the United  
States, but do not know when treaty was made. Ancestors  
resided on lower Klamath River, Del Norte County, California,  
on June 1, 1852. (Treaty signed at Camp Klamath October  
27, 1851). Ancestors also resided in Humboldt County, Calif., on  
June 1, 1852.

12. Give the names of your California Indian ancestors living on June 1, 1852,  
through whom you claim who were parties to the Treaty or Treaties with the  
United States. If you claim through more than one ancestor living on that date,  
set forth each claim separately. State your descent from said ancestor or an-  
cestors setting forth your relationship.

Name	Tribe or Band	Relationship by Blood
Jennie Waukell	Humboldt County, Cal.	Maternal Grandmother
Jennie Waukell	Del Norte County, Cal.	Maternal Grandmother

13. Give the names of the Chiefs, Captains and Headmen of the Tribe or Band to which your ancestors belonged on June 1, 1850, who executed the Treaty or Treaties herein referred to, if you know them.

I do not know

14. What lands in the State of California were taken from you or your California Indian ancestors by the United States without compensation, or which were appropriated by the United States for its own purposes and for which the United States has refused or failed to compensate you?

In Del Norte, Humboldt and Tehama Counties, California.

15. Give names of your father and mother, and your mother's name before her marriage. If either is a white person, give the name of the Indian with whom he or she was united.

Father— English Name HARRY WATSON Degree of Indian Blood 4/4  
Indian Name None

Mother— English Name Nettie Watson Degree of Indian Blood 4/4  
Indian Name Do not know

Maiden Name Nettie Watson

16. Where were they born?

Father Requa, Del Norte County, California.

Mother Johnsons Indian Reservation, Humboldt Co., Calif.

17. When and where were your parents married?

Married at Requa, Del Norte County, California. Do not know when.

18. How were they married, in accordance with Indian custom or by Indian custom?

Indian custom

Requa, Del Norte County, California

20. Where did they reside on June 1, 1852, and how long at that time?

Not living on June 1, 1852.

21. Dates of death of your father and mother?

Father living Requa, Calif. Mother living Requa, Calif.

22. Were you or your minor children or either of your parents ever enrolled for any land or other benefits?

Yes

23. If so, give the number of your allotment, where it is located, and the name of the Indian School or Agency under whose jurisdiction it now is.

No. 85-H. Allotment in Del Norte County, California, on lower Klamath River. For patent same on September 10, 1919.

Allotment sold by me for \$2,000.

24. If enrolled on a Census Roll, state the Census Roll Number on the Census Roll of June 30, 1928, and the name of the Indian School or Agency under whose jurisdiction you are.

No. 140. Lower Klamath Roll, Klamath Valley Agency, Calif. Name of Indian School or Agency

25. State the amount and kind of property owned, and what is your occupation.

100 acres, 3 horses, 10 head of cattle, and farm implements. Value \$1,000.00. Occupation: Housewife

26. State English and Indian names of your father and mother, and their degree of Indian blood.

Father's Side

Mother's Side

Name	Degree of Indian Blood	Name	Degree of Indian Blood
Do not know	1/4	Do not know	1/4
Do not know	1/4	Do not know	1/4

27. Where were they born?

Paternal grandparents and maternal grandmother born in Humboldt County, California. Maternal grandfather born in Del Norte County, California.

28. Where did they reside during their lives and where were they living on June 1, 1862?

Resided in Humboldt and Del Norte Counties, California, on Klamath River and were residing in said Counties on June 1, 1862.

29. To expedite identification, claimants should give the full English and Indian names, if possible, of their paternal and maternal California Indian ancestors known on June 1, 1862, the name of the tribe to which they belonged and where they resided on that date.

Know or none aside from those already named.

Under this head the applicant may give additional information that he believes will assist in proving his claim.

I solemnly swear that the foregoing is true to the best of my knowledge and belief.

Subscribed and sworn to before me this 29th day of

AUGUST 1910



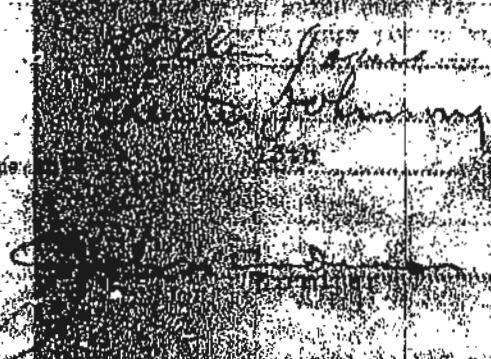
AFFIDAVIT

(The following affidavit must be sworn to by two or more witnesses who are well acquainted with the applicant.)

Personally appeared before me Walter W. Rupp  
and Chester Johnny  
who say that they are well acquainted with her  
who makes the foregoing application and her and have known her  
personally for 25 years and 25 years, respectively; that they know  
that she is of California Indian blood, the degree and lineage stated in  
the above application and that the facts therein with reference to her ancestors,  
the parentage of her children, the degree of Indian blood, and  
other places of residence are true; that her to be the identical  
person she represents herself to be, and that all statements made by her  
are true, to the best of their knowledge and belief, and that they have no inter-  
est whatever in her claim.

Witnesses to Mark

Signature of Witnesses



Subscribed and sworn to before me on this 10 day of July, 1920

My Commission Expires

**EXHIBIT D**  
**(Brandt Decl.)**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

Application Number **4022**

Application for Enrollment  
with the Indians of the State of California under  
the Act of May 18, 1928 (45 Stat. L. 602)

The Secretary of the Interior,  
Washington, D. C.

Sir:

I hereby make application for the enrollment of myself (and minor children living on May 18, 1928) as Indians of the State of California in accordance with the provisions of the Act of May 18, 1928 (45 Stat. L. 602). The evidence of identity is hereby submitted.

1. State the full names, ages, sex, and dates of birth of yourself and your minor children living on May 18, 1928.

English Names	Indian Names	Age	Sex	Dates of birth Month Day Year	Desc.
Green, George	None	Head 41	M.	July 3 1887	±
<i>Witcher</i>	None	Dau 18	F.	Dec. 12 1910	±
Green, Lila	None	Dau 18/14	F.	Jan. 14 1914	±
Green, George S.	None	Son 17/12	M.	May 4 1916	±
Green, Lincoln	None	Son 17/9	M.	Feb. 14 1919	±
Green, Verla	None	Dau 8	F.	Dec. 21 1923	±
Green, Thelma	None	Dau 8	F.	Oct. 25 1925	±

(See application of Laura Green No. 4023)

\*See application of Violet Green No. 4024

2. Residence on May 18, 1928 Burnt Ranch, Trinity Co., Calif.
3. Post Office Burnt Ranch Trinity California.  
Town or City, Box Number                      County                      State                       
Rural Route Number

4. Place of birth of yourself and each of your minor children  
I was born at Weitchpec, Humboldt County, Calif., and my children  
were born at Burnt Ranch, Trinity County, California.

Application Number **4022**  
Name Green, George

Action taken

Accepted

5. Where have you and your children resided since birth?

Humboldt and Trinity Counties, California

6. Are you married? Yes

7. If a married woman, give your name before you were married.

8. Name and exact date of birth [Month, Day and Year] of your wife (or husband):

Laura Green, born September 12, 1852

9. Is he (or she) of Indian blood? If so, give the name of the Tribe or Band, and degree of Indian blood.

1/2

Chin-a-ri-ke Tribe  
Trinity County, Calif.

10. What is your degree of Indian blood, and to what Tribe or Band of Indians of the State of California do you belong?

1/2

Yurok Tribe  
Humboldt County, California

Degree of Indian Blood

Name of Tribe, or Band

11. To what Treaty or Treaties were you or your ancestors a party, and where did you (or they) reside on June 1, 1852? Where and when were said Treaties negotiated?

I have heard of the treaty my Indian ancestors made with the United States, but I do not know where or when it was made. My Indian ancestors resided in Humboldt County, California, on June 1, 1852, on Lower Klamath River.

12. Give the names of your California Indian ancestors living on June 1, 1852, through whom you claim, who were parties to any Treaty or Treaties with the United States. If you claim through more than one ancestor living on that date, set forth each claim separately. State the descent from said ancestor or ancestors setting forth your relationship to them:

<u>Name</u>	<u>Tribe or Band</u>	<u>Relationship by Blood</u>
Bessie Gordon	Yurok Tribe Humboldt County, Cal.	Mother.

3. Where have you and your children resided since birth?  
 Humboldt and Trinity, California

6. Are you married? Yes  
 7. If a married woman, give your name before you were married.

8. Name and exact date of birth (Month, Day, Year) of your wife (or husband)  
 Laura Green, born September 12, 1852

9. Is he (or she) of Indian blood? If so, give the name of the Tribe or Band, and degree of Indian blood.  
 1/2 Chim-a-ricks Tribe  
 Trinity County, Calif.

10. What is your degree of Indian blood, and to what Tribe or Band of Indians of the State of California do you belong?  
 1/2 Yurok Tribe  
 Humboldt County, California  
 Degree of Indian Blood Name of Tribe or Band

11. To what Treaty or Treaties were you or your ancestors a party, and where did you (or they) reside on June 1, 1852? Where were said Treaties negotiated?  
 I have heard of the treaty my ancestors made with the United States, but I do not know where it was made. My Indian ancestors resided in Humboldt County, California, on June 1, 1852, on Lower Klamath River.

12. Give the names of your California Indian ancestors living on June 1, 1852, through whom you claim, who were parties to the Treaty or Treaties with the United States. If you claim through more than one ancestor living on that date, set forth each claim separately. State the descent from said ancestor or ancestors setting forth your relationship to them.

<u>Name</u>	<u>Tribe or Band</u>	<u>Relationship by Blood</u>
Bessie Green	Yurok Humboldt County, Cal.	Mother.

13. Give the names of the Chiefs, Captains, or Headmen of the Tribe or Band to which your ancestors belonged on June 1, 1822, who ratified the Treaty or Treaties herein referred to, if you know them.

I do not know

14. What lands in the State of California were taken from you or your California Indian ancestors by the United States without compensation, or which were appropriated by the United States for any purpose and for which the United States has refused or failed to compensate you?

In Humboldt and Trinity Counties, California.

15. Give names of your father and mother, and mother's name before her marriage. If either is a white person, give race.

Father - English Name JOAN OKA White  
Degree of Indian Blood

Indian Name

Mother - English Name Susie Gray 4/4  
Degree of Indian Blood

Indian Name Do not know

Maiden Name Do not know

16. Where were they born?

Father Do not know I think

Mother Near Whitshoe Humboldt County, California.

17. When and where were your parents married?

I do not know

18. How were they married, in accordance with the law, or by Indian custom?

I do not know

19. Where did they reside after the death of your father?  
 bluff Creek, about 6 miles above Weitchpec, Humboldt County, Cal.

20. Where did they reside on June 1, 1858, and where were they living at that time?  
 Mother resided at Weitchpec, Humboldt County, Cal., on June 1, 1858

21. Dates of death of your father and mother?  
 Father about 1890 Mother 1905, age 60 years.

22. Were you or your minor children or either of your parents ever enrolled for any land or other benefits?  
 No.

23. If so, give the number of your allotment, the acreage it is located, and the name of the Indian School or Agency under whose jurisdiction it now is.  
 Never enrolled for allotment

24. If enrolled on a Census Roll, state your Roll Number on the Census Roll of June 30, 1928, and the name of the Indian School or Agency under whose jurisdiction you are.

Name on 1928 Census ..... Flora Valley Agency, Calif.  
 Census Roll No. June 30, 1928 ..... of Indian School or Agency

25. State the amount and kind of property owned by you, and what is your occupation.  
 Have homestead of 55 acres in Tehama County, California, near  
 Smith Ranch, dwelling house and barn worth \$100,000,  
 1 head cattle, Ford automobile worth \$1,200.00

OCCUPATION - Miner.

26. State English and Indian names of your grandparents on both father's and mother's side, if possible. If any are white, state the state.

Father's Side		Mother's Side	
Name	Degree of Indian Blood	Name	Degree of Indian Blood
Do not know	White	Do not know	4/4 Yurok Tribe
Do not know	White	Do not know	4/4 Yurok Tribe

19. Where were they born?

Maternal grandparents born Humboldt County, California, near  
Helton, on Lower Klamath River.

20. Where did they reside during their lives and where were they living on June 1,  
1852?

Resided in Humboldt County, California (Maternal Grandparents). Do  
not know whether they were living on June 1, 1852, or not.

21. To expedite identification, claimants should give the full English and Indian  
names, if possible, of their paternal and maternal California Indian ancestors  
back to June 1, 1852, the name of the tribe or band to which they belonged and  
where they resided on that date.

Know of none aside from ones already listed.

REMARKS

(Under this head the applicant may give any additional information that he  
believes will assist in proving his claim.)

I solemnly swear that the foregoing statements made by me are true to the best  
of my knowledge and belief.

(Signature) *John Green*

Subscribed and sworn to before me this 27th

June 19 1852

My commission expires

*[Signature]*  
Examiner



AFFIDAVIT

(The following affidavit must be sworn to by two or more witnesses who are well acquainted with the applicant.)

Personally appeared before me Mark Tom  
and Pedro Freddie  
who say that they are well acquainted with Mark Tom  
who makes the foregoing application and Mark Tom  
personally for 41 years and 30 years respectively; that they know  
that he is of California Indian Indian degree and lineage stated in  
the above application and that the facts with reference to his ancestors,  
the parentage of his children, the degree and degree of Indian blood, and  
their places of residence are true; that he is him to be the identical  
person he represents himself to be his statements made by him  
are true, to the best of their knowledge and belief, and that they have no inter-  
est whatever in his claim.

Witnesses to Mark

Mark Tom  
Pedro Freddie

Signature of Witness

Mark Tom  
Pedro Freddie

Subscribed and sworn to before me 27th day of  
June 19 20

My commission expires

Mark Tom  
Examiner

**EXHIBIT E**  
**(Brandt Decl.)**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF INDIAN AFFAIRS

Application Number 6530

Application for enrollment  
with the Indians of the State of California under  
the Act of May 18, 1928 (45 Stat. 1, 602)

The Secretary of the Interior,

Washington, D. C.

Sir:

I hereby make application for the enrollment of myself and minor children living on May 18, 1928, as Indians of the State of California in accordance with the provisions of the Act of Congress of May 18, 1928 (45 Stat. 1, 602). The evidence of identity is herewith submitted.

State the full names, ages, sex, and dates of birth of yourself and your minor children living on May 18, 1928.

English Name	Indian Name	Age	Sex	Date of Birth Month Day Year
Walter J. ...	...	19	M	...

The application of Theodore ...  
Del Norte County, California, Act No. ...

Witness my hand and seal this ... day of ... 1928.  
Theodore ...  
Del Norte County, California

1. How long you and your children resided since birth

Smith River, Del Norte County, California

2. How long you have lived in California since you were born

Smith River, Del Norte County, California

3. How long you have lived in California since you were born

Smith River, Del Norte County, California

4. How long you have lived in California since you were born

Smith River, Del Norte County, California

5. How long you have lived in California since you were born

Smith River, Del Norte County, California

6. How long you have lived in California since you were born

Smith River, Del Norte County, California

7. How long you have lived in California since you were born

Smith River, Del Norte County, California

8. How long you have lived in California since you were born

Smith River, Del Norte County, California

9. How long you have lived in California since you were born

Smith River, Del Norte County, California

10. How long you have lived in California since you were born

Smith River, Del Norte County, California

11. How long you have lived in California since you were born

Smith River, Del Norte County, California

12. How long you have lived in California since you were born

Smith River, Del Norte County, California

13. How long you have lived in California since you were born

Smith River, Del Norte County, California

14. How long you have lived in California since you were born

Smith River, Del Norte County, California

15. How long you have lived in California since you were born

Smith River, Del Norte County, California

16. How long you have lived in California since you were born

Smith River, Del Norte County, California

17. How long you have lived in California since you were born

Smith River, Del Norte County, California

18. How long you have lived in California since you were born

Smith River, Del Norte County, California

19. How long you have lived in California since you were born

Smith River, Del Norte County, California

20. How long you have lived in California since you were born

Smith River, Del Norte County, California

21. How long you have lived in California since you were born

Smith River, Del Norte County, California

Give the names of the Chiefs, Captains and Headmen of the Tribes to which your ancestors belonged on June 15, 1852, and designate the Treaty or Treaties (which referred to) if you know them.

I do not know.

14. What lands in the State of California do you claim were taken from you or your California Indian ancestors by the United States without compensation, or which were appropriated by the United States to its own purpose and for which the United States has refused or failed to compensate you?

Del Norte County, California.

15. Give names of your father and mother and your mother's name before her marriage, if either is a white person, or state:

Father: English Name Lewis Whipple Degree of Indian Blood  
Indian Name

Mother: English Name Ida Whipple Degree of Indian Blood  
Indian Name

Maiden Name Ida Bob

16. State where they born:

Father Del Norte County, California

Mother

17. How and state were your parents married?

Del Norte County, California

18. State the names of the persons with whom you are now residing.

Ida Bob

1. Have you ever resided after your marriage?

Yes, Harris County, California.

2. Where did you reside on June 1, 1924, or living at that time?  
Was living then

3. Name of each of your father and mother.  
Father: Not living Mother: 1911

4. Have you or your minor children or either of your parents ever enrolled for any Indian benefits?  
No

5. Give the number of your allotment, state where it is located, and the name of the Indian School or Agency under whose jurisdiction it now is.  
Never allotted.

6. If enrolled on a Census Roll, state your Census Roll Number on the Census Roll under No. 1924, and the name of the Indian School or Agency under whose jurisdiction you are.  
Census Roll No. June 30, 1924  
Rope Valley Indian Agency  
Resident, Rope Valley  
Name of Indian School or Agency

7. State the amount and kind of property you now own, and what is your occupation.  
Have no separate property

Occupation: Housewife

8. State English and Indian names of your grandparents on both father's and mother's side, if possible, if any are white persons so state.

Father's Side		Mother's Side	
Name	Degree of Indian	Name	Degree of Indian
Thippie	White man	Long Haired Man	1/2
White Thippie	1/4	Had no Indian name	1/2
Johnston			

Del Norte County, California,

Where and they resided during their lives, and where were they living on June 16, 1852.

Del Norte County, California,

In the identification statements should give the full English and Indian names, as far as possible, of their paternal and maternal California Indian ancestors, and also the name of the Tribe or Band to which they belonged and where they resided on that date.

REMARKS

Wherever it is found the applicant may give any additional information that he may wish to use in proving his claim.

Witness my hand and the official seal of the Department of the Interior at Washington, D.C., this 10th day of June, 1852.

James W. Smith, Secretary of the Department of the Interior.

Filed for record in the office of the Register of the Land Office at San Francisco, California, this 10th day of June, 1852.

Register of the Land Office.

AFFIDAVIT

I, John G. Williams, being duly sworn, depose and say that Max is of California Indian blood of the degree and lineage claimed in the foregoing application and statements, and have known Max for 20 years and 20 years respectively, that Max is the father of Max children, their ages and degree of Indian blood, and that the facts stated with reference to Max and Max are true, that they know Max to be the identical person Max represent Max to us, and that all statements made by Max are true to the best of their knowledge and belief, and that they have no claim Max claim.

Witness my hand

Signature of Witness

Subscribed and sworn to before me this AUGUST 19 1923

Notary Public  
1923  
Notary Public



APPROVED FOR THE SECRETARY

8529

W. K. ...

0769

NAME	SEX	AGE	EDUCATION	RELIGION	PROFESSION
...	...	...	...	...	...

UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF INDIAN AFFAIRS

8529



Have you and your children resided since birth

Del Norte County, California.

Are you married? Yes

If a married woman, give your name before you were married.

Name and exact date of birth (Month, Day and Year) of your wife (or husband)

Robert Morshood --- Age about 19 years. I do not know her birth

day. Is he (or she) of Indian blood? If so, state the name of the Tribe or Band, and degree of Indian blood.

Yes 3/4 Smith River Band, Del Norte County, California

What is your degree of Indian blood and to what Tribe or Band of Indians of the State of California do you belong?

1/2 Smith River Band, Del Norte County, California

To what Treaty or Treaties were you or your ancestors a party, and where did you (or they) reside on June 1, 1852? Where and when were said Treaties negotiated?

I do not know.

List the names of your California Indian ancestors living on June 1, 1852, who were then of blood, who were parties to any Treaty or Treaties with the United States, if you are through more than one ancestor living at that date set out in each claim separately. State your descent from said ancestor or ancestors setting forth your relationship to them.

Name	Tribe or Band	Relationship by Blood
Robert Morshood	Smith River Band, Del Norte County, California	Father

Robert Morshood  
I declare it and it is true

Give the names of the Officers, Captains and Headmen of the Tribes in which your ancestors belonged on June 1852 and specify the Tribes in which they resided if you know them.

I do not know.

What lands in the State of California do you think were taken from the California Indian Ancestors by the United States without compensation or were appropriated by the United States against the wishes and consent of the United States and refused or failed to compensate you?

In Del Norte County, California.

