CALIFORNIA INDIAN LAW ASSOCIATION'S SPRING 2019 LEGAL

# JOURNAL

ANNOUNCING THE 2019 CILA SCHOLARSHIP WINNERS

$15,000.00 AWARDED

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PRESERVING THE CULTURAL LANDSCAPE / RESERVED WATER RIGHTS AFTER TERMINATION / HOW BRACKEEN V BERNHART MAY IMPACT CALIFORNIA ICWA LAW / LEGISLATION UPDATE / + MORE INSIDE

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*ON THE COVER*
*2018 CILA Excellence in California Indian Law Honoree Jerome Levine pictured with CILA Members Carole Goldberg, Jonathan D. Varat Distinguished Professor of Law Emerita at UCLA Law and Javier Kinney, Yurok Tribe Executive Director, at the 18th Annual CILA Conference at Pechanga Resort & Casino.*





CILA LEGAL JOURNAL SUBMISSIONS
CILA relies on submissions from CILA members and nonmembers that are of interest to readers. Questions about submissions or want to discuss articles? Email calindianlaw@gmail.com.

# *WELCOME FROM THE PRESIDENT*

*Osiyo* and welcome to the 2019 California Indian Law Association (CILA) Legal Journal. CILA continues to strive to provide our members with information on current and relevant developments in Indian law. As part of this work, we are proud to provide publishing opportunities for CILA members and the Native community. I would like to extend my appreciation to the authors of this edition for their time and excellent work and to the CILA Board of Directors for their work ushering this edition through the publication process

CILA has developed a three-year strategic plan focusing on four specific goals to continue and honor CILA's mission to serve as the representative of the Indian law legal profession in California. These goals include: (1) improve the law school to bench pipeline to encourage more Native people to enter the legal profession; (2) improve CILA's ability to serve as a resource and to promote public policies on behalf of Native attorneys, people, and tribes; (3) to continue to organize CLE events and opportunities to network and build a California Indian law community; and (4) strengthen our fundraising efforts to support CILA's goals and programs.

**Goal #1 Building the Pipeline:**

The CILA Board of Directors has continued our work to provide scholarships for Native students to help fund LSAT preparation courses, law school expenses, and California Bar preparation course. This year, we have received a generous grant from California ChangeLawyers to develop a new program in collaboration with the National Native American Bar Association (NNABA). This inaugural two-day summer program in Malibu, California is designed to guide Native undergraduate students through the law school application process, the LSAT, and to help "de-mystify" the legal profession. We are very excited to announce this new program, if you would like to support our work as a donor, student mentor, or volunteer, please reach out!

**Goal #2 Improving Policy:**

Our recent policy efforts have focused on protecting our children and tribal sovereignty by working to protect the Indian Child Welfare Act (ICWA). CILA joined the amicus brief in support of the appellants in the *Brackeen v. Bernhardt* case before the 5th Circuit US Court of Appeals arguing to overturn the district court ruling and to uphold ICWA to "promote the best interests of Indian children and to protect the rights of parents, while balancing the jurisdiction and political interests of tribes and states." CILA has also sent letters to the California Legislature in support of California AB 685, requiring the State Bar of California to administer grants to qualified organizations to provide legal services to Indian tribes in child welfare matters, and AB 686, to require a rule of court to authorize the use of telephonic or other remote access by an Indian child's tribe in ICWA proceedings.

**Goal #3 Supporting Professional Development:**

Each year, CILA holds our Annual Conference dedicated to the discussion of legal topics of vital interest to California Indian tribes. We are proud to announce the 2019 Annual Conference & Gala will be held at Graton Resort & Casino on October 3rd and 4th, 2019. We hope you can join us! Many thanks to the Federated Indians of Graton Rancheria for hosting the Conference and for their generous support. CILA will also be hosting a CLE webinar with a panel of judges who will talk with CILA members and Native law students about their path to the bench and to provide advice for those interested in pursuing judicial appointments.

**Goal #4 Sustainability:**

CILA is committed to the sustainability of our many programs and advocacy efforts. We welcome support from our members, Native people, and the larger Indian law community. If you are interested in donating, please visit our website at **www.calindianlaw.org** or you can reach us at **calindianlaw@gmail.com**. Your support will help us continue to pursue our goals and support our mission to serve as the representative of the Indian law legal profession in California.

We hope you enjoy this edition of the CILA Legal Journal!

Sincerely,

Geneva E.B. Thompson
2018-2019 President
California Indian Law Association

# *ICWA UNDER ATTACK: AN UPDATE ON THE BRACKEEN V. BERNHARDT LITIGATION*

DELIA M. SHARPE

The Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901–1963, a decades old federal law widely considered the gold standard in child welfare, is under attack by right-wing anti-tribal interests. Five tribes, Cherokee Nation, Morongo Band of Mission Indians, Oneida Nation, Quinault Nation, and now the Navajo Nation, intervened in the case and are now seeking to reverse the decision of Northern District of Texas Judge Reed O'Conner. The District Court judge found the 40-year old statute unconstitutional on several grounds, but namely equal protection grounds, claiming that ICWA is a race-based statute. *Brackeen et al. v. Zinke*, 4:17-CV-00868 (N.D. Texas, Oct. 4, 2018).

The Tribes and the United States filed notices of appeal with the U.S. Court of Appeals for the Fifth Circuit in November 2018. Showing the nearly universal support ICWA has in Indian Country, 325 tribes and 57 tribal organizations signed the pro-ICWA tribal amicus brief submitted to the Fifth Circuit to support the appellants and defend ICWA. 21 state attorneys general, led by California Attorney General Xavier Becerra, wrote a separate amicus brief supporting the tribes, along with a bipartisan group of federal lawmakers.

ICWA's purpose is to "protect the best interests of Indian children and promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards." 25 U.S.C. 1902. In passing the ICWA, Congress specifically found that Indian children are best served by placement, if possible, in homes which keep them connected to their extended family, their tribes and their cultural heritage.

*"But those of us who practice in the field know the widespread success ICWA has had in keeping children connected to their tribal communities, and will not stop fighting these unfounded attacks."*

This position is supported by numerous child welfare organizations including the National CASA Association, the National Association of Social Workers, Casey Family Programs and the Annie E. Casey Foundation. *See* Brief of Casey Family Programs & Child Welfare League of America, et al. as Amici Curiae Supporting Respondent, *Adoptive Couple v. Baby Girl*, supra ("Amici are united in their view that, in the Indian Child Welfare Act, Congress adopted the gold standard for child welfare policies and practices that should be afforded to all children."). ICWA works to preserve families and keep Indian children connected to their communities when they cannot safely return home. These are foundational principles to good social work practice and are embedded in many other child welfare laws.

Importantly, in response to a motion from the intervening tribes, the Fifth Circuit Court of Appeals stayed Judge O'Conner's rogue decision. Even if the stay had not been granted, the Texas decision does not apply for California tribes and out-of-state tribes with children in California courts. Existing statutes incorporating ICWA into state law remain valid, as does recent California legislation such as Assembly Bill 3176 (R-Waldron) incorporating the Bureau of Indian Affairs' ICWA regulations into state law.

The attacks on ICWA are not new – they are part of an ongoing national campaign by the Goldwater Institute, a conservative organization based in Arizona, and others, which for several years has pursued anti-ICWA litigation in various courts across the country. ICWA has survived these challenges, including a case recently before the U.S. Supreme Court where the court declined to rule ICWA unconstitutional. *Adoptive Couple v. Baby Girl*, 570 U.S. 637 (2013).

