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RESUME OF GEORGE FORMAN
California Bar #47822

George Forman, a 1967 graduate of U.C. Berkeley, a 1970 graduate of U.C. Berkeley's (then) Boalt Hall School of Law (now Berkeley Law), and admitted to practice in California in 1971, began his Indian law career as a summer law clerk in the Escondido, California office of California Indian Legal Services (CILS) in 1969, and as a Reginald Heber Smith Community Lawyer Fellow in 1970-71 in Escondido, after which he opened the Ukiah Office, then came to the CILS central office. Over a period of more than 15 years, George served as a staff attorney, directing attorney, executive director, litigation director and director of a special land consolidation, untermination and recognition project. In 1985, George entered full-time private practice in the offices of Alexander & Karshmer in Berkeley, California, and in 1996, along with Patricia A. Prochaska, founded Forman & Prochaska in San Rafael, California. In 2006, George founded Forman & Associates, where he employed two other attorneys. In 2022, George became a founding partner in Forman Shapiro & Rosenfeld LLP, through which he continues to practice.

George is admitted to the bars of and has practiced before the California Supreme Court, the U.S. Supreme Court, the U.S. Claims Court (now the Federal Circuit), the U.S. Court of Appeals for the District of Columbia, the Ninth, Sixth and D.C. Circuits, all of the U.S. District Courts in California, and has been admitted pro hac vice in U.S. District Courts in Washington and Michigan.

While actively engaged in practicing law, George taught federal Indian law for ten years as an Adjunct Professor at U.C.'s Hastings College of the Law in San Francisco, and has been a presenter at the annual conferences of the Environmental Law Section of the California State Bar, several conferences of the California District Attorneys' Association, Indian Financing Conferences, the Earl Warren Inns of Court in Oakland, meetings of various tribal organizations and trade associations, and in state and federal legislative hearings, where he has shared his knowledge of jurisdiction in Indian country, tribal government gaming and other related issues.

George has been solely or principally responsible for such landmark Indian law decisions as:

- *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975): held that P.L. 83-280 did not grant land use jurisdiction to States or Counties.

- *Segundo v. City of Rancho Mirage*, 813 F.2d 1387 (9th Cir. 1987): held that City has no jurisdiction to control rents in mobile home park operated by non-Indians on leased allotted trust land.
- *Duncan v. United States*, 229 Ct.Cl. 120, 667 F.2d 36 (1981): held that the Secretary of the Interior's failure to carry out obligations under the California Rancheria Act at the Robinson Rancheria was a breach of trust for which money damages could be recovered.
- *Upper Lake Pomo Association v. United States*, C-75-0181-SW (May 15, 1979); *Table Bluff Rancheria v. United States*, 532 F.Supp. 255 (1981); *Table Mountain Rancheria v. United States*, (N.D. Cal.) and *Auberry-Big Sandy Association v. United States* (N.D. Cal.): reversed the termination of those Rancherias and restored their citizens' status as Indians.
- *Arnett v. 5 Gill Nets*, 425 U.S. 907: defeated State's *cert.* petition from Court of Appeal decision that State has no jurisdiction over Yurok fishing in the Klamath River for subsistence purposes.
- *People v. McCovey*, 36 Cal.3d 517 (1984); *Mattz v. Superior Court*, 46 Cal.3d 355 (1988): California Supreme Court upheld (twice) the right of Yuroks and other Indians of the Hoopa Valley and Yurok Reservations to fish free of State regulation, including for commercial purposes, and to sell Reservation-caught fish outside Reservation boundaries.
- *Parravano v. Babbitt*, 70 F.3d 539 (9th Cir. 1995): upheld the Secretary of Commerce's order to reduce ocean salmon fishing to allow more fish to reach the Klamath River system to meet both spawning escapement needs and fishing rights of tribes along the Klamath River.
- *Southern Indian Health Council v. Bowen*, (E.D. Cal.): held that IHS could not require every tribe within an IHS-defined territory to support a tribal consortium for the consortium to contract under P.L. 93-638.
- *Boisclair v. Superior Court*, 51 Cal.3d 1140 (1990): held that a State court has no jurisdiction over an action against tribal officers to establish a right to use a road across Reservation land.
- *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074 (9th Cir. 1990): upheld tribal power to enforce gaming ordinance against non-Indians on allotted trust land.
- *Sycuan Band v. Roache*, 38 F.3d 402 (9th Cir. 1994): held that State authorities lack jurisdiction under P.L. 280 or IGRA to enforce State gambling laws in Indian Country.
- *Cabazon and Sycuan Bands v. Wilson*, 37 F.3d 430 (9th Cir. 1994): (co-counsel with Glenn Feldman) held State license fee inapplicable to wagers placed at tribal simulcast facility although legal incidence of tax is on host racing associations.
- *Sycuan and Cabazon Bands v. Wilson*, 124 F.3d 1050 (9th Cir. 1997): State was not entitled to enjoin other forms of Class III gaming not covered by simulcast compact.
- *Pan American Co. v. Sycuan Band*, 884 F.2d 416 (9th Cir. 1989): affirmed District Court's ruling that tribal sovereign immunity precluded suit for breach of gaming management contract despite contract's inclusion of a non-standard arbitration clause.
- *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (9th Cir. 1991): held that tribal sovereign immunity cloaked tribal officials exercising tribal power to prevent non-members from crossing tribal lands to reach fee-simple lands.
- *Cachil Dehe Band of Wintun Indians et al. v. Schwarzenegger, et al.*, 547 F.3d 962 (9th Cir. 2008) and 618 F.3d 1066 (9th Cir. 2010): held, inter alia, that a California Tribe

could challenge the State's unilateral interpretation of the meaning of a Compact without joining other Tribes as parties (*Colusa I*), and that the California Class III gaming compacts that took effect in May, 2000 authorized issuance of 40,200 slot machine licenses, rather than 32,121 licenses allowed by State, and otherwise endorsed Tribe's interpretation of various compact provisions (*Colusa II*).

- *California v. Cabazon*, 480 U.S. 202 (1987) (with co-counsel Glenn Feldman and Barbara Karshmer): held that because California's gambling laws are civil/regulatory, rather than criminal/prohibitory, P.L. 83-280 did not give State jurisdiction over on-Reservation gambling, and that federal and tribal interests in self-government and economic self-determination outweighed any State interest in enforcing its gambling laws on Reservation. Codification of this decision was the primary impetus for passage in 1988 of IGRA.

George handled the first contested hearing of a Notice of Violation before the National Indian Gaming Commission, negotiated both new gaming management agreements and the termination of existing agreements in California, Washington State and Michigan, and has advised and represented tribes in all aspects of the establishment and operation of tribal gaming enterprises, gaming regulatory bodies and other transactions, including land acquisitions, applications to convey lands into federal trust status and other matters pertaining to the establishment and/or operation of gaming enterprises, as well as in connection with issues pertaining to economic diversification and internal tribal governmental organization. George was a principal author (along with Jerry Levine and a few others) of California's Proposition 5 in 1998, was one of the principal negotiators of the Class III Gaming Compacts that took effect in California in May, 2000 after passage of Proposition 1A, and was the principal tribal negotiator for two of the amended compacts approved by California's voters in February, 2008. Between 2015 and 2020, George was one of the principal attorney negotiators for the Compact Tribes Steering Committee, a broad coalition of Tribes of diverse circumstances, but united in their quest for IGRA-consistent replacements for their 1999 Compacts, rather than the intrusive Compacts imposed by the Schwarzenegger and Brown Administrations. George currently represents five California Tribes in lawsuits that contend that the State of California has failed to negotiate in good faith for new gaming compacts to replace those that now are due to expire on December 31, 2023.

George also has represented tribes in proceedings before the Federal Power Commission/FERC, the California Energy Commission and the California Public Utilities Commission in connection with the siting of nuclear generating projects and related transmission lines, and negotiation of renewals of expiring utility rights of way across Reservation lands.

**California's War of Extermination Against American Indians:
Legislation & Litigation**

Date: December 1, 2022 Time: 5:30 PM – 7:00 PM

Location: San Francisco Historical Society (In person & Livestream)

Abinanti

Yurok Chief Judge Abby Abinanti is an enrolled Yurok Tribal member. She holds a Doctor of Jurisprudence from the University of New Mexico School of Law, and was the first California tribal woman to be admitted to the State Bar of California. She was a State Judicial Officer (Commissioner) for the San Francisco Superior Court for over 17 years assigned to the Unified Family Court (Family/Dependency/Delinquency).

Abby Abinanti retired from the Superior Court in September 2011 and on July 31, 2014 was reappointed as a part-time Commissioner for San Francisco assigned to Dependency, and Duty Judge for that Court where she served until 2015. She has been a Yurok Tribal Court Judge since 1997 and was appointed Chief Tribal Court Judge in 2007, a position she held in conjunction with her Superior Court assignment until 2015.

