



Cher-Ae Heights Indian Community of the Trinidad Rancheria



**CONGRESSIONAL TESTIMONY OF**

**GARTH SUNDBERG, SR., TRIBAL CHAIRMAN OF THE**

**CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA**

**BEFORE THE HOUSE NATURAL RESOURCES**

**SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES**

**REGARDING H.R. 1312, THE "YUROK LANDS ACT OF 2019"**

**ON SEPTEMBER 19, 2019**

The Cher-Ae Heights Indian Community of the Trinidad Rancheria (“Trinidad Rancheria” or “Tribe”)<sup>1</sup> appreciates the opportunity to present both written and oral testimony for the hearing of the House of Representatives Natural Resources Subcommittee for Indigenous Peoples of the United States on our substantial concerns regarding the Yurok Lands bill (H.R. 1312). This testimony sets forth the views of the Trinidad Rancheria. However, the Subcommittee should also note that it has raised substantial concerns of a number of tribes because H.R. 1312 treats similarly situated Indian tribes unequally by granting just one tribe, the Yurok Tribe, significant new rights regarding federal management of an ancestral territory shared by many tribes. Seven neighboring tribes<sup>2</sup> jointly signed a letter opposing the bill in its current form (see Exhibit A).<sup>3</sup> In addition, the Southern California Tribal Chairmen’s Association (SCTCA), expressed concerns about H.R. 1312, and while encouraging the parties to resolve concerns about H.R. 1312, the SCTCA expressed its opposition to legislation that develops into a position that pits one tribe against another (see Exhibit A).

H.R. 1312 would affect the federal government’s management of a vast area within the North Coast region of California that includes the overlapping and shared ancestral territory of a number of federally recognized tribes. Because the bill would grant only one tribe, the Yurok Tribe, significant new rights and privileges with regard to federal management of lands and resources in broad area affecting the ancestral territory of a number of tribes, it will harm and diminish the rights of the similarly situated tribes regarding this shared ancestral territory and their relationship with federal agencies managing these lands. There is no basis for a distinction to be drawn between the affected tribes. Federal law provides that all tribes stand equal in their relationship with the United States and have the same privileges and immunities. Further, the Yurok Tribe wrongfully conflates the ancestral territory of the historic Yurok people (“Yurok People”) with the territory of the Yurok Tribe. There are four tribes of historic Yurok origin (the Trinidad Rancheria, Resighini Rancheria, Big Lagoon Rancheria and Yurok Tribe), who share similar interests in the ancestral territory of the Yurok People. Although the Trinidad Rancheria does not oppose significant aspects of the bill, by recognizing only the Yurok Tribe and congressionally ratifying the Constitution of the Yurok Tribe, H.R. 1312 poses a grave threat to the Trinidad Rancheria and the other tribes of historic Yurok origin. By granting rights and benefits to the Yurok Tribe, which are not granted to other similarly situated tribes, H.R. 1312 runs contrary to congressional policy and the bedrock principles of Indian law. This is unprecedented and cannot move forward in its current form.

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<sup>1</sup> To avoid confusion, in this testimony we generally refer to our Tribe as the “Trinidad Rancheria,” but this in no way diminishes our status as a federally recognized tribe with rights, privileges and immunities equal to other federally recognized tribes, including the Yurok Tribe.

<sup>2</sup> The seven tribes signing the letter are the Trinidad Rancheria, Big Lagoon Rancheria, Blue Lake Rancheria, Bear River Band of the Rohnerville Rancheria, Hoopa Valley Tribe, Resighini Rancheria, and Tolowa Dee-ni Nation.

<sup>3</sup> In 2018, a group of six concerned tribes expressed similar concerns and opposition to H.R. 3847 an earlier and substantially similar version of the bill Representative Huffman introduced in the 114<sup>th</sup> Congress (see Exhibit A).

## **Executive Summary**

The “North Coast” region of California is home to no less than 12 federally recognized Indian tribes and numerous tribal cultural resources and related natural resources, on which many of our traditional and customary practices depend. This region is also the home of large areas of land managed by federal and state agencies, which affect these cultural and natural resources. Further, many of the tribes in this region have overlapping ancestral homelands and share interests in cultural sites and natural resources. In this culturally rich environment, it is important that the federal government work cooperatively and collaboratively with the tribes to enhance the protection of our cultural resources and related natural resources and that each federal and state agency treat similarly situated tribes equally. As a matter of federal law, we have equal standing with regard to our government-to-government relationship with the United States and our privileges and immunities as federally recognized tribes.

The Trinidad Rancheria, like the Yurok Tribe, the Resighini Rancheria, and the Big Lagoon Rancheria, is a federally recognized Indian tribe descended from the historic Yurok people (“Yurok People”). Congress, and federal and state agencies, have long recognized that these tribes are all of historic Yurok origin, who share a common language, culture, ceremonies, and relations. Each, however, is a separate and independent federally recognized tribe from a distinct part of the ancestral territory of the Yurok People. The Yurok Tribe is not synonymous with the Yurok People, and it is critical that Congress, and federal and state agencies, not conflate the Yurok People with the Yurok Tribe. No single federally recognized tribe represents the Yurok People, the ancestral territory of the Yurok People, and the Yurok culture associated with the ancestral territory is shared by the four tribes. The status of these tribes and our shared interests in the ancestral territory of the Yurok People must be expressly recognized in any legislation affecting our shared interests.

