
Cher-Ae Heights Indian Community of the Trinidad Rancheria

June 7, 2022

Humboldt County Board of Supervisors
c/o Clerk of the Board 825
5th Street, Room 111
Eureka, CA 95501

*Re: Need for Board of Supervisors to Recognize and Affirm the Equal Rights and Status of All Federally Recognized Indian Tribes*

Dear Members of the Board of Supervisors:

I write on behalf of the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and respectfully request the Humboldt County Board of Supervisors take immediate and affirmative action to recognize and affirm the equal rights and status of all federally recognized Indian tribes.

Despite the overall improvement of relations between Humboldt County and federally recognized Indian tribes, some individuals continue to advocate an invalid distinction among federally recognized Indian tribes that is both discriminatory and lacks any support in the governing federal law. An especially troubling manifestation of this discrimination is the meritless argument that federally recognized tribes, whose reservation or rancheria lands[1] were acquired pursuant to the "Indian Appropriation Acts" passed by Congress in the early 1900s for the benefit of Indians in California without sustainable homelands, on reservations which did not contain land suitable for cultivation, and for Indians not on reservations,[2] have a lesser status than other federally recognized tribes. Despite Acts of Congress and binding federal court decisions to the contrary, some continue to argue that such tribes do not have equal status and rights as the so-called "historic" federally recognized tribes. As the United States Court of Appeals for the Ninth Circuit recently held: "No tribunal has accepted this argument . . . . [t]he distinction . . . between historic tribes and other tribal entities organized under the IRA is without basis in federal law." *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 988–989 (9th Cir. 2020). Unfortunately, this invalid theory—distinguishing between federally recognized tribes—was recently espoused by a member

[1] Please note that the terms "reservation" and "rancheria" have been used interchangeably in California. *See*, e.g. William Wood, The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias, 44 Tulsa Law Review 2 (2008).

[2] Many members of tribes or bands were rendered homeless by the United States' failure to ratify eighteen California Indian treaties negotiated in 1851-52, which if ratified, would have reserved tribal homelands throughout California. These Acts were to benefit members of tribes and bands living on reservations not suitable for cultivations and those without reservation lands.

of the Humboldt County Board of Supervisors, during a meeting between the Tribe and a State agency, as grounds to deny the Tribe's equal rights under the law.

Specifically, on March 29, 2022, Supervisor Steve Madrone attended a Project Development Team Meeting between Caltrans and the Tribe to discuss a proposed highway interchange to provide access from Highway 101 to the Trinidad Rancheria. Supervisor Madrone asserted that our Tribe has no ancestral territory because Rancherias do not have the same rights as "real tribes" and that Rancherias were established for landless homeless Indians who did not have rights to ancestral territory. Supervisor Madrone's theory that the Tribe is not a "real tribe" and does not have any ancestral territory is without any basis in historical fact and has been expressly rejected by Congress and the courts.

The Trinidad Rancheria was acquired pursuant to the Indian Appropriation Act of June 21, 1906 (34 Stat. 333). An early nineteenth century report from the Commissioner of Indian Affairs to the Secretary of the Interior describes the lands purchased for Indians in California during the fiscal years June 30, 1913, through June 30, 1917.[3] For each acquired parcel, Table 30 of the report identifies the band for which the lands were acquired, the county, the number of Indians, the acres, and the amount paid. With regard to the Trinidad Rancheria, Table 30 indicates that 60 acres were purchased in Humboldt County for the Trinidad Band, which included 43 Indians, and that the purchase price was $1,198.90. Because some individuals have relied on the Hoopa-Yurok Settlement Act, Public Law 100-580, Oct. 31, 1988 (102 Stat. 2924) ("Settlement Act") to disparage the rights and culture of our Tribe, we note that there is nothing in the Settlement Act that terminates the ancestry of the members of the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and nothing in that Act applies to the relationship of tribes or their members to lands located outside of the Yurok Reservation.[4] On the contrary, the Senate Report accompanying the Settlement Act recognized the Trinidad Rancheria as a tribe of historic Yurok origin.[5]

Congress squarely addressed and affirmed the bedrock principle that all federally recognized tribes must be treated equally under the laws of the United States when it enacted Public Law 103-263 in May of 1994. Public Law 103-263 amended Section 16 of the Indian Reorganization Act (IRA) to clarify that certain distinctions that the Department of the Interior once drew between tribes (e.g. between so-called "historic" and "created" tribes) were invalid and prohibited. As amended, Section 16 of the IRA provides that the Departments and agencies of the United States are

[3] Report from the Commissioner of Indian Affairs to the Secretary of the Interior for the fiscal year ended June 30, 1913 to June 30, 1917" (GPO 1914).

