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YUROK TRIBE, on behalf of itself and its members,

Plaintiff,

v.

RESIGHINI RANCHERIA and GARY MITCH DOWD,

Defendants.

No.:

COMPLAINT

INTRODUCTION

1. By this action, the Yurok Tribe seeks a declaratory judgment that the Resighini Rancheria (“Rancheria”) and Gary Mitch Dowd, a member of the Rancheria, do not have any rights to fish in the Klamath River Indian fishery within the Yurok Reservation because Defendants elected not to enjoy such rights pursuant to the Hoopa-Yurok Settlement Act (“HYSA” or “Act”), Pub. L. 100-580, *codified at* 25 U.S.C. § 1300i *et seq.*, *as amended*, Pub. L.

1 101-301 § 9. The Yurok Tribe is a federally recognized sovereign Indian tribe that brings this
2 action on its own behalf and on behalf of its members. The action is necessary to protect the
3 Yurok Tribe's right to fish in the Klamath River within the Yurok Reservation, and to prohibit
4 from fishing within the Yurok Reservation persons without the authority to do so granted either
5 by the Yurok Tribe or the State of California, where the State has jurisdiction. In addition, this
6 action is necessary to protect Klamath River fish species. Klamath River fish that are taken
7 unlawfully are those that would otherwise have been able to complete their upriver journey and
8 spawn to help preserve the next generation of the species.

9 2. A controversy exists in that the Yurok Tribe has the exclusive federally reserved
10 fishing right within the boundaries of the Yurok Reservation and Defendants, an Indian tribe and
11 a member of that tribe, assert a right to fish from the Klamath River fishery within the Yurok
12 Reservation without approval from the Yurok Tribe or a license from the State of California.

13 JURISDICTION AND VENUE

14 3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331
15 and 28 U.S.C. § 1362.

16 4. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of
17 the events or omissions giving rise to this action occurred in the Northern District of California.

18 PARTIES

19 Plaintiff

20 5. Plaintiff Yurok Tribe is a sovereign federally recognized Indian tribe that is
21 organized pursuant to a Constitution and is governed by a Tribal Council. The Yurok Tribe is
22 the largest Indian tribe in California, with more than 6,100 members, and is a natural resources
23 tribe. The Yurok Tribe occupies and is the beneficial owner of the Yurok Reservation in
24 Northern California. The current boundaries of the Yurok Reservation were established by
25 Congress in 1988 by the HYSA. The Yurok Reservation straddles and includes the Klamath
26 River, extending for one mile on each side of the Klamath River from the mouth at the Pacific
27 Ocean near the Yurok village of Requa approximately 45 miles upriver to the Yurok village of
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1 Weitchpec. The Klamath River and the lands surrounding it are within the ancestral territory of
2 the Yurok Tribe.

3 6. The members of the Yurok Tribe are fishing people, and the Yurok Tribe
4 accordingly has devoted a substantial portion of its scarce resources to the protection and
5 restoration of the Klamath River fishery. This ongoing effort is a duty the Yurok Tribe imposed
6 upon itself in its constitution. The Tribe has a constitutional obligation to protect the natural
7 resources of the Reservation and “to restore, enhance and manage the tribal fishery [and] tribal
8 water rights.” Yurok Constitution, Preamble. The elected leaders of the Yurok Tribe are
9 assigned the duty “to further the objectives of the Yurok Tribe as reflected in the Preamble” and
10 to safeguard the “natural resources” of the Tribe. Yurok Constitution, Article IV Section 1(g)
11 and Section 5. This complaint is brought in furtherance of those constitutional obligations.

12 7. The Yurok Tribe created a Fisheries Department when the Tribe was formally
13 organized following the HYSA. The Tribe’s budget for its Fisheries Department has been
14 approximately \$4 million per year for the last 10 years. The Tribe presently employs in its
15 Fisheries Department 57 people, including 19 biologists, a geomorphologist, an engineer devoted
16 to habitat restoration, a geologist, and dozens of technical staff involved in monitoring, habitat
17 improvement, and related activities.

18 8. The Yurok Tribe has devoted substantial resources over the decades to ensure an
19 adequate supply and quality of water in the Klamath River within the Reservation. The Yurok
20 Tribe Watershed Department has an annual budget of \$2.5 million and maintains 15 full-time
21 employees for watershed and fisheries restoration work, including decommissioning of roads and
22 removal of stream crossings that have a high likelihood of impacting viable spawning habitat.
23 The Yurok Tribe Environmental Program employs 12 full-time staff to monitor and protect the
24 natural resources of the Yurok Reservation, a priority of which is protection of water quality on
25 the Klamath River.