In order to properly assess H.R. 1312, it is imperative that the Subcommittee, the full Natural Resources Committee, and Congress as a whole, consider H.R. 1312 in the context of the North Coast region, and the Yurok Tribe’s assertion of hegemony over the entire shared ancestral territory. It remains vitally important that similarly situated tribes enjoy equal protection under the law, and that federal land management agencies recognize the interests and rights pertaining to and shared by each tribe, so that these agencies may implement the law in a fair and unbiased manner. H.R. 1312, however, grants only the Yurok Tribe special rights and benefits with regard to federal management of lands and resources, which include irreplaceable cultural and natural resources that are of significant interest to multiple similarly situated tribes. This runs counter to the bedrock principle set forth in Section 16 of the Indian Reorganization Act (IRA) (25 U.S.C. § 5123(f) and (g)) that all tribes stand equal to other tribes in their relationship with the United States and have the same privileges and immunities and right to exercise the same inherent and delegated authorities. There are no “greater tribes” and “lesser tribes” in the United States, and no tribe is subordinate to any other. As set forth below, this bill

would diminish the ability of other tribes in the region, particularly other tribes of historic Yurok origin, to protect and express our cultural heritage and protect our cultural resources, and it would restrict the exercise of our rights under federal law.

The Yurok Tribe's Constitution conflates the ancestral territory of the Yurok People with the territory of the Yurok Tribe and asserts jurisdiction over the entire area, which includes the lands of the three other tribes of historic Yurok origin. Further, Yurok Tribe officials have stated that they have a constitutional mandate to acquire all our ancestral lands as defined in their Constitution, and another "constitutional mandate is to protect our ancestral territory from foreign government, and whether the rancherias like it or not they are not the Yurok Nation therefore they are considered a foreign government in our lands, that's why we oppose any fee to trust that the rancherias attempt."<sup>4</sup> As set out below, the Yurok Tribe has engaged in a longstanding assault on the rights of the Trinidad Rancheria related to natural or cultural resources within our shared territory. If the Yurok Constitution is ratified and affirmed by Congress, as provided in H.R. 1312, the Yurok Tribe will assert that the United States has ratified the Yurok Tribe's position that all the ancestral lands of the Yurok People are solely the territory of the Yurok Tribe—at the exclusion of other tribes of historic Yurok origin, who the Yurok Tribe will argue have no rights or interests in the shared ancestral territory. We come before the Subcommittee today to protect our rights and our future. We are Yurok, and the Trinidad Rancheria has never relinquished or waived its rights or privileges regarding our ancestral territory or culture. We will not be denied our heritage or our rights as a sovereign Tribe, and we will not allow our tribal members to be denied their rights as Yurok People.

The Trinidad Rancheria has detailed its concerns regarding various iterations of H.R. 1312 to the bill's author, Representative Jared Huffman, and other interested Members of Congress, in numerous letters and meetings dating back to 2014. We have offered to work cooperatively with Representative Huffman and the Yurok Tribe to develop revisions to address our concerns regarding these provisions, but neither has responded to our concerns about H.R. 1312 or reached out to try to resolve them.

Although the Trinidad Rancheria opposes H.R. 1312 in its current form, we have examined the bill closely and do not oppose significant aspects of the bill. In the final section of this testimony we provide a section-by-section statement of our concerns regarding the bill and our requested amendments to address those concerns. In summary, we do not oppose the provision that would transfer 1,229 acres in trust for the benefit of the Yurok Tribe. Additionally, although the bill needs to be amended to include basic provisions to protect the rights of members of the Trinidad Rancheria and other tribes, we do not oppose the proposed expansion of the Yurok Reservation to include National Forest and National Park lands. We

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<sup>4</sup> Toby Vanlandingham, a Yurok Tribal Council Member, posted this statement on social media May 2019, which is substantially similar to comments Yurok Tribal leaders and officials have stated in direct conversations with Trinidad Rancheria tribal leaders and officials.

strongly support congressional efforts to encourage or direct federal land management agencies to negotiate and enter into cooperative and co-management agreements with Indian tribes, but such provisions must extend to all similarly situated tribes, not just the Yurok Tribe. However, for the reasons outlined above, the Trinidad Rancheria opposes the congressional ratification of the Yurok Tribe's governing documents because the Yurok Tribe has repeatedly sought to use those documents as a weapon to subjugate the rights of the Trinidad Rancheria and our members. Ratification of the Yurok Tribe's governing documents would be highly unusual and would have far-reaching implications that run counter to federal law and threaten vital rights of the Trinidad Rancheria and other tribes.

In our testimony, we first set out certain basic facts regarding the Trinidad Rancheria, the Yurok Tribe, and our relationship to the ancestral territory of the Yurok People. We then turn to the Yurok Tribe's Constitution, the Yurok Tribe's assault on the rights of the Trinidad Rancheria, and the Yurok Tribe's advocacy for a two-tiered classification of federally recognized tribes. With this factual context in mind, we examine how H.R. 1312 runs contrary to the 1994 amendments to Section 16 of the Indian Reorganization Act - pitting one tribe against another. Lastly, we provide a detailed analysis of H.R. 1312 and discuss the how the bill could be amended to address our concerns while still providing the Yurok Tribe with substantial benefits.

### **Establishment and Status of the Trinidad Rancheria**

The Cher-Ae Heights Indian Community of the Trinidad Rancheria is a federally recognized Indian tribe.<sup>5</sup> The land for the Trinidad Rancheria was acquired pursuant to the Indian Appropriation Act of June 21, 1906 (34 Stat. 333) authorizing the Secretary of the Interior to expend certain funds "to purchase for the use of the Indians in California . . . suitable tracts or parcels of land, water, and water rights in said State of California . . . ." Pursuant to the 1906 statute, in 1908, the Secretary of the Interior acquired 60 acres of land on the coastal bluffs of Trinidad Bay near the historic Village of Tsurai (also spelled Chue-rey), for the use of what the Department of the Interior referred to as the Trinidad Band.<sup>6</sup> Although the statute authorized appropriations for the purchase of lands for the use of Indians in California, the Secretary of the Interior clearly purchased the lands in Trinidad for a specific tribe – then known as the Trinidad Band. In 1917 the Secretary of the Interior formally established the Trinidad Rancheria as a

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<sup>5</sup> Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 84 Fed. Reg. 1200, 1200-1205 (February 1, 2019).