Give names of your father and mother and your mother's name before marriage if either is a white person do state.

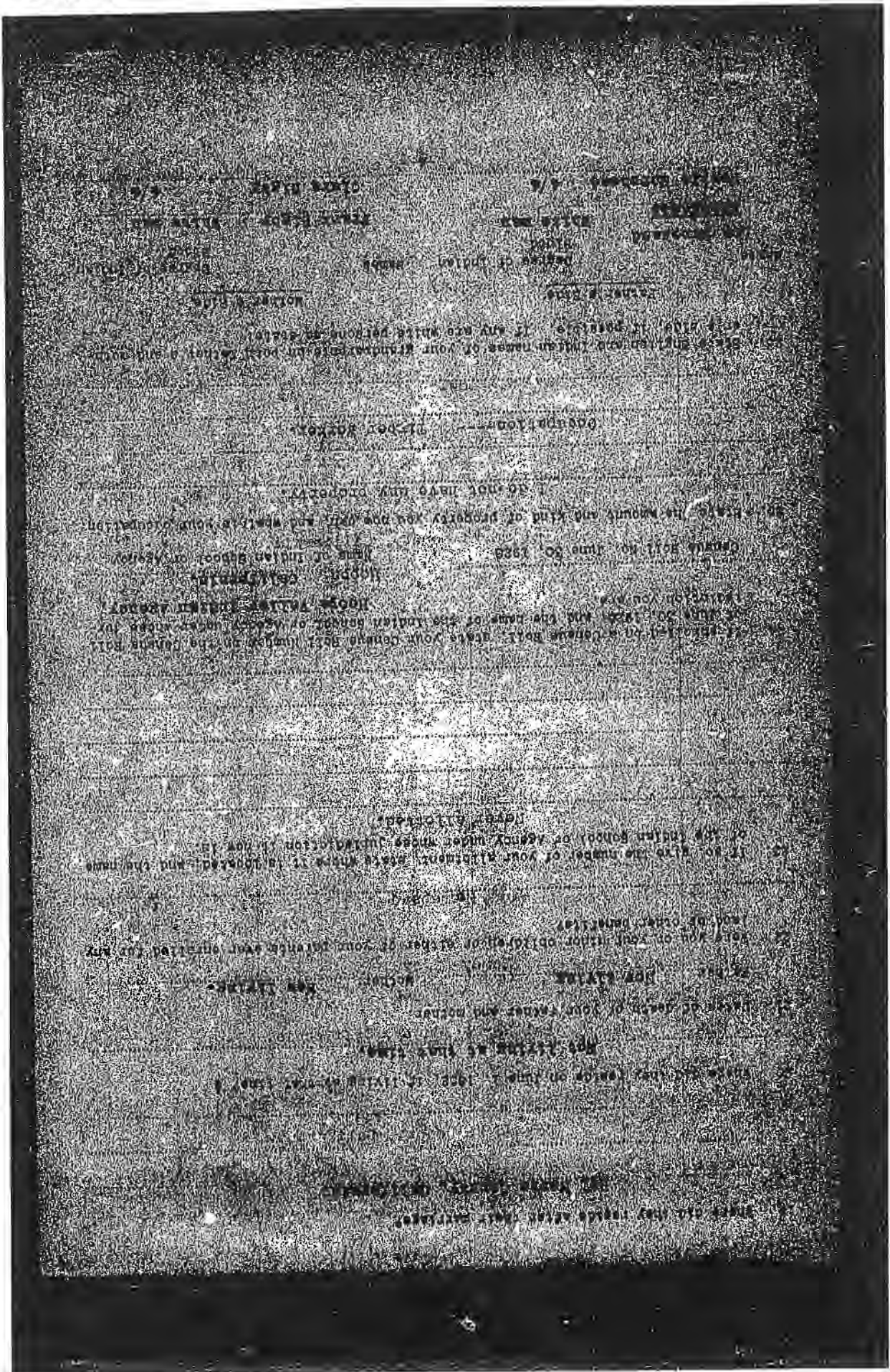
Father	English Name	Lewis Morehead	1812
	Indian Name		Degree of Indian Blood
Mother	English Name	Mandy Morehead	1812
	Indian Name		Degree of Indian Blood
	Married Name	Mandy Bigby	

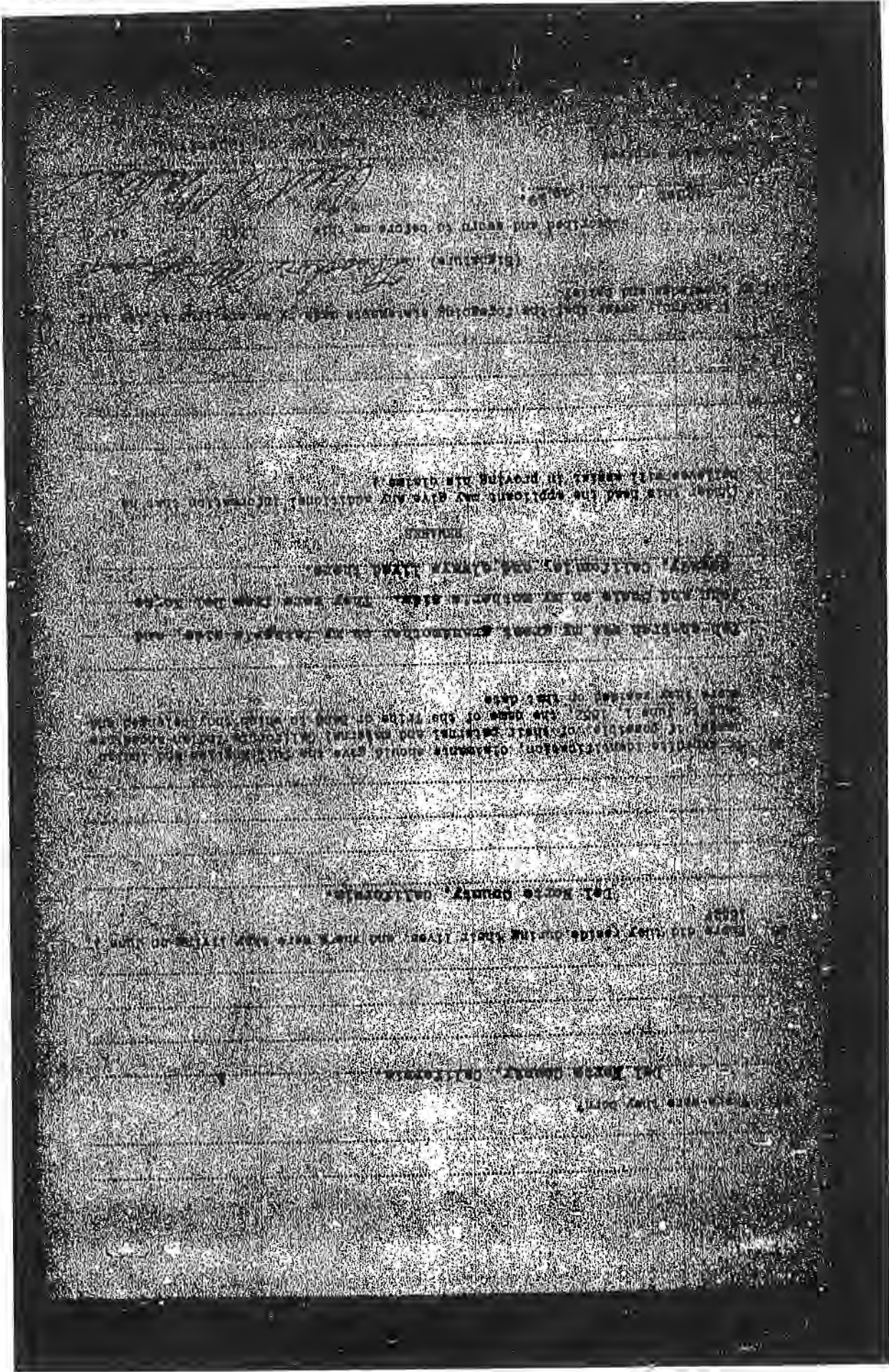
Where were they born?

Father	Del Norte County, California
Mother	

When and where were your parents married?

Del Norte County, California.





AFFIDAVIT

(The foregoing affidavit must be sworn to by two or more witnesses who are acquainted with the applicant.)

appeared before me  
MARRIE BRYMOUR who, being duly sworn, on oath depose and testify that they are well acquainted with [redacted] and [redacted] and have known [redacted] and [redacted] since they were [redacted] years and [redacted] years, respectively. That they know [redacted] is of California Indian blood of the degree and lineage stated in the above application and that the facts stated with reference to [redacted] and [redacted] children, their ages and degree of Indian blood, and their places of residence are true, that they know [redacted] to be the identical person who represents herself to be, and that all statements made by [redacted] are true to the best of their knowledge and belief, and that they have no objection to refer in [redacted] claim.

Witnessed my hand and seal of office this [redacted] day of [redacted] 19[redacted]

Subscribed and sworn to before me this [redacted] day of [redacted] 19[redacted]

**EXHIBIT G**  
**(Brandt Decl.)**

APPLICATION FOR ENROLLMENT TO SHARE IN THE CALIFORNIA JUDGMENT FUNDS

DO NOT WRITE IN THIS BLOCK - FOR ADMINISTRATIVE USE ONLY

DATE RECEIVED: JUN 13 1969 APPLICATION NUMBER 020295

IMPORTANT: READ "INSTRUCTIONS FOR FILING APPLICATIONS", THEN COMPLETE THE FOLLOWING:

1. APPLICANT: Theodore Moorehead Sr. SEX:  MALE  FEMALE
2. INDIAN, MAIDEN OR OTHER NAME BY WHICH YOU ARE KNOWN: \_\_\_\_\_
3. ADDRESS: Box 38 (STREET OR BOX NUMBER) Smith River (CITY OR TOWN)  
California (STATE) 95567 (ZIP CODE) Del Norte (COUNTY)
4. DATE OF BIRTH: 5-13-06 PLACE OF BIRTH: Smith River
5. WERE YOU NAMED ON THE ROLL OF CALIFORNIA INDIANS WHICH QUALIFIED YOU TO RECEIVE THE \$150 PAYMENT AUTHORIZED BY THE ACT OF MAY 24, 1950 (64 STAT. 189):  YES  NO IF YOUR ANSWER IS "YES", COMPLETE SECTION A. IF YOUR ANSWER IS "NO", COMPLETE SECTION B. (COMPLETE SECTION A OR SECTION B, BUT NOT BOTH)

SECTION A:

GIVE THE NAME BY WHICH YOU WERE KNOWN ON MAY 24, 1950: Theodore Moorehead Sr. IF KNOWN, GIVE YOUR ROLL NUMBER: RN 22581  
(13557)  
1993

CERTIFICATION BY OR FOR APPLICANT

I HEREBY CERTIFY THAT ( I AM ) ( THE APPLICANT IS ) THE PERSON, NAMED ABOVE, WHO WAS PREVIOUSLY ENROLLED:

DATE: 6-10-69 SIGNATURE: Theodore Moorehead Sr.

SECTION B:

GIVE THE NAME, RELATIONSHIP, AND ROLL NUMBER (IF KNOWN) OF ANY LINEAL OR COLLATERAL RELATIVE NAMED ON THE ORIGINAL ROLL OF CALIFORNIA INDIANS APPROVED MAY 16, 1933, OR THE REVISED ROLL OF PERSONS WHO RECEIVED THE \$150 PAYMENT AUTHORIZED BY THE 1950 ACT:

NAME OF RELATIVE: \_\_\_\_\_ RELATIONSHIP: \_\_\_\_\_

DATE OF ROLL:  1933  REVISED ROLL NUMBER: \_\_\_\_\_

IF NONE OF YOUR LINEAL OR COLLATERAL RELATIVES WERE EVER ENROLLED, NAME THE INDIAN WHO LIVED IN CALIFORNIA ON JUNE 1, 1852, THROUGH WHOM YOU CLAIM ELIGIBILITY FOR ENROLLMENT: \_\_\_\_\_

(FURNISH EVIDENCE TO SUPPORT CLAIM OF RELATIONSHIP TO INDIAN RELATIVE)

EVIDENCE OF BIRTH AND NATURAL PARENTAGE FURNISHED WITH THIS APPLICATION:  YES  NO

CERTIFICATION BY OR FOR APPLICANT

I HEREBY CERTIFY THAT ( I AM ) ( THE APPLICANT IS ) A LINEAL OR COLLATERAL RELATIVE BY BLOOD OF THE PERSON THROUGH WHOM ELIGIBILITY FOR ENROLLMENT IS CLAIMED:

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

(APPLICATION CONTINUED ON REVERSE SIDE)



6. NAME THE CALIFORNIA TRIBE, BAND OR GROUP OF INDIANS WITH WHICH YOUR ANCESTORS WERE AFFILIATED ON JUNE 1, 1852: Smith River

7. COMPLETE THE FOLLOWING FAMILY HISTORY CHART:

APPLICANT'S NAME <u>Theodore Moorehead RN 22581</u>	APPLICANT'S FATHER TRIBE <u>Lewis Moorehead 13546</u> * <u>Smith River</u>	PATERNAL GRANDFATHER TRIBE <u>Unknown</u>
	APPLICANT'S MOTHER TRIBE <u>Mandy Moorehead 13547</u> * <u>Smith River</u>	PATERNAL GRANDMOTHER TRIBE <u>Unknown</u>
		MATERNAL GRANDFATHER TRIBE <u>Frank Bigby</u> * <u>Unknown</u>
		MATERNAL GRANDMOTHER TRIBE <u>Clara Hostler 8452</u> * <u>Smith River</u>

8. NOTE: (TO BE COMPLETED BELOW ONLY IF PERSON FILING THIS APPLICATION IS ACTING IN BEHALF OF A MINOR, A MENTAL INCOMPETENT OR OTHER PERSON IN NEED OF ASSISTANCE, A MEMBER OF THE ARMED FORCES, OR A PERSON WHO WAS LIVING ON SEPTEMBER 21, 1968, BUT WHO DIED ON OR AFTER THAT DATE.)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

RELATIONSHIP TO APPLICANT: \_\_\_\_\_  
 (INDICATE WHETHER PARENT, GUARDIAN, FRIEND, ETC.)

ATTENTION: CRIMINAL PENALTIES ARE PROVIDED BY STATUTE FOR KNOWINGLY MAKING FALSE STATEMENTS (18 U.S.C. 1001).

021542

Folder # 15213  
Appl. # 26205  
Timely: Yes    No    *th*  
DOB 5-13-06 *th*

(Instructions: Initial each item checked.)

Name Worcester, Theodore H.

Other Names \_\_\_\_\_

If deceased, DOD \_\_\_\_\_ Evidence submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

List Duplicate Applications \_\_\_\_\_

Applicant eligible as:  
 A1 - (Person on previous roll.) - - - - - *th*  
 A2 - (Person who has relative on previous roll.) - - - - -  
 A3 - (Lineal or collateral relationship to an Indian residing  
in California on June 1, 1852.) - - - - -  
Tribe Iolowa - - - - - *th*

Applicant determined ineligible. Reason \_\_\_\_\_

Letter of Notification - Date \_\_\_\_\_

Eligible for 44 Award only   . Eligible for both Awards   

Applicant's family who have filed:

- Grandparents
- Parents
- Children
- Brothers/Sisters
- Aunts/Uncles
- Cousins

A1 - Source information for verifying applicant's claim:  
 On 1933 Roll # 13557 (Appl. # 6529) - - - - - *th*  
 On Revised Roll # 22581 (48 Appl. \_\_\_\_\_ or 50 Appl. \_\_\_\_\_) - - *th*  
 Not identified on either roll from check made. - - - - -  
 1950 Rejectee - - - - -  
 Not previously enrolled. - - - - -  
 Other - - - - -

A2 or A3 - Source for verifying applicant's claim. If applicant is A2 give name and relationship of person on roll:

Name \_\_\_\_\_ Relationship \_\_\_\_\_  
Documents which support claim:  
 Birth Certificate or other acceptable evidence to support claimed  
relationship. Yes \_\_\_\_\_ No \_\_\_\_\_  
 Family tree chart supported by documents. Yes \_\_\_\_\_ No \_\_\_\_\_  
 Affidavits - - - - -

\_\_\_\_ Probate Determinations - - - - -  
\_\_\_\_ Marriage Certificates - - - - -  
\_\_\_\_ Death Certificates - - - - -  
\_\_\_\_ Tribal Membership Rolls - - - - -  
\_\_\_\_ Census Records - - - - -  
\_\_\_\_ Public School or Boarding School Records - - - - -  
\_\_\_\_ Church Records - - - - -  
\_\_\_\_ Newspaper Clippings - - - - -

Comments:

Re Payments:

Info Re Mixed Ancestry:

Name California and Splinter Tribes \_\_\_\_\_.

Advised by letter dated \_\_\_\_\_.

Applicant's choice given in writing on \_\_\_\_\_.

Decision:

R Harris  
Claims Examiner  
12-28-71  
Date

Reproduced at the National Archives-Pacific Region (San Francisco)

Lynn Moorehead (10-5-67)	JEAN HINTON F3183	AP. 5186 - TOLSON (8-22-16)	MAGGIE SMITHS Dec 11
FRANKLIN MOOREHEAD F1007	(10-11-44)	HARVEY MOOREHEAD - Dec 11	AP. 6531 (2-18-11)
STEVEN " F16052	(2-24-41)	FREN MOOREHEAD F16051	AP. 6531 (2-18-11)
JAMES " F11859	(3-22-46)	AP. 3186 - TOLSON (8-22-16)	AP. 6531 (2-18-11)
MARKERST " F16053	(4-13-47)	1. GILBERT CROOK Dec 11	AP. 6531 (2-18-11)
FRANKLIN MOOREHEAD F1007	(10-11-44)	2. LIP JAMES F16050	AP. 6531 (2-18-11)
ANDREW WHIPPLE JR F3178	4-1-15	FRAN MOOREHEAD F16051	AP. 6531 (2-18-11)
KAROL YUOK F3179	4-1-15	ETHEL MOOREHEAD F15916	AP. 6531 (2-18-11)
KARENIA YUOK F3179	4-1-15	AP. 6531 (9-18-44)	AP. 6531 (9-18-44)
ANDREW WHIPPLE JR F3178	(11-5-42)	LOUISE MOOREHEAD F20428	AP. 6531 (4-17-42)
ROY FOLKINS	NOT NAMED	ANDREW WHIPPLE F20927	AP. 6531 (9-10-22)
MICHAE " (7-26-63)	ROY FOLKINS	HARVEY MOOREHEAD Dec 10	AP. 6531 (9-10-22)
ROY " JR (7-21-61)	MICHAE " (7-26-63)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
WILSON " (8-22-64)	ROY " JR (7-21-61)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
MURKIN " (10-4-65)	WILSON " (8-22-64)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
WAGE " (1-2-69)	MURKIN " (10-4-65)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
MELINDA BURK (8-28-64)	WAGE " (1-2-69)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
MELINDA BURK (8-28-64)	MELINDA BURK (8-28-64)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
MELINDA BURK (8-28-64)	MELINDA BURK (8-28-64)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
MELINDA BURK (8-28-64)	MELINDA BURK (8-28-64)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)
MELINDA BURK (8-28-64)	MELINDA BURK (8-28-64)	EMERIE " (2-8-47)	AP. 6531 (9-10-22)

dm

Theodore Morehead  
7 31804

Richard Morehead  
7 30572

Ramona Morehead 713091  
R 34132 4-18-30

David M. Weatherford

Alatahs(?)

See Page 1

Theodore Morehead 7 15213  
(Tolowag)

Isabel Morehead 7 15214

Rita Weatherford Nelson 72144  
R 34133

Bryce N. Nelson (?)

Alma Jean (Martha) Allen  
(NE) 7-24-50

Billy Joe Allen N/E

Travis Nelson 7-16-16  
Bryce Nelson 9-1-68 7 14787

Billy Joe Allen 7 1588

**EXHIBIT H**  
**(Brandt Decl.)**

Folder # 15214

Appl. # 26206

Timely: Yes  No

(Instructions: Initial each item checked.)

Name Goodhead, Isabel DOB 9-15-09

Other Names Whipple

If deceased, DOD \_\_\_\_\_ Evidence submitted? Yes  No

List Duplicate Applications \_\_\_\_\_

Applicant eligible as:

A1 - (Person on previous roll.) - - - - -

A2 - (Person who has relative on previous roll.) - - - - -

A3 - (Lineal or collateral relationship to an Indian residing in California on June 1, 1852.) - - - - -

Tribe Iolowa

Applicant determined ineligible. Reason \_\_\_\_\_

Letter of Notification - Date \_\_\_\_\_

Eligible for 44 Award only . Eligible for both Awards .