26 9. The Yurok Tribe Department of Public Safety provides policing services for the
27 Yurok Reservation and surrounding communities. The Department of Public Safety spends a
28 majority of staff time on fisheries-related issues, including patrolling the Klamath River and

1 enforcing fishing laws that govern the Indian fishery within the Yurok Reservation. It employs
2 two conservation wardens and three temporary conservation officers to assist with patrol of the
3 Indian fishery.

4 10. The Klamath River fishery within the Yurok Reservation is essential to the health,
5 welfare and culture of the members of the Yurok Tribe.

6 **Defendants**

7 11. Defendant Rancheria is a federally recognized Indian tribe located in Northern
8 California. The Rancheria consists of approximately 228 acres of land and is entirely surrounded
9 by the Yurok Reservation. On information and belief, approximately 111 persons are members
10 of the Rancheria.

11 12. Defendant Gary Mitch Dowd is a member of the Rancheria and of Yurok descent,
12 but he is not a member of the Yurok Tribe. Upon information and belief, Defendant Dowd
13 currently serves as the Secretary of the Rancheria Tribal Council. Defendant Dowd is being sued
14 in his official and individual capacities.

15 **FACTUAL ALLEGATIONS**

16 **History of the Yurok Tribe / HYSA**

17 13. Yurok people have inhabited the lands surrounding the Klamath River and fished
18 the river and Pacific Ocean at the Klamath River's mouth and beyond since time immemorial.
19 The Klamath River originates in Oregon and flows south into California. The river turns
20 northwest near Weitchpec within the Yurok Reservation to flow to the Pacific Ocean. The last
21 downstream, approximately 45 miles of the Klamath River, runs through the center of the Yurok
22 Reservation and into the Pacific Ocean.

23 14. Since time immemorial, the fishery resources of the Klamath River and Pacific
24 Ocean have been a mainstay of the life, economy and culture of the Yurok Tribe. *Mattz v.*
25 *Arnett*, 412 U.S. 481 (1973). The courts have acknowledged that the Klamath River Indian
26 fishery is "not much less necessary to the existence of the [Yurok] Indians than the atmosphere
27 they breathed." *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (internal citation omitted).

1 15. Prior to the arrival of non-Indians in the 19th century, the Klamath River fishery
2 provided significant economic value such that Yurok Indians were self-sufficient and considered
3 to be people of wealth.

4 16. The Yurok Reservation is within the ancestral territory of the Yurok people. The
5 Klamath River Reservation, which included the lower portion of the Yurok Reservation, was
6 created by Executive Order on November 16, 1855, pursuant to authority granted by Congress in
7 the Act of March 3, 1853, 10 Stat. 238. The HYSA established the Yurok Reservation as that
8 land included in the Klamath River Reservation and land previously set aside by Executive Order
9 on October 16, 1891, extending from the Klamath River Reservation upstream to the present-day
10 Hoopa Valley Reservation, but excluding the Rancheria. 25 U.S.C. § 1300i-1(c).

11 17. The Executive Orders that created the present-day Yurok Reservation vested the
12 Yurok Tribe with “federally reserved fishing rights.” *Parravano v. Masten*, 70 F.3d 539, 546
13 (9th Cir. 1995), *cert. denied* 518 U.S. 1016 (1996).

14 18. In 1988, Congress enacted the Hoopa-Yurok Settlement Act confirming the
15 boundaries of the current Yurok Reservation as that land included in the Klamath River
16 Reservation and land previously set aside by Executive Order on October 16, 1891. In enacting
17 the HYSA, Congress also recognized the Act’s purpose to establish and confirm the property
18 interests of the Yurok Tribe in the Reservation, including its interest in the fishery.

19 19. The Yurok Tribe was formally organized pursuant to section 9 of the HYSA with
20 the adoption of the Yurok Constitution in 1993. The Yurok Constitution prohibits enrollment as
21 a Yurok Tribal member of any person who is a member of another federally recognized Indian
22 tribe.