<sup>6</sup> Department of the Interior Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the fiscal year ended June 30, 1915. (Washington: Government Printing Office 1915). *See* <http://images.library.wisc.edu/History/EFacs/CommRep/AnnRep1517/reference/history.annrep1517.i0001.pdf>. Table 30 of this 1915 report describes the lands purchased for Indians in California to June 30, 1915, and for each acquired parcel, this table sets out the band, the county, the number of Indians, the acres, and the amount paid. With regard to the Trinidad Rancheria, Table 30 of this report 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. Relevant pages attached as Exhibit B.

homeland for our Tribe and approved Federal recognition of the tribe.<sup>7</sup> Following an election conducted by the United States, the Trinidad Rancheria voted to accept the Indian Reorganization Act (IRA) per tribal election, as set forth in the 1947 report of Theodore Hass, “Ten Years of Tribal Government under the I.R.A.,” commonly referred to as the “Haas Report.”

Although the Trinidad Rancheria—like most if not all tribes in California—has ancestral ties with several Native peoples, the Trinidad Rancheria’s members are primarily Yurok People and our ancestral territory is that of the Yurok People. The fact that all members of the Trinidad Rancheria are not entirely descended from the Yurok People does not affect the Trinidad Rancheria’s status as a tribe of historic Yurok origin. The Senate Report issued by the Senate Select Committee on Indian Affairs accompanying the Senate Bill 2723, which was enacted as the Hoopa-Yurok Settlement Act of 1988 (“Settlement Act”) (Public Law 100-580). The Senate Report states that “[m]ost, if not all, Federally recognized Indian tribes have members who are not of the full degree of blood of the ancestral tribe.”<sup>8</sup> With regard to Section 9 of the Settlement Act, which provides for the development of the base membership roll of the Yurok Tribe, the Senate Report notes that there may be some people on the Settlement Roll, who will have little or no Yurok Indian blood but select the Yurok Tribe option, and will be on the Yurok Tribe’s base membership roll. Senate Report at 26.<sup>9</sup>

The Yurok Tribe claims without merit that the Trinidad Rancheria is not a tribe of historic Yurok origin because the land for the Trinidad Rancheria was established pursuant to a statute to acquire lands for the benefit of homeless Indians.<sup>10</sup> As set forth above, the Trinidad Rancheria was established for the benefit of the Trinidad Band, which was located near the historic Village of Tsurai and within the ancestral territory of the historic Yurok People. Further, the Trinidad Rancheria’s base roll is primarily of Yurok descent.

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<sup>7</sup> See Coastal Zone Information Center, U.S. Department of Commerce, Federal and State Indian Reservations and Indian Trust Areas 159 (1974) (“Report of Indian Reservations and Trust Areas”). Although this report also indicates that the Rancheria was in the process of being terminated under the Rancheria Act (P.L. 85-671), the Trinidad Rancheria did not accept the termination offer presented by the Department of the Interior, and the Trinidad Rancheria was never terminated. A copy of the relevant pages of the report are attached to this letter as Exhibit C.

<sup>8</sup> See S. Rept. 100-564, Partitioning Certain Reservation Lands Between the Hoopa Valley Tribe and the Yurok Indians to Clarify the Use of Tribal Timber Proceeds and for other purposes, 100 Cong. 2d Sess. (“Senate Report”) at 25.

<sup>9</sup> See also, William Wood, *The Trajectory of Indian Country in California*, 44 TULSA L. REV. 356-366 (2008) (Discussing the history of Indian lands in California, the terms used to refer to such lands—such as “Rancheria”—the migration of diverse Native peoples to the same lands, and the interchangeability of terms for Indian lands in California).

<sup>10</sup> These “homeless Indians” were members of tribes or bands (or remnants of tribes or bands) that had been rendered homeless by the United States’ failure to ratify eighteen California Indian treaties negotiated in 1851-52 and establish adequate trust lands. Thus, the term “homeless Indians” by no means implies that these Indians were not members of tribes and bands of historic origin.

The United States has consistently recognized the Trinidad Rancheria as a tribe of historic Yurok origin. For example, a report on Indian reservations and Indian trust areas published by the Department of Commerce, which was based on information provided by the Bureau of Indian Affairs (“BIA”) Sacramento Area Office in January 1970, identifies the Trinidad Rancheria as a Yurok Tribe (this was before Congress confirmed recognition of the “Yurok Tribe” later organized pursuant to the Hoopa-Yurok Settlement Act in 1988).<sup>11</sup> Significantly, Section 11 of Settlement Act provided three tribes of historic Yurok origin (Trinidad Rancheria, Resighini Rancheria, and Big Lagoon) the option of merging with the Yurok Tribe to be organized pursuant to the Act to govern the Yurok Reservation. All three tribes elected to retain their status as separately federally recognized Indian tribes and declined to merge, but that did not affect their historic Yurok origin.<sup>12</sup> If any of these tribes of historic Yurok origin had elected to merge with the Yurok Tribe, their tribe and reservation would have been extinguished and would have become part of the Yurok Reservation. However, because none did, each tribe remains an independent federally recognized Indian tribe of historic Yurok origin, with inherent rights to the off-reservation ancestral territory equal to the current Yurok Tribe.