Applicant's family who have filed:

Grandparents

Parents

Children

Brothers/Sisters

Aunts/Uncles

Cousins

*see charts*

A1 - Source information for verifying applicant's claim:

On 1933 Roll # 13558 (Appl. # 6530) - - - - -

On Revised Roll # 22579 (43 Appl. \_\_\_\_\_ or 50 Appl. \_\_\_\_\_) - - - - -

Not identified on either roll from check made. - - - - -

1950 Rejectee - - - - -

Not previously enrolled. - - - - -

Other - - - - -

A2 or A3 - Source for verifying applicant's claim. If applicant is A2 give name and relationship of person on roll:

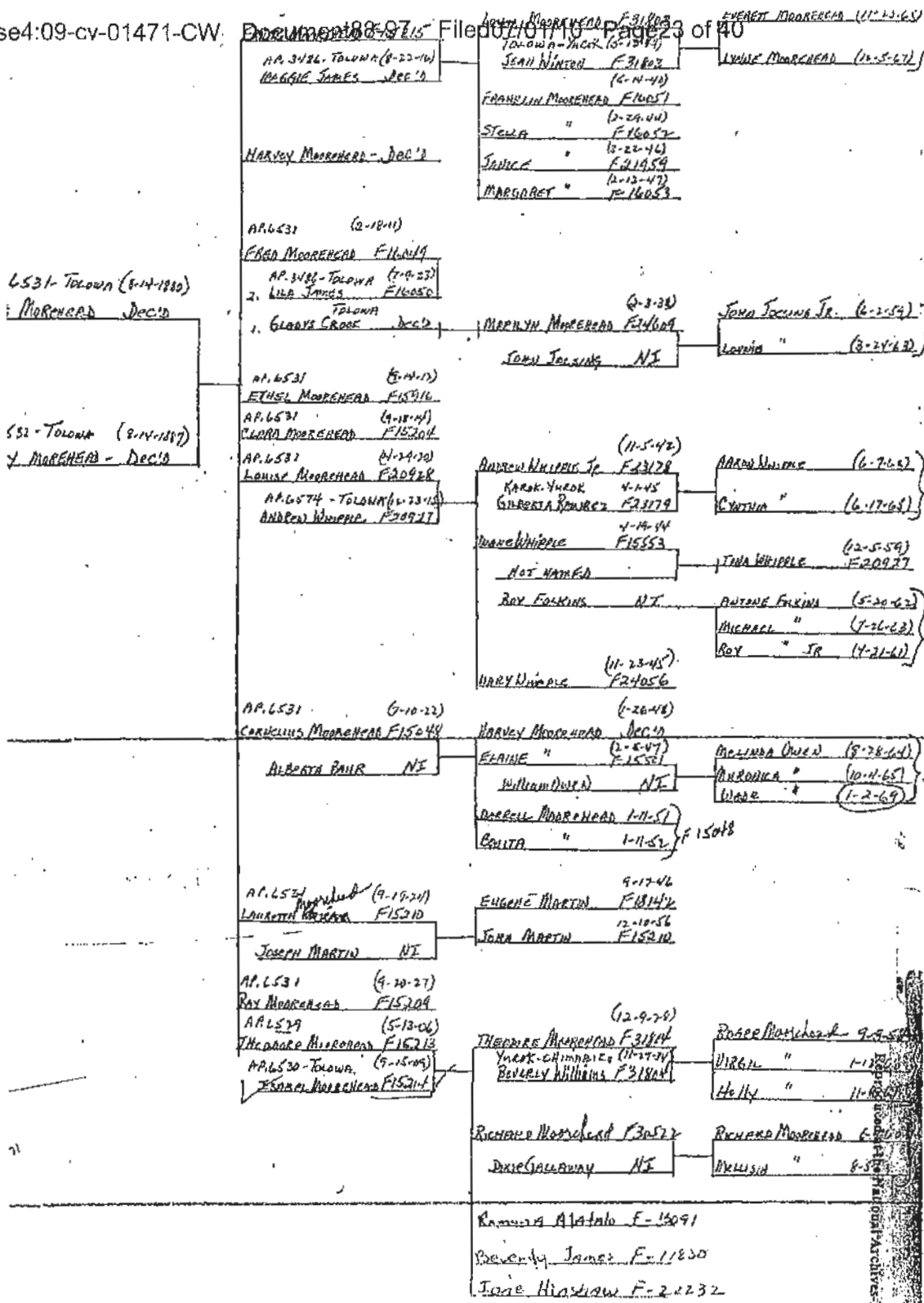
Name \_\_\_\_\_ Relationship \_\_\_\_\_

Documents which support claim:

Birth Certificate or other acceptable evidence to support claimed relationship. Yes  No

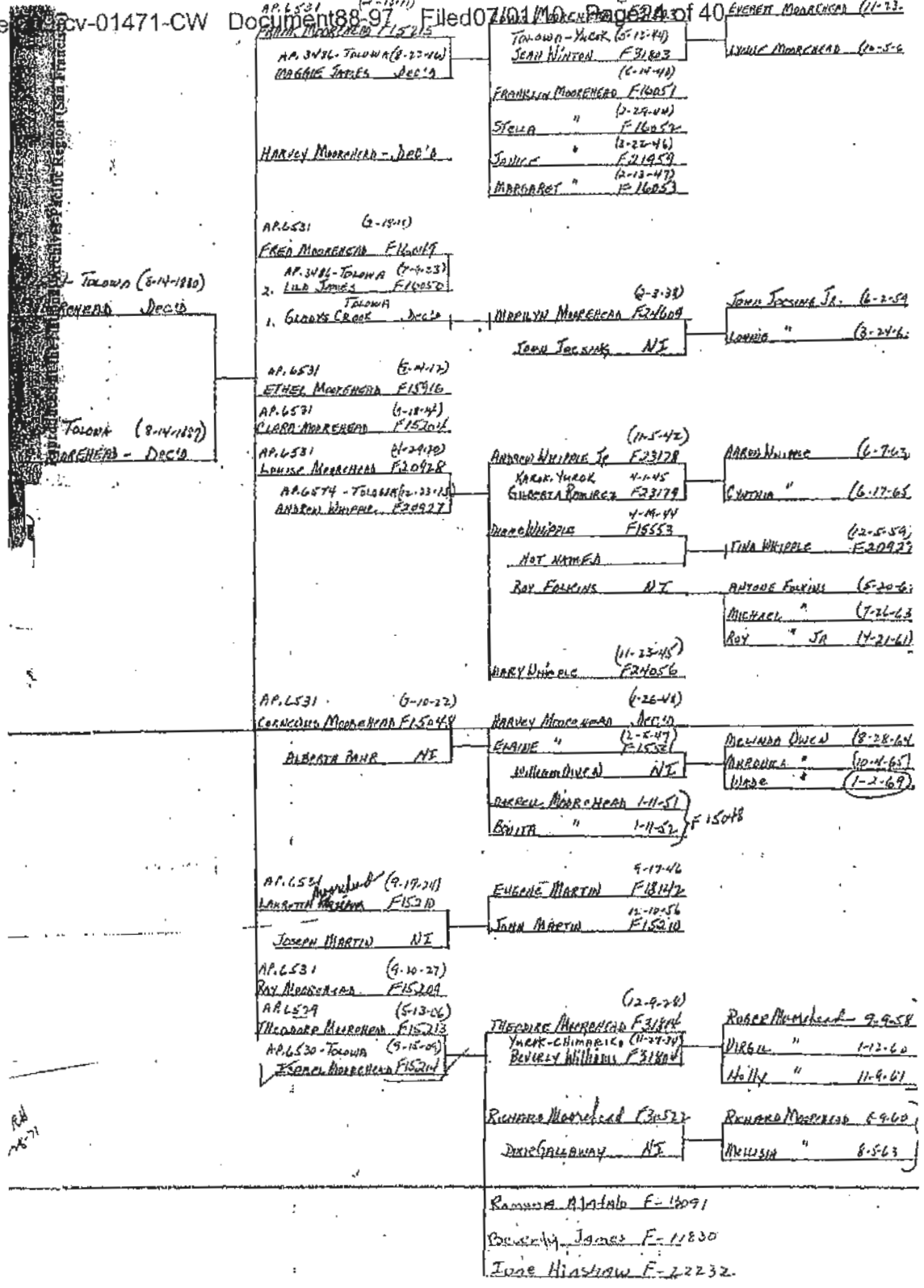
Family tree chart supported by documents. Yes  No

Affidavits - - - - -



San Francisco Public Access - Full Record (San Francisco)





PH  
24-71

4-10-72

(1)20813-34413 Dec'd  
Delmar Whipple 8-25-1899

(1)20815-11573 F-26831  
Mercedes Giovannetti

(2)26019-11574 F-26832  
Victor Giovannetti 5-3-47

(1)20814-34421 F-18845  
Evelyn Whipple 1-11-02  
(1/2 Tolowa)

Frank Giovannetti N/I

(3)38179-11572 F-26833  
Joseph Giovannetti 4-12-50  
F-26831

(2)31150-34414 F-23483  
Delmar Whipple 12-1-41

Marie Giovannetti 5-13-51

(1)20828 Dec'd  
Elmer Whipple 9-22-1905

(1)20829-32222 F-17877  
Ida Donahue 3-3-1911 A-1

(Tolowa) see chart  
Harold Thornton Dec'd

Five children all worked A-1's

(Karok)  
Lafayette Donahue Dec'd

One child A-2

(1)20826-34431 Dec'd  
Lewis Whipple 8-14-1873  
(1/2 Tolowa)

(1)20830-34407 F-20927  
Andrew Whipple 12-23-15 A-1

(2)33226-34411 no  
Clarence Whipple 11-9-37

(Tolowa) See chart  
Louise Moorehead A-1

(2)33227-34405 no  
Adrienne Reed 9-1-41

(2)33228-34408 F-23178  
Andrew Whipple 11-5-42 A-1

(4/4 Tolowa)  
Ida Bob Whipple Dec'd

(1)20831-21308 F-29681  
Mabel Melton 1-23-1918 A-1

(2)33229-34416 F-15553  
Diane Folkins 4-19-44 A-1

(2)33230-34435 F-24056  
Mary Hanley 11-23-45 A-1

Kenneth Melton N/I

(2)31465-4591 F-3461  
Linda Fahl 1-1-1941 A-1

Three children A-2's

(1)20832-34432 F-20447  
Lewis Whipple 9-10-1922 A-1

Denny Fahl N/I

(2)28245-21309 F-27031  
Norene Melton 11-26-42 A-1

Two children A-2's

(1)20833-25997 F-22194  
Edith Pope 1-8-1925 A-1

not named

(2)42878-25995 F-15505  
Charles Pomeroy 12-16-38 A-1

Charles Pomeroy  
non ca ind.

(2)29327-25996 F-14312  
Diane Knight 9-18-1940 A-1

ER-503

(1)20834-27306 F-17991  
Elinor Richards 1-8-25 *A-1*

Floyd Richards F-17988  
(Tolowa) see chart

Three children all worked *A-13*

(1)20835-34410 F-15520  
Charles Whipple 3-1-27 *A-1*  
(Tolowa) *A-1*

Thelma Richards F-15521  
see chart

Six children *A-23*

(2)31159-34428 F-24055  
James Whipple 3-13-37 *A-1*

Joanne Conley N/I

Two children *A-213*

Mo. Ida Bob Whipple

(1)23558-22579 F-15214  
Isabel Moorehead 9-15-09

(1)13557-22581 F-15213  
Theodore Moorehead  
(Tolowa) See chart

(2)42713-22494 F-31804 *A-1*  
Theodore Moorehead 12-9-29

(2)43183-34132 F-13091  
Ramona Alatalo 4-18-30 *A-1*

(2)42997-29531 F-11830  
Beverly James 11-20-32 *A-1*

(2)42429-13954 F-22232  
Ione Hinshaw 10-15-35

(2)42714-22491 F-30522  
Richard Moorehead 2-28-30 *A-1*

**EXHIBIT I**  
**(Brandt Decl.)**

APPLICATION FOR ENROLLMENT WITH THE INDIANS OF CALIFORNIA

UNDER THE ACT OF JUNE 30, 1948 (PUBLIC LAW 852)

Application No. \_\_\_\_\_

Date June 10, 1949

Pursuant to the provisions of the Act of June 30, 1948 (Public Law 852) application is hereby made for enrollment on behalf of the person or persons hereinafter named all of whom are children or their descendants, now living, born subsequent to May 18, 1928, of enrollees qualified under Section 1 of the Act of May 18, 1928; whose names appear on the roll of the Indians of California approved May 17, 1933.

Name	Sex	Date of birth	Place of birth	Present address
<u>Theodore K. Moorhead</u>	<u>Male</u>	<u>Dec 9, 1929</u>	<u>Smith River, Calif</u>	<u>Blue Lake, Calif</u>
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				

I CERTIFY THAT BIRTH CERTIFICATE OR OTHER SATISFACTORY EVIDENCE OF BIRTH TO ENROLLEE IS SUBMITTED WITH THIS APPLICATION.  
J. Robert  
 ENROLLMENT ASSISTANT  
 CALIFORNIA INDIAN AGENCY

In support of this application for enrollment the following information is furnished:

Ancestor or ancestors through whom enrollment rights are claimed:

- Name Gabel Moorhead Roll Number 13558  
 Relationship to applicant Mother  
 Present address, if living Blue Lake, California  
 If deceased, date of death \_\_\_\_\_
- Name Theodore Moorhead Roll Number 13557  
 Relationship to applicant Father

RECEIVED  
JUN 13 1949

Present address, if living Blue Lake, Calif

If deceased, date of death \_\_\_\_\_

Proof of relationship: Copy of birth certificate attached (✓)

Affidavits attached ( )

Additional information regarding proof of relationship and right of applicant to enrollment \_\_\_\_\_

I solemnly swear that the foregoing statements made by me are true to the best of my knowledge and belief.

_____	<u>Isabel Moncheed</u>
Signature *	Signature*
_____	<u>Blue Lake California</u>
Address	Address
_____	_____
Signature*	Signature*
_____	_____
Address	Address

Subscribed and sworn to before me this 10 day of June 1949.

H. A. Tolson City Judge  
Notary Public or Postmaster

My commission expires \_\_\_\_\_

\*If the applicant is of age, the applicant should sign the application. If the applicant is a minor, the parent, guardian or other person responsible for the care of the applicant should execute the application. Separate applications should be filed for each family.

**EXHIBIT J**  
**(Brandt Decl.)**

State of California :  
County of Del Norte : ss. In the matter of the estate of Harry Waukell.

- Q. State your name, age, tribe, and place of residence.  
A. Nettie Waukell. I don't know how old I am. (Appears to be about 65).  
Klamath Tribe. I live near Klamath, California.
- Q. Did you know Harry Waukell?  
A. Yes, he was my husband.
- Q. Is he dead?  
A. Yes, he died about five years ago (Records, June 27, 1939).
- Q. How old was he at the time of his death?  
A. He was pretty old. He was more old than me.
- Q. Did he leave a will?  
A. No.
- Q. Were you living with him as his wife at the time of his death?  
A. Yes. I take care of him.
- Q. When and how were you and Harry Waukell married?  
A. We were married when I was just a young girl. Two years he was after me.  
I was just young and didn't want to get married. We married Indian way then.
- Q. Did Harry Waukell have any other wife?  
A. He had one first - before me, but they divorced. Her name was Nancy. She was  
from Johnson's. They were separated before Harry married me. They buy them,  
you know and he take 'em back his money. That woman die long ago.
- Q. How many children did Harry Waukell have?  
A. Eight. Four boys and four girls. No, I guess there were nine. I lost track  
of all the babies that died.
- Q. What are the children's names?  
A. Dave, Ida, Minnie, Frank, Ada, and Margaret, and the rest of them were just babies.
- Q. Which ones are still living?  
A. Ida. She is Mrs. Louis Walker, and lives at Bayside, near Arcata, California.  
Minnie. She is Mrs. Minnie Frank, and lives at Klamath, California.  
And Ada. She is living with Robert Charles. They never married, but they got  
kids. She lives at Klamath, California.  
All the others are dead. Dave died when he was 19 years old. He never had no  
children. Frank was 30 years old when he died. He never married. Had no children.  
Margaret died this spring. Her husband killed her. He's in San Quentin now.
- Q. Did all of the children who are dead, with the exception of Margaret, die before  
their father?  
A. Yes. They all died first. Frank died just a month or two before his father.
- Q. Did any of the dead children have children?  
A. Yes, Margaret had two. Clarice and Henrietta Jean.



Q. Who is the father of Margaret's children?

A. Homer Charles, Margaret's husband.

Q. How old are these two children?

A. Clarice is over 4 years old. Henrietta is about 8.

Q. Who is caring for these two children?

A. I take care of the little one. Henrietta is in Chemawa at school.

Q. You say Homer Charles is in the penitentiary for the killing of his wife?

A. Yes. They took him to court in Crescent City, and sent him to San Quentin.

Q. Are there any bills against the estate of Harry Waukell?

A. No. We paid it all up. We bought casket for \$80 and last year we finished paying for that.

Q. Is there anything else you wish to say about this case?

A. No.

WITNESS:

*Homer Charles*

MRS. HETTIE WAUKELL

HER

MARK

Subscribed and sworn to before me at  
Klamath, California, this 7th day of  
October, 1944.

*D. H. Bruce*  
D. H. Bruce,  
Examiner of Inheritance.

**EXHIBIT K**  
**(Brandt Decl.)**

STATE OF CALIFORNIA )  
COUNTY OF HUMBOLDETT ) ss

In the matter of the estate of Harry  
Waukell, deceased.

- Q. What is your name, age and place of residence?  
A. Mrs. Minnie Waukell Frank, I am about 49 years old and live at Klamath, Calif.
- Q. To what Indian tribe do you belong?  
A. Lower Klamath tribe.
- Q. Did you know Harry Waukell?  
A. Yes, he was my father.
- Q. Is he dead?  
A. He died about five or six years ago (Records show June 27, 1939).
- Q. How old was he at the time he died?  
A. We don't know, but he was real old (Records show 80).
- Q. Was he married at the time he died?  
A. Just one time to my mother, Nettie Waukell. She is still living.
- Q. How were they married?  
A. By Indian law.
- Q. Is she a member of the Lower Klamath tribe?  
A. Yes.
- Q. Were they living together as man and wife at the time she died?  
A. Yes.
- Q. How many children did your father have?  
A. I remember of nine. Ida Walker of Bayside is the oldest. She lives at Bayside, Calif. I am the next. Ada Waukell lives near Klamath, Calif. There were six others that are all dead now. They are, Dave, Johnnie, Tony, Willie, Frank and Margaret Charles.
- Q. How old are Ida and Ada?  
A. Ida is about 53 and Ada is about 31 or 32.
- Q. When did Dave die and how old was he at the time he died?  
A. I was a little girl at that time, about 8 years old. He was about 16 when he died.
- Q. Did he leave issue?  
A. No.
- Q. When did Johnnie die and how old was he at the time he died?  
A. He died before Dave when he was about five years old.
- Q. When did Tony die and how old was he at the time he died?  
A. I was just a baby girl when he died. He was two years old when he died.
- Q. When did Willie die and how old was he at the time he died?  
A. He died over 30 years ago when he was about eight years old.
- Q. When did Frank die and how old was he at the time he died?  
A. He died about two months before our father died. He was 34 years old then.

Minnie Frank, cont.

Page 2.

Q. Did Frank leave issue?

A. No, he was never married.

Q. When did Margaret Charles die?

A. She died May 11, 1944. She was beat to death by her husband.

Q. Who was her husband?

A. Homer Charles, an Indian from Trinidad, Calif. He is in San Quentin penitentiary now serving one to ten years for killing her.

Q. How were they married?

A. By law. They were married at Crescent City, Calif.

Q. Where was the trial held for the killing of your sister?

A. Crescent City, Calif.

Q. Were your sister and Homer Charles living together as man and wife at the time of her death?

A. Yes, they had a home near Klamath, Calif.

Q. How many children did Margaret have?

A. Two, Henrietta Jean Charles, aged 8, and Clarice Louise Charles, aged almost five now. I am taking care of Clarice and Henrietta is going to school at Chemawa, Ore. She was with me this summer.

Q. Was Homer their father?

A. Yes.

Q. Was Nettie Waukell the mother of all of Harry Waukell's children?

A. Yes.

Q. Did your father, your brother Frank <sup>or</sup> your sister, Margaret leave a will?

A. No, none of them made a will.

Q. Did any of them leave personal property?

A. No.

Q. Did any of them leave funeral or other bills that should be considered?

A. No, mother and I paid all of it now. Mother and I had a hard time paying it all.


Q. Is it your intention to care for Henrietta and Clarice until they grow up?

A. Yes, mother and I are looking after them.

Q. Will you act as the guardian ad litem in the interests of these two minors?

A. Yes.

Subscribed and sworn to before me  
at Klamath, California (Schoolhouse),  
on this 7th day of October, 1944.

  
Thomas R. Nasson,

Special Examiner of Inheritance

**EXHIBIT L**  
**(Brandt Decl.)**

TWELFTH CENSUS OF THE UNITED STATES

SCHEDULE No. 1 - POPULATION

INDIAN POPULATION

State or other division of country: California
Name of incorporated city, town, or village, within the above-named division: Red Bluff
Enumerated by me on the 7 Day of June, 1900 by Charles D. Johnson

Table with columns: Relationship, Name, Sex, Color, Race, Birthplace, Nativity, Occupation, Duration of stay, etc. Includes entries for the Blanchard family and the Clayton family.