23 **Origins of the Resighini Rancheria**

24 20. The Rancheria is located on the former homesteads of James C. Isles and Henry
25 K. Pilgrim, non-Indians each in receipt of 160 acres of land pursuant to the Homestead Act of
26 1862. The northwestern portion of the Rancheria is located within a third parcel of 26.5 acres,
27 formerly vested to Wilhelm Crone, a non-Indian, pursuant to the Public Lands Act of 1820. The
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1 three properties were consolidated and boundaries redefined by various transfers until conveyed
2 to Gus Ressighini, a non-Indian, sometime prior to 1920.

3 21. On January 7, 1938, Gus Ressighini sold his property of approximately 228 acres,
4 within what is now the Yurok Reservation, to the United States, which placed the land in trust
5 pursuant to Section 5 of the Indian Reorganization Act (IRA). 25 U.S.C. § 465. On October 21,
6 1939, Acting U.S. Secretary of the Interior E.K. Burlew issued a proclamation designating the
7 land to be an Indian reservation for the use and benefit of such Indians living in Del Norte and
8 Humboldt Counties “eligible to participate in the benefits of the [Indian Reorganization Act], as
9 shall be designated by the Secretary of the Interior.” The purchase of the land was to “provide
10 for the protection of the soil, the proper development of the land and the equitable distribution of
11 benefits from the land.” 4 Fed. Reg. 1431 (Oct. 21, 1939).

12 22. After 1939, two families of Yurok and other tribal origins moved onto the land.
13 Thirty years later, approximately seven families of Yurok and other tribal origins resided at the
14 Rancheria.

15 23. In 1975, the residents of the Rancheria adopted a constitution and, upon
16 information and belief, have established a government. Though the Rancheria land is entirely
17 surrounded by the Yurok Reservation, the Rancheria is a distinct governmental entity entirely
18 separate from the Yurok Tribe. The Rancheria is recognized by the U.S. Department of the
19 Interior as an Indian tribe eligible for federal benefits and services. 80 Fed. Reg. 1945, January
20 15, 2015.

21 24. The Department of the Interior recognizes the Resighini Rancheria as a non-
22 historic tribe, maintaining “only those powers which are incidental to its ownership of property
23 and to carrying on of business, and those which may be delegated to it by the Secretary.” Letter
24 from Wyman D. Babby, Acting Assistant Secretary of Indian Affairs, to George Miller,
25 Chairman of House Committee on Natural Resources (Jan. 14 1994).

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Resighini Declines to Merge with the Yurok Tribe

25. In the HYSAs, Congress provided the Rancheria with the opportunity to merge with the Yurok Tribe and enjoy the rights, benefits and resources of the Yurok Tribe by voting to do so within ninety days after October 31, 1988. 25 U.S.C. §1300i-11(b).

26. The Bureau of Indian Affairs mailed out a notice to the Rancheria on December 9, 1988, of an election to vote on a merger with the Yurok Tribe. That notice was also provided to the local papers for publication on the same date. Notice to Rancherias on Merger Under Hoopa-Yurok Settlement Act, attached as Exhibit A.

27. The Bureau of Indian Affairs conducted an election in which 40 adult members of the Rancheria voted on the proposed merger with the Yurok Tribe. In that election, the members of the Rancheria declined to merge with the Yurok Tribe. Certification of Results of the Resighini Rancheria Merger Election, attached as Exhibit B.

Gary Dowd Declines Membership in the Yurok Tribe and Waives All Rights and Interest in the Yurok Reservation and Yurok Tribe

28. Under the HYSAs, individual members of the Rancheria were given the opportunity to join the membership of the Yurok Tribe. Upon electing to join the Yurok Tribe, individuals below the age of 50 were entitled to receive \$5,000 and those over the age of 50 would receive \$7,500. HYSAs, 25 U.S.C. § 1300i-5(c)(3). Those individuals that chose not to join the Yurok Tribe or the Hoopa Valley Tribe were to be paid a lump sum payment of \$15,000, which was referred to as the buy-out. Congress provided that such individuals electing the lump sum payment would “not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property resources, or rights within, or appertaining to, . . . the Yurok Reservation, or the Yurok Tribe . . .” HYSAs, 25 U.S.C. § 1300i-6(d).

29. The HYSAs required the Secretary of the Interior to provide notice and a comprehensive, objective assessment of the advantages and disadvantages of the options offered. It also required that comprehensive counseling services be made available to individuals about the respective rights and benefits of each option and of the effects of a lump sum payment option on that person and the tribal enrollment rights of that person’s children. The Bureau of Indian

1 Affairs was required to afford the opportunity for counseling to those who elected the buy-out
2 option. The HYSA also required that election of the lump sum option required the “completion
3 of a sworn affidavit certifying that the individual has been provided with complete information
4 about the effects of such an election.” HYSA, 25 U.S.C. § 1300i-5(a)(2).