The circumstances of the Yurok Tribe, are notably similar to the Trinidad Rancheria in these respects. The Yurok Reservation was created by partitioning the former Hoopa Valley Reservation, which the Court of Claims found was “intended, from the outset, for the accommodation of numbers of tribes of Northern California, including the Klamaths, such as might reside there . . . .”<sup>13</sup> Further, pursuant to the Settlement Act, the base roll for the Yurok Tribe consists of the persons on the Settlement Roll, who were those persons who had sufficient connection to the Hoopa Valley Reservation (prior to partition) to qualify as an “Indian of the Reservation” as established in the *Jessie Short* litigation<sup>14</sup> and were not members of the Hoopa Valley Tribe, regardless of whether the person descended from the historic Yurok People.<sup>15</sup> The Senate Report drives this point home by expressly noting that some people on the Settlement Roll, who could elect to be on the base roll of the Yurok Tribe, may have little or no Yurok Indian blood.<sup>16</sup> The current Yurok Tribe is thus not exclusively made up of persons who have

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<sup>11</sup> Report of Indian Reservations and Trust Areas at 159 (see Exhibit C).

<sup>12</sup> The Senate Report addresses changes to Section 11 of the bill, stating that the Committee deleted reference to Blue Lake, Smith River, Elk Valley, and Tolowa Rancherias on the grounds that those Rancherias are not historically of Yurok origin. This statement and action by the Indian Affairs Committee clearly implies that the Committee (and Congress) found that the Tribes it retained in Section 11 of the Act are of historic Yurok origin. See Senate Report at p. 29.

<sup>13</sup> See *Short v. United States*, 202 Ct. Cl. 870, 975 (1973).

<sup>14</sup> The *Jessie Short* litigation was filed against the United States seeking a money judgment for an alleged share in the timber income on the basis that such timber was harvested from the Hoopa Reservation prior to the partition of the Reservation and the organization of the Yurok Tribe. A number of decisions were issued in this case.

<sup>15</sup> See Settlement Act, §§ 1(b)(5), 5(a)(1), and 9(a)(1). The Settlement Act directed the Secretary of the Interior to prepare a Settlement Roll of all persons who could meet the criteria established by the federal courts in the Short case for qualification as an “Indian of the Reservation” and met other requirements (e.g. born on or prior to enactment of the Settlement Act and not members of the Hoopa Valley Tribe).

<sup>16</sup> See S. Rep. No. 100-564 at 26.

“Yurok Indian blood,” and Congress did not intend the base roll to include all persons of “Yurok Indian blood.” On the contrary, Congress recognized that there are other federally recognized Indian tribes of historic Yurok origin (the Trinidad Rancheria, Resighini Rancheria, and Big Lagoon Rancheria).

In recognition of the Trinidad Rancheria’s status as a historic tribe of Yurok origin, California Fish & Game regulations implementing a State law known as the Marine Life Protection Act (Section 632(b), Title 14 CCR) includes the Cher-Ae Heights Indian Community of the Trinidad Rancheria as a federally recognized tribe exempt from the area and take regulations for the Reading Rock State Marine Conservation Area (SMCA) (traditionally known as Sek-kwo-nar). The Commission, based upon an analysis by its legal counsel, rejected the Yurok Tribe’s arguments in opposition, including their false assertion that the Trinidad Rancheria’s interests to the cultural resources of the Yurok People were terminated by the Hoopa-Yurok Settlement Act because the Trinidad Rancheria elected to retain its status as a separate sovereign.<sup>17</sup> The City of Trinidad also long recognized the Trinidad Rancheria’s relationship to the historic Tsurai Village (located within the “Tsurai Study Area”) in the City’s General Plan and Open Space Ordinance.<sup>18</sup>

### **The Trinidad Rancheria and the Yurok Tribe Have Equal Status as Federally Recognized Indian Tribes**

The Trinidad Rancheria and the Yurok Tribe—and all other federally recognized tribes—stand on an equal footing. The tribes retain the same inherent sovereign authority; and have the same relationship with the United States. Each tribe must be treated equally under the laws of the United States. Congress squarely affirmed this bedrock principle more than 25 years ago with the enactment of Public Law 103-263 (25 U.S.C. § 5123 (formerly 25 U.S.C. § 476)) in May of 1994, which amended Section 16 of the 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 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 federally recognized tribes by virtue of their status as Indian tribes. 25 U.S.C. § 5123(f) and (g).

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<sup>17</sup> A copy of the Memorandum of Michael Yaun, Legal Counsel, California Fish and Game Commission is attached as Exhibit D.

<sup>18</sup> See Exhibit E, relevant pages of City of Trinidad General Plan Policy 69 and Section 17.16.080 of the City’s Open Space Ordinance:

Within the portion of the Tsurai study area zoned open space any soil disturbance, removal of vegetation, placement of temporary or permanent structures, or establishment of a use identified in TMC 17.16.020(A) shall require a use permit. Except for a fence to protect burial grounds, no soil disturbance, removal of vegetation, structural improvements or use shall be permitted unless it has been approved by the city council, the State Historic Preservation Officer, the Trinidad Rancheria and the lineal descendants of Tsurai. [Ord. 166 § 4.02(C)(5), 1979].



The intent of the 1994 amendment to Section 16 of the IRA is set forth in a colloquy between Senator Daniel Inouye and Senator John McCain held on May 19, 1994.<sup>19</sup> The colloquy notes that the Department of the Interior had incorrectly distinguished between “created” and “historic” tribes based on the Department’s flawed understanding that the created tribes are new in the sense that they did not exist before they organized under the IRA. The Senators agreed that the purported rationale ignored fundamental principles of Federal Indian law and policy, because 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. As such, Congress recognized that under Federal Indian law all Indian tribes are historic tribes.

The colloquy further clarifies that the amendment to Section 16 of the IRA makes clear that the IRA prohibits the Secretary or any other Federal official from distinguishing between Indian tribes or classifying them based not only on the IRA but also based on any other Federal law, that it corrected any instances where any federally recognized Indian tribe has been classified as “created,” and that it will prohibit such classifications in the future.

[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.

Exhibit F at 8.