Despite this history, the decision from the Northern District of Texas is especially disturbing because it characterizes ICWA as a race-based statute in violation of the equal protection clause, creating the potential for this decision to have implications well beyond child welfare to threaten tribal sovereignty. The holding that ICWA is a race-based statute, rather than a statute based on a parent's or child's political status as a member of a federally recognized tribe, could open the door for all federal legislation involving Indian tribes to be undone. Indian Health Services and similar programs could disappear.

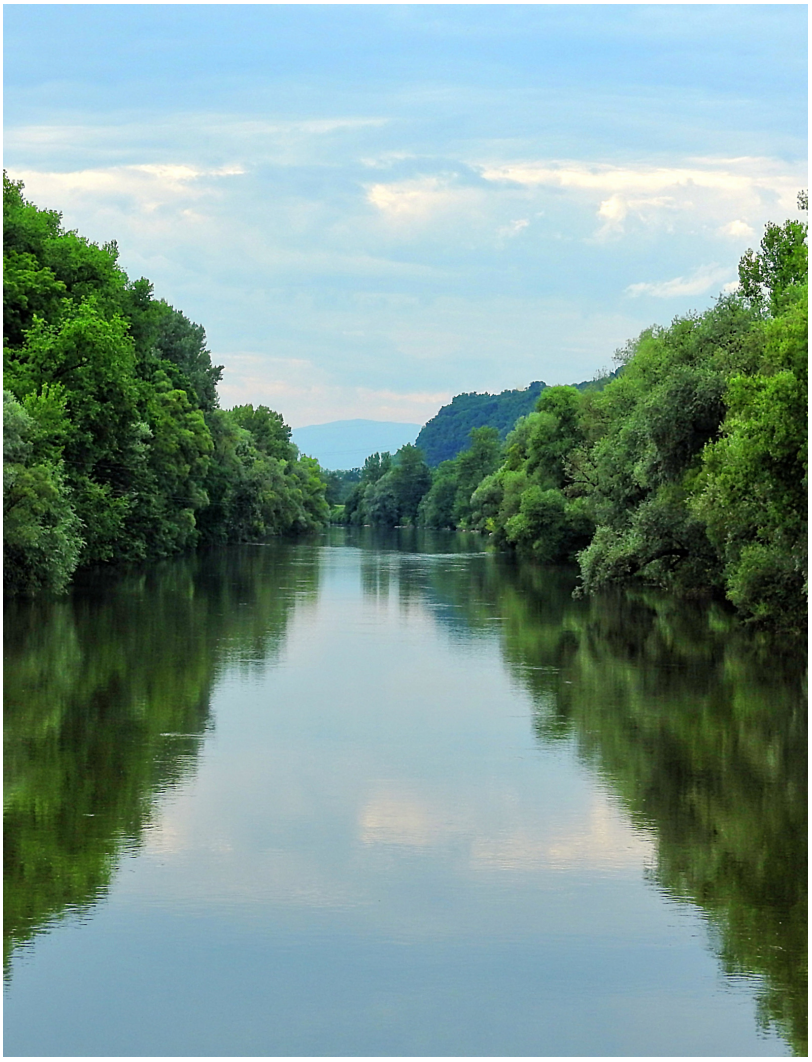
This case has created widespread and overwhelming support for ICWA, as a statute, that tribes know, protects their children and, indeed, their very existence. The California Tribal Families Coalition urges all tribes and child welfare advocates to share stories of cases when ICWA has made a positive difference for Indian families.These stories about the benefits for Indian children to retain their cultural identity and heritage seldom garner media attention, as those chronicling conflict over the law's application. But those of us who practice in the field know the widespread success ICWA has had in keeping children connected to their tribal communities, and will not stop fighting these unfounded attacks.

*Delia M. Sharpe is the Executive Director at the California Tribal Families Coalition, a non-profit organization dedicated to protecting the health, safety and welfare of tribal children and families, with a focus on increasing compliance with the Indian Child Welfare Act.*

# *SURVIVAL OF INDIAN RESERVED WATER RIGHTS FOLLOWING TERMINATION IN CALIFORNIA*

BY ERICA COSTA

The history of Native tribes in California is unique for many reasons, as are the water rights of California tribes. This article will focus on tribal reserved water rights and how the California Rancheria Act affected those rights. The scope of this article is limited to federally recognized tribes in California that were terminated by the California Rancheria Act and termination's effect on tribal surface water rights.



The priority date and quantification of these reserved water rights and the issue of groundwater rights are beyond the scope of this article.

In 1958, Congress passed the California Rancheria Termination Act, Pub. L. 85-671, 72 Stat. 619 (1958), as amended by the Act of August 11, 1964, 78 Stat. 390 ("Rancheria Act" or "Act"). The purpose of the Act was to end, or "terminate," the special trust relationship between the federal government and tribes listed in the Act. House Concurrent Resolution 108, issued in 1953, set the tone for the federal government's approach to termination: "it is the policy of Congress, *as rapidly as possible*, to make the Indians within territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship." H.R. Con. Res. 108, 83rd Cong., 1st Sess., 67 Stat. B132 (1953) (emphasis added).

*The effects of termination are widespread and deeply felt by many tribes in California.*

Section 1 of the Rancheria Act provided that the lands of forty-one named tribes were to be removed from trust status and distributed to individual tribal members to be owned individually in fee. Pub. L. 85-671, 72 Stat. 619 §1. The tribe or the Secretary of Interior, after consultation with the tribe, was to prepare a distribution plan for the land and assets of each rancheria. *Id*. §2(a). The Secretary was also required to improve or construct roads and install or rehabilitate irrigation, sanitation, and domestic water systems. *Id*. §3(c)-(b). However, like many of the federal government's promises to Native communities, many of those promises for improvements and construction were never fulfilled.

The Act was lauded by its proponents as a means to "liberate" Native people from the oversight of the federal government. Actually, it was part of a renewed national effort to dismantle tribal governments, destroy tribal land bases and forcibly assimilate Native people into "mainstream" American culture. The goal was to terminate the sovereignty of tribes, the federal government's trusteeship over Indian reservations and the financial responsibilities of that trusteeship. The Act also applied state law to Native communities and on what was once tribally-owned land. No longer would Native people of these terminated tribes to be considered "tribal members." Nor would the federal government be required to provide them healthcare, education, housing, or other services based on their tribal status.

The federal government began abandoning its nation-wide termination policy in the 1970s. *See* Cohen's Handbook of Federal Indian Law § 1.07 (Nell Jessup Newton ed., 2012). Many of the forty-one terminated tribes have been restored through Congressional Acts and federal court decisions. See Pub. L. No. 106-568, 114 Stat. 2939 (2000) (Congressional Act restoring the Federated Indians of Graton Rancheria); *Tillie Hardwick et al. v. United States*, Civil No. C-79-1910-SW (N.D. Cal. 1983) (federal court case in which the United States agreed to settle litigation that challenged the purported termination of seventeen California Rancheria); *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C-86-3660 (N.D. Cal. March 22, 1991) (federal district court stipulated judgment restoring four tribes to their status as a federally recognized Indian tribe); *Duncan v. Andrus*, 517 F. Supp. 1 (1977) (federal district court decision restoring the Robinson Rancheria Pomo Indians). Some terminated tribes have yet to have their federal trust status restored.

Even after they have been restored, many tribes still feel the impacts of termination. Although their trust relationship with the federal government has been reinstated, many tribes lack resources to fully realize sovereign relations with the federal government; others have been unable to reacquire lands lost during termination. See Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416, Advisory Council on California Indian Policy (Sept. 1997).