5 30. Consultation services provided by the Bureau of Indian Affairs and the Yurok
6 Transition Team included written correspondence, at least four in-person consultation sessions
7 held in Hoopa, Eureka, Crescent City, California and Grants Pass, Oregon, and a toll-free phone
8 number for individual counseling sessions. Bureau of Indian Affairs HYSA Section 6(a)(1)
9 Notification, attached as Exhibit C. Written correspondence explained how electing to be paid
10 cash in return for extinguishing all rights within the Yurok Reservation would result in the loss
11 of fishing rights.

12 31. The Bureau of Indian Affairs provided Rancheria members with notice that if an
13 individual elected the buy-out, the individual would not be able to hunt or fish on the Yurok
14 Reservation unless otherwise authorized by the Yurok Tribe. Bureau of Indian Affairs HYSA
15 Question and Answers, attached as Exhibit D at 2. The Bureau of Indian Affairs informed
16 Rancheria members that the fishing rights on the Yurok Reservation would be exclusive to
17 Yurok Tribal members only except as authorized by the Yurok Tribe. *Id.* The Bureau of Indian
18 Affairs noted that a disadvantage of remaining in the Rancheria would be that an individual
19 would no longer have fishing rights. Hoopa/Yurok Questions, attached as Exhibit E at 10.

20 32. Defendant Dowd was specifically informed by the Bureau of Indian Affairs by
21 letter dated July 31, 1989, that any person making an election to receive, and having received a
22 lump sum payment shall not have any interest or right whatsoever in the tribal, communal, or
23 unallotted land, property, resources or rights within, or appertaining to, the Yurok Reservation or
24 the Yurok Tribe. Gary Dowd Eligibility Notification, attached as Exhibit F.

25 33. Additionally, prior to June 1991, the Bureau of Indian Affairs and the Yurok
26 Transition Team hosted a consultation session at the Resighini Rancheria and spoke directly to
27 Rancheria members about electing to be paid cash in return for giving up all rights to the Yurok
28 Reservation and the Yurok Tribe. Members of the Dowd family were active participants in the

1 Rancheria consultation session. Participants, including the Dowd family, were counseled by the
2 Bureau of Indian Affairs and the Yurok Transition Team on the provisions of the HYSA
3 whereby electing to be paid money would result in a loss of fishing, hunting, and gathering rights
4 on any lands within the Yurok Reservation.

5 34. Following the BIA and Yurok Transition Team consultations sessions, and on or
6 about June 14, 1991, Defendant Dowd chose “to receive the lump sum” payment by completing
7 a Settlement Option Form. Defendant Dowd acknowledged that the Bureau of Indian Affairs had
8 informed him “of the rights and benefits of each option presented, the advantages and
9 disadvantages of each option and information on counseling.” Gary Dowd Settlement Option
10 Election Form, attached as Exhibit G.

11 35. On June 20, 1991, as required by the HYSA, Dowd executed an affidavit
12 swearing under penalty of perjury that he had “been afforded the opportunity to receive
13 consultation regarding the disadvantages and advantages” of his election to be paid cash in return
14 for extinguishing all rights within the Yurok Reservation. Gary Dowd Affidavit Lump Sum
15 Payment Option, attached as Exhibit H.

16 36. Individual members of the Rancheria, including Defendant Dowd, elected the
17 buy-out in return for giving up “all interest or right whatsoever in the tribal, communal, or
18 unallotted land, property, resources, or rights within, or appertaining to, the . . . Yurok
19 Reservation, or the Yurok Tribe.” 25 U.S.C. §1300i-5(d)(3).