Abraham

Michael Abraham is a Principal of the Bartko Zankel Bunzel & Miller law firm. He is the head of the firm's privacy practice group, the head of the firm's award winning eDiscovery practice group, and a member of the firm's executive committee. He has successfully tried cases and counseled large health care companies, high tech companies, major financial organizations, large corporations, national chains, franchisors and international law firms. Michael's expansive trial experience includes favorable verdicts for his clients in matters involving privacy claims, data breaches, unfair business practices, antitrust claims, breach of contract, real estate transactions, tort liability, security violations, officer and director liability, franchise law violations, employment claims, Proposition 65 claims and breaches of fiduciary duty.

Castro

Gregg Castro [t'rowt'raahl Salinan/rumsien-ramaytush Ohlone] has worked to preserve his Ohlone and Salinan heritage for over three decades. Gregg is the Society for California Archaeology's Native American Programs Committee Chairperson. He is a Facilitator for the annual California Indian Conference, a 30+ year annual gathering about California Indigenous culture. He is a Founder/ Advisor to the California Indian History Curriculum Coalition, based at CSU-Sacramento, promoting accurate school curriculum. Gregg is now the Culture Director of the Association of Ramaytush Ohlone [ARO - nonprofit], advising within their San Francisco-Peninsula homelands. Gregg is a writer-activist within the California indigenous community.

Cotchett

Joseph W. Cotchett has a legendary reputation for his courtroom accomplishments and is considered one of the country's foremost trial lawyers by both plaintiff and defense attorneys. The National Law Journal has regularly called him one of the 100 Most Influential Lawyers in America. Joseph is the senior partner at Cotchett, Pitre & McCarthy, LLP and has been in the top 100 Attorneys selection by the Los Angeles Daily Journal for the past 20 years. He has authored numerous books on law, ethics, corporate practices and civil rights. He has an Engineering degree from California Polytech State University and a J.D. from the University of California, Hastings College of Law. He is a Fellow of the American College of Trial Lawyers, the International Society of Barristers, the International Academy of Trial Lawyers, a Diplomat in the American Board of Trial Advocates, and a former Master of the American Inns of Court.

Joseph is a former Colonel in the Army in both Airborne Special Forces and JAG Corp, receiving the Legion of Merit for his services. He has tried over 100 cases to verdict and received the Trial Lawyer of the Year Award by Trial Lawyers for Public Justice, the Anti-Defamation League's Distinguished Jurisprudence Award, honored by Disability Rights Advocates and inducted into the American Trial Lawyer Hall of Fame in 2011 and was inducted into the State Bar of California Trial Lawyer Hall of Fame in 1999.

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Flores

Paloma Flores (Pit River Nation, Purhepecha) is the Director of Community Development and Partnerships for the American Indian Cultural District. She is a champion for American Indian communities supporting the shifting of consciousness through professional development, youth empowerment, and creating opportunities for systemic change. She is an advocate for American Indian voice and representation in the arts. Prior to her role with AICD, Paloma was a cultural educator and the Program Coordinator for San Francisco Unified School District's Indian Education Program for 8 years. She is a Board Member for the American Indian Film Institute and serves locally on the Human Rights Commission Community Roundtable, Racial Equity Task force, Bay Area Equity Advisory Group, and Committee for Bay Area Native Foodways. Paloma has also served as a racial equity consultant for Courageous Conversations about Race, leading national workshops focused on educating the educators.

Fuller

Thomas Fuller is the San Francisco bureau chief for The New York Times. In addition to a series of articles published last year on the history of state-sponsored massacres of Native Americans in California, he has reported on homelessness, wildfires, and earthquake risks in the state. Before moving to California in 2016, Thomas reported from more than 40 countries for The Times, mainly in Europe and Southeast Asia.

Goldberg

Rose Carmen Goldberg directs the Veterans Law Practicum at UC Berkeley School of Law and teaches op-ed writing at Stanford Continuing Studies. She is also a Deputy Attorney General in the Public Rights Division of the Office of the California Attorney General, where her work focuses on veterans and ghost guns. (She is appearing in her personal capacity.) Rose is on the Board of the U.S. District Court for the Northern District of California Historical Society and on the Advisory Board of the American Indian Cultural District of San Francisco.

Previously, Rose served as a Skadden Fellow and founded a Medical-Legal Partnership for homeless and low-income veterans that integrated legal and mental health services. Rose's work background also includes all three branches of the federal government. She clerked on the U.S. Court of Appeals for the Third Circuit and worked for Senator Blumenthal. She also worked at the White House under President Obama on Native American affairs, on issues ranging from ICWA, disparaging trademarks, and tribal healthcare costs.

Rose earned her J.D. at Yale Law School, where she received a Native American Law Students Association Writing Prize for an article on tribal judges' citation practices. She also holds an M.P.A from Columbia University and a B.A. from St. John's College's great books program in beautiful New Mexico.

Lopez-Keifer

Merri Lopez-Keifer was appointed as the director of the Office of Native American Affairs, in the Office of the Attorney General, California Department of Justice (ONAA) by California Attorney Generals Rob Bonta and Xavier Becerra and serves as the Attorney General's legal and policy advisor on tribal affairs. As the director of ONAA, Merri works closely with California's Native American tribes to ensure that tribal governments have the opportunity to engage and coordinate with the state on matters of mutual concern and serves as a liaison between the department's legal and law enforcement divisions and tribal governments.

Merri joined the Attorney General's Office following over 15 years serving as the Chief Legal Counsel for the San Luis Rey Band of Mission Indians (SLR), where she worked to protect Luiseño culture, cultural resources, sacred burial and ceremonial sites, and history. In that capacity, she advised the SLR Tribal Council on environmental impacts to tribal cultural resources, healthcare rights, climate change, NAGPRA and CalNMAGPRA repatriation issues, child welfare, and property rights. Merri also served as an Assistant District Attorney at the San Francisco District Attorney's Office for six years where she specialized in the area of domestic violence prosecutions. She also worked as a private practice attorney where she provided strategic counsel to Native American advocacy organizations. Merri earned a Juris Doctor from Boston College Law School and a Bachelor of Arts in law and society with special emphasis in criminal justice from the University of California, Santa Barbara.

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Madley

Benjamin Madley is an historian of Native America, the United States, and colonialism in world history. Born in Redding, California, he spent much of his childhood in Karuk Country near the Oregon border where he became interested in relations between colonizers and Indigenous people. Educated at Yale and Oxford, Benjamin writes about Native Americans as well as colonialism in Africa, Australia, and Europe, often applying a transnational and comparative approach. Benjamin has authored or co-authored twenty journal articles and book chapters. His articles have appeared in journals ranging from *The American Historical Review*, *California History*, *European History Quarterly*, and the *Journal of British Studies* to the *Journal of Genocide Research*, *Pacific Historical Review*, and *The Western Historical Quarterly*. Yale University Press published his first book, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873*. This book received the Los Angeles Times Book Prize for History, the Raphael Lemkin Book Award from the Institute for the Study of Genocide, the Charles Redd Center/Phi Alpha Theta Award for the Best Book on the American West, the California Book Awards Gold Medal for California, the Heyday Books History Award, and the Norman Neuerburg Award from the Historical Society of Southern California. It was also named a New York Times Book Review Editor's Choice, an Indian Country Today Hot List book, a Choice magazine Outstanding Academic Title, and a Caroline Bancroft History Prize Honor Book. True West Magazine named Benjamin the Best New Western Author of 2016.

In 2018, Benjamin received the California Commendation Medal from the Military Department of the State of California. According to former California Governor Jerry Brown, "Madley corrects the record with his gripping story of what really happened: the actual genocide of a vibrant civilization, thousands of years in the making."

Benjamin is co-editing *The Cambridge World History of Genocide, Volume 2: Genocide in the Indigenous, Early Modern, and Imperial Worlds, 1535-1914* (forthcoming, 2023), with historians Ned Blackhawk, Ben Kiernan, and Rebe Taylor. His current research explores Native American migration and labor in the making of the United States.

Souza

Sharaya Souza (Taos Pueblo, Ute, Kiowa), Executive Director of the American Indian Cultural District, is dedicated to recognizing, honoring, and celebrating American Indian legacy, culture, people, and contributions. She is an ambassador for promoting equitable resource distribution to American Indian communities, increasing Native visibility and political representation, and protecting and preserving tribal cultural resources in the San Francisco Bay Area.

Sharaya serves on the Climate Council, SFAC Monuments Memorials Advisory Committee, Aquatic Park Pier Planning Committee, Housing Policy Committee, HRC Racial Equity in the Arts Working Group, Presidio Activators Council, Environmental Justice Working Group, and the Human Rights Commission Roundtable. Her previous work included establishing Native visibility in tech, sacred site and tribal cultural resource protection, land use mediation, helping tribal groups gain recognition as non-federally recognized tribes, and protecting Native American human remains.

CONSTITUTION OF THE STATE OF CALIFORNIA (1849)

We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I DECLARATION OF RIGHTS

Sec. 1 – All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property: and pursuing and obtaining safety and happiness.