Another outstanding issue relates to water rights. This issue is important because despite the increase in rainfall in recent years, extremes of climate and therefore extremes of drought will likely be more common in the future. Further, the Ninth Circuit has not addressed the *Winters* reserved surface water rights of terminated tribes in many years. Amid climate change and uncertainty about water available in the future, the status of tribal water rights in California is both timely and significant. What effect, if any, did the termination and later restoration of these California tribes have on their reserved water rights? In *Winters v. United States*, 207 U.S. 564 (1908), the United States Supreme Court ruled that the reservation of land for Indians by the federal government may also include by implication the right to sufficient amounts of water to carry out the purposes for which the reservation was set aside. Termination raised the question, however: if *Winters* reserved rights are based on the establishment of a reservation, does the termination of that reservation permanently and irrevocably terminate the tribe's reserved water rights? A careful analysis of the Rancheria Act and analogous case law involving similar legislation strongly suggests that the answer is no. Absent explicit congressional direction to the contrary, the water rights reserved to tribes pursuant to the *Winters* doctrine survived termination and were revived when the tribes themselves were restored.

First, Congress explicitly protected tribal federal reserved water rights in the Rancheria Act. Specifically, the Act states in part, "Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to his Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based upon State law…" Pub. L. 85-671, 72 Stat. 619, § 4.

Under the Indian cannons of construction, statutes are to be construed in favor of Indians. Ambiguities are resolved in their favor and in favor of tribal sovereign rights, unless Congress clearly intended to limit such rights. *See Yakima County v. Yakima Indian Nation*, 502 U.S. 251, 258, 269 (1992).

Viewed through this lens, the Rancheria Act did not express a congressional intent to terminate tribal federal reserved water rights. In the Rancheria Act, Congress clarified that "nothing in [the Act] shall abrogate any water rights that exists by virtue of the laws of the United States." Pub. L. 85-671, 72 Stat. 619, § 4. Indian reserved water rights are federal water rights defined primarily by federal common law and by definition "exist" at the time of a reservation's creation. *See Colville Confederated Tribes v. Walton*, 752 F.2d 397, 400 (9th Cir. 1985). For these reasons they should be considered "rights that exist[ed] by virtue of the laws of the United States" at the time of the Rancheria Act's passage. The Act is thus best read to preserve Indian reserved water rights.

Case law also suggests that water rights reserved in the establishment of a California rancheria survived termination. In *United States v. Adair*, the Ninth Circuit determined that the water rights reserved to a tribe in Oregon were not abrogated by legislation specifically terminating that tribe. 723 F.2d at 1412. The Klamath Reservation in south-central Oregon was created when the Klamath Tribe entered into a treaty with the United States in 1864. Article I of the treaty explicitly reserved the Klamath's exclusive right to hunt, fish, and gather on their reservation. In 1954, Congress passed the Klamath Termination Act, Act of August 13, 1954 c. 732, §1, 68 Stat. 718, which terminated the original Klamath Reservation. The Klamath Tribe was restored in 1986 through Congressional legislation. *See* Klamath Indian Tribe Restoration Act, Pub. L. 99-398, 100 Stat. 849 (1986). Although the Klamath Tribe no longer held any of its former reservation, the Court held that the creation of the Klamath Reservation impliedly reserved water rights for the purpose of maintaining the tribe's treaty right to hunt and fish on reservation lands. *Id*. at 1410. The Court also held that because the Klamath Termination Act expressly provided that "[n]othing in [the Act] shall abrogate any water rights of the tribe and its members," Congress had explicitly protected tribal water rights from termination. *Id*. at 1412. The absence of treaties in California does not undermine the applicability of this case to California tribal water rights. *See Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist*., 849 F.3d 1262, 1269 (9th Cir.) (applying *Adair* in discussion of purpose of creating California reservation); *see also Colville Confederated Tribes v. Walton,* 752 F.2d 397, 400 (9th Cir. 1985) (applying *Adair* where Colville Reservation was created by Executive Order).

The effects of termination are widespread and deeply felt by many tribes in California. While many tribes work to reacquire lands lost, others work to regain recognition and restore their federal trust relationship. The language in the Rancheria Act and the Ninth Circuit's analysis in *Adair*, taken together, strongly suggests that the Rancheria Act's termination of California tribes did not extinguish those tribes' federal Indian reserved water rights. Although establishing the continued existence of a reserved water right is only the first step in securing the water tribes need and are legally entitled to, it is a critical first step toward righting many of termination's wrongs.

*Erica Costa is a descendant of the Sherwood Valley Band of Pomo Indians and Round Valley Indian Tribes and is an associate attorney at the law firm of Berkey Williams LLP. She is a graduate of UCLA School of Law, where she received her specialization in Critical Race Studies with an emphasis on Native American rights.*

# SCHOLARSHIP ANNOUNCEMENT

CILA awards $15,000 to three Native law students who plan to practice law in California

**JANET BILL**
PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS
2019 CILA SCHOLARSHIP RECIPIENT

This year, through a generous donation by the San Manuel Band of Mission Indians, CILA was proud to offer two $5,000 scholarships to current Native law students to assist with law school expenses. CILA is proud to announce the recipients of the 2019 CILA Native Law Student Scholarships, Janet Bill (Sandra Day O'Connor College of Law, Arizona State University), and Danikka Huss (James E. Rogers College of Law, University of Arizona).

For the past two years, and also this year, CILA has offered a 3L Diversity Scholarship through a partnership with the California ChangeLawyers Foundation (formerly, the California Bar Foundation) to assist with expenses for one graduating Native law student who plans to take the California Bar Exam. CILA is proud to announce the recipient of the $5,000 2019 3L Diversity Scholarship, Alyssa Acuña (California Western School of Law).

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| **SB 854:** Development of California Indian Heritage Center – ENACTED 6/27/2018. | Clarifies that it is the intent of the Legislature that the department develop a California Indian Heritage Center for cultural preservation, learning and exchange, land stewardship, and a place to engage all visitors in celebrating the living cultures of California tribes. The bill appropriated $100,000,000 from the Natural Resources and Parks Preservation Fund for the design and construction of the center. |
| **AB 2836:** Remains and Artifacts: University of California Museums and Campuses; Repatriation Policies – ENACTED 1/1/2019 | Requires the regents, or their designee, as a condition for using state funds to handle and maintain Native American human remains and cultural items, to establish and support a system wide Native American Graves Protection and Repatriation Act. |
| **AB 2849:** Watershed Improvements: Tribal Organizations – ENACTED 1/1/2019 | Establishes the Sierra Nevada Watershed Improvement Program and defines "tribal organization" as an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe and either recognized by the US or listed on the contact list maintained by the Native American Heritage Commission as a California Native American tribe, or both. |
| **AB 1817:** Committee on Budget; State government – ENACTED 6/27/2018 | Requires the Department of Finance ("DOF"), in consultation with the California Gambling Control Commission ("CGCC"), to determine if total revenues estimated for the Indian Gaming Special Distribution Fund in the current fiscal year are anticipated to exceed estimated expenditures, transfers, reasonable reserves, or other adjustments from the fund for the current fiscal year. If so, the bill requires the CGCC, to apply the amount of funds directed by the DOF to reduce, eliminate, satisfy, or partially satisfy, on a proportionate basis, the pro rata share payments required to be made to the fund by limited gaming tribes. |
| **AB 1811:** Child Welfare Services: Funding Allocation – ENACTED 6/27/2018 | To the extent that funding is expressly provided in the annual Budget Act for these purposes, this bill authorize an Indian tribe, consortium of tribes, or tribal organization, that is a party to an agreement, to be eligible to receive an allocation of child welfare services funds to assist in funding the startup costs associated with establishing a comprehensive child welfare services program. |
| **AB 1962:** Wards of the Courts of an Indian Tribe, Consortium of Tribes, or Tribal Organizations - ENACTED 1/1/2019 | Includes in that definition of "foster youth" a dependent child of a court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court in accordance with the tribe's law, provided the child also meet one of the descriptions of specified existing law describing when a child may be adjudged a dependent child of the juvenile court. This provision imposes additional duties on county superintendents of schools, school districts, and charter schools when submitting and reporting data relating to these pupils, the bill imposes a state-mandated local program. |
| **AB 3176:** Custody Notifications, Placement, etc. – ENACTED 1/1/2019 | Conforms the California Welfare and Institutions Code to the 2016 Bureau of Indian Affairs Indian Child Welfare Act regulations. |
| **AB 3047:** Pro Hac Vice Filing Fee Waivers – ENACTED 1/1/2019 | Waives fee and renewal fee for filing pro hac vice when applicant is an attorney representing a tribe in a child welfare matter under ICWA. |