20 37. Defendant Dowd and other members of the Rancheria who gave up all claims to
21 “resources [and] rights” of the Yurok Reservation and Yurok Tribe were paid the \$15,000 buy-
22 out money authorized by Congress. Despite Defendant Dowd having given up his interests in
23 the fishery and all other resources of the Yurok Reservation, in the time since he accepted the
24 lump sum payment he has continued to fish on the Yurok Reservation. Defendant Dowd has
25 been cited by California State and Yurok Tribal law enforcement officers on at least five separate
26 occasions for unlawfully fishing within the Yurok Reservation without a permit from the Yurok
27 Tribe and in violation of California law.
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1 38. Defendant Dowd asserts that he may take fish from the Klamath River Indian
2 fishery within the Yurok Reservation without approval by the Yurok Tribe and without a license
3 from the State of California. Though the Rancheria declined in 1988 to merge with the Yurok
4 Tribe and maintains itself as an entity separate from the Yurok Tribe, in a letter to the Yurok
5 Tribal Court dated February 14, 2005, Dowd asserted that the Rancheria and the Yurok Tribe
6 “are in fact one and the same.” On that basis, he claimed that he had a right to fish within the
7 Yurok Reservation, despite having sought and accepted the lump sum payment option of
8 \$15,000 in exchange for relinquishing all rights to do so.

9 **Rancheria Claims the Right to Fish on the Yurok Reservation**

10 39. The Rancheria itself asserts on behalf of its members a right to take fish outside
11 the Rancheria but from areas within the Yurok Reservation despite having declined to merge
12 with the Yurok Tribe, and despite Defendant Dowd and, upon information and belief, others of
13 its members having chosen to take cash in return for the extinguishment of any claimed right to
14 take resources of the Yurok Reservation.

15 40. The Rancheria claims that “[t]he Yurok Tribe invokes the Hoopa-Yurok
16 Settlement Act as vesting them with authority over our fishing rights, but we find no language
17 within the law that so states.” The Rancheria stated in an August 10, 1994, letter that it believes
18 that all of its members have aboriginal rights to hunt, fish, and gather along the Klamath River.

19 41. The Rancheria has asserted in court its claim of a right to fish within the Yurok
20 Reservation without authorization from the Yurok Tribe or the State of California. On
21 December 29, 2011, the Rancheria filed a lawsuit in United States District Court against the
22 Director of the California Department of Fish and Game, alleging that the State of California has
23 no jurisdiction to enforce the California Fish and Game Code against Rancheria members who
24 fish within the Yurok Reservation. *Resighini Rancheria v. Bonham*, 872 F. Supp. 2d 964 (N.D.
25 Cal. 2012). The suit arose out of citations given to Rancheria members, including Gary Dowd,
26 for illegally fishing within the Yurok Reservation. The citations were issued by Yurok Tribal
27 police officers.

28

1 42. The Rancheria’s complaint in that case asserted that “[members] of the Resighini
2 Reservation have federally reserved fishing rights on what is now known as the Yurok Indian
3 Reservation”

4 43. The complaint was dismissed without a decision on the Rancheria’s claim of a
5 right to fish on the Yurok Reservation.

6 44. Any aboriginal rights once enjoyed by the Rancheria and its members to fish in
7 the Klamath River were extinguished no later than the enactment of the HYSA, when Congress
8 vested fishing rights in the Klamath River to the Yurok Tribe.

9 45. The Bureau of Indian Affairs does not recognize any right of the Rancheria to a
10 salmonid fishery and does not consider fish within the Yurok Reservation as a Rancheria trust
11 resource.

12 **Gary Dowd’s Illegal Fishing Activities**

13 46. On August 6, 1994, Defendant Dowd was cited in the Klamath River Estuary by a
14 Bureau of Indian Affairs officer for illegally fishing on the Klamath River within the boundaries
15 of the Yurok Reservation and charged with violating the California Fish & Game Code.

16 47. On August 17, 1997, Defendant Dowd was again cited in the Klamath River
17 Estuary for illegally fishing on the Klamath River within the boundaries of the Yurok
18 Reservation and charged with violating the California Fish & Game Code. The following year,
19 on May 13, 1998, Dowd was found guilty in Del Norte County Municipal Court of violating the
20 California Fish & Game Code Section 8685.5 by fishing on the Klamath River within the Yurok
21 Reservation without a license from the state.

22 48. On September 17, 2004, Defendant Dowd was cited by Yurok Tribal Police
23 officers downstream of the Klamath River Bridge at U.S. Highway 101 for illegally fishing
24 within the boundaries of the Yurok Reservation. He was charged in Yurok Tribal Court for
25 violating Yurok Tribal law.