Sec. 2 – All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same, whenever the public good may require it.

Sec. 3 – The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.

Sec. 4 – The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State: and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience, hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Sec. 5 – The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Sec. 6 – Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Sec. 7 – All persons shall be bailable, by sufficient sureties: unless for capital offences, when the proof is evident or the presumption great.

Sec. 8 – No person shall be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of militia when in actual service, and the land naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny under the regulation of the Legislature) unless on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put jeopardy for the same offence; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sec. 9 – Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of

speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Sec. 10 – The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Sec. 11 – All laws of a general nature shall have a uniform operation.

Sec. 12 – The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace; and in time of war no appropriation for a standing army shall be for a longer time than two years.

Sec. 13 – No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

Sec. 14 – Representation shall be apportioned according to population.

Sec. 15 – No person shall be imprisoned for debt, in any civil action on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

Sec. 16 – No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Sec. 17 – Foreigners who are, or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens,

Sec. 18 – Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

Sec. 19 – The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Sec. 20 – Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless the evidence of two witnesses to the same overt act, or confession in open court.

Sec. 21 – This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II RIGHT OF SUFFRAGE

Sec. 1 – Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848 of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in

which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may authorized by law: Provided, nothing herein contained, shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such proportion of the legislative body may deem just and proper.

Sec. 2 – Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of the election, during their attendance at such election, going to and returning therefrom.

Sec. 3 – No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Sec. 4 – For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

Sec. 5 – No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

Sec. 6 – All elections by the people shall be by ballot.

ARTICLE III DISTRIBUTION OF POWERS

The powers of the Government of the State of California shall be divided into three separate departments: the Legislative, the Executive, and Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV LEGISLATIVE DEPARTMENT

Sec. 1 – The Legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California; and enacting clause of every law shall be as follows: "The people of the State of California, represented in Senate and Assembly, do enact as follows."

Sec. 2 – The sessions of the Legislature shall be annual, and shall commence on the first Monday of January, next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation.

Sec. 3 – The members of the Assembly shall be chosen annually, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, unless otherwise ordered by the Legislature, and their term of office shall be one year.

Sec. 4 – Senators and Members of Assembly shall be duly qualified electors in the respective counties and districts which they represent.

Sec. 5 – Senators shall be chosen for the term of two years, at the same time and places as Members of Assembly; and no person shall be a member of the Senate or Assembly, who has not been a citizen and inhabitant of the State one year, and of the country or district for which he shall be chosen six months next before his election.

Sec. 6 – The number of Senators shall not be less than one-third, nor more than one-half, of that of the Members of the Assembly; and at the first session of the Legislature after this Constitution takes effect, the Senators shall be divided by lot as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the first year, so that one-half shall be chosen annually.

Sec. 7 – When the number of Senators is increased, they shall be apportioned by lot, so as to keep the two classes as nearly equal in number as possible.

Sec. 8 – Each house shall choose its own officers and judge of the qualifications, elections, and returns of its own members.

Sec. 9 – A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Sec. 10 – Each house shall determine the rules of its own proceedings, and may, with the concurrence of two thirds of all members elected, expel a member.

Sec. 11 – Each house shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house, on any question, shall at the desire of any three members present be entered on the journal.

Sec. 12 – Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and they shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

Sec. 13 – When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

Sec. 14 – The doors of each house shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

Sec. 15 – Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Sec. 16 – Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended in the other.

Sec. 17 – Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the journal, and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him, (Sunday excepted,) the same shall be a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return.

Sec. 18 – The Assembly shall have the sole power of impeachment; and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted, without the concurrence of two-thirds of the members present.

Sec. 19 – The Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Surveyor General, Justices of the Supreme Court and Judges of the District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit, under the State; but the party convicted, or acquitted, shall nevertheless, be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried, for misdemeanors in office, in such manner as the Legislature may provide.

Sec. 20 – No Senator, or member of Assembly, shall during the term for which he shall have been elected, be appointed to any civil office of profit, under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such office as may be filled by elections by the people.

Sec. 21 – No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit, under this State: provided, that officers in the militia, to which there is attached no annual salary, or local officers and postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

Sec. 22 – No person who shall be convicted of the embezzlement, or defalcation of the public funds of this State, shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement, or defalcation, as a felony.

Sec. 23 – No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys, shall be attached to and published with the laws at every regular session of the Legislature.

Sec. 24 – The members of the Legislature shall receive for their services, a compensation to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected.

Sec. 25 – Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title; and no law shall be revised, or amended, by reference to its title; but in such case, the act revised, or section amended shall be re-enacted and published at length.

Sec. 26 – No divorce shall be granted by the Legislature.

Sec. 27 – No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

Sec. 28 – The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-two, and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken, under the direction of the Congress of the United States, in the year one thousand eight hundred and fifty, and every subsequent ten years, shall serve as the basis of representation in both houses of the Legislature.

Sec. 29 – The number of Senators and members of Assembly, shall, at first session of the Legislature, holden after the enumerations herein provided for are made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of Assembly shall not be less than twenty four, nor more than thirty- six, until the number of inhabitants within this State, shall amount to one hundred thousand; and after that period, at such ratio that the whole number of members of Assembly shall never be less than thirty, nor more than eighty.

Sec. 30 – When a congressional, senatorial, or assembly district, shall be composed of two or more counties, it shall not be separated by any county belonging to another district; and no county shall be divided, in forming a congressional, senatorial, or assembly district.

Sec. 31 – Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed.

Sec. 32 – Dues from corporations shall be secured by such individual liability of the corporators, and other means, as may be prescribed by law.

Sec. 33 – The term corporations as used in this article shall be construed to include all associations and joint-stock companies, having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Sec. 34 – The Legislature shall have no power to pass any act granting any charter for banking purposes; but associations may be formed, under general laws, for the deposit of gold and silver, but no such association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

Sec.35 – The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

Sec. 36 – Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for his proportion of all its debts and liabilities.

Sec. 37 – It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money,

contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

Sec. 38 – In all elections by the Legislature, the members thereof shall voto viva voce, and the votes shall be entered on the journal.

ARTICLE V EXECUTIVE DEPARTMENT

Sec. 1 – The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

Sec. 2 – The Governor shall be elected by the qualified electors, at the time and places of voting for members of Assembly, and shall hold his office two years from the time of his installation, and until his successor shall be qualified.

Sec. 3 – No person shall be eligible to the office of the Governor, (except at the first election) who has not been a citizen of the United States and a resident of this State two years next preceding the election, and attained the age of twenty-five years at the time of said election.

Sec. 4 – The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the Assembly, who shall, during the first week of the session, open and publish them in presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons, so having an equal and the highest number of votes, for Governor.

Sec. 5 – The Governor shall be commander-in-chief of the militia, the army and navy of this State.

Sec. 6 – He shall transact all executive business with the officers of Government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

Sec. 7 – He shall see that the laws are faithfully executed.

Sec. 8 – When any office shall, from any cause become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

Sec. 9 – He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

Sec. 10 – He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

Sec. 11 – In case of a disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next Legislature.

Sec. 12 – No person shall, while holding any office under the United States, or this State, exercise the office of Governor, except as hereinafter expressly provided.

Sec. 13 – The Governor shall have the power to grant reprieves and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, and its date, and the date of the pardon or reprieve.

Sec. 14 – There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The great seal of the State of California."

Sec. 15 – All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the State, signed by the Governor and countersigned by the Secretary of State.

Sec. 16 – A Lieutenant Governor shall be elected at the time and places, and in the same manner as the Governor; and his term of office, and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor, until the vacancy be filled, or the disability shall cease.

Sec. 17 – In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue commander-in-chief of the military force of the State.

Sec. 18 – A Secretary of State, a Comptroller, a Treasurer, an Attorney General, and Surveyor General, shall be chosen in the manner provided in this Constitution; and the term of office, and eligibility of each shall be the same as are prescribed for the Governor and Lieutenant Governor.

Sec. 19 – The Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall keep a fair record of the official acts of the legislative and executive departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature; and shall perform such other duties as shall be assigned him by law.

Sec. 20 – The Comptroller, Treasurer, Attorney General, and Surveyor General, shall be chosen by joint vote of the two houses of the Legislature, at their first session under this Constitution, and

thereafter shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor.

Sec. 21 – The Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, and Surveyor General, shall each at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive for his own use any fees for the performance of his official duties.

ARTICLE VI JUDICIAL DEPARTMENT

Sec. 1 – The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, and in Justices of the Peace. The Legislature may also establish such municipal and other inferior courts as may be deemed necessary.

Sec. 2 – The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum.

Sec. 3 – The justices of the Supreme Court shall be elected at the general election, by the qualified electors of the State, and shall hold their office for the term of six years from the first day of January next after their election; provided that the Legislature shall, at its first meeting, elect a Chief Justice and two Associate Justices of the Supreme Court, by joint vote of both houses, and so classify them that one shall go out of office every two years. After the first election the senior Justice in commission shall be the Chief Justice.