SCHEDULE No. 1 - POPULATION - Continued. SPECIAL INQUIRIES RELATING TO INDIANS.

Table with columns: OTHER NAME, IF ANY, NATIVITY, SEX, COLOR, CITIZENSHIP, DWELLINGS, INSTRUCTIONS FOR FILLING THIS SCHEDULE.

1911 RELEASE UNDER E.O. 14176 - FILED IN 701710 - PAGE 37 OF 40

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
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19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19
20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20

**SCHEDULE No. 1 - POPULATION - Continued**  
**SPECIAL INQUIRIES RELATING TO INDIANS.**

**INSTRUCTIONS FOR FILLING THIS SCHEDULE**

This schedule form of Schedule No. 1 is to be filled in by the local enumerator, and is to be used in connection with the instructions for filling this schedule.

Persons residing in any Indian Territory, or in any Indian reservation, or in any Indian school, or in any Indian boarding school, should be reported as Indians on this schedule. Persons residing in any Indian Territory, or in any Indian reservation, or in any Indian school, or in any Indian boarding school, should be reported as Indians on this schedule. Persons residing in any Indian Territory, or in any Indian reservation, or in any Indian school, or in any Indian boarding school, should be reported as Indians on this schedule.

Persons residing in any Indian Territory, or in any Indian reservation, or in any Indian school, or in any Indian boarding school, should be reported as Indians on this schedule. Persons residing in any Indian Territory, or in any Indian reservation, or in any Indian school, or in any Indian boarding school, should be reported as Indians on this schedule.

TWENTY-NINTH CENSUS OF THE UNITED STATES

SCHEDULE No. 1—POPULATION

INDIAN POPULATION.

Name of community *Blaine, Franklin* Name of precinct *Y*  
 Incorporated by State or County within the above named Division  
 Enumerated by me on the 17 day of June 1900 *Richard D. Hollister*

Age	Sex	Marital Status	Color	Place of Birth	Place of Birth of Father	Place of Birth of Mother	Place of Birth of Grandfather	Place of Birth of Grandmother	Place of Birth of Great-grandfather	Place of Birth of Great-grandmother	Place of Birth of Great-great-grandfather	Place of Birth of Great-great-grandmother	Place of Birth of Great-great-great-grandfather	Place of Birth of Great-great-great-grandmother
25-35	Male	Married	W	California	California	California	California	California	California	California	California	California	California	California
15-25	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
15-25	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
15-25	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
15-25	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California
25-35	Female	Married	W	California	California	California	California	California	California	California	California	California	California	California



SCHEDULE No. 1—POPULATION—Continued  
 SPECIAL INQUIRIES RELATING TO INDIANS.

OTHER NAME, IF ANY	NATIVITY	NEED BLOCK	CONVICT OFFENSE	CITIZENSHIP	RESIDENCE	INSTRUCTIONS FOR FILING THIS SCHEDULE (CONTINUED FROM "AT SIDE OF SHEET.")
						The following instructions apply to columns 29 to 34: COLUMN 29.—Write the Indian name, if the person has one, in addition

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ER-517



**SCHEDULE No. 1—POPULATION—Continued  
SPECIAL INQUIRIES RELATING TO INDIANS.**

OTHER NAME IF ANY	NATIVITY	MARRIED- WOMEN	BORN IN		IN		BORN IN		DECEASED
			Foreign	Foreign	Foreign	Foreign	Foreign	Foreign	
Wainwright Mary	Klamath	0	No	Yes	1892	Yes	Yes	Yes	
Clara	Klamath	0	No	Yes	1893	Yes	Yes	Yes	
Doris	Klamath	0	No	Yes	1892	Yes	Yes	Yes	
Charles	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
Sadie	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
Ada	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
James	Klamath	0	No	Yes	1892	Yes	Yes	Yes	
Fred	Klamath	0	No	Yes	1893	Yes	Yes	Yes	
George Henry	Klamath	0	No	Yes	1892	Yes	Yes	Yes	
Hubert	Klamath	0	No	Yes	1893	Yes	Yes	Yes	
Robert A	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
Myra	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
Walter Henry	Klamath	0	No	Yes	1893	Yes	Yes	Yes	
Edna	Klamath	0	No	Yes	1892	Yes	Yes	Yes	
Billie	Klamath	0	No	Yes	1892	Yes	Yes	Yes	
Henry G	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
William	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	
John	Klamath	0	No	Yes	Yes	Yes	Yes	Yes	

**INSTRUCTIONS FOR FILING THIS SCHEDULE**

The following instructions apply to columns 10 to 21:

Column 10.—Write the Indian name in the Indian language and the English name given to him. If the Indian has only one name in his own language, write that name in the English language. If the Indian has only one name in his own language, write that name in the English language.

Column 11.—If the Indian was born in the United States, write the name of the state or territory of birth. If he was born in a foreign country, write the name of the country.

Column 12.—If the Indian was born in the United States, write the date of birth in month, day, and year. If he was born in a foreign country, write the date of birth in month, day, and year.

Column 13.—If the Indian was born in the United States, write the name of the tribe or band. If he was born in a foreign country, write the name of the country.

Column 14.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 15.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 16.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 17.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 18.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 19.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 20.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

Column 21.—If the Indian was born in the United States, write the name of the reservation. If he was born in a foreign country, write the name of the country.

TWELFTH CENSUS OF THE UNITED STATES

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 SARA J. DRAKE  
 Senior Assistant Attorney General  
 3 RANDALL A. PINAL  
 Deputy Attorney General  
 4 State Bar No. 192199  
 110 West A Street, Suite 1100  
 5 San Diego, CA 92101  
 P.O. Box 85266  
 6 San Diego, CA 92186-5266  
 Telephone: (619) 645-3075  
 7 Fax: (619) 645-2012  
 E-mail: Randy.Pinal@doj.ca.gov  
 8 Attorneys for Defendant State of California

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 OAKLAND DIVISION

13 **BIG LAGOON RANCHERIA, a Federally**  
 14 **Recognized Indian Tribe,**  
 15 Plaintiff,  
 16 v.  
 17 **STATE OF CALIFORNIA,**  
 18 Defendant.

CV 09-1471 CW (JCS)

**DECLARATION OF LINDA THORPE IN  
 OPPOSITION TO PLAINTIFF'S  
 MOTION FOR SUMMARY JUDGMENT  
 AND IN SUPPORT OF DEFENDANT'S  
 CROSS-MOTION FOR SUMMARY  
 JUDGMENT**

**Fed. R. Civ. P. 56**

Date: August 12, 2010  
 Time: 2:00 p.m.  
 Dept: 2, Fourth Floor

1301 Clay Street  
 Oakland, CA 94612

Judge: The Honorable Claudia Wilken  
 Trial Date: Not set  
 Action Filed: 4/3/2009

26 I, LINDA THORPE, declare:

27 1. I am currently employed as a Legal Secretary by the California Department of  
 28 Justice, Office of the Attorney General, in Sacramento, California.



**EXHIBIT A**  
**(Thorpe Decl.)**

72-032738

CERTIFICATE OF DEATH

1900 - 213

STATE FILE NUMBER <b>72-032738</b>		STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC HEALTH				LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER	
DECEDENT PERSONAL DATA	1a. NAME OF DECEASED—FIRST NAME	1b. MIDDLE NAME	1c. LAST NAME	2a. DATE OF DEATH—MONTH, DAY, YEAR	2b. HOUR		
	<i>Robert</i>	<i>Oliver</i>	<i>Charles</i>	<i>April 12, 1972</i>	<i>4:35 P.</i>		
	3. SEX	4. COLOR OR RACE	5. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	6. DATE OF BIRTH	7. AGE—LAST BIRTHDAY	IF UNDER 1 YEAR	IF UNDER 24 HOURS
	<i>Male</i>	<i>Indian</i>	<i>California</i>	<i>[REDACTED] 1913</i>	<i>59</i>		
PLACE OF DEATH	8. NAME AND BIRTHPLACE OF FATHER			9. MAIDEN NAME AND BIRTHPLACE OF MOTHER			
	<i>Jim Charles - California</i>			<i>Lottie Moon - California</i>			
	10. CITIZEN OF WHAT COUNTRY	11. SOCIAL SECURITY NUMBER	12. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED, SEPARATED	13. NAME OF SURVIVING SPOUSE (IF WIFE, ENTER MAIDEN NAME)			
USUAL RESIDENCE (IF DEATH OCCURRED IN INSTITUTION, ENTER RESIDENCE BEFORE ADMISSION)	14. LAST OCCUPATION	15. NUMBER OF YEARS IN THIS OCCUPATION	16. NAME OF LAST EMPLOYING COMPANY OR FIRM	17. KIND OF INDUSTRY OR BUSINESS			
	<i>Woodsmen</i>	<i>30</i>	<i>Unknown</i>	<i>Logging</i>			
PHYSICIAN'S OR CORONER'S CERTIFICATION	18a. PLACE OF DEATH—NAME OF HOSPITAL OR OTHER IN-PATIENT FACILITY		18b. STREET ADDRESS—STREET AND NUMBER OR LOCATION		18c. WARD, FLOOR, CORPORATE UNIT		
	<i>Humboldt Medical Center</i>		<i>2200 Harrison Street</i>		<i>Yes</i>		
	18d. CITY OR TOWN	18e. COUNTY	18f. LENGTH OF STAY IN COUNTY OF DEATH	18g. LENGTH OF STAY IN CALIFORNIA			
FUNERAL DIRECTOR AND LOCAL REGISTRAR	19a. USUAL RESIDENCE—STREET ADDRESS, STREET NO. NUMBER OR LOCATION			19b. INSIDE CITY, CORPORATE LIMITS, OR PORT OF ENTRY	20. NAME AND MAILING ADDRESS OF INFORMANT		
	<i>[REDACTED]</i>			<i>Yes</i>	<i>Mrs. Florine Fern Bates</i>		
	19c. CITY OR TOWN	19d. COUNTY	19e. STATE	<i>Oriskany, California 95482</i>			
MEDICAL AND HEALTH DATA	21a. CORONER: I HEREBY CERTIFY THAT I HAVE EXAMINED THE BODY OF THE DECEASED AT THE PLACE AND TIME STATED ABOVE AND THAT THE CAUSE OF DEATH IS AS STATED ON THE CERTIFICATE OF DEATH AND THAT I HAVE FILED ON THE RECORDS OF DECEASED A COPY OF THIS CERTIFICATE.		21b. PHYSICIAN: I HEREBY CERTIFY THAT I HAVE EXAMINED THE BODY OF THE DECEASED AT THE PLACE AND TIME STATED ABOVE AND THAT THE CAUSE OF DEATH IS AS STATED ON THE CERTIFICATE OF DEATH AND THAT I HAVE FILED ON THE RECORDS OF DECEASED A COPY OF THIS CERTIFICATE.		21c. SIGNATURE OF PHYSICIAN OR CORONER	21d. DATE SIGNED	
	<i>[REDACTED]</i>		<i>[REDACTED]</i>		<i>[Signature]</i>	<i>4-14-72</i>	
	22a. SPECIFY FUNERAL ENTHURMENT OR CREMATION		22b. DATE	23. NAME OF CEMETERY OR CREMATORY		24. EMBALMER—SIGNATURE	
<i>Burial</i>		<i>4-15-72</i>	<i>Trinidad Cemetery</i>		<i>[Signature]</i>		
STATE REGISTRAR	25. NAME OF FUNERAL DIRECTOR (OR PERSON ACTING AS SUCH)			26. I HEREBY CERTIFY THAT I HAVE EXAMINED THE LOCAL REGISTRATION DISTRICT RECORDS AND THAT THE DECEASED IS NOT REGISTERED IN THIS DISTRICT.	27. LOCAL REGISTRAR SIGNATURE		
	<i>Chapel of the Ferns, Inc.</i>			<i>Normal M. Miller</i>	<i>[Signature]</i>		
	28. PART I. DEATH WAS CAUSED BY IMMEDIATE CAUSE (A) DUE TO, OR AS A RESULT OF (B) [REDACTED] (C) DUE TO, OR AS A CONSEQUENCE OF			29. PART II. OTHER SIGNIFICANT CONDITIONS—(DO NOT WRITE IN THESE SPACES UNLESS REFERRED TO IN IMMEDIATE CAUSE SECTION, PART I.)			
INJURY INFORMATION	33. SPECIFY ACCIDENT, SUICIDE OR HOMICIDE			34. PLACE OF INJURY (STREET AND NUMBER OR LOCATION AND CITY OR TOWN)	35. INJURY AT WORK (SPECIFY IF SO)	36. DATE OF INJURY—MONTH, DAY, YEAR	
	<i>[REDACTED]</i>			<i>[REDACTED]</i>	<i>[REDACTED]</i>	<i>[REDACTED]</i>	
	37. PLACE OF INJURY (STREET AND NUMBER OR LOCATION AND CITY OR TOWN)			37a. ESTIMATE TIME ELAPSED FROM INJURY TO DEATH (SPECIFY IF SO)	38. WEATHER CONDITIONS (TEMPERATURE, WIND, MOON, etc.)	39. ALL INFORMATION FROM THIS SECTION IS FOR STATISTICAL PURPOSES ONLY.	
40. DESCRIBE HOW INJURY OCCURRED (LIMIT TO ONE SIDE OF THIS PAGE UNLESS REFERRED TO IN IMMEDIATE CAUSE SECTION, PART I.)			41. SIGNATURE OF REGISTRAR				
<i>[REDACTED]</i>			<i>[Signature]</i>				
A. <i>2</i>		B. <i>X</i>		C. <i>2</i>		E. <i>5710</i>	

**EXHIBIT B**  
**(Thorpe Decl.)**

3052004035267

CERTIFICATE OF DEATH

3200412000158

STATE FILE NUMBER		USE BLACK INK ONLY / NO ERASURES, WHITEOUTS OR ALTERATIONS		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT -- FIRST (Given)		2. MIDDLE		3. LAST (Family)	
THOMAS				WILLIAMS	
4. DATE OF BIRTH mm/dd/yyyy		5. AGE Yrs.		6. SEX	
[REDACTED] 12		91		M	
8. BIRTH STATE/FOREIGN COUNTRY		10. SOCIAL SECURITY NUMBER		11. EVER IN U.S. ARMED FORCES?	
CA		[REDACTED]		<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK	
12. MARITAL STATUS (at Time of Death)		7. DATE OF DEATH mm/dd/yyyy		8. HOUR (24 Hours)	
Widowed		02/13/2004		1205	
13. EDUCATION -- Highest Level/Degree (see worksheet on back)		14/15. WAS DECEDENT SPANISH/SPANISH/LATINO? (if yes, see worksheet on back)		18. DECEDENT'S RACE -- Up to 3 races may be listed (see worksheet on back)	
		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Native American 30	
17. USUAL OCCUPATION -- Type of work for most of life. DO NOT USE RETIRED			18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)		19. YEARS IN OCCUPATION
Logger			Timber		60
20. DECEDENT'S RESIDENCE (Street and number or location)					
[REDACTED]					
21. CITY		22. COUNTY/PROVINCE		23. ZIP CODE	
Trinidad		Humboldt		95570	
24. YEARS IN COUNTY		25. STATE/FOREIGN COUNTRY			
91		CA			
26. INFORMANT'S NAME, RELATIONSHIP			27. INFORMANT'S MAILING ADDRESS (Street and number or rural route number, city or town, state, ZIP)		
Peter Lara - Grandson			[REDACTED] Trinidad, CA 95570		
28. NAME OF SURVIVING SPOUSE -- FIRST		29. MIDDLE		30. LAST (Maiden Name)	
31. NAME OF FATHER -- FIRST		32. MIDDLE		33. LAST	
Thomas				Williams	
34. BIRTH STATE		35. NAME OF MOTHER -- FIRST		36. MIDDLE	
unk		Ida			
37. BIRTH STATE		38. LAST (Maiden)		39. BIRTH STATE	
CA		Walker		CA	
39. DISPOSITION DATE mm/dd/yyyy		40. PLACE OF FINAL DISPOSITION			
02/14/2004		Williams Family Cemetery, Big Lagoon, CA 95570			
41. TYPE OF DISPOSITION(S)		42. SIGNATURE OF EMBALMER		43. LICENSE NUMBER	
BU		Not Embalmed			
44. NAME OF FUNERAL ESTABLISHMENT		45. LICENSE NUMBER		46. SIGNATURE OF LOCAL REGISTRAR	
Peter Lara				Anna Lindsey MD. (15)	
47. DATE mm/dd/yyyy		48. SIGNATURE OF LOCAL REGISTRAR			
02/13/04					
101. PLACE OF DEATH		102. IF HOSPITAL, SPECIFY ONE		103. IF OTHER THAN HOSPITAL, SPECIFY ONE	
Residence		<input type="checkbox"/> IP <input type="checkbox"/> ENOP <input type="checkbox"/> DOA		<input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/LTO <input checked="" type="checkbox"/> Decedent's Home <input type="checkbox"/> Other	
104. COUNTY		105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number or location)		106. CITY	
Humboldt		[REDACTED]		Trinidad	
107. CAUSE OF DEATH		108. DEATH REPORTED TO CORONER?		109. BIOPSY PERFORMED?	
IMMEDIATE CAUSE (Final disease or condition resulting in death)		Time Interval Between Onset of Death		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
[REDACTED]		5 Days		REASON FOR REFUSAL	
110. UNDERLYING CAUSE (Disease or injury that initiated the events resulting in death) LAST		111. USED IN DETERMINING CAUSE?		112. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107	
[REDACTED]		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		None	
113. WAS OPERATION PERFORMED FOR ANY CONDITION ON ITEM 107 OR 112? (If yes, list type of operation and date)		114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.		115. SIGNATURE AND TITLE OF CERTIFIER	
No		Decedent Attended Since <input type="checkbox"/> Decedent Lived With <input type="checkbox"/>		[Signature] MD	
116. DATE mm/dd/yyyy		117. LICENSE NUMBER		118. DATE mm/dd/yyyy	
03/03/1986		674722		02-13-04	
119. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE					
1600 Weet Way, Arcata, CA, 95521					
119. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED.		120. INJURED AT WORK?		121. INJURY DATE mm/dd/yyyy	
MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Accidents <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK			
122. HOUR (24 Hours)					
123. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)					
124. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)					
125. LOCATION OF INJURY (Street and number, or location, and city, and ZIP)					
126. SIGNATURE OF CORONER/DEPUTY CORONER					
[Signature]					
127. DATE mm/dd/yyyy		128. TYPE NAME, TITLE OF CORONER/DEPUTY CORONER			
STATE REGISTRAR		FAX AUTH #		CENSUS TRACT	
A 8 B X C 2 D E					





**EXHIBIT C**  
**(Thorpe Decl.)**

STATE FILE NUMBER		CERTIFICATE OF LIVE BIRTH				LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER
61-308753		STATE OF CALIFORNIA--DEPARTMENT OF PUBLIC HEALTH				1200 2179
THIS CHILD	1a NAME OF CHILD--FIRST NAME Holly		1b MIDDLE NAME Lynna		1c LAST NAME Moorehead	
	2 SEX Female	3a THIS BIRTH SINGLE TWIN OR TRIPLET? Single	3b IF TWIN OR TRIPLET, THIS CHILD BORN 1ST, 2ND, 3RD?		4a DATE OF BIRTH--MONTH DAY YEAR [REDACTED] 1961	4b HOUR 11:45 AM
PLACE OF BIRTH	5a PLACE OF BIRTH--NAME OF HOSPITAL St. Joseph Hospital			5b STREET ADDRESS (GIVE STREET OR RURAL ADDRESS OR LOCATION DO NOT GIVE P.O. BOX NUMBER) 2700 Dolbeer Street		
	5c CITY OR TOWN Eureka			5d COUNTY Humboldt		
MOTHER OF CHILD	6a MAIDEN NAME OF MOTHER--FIRST NAME Beverly		6b MIDDLE NAME Ray		6c LAST NAME Williams	
	7 COLOR OR RACE OF MOTHER White		8 AGE OF MOTHER (AT TIME OF THIS BIRTH) 26 YEARS		9 BIRTHPLACE (STATE OR TERRITORY IN COUNTRY) California	
USUAL RESIDENCE OF MOTHER (WHERE BORN MOTHER LIVES?)	10 MAILING ADDRESS (IF MOTHER--IF DIFFERENT FROM RESIDENCE, INDICATE BY CHECKING ONE OF THESE) [REDACTED]			11a IF INSIDE CORPORATE LIMITS <input type="checkbox"/> CHECK HERE		11b IF OUTSIDE CITY CORPORATE LIMITS <input checked="" type="checkbox"/> ON A FARM <input type="checkbox"/> NOT ON A FARM
	12a USUAL RESIDENCE OF MOTHER--STREET ADDRESS Same			11c COUNTY Humboldt		11d STATE California
	11c CITY OR TOWN Trinidad					
FATHER OF CHILD	12a NAME OF FATHER--FIRST NAME Theodore		12b MIDDLE NAME Ray		12c LAST NAME Moorehead	
	13 COLOR OR RACE OF FATHER White		14 AGE OF FATHER (AT TIME OF THIS BIRTH) 32 YEARS		15 BIRTHPLACE (STATE OR TERRITORY IN COUNTRY) California	
INFORMANT'S CERTIFICATION	16a PRESENT OR LAST OCCUPATION Logger			16b KIND OF INDUSTRY OR BUSINESS Lumber Company		17a DATE SIGNED BY INFORMANT [REDACTED] 1961
	17b PARENT OR OTHER INFORMANT--SIGNATURE (APPROVED) <i>Beverly Moorehead</i>					
ATTENDANT'S CERTIFICATION	18a PHYSICIAN (OR OTHER PERSON WHO ATTENDED THIS BIRTH)--PLEASE GIVE TITLE <i>John [REDACTED]</i>			18b ADDRESS Eureka		
	19 HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR, DATE AND PLACE STATED ABOVE.			20 LOCAL REGISTRAR--SIGNATURE <i>Carl L. Wallace</i>		21 DATE RECEIVED BY LOCAL REGISTRAR [REDACTED] 1961
REGISTRAR'S CERTIFICATION	19 DATE ON WHICH NAME ADDED BY SUPPLIER MENTAL NAME REPORT					