26 49. On August 29, 2010, Yurok Tribal Police officers cited Defendant Dowd
27 downstream of the Klamath River Bridge at U.S. Highway 101 for illegally fishing within the
28

1 Yurok Reservation. Dowd was charged with violations of Yurok Tribal law in Yurok Tribal
2 Court in March 2011.

3 50. On July 24, 2014, Dowd was yet again cited at the Requa Boat Ramp near the
4 mouth of the Klamath River by Yurok Tribal Police officers for illegally fishing within the
5 Yurok Reservation.

6 51. Since the beginning of Defendant Dowd's illegal fishing activities, he has
7 maintained that he retains a right to fish within the Yurok Reservation despite the Rancheria's
8 refusal to merge with the Yurok Tribe and despite his having chosen to waive any claim of right
9 or interest in the Yurok Reservation fishery and all of its other resources in return for a lump sum
10 cash payment. He continues to make this claim. Defendant Rancheria has supported and
11 repeated Defendant Dowd's position.

12 **Adverse Consequences to Yurok Fish Species Arising from Unlawful Fishing**

13 52. Unlawful fishing by Defendant Rancheria members and Defendant Dowd cause
14 long-term, lasting, adverse impacts to Klamath River fish species. Their actions deplete the stock
15 of fish that would otherwise spawn and increase the risks to the future survival of the Klamath
16 River salmon fishery. The conservation of the species is threatened by their unlawful fishing.

17 53. Because the Klamath River and Pacific Ocean salmon fishery is in decline, there
18 are strict limits ("allocations") on the numbers of fish that may be taken in the in-River fishery
19 and in the ocean fishery. Salmon are anadromous fish. They spawn in freshwater rivers and
20 spend a part of their lives in the ocean, returning to the river in which they spawned and after
21 which they die. The goal of the allocation system is to ensure that sufficient fish "escape" being
22 taken by fishers and predators to survive the upriver journey and spawn, thereby creating the
23 next generation of young fish. Those fish numbers above the escapement goal are considered to
24 be the harvestable surplus.

25 54. Fishing in the Klamath River is highly regulated by the Yurok Tribe, the State of
26 California, and the United States. The Yurok Tribe exercises its fishing rights under a specific
27 harvest allocation pursuant to the Magnuson-Stevens Fishery Conservation and Management
28 Act, 16 U.S.C. §§ 1851-1853. In general, federal, state and Yurok Tribal fish scientists estimate

1 the numbers of salmon that are expected to return from the ocean to the Klamath River in a given
2 year. Based on this information, the Pacific Fisheries Management Council (“PFMC”)
3 determines the optimum number of fish that should be allowed to spawn and the number that
4 may be taken in the fishery. The PFMC also determines the appropriate escapement, which is
5 the number of fish needed to survive to spawn and ensure continuation of the species. The PFMC
6 sets harvest levels for the Klamath River fishery. The Yurok and Hoopa Valley Tribes have a
7 right to 50 percent of the fall-run Chinook salmon harvestable surplus for the Klamath River
8 fishery. The non-Indian sport fishers and commercial and recreational ocean fishers are
9 allocated the remaining fifty percent.

10 55. The harvestable surplus of fall-run Chinook salmon within the Klamath River
11 fishery is allocated between the State of California and the Yurok and Hoopa Valley Tribes such
12 that any fish beyond that surplus are part of the escapement allocation. The Yurok Tribe
13 authorizes Yurok Tribal members to fish for specified numbers of fall-run Chinook salmon from
14 the Yurok Tribe’s allocation of the Klamath River fishery. The State of California authorizes
15 commercial, recreational, and sport fishers to take a specified number of fish from the State
16 allocation. Both the Yurok Tribe and the State tightly control and closely regulate the fishers to
17 ensure that the take is within the harvestable surplus set under the Magnuson-Stevens Fishery
18 Conservation and Management Act to ensure the survival of the species.

19 56. Persons, such as the Defendant Rancheria members and Dowd, who fish within
20 the Yurok Reservation without authority of the Yurok Tribe, do not take from the Tribe’s
21 allocation of the Klamath River Fishery.

22 57. Each year, Yurok Tribal members and State-regulated fishers harvest their entire
23 allocation of fish from the Klamath River fishery.

24 58. Persons, such as the Defendant Rancheria members and Dowd, who fish within
25 the Yurok Reservation without the authority of the Yurok Tribe and without a license from the
26 State of California, take fish that are part of the escapement allocation to ensure sufficient
27 salmon spawn to conserve the species. Defendants’ unlawful conduct is a direct threat to the
28 survival and conservation of Klamath River fish species.