Sec. 4 – The Supreme Court shall have appellate jurisdiction in all cases when the matter in dispute exceeds two hundred dollars, when the legality of any tax, toll, or impost or municipal fine is in question, and in all criminal cases amounting to felony or questions of law alone. And the said Court, and each of the Justices thereof, as well as all district and county judges, shall have power to issue writs of habeas corpus at the instance of any person held in actual custody. They shall also have power to issue all other writs and process necessary to the exercise of their appellate jurisdiction, and shall be conservators of the peace throughout the State.

Sec. 5 – The State shall be divided by the first Legislature into a convenient number of districts subject to such alteration from time to time as the public good may require, for each of which a district judge shall be appointed by the joint vote of the Legislature, at its first meeting, who shall hold his office for two years from the first day of January next after his election; after which, said judges shall be elected by the qualified electors of their respective districts, at the general election, and shall hold their office for the term of six years.

Sec. 6 – The District Courts shall have original jurisdiction, in law and equity, in all civil cases where the amount in dispute exceeds two hundred dollars, exclusive of interest. In all criminal cases not otherwise provided for, and in all issues of fact joined in the probate courts, their jurisdiction shall be unlimited.

Sec. 7 – The Legislature shall provide for the election, by the people, of a Clerk of the Supreme Court, and County Clerks, District Attorneys, Sheriffs, Coroners, and other necessary officers; and shall fix by law their duties and compensation. County Clerks shall be, ex officio, clerks of the District Courts in and for their respective counties.

Sec. 8 – There shall be elected in each of the organized counties of this State, one County Judge, who shall hold his office for four years. He shall hold the County Court, and perform the duties of Surrogate, or Probate Judge. The County Judge, with two Justices of the Peace, to be designated according to law, shall hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and he shall perform such other duties as shall be required by law.

Sec. 9 – The County Courts shall have such jurisdiction, in cases arising in Justices Courts, and in special cases, as the Legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

Sec. 10 – The times and places of holding the terms of the Supreme Court, and the general and special terms of the District Courts within the several districts, shall be provided for by law.

Sec. 11 – No judicial officer, except a Justice of the Peace, shall receive, to his own use, any fees or perquisites of office.

Sec. 12 – The Legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person.

Sec. 13 – Tribunals for conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in the presence of such tribunal, in such cases as shall be prescribed by law.

Sec. 14 – The Legislature shall determine the number of Justices of the Peace, to be elected in each county, city, town, and incorporated village of the State, and fix by law their powers, duties, and responsibilities. It shall also determine in what cases appeals may be made from Justices Courts to the County Court.

Sec. 15 – The Justices of the Supreme Court, and Judges of the District Court, shall severally, at stated times during their continuance in office, receive for their services a compensation, to be paid out of the treasury, which shall not be increased or diminished during the term for which they shall have been elected. The county Judges shall also severally, at stated times, receive for their services a compensation to be paid out of the county treasury of their respective counties, which shall not be increased or diminished during the term for which they shall have been elected.

Sec. 16 – The Justices of the Supreme Court and District Judges shall be ineligible to any other office, during the term for which they shall have been elected.

Sec. 17 – Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Sec. 18 – The style of all process shall be "The People of the State of California;" all the prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE VII MILITIA

Sec. 1 – The Legislature shall provide by law for organising and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

Sec. 2 – Officers of the militia shall be elected, or appointed, in such a manner as the Legislature shall from time to time direct, and shall be commissioned by the governor.

Sec. 3 – The governor shall have power to call forth the militia, to execute the laws of the State, to suppress insurrections, and repel invasions.

ARTICLE VIII STATE DEBTS

The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly, or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion or suppress insurrection, unless the same shall be authorised by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due, and also pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.

ARTICLE IX EDUCATION

Sec. 1 – The Legislature shall provide for the election, by the people, of a superintendent of public instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the Legislature may direct.

Sec. 2 – The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all land that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A.D. 1841; and all estates of deceased persons who may have died without leaving a will, or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

Sec. 3 – The Legislature shall provide for a system of common schools, by which a school be kept up and supported in each district at least three months in every year, and any school neglecting to keep and support such a school, may be deprived of its proportion of the interest of the public fund during such neglect.

Sec. 4 – The Legislature shall take measures for the protection, improvement, or disposition of such lands as have been, or may hereafter be reserved or granted by the United States, or any person or persons to the State for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorised by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE X

MODE OF AMENDING AND REVISING THE CONSTITUTION

Sec. 1 – Any amendment, or amendments to this Constitution, may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen as aforesaid, such proposed amendment or amendments, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner, and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature, voting thereon, such amendment or amendments, shall become part of the Constitution.

Sec. 2 – And if, at any time two-thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against the convention ; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the Legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the Legislature.

ARTICLE XI MISCELLANEOUS PROVISIONS

Sec. 1 – The first session of the Legislature shall be at the Pueblo de San Jose; which place shall be the permanent seat of government, until removed by law: Provided, however, that two-thirds of all members elected to each house of the Legislature shall concur in the passage of such law.

Sec. 2 – Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send, or accept a challenge to fight a duel with deadly weapons, either within this State or out of it; or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

Sec. 3 – Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: " I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of , according to the best of my ability." And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

Sec. 4 – The Legislature shall establish a system of county and town governments, which shall be as nearly as practicable, throughout the State.

Sec. 5 – The Legislature shall have the power to provide for the election of a board of supervisors in each county; and these supervisors shall jointly and individually perform such duties as may be prescribed by law.

Sec. 6 – All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct.

Sec. 7 – When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office not fixed by this Constitution ever exceed four years.

Sec. 8 – The fiscal year shall commence on the 1st day of July.

Sec. 9 – Each county, town, city, and incorporated village, shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

Sec. 10 – The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation; nor shall the State directly or indirectly become a stockholder in any association or corporation.

Sec. 11 – Suits may be brought against the State in such manner, and in such courts, as shall be directed by law.

Sec. 12 – No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

Sec. 13 – Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; but assessors and collectors of town, county, and State taxes, shall be elected by the qualified electors of the district, county, or town, in which the property taxed for State, county, or town purposes is situated.

Sec. 14 – All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Sec. 15 – The Legislature shall protect by law, from forced sale, a certain portion of the homestead and other property of all heads of families.

Sec. 16 – No perpetuities shall be allowed, except for eleemosynary purposes.

Sec. 17 – Every person shall be disqualified from holding any office of profit in this State, who shall have been convicted of having given, or offered a bribe, to procure his election or appointment.

Sec. 18 – Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

Sec. 19 – Absence from this State on business of the State, or of the United States, shall not affect the question of residence of any person.

Sec. 20 – A plurality of the votes given at an election shall constitute a choice, where not otherwise directed in this Constitution.

Sec. 21 – All laws, decrees, regulations, and provisions, which from their nature require publication, shall be published in English and Spanish.

ARTICLE XII BOUNDARY

The Boundary of the State of California shall be as follows :

Commencing at this point of intersection of 42d degree of north latitude with the 120th degree of longitude west from Greenwich, and running south on the line of said 120th degree of west longitude until it intersects the 39th degree of north latitude; thence running in a straight line in a south easterly direction to the River Colorado, at a point where it intersects the 35th degree of north latitude; thence down the middle of the channel of said river, to the boundary line between the United States and Mexico, as established by the Treaty of May 30th, 1848; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction, and following the direction of the Pacific Coast to the 42d degree of north latitude, thence on the line of said 42d degree of north latitude to the place of beginning. Also all the islands, harbors, and bays, along adjacent to the Pacific Coast.

SCHEDULE

Sec. 1 – All rights, prosecutions, claims and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if the same had not been adopted.

Sec. 2 – The Legislature shall provide for the removal of all causes which may be pending when this Constitution goes into effect, to courts created by the same.

Sec. 3 – In order that no inconvenience may result to the public service, from the taking effect of this Constitution, no office shall be superceded thereby, nor the laws relative to the duties of the several officers be changed, until the entering into office of the new officers to be appointed under this Constitution.

Sec. 4 – The provisions of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the Legislature at its first session.

Sec. 5 – Every citizen of California, declared a legal voter by this Constitution, and every citizen of the United States, a resident of this State on the day of election, shall be entitled to vote at the first general election under this Constitution, and on the question of the adoption thereof.