Not only is there no distinction between the status of the Trinidad Rancheria and the Yurok Tribe, as noted above, the factual record shows that the Secretary of the Interior acquired lands for the Trinidad Band next to the band’s historic Village of Tsurai, and that the Secretary established the Trinidad Rancheria by 1917, which the United States has consistently recognized as a tribe of historic Yurok origin. Further, it should be emphasized that there is no legal distinction between the use of the term “reservation” or “rancheria.” The crucial question for the Supreme Court has been whether the area has been set aside for the use of Indians. The Supreme Court addressed this question in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505 (1991), where the Court found no precedent that the Supreme Court “has ever drawn the distinction between tribal trust land and reservations that Oklahoma urges.” *Id.* at

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<sup>19</sup> See 140 Cong. Rec. S6147 (daily ed. May 19, 1994). A copy of the relevant pages from the Congressional Record are attached as Exhibit F to this letter. The colloquy is found on pages 6-8.

511. The Court stated that “[T]he test for determining whether land is Indian country does not turn upon whether that land is denominated “trust land” or “reservation.” *Id.* Rather, we ask whether the area has been ““validly set apart for the use of the Indians as such, under the superintendence of the Government.”” *Id.* (citations omitted). The terms “reservation” and “rancheria” have been used interchangeably in California.<sup>20</sup>

In sum, the Trinidad Rancheria and the Yurok Tribe have the same powers of self-governance, and the Yurok Tribe has no greater authority or interest than the Trinidad Rancheria with respect to the shared ancestral territory or the resources located therein.

### **The Yurok Tribe's Constitution and Their Assertion to All Shared Ancestral Territory**

Article I, Section 1 of the Yurok Tribe Constitution defines the Ancestral Lands of the Yurok Tribe to include the area that has been generally been defined as the ancestral lands of the Yurok People. (A copy of the Yurok Tribe’s Constitution is attached as Exhibit G.) This is an expansive area that includes a large portion of the North Coast region in which several other federally recognized Indian several tribes are located.<sup>21</sup> Section 2 of Article I of the Yurok Tribe’s Constitution states that the territory of the Yurok Tribe “consists of all Ancestral Lands and any lands that may hereinafter be acquired by the Tribe, within or without the Ancestral Lands.” Section 3 asserts that “[t]he jurisdiction of the Yurok Tribe extends to all of its member [*sic.*] wherever located, to all persons throughout its territory, and within its territory, over lands, waters, river beds, submerged lands, properties, air spaces, minerals, fish, forests, wildlife, and other resources, and any interest therein, located within the Yurok Tribe’s territory. Thus, the Yurok Tribe’s Constitution asserts that all lands located within the ancestral territory of the Yurok People are within the territory of the Yurok Tribe and lands and all lands, waters, and other resources located within that territory are under the Yurok Tribe’s jurisdiction.

The Yurok Tribe asserts that the definition of the Yurok Tribe’s “Ancestral Lands” is supported by decisions in the *Jessie Short* litigation. The first decision in that litigation (*Short v. United States*, 202 Ct. Cl. 870 (1973) (“*Short I*”)) includes a finding (Finding of Fact No. 5, which describes the location of Native villages of the “Lower Klamaths” or Yuroks.<sup>22</sup> The

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<sup>20</sup> 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).

<sup>21</sup> The Yurok Tribe’s Constitution states that the Ancestral Lands are depicted on a map captioned as “Map of the Yurok Ancestral Lands” and maintained in the Yurok Tribal Offices. (A copy of a map captioned as the Yurok Ancestral Territory and produced by the Yurok Tribe on May 3, 2016 is attached as Exhibit H).

<sup>22</sup> *Short I* at 886-887. This finding provides:

5. The Native villages of the Lower Klamaths or Yuroks were located on the Pacific coast from Wilson Creek, north of the mouth of the Klamath, to Little River, south of the Klamath, along the Klamath River from its mouth to Bluff Creek, located a short distance upstream from the Klamath-Trinity junction, and (of particular significance in this case) in the canyon of the Trinity River in the most northerly part of the river near the junction of the Trinity with the Klamath and in a village a small distance from the Trinity.

court's reference to "Lower Klamaths" or "Yuroks" is a reference to the historic Yurok People. The Yurok Tribe's reliance on the "*Jessie Short*" litigation is misplaced.<sup>23</sup> The courts in the *Short* case ruled on whether certain individuals living on the Hoopa Valley Reservation were entitled to a share of the revenues generated from timber harvests on the reservation. The courts did not adjudicate the nature or extent of the authority of the current Yurok Tribe, which was not organized until more than 25 years after the case was filed, and did not adjudicate rights regarding properties or cultural resources located in the ancestral lands of the Yurok People outside of the reservation.<sup>24</sup>

As discussed in more detail below, it would be wrong and dangerous for Congress to ratify the Yurok Tribe's wrongful claim that the shared ancestral territory of the Yurok People lies within the territory and jurisdiction of the Yurok Tribe.

### **The Yurok Tribe's Assault on the Rights and Interests of the Trinidad Rancheria**

Over the past number of years the Yurok Tribe has engaged in a relentless offensive to undermine the Trinidad Rancheria's efforts to exercise our basic sovereign rights related to portions of our shared ancestral territory on lands adjacent to the Trinidad Rancheria's reservation lands, and they have interfered with our efforts to work with local, state, and federal governments related to matters on ancestral lands. Below is a brief summary of several instances where the Yurok Tribe has engaged in such activities.<sup>25</sup>

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<sup>23</sup> The Yurok Tribe has also cited the case of *Karuk Tribe of California v. Ammon*, 209 F.3d 1366, 1370, 1378 (9th Cir. 2000), in support of their assertion that the ancestral territory of the Yurok People is their sole territory. Their reliance on the *Karuk* case, however, is also misplaced, because that case involved asserted rights to Hoopa Valley Reservation at the time the Settlement Act was passed and the court's references to the traditional territory of the Yuroks are limited to land "along the coast of the Pacific Ocean near the mouth of the Klamath River, as well as along the river itself."