**EXHIBIT D**  
**(Thorpe Decl.)**

FILE NUMBER **60-006923** **CERTIFICATE OF LIVE BIRTH** LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER **1200 131**  
 STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC HEALTH

THIS CHILD	1a. NAME OF CHILD—FIRST NAME <b>Virgil</b>		1b. MIDDLE NAME <b>Dean</b>		1c. LAST NAME <b>Moorhead</b>	
	2. SEX <b>Male</b>	3a. THIS MOTHER SINGLE BORN (IF EARLIER) <b>Single</b>	3b. IF TWIN OR TRIPLET, THIS CHILD BORN 1ST AND 2ND <b>1</b>		4a. DATE OF BIRTH—MONTH DAY YEAR <b>1960</b>	
6-20 PLACE OF BIRTH	5a. PLACE OF BIRTH—NAME OF HOSPITAL <b>St. Joseph Hospital</b>			5b. STREET ADDRESS (GIVE STREET, RAILROAD ADDRESS OR LOCATION DO NOT USE P.O. BOX NUMBERS) <b>2700 Dolbeer St.</b>		
	5c. CITY OR TOWN <b>Eureka</b>			5d. COUNTY <b>Humboldt</b>		
1297 MOTHER OF CHILD	6a. MAIDEN NAME OF MOTHER—FIRST NAME <b>Beverly</b>		6b. MIDDLE NAME <b>Faye</b>		6c. LAST NAME <b>Williams</b>	
	8. AGE OF MOTHER (AT TIME OF THIS BIRTH) <b>25</b> YEARS		9. BIRTHPLACE (STATE OR FOREIGN COUNTRY) <b>California</b>		10. MAILING ADDRESS OF MOTHER—(GIVE STREET, RAILROAD ADDRESS OR LOCATION DO NOT USE P.O. BOX NUMBERS) <b>[REDACTED]</b>	
USUAL RESIDENCE OF MOTHER (WHERE MOTHER BORN)	11a. USUAL RESIDENCE OF MOTHER—STREET ADDRESS (GIVE STREET, RAILROAD ADDRESS OR LOCATION DO NOT USE P.O. BOX NUMBERS) <b>Same</b>			11b. IF INSIDE CORPORATE LIMITS <input type="checkbox"/> CHECK HERE		11c. IF OUTSIDE CITY CORPORATE LIMITS CHECK ONE <input type="checkbox"/> ON A FARM <input checked="" type="checkbox"/> NOT ON A FARM
	11c. CITY OR TOWN <b>Trinidad</b>			11d. COUNTY <b>Humboldt</b>		11e. STATE <b>California</b>
FATHER OF CHILD	12a. NAME OF FATHER—FIRST NAME <b>Theodore</b>		12b. MIDDLE NAME <b>Ray</b>		12c. LAST NAME <b>Moorhead</b>	
	14. AGE OF FATHER (AT TIME OF THIS BIRTH) <b>31</b> YEARS		15. BIRTHPLACE (STATE OR FOREIGN COUNTRY) <b>California</b>		16a. PRESENT OR LAST OCCUPATION <b>Woodman</b>	
INFORMANT'S CERTIFICATION	17. PARENT OR OTHER INFORMANT—SIGNATURE (PRINT NAME) <i>Beverly Moorhead</i>			17a. DATE SIGNED BY INFORMANT <b>1960</b>		
ATTENDANT'S CERTIFICATION	18. PHYSICIAN (GIVE STREET, RAILROAD ADDRESS OR LOCATION DO NOT USE P.O. BOX NUMBERS) <i>Johnnie Abel D.M.</i>			18a. ADDRESS <b>Eureka</b>		
REGISTRAR'S CERTIFICATION	19. DATE IN WHICH NAME ADDED BY SUPPLEMENTAL NAME REPORT			20. LOCAL REGISTRAR—SIGNATURE <i>L.S. Moorhead, M.D.</i>		21. DATE RECEIVED BY LOCAL REGISTRAR <b>1960</b>

**EXHIBIT E**  
**(Thorpe Decl.)**

STATE FILE #		CERTIFICATE OF LIVE BIRTH		LOCAL REGISTRATION DISTRICT AND	1200
58-205156		STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC HEALTH		CERTIFICATE NUMBER	1715
THIS CHILD	1a. NAME OF CHILD—FIRST NAME	1b. MIDDLE NAME		1c. LAST NAME	
	Roger	Lee		MOOREHEAD	
PLACE OF BIRTH	2. SEX	3a. THIS BIRTH IS ALL TIME OR 1st/2nd/3rd/4th	3b. IF TWIN OR TRIPLET, 1st/2nd CHILD BORN BY 2nd/3rd/4th	4a. DATE OF BIRTH—MONTH, DAY, YEAR	4b. HOUR
	Male	single		1958	3:30 P.
MOTHER OF CHILD	5a. PLACE OF BIRTH—NAME OF HOSPITAL		5b. STREET ADDRESS (GIVE STREET OR RURAL ADDRESS OR LOCATION DO NOT USE P. O. BOX NUMBER)		
	PHS Indian Hospital		Bald Hill Road		
USUAL RESIDENCE OF MOTHER (GIVE LAST MOTHER USED)	6a. CITY OR TOWN	6b. COUNTY	7. COLOR OR RACE OF MOTHER		
	Hoopa	Humboldt	American Indian		
FATHER OF CHILD	8a. MOTHER'S NAME—FIRST NAME	8b. MOTHER'S M.I.	8c. LAST NAME	9. MARITAL ADDRESS OF MOTHER—STREET, CITY, COUNTY, STATE	
	Beverly	Paye	Williams	Hoopa, California	
INFORMANT'S CERTIFICATION	10. AGE OF MOTHER (AT TIME OF THIS BIRTH)	11. BIRTHPLACE (STATE OR FOREIGN CO. IF FOREIGN)	12a. NAME OF FATHER—FIRST NAME	12b. MIDDLE NAME	12c. LAST NAME
	23	California	Theodore	Ray	Moorehead
ATTENDANT'S CERTIFICATION	13. USUAL RESIDENCE OF MOTHER—STREET ADDRESS (GIVE STREET OR RURAL ADDRESS OR LOCATION DO NOT USE P. O. BOX NUMBER)	14. AGE OF FATHER (AT TIME OF THIS BIRTH)	15. BIRTHPLACE (STATE OR FOREIGN CO. IF FOREIGN)	16a. PRESENT OR LAST OCCUPATION	16b. KIND OF INDUSTRY OR BUSINESS
	near Sig Neck, N. side	29	California	Logger	Lumber
REGISTRAR'S CERTIFICATION	17a. I HAVE REVIEWED THE ABOVE STATED INFORMATION AND HEREBY CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE	17b. PARENT OR OTHER INFORMANT—SIGNATURE (GIVE NAME)	17c. DATE SIGNED BY INFORMANT		
		<i>Beverly Paye</i>	-58		
REGISTRAR'S CERTIFICATION	18. I HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR, DATE AND PLACE STATED ABOVE	19. DATE ON WHICH NAME ADDED BY 1st FILE VITAL NAME REPORT	20. LOCAL REGISTRAR—SIGNATURE	21. DATE RECEIVED BY LOCAL REGISTRAR	
			<i>L.S. [Signature]</i>	1958	

**EXHIBIT F**  
**(Thorpe Decl.)**

**54 222661 CERTIFICATE OF LIVE BIRTH**  
STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC HEALTH

REGISTRATION DISTRICT No. 1200 REGISTRAR'S NUMBER 1774

THIS CHILD <small>(TYPE OR PRINT NAME)</small>	1. CHILD'S FIRST NAME <b>Franklin</b>		1B. MIDDLE NAME <b>Wayne</b>	1C. LAST NAME <b>Lara</b>
	2. SEX <b>Male</b>	3A. THIS BIRTH, SINGLE, TWIN, OR TWINS? <b>Single</b>		3B. IF TWIN OR TRIPLET, THIS CHILD BORN FIRST, 2ND, 3RD, <b>[REDACTED]</b>
PLACE OF BIRTH	4A. COUNTY <b>Humboldt</b>		4B. CITY OR TOWN <b>Eureka</b>	
	5C. FULL NAME OF HOSPITAL OR INSTITUTION <b>Saint Joseph Hospital</b>		5D. ADDRESS <small>(If not in hospital or institution give street or rural route or location and lot or P. O. box number)</small>	
US (A) RESIDENCE OF MOTHER (B) RESIDENCE	6A. STATE <b>California</b>	6B. COUNTY <b>Humboldt</b>	6C. CITY OR TOWN <b>Trinidad</b>	6D. STREET OR RURAL ADDRESS <small>(Do not list P. O. box number)</small>
	7A. MAIDEN NAME OF MOTHER—FIRST NAME, MIDDLE NAME <b>Beverly J. Jave</b>		7C. LAST NAME <b>Williams</b>	7D. COLOR OR RACE OF MOTHER <b>One Half Indian One Half White</b>
MOTHER OF CHILD	8. AGE OF MOTHER (AT TIME OF THIS BIRTH) <b>19</b> YEARS	10. BIRTHPLACE (STATE OR FOREIGN COUNTRY) <b>California</b>		11. MAILING ADDRESS OF MOTHER— <small>(If not in usual residence, street address, city or town)</small> <b>[REDACTED] Trinidad, California</b>
	12A. NAME OF FATHER—FIRST NAME <b>Francis</b>		12B. MIDDLE NAME <b>Mark</b>	12C. LAST NAME <b>Lara</b>
FATHER OF CHILD	14. AGE OF FATHER (AT TIME OF THIS BIRTH) <b>22</b> YEARS		15. BIRTHPLACE (STATE OR FOREIGN COUNTRY) <b>California</b>	16A. USUAL OCCUPATION <b>Woodman</b>
	13. COLOR OR RACE OF FATHER <b>Indian</b>		16B. KIND OF BUSINESS OR INDUSTRY <b>Timber</b>	
INFORMANT'S CERTIFICATION	17A. SIGNATURE OF PARENT OR OTHER INFORMANT (IF SIGNATURE) <i>[Signature]</i>		17B. DATE SIGNED BY PARENT OR OTHER INFORMANT <b>[REDACTED] 1954</b>	
ATTENDANT'S CERTIFICATION	18A. SIGNATURE OF ATTENDANT <i>[Signature]</i>		18B. ADDRESS <b>Eureka, California</b>	
REGISTRAR'S CERTIFICATION	19. DATE RECEIVED BY LOCAL REGISTRAR <b>[REDACTED] 1954</b>		20. SIGNATURE OF LOCAL REGISTRAR <i>[Signature]</i>	
				21. DATE ON WHICH NAME ADDED BY SUPPLEMENTAL BIRTH RECORD



**EXHIBIT G**  
**(Thorpe Decl.)**

STATE FILE NO. <b>56 115164</b>		<b>CERTIFICATE OF LIVE BIRTH</b>		REGISTRATION DISTRICT NO. <b>1200</b>		REGISTRAR'S NUMBER <b>964</b>	
1A. CHILD'S FIRST NAME		1B. MIDDLE NAME		1C. LAST NAME		1D. SEX	
Louis		Dale		Lara		Male	
2. SEX		3A. THIS BIRTH, SINGLE, TWIN, OR TRIPLET?		3B. IF TWIN OR TRIPLET, THIS CHILD BORN 1ST, 2ND, 3RD?		4A. DATE OF BIRTH—MONTH, DAY, YEAR	
Male		Single				12/33 P 1956	
5A. COUNTY		5B. CITY OR TOWN		5C. FULL NAME OF HOSPITAL OR INSTITUTION		5D. ADDRESS	
Humboldt		Eureka		St. Joseph Hospital		2700 Dolbeer Street	
6A. STATE		6B. COUNTY		6C. CITY OR TOWN		6D. STREET OR RURAL ADDRESS	
California		Humboldt		Trinidad			
7A. MOTHER'S FIRST NAME		7B. MIDDLE NAME		7C. LAST NAME		7D. COLOR OR RACE OF MOTHER	
Beverly		Faye		Williams		White	
9. AGE OF MOTHER (AT TIME OF THIS BIRTH)		10. BIRTHPLACE (STATE OR FOREIGN COUNTRY)		11. MARITAL ADDRESS OF MOTHER		12. COLOR OR RACE OF FATHER	
21		California		Sons		White	
12A. FATHER'S FIRST NAME		12B. MIDDLE NAME		12C. LAST NAME		13. COLOR OR RACE OF FATHER	
Frank				Lara		White	
14. AGE OF FATHER (AT TIME OF THIS BIRTH)		15. BIRTHPLACE (STATE OR FOREIGN COUNTRY)		16A. USUAL OCCUPATION		16B. KIND OF BUSINESS OR INDUSTRY	
27		California		Woodman		Lumber	
INFORMANT'S CERTIFICATION		17A. SIGNATURE OF PARENT OR OTHER INFORMANT		17B. DATE SIGNED BY PARENT OR OTHER INFORMANT			
I HEREBY CERTIFY THAT THE ABOVE STATED INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.		<i>Beverly Lara</i>		1956			
ATTENDANT'S CERTIFICATION		18A. SIGNATURE OF ATTENDANT		18B. ADDRESS			
I HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE TIME, DATE AND PLACE STATED ABOVE.		<i>Alan W. Pitt M.D.</i>		Eureka			
REGISTRAR'S CERTIFICATION		19. DATE RECEIVED BY LOCAL REGISTRAR		20. SIGNATURE OF LOCAL REGISTRAR		21. DATE ON WHICH NAME ADDED BY SUPPLEMENTAL NAME REPORT	
		1956		<i>L.S. M. D.</i>			

**EXHIBIT H**  
**(Thorpe Decl.)**

STATE FILE NUMBER		STATE OF CALIFORNIA - DEPARTMENT OF PUBLIC HEALTH		LOCAL REGISTRATION DISTRICT	CERTIFICATE NUMBER
57-188771		CERTIFICATE OF LIVE BIRTH		1200	1610
THIS CHILD	1A. NAME OF CHILD—FIRST NAME	1B. MIDDLE NAME	1C. LAST NAME		
	Peter	Harry	Lara		
PLACE OF BIRTH	2. SEX	3A. THIS CHILD SINGLE, TWIN, OR TRIPLET	3B. IF TWIN OR TRIPLET, TRY CHILD'S ORDER, 1ST, 2ND, 3RD	4A. DATE OF BIRTH—MONTH/DAY, YEAR	4B. HOUR
	Male	single		1957	6:53 A.
MOTHER OF CHILD	5A. PLACE OF BIRTH—NAME OF HOSPITAL	5B. STREET ADDRESS (GIVE STREET OR RURAL ADDRESS OR LOCATION DO NOT USE P.O. BOX NUMBERS)		5C. COUNTY	
	PMS Indian Hospital	Bald Hill Rd.		Humboldt	
USUAL RESIDENCE OF MOTHER (WHERE DOES MOTHER LIVE?)	6A. MAIDEN NAME OF MOTHER—FIRST NAME	6B. MIDDLE NAME	6C. LAST NAME	7. COLOR OR RACE OF MOTHER	
	Beverly	Faye	Williams	American Indian	
FATHER OF CHILD	8. AGE OF MOTHER (AT TIME OF THIS BIRTH) YEARS	9. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	10. MAILING ADDRESS OF MOTHER (IF DIFFERENT FROM USUAL RESIDENCE, INDICATE)		
	22	California	Trinidad, California		
INFORMANT'S CERTIFICATION	11A. USUAL RESIDENCE OF MOTHER—STREET ADDRESS (GIVE STREET OR RURAL ADDRESS OR LOCATION DO NOT USE P.O. BOX NUMBERS)	11B. CITY OR TOWN	11C. COUNTY	11D. STATE	
	Big Lagoon State Park on Highway 101, 9 miles North of Trinidad	Trinidad	Humboldt	California	
ATTENDANT'S CERTIFICATION	12A. NAME OF FATHER—FIRST NAME	12B. MIDDLE NAME	12C. LAST NAME	13. COLOR OR RACE OF FATHER	
	Francis	Marks	Lara	White	
REGISTRAR'S CERTIFICATION	14. AGE OF FATHER (AT TIME OF THIS BIRTH) YEARS	15. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	16A. PRESENT OR LAST OCCUPATION	16B. KIND OF INDUSTRY OR BUSINESS	
	23	California	Woodman	Lumber	
INFORMANT'S CERTIFICATION	17A. PARENT OR OTHER INFORMANT—SIGNATURE (PRINT NAME)		17B. DATE SIGNED BY INFORMANT		
	Francis Faye Lara		57		
ATTENDANT'S CERTIFICATION	18A. PHYSICIAN (OR OTHER PRACTICE ASSISTANT) SIGNATURE (PRINT NAME)		18B. ADDRESS		
	Wayne Bigelow M.D.		Hoopa, California		
REGISTRAR'S CERTIFICATION	19. DATE ON WHICH NAME ADDED BY SUPPLEMENTAL NAME REPORT		20. LOCAL REGISTRAR—SIGNATURE (PRINT NAME)		
			L. S. M. Lewis, M.D.		
			21. DATE RECEIVED BY LOCAL REGISTRAR		
			957		

**EXHIBIT I**  
**(Thorpe Decl.)**

REGISTRATION DISTRICT NO. <u>1201</u>		REGISTRAR'S NUMBER <u>505</u>		CERTIFICATE OF LIVE BIRTH		STATE FILE NO. <u>49-115381</u>	
THIS CHILD'S SEX OR INTERSEX	14. CHILD'S FIRST NAME	15. MIDDLE NAME	16. LAST NAME	17. SEX	18. THIS BIRTH SINGLE, TWIN OR TRIPLET	19. STATE OF BIRTH - MONTH, DAY, YEAR	20. HOUR
	<u>Thomas</u>	<u>Wayne</u>	<u>Williams</u>	<u>Male</u>	<u>Single</u>	<u>1949</u>	<u>8:00p</u>
PLACE OF BIRTH	21. PLACE OF BIRTH - CITY OR TOWN (IF OUTSIDE COMPLETE LIMITS, WRITE BIRTH AND NAME OF NEAREST TOWN)			22. COUNTY			
	<u>Eureka</u>			<u>Humboldt</u>			
USUAL RESIDENCE OF MOTHER (IF MOTHER DECEASED, MOTHER LISTED)	23. FULL NAME AND ADDRESS OF HOSPITAL OR INSTITUTION - (IF NOT IN HOSPITAL OR INSTITUTION, GIVE STREET ADDRESS OR LOCATION)			24. RESIDENCE OF MOTHER - STREET ADDRESS (IF RURAL, GIVE LOCATION)			
	<u>The General Hospital, Marine &amp; U Sts.</u>			<u>Trinidad</u>			
MOTHER OF CHILD	25. MAIDEN NAME OF MOTHER - FIRST NAME	26. MIDDLE NAME	27. LAST NAME	28. COLOR OR RACE OF MOTHER			
	<u>Lila</u>	<u>Lee</u>	<u>Green</u>	<u>Indian</u>			
FATHER OF CHILD	29. AGE OF MOTHER (AT TIME OF THIS BIRTH) YEARS	30. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	31. MAILING ADDRESS OF MOTHER (IF DIFFERENT FROM USUAL RESIDENCE)	32. COLOR OR RACE OF FATHER			
	<u>35</u>	<u>California</u>	<u>Box 85 Trinidad, Calif.</u>	<u>Indian</u>			
INFORMANT'S CERTIFICATION	33. NAME OF FATHER - FIRST NAME	34. MIDDLE NAME	35. LAST NAME	36. KIND OF BUSINESS OR INDUSTRY			
	<u>Thomas</u>	<u>-</u>	<u>Williams</u>	<u>Sawwood Lumber Co.</u>			
ATTENDANT'S CERTIFICATION	37. AGE OF FATHER (AT TIME OF THIS BIRTH) YEARS	38. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	39. USUAL OCCUPATION	40. DATE SIGNED			
	<u>37</u>	<u>California</u>	<u>Woodman</u>	<u>1949</u>			
REGISTRAR'S CERTIFICATION	41. I HEREBY CERTIFY THAT THE ABOVE STATED INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.		42. SIGNATURE OF PARENT OR OTHER INFORMANT		43. DATE		
			<u>Lila Lee Green</u>		<u>1949</u>		
REGISTRAR'S CERTIFICATION	44. I HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR AND DATE STATED ABOVE.		45. SIGNATURE OF ATTENDANT		46. ADDRESS		
			<u>Thomas W. Williams</u>		<u>Eureka, Calif.</u>		
REGISTRAR'S CERTIFICATION	47. DATE RECEIVED BY LOCAL REGISTRAR		48. SIGNATURE OF LOCAL REGISTRAR		49. DATE ON WHICH GIVEN NAME ADDED		
	<u>1949</u>		<u>M. W. Husband, M. D.</u>		<u>M. W. B.</u>		

**EXHIBIT J**  
**(Thorpe Decl.)**

Hoop Valley Agency, Calif., No. OFF R.