[4] The purpose of the Settlement Act was to partition the Hoopa Reservation and establish the Yurok Reservation, distribute revenues generated from timber harvesting on the Hoopa Reservation to persons identified as "Indians of the Reservation," and to establish the process for the formal organization of the Yurok Tribe. *See* Settlement Act, §§ 1(b)(5), 5(a)(1), and 9(a)(1).

[5] Senate Report 100-564 at 29, describes Section 11(b) of the Settlement Act, which offered three tribes historically of Yurok origin, Trinidad Rancheria, Resighini Rancheria, and Big Lagoon Rancheria, the election to merge with the Yurok Tribe.

prohibited from promulgating any regulation or making any decision or determination that classifies, enhances, or diminishes, the privileges and immunities available to an Indian tribe relative to other federal recognized tribes by virtue of their status as Indian tribes. 25 U.S.C. § 476(f) and (g). As the Ninth Circuit held in *Jamul Action Comm. v. Simermeyer*, "the Act of May 31, 1994, prohibits any agency decision under the IRA 'that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.' *See* 25 U.S.C. § 5123(f)–(g). The purpose and effect of the Act was to eliminate the distinction between "created" and "historic" tribes." *Id*. at 993 (internal citation omitted).

The intent of the 1994 amendment to Section 16 of the IRA is also set forth in a colloquy between Senator Daniel Inouye and Senator John McCain held on May 19, 1994.[6] The Senators agreed that Indian tribes exercise powers of self-governance by reason of their inherent sovereignty and not by virtue of a delegation of authority from the Federal Government, and that neither the Congress nor the Secretary can create an Indian tribe where none previously existed. *Id*. As inherently sovereign and self-governing entities, Congress recognized that all tribes are historic tribes under Federal Indian law. The colloquy further clarified the equal status of tribes:

> [I]t is and has always been Federal law and policy that Indian tribes recognized by the Federal Government stand on an equal footing to each other and to the Federal Government. That is, each federally recognized Indian tribe has the same governmental status as other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States. Each federally recognized Indian tribe is entitled to the same privileges and immunities as other federally recognized tribes and has the right to exercise the same inherent and delegated authorities.

*Id*.

Notably, the State of California does not distinguish between classifications of federally recognized Indian tribes. With regard to the protection of tribal cultural resources, the California legislature did not distinguish between federally recognized Indian tribes.[7]

By attending a meeting as a representative of the County and asserting to Caltrans that our Tribe is something less than a "real tribe" and does not have ancestral territory, Supervisor Madrone has implied that this is the position of the County. The Board of Supervisors, therefore, needs to take action to clarify the County's position. Because the initial reservation lands of many tribes located within Humboldt County were acquired pursuant to the Indian Appropriations Act, Supervisor

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[6] *See* 140 Cong. Rec. S6147 (daily ed. May 19, 1994).

[7] The law provides for the protection of tribal cultural resources under the California Environmental Quality Act (CEQA) and requires consultation under that Act with California Native American tribes. A "California Native American tribe" is defined as "a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004" (commonly known as SB 18).

Madrone's comments, unless expressly repudiated by the Board, may have a far-reaching negative effect on the County's relationship with tribes.

In summary, we respectfully request that the Board of Supervisors repudiate the argument that there is a second class of federally recognized tribes and take affirmative action to recognize and affirm that all federally recognized Indian tribes, including our Tribe, possess equal rights and status under federal and state law and shall be treated equally by the County of Humboldt.

The Tribe appreciates the Board of Supervisor's consideration of this urgent matter and we look forward to working with the Board to clarify its position consistent with federal and state law. Please do not hesitate to contact Trinidad Rancheria Chief Executive Officer, Jacque Hostler-Carmesin at (707) 677-0211 if you have any questions or would like additional information regarding this matter.

Sincerely,

Garth Sundberg
Tribal Chairman
Trinidad Rancheria