<sup>24</sup> Emphasizing the narrow scope of the *Short* case, the Senate Report cited the following statement from a 1983 decision of the Circuit Court in the case:

At the close of our opinion we again stress – what the Court of Claims several times emphasized and we have interlaced *supra* – that all we are deciding are the standards to be applied in determining those plaintiffs who should share as individuals in the monies from the . . . Reservation unlawful[ly] by the United States . . . . This is solely a suit against the United States for monies, and everything we decide is in that connection alone; neither the Claims Court nor this court is issuing as general declaratory judgment. We are not deciding the standards for membership in *any* tribe, band, or Indian group, nor are we ruling that Hoopa membership standards should or must control membership in a Yurok tribe or any other entity that may be organized on the Reservation.

S. Rpt. 100-564 at 13 *citing Short v. United States*, 719 F. 2d 1133, 1143 (1983). (Emphasis added.) Notably, in *Short II*, the court denied the government's motion to substitute the as-yet unformed "Yurok Tribe" for the plaintiffs. *See* 61 F. 2d 150, 154-59 (1981).

<sup>25</sup> This summary is not intended to be comprehensive of all such instances.

1. The Yurok Tribe has argued that the Trinidad Rancheria's Yurok ancestry was somehow terminated by the Hoopa-Yurok Settlement Act, and that because the Trinidad Rancheria is a "rancheria" we have no interests in our ancestral territory and no right to participate in the management of federal or state resources within this territory (even those areas located next to the Trinidad Rancheria). As set forth in this testimony, both are false and contrary to law.

2. The Trinidad Rancheria owns and operates the Trinidad Pier located in Trinidad Harbor, which is located within a mile of the Trinidad Rancheria's reservation lands. We long sought an agreement with the Bureau of Land Management ("BLM"), which manages lands in the California Coastal National Monument located near the harbor, to protect significant resources through effective and practical harbor policies. The Yurok Tribe asserted that any such agreement must be approved by the Yurok Tribe. Although this hindered our efforts to establish an agreement with the BLM, after several years we were able to reach an agreement with the BLM regarding the "Seabird network."

3. The Yurok Tribe has opposed the Trinidad Rancheria's land into trust application for our harbor lands, and asserted that the BIA must provide the Yurok Tribe with a direct role in the BIA's consideration of that application, based on the false assertion that the Trinidad Rancheria is a "non-historic tribe" and that all land surrounding the Trinidad Rancheria is within the territory of the Yurok Tribe.<sup>26</sup> In addition, contrary to federal law, the Yurok Tribe has asserted that the Trinidad Rancheria is not entitled to have land taken into trust because it is a "non-historic" Tribe.<sup>27</sup> As discussed below, Congress expressly rejected this idea of "historic" and "non-historic" tribes when it adopted the 1994 amendments to Section 16 of the IRA. When the California Coastal Commission was considering whether the fee to trust acquisition was consistent with the California Coastal Act, the Yurok Tribe falsely asserted that the Trinidad Rancheria has no historic or cultural interest or standing with regard to those lands located within a mile of our reservation lands, and that the Yurok Tribe has sole authority with regard to cultural resources on those lands. The Coastal Commission, however, found that the fee to trust acquisition was indeed consistent with the State's Coastal Act.

4. The Yurok Tribe opposed a California Fish and Game Commission regulation that identified the Trinidad Rancheria as a Tribe that historically engaged in traditional

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<sup>26</sup> The Supreme Court's decision in *Carciari v. Salazar* did not alter that authority, because it is clear that the Trinidad Rancheria was under federal jurisdiction well before 1934. The property was purchased for the benefit of the Trinidad Band in 1908, the Secretary of the Interior established the Trinidad Rancheria in 1917, and the Department of the Interior conducted an election at the Trinidad Rancheria regarding adoption of the Indian Reorganization Act in 1935.

<sup>27</sup> A copy of the Yurok Tribe's letters to the BIA are attached as Exhibit I.

fishing and gathering on a regulated site (Reading Rock), in an effort to deprive the Trinidad Rancheria and our members of the right to continue engaging in such traditional and customary activities. The Yurok Tribe argued that the Hoopa-Yurok Settlement Act somehow “terminated” the Trinidad Rancheria’s Yurok heritage. Contrary to the Yurok Tribe’s argument, as detailed in this testimony, the Settlement Act recognizes the Trinidad Rancheria as a Tribe of historic Yurok origin and does not grant the Yurok Tribe any authority over lands, sites, resources lying outside the Yurok Reservation. After several hearings, the Fish and Game Commission, recognizing the Trinidad Rancheria as a tribe of historic Yurok origin, approved the amendment to the regulation which included the Trinidad Rancheria in the regulation for the cultural site.

5. The Yurok Tribe has sought to have the parcel on which our namesake historic Village of Tsurai is located, which is owned by the City of Trinidad and located between the Trinidad Rancheria and our harbor lands, conveyed to the Yurok Tribe, which is located 45 miles away. Yurok Tribe has also prevented the City and the California Coastal Conservancy from engaging with the Trinidad Rancheria on the management of that village site, and other nearby cultural sites, which the City and State recognize as being affiliated with the Trinidad Rancheria. This matter is currently in litigation. The Yurok Tribes’ efforts to acquire title to a cultural resource located next to the Trinidad Rancheria’s reservation lands are unprecedented.