2748

G-6503

DEPARTMENT OF COMMERCE  
BUREAU OF THE CENSUS

STANDARD CERTIFICATE OF BIRTH

State File No. 3

Registered No.

1. PLACE OF BIRTH—1256 W-452  
County Humboldt State Calif.  
Township 35-000914 or Village Hoopa  
City No. Hoopa Valley Hospital, St. Hoopa

2. Full name of child Beverly Faye Williams

3. Sex F. 4. Twin, triplet, or other — 5. Premature — 6. Date of birth 1934  
7. Legals Yes 8. Date of birth (Month, day, year)

9. Full name of FATHER Thomas Williams 18. Full name of MOTHER Lila Green

10. Residence (usual place of abode) Hoopa, Calif. 19. Residence (usual place of abode) Hoopa, Calif.  
21. Color of hair Indian, Klamath 22. Age at last birthday 22 (years) 23. Color of hair Indian, Klamath 24. Age at last birthday 20 (years)

13. Birthplace (city or place) Regus, Off Res., Calif. 14. Birthplace (city or place) Denny, Off Res., Calif.

15. Trade, profession, or particular kind of work done, as salesman, carpenter, bank officer, etc. Labor 25. Trade, profession, or particular kind of work done, as housekeeper, typist, nurse, clerk, etc. Housework

16. Industry or business in which work was done, as silk mill, sawmill, bank, etc. I.E.C.W. 26. Industry or business in which work was done, as iron works, lawyer's office, silk mill, etc. Own Home

17. Date (month and year) last engaged in this work present time, 1934 18. Total time (years) spent in this work 5/12 19. Date (month and year) last engaged in this work Present time, 34 20. Total time (years) spent in this work 1

27. Number of children of this mother (At time of this birth and including this child) (a) Born alive and now living 2 (b) Born alive but now dead (c) Stillborn

28. If stillborn, period of gestation (months or weeks) 29. Cause of stillbirth

CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE

I hereby certify that I attended the birth of this child, who was alive at 454 m. on the date above stated. (Born alive or stillborn)

(Signed) \_\_\_\_\_ M. D.  
or \_\_\_\_\_ Midwife  
Address Hoopa Calif.  
Filed \_\_\_\_\_, 1935  
E. J. Anderson

MARGIN RESERVED FOR BINDING  
WRITE PLAINLY WITH UNFADING INK—THIS IS A PERMANENT RECORD  
In case of more than one child of a birth, a SEPARATE RETURN must be made for each, and the number of each, in order of birth, stated.



1 Peter J. Engstrom, State Bar No. 121529  
2 [peter.engstrom@bakermckenzie.com](mailto:peter.engstrom@bakermckenzie.com)  
3 Bruce H. Jackson, State Bar No. 98118  
4 [bruce.jackson@bakermckenzie.com](mailto:bruce.jackson@bakermckenzie.com)  
5 Irene V. Gutierrez, State Bar No. 252927  
6 [irene.gutierrez@bakermckenzie.com](mailto:irene.gutierrez@bakermckenzie.com)

7 **BAKER & McKENZIE LLP**  
8 Two Embarcadero Center, 11th Floor  
9 San Francisco, CA 94111-3802  
10 Telephone: +1 415 576 3000  
11 Facsimile: +1 415 576 3099

12 Attorneys for Plaintiff  
13 **BIG LAGOON RANCHERIA**

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

17 **BIG LAGOON RANCHERIA**, a Federally  
18 Recognized Indian Tribe,

19 Plaintiff,

20 v.

21 **STATE OF CALIFORNIA**,

22 Defendant.

Case No. CV-09-01471-CW(JCS)

*Related Case No. C 99-04995-CW*

**PLAINTIFF LAGOON RANCHERIA'S  
NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**Date: August 12, 2010  
Time: 2:00 p.m.  
Place: Courtroom 2, 4th Floor**

**1301 Clay Street  
Oakland, CA**

**Before The Honorable Claudia Wilken**

**Trial Date: Not Set  
Date Action Filed: April 3, 2009**

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 19 512 F.3d 921 (7th Cir. 2008) .....15

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 STATUTES

California Government Code  
 § 16300.....16  
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 Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq*..... 1, passim  
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 Rule 56(c).....1, 3

MISCELLANEOUS

S. Rep. No. 100-446, at 14 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 3071, 3084 .....13, 21, 22  
 134th Cong. Rec. S 12643- 01 at S12651 (1988) (Statement of Sen. Inouye) .....21, 22

1 **NOTICE OF MOTION AND MOTION**

2 TO DEFENDANT STATE OF CALIFORNIA AND ITS ATTORNEY OF RECORD:

3 NOTICE IS HEREBY GIVEN that on August 12, 2010, at 2:00 p.m., or as soon thereafter as  
4 counsel may be heard by the above-entitled Court, located at 1301 Clay Street, Courtroom 2, Fourth  
5 Floor, Oakland, CA 94612, Plaintiff Big Lagoon Rancheria will and hereby does move the Court for  
6 summary judgment.

7 The motion for summary judgment is made in accordance with Federal Rule of Civil  
8 Procedure 56, on the ground that there is no genuine issue as to any material fact and that the moving  
9 party is entitled to summary judgment as a matter of law for the following reasons: The undisputed  
10 facts establish that Plaintiff Big Lagoon Rancheria is entitled to summary judgment in its favor on its  
11 claims under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA") and against  
12 Defendant the State of California. This Court should determine that the State has not negotiated in  
13 good faith within the meaning of IGRA, and should issue an order compelling the State to conclude  
14 a compact with the Tribe within the 60-day period prescribed by IGRA.

15 This motion is based upon this Notice of Motion and Motion, the accompanying  
16 Memorandum of Points and Authorities, the Declaration of Peter J. Engstrom, the Request for  
17 Judicial Notice, the Proposed Order, all the pleadings and papers on file in this action, and upon such  
18 any other matters as may be presented to the Court at the time of hearing.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 For the past fifteen years, plaintiff Big Lagoon Rancheria, a federally recognized Indian tribe  
22 ("Big Lagoon" or the "Tribe"), has negotiated with the State of California in an effort to obtain a  
23 tribal-state compact permitting the Tribe to conduct class III gaming on its ancestral reservation  
24 lands, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* ("IGRA"). Those  
25 fifteen years of negotiations have included nearly a decade of litigation in this Court aimed at  
26 compelling the State to negotiate a compact in good faith, and two years during which a compromise  
27 tribal-state compact languished before the State Legislature without being ratified.

28 In the most recent round of negotiations, commencing in September, 2007, the State has

1 continued its pattern and practice of bad faith negotiations with the Tribe. Most significantly, it is  
2 undisputed that, as a condition for agreeing to a compact, the State has unwaveringly demanded that  
3 the Tribe pay at least 10% of its annual net winnings to the State's general fund. Pursuant to the  
4 recent holding of the Ninth Circuit Court of Appeals in Rincon Band of Luiseno Mission Indians of  
5 the Rincon Reservation v. Schwarzenegger, Nos. 08-55809, 08-55914 (9th Cir. April 20, 2010), the  
6 State's demand for revenue sharing constitutes a "demand for a tax" that this Court must consider to  
7 be made in bad faith. As Rincon makes clear, having made a bald demand for general fund revenue  
8 sharing, the State "faces a very difficult task to rebut the evidence of bad faith arising from that  
9 demand." Id. at 5896. Indeed, it is a task the State cannot perform.

10 According to Rincon, to rebut that prima facie evidence of bad faith, the State must satisfy all  
11 of the following conditions: (1) establish that the revenue sharing is for uses directly relating to  
12 gaming activities; (2) show that it is consistent with the purposes of IGRA and (3) show that it was  
13 bargained for in exchange for meaningful concessions. Id. at 5898. The State can satisfy none of  
14 these conditions. Significantly, as was the case regarding the State's negotiating position in Rincon,  
15 it is undisputed that the only concession the State has offered to the Tribe throughout is exclusivity  
16 from non-tribal gaming. The Tribe has made it clear throughout these negotiations that exclusivity  
17 was and is of no value, and not something the Tribe desires or needs. More importantly, Rincon  
18 holds that "exclusivity" is not a meaningful concession as a matter of law. "In the current legal  
19 landscape, exclusivity is not a new consideration the State can offer in negotiations because the tribe  
20 already enjoys that right as a matter of state constitutional law." Id. at 5906.

21 Additionally, in ostensibly attempting to negotiate a compact, the State consistently proposed  
22 alternative off-reservation sites, as distinct from the Tribe's existing trust lands, and has sought to  
23 impose numerous environmental, land use and other restrictions. Under Rincon, these requests are  
24 also improper – they are not directly related to gaming, not consistent with the purposes of IGRA,  
25 and are not made with any offer of meaningful concessions in return.

26 This pattern of bad faith negotiations is evident from the latest round of compact negotiations  
27 between the Tribe and the State, and it is also supported by the history of prior dealings between the  
28 Tribe and State. While this Court previously found evidence of bad faith on the part of the State, the

1 Court ordered the parties to continue negotiating in the hope that, with the Court's guidance on these  
 2 matters, the parties could reach a resolution. That has not occurred, however, because the State has  
 3 continued its pattern of bad faith by making proposals that would push the Tribe off of its tribal  
 4 lands, would require revenue sharing with the State and would require environmental regulation and  
 5 land use restrictions – all negotiating positions that the Ninth Circuit has now definitively ruled are  
 6 not permissible and constitute bad faith under IGRA. The undisputed facts establish that Big  
 7 Lagoon is entitled to summary judgment in its favor on its claims under IGRA. We respectfully  
 8 submit that further delays are not warranted. The time has come for the Court to determine that the  
 9 State has not negotiated in good faith within the meaning of IGRA, and to issue an order compelling  
 10 the State to conclude a compact with the Tribe within the 60-day period prescribed by IGRA.

## 11 II. SUMMARY JUDGMENT STANDARD

12 Summary judgment is appropriate if the “pleadings, depositions, answers to interrogatories,  
 13 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to  
 14 any material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV.  
 15 P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Eisenberg v. Ins. Co. of N. Am.,  
 16 815 F.2d 1285, 1288-89 (9th Cir. 1987). The moving party bears the burden of showing that there is  
 17 no material factual dispute. The court must regard as true the opposing party's evidence, if  
 18 supported by affidavits or other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815 F.2d  
 19 at 1289. The court must draw all reasonable inferences in favor of the party against whom summary  
 20 judgment is sought. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986);  
 21 Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991).

## 22 III. BACKGROUND FACTS

### 23 A. Previous Compact Negotiations and IGRA Litigation Between Tribe and State

24 The Tribe first attempted to commence compact negotiations with the State on September 22,  
 25 1993. The State failed to make any good faith response, and accordingly, the Tribe filed a lawsuit to  
 26 compel the State to negotiate in good faith, entitled Big Lagoon Rancheria v. Governor Pete Wilson,  
 27 State of California, CIV-S-97-0651 WBS (GGH). This lawsuit was eventually dismissed on  
 28 Eleventh Amendment Immunity grounds, since it was only with the passage of Proposition 5 in



1 1998, that California consented to suit in IGRA actions.

2 In 1998-1999, as the State was negotiating gaming compacts with other tribes in California,  
3 Big Lagoon renewed its efforts to obtain gaming rights. On November 18, 1999, the Tribe filed a  
4 lawsuit in the Northern District of California, captioned Big Lagoon Rancheria v. State of California,  
5 Case No. C-99-4995-CW, seeking to compel the State to conclude a tribal-state compact. The Tribe  
6 also sought to concurrently pursue further compact negotiations, and on March 24, 2000, transmitted  
7 to the Governor's office a further request to enter into compact negotiations. Exhibit A to Koji F.  
8 Fukumura's Declaration in Support of Big Lagoon's Motion for an Order Pursuant to 25 U.S.C.  
9 §2710(d)(7)(b)(iii), filed October 5, 2001, Big Lagoon Rancheria v. State of California, No. C-99-  
10 4995-CW, attached as Exhibit 1 to Big Lagoon's Request for Judicial Notice in Support of its  
11 Motion for Summary Judgment ("RJN").

12 Throughout the parties' compact negotiations, the State insisted on numerous forms of  
13 environmental, land use and other kinds of regulatory oversight over Big Lagoon's tribal lands not  
14 permitted under federal law, nor required of other gaming tribes, but failed to offer any reciprocal  
15 concessions to the Tribe in return. When negotiations between the parties stalled, the Tribe filed a  
16 motion for summary judgment on October 5, 2001, seeking to compel the State to negotiate in good  
17 faith. In ruling on the parties' cross-motions for summary judgment, this Court found that "it  
18 appears that the State has not negotiated with the Tribe in good faith thus far" but held that a final  
19 determination of bad faith was premature in light of the novelty of issues regarding good faith  
20 bargaining. Order Denying Cross Motions for Summary Judgment at 19:17-19, filed March 18,  
21 2002, RJN Exh. 2.

22 The parties then resumed compact negotiations, during which time the State continued to  
23 insist on environmental, land use and other kinds of regulatory oversight over Big Lagoon's tribal  
24 lands, still without offering Big Lagoon any concessions in exchange for submitting to such  
25 regulation over its sovereign lands. The State also proposed for the first time, an off-reservation  
26 gaming arrangement.

27 Due to a lack of progress in these negotiations, the Tribe filed a further motion for summary  
28 judgment on April 2, 2003. In ruling on Big Lagoon's motion for summary judgment, the Court

1 stated: "It has been nearly ten years since the compact negotiations between the Tribe and the State  
2 began. At this juncture, the Court is inclined to grant Plaintiff's motion," but stayed a decision on  
3 the motion and ordered that the parties follow a Court-mandated schedule for drafting a gaming  
4 compact and negotiating with each other. Order Staying Decision on Plaintiff's Motion for  
5 Summary Judgment at 2:13-16, filed June 11, 2003, RJN Ex. 3. Later, on August 4, 2003, the Court  
6 denied the motion for summary judgment, in light of the fact that the parties were still considering an  
7 alternative proposal by the State for Big Lagoon to purchase a 25-acre site from the State, develop a  
8 gaming operation on that property, and agree not to develop a casino on its rancheria site. Order  
9 Denying Plaintiff's Motion for Summary Judgment, filed August 4, 2003, RJN Exh. 4.

10 Following the Court's order, the Tribe sought to renew compact discussions with the State,  
11 and suggested that the parties sign the Model Compact, just as the State has previously done with a  
12 number of other California tribes, to develop a casino on the Tribe's existing lands, taking into  
13 account the State's concerns about the environmental impact. Exh. A to Declaration of Peter J.  
14 Engstrom in Support of Further Motion for Summary Judgment by Plaintiff Big Lagoon Rancheria,  
15 executed on January 15, 2004, RJN Exh. 5. The State rejected the Tribe's proposal, and insisted that  
16 relocating the casino to an alternative site remained the most promising avenue for negotiations.  
17 Exh. C., *Id.*

18 Negotiations between the parties dragged on, until the Tribe encountered further delays from  
19 the State in the Fall of 2003, when the State indicated that due to the impending transition to  
20 Governor Arnold Schwarzenegger's administration, it would need additional time to familiarize  
21 itself with the pertinent issues. Exh. T., *Id.*

22 **B. Agreement to Sign the Barstow Compact**

23 On August 17, 2005, after many months of negotiations, including with another Indian tribe  
24 the State wished Big Lagoon to partner with at yet another location, the Tribe and the State entered  
25 into a Settlement Agreement pursuant to which the parties agreed to execute a tribal-state compact  
26 permitting class III gaming by the Tribe. Settlement Agreement between State of California and Big  
27 Lagoon Rancheria; attached as Exhibit 1 to Declaration of Peter Engstrom in Support of Big  
28 Lagoon's Motion for Summary Judgment, filed June 17, 2010 ("Engstrom Decl."). The Tribe

1 agreed not to develop its ancestral reservation lands at Big Lagoon, in exchange for a tribal-state  
2 compact permitting off-site gaming in Barstow, California and the Governor's backing of the  
3 project. The Settlement Agreement provided for joint development of the Barstow casino with the  
4 Los Coyotes Band of Cahuilla and Cupeno Indians ("Los Coyotes"), effectively combining two  
5 separate tribes' proposed class III gaming operations into one. The Barstow property would have  
6 had to be purchased by the tribes, and then conveyed in trust to the Secretary of the Interior.

7 The Settlement Agreement and Barstow Compact provided that if certain conditions were not  
8 met, such as the Secretary of the Interior not approving the Settlement Agreement or Compact, or the  
9 Secretary declining to accept the designated Barstow property site into trust for the benefit of the  
10 tribes, or the Compact not being ratified by the California Legislature before a specified date in  
11 2007, the parties' obligations under the Agreement would terminate and the Compact would become  
12 null and void and new compact negotiations and, if necessary, litigation pursuant to IGRA would  
13 follow. Id.

14 Governor Schwarzenegger announced the conclusion of the Barstow Compact on  
15 September 9, 2005. Proposed legislation for the ratification of the Barstow Compact was introduced  
16 at the start of the 2006 legislative session. However, the Compact was not ratified during the 2006  
17 legislative session. The Compact was also not ratified during the 2007 legislative session. The State  
18 Legislature refused to approve the Compact that the Governor had entered into. The parties agreed  
19 to extend the time for legislative ratification of the Compact to September 17, 2007 – but as the  
20 Compact was not ratified by that date, it expired according to its terms. Joint CMC Statement, filed  
21 March 9, 2007; RJN Exh. 6.

22 **C. Latest Round of Compact Negotiations Between the Tribe and State**

23 As contemplated by the terms of their Settlement Agreement, the Tribe and the State  
24 commenced new compact negotiations, pursuant to the Tribe's written request dated September 18,  
25 2007. Engstrom Decl., ¶3, Exh. 2. For the Court's ease of reference, a table describing the written  
26 proposals and counterproposals ("Proposals") made during these most recent negotiations is  
27 attached to this memorandum as **Exhibit A** (the correspondence underlying the proposals is  
28 attached to and identified by the separate declaration of Peter Engstrom).

1           **1. The State's Insistence on General Fund Revenue Sharing**

2           Throughout the latest round of compact negotiations between the parties, the State was  
3 adamant that any compact must include a provision obligating the Tribe to contribute part of its  
4 casino revenues to the State's general fund. The very first of the communications from the State  
5 regarding compact provisions included revenue sharing obligations to be imposed upon the Tribe.  
6 Draft Tribal-State Compact at 4.3, attached to November 19, 2007 letter from Andrea Hoch;

7           **Proposal 1.**

8           The State's demand for revenue sharing continued through all subsequent compact proposals.  
9 In its January 2008 proposal, the State required that the Tribe pay into the State's general fund  
10 "percentages of its net win generated from the operation of all gaming devices," which would have  
11 ranged from 12% to 25% of net winnings, and would be scaled according to the Tribe's annual net  
12 win. January 31, 2008 Letter from Andrea Hoch; **Proposal 2.** As a purported "concession," the  
13 State offered the Tribe "geographic exclusivity of 50 miles," and stated that it was entitled to  
14 revenue sharing, "in consideration of exclusive rights to operate gaming devices." *Id.* Under the  
15 Highway Site proposal, the State took away the Tribe's right to receive RSTF payments, and the  
16 Tribe would have been required to contribute to the Revenue Sharing Trust Fund (RSTF). In its  
17 May 2008 proposal, the State again demanded revenue contribution to the State's general fund  
18 ranging between 10% to 25% of the Tribe's annual net winnings, offering the Tribe geographic  
19 exclusivity of 50 miles in exchange. May 2, 2008 Letter from Andrea Hoch; **Proposal 5.** The Tribe  
20 emphasized throughout the course of compact negotiations that it had no interest in exclusivity. As  
21 the Tribe stated in its October 2008 letter: "it has no need or desire for any 'exclusivity' protection  
22 provisions and sees no justification for sharing its revenue with the State." October 6, 2008 Letter  
23 from Jerome Levine; **Proposal 6.** The Tribe emphasized that "exclusivity" was "meaningless" to it,  
24 as it was in an area where non-tribal gaming was unlikely to proliferate, and that moreover, some 40  
25 other California tribes had concluded compacts with no revenue sharing requirement. *Id.* In the  
26 interest of achieving a conclusion to compact negotiations, the Tribe had been willing to consider  
27 revenue sharing of less than 10% of annual net wins – but noted that, in light of the State's  
28 unwillingness to "compromise by deviating from the amount of its arbitrary and apparently

1 minimum uniform tax rate on tribal slot machine revenues,” it was no longer willing to consider  
2 revenue sharing with the State. Id.