**Recent Tribal-State Compact Ratifications**

**AB 1433:** Elk Valley Rancheria – ENACTED MAY 14, 2018

**AB 1965**: Big Valley Band of Pomo Indians of the Big Valley Rancheria – ENACTED SEPTEMBER 27, 2018

**AB 1966:** Habematolel Pomo of Upper Lake – ENACTED SEPTEMBER 27, 2018

**AB 3262:** Santa Ynez Band of Mission Indians – ENACTED SEPTEMBER 27, 2018

**SB 1051**: La Jolla Band of Luiseño Indians; Mechoopda Indian Tribe of Chico Rancheria; San Pasqual Band of Mission Indians; Torres-Martinez Desert Cahuilla Indians; and the Twenty-Nine Palms Band of Mission Indians – ENACTED SEPTEMBER 27, 2018

# *ENHANCING SOVEREIGNTY THROUGH TRIBAL COURTS*

JOHN MILLER

On April 12, 2018, the Tribal Justice Project celebrated its official launch at the Martin Luther King, Jr. School of Law, University of California, Davis. The Tribal Justice Project is a collaborative effort with California tribal judges, lawyers, and leaders that seeks to enhance the capacity and sovereignty of tribes in California by providing culturally appropriate training for tribal judges and court personnel.

Since its launch, the Project has hosted two trainings for tribal court judges and tribal court personnel – one with the Yurok Tribe of Northern California and one with the San Manuel Band of Mission Indians. At each training – the first in June 2018 and the second in January 2019, Judge Christine Williams (Yurok), Chief Judge at the Shingle Springs Band of Miwok Indians Tribal Court, and Jennifer Leal (Washoe), the Project's Program Coordinator, provided original training to attendees, focusing on culturally appropriate was to rule and to administer tribal courts.

Additionally, in September 2018, the Tribal Justice Project hosted its first symposium entitled, "Enhancing Sovereignty through Tribal Courts" (the motto of the Project). The symposium drew over 125 members, making it one of the largest symposiums at the UC Davis School of Law. Attendees included tribal members, lawyers, academics, and students. Panels included a variety of topics, including the enforcement of tribal court orders, incorporation of culture into tribal courts, and Indian children and tribal courts. The highlight of the symposium was the attendance of several tribal court judges in Alaska, who presented a panel on tribal justice from a village perspective.

Most recently, the Tribal Justice Project has begun offering technical assistance to tribes in California. In doing so, the Project has created opportunities for law students and pre-law Native students alike to participate in the Project's


meaningful work. Moving forward, the Project plans to work with pre-law students to establish a pipeline for Native students to attend the UC Davis School of Law and to continue providing meaningful work through its trainings.

This year, the Tribal Justice Project will celebrate its one-year anniversary. A celebration in April 2019 will include a lecture, "A Review of Native American Identity in California," by Judge Williams, along with a post-lecture celebration. We look forward to what the second year will bring for the Program and its growing network of participants. Learn more at https://law.ucdavis.edu/centers/critical-race/tribal-justice/.

Previous page: (left to right) Alyssa Sanderson (UCD senior), AnaStacia Wright (2L), and Rose Calderon (UCD senior); top: opening remarks by Prof. Mary Louise Frampton, Director of the Aoki Center for Critical Race & Nation Studies, Tribal Justice Symposium; left: attendees at San Manuel training in San Manuel's Tribal Courtroom.

# *CASE ALERT: NINTH CIRCUIT AFFIRMS TRIBAL COURT JURISDICTION OVER TRIBE'S CLAIMS AGAINST NON-MEMBER FORMER EMPLOYEE*

BY JOHN HANEY

In *Knighton v. Cedarville Rancheria of Northern Paiute Indians*, et al., No. 17-15515, 2019 WL 1145150 (9th Cir., Mar. 13, 2019), the Ninth Circuit issued a decision favorable to tribal sovereignty in affirming that the tribal court of the Cedarville Rancheria of Northern Paiute Indians (the "Tribe") had jurisdiction over tort claims brought by the Tribe against a non-member former employee of the Tribe.

The Ninth Circuit held that the tribal court had jurisdiction over the non-member former employee pursuant to the Tribe's sovereign powers of exclusion. The Ninth Circuit also found the tribal court had jurisdiction, separate and apart from its exclusionary powers, under the framework for tribal civil regulatory jurisdiction over nonmembers as set forth in *Montana v. United States*, 450 U.S. 544 (1981).

**Background and Procedural History**

In *Knighton*, the Tribe brought a lawsuit in tribal court against a non-member former employee, and two entity defendants, related to alleged acts by the former employee while she served as the tribal administrator. The claims arose from allegations that the former employee (1) improperly manipulated policies to provide the former employee's salary, fringe benefits, and pensions, (2) improperly invested tribal funds leading to over a million dollar loss for the Tribe, (3) provided misinformation to the Tribe which led to the Tribe's purchase of real estate for substantially more than market value, and (4) attempted to enter into financial agreements without authorization or tribal sovereign immunity waivers. The claims were based on conduct regulated via the Tribe's personnel manual which applied to the tribal administrator.

Knighton filed a motion to dismiss the lawsuit in tribal court, asserting that the tribal court lacked subject matter jurisdiction. The tribal court found that the Tribe had subject matter jurisdiction under the so-called "*Montana* exceptions", i.e., tribes may regulate activities of nonmembers who enter consensual relationships with tribe or its members; and tribes may exercise civil authority over conduct of nonmembers which affect the political integrity, economic security, and health or welfare of the tribe. The tribal court found that the former employee entered into a consensual relationship with the Tribe through her employment with the Tribe, and also that the former employee's alleged conduct threatened or had a direct effect on the political integrity, economic security, and health and welfare of the Tribe.

The Tribe's court of appeals affirmed as to jurisdiction, but remanded on an unrelated issue as to another entity defendant. Thereafter, the parties stipulated to stay the lawsuit because the former employee sought to challenge the tribal court's jurisdiction in federal court. The former employee filed a lawsuit in federal court seeking, inter alia, declaratory relief that the tribal court lacked jurisdiction, and an injunction against further proceedings in the tribal court. The Tribe filed a motion to dismiss, which the district court granted, finding that the tribal court had jurisdiction over the Tribe's claims. The former employee appealed to the Ninth Circuit.

**The Holding**

The Ninth Circuit held that the tribal court has jurisdiction over the Tribe's claims under (1) the Tribe's sovereign power to exclude nonmembers from tribal land, as well as under (2) the framework for tribal civil regulatory jurisdiction over nonmembers under both of the *Montana* exceptions.