### **Section By Section Analysis of H.R. 1312 and Proposed Amendments to Address Concerns**

Although H.R. 1312 in its current form presents an unprecedented threat to the Trinidad Rancheria, as set forth more thoroughly below, we do not oppose significant provisions in the bill. Even though the Yurok Tribe has repeatedly stated its objection to any land being taken into trust for the benefit of the Trinidad Rancheria, we do not object to the transfer of land into trust for the benefit of the Yurok Tribe set out in Section 3 of the bill. Further, we do not object to the expansion of the Yurok Reservation, described in Section 4, provided some basic questions are clarified and provisions are included to protect the rights of members of other tribes to access and use National Forest and National Park lands included within the revised reservation in accordance with federal law and policy. While we strongly support cooperative and co-management agreements between federal agencies and tribes regarding the management of tribal ancestral territory, it is imperative that the provisions in Section 5 of the bill requiring agreements between federal agencies and the Yurok Tribe regarding the management of federal lands located outside the Yurok Reservation be amended to recognize and confirm the equal rights of similarly situated tribes. However, because the Yurok Constitution conflates the ancestral territory of the Yurok People with the Yurok Tribe and asserts that this shared ancestral territory is the territory of only the Yurok Tribe, Section 7 of the bill, which would ratify the Yurok Tribe’s Constitution presents a grave threat our Tribe’s ability to carry out fundamental sovereign rights related to our shared ancestral lands, and it must be removed. We also request

that the bill be modified to expressly reference and protect the rights of all tribes of historic Yurok origin.

## **Section 2. Definitions.**

Insert a new paragraph (6) defining the term “tribe of historic Yurok origin” to mean the Big Lagoon Rancheria, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, the Resighini Rancheria, and the Yurok Tribe. This definition is consistent with the Settlement Act and the Senate Report.

## **Section 3. Land to be Held in Trust.**

This section provides for the transfer of 1,229 acres of National Forest land located near the Yurok Reservation, and known as the Yurok Experimental Forest, to be held in trust for the benefit of the Yurok Tribe, and we have no objections to this section.

## **Section 4. Yurok Reservation Boundary Adjustment.**

Section 4 of H.R. 1312 would expand the Yurok Reservation beyond the new trust land acquisition mandated in section 3 to include a large but vaguely defined area that includes National Forest System Land and National Park System Land. We do not object to the expansion of the reservation to include adjacent lands, but the map of the Revised Yurok Reservation Boundary prepared in 2017 (see Exhibit J) does not provide sufficient detail to identify the specific lands that would be included in the revised Reservation. Because the Reservation would be expanded to include National Forest and National Park lands, which will continue to be managed by the federal agencies, we request that the bill guaranty the right of other Tribes, and their members, to be able to continue to access and use those lands in accordance with federal law.

## **Section 5. Tribal-Federal Partnerships for Federal Land and Resource Management.**

Subsections 5(a) – (d). These subsections would provide that the Yurok Tribe at its option may act as a joint lead agency in accordance with a Memorandum of Understanding with regard to any major federal action on federal land within the revised Yurok Reservation. The Trinidad Rancheria does not oppose this provision but requests a clarification that the lead Federal agency shall not be required to reconcile its proposed action with a plan or environmental requirement of the Yurok Tribe that restricts the right of a tribal member of another tribe to access and use the subject Federal land or the resources located thereon in accordance with applicable federal law.

Subsection (e) (Cooperative Agreements with the Yurok Tribe). This subsection includes four paragraphs with significantly different provisions and implications.

Paragraph (1). It would require the Redwood National Park to enter cooperative agreements, but it is not limited to portions of the Park within the revised Yurok Reservation. We have proposed an amendment to limit the scope of this paragraph to Federal Lands within the revised Yurok Reservation. Alternatively, it has been proposed that this subsection be replaced with a new section that would establish a Tribal Secretarial Advisory Committee. As we understand it, the Advisory Committee would consist of representatives from tribes located in the region, to advise the Secretary and agencies on matters related to cooperative and co-management agreements between tribes and the agencies, protection and traditional use of tribal cultural and sacred sites, land and resource management, NEPA reviews, and self-governance agreements. Although there is much that would need to be worked out, such a proposal has merit. The establishment of such a Tribal Secretarial Advisory Committee may provide a positive way to address these issues in a respectful and productive manner. We note that the California Fish and Game Commission has established a Native American Advisory Committee to advise the Commission on such matters and that the Advisory Committee has been working successfully with the Commission.

Paragraph (2). It appears that this paragraph may require the U.S. Forest Service to enter into cooperative agreements for U.S. Forest lands generally, and at a minimum for the “Yurok Experimental Forest.” If this provision is not limited to National Forest lands located within the Yurok Reservation, we recommend that this paragraph be replaced with the Tribal Secretarial Advisory Committee proposal discussed above.

Paragraph (3). This paragraph would require the National Park Service to enter into a cooperative agreement treating the Yurok Tribe as an agency for the purposes of National Park System generally, and we recommend that this provision also be made applicable to other tribes or that it be replaced with the Tribal Secretarial Advisory Committee proposal discussed above.

Paragraph (4). This paragraph raises the most significant concern. It would grant congressional confirmation on a Cooperative Agreement executed in 2006 between the Yurok Tribe and the Department of the Interior. It is not clear why Congress should confirm an 11-year old agreement, but, based on our review of the terms and conditions of the agreement, it raises substantial concerns. In particular, the agreement applies to ill-defined lands “both within the Yurok Reservation as well as the [Klamath Basin], upstream river, and Pacific Ocean resources subject to the jurisdiction or authorities of various [Department of the Interior (DOI)] agencies and bureaus.” It is not clear to what lands or resources this agreement is intended to apply, but based on the Yurok Tribe’s Constitution, we are concerned that the Yurok Tribe interprets this agreement to apply to the entire ancestral territory of the Yurok People, which is the shared homeland of all tribes of historic Yurok origin. We are concerned the Yurok Tribe interprets this agreement to grant the Yurok Tribe a unique right to coordinate and collaborate with agencies of

the DOI not available to other tribes with lands and interests located in this broad region. Congressional “confirmation” of this ambiguous agreement is an invitation to litigation. We request that Congressional confirmation and Secretarial authorization to “effectuate the agreement” be stricken, and that this section be revised to direct the Secretary to enter into cooperative agreements with all tribes of historic Yurok origin and other tribes within the defined region for the purposes set out in this paragraph.