Sec. 6 – This Constitution shall be submitted to the people, for their ratification or rejection, at the general election to be held on Tuesday, the thirteenth day of November next. The Executive of the existing Government of California is hereby requested to issue a proclamation to the people, directing the Prefects of the several districts, or in case of vacancy, the Sub-Prefects, or senior Judge of first Instance, to cause such election to be held, the day aforesaid, in the respective districts. The election shall be conducted in the manner which was prescribed for the election of Delegates to this Convention, except that the Prefect, Sub-Perfect, or senior Judge of first Instance ordering such election in each district, shall have power to designate any additional number of places for opening the polls, and that, in every place of holding the election, a regular poll-list shall be kept by the judges and inspectors of election. It shall also be the duty of these judges and

inspectors of election, on the day aforesaid, to receive the votes of the electors qualified to vote at such election. Each voter shall express his opinion, by depositing in the ballot-box a ticket, whereon shall be written, or printed "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These Judges and Inspectors shall also receive the votes for the several officers to be voted for at the said election as herein provided. At the close of the election, the judges and Inspectors shall carefully count each ballot, and forthwith make duplicate returns thereof to the Prefect, Sub-Prefect, or senior Judge of first Instance, as the case may be, of their respective districts; and said Prefect, Sub-Prefect, or senior Judge of first Instance shall transmit one of the same, by the most safe and rapid conveyance, to the Secretary of State. Upon the receipt of said returns, or on the tenth day of December next, if the returns be not sooner received, it shall be the duty of a board of canvassers, to consist of the Secretary of State, one of the Judges of the Superior Court, the Perfect, Judge of first Instance, and an Alcalde of the District of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said election, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the Executive will also immediately after ascertaining that the Constitution has been ratified by the people, make proclamation of the fact; and thenceforth this Constitution shall be ordained and established as the Constitution of California.

Sec. 7 – If this Constitution shall be ratified by the people of California, the Executive of the existing government is hereby requested immediately after, the same shall be ascertained, in the manner herein directed, to cause a fair copy thereof to be forwarded to the President of the United States, in order that he may lay it before the Congress of the United States.

Sec. 8 – At the general election aforesaid, viz: the thirteenth day of November next, there shall be elected a Governor, Lieutenant-Governor, members of the Legislature, and also two Members of Congress.

Sec. 9 – If this Constitution shall be ratified by the People of California, the Legislature shall assemble at the seat of government on the fifteenth day of December next, and in order to complete the organization of that body, the Senate shall elect a President pro tempore, until the Lieutenant-Governor shall be installed into office.

Sec. 10 – On the organization of the Legislature, it shall be the duty of the Secretary of State, to lay before each house, a copy of the abstract made by the board of canvassers, and if called for, the original returns of election, in order that each house may judge of the correctness of the report of said board of canvassers.

Sec. 11 – The Legislature, at its first session, shall elect such officers as may be ordered by this Constitution, to be elected by that body, and within four days after its organization, proceed to elect two Senators to the Congress of the United States. But no law passed by this Legislature shall take effect until signed by the Governor after his installation into office.

Sec. 12 – The Senators and Representatives to the Congress of the United State, elected by the Legislature and People of California, as herein directed, shall be furnished with certified copies of

this Constitution, when ratified, which they shall lay before the Congress of the United States, requesting, in the name of the People of California, the admission of the State of California into the American Union.

Sec. 13 – All officers of this State, other than members of the Legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

Sec. 14 – Until the Legislature shall divide the State into counties, and senatorial and assembly districts, as directed by this Constitution, the following shall be the apportionment of the two houses of the Legislature, viz: the districts of San Diego and Los Angeles, shall jointly elect two senators; the districts of Santa Barbara and San Luis Obispo, shall jointly elect one senator; the district of Monterey, one senator; the district of San Jose, one senator; the district of San Francisco, two senators, the district of Sonoma, one senator; the district of Sacramento, four senators; and the district of San Joaquin, four senators. And the district of San Diego shall elect one member of assembly; the district of Los Angeles, two members of assembly; the district of Santa Barbara, two members of assembly; the district of San Luis Obispo, one member of assembly; the district of Monterey, two members of assembly: the district of San Jose, three members of assembly; district of San Francisco, five members of assembly; the district of Sonoma, two members of assembly ; the district of Sacramento, nine members of assembly; and the district of San Joaquin nine members of assembly.

Sec. 15 – Until the Legislature shall otherwise direct, in accordance with the provisions of this Constitution, the salary of the Governor shall be ten thousand dollars per annum; and the salary of the Lieutenant-Governor shall be double the pay of a State senator; and the pay of members of the Legislature shall be sixteen dollars per diem, while in attendance, and sixteen dollars for every twenty miles travel by the usual route from their residences, to the place of holding the session of the Legislature, and in returning therefrom. And the Legislature shall fix the salaries of all officers, other than those elected by the people, at the first election.

Sec. 16 – The limitation of the powers of the Legislature, contained in article 8th of this Constitution, shall not extend to the first Legislature elected under the same, which is hereby authorised to negotiate for such amount as may be necessary to pay the expenses of the State Government.

R. SEMPLE, President of the Convention, and Delegate from Benicia.

Wm. G. Marcy, Secretary.

J. ARAM, B. S. LIPPINCOTT, C. T. BOTTS, M. M. McCARVER, E. BROWN, JOHN McDOUGAL, J. A. CARRILLO, B.F. MOORE, J. M. COVARRUBIAS, MYRON NORTON, E. O. CROSBY, P. ORD, P. DE LA GUERRA, MIGUEL PEDRORENA, L. DENT, A. M. PICO, M. DOMINGUEZ, R. M. PRICE, K. H. DIMMICK, HUGO REID, A. J. ELLIS, JACINTO, RODRIGUEZ, S. C. FOSTER, PEDRO SANSEVAINE, E. GILBERT, W. E. SHANNON, W. M. GWIN, W. S. SHERWOOD, H. W. HALLECK, J. R. SNYDER, JULIAN HANKS, A. STEARNS,

L. W. HASTINGS, W. M. STEUART, HENRY HILL, J. A. SUTTER, J. HOBSON, HENRY A. TEFFT, J. McH. HOLLINSWORTH, S. L. VERMULE, J. D. HOPPE, M. G. VALLEJO, J. M. JONES, J. WALKER, T. O. LARKIN, O. M. WOZENCRAFT, FRANCIS J. LIPPITT.

FONTE:

<http://www.sos.ca.gov/archives/collections/1849/full-text.html>

AN ACT for the Government and Protection of Indians.

Passed April 22, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

Jurisdiction of complaints by and against Indians. Indians to be permitted to reside on lands now occupied by them. Proviso.

§ 1. Justices of the Peace shall have jurisdiction in all cases of complaints by, for, or against Indians, in their respective Townships in this State.

§ 2. Persons and proprietors of lands on which Indians are residing, shall permit such Indians peaceably to reside on such lands, unmolested in the pursuit of their usual avocations for the maintenance of themselves and families: *Provided*, the white person or proprietor in possession of such lands may apply to a Justice of the Peace in the Township where the Indians reside, to set off to such Indians a certain amount of land, and, on such application, the Justice shall set off a sufficient amount of land for the necessary wants of such Indians, including the site of their village or residence, if they so prefer it; and in no case shall such selection be made to the prejudice of such Indians, nor shall they be forced to abandon their homes or villages where they have resided for a number of years; and either party feeling themselves aggrieved, can appeal to the County Court from the decision of the Justice: and then divided, a record shall be made of the lands so set off in the Court so dividing them, and the Indians shall be permitted to remain thereon until otherwise provided for.

Appeal.

Right of custody and control of Indian children during their minority.

§ 3. Any person having or hereafter obtaining a minor Indian, male or female, from the parents or relations of such Indian minor, and wishing to keep it, such person shall go before a Justice of the Peace in his Township, with the parents or friends of the child, and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the child from its parents or friends, shall enter on record, in a book kept for that purpose, the sex and probable age of the child, and shall give to such person a certificate, authorizing him or her to have the care, custody, control, and earnings of such minor, until he or she obtain the age of majority. Every male Indian shall be deemed to have attained his majority at eighteen, and the female at fifteen years.

At what age to attain majority.

Penalty for improper treatment of Indian child by person having the custody thereof.

§ 4. Any person having a minor Indian in his care, as described in the foregoing Section of this Act, who shall neglect to clothe and suitably feed such minor Indian, or shall inhumanly treat him or her, on conviction thereof shall be subject to a fine not less than ten dollars, at the discretion of a Court or Jury; and the Justice of the Peace, in his discretion, may place the minor Indian in the care of some other person, giving him the same rights and liabilities that the former master of said minor was entitled and subject to.

Hiring of Indians—how effected.

§ 5. Any person wishing to hire an Indian, shall go before a Justice of the Peace with the Indian, and make such contract as the Justice may approve, and the Justice shall file such contract in writing

in his office, and all contracts so made shall be binding between the parties ; but no contract between a white man and an Indian, for labor, shall otherwise be obligatory on the part of an Indian.

§ 6. Complaints may be made before a Justice of the Peace, by white persons or Indians ; but in no case shall a white man be convicted of any offence upon the testimony of an Indian, or Indians. And in all cases it shall be discretionary with the Court or jury after hearing the complaint of an Indian.

Complaints by white persons or Indians. No conviction on testimony of Indian. Penalty for abduction of Indians or forcing them to work.

§ 7. If any person forcibly conveys any Indian from his home, or compels him to work, or perform any service against his will, in this State, except as provided in this Act, he or they shall, on conviction, be fined in any sum not less than fifty dollars, at the discretion of the Court or jury.