The Court explained that under its precedent, "a tribe's inherent sovereign power to exclude nonmembers from tribal land provides an independent basis upon which a tribe may regulate the conduct of nonmembers on tribal land." *Knighton*, 2019 WL 1145150, at *7 (citation omitted).

The Court expressly clarified, however, that its prior precedent does "not exclude *Montana* as a source of tribal regulatory authority over nonmember conduct on tribal land", and the Court ultimately concluded that "the Tribe's authority to regulate [the former employee's] conduct derived **not only** from its sovereign power to exclude nonmembers from tribal lands, **but also from** its inherent sovereign power [under the *Montana* exceptions, i.e.,] to regular consensual relations with nonmembers . . . and to protect the political integrity, the economic security, [and] the health [and] welfare" of the Tribe. *Id*. at *7, 11 (emphasis added).

As to the first *Montana* exception, the Court explained that "the conduct that the Tribe seeks to regulate through tort law arises directly out of the consensual employment relationship between the Tribe and [the former employee]" and that she "should have reasonably anticipated that her conduct might 'trigger' tribal authority." *Id*. at *9. The Court found it particularly convincing that she had been employee for approximately sixteen years, and that the Tribe adopted a tribal constitution during her employment which provided that the "jurisdiction of [the Tribe] shall extend to land now within the confines of the [Rancheria] and to such other lands as may thereafter be added thereto." Id.

As to the second *Montana* exception, the Court reasoned that the former employee's alleged conduct was "of long duration and had a great impact on the Tribe" and that the "alleged harm to the Tribe caused by her conduct 'imperil[ed] the subsistence' of the tribal community. [citations omitted]". *Id*. The Court found that the alleged conduct "threatened the Tribe's very subsistence and that the Tribe therefore retains the inherent power under the second *Montana* exception to regulate that conduct." *Id*. at 10.

**Takeaway**

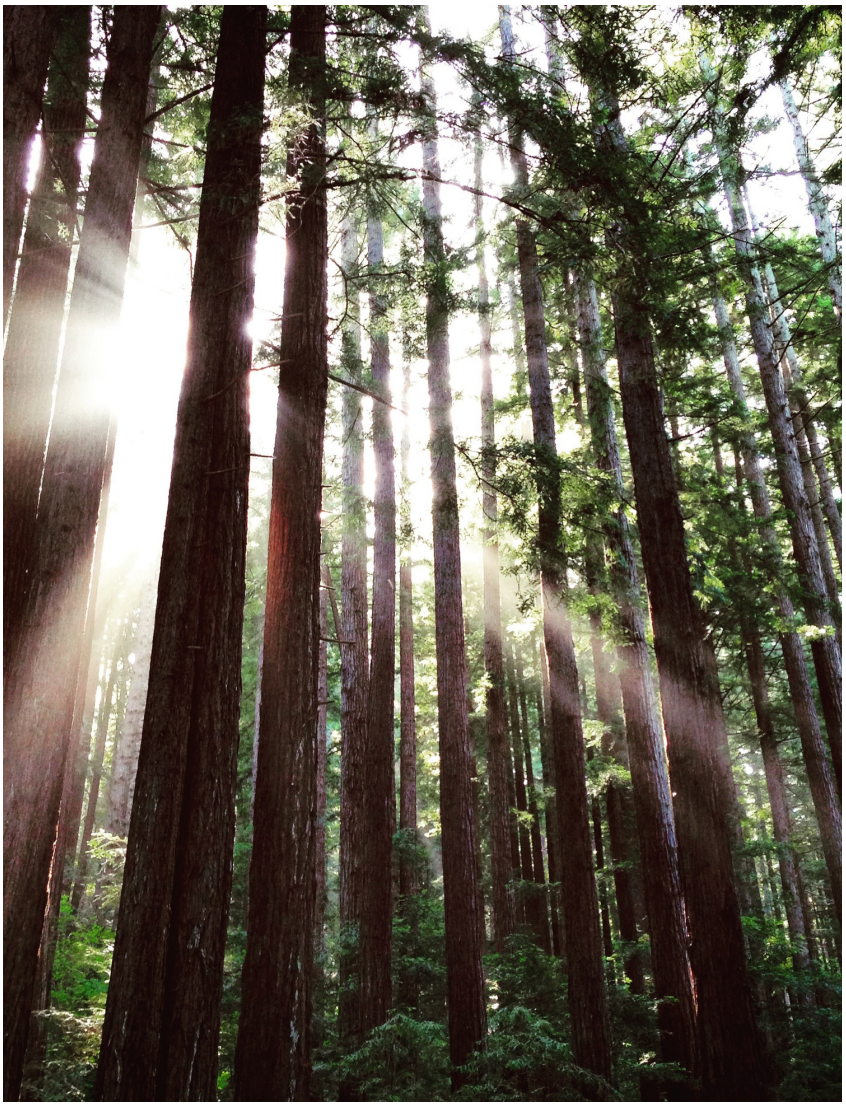
*Knighton* highlights tribes' sovereign exclusionary power as a source for regulating nonmember conduct on tribal land, and also clarifies that *Montana* provides a separate source for such regulation. *Knighton* also highlights the importance of labor and employment law in Indian Country given that the employment relationship between the former employee and the Tribe supported tribal court jurisdiction under the first *Montana* exception. *Knighton* is a welcome decision for tribes that seek to use their own tribal courts to redress harm caused by current or former employees.

*John H. Haney is an associate attorney at the law firm of Holland & Knight LLP in its Native American Law Group and its Labor, Employment, and Benefits Group.*

# *PROTECTING CULTURAL LANDSCAPES AND CULTURALLY SIGNIFICANT PLANT AND ANIMAL SPECIES*

GENEVA E.B. THOMPSON

For many Native nations, their traditional homelands support their cultural lifeways including being an ecosystem for culturally significant plants and animals. Certain areas with significant cultural value are designated as cultural landscapes and can include human made and natural features as well as culturally significant plants and animals. For these areas, the protection of cultural lifeways can include significant landscape features and the protection of plants and animals. Government-to-government consultation and, at times, litigation under the National Environmental Protection Act ("NEPA"), the National Historic Preservation Act ("NHPA"), and the California Environmental Protection Act ("CEQA") –for those within California- are essential legal tools for Native nations to demand the adoption of mitigation measures to protect their cultural landscapes and culturally significant animal and plants species within those landscapes during environmental review and approval of new projects from federal and state administrative agencies.



**National Environmental Protection Act and the National Historic Preservation Act**

For all major federal actions that may significantly affect the

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quality of the human environment, NEPA requires the preparation of an environmental impact statement ("EIS"). While NEPA does not specifically require government-to-government consultation with Native nations, the Council on Environmental Quality ("CEQ"), an executive division tasked with implementing NEPA, requires agencies to contact Native nations and provide opportunities to participate at various stages in the preparation of an environmental review. (CEQ Regulations §§1501.2 and 1501.7). Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, provides additional executive authority requiring lead federal agencies to consult with Native nations during environmental review. (Executive Order 13175, Nov., 6 2000). Government-to-government consultation or participation in public comment periods under NEPA is an opportunity for Native nations to express concerns about the impacts of a federal action will have to their cultural landscapes and the culturally significant species essential to their lifeways and to advocate for mitigation measures to be adopted to decrease or eliminate those harms. Participating in consultation or public comment periods is also essential to exhaust administrative remedies, which is judicially required if a nation hopes to file a law suit alleging harms to their cultural resources. (*McKart v. United States*, 395 U.S. 185, 193 (1969) (confirming that plaintiffs are not entitled to judicial relief until prescribed administrative remedies have been exhausted.)).