3 **2. Continued Efforts to Force Big Lagoon Off of its Tribal Lands**

4 At the outset of these further compact negotiations, and notwithstanding the Tribe’s express  
5 desire to negotiate a compact for gaming on its trust lands as envisaged by IGRA, the State  
6 immediately renewed its proposal to pursue alternative off-reservation sites, rather than the Tribe’s  
7 existing trust lands. On January 31, 2008, the State presented the Tribe with a proposal for three  
8 alternative casino sites. **Proposal 2 A, B and C.** The Tribe rejected the State’s proposals for off-  
9 reservation sites which, while located in Humboldt County, would nonetheless have required the  
10 Tribe to go through additional time-consuming and extensive and uncertain administrative  
11 proceedings, federal and local, to enable development on those sites, and would have added an  
12 estimated three to five years before development on the sites could commence. March 21 Letter  
13 from Rory Dilweg; **Proposal 4.**

14 The State’s first priority site would have required the Tribe to arrange the acquisition of a  
15 new parcel of off-reservation property, adjacent to the highway (“Highway Site.”). **Proposal 2A.**  
16 The State’s second priority would have allowed construction of the casino on the rancheria site, with  
17 a hotel on the Tribe’s post-1988 trust lands, but removed the employee and patron parking and waste  
18 water treatment facilities off site, to a five-acre parcel owned by the Tribe in fee, i.e., not held in  
19 trust (“Five Acre/Rancheria Site”). **Proposal 2B.** The State’s third priority would site the casino on  
20 the Tribe’s original rancheria and the hotel on post-1988 trust lands, and would split parking and  
21 other developments between the two parcels (“Rancheria Site”). **Proposal 2C.** Additionally, the  
22 Rancheria Site proposal would mandate the location of the casino project on-site in such a way as to  
23 require relocation of existing tribal housing, and to uproot the Tribe’s resident members. Under the  
24 State’s punitive proposal, each of these prioritized sites would have to be pursued in sequence, along  
25 with numerous federal, state, county, local, and third-party approvals not otherwise required of  
26 competing tribes.

27 In each case, the closer the Tribe’s desired casino project came to being located on the  
28 Tribe’s trust lands, the smaller the casino project proposed by the State: the Highway Site would

1 have permitted 500 gaming devices and a 100 room hotel; the Five Acre/Rancheria Site would have  
2 permitted 250 gaming devices and a 50 room hotel; and the Rancheria Site would be permitted 175  
3 gaming devices and a 50 room hotel.

4 The State and Tribe met for a negotiating session in Sacramento on February 25, 2008.  
5 Following the in-person negotiating session, in which the Tribe reiterated that it was unwilling to  
6 suffer the added delay, cost and uncertainty of pursuing off-reservation sites – which the State has no  
7 legal right to impose – the Tribe repeated its concerns about the proposed limitations placed by the  
8 State on the number of gaming devices it could operate, and the cap on the number rooms in the  
9 planned casino hotel. **Proposal 4.** The Tribe expressed its belief that such restrictions would not  
10 allow it to remain competitive with other similarly situated casinos, since “Humboldt County has  
11 seen an increase in the quantity and quality of gaming facilities since the Tribe began this project.”  
12 *Id.* The Tribe proposed that the State allow a casino with 350 gaming devices and a 120-room hotel,  
13 conceding some design restrictions, and agreed that it would limit the height of the development to  
14 five stories, and ensure that the development was compatible with the local landscape. *Id.*

15 On May 2, 2008, the State replied with yet another proposal that emphasized its desire to  
16 explore a site other than the Tribe’s existing rancheria. **Proposal 5.** The State indicated that it  
17 would be willing to consider a casino on the rancheria site, but only with an even more limited plan  
18 than had been contemplated in earlier proposals from the State – under this proposal, the Tribe  
19 would have been allowed to operate but 99 gaming devices, and open only a 50 room hotel. *Id.*

20 **3. The State’s Insistence on Imposing Environmental and Land Use Requirements**  
21 **and Restrictions**

22 In the latest round of negotiations between the parties, the State also sought to impose a  
23 number of environmental and land use restrictions and regulations upon Big Lagoon’s sovereign  
24 lands, without actually negotiating, and without offering the Tribe any meaningful concessions in  
25 return. The State vigorously sought to push development of the casino site off of the Tribe’s lands,  
26 and for any potential casino construction located on the Tribe’s lands, the State would have  
27 subjected the Tribe to various State regulatory standards. For example, in various draft compact  
28 proposals, the State insisted that development on the rancheria site must comply with conditions

1 listed in an "Appendix A" to the draft compact, among which included the following environmental  
 2 restrictions: a requirement that the Tribe implement a wastewater treatment facility that meets  
 3 Regional Water Quality Control Board Standards; a requirement for establishment of facilities for  
 4 waste water, ground water and surface water monitoring, with a further requirement that these  
 5 facilities undergo independent monitoring at least twice a year; a requirement that plant species not  
 6 be listed as "problematic" or "noxious weeds" by the State of California; a requirement that storm  
 7 water to the lagoon not exceed natural run-off; a requirement that a wastewater sludge disposal plant  
 8 be implemented; a requirement that the outdoor lighting of the casino comply with standards adopted  
 9 by the California Energy Commission. **Proposals 2, 5.** The State contended that such restrictions  
 10 "are necessary for the development of a tribal casino and hotel facility on the Tribe's rancheria due  
 11 to the environmentally sensitive nature of the site." **Proposal 2.** Additionally, the State sought to  
 12 impose land use restrictions on the design of the casino facilities – it insisted that the casino  
 13 structures be set back a minimum distance from the lagoon; that the structures be limited to a  
 14 maximum height; that building materials blend with the surrounding environment; that native  
 15 vegetation be maintained and replaced; that structures be screened from public view; that patrons  
 16 and employees not be allowed to drive to the facility but be required to use shuttle buses and that the  
 17 number of hotel rooms be restricted. **Proposals 2, 5.**

18 The State also sought to limit the Tribe's ability to freely develop on its own lands. Under an  
 19 early proposal, the Tribe would have acquired a separate parcel of land on which to conduct gaming,  
 20 and would have agreed to convey its rancheria lands to the State by land use conservancy, and would  
 21 have also agreed to limits on the development of its lands. **Proposal 2.** This proposal also would  
 22 have required the Tribe to obtain approvals from state agencies, such as the Humboldt County  
 23 Planning Department, the California Coastal Commission, the Department of Parks and Recreation  
 24 and the Department of Fish and Game. Id.

#### 25 4. Final Exchange of Proposals

26 On October 6, 2008, the Tribe made a final proposal, for the class III gaming casino  
 27 development to be situated at the Rancheria Site, with a 100 room hotel, some restrictions on the  
 28 height of the casino and set-backs from the high-tide line, the right to operate up to 350 gaming

1 devices, and any requested payments to be made into the RSTF alone. **Proposal 6.** The Tribe  
2 indicated that if the parties could not come to an agreement by November 7, 2008, the Tribe would  
3 resume litigation in accordance with the Settlement Agreement. Id. The Tribe did not request any  
4 exclusivity. Id.

5 The State's response failed to accommodate the Tribe's concerns, and gave short shrift to the  
6 accommodations that the Tribe was willing to make to the State's various demands. **Proposal 7.**  
7 Perhaps most significantly, the State refused to consider a compact that did not require general fund  
8 revenue sharing, stating:

9 The Tribe will receive significant value from a compact that provides  
10 it with a class III gaming monopoly. In return for its agreement to  
11 provide the Tribe with that monopoly, the State seeks consideration in  
12 the form of general fund revenue sharing. The amount of that revenue  
13 sharing remains negotiable, but to be consistent with the consideration  
14 requested of other tribes, our proposal is that the Tribe pay to the  
15 State's general fund fifteen percent of its net win on a maximum of  
16 349 slot machines.

17 Id.<sup>1</sup> The State argued that the Tribe had no entitlement to a class III gaming monopoly in California;  
18 and moreover, that "as with any contract, the Tribe must offer the State something of value in return  
19 for what it is receiving, the exclusive right to conduct gaming in the most populous state in the  
20 union." Id. The State indicated that it was willing to locate the casino on the Rancheria,  
21 nevertheless, it continued to insist that the Tribe go through a further environmental review process,  
22 and comply with various environmental mitigation measures. Id.

23 The parties failed to come to an agreement as to a mutually acceptable compact proposal, and  
24 compact negotiations closed. On April 3, 2009, Big Lagoon filed a complaint to re-commence the  
25 present action. By order dated April 16, 2009, this action was deemed a related case to Case No. C-  
26 99-4995-CW. Big Lagoon Rancheria v. State of California, 09-CV-01471-CW, Docket No. 5.

27 <sup>1</sup> Earlier in negotiations, the State offered the Tribe "geographic exclusivity" within a fifty mile  
28 radius of the proposed casino site, which, in the event that the State authorized "a person or entity  
other than an Indian Tribe" to operate class III gaming devices within the Tribe's core geographic  
market, would have allowed the Tribe to either terminate the Compact altogether, or continue  
gaming, but cease making payments to the State's general fund. See, Draft Tribal-State Compact at  
§4.5, attached to November 19, 2007 letter from Andrea Hoch to Peter Engstrom, Engstrom Decl.,  
¶4, Exh. 3; see also, Proposals 2, 5, 7. But the Tribe had repeatedly declined any such exclusivity,  
such that it was "meaningless," and not constituting consideration at all. Proposal 6.



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#### IV. ARGUMENT

##### A. Relevant Standards Under the Indian Gaming Regulatory Act<sup>2</sup>

In enacting IGRA in 1988, Congress created a statutory framework for the operation and regulation of gaming by Indian tribes. See 25 U.S.C. § 2702. IGRA provides that Indian tribes may conduct certain gaming activities on their lands only if authorized pursuant to a valid compact between the tribe and the state in which the gaming activities are located. See id., § 2710(d)(1)(C).

If an Indian tribe requests that a state negotiate over gaming activities that are permitted within that state, the state is required to negotiate in good faith toward the formation of a compact that governs the proposed gaming activities. See id., § 2710(d)(3)(A); Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250, 1256-58 (9th Cir. 1995), amended on denial of reh'g by 99 F.3d 321 (9th Cir. 1996). Tribes may bring suit in federal court against a state that fails to negotiate in good faith, in order to compel performance of that duty, and the State of California has consented to suit. See, 25 U.S.C. § 2710(d)(7); Cal. Gov't Code § 98005; Hotel Employees & Rest. Employees Int'l Union v. Davis, 981 P.2d 990, 1010-11 (Cal. 1999); In re: Indian Gaming Related Cases ("Coyote Valley IP"), 331 F.3d 1094, 1101 (9th Cir. 2003); Order Denying Defendant State of California's Motion for Judgment on the Pleadings at 11:15, filed June 29, 2009, Docket No. 21.

If a state fails to negotiate in good faith, the Indian tribe may, after the close of the 180-day period beginning on the date on which the Indian tribe asked the state to enter into negotiations, initiate a cause of action in a federal district court. See 25 U.S.C. § 2710(d)(7)(A)(i). In such an action, the tribe must first show that no tribal-state compact has been entered into and that the state failed to respond in good faith to the tribe's request to negotiate. Id., § 2710(d)(7)(B)(ii). After the tribe makes this prima facie showing, the burden then shifts to the state to prove that it did in fact negotiate in good faith. Id. Any demand by the state for "direct taxation" will be deemed evidence that the State did not negotiate in good faith. 25 U.S.C. 2710(d)(7)(B)(iii)(II).

<sup>2</sup> The discussion in this section has been adapted from this Court's Order Denying Defendant State of California's Motion for Judgment on the Pleadings, filed June 29, 2009.

1 Any ambiguities in determining whether a state acted in bad faith will be interpreted in “a  
2 manner that will be most favorable to tribal interests consistent with the legal standard used by  
3 courts for over 150 years in deciding cases involving Indian tribes.” 1988 U.S.C.C.A.N. at 3084.

4 If the district court concludes that the state failed to negotiate in good faith, it “shall order the  
5 State and Indian Tribe to conclude such a compact within a 60-day period.” *Id.*, § 2710(d)(7)(B)(iii).  
6 If no compact is entered into within sixty days, the Indian tribe and the state must then each submit  
7 to a court-appointed mediator a proposed compact that represents their last best offer. 25 U.S.C.  
8 § 2710(d)(7)(B)(iv). The mediator chooses the proposed compact that “best comports with the terms  
9 of [IGRA] and any other applicable Federal law and with the findings and order of the court.” *See*  
10 *id.* If, within the next sixty days thereafter, the state does not consent to the compact selected by the  
11 mediator, the mediator notifies the Secretary of the Interior, who then prescribes the procedures  
12 under which class III gaming may be conducted. *See id.*, § 2710(d)(7)(B)(vii).

13 **B. The State Has Negotiated with Big Lagoon Rancheria in Bad Faith**

14 The facts establish that throughout an attenuated 15-year plus period, and particularly during  
15 the most recent negotiating sessions, the State has failed to negotiate in good faith, as is required by  
16 IGRA. This is evidenced by the following actions, among other things: (1) the State has demanded  
17 general fund revenue sharing; (2) the State has insisted on numerous forms of environmental, land  
18 use and other kinds of regulatory oversight over Big Lagoon’s tribal lands not required under federal  
19 law, nor required of other gaming tribes and (3) the State at various times has also proposed  
20 relocating the Tribe’s casino to an off-reservation site, notwithstanding that it has no authority to  
21 require such relocation. As to all of these demands, the State has failed to offer any meaningful  
22 concessions to Big Lagoon in exchange for accepting the State’s demands.

23 **1. Demanding general fund revenue sharing amounts to an impermissible tax  
24 under IGRA and must be considered by this Court as evidence of bad faith**

25 **a. Big Lagoon has made a prima facie showing that the State has negotiated  
26 in bad faith**

26 It is undisputed that throughout the course of negotiations following the failure of the  
27 Barstow Compact, the State has insisted that Big Lagoon contribute at least 10% of its annual net  
28 winnings to the State’s general fund, just as it did with the tribe in Rincon. Throughout the course of

1 negotiations, the State has been unwilling to compromise on its demand for general fund revenue  
2 sharing, notwithstanding Big Lagoon's continuous objection to revenue sharing. The State's  
3 demand for revenue sharing is a undisputedly a demand for a "tax" prohibited by IGRA, and  
4 constitutes evidence that the State has negotiated in bad faith with the Tribe.

5 In negotiating for a gaming compact under IGRA, states are expressly prohibited from  
6 imposing upon a tribe a "tax, fee, charge, or other assessment." 25 U.S.C. §2710(d)(4). In assessing  
7 whether a state has negotiated in bad faith under IGRA, the statute requires courts to treat any  
8 demand by the state for "direct taxation" as evidence that the state has negotiated in bad faith. 25  
9 U.S.C. §2710(d)(7)(B)(iii).

10 The Ninth Circuit Court of Appeal has now unequivocally held that a demand by the State  
11 that a tribe contribute a percentage of its gaming profits to the State's general fund is an  
12 impermissible tax, and constitutes evidence of negotiating in bad faith. Rincon Band of Luiseno  
13 Mission Indians of the Rincon Reservation v. Schwarzenegger, Nos. 08-55809, 08-55914 at 5893  
14 (9th Cir. April 20, 2010). The Ninth Circuit has explicitly held that IGRA contains no statutory  
15 basis for authorizing tribal state negotiations over general fund revenue sharing. Rincon, at 5900.  
16 As stated by the Ninth Circuit, "a non-negotiable, mandatory payment of 10% of net profits into the  
17 State treasury for unrestricted use yields public revenue, and is a tax." Id. at 5892. As the Ninth  
18 Circuit clarified in Rincon, "under § 2710(d)(7)(B)(iii)(II), a court *must* consider any "demand for a  
19 tax to be made in bad faith." Id. at 5892 (emphasis in original)("under the plain language of  
20 §2710(d)(7)(B)(ii)(II), the State's demand for the payment of a tax is evidence of the State's bad  
21 faith.").

22 The State cannot dispute that throughout the latest round of negotiations it has consistently  
23 demanded that the Tribe make payments to the State general fund as an essential condition of any  
24 gaming compact with the Tribe.<sup>3</sup> As in Rincon, the State's repeated insistence that the Tribe  
25 'contribute a portion of its revenue to the State's general fund constitutes a demand for a "direct tax"

26  
27 <sup>3</sup> The payments requested were indisputably destined for the State's general fund – the State  
28 specifically indicated in its negotiating correspondence with the Tribe that the payments were  
intended for the general fund, and RSTF payments were separately requested during the course of  
negotiations.

1 flatly contrary to the provisions of IGRA. The Tribe has met its burden under IGRA of making a  
 2 *prima facie* showing that the State has negotiated in bad faith, and unless the State can rebut such a  
 3 showing – which it cannot – summary judgment must be granted in Big Lagoon’s favor.

4 **b. The State cannot rebut the Tribe’s showing that it has acted in bad faith**

5 Under IGRA, after a tribe has made a *prima facie* showing that the state has negotiated in bad  
 6 faith, the burden shifts to the state to demonstrate that it has in fact negotiated in good faith. When a  
 7 state has demanded a tax, as it has here, the state “faces a very difficult task to rebut the evidence of  
 8 bad faith arising from that demand.” Rincon at 5896. According to Rincon and Coyote Valley II,  
 9 the state may attempt to rebut this evidence of bad faith by demonstrating that the revenue demanded  
 10 was to be used for “the public interest, public safety, criminality, financial integrity, and adverse  
 11 economic impacts on existing gaming activities.” § 2710(d)(7)(B)(iii). Failing that, to rebut the  
 12 *prima facie* evidence of bad faith, the state must satisfy all of the following conditions: (1) establish  
 13 that the revenue sharing is for uses directly relating to gaming activities; (2) show that it is consistent  
 14 with the purposes of IGRA and (3) show that it was bargained for in exchange for meaningful  
 15 concessions. Id. at 5898. Here, the State can satisfy none of these conditions.

16 **i. Demands for general revenue fund sharing are not on the list of**  
 17 **negotiating items recognized by IGRA**

18 Generally, a state might rebut evidence of bad faith by showing that it was negotiating for  
 19 compact terms permitted under IGRA, and that the revenue demanded was to be used for “the public  
 20 interest, public safety, criminality, financial integrity and adverse economic impacts on existing  
 21 gaming activities” as permitted under §2710(d)(7)(B)(iii). Rincon, at 5896. However, the Ninth  
 22 Circuit has explicitly stated that “general tax revenues” are not among the list of permitted subjects  
 23 on which a State may negotiate in good faith. Id. at 5897. See also, Wisconsin v. Ho-Chunk Nation,  
 24 512 F.3d 921, 933 (7th Cir. 2008)(declining ruling on validity of general fund revenue sharing, but  
 25 noting that the legislative history of IGRA does not contemplate general fund revenue sharing as a  
 26 permissible subject of negotiation).

27 Here, the State has undisputedly demanded that Big Lagoon contribute a portion of its net  
 28 winnings to the State’s general fund. The record of negotiations indicates that in requesting

1 payments to be made to the State's general fund, the State never claimed that the revenue sharing  
2 proceeds would be used for the public interest, public safety, criminality or the other negotiating  
3 topics permitted by IGRA. **Proposal 7.** The State's request for general fund revenue sharing does  
4 not fall within the list of negotiating topics permitted by IGRA, and the State cannot rebut the  
5 showing of bad faith by arguing that it was negotiating for compact terms permitted by IGRA.

6 **ii. Demands for general revenue fund sharing are not directly related**  
7 **to gaming activities**

8 Under Rincon, to demonstrate that a demand for revenue sharing was not made in bad faith,  
9 the State must first show that general fund revenue sharing is "directly related to the operation of  
10 gaming activities." Rincon, at 5898. Rincon holds, as a matter of law, that general fund revenue is  
11 not used for purposes directly related to the operation of gaming activities. Id. at 5899. Moreover,  
12 the facts are undisputed that throughout the course of negotiations with Big Lagoon, the State never  
13 claimed that the payments into the State's general fund would be used for purposes directly related  
14 to Indian gaming. Therefore, the State cannot meet the first condition required by Rincon, and  
15 cannot rebut the showing that it has acted in bad faith.

16 In examining whether a revenue sharing demand is "directly related to the operation of  
17 gaming activities," a court must look to "the use to which revenue will be put." Rincon at 5899.<sup>4</sup>  
18 By California statute, the State's general fund is not allocated for any particular purpose. See, Cal.  
19 Gov't Code §16300. Even prior to Rincon, the Ninth Circuit had recognized that there is no direct  
20 relationship between general fund revenue sharing and the operation of Indian gaming activities.  
21 See, Cabazon Band of Mission Indians v. Wilson, 37 F.3d 430, 435 (9th Cir. 1994).