Subsection (f) (Self-Governance Agreements).

This provision would require the Department of the Interior to enter into a self-governance agreement under the Indian Self-Determination and Education Assistance Act (“ISDEAA”) with the Yurok Tribe for programs, functions, services and activities carried out by the National Park Service on Federal land within the revised Yurok Rancheria. Because the Yurok Tribe has argued in several forums that members of other tribes of historic Yurok origin, and their members, have no right or interest in their traditional ancestral lands and culture, it is important that our members rights to access and use these federally management lands be protected. We request that the bill require that any such ISDEAA agreement include provisions ensuring the right of any individual, who is the member of another tribe, to access and use the Federal land subject to the agreement in accordance with Federal law.

**Section 6. Yurok Scenic Byway Designation**

The Trinidad Rancheria requests that this section be amended to limit the scope of the designation to portions of the Bald Hill Road located within the revised Yurok Reservation.

**Section 7. Confirmation of Governing Body and Documents.**

This section would ratify and confirm the governing documents of the Yurok Tribe. Congressional ratification and confirmation of a federally recognized tribe’s governing documents is a highly unusual action and no need or justification for this extraordinary measure has been put forth.

As discussed above, the Yurok Tribe’s Constitution defines the Yurok Tribe’s territory to include on the entire shared ancestral territory of the Yurok People, and it asserts the jurisdiction of the Yurok Tribe over all people, lands, waters, and resources located within that broad regional area shared by several other tribes of historic Yurok origin and overlapping with other tribes in the North Coast region. Although Section 7 provides that the ratified and confirmed governing document “shall only have effect within the revised Yurok Reservation,” it is not clear whether that provision would affect the Yurok Tribe’s claim of territory set forth in Article I, Sections 1 and 2 even though it may affect their right to exercise jurisdiction over the entire territory. What is clear, is that the Yurok Tribe will assert that ratification of the Yurok Tribe’s



Constitution gives the force of federal law to their claim that all the ancestral territory of the Yurok People is within the territory of the Yurok Tribe, alone, and that the other tribes of historic Yurok origin have no rights or interest in this territory or its natural and cultural resources. This presents a grave threat to the Trinidad Rancheria and the other tribes of historic Yurok origin, and will result in costly and protracted litigation involving the tribes, and Federal, State, and local governments.

The Congressional Research Service (CRS), in a May 16, 2017 memorandum to Representative Huffman address analyzed whether congressional ratification of the Yurok Tribe's Constitution could delegate authority over non-Indian land and non-Indian people (see Exhibit K to this testimony). Unfortunately, CRS was not asked to consider the effect of ratification could have on other tribes of historic Yurok origin located within the shared ancestral territory of the Yurok People. However, the CRS analysis raises the concern that, with congressional ratification of the definition of the Yurok Tribe's territory could acquire the force of federal law. It also appears that the CRS was not asked to consider the effect that ratification of the Yurok Tribe's Constitution and the mandated agreements between the Yurok Tribe and the U.S. Forest Service and the National Park Service could have on the federal agencies' management of National Forest and National Park lands.

For the foregoing reasons, it is imperative that Section 7 of H.R. 1312 be stricken. As discussed below, the limitations in Sections 8 and 9 of the bill do not adequately address the concerns raised by Section 7.

#### **Section 8. No Delegation of Federal Authority Over Non-Tribal Land or People.**

Although Section 8 states that that the Act shall not be construed as a delegation of Federal or other authority to the Tribe "over or related to interests in land that are not within the revised Yurok Reservation," it does not directly address the concerns raised by the effect that congressional ratification of the definition of the Tribe's territory could have on the Trinidad Rancheria and other tribes of historic Yurok origin. Additionally, despite the reference to "people" in the section heading, the provision does not address or protect the rights of people, such as the members of other tribes of historic Yurok ancestry to their cultural ancestry and heritage. We request that this section be amended to expressly state that the nothing in the Act shall be construed to affect or diminish the rights and interests that other tribes of historic Yurok origin hold with regard to the natural and cultural resources located within the ancestral territory of the Yurok People.

#### **Section 9. No Additional Authority or Rights.**

Section 9 provides that the Act shall not increase, diminish or otherwise affect the rights, privileges, or authorities of any federally recognized Indian tribe in relation to any other

federally recognized tribe. Unfortunately, saying it is so, does not make it so. Notwithstanding this purported limitation, the bill would in fact affect the rights, privileges and authorities of a number of tribes located in the North Coast in relation to the Yurok Tribe because it grants the Yurok Tribe important rights with regard to their relationship to Federal agencies with regard to the management of lands and resources located within a shared ancestral territory, which the bill does not grant to the other similarly situated tribes.

### **Conclusion**

For the reasons set forth in this testimony, the Trinidad Rancheria opposes H.R. 1312 in its current form, and we respectfully request that the Committee on Natural Resources withhold action on this bill until the concerns of the Trinidad Rancheria and those of the six other neighboring tribes who signed the letter opposing this bill, are resolved. As discussed above, the Trinidad Rancheria does not oppose significant aspects of the bill, but as it is currently drafted, but the bill does not treat similarly situated tribes equally and congressional ratification of the Yurok Tribe's Constitution would present a grave threat to the Trinidad Rancheria and other tribes of historic Yurok origin. The Trinidad Rancheria, however, stands ready to work with the Committee, Representative Huffman, the Yurok Tribe and other interested tribes to resolve these concerns.