The National Historic Preservation Act ("NHPA"), is an essential legal tool for Native nations arguing for the protection of their cultural landscapes. (16 U.S.C. § 470 et seq.). Congress in 1966 enacted the NHPA with the express intent that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people." (16 U.S.C. § 470(b)(2)). Section 106 of the NHPA, similar to NEPA, mandates federal actors to consider the impacts of federal undertakings "on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register [of Historic Places]." (16 U.S.C. § 470f). These properties must also have; (1) "integrity of relationship," meaning it is still important to a living community, (2) "integrity of condition," as in, able to function in maintaining the community's culture; and (3) meet the criteria and standards for listing in the National Register of Historic Places ("NRHP"). (National Park Service 1998:11-12).

In its consideration, the federal government must consult with Native nations that attach religious and cultural significance to historic properties within the project area and that may be affected by the federal undertaking, even if such an area is outside of a Native nation's reservation boundaries. (16 U.S.C. §§ 800.2(c)(2)(ii)(iii), 800.3(f)(2), 800.4(a)(4), 800.5(c)(2)(iii), 800.6(a), 800.6(b)(2)). These consultations typically arise at the same time as the NEPA consultations and should be commenced early in the planning process. (36 C.F.R. § 800.2(c)(2)(ii)(A)). Government-to-government Section 106 consultations is the best opportunity for Native nations to alert the federal government of a project impacting cultural landscapes and the culturally significant species and to advocate for the adoption of mitigation measures that will limit or eliminate the harms to those resources.

During NEPA and NHPA consultations it is essential for Native nations to provide enough evidence to prove the cultural landscape and the culturally significant species meet the requirements of; (1) integrity of relationship, (2) integrity of condition; and (3) the criteria and standards for listing in the NRHP.

For many cultural landscapes and culturally significant species, oral testimony from cultural elders and practitioners and official government statements from Native nations are typically enough to prove (1) integrity of relationship, and (2) integrity of condition. For criteria three, Native nations will have to provide evidence that their cultural landscape and culturally significant species meet the NRHP definition of a district, site, building, structure, or object in order for mitigation measures to be adopted in an EIS and protected under the NHPA.

Most cultural landscapes and culturally significant species will fit under the NRHP definition of a "site." A historic property may be defined as a site when; "it was the location of a significant event or activity, regardless of whether the event or activity left any evidence of its occurrence. A culturally significant natural landscape may be classified as a site, as may the specific location where significant traditional events, activities, or cultural observances have taken place." (National Register Bulletin 38 at 11). Thus, many cultural landscapes including significant historical events can easily fit into this definition, like Wounded Knee Battlefield. Those landscapes that have significant cultural and historic value, but lack individual distinction, can still be deemed a traditional cultural property "if it represents or is an integral part of a larger entity of traditional cultural importance." (National Register Bulletin 38 at 14).

To illustrate this, Bulletin 38 provides the example of certain locations along the Shabaikai (the Russian River) which, for centuries, have high quality sedge roots needed for Pomo baskets. *Id*.

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Thus, while sedge grows in multiple areas and are indistinguishable from an untrained eye, the high quality sedge in certain sections of the River are representative of a larger entity of Pomo basketmaking and will qualify the area as a traditional cultural site under the NRHP. *Id.* The NRHP currently has sites listed because of their status as refuges for wildlife and their association with animals, including the Lower Klamath National Wildlife Refuge, Lake Merritt Wild Duck Refuge, and Pelican Island National Wildlife Refuge. (National Register of Historic Places, National Register Database and Research (Feb. 20, 2019) available at www.nps.gov/subjects/nationalregister/database-research.htm). Further, the Court in *Hatmaker v. Georgia DOT*, determined the Friendship Oak was eligible for the NRHP as a "site" because of its cultural significance to the community. (973 F. Supp. 1047, 1057 (M.D. Ga. 1995)).

A second and less clear avenue for the protection of culturally significant species is to argue the species themselves are an "object" under the NRHP criteria. An "object" is defined as a "material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment." (36 CFR Section 60.3(j)). Bulletin 38 clarifies "[a] natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use." (Bulletin 38 at 11).

The case *Okinawa Dugong v. Rumsfeld* found the dugongs, a culturally significant marine animal in Japan, were an object and considered a traditional cultural property under the NHPA. (543 F. Supp. 2d 1082, 1100 (2008)). It is important to note that this case relied on Section 402 applying the NHPA to federal agency actions outside of the United States and not Section 106 applying the NHPA to federal actions inside the United States. The Court did not see much of a distinction between the two sections, stating "Section 402 … is the international counterpart to section 106 governing domestic undertakings" and relying on judicial opinions, guidelines, promulgated regulations, and congressional opinions on section 106 to inform its ruling. (*Id*. at 1088). The fact that culturally significant species as a main feature of a cultural landscape or in of themselves can be eligible for listing under the NRHP provides a federal legal avenue for Native nations to advocate for the adoption of mitigation measures to protect their cultural landscapes and the culturally significant species within those landscapes.

**The California Environmental Quality Act**

Similar to NEPA and the NHPA, CEQA requires the California state and local lead agencies to conduct an environmental review to identify any significant environmental impacts associated with agency actions and to mitigate against those impacts. CEQA, as amended by AB 52 in 2014, requires lead agencies to seek and conduct government-to-government consultation with all California Native nations with traditional and cultural affiliations within a project's geographic area that have also requested the lead agency notify the nation on projects within areas with traditional and cultural affiliation. (Pub. Resources Code § 21080.3.1(b)). AB 52 also amended CEQA to include "Tribal Cultural Resources" as its own category for agency consideration during the environmental review process. (Pub. Resources Code § 21074(a)).

Tribal Cultural Resources include "sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe" and that are either included or determined to be eligible for inclusion in the California Register of Historical Resources ("CRHR") or in a local register of historical resources. Id.

The four criterion for eligibility as a historic resource under the CRHR include properties; (1) associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States; (2) associated with the lives of persons important to local, California or national history; (3) that embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values; and (4) that have yielded, or the potential to yield, information important to the prehistory or history of the local area, California or the nation. (Pub. Resources Code § 5024.1(c)).

It is important to note that CEQA specifically includes cultural landscapes in the definition of Tribal Cultural Resources and through successful consultation negotiations and litigation, Native nations can help strengthen the definition of cultural landscapes in CEQA to include those landscapes that may have culturally significant features and species which are indistinguishable from an untrained eye. Government-to-government consultation under CEQA is an opportunity to not only advocate for the protection of cultural landscapes, but to highlight the fact that culturally significant species are key features of those landscapes and should also be treated as Tribal Cultural Resources.

In conclusion, Native nations through consultation and, at times, litigation can use NEPA, the NHPA, and CEQA as legal tools to advocate for and enforce the adoption of mitigation measures to protect cultural landscapes and culturally significant animal and plant species within those landscapes.