§ 8. It shall be the duty of the Justices of the Peace, once in six months in every year, to make a full and correct statement to the Court of Sessions of their county, of all moneys received for fines imposed on Indians, and all fees allowed for services rendered under the provisions of this Act ; and said Justices shall pay over to the County Treasurer of their respective counties, all money they may have received for fines and not appropriated, or fees for services rendered under this Act ; and the Treasurer shall keep a correct statement of all money so received, which shall be termed the " Indian Fund " of the county. The Treasurer shall pay out any money of said funds in his hands, on a certificate of a Justice of the Peace of his county, for fees and expenditures incurred in carrying out the provisions of this law.

Justices to report to sessions moneys received for fines of Indians, and all fees received, and pay over same.

Indian fund.

§ 9. It shall be the duty of Justices of the Peace, in their respective townships, as well as all other peace officers in this State, to instruct the Indians in their neighborhood in the laws which relate to them, giving them such advice as they may deem necessary and proper ; and if any tribe or village of Indians refuse or neglect to obey the laws, the Justice of the Peace may punish the guilty chiefs or principal men by reprimand or fine, or otherwise reasonably chastise them.

Indians to be instructed in laws relating to them. Indians refusing to obey laws may be punished.

§ 10. If any person or persons shall set the prairie on fire, or refuse to use proper exertions to extinguish the fire when the prairies are burning, such person or persons shall be subject to fine or punishment, as a Court may adjudge proper.

Setting fire to prairie or not aiding to extinguish it when on fire.

§ 11. If any Indian shall commit an unlawful offence against a white person, such person shall not inflict punishment for such offence, but may, without process, take the Indian before a Justice of the Peace, and on conviction, the Indian shall be punished according to the provisions of this Act.

Offences by Indians against white persons.

§ 12. In all cases of trial between a white man and an Indian, either party may require a jury.

Jury trial may be demanded.

§ 13. Justices may require the chiefs and influential men of any village to apprehend and bring before them or him any Indian charged or suspected of an offence.

Chiefs may be required to apprehend Indian charged with an offence. Indians sentenced to pay fine may be compelled to work out fine and costs.

§ 14. When an Indian is convicted of an offence before a Justice of the Peace punishable by fine, any white person may, by consent of the Justice, give bond for said Indian, conditioned for the payment of said fine and costs, and in such case the Indian shall be compelled to work for the person so bailing, until he has discharged or cancelled the fine assessed against him : *Provided*, the person bailing shall treat the Indian humanely, and clothe and feed him properly : the allowance given for such labor shall be fixed by the Court, when the bond is taken.

§ 15. If any person in this State shall sell, give, or furnish to any Indian, male or female, any intoxicating liquors (except when administered in sickness), for good cause shown, he, she, or they so offending shall, on conviction thereof, be fined not less than twenty dollars for each offence, or be imprisoned not less than five days, or fined and imprisoned, as the Court may determine.

Penalty for furnishing intoxicating liquors to Indians.

§ 16. An Indian convicted of stealing horses, mules, cattle, or any valuable thing, shall be subject to receive any number of lashes not exceeding twenty-five, or shall be subject to a fine not exceeding two hundred dollars, at the discretion of the Court or Jury.

Punishment of Indians convicted of stealing.

§ 17. When an Indian is sentenced to be whipped, the Justice may appoint a white man, or an Indian at his discretion, to execute the sentence in his presence, and shall not permit unnecessary cruelty in the execution of the sentence.

Sentence of whipping—how executed.

§ 18. All fines, forfeitures, penalties recovered under or by this Act, shall be paid into the treasury of the county, to the credit of the Indian Fund as provided in Section Eight.

All fines, &c., to be paid into treasury.

Fee to justices
for confirming
contracts with
Indians.

§ 19. All white persons making application to a Justice of the Peace, for confirmation of a contract with or in relation to an Indian, shall pay the fee, which shall not exceed two dollars for each contract determined and filed as provided in this Act, and for all other services, such fees as are allowed for similar services under other laws of this State. *Provided*, the application fee for hiring Indians, or keeping minors, and fees and expenses for setting off lands to Indians, shall be paid by the white person applying.

Able bodied
Indians begging,
&c., to be hired
out to work.

§ 20. Any Indian able to work and support himself in some honest calling, not having wherewithal to maintain himself, who shall be found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate course of life, shall be liable to be arrested on the complaint of any resident citizen of the county, and brought before any Justice of the Peace of the proper county, Mayor or Recorder of any incorporated town or city, who shall examine said accused Indian, and hear the testimony in relation thereto, and if said Justice, Mayor, or Recorder shall be satisfied that he is a vagrant, as above set forth, he shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public notice given as he shall direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by the provisions of this Act, regulating guardians and minors, during the time which he has been so hired. The money received for his hire, shall, after deducting the costs, and the necessary expense for clothing for said Indian, which may have been purchased by his employer, be, if he be without a family, paid into the County Treasury, to the credit of the Indian fund. But if he have a family, the same shall be appropriated for their use and benefit: *Provided*, that any such vagrant, when arrested, and before judgment, may relieve himself by giving to such Justice, Mayor, or Recorder, a bond, with good security, conditioned that he will, for the next twelve months, conduct himself with good behavior, and betake to some honest employment for support.

Application of
money received
for his hire.

Proviso.

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REVERSING TERMINATION OF CALIFORNIA RANCHERIAS AND THEIR CITIZENS
THROUGH CREATIVE AND CONSCIENTIOUS ADVOCACY

Article I, Section 8, Clause 3 of the United States Constitution grants the Congress the power, “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The Supreme Court has described the scope of this power thusly: “[T]he Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ‘plenary and exclusive.’ *E.g.*, *Washington v. Confederated Bands and Tribes of Yakima Nation*, 439 U.S. 463, 470-471, 58 L. Ed. 2d 740, 99 S. Ct. 740 (1979); *Negonsott v. Samuels*, 507 U.S. 99, 103, 122 L. Ed. 2d 457, 113 S. Ct. 1119 (1993)” *United States v. Lara*, 541 U.S. 193, 200, 124 S. Ct. 1628, 1633 (2004)

In the exercise of this plenary power, federal policy toward Indian Tribes and Indian people has been anything but consistent. It has included treaty-making, which Congress ended with the Indian Appropriations Act of 1871, 25 U.S.C. § 71;² armed conflict;³ isolation on reservations in pre-statehood territories; assimilationist statutes such as the General Allotment Act of 1887 intended to break tribal lands into individual allotments and provide a pathway to citizenship, and the 1891 Mission Indian Relief Act, 26 Stat. 712-14, that simultaneously authorized the issuance of trust patents for various Southern California Tribes and authorized their allotment in severalty; granting of U.S. citizenship in 1924 ([8 U.S.C. § 1401\(b\)](#)); the Indian Reorganization Act of 1934 (the “Indian New Deal”), 25 U.S.C. § 450, *et seq.* (recently recodified as 25 U.S.C. § 5101 *et seq.*); assimilation through transfer of criminal jurisdiction to certain States in 1953 (18 U.S.C. § 1162); termination of tribal and individual Indian status after

¹ The author served as a staff attorney, litigation director and executive director of California Indian Legal Services, and had an active role in litigating numerous cases involving untermination, jurisdiction in Indian country, sovereign immunity and other significant issues of Indian law.

² “No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired...” After 1871, the government used formal agreements between the government and Indian tribes to replace treaties. These agreements included executive orders. Treaties that had been ratified prior to 1871 remained valid.

³ Including the 1872-1873 “Modoc War” in Northeastern California between the Tribe led by Captain Jack and the U.S. Army that ultimately resulted in the relocation of some Modoc people to pre-statehood Oklahoma and the recognition of a separate Modoc Tribe in that State.

WWII, starting in Wisconsin (Menominee) and Oregon (Klamath) in 1954, and California in 1958 (the California Rancheria Act, amended in 1964 to authorize termination of all California Tribes); and the current policy self-determination and economic self-sufficiency (25 U.S.C. § 5301, *et seq.*, and *inter alia*, the Indian Gaming Regulatory Act of 1988 (25 U.S.C. § 2701, *et seq.*).

California has been an outlier in federal Indian policy. For example, California was the first state in which the United States set aside lands as Indian Reservations *after* the State was admitted to the Union. For more than 100 years, the federal government devoted far fewer resources to California Tribes than it did to Tribes in other States; as one example, California Tribes had to sue the Department of Health and Human Services to obtain equitable health care funding from the Indian Health Service, and California Tribes have had difficulty receiving funding for law enforcement services because in 1953, Congress conferred upon California (and five other States) jurisdiction to enforce its criminal laws against Indians in Indian country.