1 **FIRST CLAIM FOR RELIEF**

2 **Violation of the Hoopa-Yurok Settlement Act**

3 59. In the HYSA, Congress provided the Rancheria with the opportunity to merge
4 with the Yurok Tribe and thereby participate fully in and enjoy with other Yurok Tribal members
5 all the rights, benefits and the resources of the Yurok Tribe, including rights to participate in the
6 Klamath River Indian fishery. The Rancheria rejected that opportunity.

7 60. Congress provided Defendant Dowd and other individual members of the
8 Rancheria with the opportunity to enroll in the Yurok Tribe. 25 U.S.C. § 1300i-5(c). Had he
9 chosen to enroll in the Yurok Tribe, he could lawfully participate in the Indian fishery in the
10 Klamath River. He declined to join the Yurok Tribe.

11 61. Defendant Dowd requested and accepted Congress's offer of a payment of
12 \$15,000 in return for his relinquishing any "interest or right whatsoever in the tribal, communal,
13 or unallotted land, property, resources, or rights within, or appertaining to, . . . the Yurok
14 Reservation, or the Yurok Tribe." 25 U.S.C. § 1300i-6(d)(3).

15 62. By declining to merge with the Yurok Tribe, the Rancheria has lost forever its
16 opportunity to participate in the governmental affairs of the Yurok Tribe, to use and take Yurok
17 Tribal resources, including the take of fish from the Klamath River Indian fishery within the
18 Yurok Reservation, and to receive other benefits of membership in the Yurok Tribe. In
19 consequence, the Rancheria, on behalf of its members, has no authority to take fish from the
20 Klamath River fishery within the Yurok Reservation without a State of California license.

21 63. By seeking and accepting the lump sum payment, Dowd has relinquished all
22 "interest or right whatsoever" to the resources of the Yurok Tribe, including in the Klamath
23 River Indian fishery within the Yurok Reservation. As a result, the Defendants are fishing on the
24 Yurok Reservation in violation of the HYSA.

25 **SECOND CLAIM FOR RELIEF**

26 **Violation of Yurok Tribe's Exclusive Federally Reserved Fishing Right**

27 64. The present-day Yurok Reservation is a part of the original Klamath River
28 Reservation set aside by the President in the 19th century for the benefit of Klamath River Indian

1 people. In establishing the Reservation straddling the Klamath River, the United States reserved
2 to the Yurok people the right to take fish from the Klamath River.

3 65. The Rancheria land was purchased in 1938 by the United States for Indians of
4 Humboldt and Del Norte County without regard to tribal affiliation or historical tribal status.
5 Prior to this purchase, the Rancheria land was held in fee by non-Indian landowners. The
6 purchase by the United States did not reserve to the Rancheria or its members, explicitly or
7 implicitly, a right to fish in the Klamath River. The Secretary of the Interior's proclamation of
8 this property as a reservation did not reserve to the Rancheria or its members a right to fish in the
9 Klamath River. The Bureau of Indian Affairs does not recognize the fishery as a trust resource
10 of the Resighini Rancheria.

11 66. To the extent that the Rancheria claims to have aboriginal or federally reserved
12 fishing rights in the Klamath River within the Yurok Reservation, those rights were relinquished
13 when the Rancheria declined to merge with the Yurok Tribe. To the extent that Defendant Dowd
14 claims an aboriginal or federally reserved right to fish in the Klamath River within the Yurok
15 Reservation, those rights were relinquished when Dowd elected to be paid cash and was paid
16 cash in return for waiving his claimed interests in the resources of the Yurok Reservation.

17 67. The Yurok Tribe maintains an exclusive federally reserved right to fish in the
18 Klamath River within the Yurok Reservation. Accordingly, the Yurok Tribe has the right to
19 control, regulate, monitor, protect and restore the Indian fishery in the Klamath River within the
20 boundaries of its Reservation.

21 68. The Rancheria by asserting a right to fish within the Yurok Reservation, and
22 Dowd by asserting a right to fish and by fishing within the Yurok Reservation, without
23 authorization from the Yurok Tribe or the State of California, have unlawfully interfered with the
24 Yurok Tribe's exclusive federally reserved fishing right within the Yurok Reservation.

25 **PRAYER FOR RELIEF**

26 69. Wherefore, Plaintiff prays for a declaratory judgment pursuant to 28 U.S.C.
27 §2201 declaring:
28