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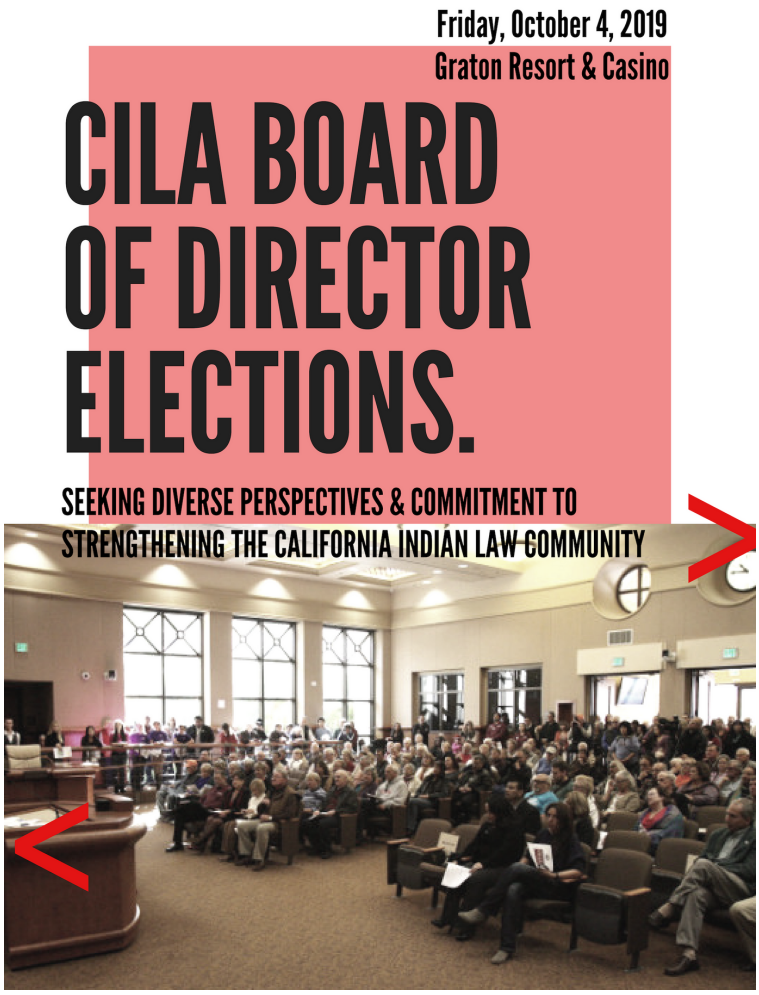

# *Thank you for Attending CILA's 18th Annual Conference and Gala at Pechanga Resort and Casino in 2018!*

## *Last Year's Agenda:*

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- **Public Law 280 & Tribal Law Enforcement** with Carole Goldberg, Bill Denke, and Howard Arnett
- **Increasing Native American Representation in Law School** with Lauren Van Schilfgaarde, Dwight K. Lomayesva, and Hon. Christine Williams
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# *A CASE THAT TELLS AN OLD AND FAMILIAR STORY*

## IN A 3-2-4 DECISION, U.S. SUPREME COURT RULES IN FAVOR OF YAKAMA NATION AND TRIBAL MEMBER BUSINESS

ANNA HOHAG

On March 18, 2019 the U.S. Supreme Court announced its decision in a closely watched treaty rights case out of Washington state. Perhaps not surprisingly, the judgment of the court was written by Justice Breyer and joined by Justice Sotomayor and Justice Kagan – ruling that the 1855 Treaty between the Yakama and the United States preempted a state fuel transportation tax on a tribal member business.

But perhaps what is surprising is the separate concurring opinion written by Justice Gorsuch and joined by Justice Ginsburg—also commonly referred to as "Notorious RBG." While Justice Ginsburg is known as the leader of the progressive wing on the Supreme Court, she does not have quite the same record or reputation when deciding Indian Law issues (let's not forget her opinion in City of Sherrill v. Oneida Indian Nation of New York). On the other side the of the concurring opinion is Justice Gorsuch – a justice recently appointed by President Trump and the only westerner sitting on the highest court. Although many didn't doubt his decent record deciding Indian law issues while he sat on the Tenth Circuit Court of Appeals, CO., I doubt many would have predicted a situation where Gorsuch and Ginsburg would be joined together in their own opinion.

The facts of the case are as follows. On June 9, 1855 the United States entered into a treaty with the Yakama Nation, under which the Nation granted approximately 10 million acres of land to the United States in return for "the right, in common with citizens of the United States, to travel upon all public highways," among many other things. Cougar Den, Inc., is a wholesale fuel importer owned by a member of the Yakama Nation, incorporated under Yakama law, and designated by the Yakama Nation as its agent to obtain fuel for members of the Tribe. Cougar Den buys fuel in Oregon, trucks the fuel over public highways to the Yakama Reservation in Washington, and then sells the fuel to Yakama-owned retail gas stations located within the reservation.

A Washington state statute requires that each fuel importer, who brings large quantities of fuel into the State by "ground transportation," obtain a license, and a fuel tax is levied and imposed for each gallon of motor vehicle fuel that the licensee brings into the State. Wash. Rev. Code §§ 82.36.010(4), (12), (16); §§ 82.36.020(1), (2)(c) (2012). As such, the Washington State Department of Licensing assessed Cougar Den $3.6 million in taxes, penalties, and licensing fees. Both the Washington Superior Court and the Washington Supreme Court ruled in favor of the tribal member-company, holding that the Yakama's Treaty preempted any state taxation imposed on the transportation of goods.

The issue in this case was whether the Yakama Nation Treaty of 1855, which included "the right, in common with citizens of the United States, to travel upon all public highways," created a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of the public highways. Specifically, at issue in this case was whether a tribal member's fuel distribution business that imports millions of gallons of fuel into the state of Washington each year to sell to the public is subject to Washington State taxes and licensing fees for hauling fuel across state lines.

While the five justices in the majority ultimately reached the same ruling, it's unclear why they chose to author separate opinions. It seems the plurality and concurrance simply came to their decisions through somewhat different reasoning– although not all that different.

For instance, the Breyer opinion concluded that the State was preempted by the Yakama Treaty from applying a tax on the tribal member's company because the tax was not a tax on the "good" but a tax on the transportation and importation of that good, and that transportation or "right to travel" was reserved for the Yakama Nation in the Treaty. And therefore, the tax was a burden on the travel and barred by the Treaty. The Court delved into the Court's history in dealing with Treaty language interpretation – as determined way back in *U.S. v. Winans* in 1905—which has consistently held that the language of a treaty should be understood as the Indians understood it at the time it was signed. Using these canons of construction as a lens, the Breyer plurality found that (1) the Right to Travel (as explicitly reserved in the Yakama Treaty) includes a right to travel with goods for sale or distribution, and (2) that imposing a tax upon traveling with certain goods burdens that travel.

Unlike the plurality –Justice Gorsuch's concurring opinion stressed that the Court's job here was a modest one, in that they are simply "charged with adopting the interpretation most consistent with the treaty's original meaning" as the Yakama understood it. Gorsuch simply applied the evidence and factual findings already in the record, which demonstrated the Yakama's understanding of the treaty language and the historical context of the treaty negotiation. For example, Gorsuch addressed the Court's interpretation of the treaty language "in common with" and argued that while "[t]o some modern ears, the right to travel in common with other might seem merely a right to use the roads subject to the same taxes and regulations as everyone else" (referring to Justice Kavanaugh's dissenting opinion) – that is not how the Yakamas understood the treaty's terms.

Rather, to the Yakama, the term "in common with" suggested public use or general use without restriction. In short, the treaty's terms do not permit encumbrances on the ability of tribal members to bring their goods to and from market because the tribe bargained for a right to travel with goods off reservation… just as it had for centuries prior to the treaty. Gorsuch's opinion is encapsulated in the following paragraph: *"If the State and federal governments do not like the result, they are free to bargain for more, but they do not get to rewrite the existing bargain in this Court… Really this case just tells an old and familiar story. The State of Washington includes millions of acres that the Yakamas ceded to the United states under significant pressure. In return, the government supplied a handful of modest promises. The State is now dissatisfied with the consequences of one of those promises. It is a new day, and now it wants more. But today and to its credit, the Court holds the parties to the terms of their deal. It is the least we can do."*

So where does this leave us and what does this mean, or not mean, for California tribes? Ultimately, even though a treaty interpretation case is not directly applicable to most issues California tribes have—as Congress left the 18 negotiated California treaties unratified—nevertheless, the Court's decision here signals to all tribes, that tribes still have a shot at winning a case from time to time in the Supreme Court.