During WWII, the federal policy of interning persons of Japanese descent was overseen by a bureaucrat named Dillon S. Meyer. After WWII, Mr. Meyer became the Commissioner of Indian Affairs, and brought to that position a zeal to reduce or eliminate federal services to Tribes in States where Tribes seemed most thoroughly assimilated – such as in California.⁴ After WWI, California Tribes had received little or no federal services, and most Rancherias were characterized by substandard housing, grossly inadequate water and sanitation systems and widespread unemployment, and because the lands were held in federal trust but the residents lacked vested beneficial interests in the land, financing for housing improvements generally was unavailable.

In 1953, Congress adopted House Concurrent Resolution 108, which called for “freeing” Indians in California, several other States, and a number of specific Tribes, from federal supervision and control, abolishing the BIA, and otherwise terminating the fiduciary relationship between the United States and its Indigenous people. However, that Resolution died with the end of the 83rd Congress and was not itself a law.

The same Congress enacted 18 U.S.C. § 1162 and 28 U.S.C. § 1360, collectively referred to as “Public Law 83-280”, or more colloquially as “P.L. 280,” in furtherance of the assimilationist policy embodied in the aforementioned HCR 108. The former statute gave California and five other States jurisdiction to enforce their criminal laws of general application to Indians in Indian country; the latter gave the courts of those States jurisdiction to adjudicate civil causes of actions arising in Indian country and involving Indians. Both statutes contained limited exceptions addressing certain reserved Reservation rights.

⁴ “When Myer became the Commissioner of Indian Affairs in 1950, he directed the agency during the years that led to the termination and relocation policies with much the same aims: removing the special status of native tribes and convincing Native Americans to relocate to different parts of the country away from reservations.” Kekki , S 2019 , “ Entangled Histories of Assimilation : Dillon S. Myer and the Relocation of Japanese Americans and Native Americans (1942-1953) “ , American studies in Scandinavia, vol. 51 , no. 2 , pp. 25-48.
<https://doi.org/10.22439/asca.v51i2.5973>

The primary impetus for P.L. 280 was the absence of effective law enforcement and functioning courts on some Indian Reservations in those States; the grant of civil adjudicatory jurisdiction was little more than an afterthought. *See, Bryan v. Itasca County*, 426 U.S. 373 (1976); *Santa Rosa Band of Tachi Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975); *see also*, Goldberg, C.: Public Law 280: “The Limits of State Jurisdiction over Reservation Indians,” 22 *U.C.L.A. L.Rev.* 535, 541-542 (1975). However, P.L. 280 did not terminate the relationship between the United States and any Indian Tribe or individual Indians.

The first physical termination⁵ of the federal trust status of a Rancheria in California occurred on March 29, 1956, when the United States conveyed most of what had been the Lower Lake Rancheria to Lake County for an airport, and conveyed fee title to the remainder to a couple residing on the property. *See* Public Law 443 [H. R. 585] 70 Stat. 58 and Public Law 751 [H. R. 11163] 70 Stat. 595. The second physical termination occurred on July 10, 1957, when the [Coyote Valley Band of Pomo Indians](#) was displaced with passage of Public Law 85-91 71 Stat. 283 in order for the Army Corps of Engineers to Secretary of the Army for the Russian River Basin project to build the Coyote Valley Dam that created Lake Mendocino. The third termination involved the [Laguna Rancheria](#), which the Indian Health Service considered to have been terminated as of February 4, 1958.

On August 18, 1958, the United States Congress passed the California Rancheria Act, which provided that the lands of 41 enumerated California Rancherias were eligible to be removed from trust status pursuant to distribution plans under which various services were to be provided and the lands then distributed in fee simple to individuals listed in the distribution plans, which then were to be published in the *Federal Register*. Cal. Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958), *amended by* Pub. L. 88-419, 78 Stat. 390 (1964). A copy of the original Act is attached. On August 11, 1964, the California Rancheria Act was amended to provide for the distribution of lands and assets of any California Reservation or Rancheria upon request by a majority vote of the adult Indians of the Rancheria. Cal. Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958), *amended by* Pub. L. 88-419, 78 Stat. 390 (1964).

Under the Rancheria Act, the Secretary of the Interior (through the BIA), in consultation with the Indians of a Rancheria, was to develop a plan for the distribution of the Rancheria’s assets (primarily the land, in which individual Indians had no legally vested interest) that would identify the individuals entitled to participate in the distribution, identify the dependent members of distributees’ families, partition the Rancheria’s lands into individual parcels, provide or upgrade water and sanitation facilities, and certain other services. Once notice of the plan was published in the *Federal Register*, it would become final, the lands would be distributed per the plan, and the distributees and the dependent members of their families no longer would have the status of Indians under federal law. Following distribution, former Rancheria lands no longer would be exempt from state and federal taxes or other statutes and ordinances. § 10(b).

Several years prior to enactment of the Rancheria Act, the BIA had conducted a survey of existing California Rancherias to determine the status of existing water, sanitation, housing and

⁵ Conveyance of the land did not necessarily effect the termination of the Tribe’s status as an Indian entity recognized as maintaining government-to-government relations with the United States, although some assumed that it had accomplished that result.

other facilities, and estimated that the cost of bringing those facilities up to some reasonable standard would be approximately \$509,000. Thus, Section 13 of the Rancheria Act “authorized to be appropriated not to exceed \$509,235 to carry out the provisions of this Act.”

The original Rancheria Act required the BIA to prepare distribution plans for the enumerated Rancherias, but those plans were not to take effect unless and until accepted by the distributees and notices of effectiveness published in the *Federal Register*. Thus, acceptance of distribution plans was not mandatory. However, the Bureau of Indian Affairs (“BIA”) presented termination as a *fait accompli*, and represented, based on the Act’s authorization of the appropriation of \$509,235 to carry out the Act’s purposes, that acceptance of termination was the only way to receive the benefits available under the act – benefits that the BIA had stopped providing after WWII.

Just as the forced allotment of Reservations under the 1887 Dawes Act had resulted in massive losses of Indian lands, so, to, was termination a disaster for most Rancherias affected by it. In allocating land among distributees, the BIA did not consider whether the parcels were of sufficient size to comply with local zoning laws, or possessed the infrastructure (*e.g.*, potable water supply and septic systems) required to obtain building permits. Distributees now had to pay property taxes that they could not afford. Unscrupulous car dealers took deeds as security for car loans, and then foreclosed on the land when the loans went into default. At the original Robinson Rancheria, a non-Indian San Franciscan frequently visited the Rancheria, targeted mostly elderly people who needed money, bought their land for a pittance, then rented it back to them.

The BIA required that distributees list the dependent members of their families for inclusion on distribution plans, but no inquiry was made into whether those listed in fact were dependents. The first official notice that any dependents listed would have received was when the distribution plans were published in the *Federal Register*. As a result, those whom distributees listed as their dependents lost their eligibility for education assistance and other federal services otherwise available to members of federally recognized Tribes, something many first discovered when their applications for these services were denied due to their terminated status.

When the termination era was in full swing, the people of the Rancherias had no means by which to fully ascertain their actual rights, much less to retain legal counsel to assert them. This began to change in 1967-68, when the Office of Economic Opportunity legal aid program California Rural Legal Assistance opened an office in Santa Rosa for the express purpose of addressing the problems caused by the failed termination policy in northern California. That office became California Indian Legal Services (“CILS”), a Legal Services Corporation program that continues to exist today.

CILS’s first major victory came not in a case involving the Rancheria Act, but in a case involving whether one of the first Reservations established in California, the Klamath River Reservation,⁶ had been disestablished when Congress opened the Reservation to settlement by

⁶ A strip of land one mile wide on each side of the Klamath River, extending from the river’s mouth to a point 20 miles upstream.

non-Indians, and the BIA forced individuals who had been allotted land in trust to accept fee patents. In *Mattz v. Arnett*⁷ (1973) 412 U.S. 481, the U.S. Supreme Court ruled that Congress had not expressly stated the intention to disestablish the Reservation, and thus the Reservation continued to exist. On remand, *Arnett v. 5 Gill Nets* (1st Dist. 1975) 48 Cal.App. 3d 454⁸ established that Indians of the Reservation could use gill nets, prohibited by California law, to fish for salmon in Reservation waters for subsistence purposes. *People v. McCovey* (1984) 36 Cal.3d 517, and *Mattz v. Superior Court* (1988) 46 Cal.3d 355, firmly established not only that Reservation Indians could fish in the Klamath River free of State regulation, but also that fish caught in the Klamath River by Indians of the Reservation could be sold outside Reservation boundaries.⁹

The early cases brought by CILS concerning the Rancheria Act concentrated on attacking the procedural sufficiency of the BIA's summary revision of its Rancheria Act regulations after the Act was amended in 1964, *see Kelly v. Department of the Interior* (Three-Judge Court, E.D. Calif., 1972) 339 F. Supp. 1095, and obtaining the water and sanitation systems that distributees were entitled to receive, but that were not provided. For example, the Graton Rancheria in Sonoma County had no source of water on its land, so CILS sued, and as a settlement, the Indian Health Service installed a well, but on land no longer part of the Rancheria. Similar lawsuits were resolved on this basis at the Guidiville (Mendocino County) and Auburn (Placer County) Rancherias, among others. These lawsuits did not reverse the terminations, restore the status of distributees and their dependents as Indians, and/or enable the land to be restored to federal trust status.