22 General fund revenue sharing can never be directly related to the operation of gaming  
23 activities. The essential facts in the present case are no different than those before the court in  
24 Rincon in this respect. The State has explicitly demanded that the Tribe contribute at minimum 10%  
25 of its net winnings to the State's "general fund." There can be no factual dispute that the State was  
26 demanding general fund revenue sharing, which is not "directly related to the operation of gaming

27 <sup>4</sup> By contrast, in Coyote Valley II, revenue sharing arrangements requiring contribution into the  
28 RSTF and SDF were permissible, as both funds are specifically allocated to address issues directly  
related to gaming activities. See, Rincon at 5899; Coyote Valley II, 331 F.3d at 1111, 1114.

1 activities,” and that this constitutes “bad faith” under the provisions of IGRA.

2 **iii. Demands for general revenue fund sharing are not consistent with**  
3 **the purposes of IGRA**

4 Rincon also requires that a State seeking to rebut a showing of bad faith must demonstrate  
5 that its revenue sharing demand was “consistent with the purposes of IGRA.” Rincon, at 5901.  
6 However, a State’s “general economic interests” are not a subject consistent with the purposes of  
7 IGRA, and a demand for general fund revenue sharing cannot be consistent with the purposes of  
8 IGRA. Id.

9 The text of IGRA states that its purpose is to provide a framework for regulating gaming  
10 activity, “as a means of promoting tribal economic development, self-sufficiency, and strong tribal  
11 governments.” 25 U.S.C. §2702. Additionally, the regulatory framework was intended to address,  
12 “organized crime and other corrupting influences, to ensure that the Indian tribe is the primary  
13 beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly.” Id.  
14 The State’s “general economic interests” are not among the purposes of IGRA, nor the subjects  
15 authorized for negotiation by IGRA. Rincon at 5901. Tribes were intended to be the primary  
16 beneficiaries of gambling enterprises regulated by IGRA, and a State’s pursuit of its “general  
17 economic interests” by demanding revenue sharing is not consistent with the purposes of IGRA.<sup>5</sup> Id.  
18 at 5903.

19 **iv. The State’s offer of non-tribal exclusivity is not a meaningful**  
20 **concession in exchange for demands for general fund revenues**  
21 **sharing**

22 Finally, Rincon requires that the State show it has offered “meaningful concessions” in  
23 exchange for its demand for revenue sharing. Rincon, at 5904.; Idaho v. Shoshone-Bannock Tribes,  
24 465 F.3d 1095, 1101 (9th Cir. 2006). The State cannot establish that it has offered any meaningful  
25 concessions, within the meaning of the law, to Big Lagoon and therefore, it cannot rebut the showing  
26 of bad faith.

27 <sup>5</sup> This distinction was also recognized by the Ninth Circuit in Coyote Valley II, where the Court  
28 found that the State’s request to contribute to the RSTF was consistent with the purposes if IGRA, as  
in addition to the fact that the State offered the tribe meaningful concessions in exchange for revenue  
sharing, the revenue was intended to “redistribute gaming profits to other Indian tribes,” and “does  
not put tribal money in the pocket of the State.” 331 F.3d at 1113.

1 In Coyote Valley II, “exclusivity” was deemed a “meaningful concession” for Revenue  
2 Sharing Trust Fund (“RSTF”) and Special Distribution Fund payments (“SDF”) – it was  
3 “exceptionally valuable and bargained for,” because exclusivity was not a right then guaranteed to  
4 the tribes under State law. Rincon at 5906. After the passage of Proposition 1A, tribes were  
5 guaranteed the right to conduct gaming free from non-tribal competition – therefore, “exclusivity”  
6 fails to provide any kind of value to tribes in current gaming negotiations. Id. Offering a party  
7 something to which “he already has an absolute right” does not constitute due consideration. Rincon  
8 at 5906, citing, Salmeron v. United States, 724 F.2d 1357, 1362 (9th Cir. 1983). Furthermore, any  
9 value inherent to “exclusivity” was already used as consideration for establishment of the RSTF and  
10 SDF. Rincon at 5906.

11 Early in the negotiations, the State offered the Tribe “geographic exclusivity” within a fifty  
12 mile radius of the proposed casino site, which, in the event that the State authorized “a person or  
13 entity other than an Indian Tribe” to operate class III gaming devices within the Tribe’s core  
14 geographic market, would have allowed the Tribe to either terminate the compact altogether, or  
15 continue gaming but cease making payments to the State’s general fund.<sup>6</sup> **Proposals 1, 2, 5, 7.** In  
16 the latest round of compact negotiations, it is undisputed that the only concession the State offered in  
17 exchange for general fund revenue sharing was “geographic exclusivity,” in other words, the right to  
18 be free from non-tribal gaming.<sup>7</sup> Yet, this purported concession is no concession at all, since the  
19 State has only offered the Tribe something to which it is already entitled under State law.

20 Moreover, although the State has held out its offer of geographic exclusivity as proof that it  
21 was willing to make concessions to the Tribe during the course of compact negotiations, the Tribe at  
22 all times rejected the State’s offer of “exclusivity,” which provided little value for Big Lagoon as it

23 <sup>6</sup> The pertinent language of the exclusivity provision of the early Draft Compact presented by the  
24 State is set forth more fully as follows: “In the event the State authorizes any person or entity other  
25 than an Indian tribe with a federally approved Class III Gaming compact to operate gaming devices  
26 within [ ] (‘core geographic market’)...the Tribe shall have the right to: (i) terminate this  
27 Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III  
28 Gaming and shall immediately cease all Gaming Activities, or (ii) continue under this Compact, in  
which case the Tribe shall be relieved of its obligations to make payments to the State specified in  
section 4.3...”

<sup>7</sup> The State’s proposals consistently stated: “In consideration of exclusive rights to operate gaming  
devices, the Tribe shall pay the State . . . .” and “In return for its agreement to provide the Tribe with  
that monopoly, the State seeks consideration in the form of general fund revenue sharing”.

1 is located in a region where a number of other gaming operations (tribal) already exist. Accordingly,  
 2 the State's proposal to give Big Lagoon "exclusivity" against non-tribal competition would not give  
 3 the tribe any meaningful economic benefit.

4 The Tribe made its position abundantly clear to the State during the course of the parties'  
 5 negotiations. Early on in negotiations, the Tribe struck from a draft tribal-State compact provisions  
 6 pertaining to revenue sharing and exclusivity. February 20, 2008 Letter from Rory Dilweg to  
 7 Andrea Hoch; **Proposal 3**. The Tribe stated explicitly in negotiating correspondence that it believed  
 8 that the request for revenue sharing constituted a tax and it "has made it clear that it has no need or  
 9 desire for any 'exclusivity' protection provisions and sees no justification for sharing its revenue  
 10 with the State." **Proposal 6**. Furthermore, the Tribe is located in an area where "non-Tribal gaming  
 11 is unlikely to proliferate," rendering the value of protection from non-tribal gaming meaningless.<sup>8</sup>  
 12 Id. It is a well-established principle of law that "something which is completely worthless cannot  
 13 constitute a valid consideration." Louisville Title Ins. v. Surety Title & Guar. Co., 60 Cal. App. 3d  
 14 781, 791 (1976). Here, the only consideration that the State has offered the Tribe is worthless –  
 15 "exclusivity" was not desired by the Tribe, nor did it believe that "exclusivity" would give it  
 16 anything of value.

17 The State has failed to offer any other meaningful concession in exchange for the payments  
 18 that it has sought to exact from the Tribe. At best, the State has offered the Tribe an "exclusivity"  
 19 provision which would allow it the right to operate its casino free from non-tribal competition – a  
 20 concession that is meaningless, as under the California Constitution, Indian tribes are already  
 21 entitled to a gaming monopoly. A meaningful concession must be something more than simply  
 22 reaffirming a tribe's right to conduct gaming free from non-tribal competition. The State can point  
 23 to no other concessions that it has offered the Tribe, and therefore, fails to rebut the showing that it  
 24 has negotiated in bad faith.

25 The "geographic exclusivity" provision offered to – or in other words, foisted upon – the  
 26

27 <sup>8</sup> Additionally, the Tribe noted that even a 10% revenue sharing requirement, the minimum amount  
 28 of revenue sharing requested by the State, would consume a substantial share of the Tribe's profits,  
 and make it difficult to achieve "any real economy of scale as to labor, equipment costs and facilities  
 development and maintenance." **Proposal 6**.



1 Tribe parallels that offered to the tribe in Rincon. As in Rincon, the State has not offered anything to  
 2 the Tribe other than a right to which it is already entitled under the California Constitution, that is,  
 3 the right to operate free from non-tribal competition. As a matter of law under Rincon and preceding  
 4 cases, "geographic exclusivity" does not constitute a "meaningful concession" that would provide  
 5 consideration for the State's attempt to impose a tax upon Big Lagoon. Additionally, it is undisputed  
 6 that the Tribe itself did not want "exclusivity," or believe that exclusivity would give it any tangible  
 7 benefit. In fact, the Tribe believed that the revenue sharing demanded by the State would result in  
 8 economic hardship to the Tribe. Undeniably, the State has failed to offset its demand for revenue  
 9 sharing from Big Lagoon by any meaningful concession, and has thereby failed to rebut the showing  
 10 of bad faith made by the Tribe. Therefore, Big Lagoon is entitled to summary judgment in its favor.

11 **2. The State has no authority to impose environmental and land use restrictions**  
 12 **upon the Tribe**

13 In addition to trying to impose an impermissible tax, the State has pressed Big Lagoon, a  
 14 federally reorganized sovereign Indian tribe, to submit to the jurisdiction of various State and local  
 15 regulatory agencies, and has insisted that all development on the Tribe's site be conditioned upon  
 16 compliance with certain environmental and land use restrictions and regulations, all without offering  
 17 the Tribe any meaningful concessions in return. The State's attempts to impose its environmental  
 18 regulations, as well as various restrictions on the zoning and use of the Tribe's lands, constitutes a  
 19 misuse of the negotiating process, and amounts to a showing that the State has negotiated in bad  
 20 faith.

21 States cannot exercise regulatory jurisdiction over Indians on their reservation lands, except  
 22 where Congress has clearly expressed an intention to permit such regulation. See, Washington v.  
 23 EPA, 752 F.2d 1465, 1469 (9th Cir. 1985); McClanahan v. State Tax Comm'n of Az., 411 U.S. 164,  
 24 170-71 (1973)("State laws generally are not applicable to tribal Indians on an Indian reservation  
 25 except where Congress has expressly provided that State laws shall apply."). Federal policy favors  
 26 tribal self-regulation in environmental matters. Washington, 752 F.2d at 1471 (noting that EPA  
 27 policies emphasize importance of tribal self-regulation in environmental matters). Here, IGRA does  
 28 not contain any authority allowing states to impose their environmental regulations on tribes -- the

1 text of IGRA does not confer any such authority. Indeed, IGRA prohibits States from using the  
 2 compacting process as a means of subjecting tribes to state laws and regulations that do not directly  
 3 pertain to regulating tribal gaming and its effects. See, 25 U.S.C. §2710(d)(3)(C). The legislative  
 4 history of IGRA also indicates that Congress did not intend “that the compacting methodology be  
 5 used in such areas such as taxation; water rights, environmental regulation, and land use...” Rincon  
 6 at 5891 n. 10, quoting statement of Sen. Inouye from 134 Cong. Rec. S12643-01 at S12651 (1988).

7 The Committee does view the concession to any implicit tribal  
 8 agreement to the application of State law for class III gaming as  
 9 unique and does not consider such agreement to be precedent for any  
 10 other incursion of State law onto Indian lands.

11 S. Rep. No. 100-446 at 14, *reprinted in* 1988 U.S.C.C.A.N. 3071, 3084. It is clear that Congress did  
 12 not intend IGRA to be used as a platform for imposing environmental or land use regulation on  
 13 Indian tribes.

14 **a. Demands for environmental and land use regulation are not directly  
 15 related to gaming activities**

16 Rincon reaffirms that IGRA limits permissible subjects of negotiation in order to ensure that  
 17 tribal-state compacts cover only those topics that are directly related to gaming and are consistent  
 18 with IGRA's stated purposes. Furthermore, the Ninth Circuit in Rincon clarified what is meant by  
 19 “directly related to gaming activities,” as a permissible subject of negotiation by the State. Rincon at  
 20 5899. There, the State argued that imposing a general fund fee for the operation of slot machines  
 21 was “directly related” to the operation of gaming activities because the money was paid out of the  
 22 income from gaming activities. Id. at 5898. Notwithstanding that the imposition of slot machine  
 23 fees coming directly from gaming revenues is much more “related to” gaming activities than is  
 24 regulation of the environment, the Court in Rincon rejected the State’s contention, stating that its  
 25 reasoning is “circular.” Id. In other words, just because the environmental issues perceived by the  
 26 State “derive from” the operation of the facility in which gaming is conducted does not make  
 27 environmental regulation a subject directly relating to gaming operations. The environmental issues  
 28 perceived by the State arise from the construction of a facility, which could as well be a hotel, a  
 restaurant or a manufacturing plant – they do not relate to gaming. Congress intended the required  
 relationship to gaming activities to be much more direct.

1                   **b. Demands for environmental regulation are not consistent with the**  
 2                   **purposes of IGRA**

3                   In addition to being limited to the subjects of negotiation listed in IGRA, a state's compact  
 4 negotiation demands must be consistent with the purposes of IGRA, which are: to promote "tribal  
 5 economic development, self-sufficiency, and strong tribal governments," and "to promote tribal  
 6 development, prevent criminal activity related to gaming, and ensure that gaming activities are  
 7 conducted fairly." Rincon, at 5901, 25 U.S.C. §2702. Rincon rejected the State's argument that  
 8 promoting the State's general economic interest was consistent with the purposes of IGRA. "The  
 9 only state interests mentioned in §2702 are protecting against organized crime and ensuring that  
 10 gaming is conducted fairly and honestly" and State regulation is limited to this one narrow area.  
 11 Rincon at 5901.<sup>9</sup> Similarly, the State's interest in environmental and land use regulation is not  
 12 mentioned in and is not "consistent with" the stated purposes of IGRA. Id.

13                   **c. Even if environmental regulation were a legitimate subject of the State's**  
 14                   **negotiation, the State has offered no meaningful concessions in exchange**  
 15                   **for its demands**

16                   The State cannot point to any meaningful concessions it has offered the Tribe in return for  
 17 the environmental and land use restrictions and regulation it has sought to impose upon the Tribe.  
 18 Indeed, it has offered nothing, but rather has simply taken the position that such regulation is  
 19 "necessary for the development of a tribal casino and hotel facility on the Tribe's Rancheria." It  
 20 offered exclusivity as a purported concession for revenue sharing, not for environmental regulation  
 21 but, as demonstrated above, "exclusivity" is not a meaningful concession in any event. The State  
 22 might argue that it has offered the Tribe various proposals that would have given it additional  
 23 gaming devices in exchange for submitting itself to State regulation. However, as noted above, both

24 <sup>9</sup> Rincon relies on the legislative history of IGRA in support of its decision: "Gaming by its very  
 25 nature is a unique form of economic enterprise and the Committee is strongly opposed to the  
 26 application of the jurisdictional elections authorized by this bill to any other economic or regulatory  
 27 issue that may arise between tribes and States in the future." S. Rep. No. 100-446, at 14, *as reprinted*  
 28 *in* 1988 U.S.C.C.A.N. 3071, 3084. *See also* 134 Cong. Rec. S12643-01, at S12651 (1988) ("There is  
 no intent on the part of Congress that the compacting methodology be used in such areas such as  
 taxation, water rights, environmental regulation, and land use. . . . The exigencies caused by the rapid  
 growth of gaming in Indian country and the threat of corruption and infiltration by criminal elements  
in class III gaming warranted the utilization of existing State regulatory capabilities in this one  
narrow area.") (statement of Sen. Inouye). Rincon at 5891, n. 10 (emphasis added except for word  
 "narrow").

1 the Ninth Circuit and the Secretary of the Interior have indicated the offer of additional gaming  
2 devices does not constitute a meaningful concession. Rincon, at 5910-11.

3 Worse yet, the State demonstrated a calculated reluctance to offer the Tribe a profitable  
4 number of gaming devices for casino projects on the Tribe's own Rancheria: in an early proposal,  
5 the State would have offered the Tribe 500 devices for an off-site gambling facility, but only 175  
6 devices for a casino development located entirely on the Tribe's lands. **Proposal 2.** In its final  
7 proposal to Big Lagoon, the State offered the Tribe up to 349 gaming devices; but, it would have  
8 taken away the right to receive additional income from RSTF payments if the Tribe amended the  
9 Compact for the right to use additional gaming devices. **Proposal 6.**

10 The State's insistence that the Tribe comply with various State regulatory standards, and its  
11 failure to offer the Tribe any meaningful concessions in exchange for doing so, amounts to a  
12 showing that the State has negotiated with the Tribe in bad faith – a showing that cannot be rebutted  
13 by the State.

14 **3. The State has engaged in a pattern and practice of "surface bargaining," which**  
15 **amounts to bad faith bargaining under the provisions of IGRA**

16 The State's conduct during the course of its negotiations with Big Lagoon – its repeated  
17 insistence on revenue sharing, its intransigence regarding environmental and land use restrictions  
18 and regulation, as well as its repeated efforts to re-locate Big Lagoon's gaming operations off of its  
19 ancestral lands – shows that it has been engaging in a pattern of bad faith bargaining prohibited by  
20 IGRA.

21 Because IGRA provides comparatively little by way of guidance as to what constitutes "bad  
22 faith," courts in interpreting the provisions of IGRA have looked to how the good faith bargaining  
23 requirement has been interpreted under statutes such as the NLRA. For example, in Coyote Valley I,  
24 the Northern District stated that while interpretation of the NLRA should not be imported wholesale  
25 into interpretation of IGRA, it still provided guidance, and that good faith bargaining "requires more  
26 than a willingness to enter upon a sterile discussion of the parties' differences," and requires that the  
27 parties "enter into discussions with an open and fair mind." Coyote Valley Band of Pomo Indians  
28 (In re Indian Gaming Related Cases) v. California, 147 F. Supp. 2d 1011, 1020-21 (N.D. Cal. 2001);

1 see also, Court's March 18, 2002 Order Denying Parties' Cross-Motions for Summary Judgment,  
 2 RJN Exh. 2. "Surface bargaining" – going through the motions of negotiating, without any real  
 3 intent to reach an agreement – does not constitute good faith bargaining. K-Mart Corp. v. NLRB,  
 4 626 F.2d 704, 706 (9<sup>th</sup> Cir. 1980). Good faith "presupposes a desire to reach ultimate agreement"  
 5 and not simply "an attitude of take it or leave it." NLRB v. Ins. Agents International Union, 361  
 6 U.S. 477, 485 (1960). In considering whether a party has negotiated in good faith, courts may  
 7 examine "the previous relations of the parties, antecedent events explaining behavior at the  
 8 bargaining table, and the course of negotiations." NLRB v. Dent, 534 F. 2d 844, 846 (9th Cir.  
 9 1976). Additionally, in determining good faith under the NLRA, a court should take into account  
 10 "all the facts viewed as an integrated whole," and consider the "totality of the circumstances." See,  
 11 Seattle-First National Bank v. NLRB, 638 F.2d 1221, 1225-26 (9th Cir. 1981).

12 The totality of the circumstances shows that the State has failed to negotiate with the Tribe in  
 13 good faith. It has repeatedly attempted to move the Tribe off of its ancestral lands – lands on which  
 14 Big Lagoon is indisputably entitled to seek a gaming compact – first with the Barstow Compact, and  
 15 then again in the latest round of compact negotiations with the Tribe. Even in its last negotiating  
 16 sessions and notwithstanding the Tribe's desire to negotiate for a casino located on the Tribe's  
 17 rancheria, the State re-raised various off-site gaming proposals, including a proposal that the Tribe  
 18 transfer its gaming rights to another gaming tribe, in exchange for a percentage of that tribe's  
 19 revenue. **Proposal 7**. And for both on-site and off-site proposals, the State has insisted that the  
 20 Tribe comply with numerous State regulations, and insisted that compliance be a condition of any  
 21 gaming operations to take place on the Tribe's rancheria. Additionally, throughout the latest round  
 22 of compact negotiations, the State has insisted that the Tribe share at minimum 10% of its net  
 23 gaming revenue, a demand that has been held to be an impermissible tax, inconsistent with the  
 24 provisions of IGRA.

25 Despite making numerous, onerous demands of the Tribe, the State has failed to offer the  
 26 Tribe any meaningful concessions, other than the hollow "exclusivity" or freedom from non-tribal  
 27 competition, a right which Big Lagoon is already entitled to under the provisions of the California  
 28 Constitution. The State has been unwilling to put aside conditions such as environmental mitigation