*Anna Hohag is a citizen of the Bishop Paiute Tribe and born and raised in Bishop, California, also known as Payahuunadü (the place of flowing water). She is a graduate of the James E. Rogers College of Law at the University of Arizona and has been a practicing attorney in California since June 2018. She is a member of the CILA Board and a current associate at Fredericks, Peebles & Patterson in Sacramento, CA.*

# THE BATTLE FOR TRANSPARENCY & TRIBAL INPUT IN KLAMATH-TRINITY JOINT UNIFIED SCHOOL DISTRICT'S LCFF FUNDING

CO-AUTHORED BY ERIKA EVA TRACY AND ALEXANDRA MOJADO

The history of schooling on the Hoopa Valley Indian Reservation has been one of colonization, violence, and imposition. In 1893, the Bureau of Indian Affairs established the Hoopa Valley Indian School, with the mission of teaching Na:tinixwe children how to be "civilized." In 1932, the boarding school was converted into a day school. In 1952, H.R. 6775 Public Law 389 authorized the conveyance of lands in the Hoopa Valley Indian Reservation to the State of California for school purposes, which established the Hoopa Unified School District. Eventually, becoming several public schools through the region and off the Hoopa Valley Indian Reservation, the district was renamed the Klamath-Trinity Joint Unified School District ("District") which is still headquartered in Hoopa to this day. However, in Na:tinixw, where Hupa people have lived since time immemorial, the Tribal community's struggle to have a voice in their children's education has remained the same nearly 100 years later.

*All stakeholders must have the opportunity to review and provide input into the LCAP before it is approved, including through an LCAP-specific public hearing*

The District gets its name from the Klamath and Trinity Rivers, which connect communities of the Hoopa Valley, Yurok, Karuk Indian Reservations, and neighboring towns of Eastern Humboldt County. Over the past few years, the District has become increasingly less transparent, less open to community input, and less accountable to parents, Tribes, and community members. Most recently the Tribes, community members, and parents have voiced their frustration and concerns about how the District is using Local Control Funding Formula ("LCFF") funds to further the education and well-being of high-need students.

In 2014, California passed the LCFF which has fundamentally altered public school funding. LCFF, if practiced appropriately, promotes equity by directing more resources to high-needs students including those who are low-income, homeless, foster youth, and English-language learners. LCFF funds are received by school districts for disadvantaged and high-need students. As part of this law, school districts are required to write an annual Local Control Accountability Plan ("LCAP") that outlines goals, describes steps

to reach those goals, and offers transparency in spending. Additionally, the law requires school districts to seek input from students, parents, teachers, community members, and Tribes through a process called stakeholder engagement. Every year, public school districts should be describing their goals, student outcomes, and how they plan to spend funds. Further, all stakeholders must have the opportunity to review and provide input into the LCAP before it is approved, including through an LCAP-specific public hearing. Districts must also setup a Parent Advisory Committee ("PAC") to review the LCAP and must respond to stakeholder input in writing.

In the summer of 2018, the Hoopa Valley Tribe, the Yurok Tribe, and the American Civil Liberties Union ("ACLU") submitted a Complaint, through the Uniform Complaint Process, to the District regarding the District's LCAP and its failure to meet basic legal standards required under California law. Despite the initial letter sent in June 2018 and a meeting in August 2018 expressing these concerns, the District responded to the Complaint by dismissing the concerns raised by the Tribes and the ACLU. The District's School Board later unanimously voted to approve the deficient LCAP in September 2018. Soon thereafter, an Appeal was filed with the California Department of Education ("CDE") to weigh in on the District's LCAP. In November of 2018, CDE issued a decision in response to the Tribe's and the ACLU's appeal to the District's decision.

The CDE found that the District's LCAP did not meet the basic legal standards because the District failed to meaningfully describe the educational services it offered to high-need students, failed to explain how it used the majority of the $2.5 million for high-need students, and failed to account for a significant portion of the special funds. Additionally, the CDE emphasized the importance of stakeholder engagement and how the District must share key information about the spending of LCFF funds with the community. CDE ordered the District to rectify these deficiencies by working with the Humboldt County Office of Education and through the required stakeholder engagement process.

Throughout the months of December 2018 and January 2019, the District refused to acknowledge any of the serious deficiencies of their LCAP plan and processes. Instead the District voted to unanimously approve a deficient LCAP again, in February 2019. A day later, CDE issued a second decision, reaffirming nearly all of its findings from November 2018.

The CDE decision also stated that the District failed to adhere to the legal requirement that it present its LCAP to a parent advisory committee, composed of majority of parents of students and including parents of high-need students, for review or comment. CDE ordered the District to correct all stated deficiencies by April 2019 with a revised LCAP and enhanced stakeholder engagement processes for meaningful community input.

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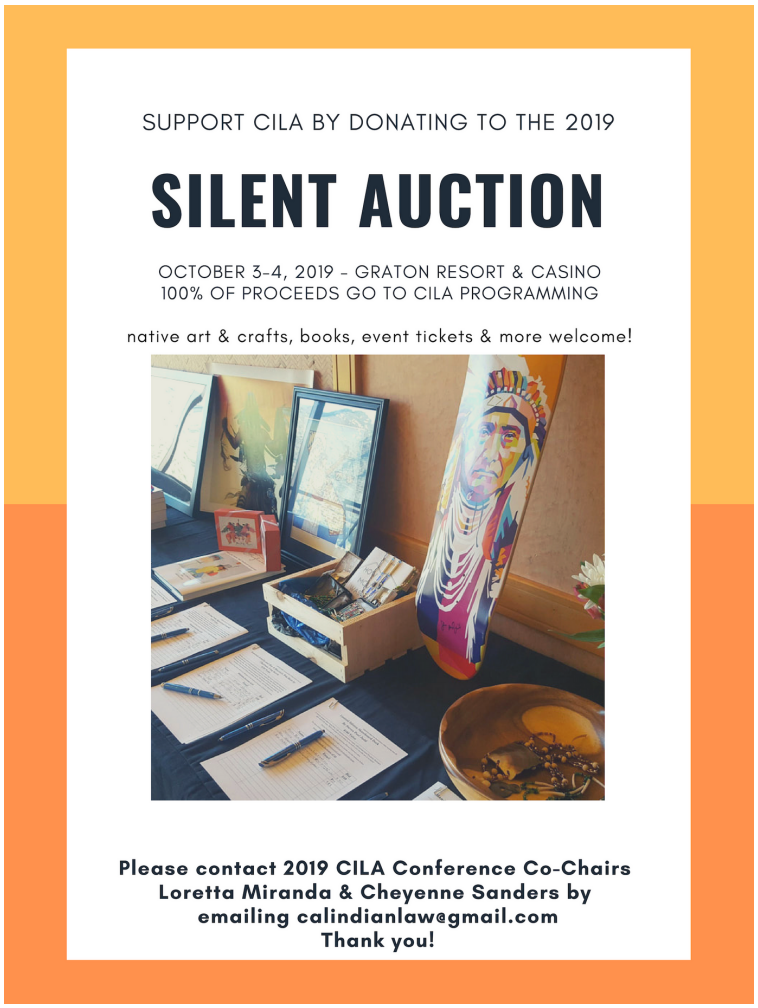
*Alexandra Mojado is a citizen of the Cherokee Nation and a direct descendant of the Pala Band of Mission Indians, and she is an Associate Attorney for the Hoopa Valley Tribe.*



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