That approach changed in the early 1970s. CILS opened an office in Ukiah, Mendocino County, in the heart of the region impacted by termination.¹⁰ James F. King joined the CILS office in Ukiah, after having been a lawyer with the Sacramento Legal Aid program, where he had won a major California Supreme Court case, *Randone v. Appellate Department* (1971) 5 Cal.3d 536. *Randone* invalidated California's pre-judgment attachment law as violative of due process.

Attorney King brought the concept of due process to bear on the termination process. In *Eddie Knight v. Rogers C.B. Morton* (N.D. Calif., unreported), a distributee of the Hopland Rancheria listed as his dependents minor children for whom he had not contributed support. His former spouse, with whom the children resided, was an enrolled member of the Covelo Indian Community. When one of the children applied for BIA education assistance, the application was denied because the child was deemed to have been terminated. The Northern District of

⁷ Arnett was the director of the California Department of Fish and Game. Mattz was a Yurok Indian arrested for fishing in the Klamath River within the boundaries of the "former" Reservation, using gear prohibited by the Fish and Game Code.

⁸ Abby Abinanti and I worked together to oppose the State's petition for a writ of *certiorari* from the Court of Appeal's decision.

⁹ "Indians of the Reservation" has a special meaning in the context of the Klamath River and Hoopa Valley Reservations, due to a decades-long dispute about whether Yuroks and other Indians would be entitled to share in the proceeds of timber harvested on the Hoopa Valley Reservation. That issue ultimately was resolved by separating the two Reservations under the Hoopa-Yurok Settlement Act, after which the Yurok Tribe organized as a separate sovereign. *See* P.L. 100-580, 102 Stat. 2924 (1988).

¹⁰ The author opened and directed that office.

California ruled that the BIA's failure to provide those to be listed as dependents notice and an opportunity to be heard about whether they actually were dependents of the distributees who had listed them violated the dependents' right to due process. The judgment summarily un-terminated all of those who had been listed as dependent members of distributees' families, restoring their eligibility for federal services provided to Indians.

Taking direct aim at termination itself, attorney King filed *Smith v. United States*, 515 F.Supp. 56 (N.D. Calif. 1978) (Hopland Rancheria, Mendocino County), and *Duncan v. Andrus*, (N.D. Calif. 1977) 517 F.Supp 1 (Robinson Rancheria, Lake County). Those cases contended that the Secretary of the Interior, as the Tribes' trustee, was obligated to do more than simply prepare distribution plans inadequate to meet the post-termination needs of distributees; that the Secretary's failure to fulfill that trust obligation warranted invalidation of termination; and that the distributees were entitled to money damages for the Secretary's breach of fiduciary duty. Northern District of California Judge William Schwarzer granted summary judgment to the plaintiffs, ruling that,

Here, Congress is attempting to end its traditional trust relationship with a group of Indians and to place them on the road to economic self-sufficiency. It was the manifest intent of Congress in enacting the Rancheria Act to grant to Indian distributees economic resources in fee simple that would enable them to sustain themselves as productive and useful citizens, independent of collateral federal programs and benefits. Obviously, of critical importance in such a transformation is conveyance of livable and agriculturally viable land. And, as recent events in California abundantly illustrate, water is an indispensable incident of such land.

The above considerations demand that Section 3(c) be construed to require more than mere agreement or failure to agree within a certain time to discharge the Secretary's obligation. The Secretary must come to the bargaining table as a fiduciary or trustee of the Indians. He must ensure that genuine, good faith bargaining is undertaken by two sides which are fully and competently represented. He must be ready, willing, and able to consider the reasonable needs of the Indians and their land. Finally, and most critically, the Secretary must bear ultimate responsibility for the fairness of the result, measured according to the purposes of the Act.

Duncan v. Andrus, 517 F. Supp. 1, 6 (N.D. Cal. 1977). By way of relief, Judge Schwarzer not only restored the distributees' status as Indians, but also entitled them to reconvey their land into trust, subject to the rights of any intervening holders. Because the damages claimed exceeded \$10,000, the damage claim was transferred to the (former) U.S. Court of Claims. *Duncan v. United States*, 229 Ct. Cl. 120, 667 F.2d 36 (1981). Ultimately, the case was resolved through a settlement under which the Rancheria acquired additional land that was accepted into trust, adequate water and sanitation facilities and other remedial services were provided, and individual distributees also received compensation.

In *Smith v. United States*, attorney King took the deposition of long-time former California BIA official Frank Haggerty, during the course of which the witness was asked why,

in light of the authorization of an appropriation of \$509,235 to carry out the purposes of the Rancheria Act, the BIA didn't have the money for the services to which the distributees were entitled prior to termination? Mr. Haggerty's answer: the BIA secretly had promised Congress that it would not seek the actual appropriation of the money, so the money never was appropriated, leaving the BIA with the same resources that had been inadequate to provide the services since WWII.

Needless to say, this answer came as a shocking surprise to attorney King. More importantly, it came as a profound shock to the conscience and honor of Assistant U.S. Attorney David Golay, opposing counsel in that and other untermination lawsuits. From that point on, the author was able to successfully conclude untermination lawsuits for, among others, the Table Mountain (Eastern District), Big Sandy (Eastern District), Table Bluff (Northern District) and Upper Lake (Northern District) Rancherias. Significantly, the federal government did not seek appellate review of any of these decisions.

Attorney King, who continues to practice in Ukiah, California, and David Golay, who walked on several years after retiring from the Justice Department, truly are the unsung heroes of the battle to undo the damage inflicted on Native communities by the Rancheria Act, but the struggle was far from over.

In 1979, CILS attorneys David Rapport, who had come to CILS after experience litigating class actions while employed by the legal aid program in Los Angeles, and Lester Marston, who already was working at CILS, filed a class action, *Tillie Hardwick v. United States* (N.D. California) on behalf of the distributees of 34 terminated Rancherias, as well as their heirs, legatees and Indian successors in interest to distributed real property. Northern District Judge Spencer Williams certified the class in 1980.

In 1983, Judge Williams entered a "Stipulation For Entry Of Judgment" ("1983 Stipulation"), which provided: "The Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities or groups of the [the listed Rancherias] as Indian entities with the same status they possessed prior to distribution of the assets of these Rancherias under the California Rancheria Act, and said Tribes, Bands[,] Communities and groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized tribal entities."

The 1983 Stipulation divided the class members into three subclasses. The first subclass consisted of individuals who received the assets of seventeen enumerated Rancherias; the United States agreed to restore those individuals to Indian status, restore recognition of their tribes as Indian entities, and provide a mechanism by which individuals holding former Rancheria lands could reconvey those lands to the United States to be held in trust. The 17 restored Rancherias in the first subclass were: (1) Big Valley; (2) Blue Lake; (3) Buena Vista; (4) Chicken Ranch; (5) Cloverdale; (6) Elk Valley; (7) Greenville; (8) Mooretown; (9) North Fork; (10) Picayune; (11) Pinoleville; (12) Potter Valley; (13) Quartz Valley; (14) Redding; (15) Redwood Valley; (16) Rohnerville; and (17) Smith River. The second subclass consisted of individuals who received assets of twelve different enumerated Rancherias; as to those individuals, the action was dismissed without prejudice. The twelve Rancherias were: (1) Graton; (2) Scotts Valley; (3) Guidiville; (4) Strawberry Valley; (5) Cache Creek; (6) Paskenta; (7) Ruffeys; (8) Mark West;

(9) Wilton; (10) El Dorado; (11) Chico; and (12) Mission Creek.¹¹ The third subclass consisted of individuals whose claims were barred under the doctrine of *res judicata*; as to those individuals, the action was dismissed with prejudice.

Of the 34 Rancherias named in the complaint, the *Tillie Hardwick* judgment untermiated only 17. However, in tribal affairs, when litigation cannot solve a problem, relief sometimes can be obtained through federal legislation. That is how, among others, the United Auburn Indian Community, the Federated Indians of Graton Rancheria, and the Paskenta Band of Nomlaki Indians were restored to federal recognition and were able to obtain trust land on which to establish successful gaming facilities.

Three Northern District of California Judges – William Schwarzer, William Sweigert (sometimes referred to as “Sweet Old Bill”), and Spencer Williams, aided by the creativity and perseverance of a handful of dedicated legal services lawyers and the dedication, honor and integrity of an equally small number of Assistant U.S. Attorneys (in addition to David Golay, Charles O’Connor handled several of the untermination lawsuits), literally resurrected numerous Indian communities in the northern and eastern districts of California that federal policy had tried to extinguish. The growing vitality of those communities as functioning sovereign governments that are providing for their citizens the basic governmental programs, services and protections that most other communities long have taken for granted, and the socio-economic benefits that the Tribes contribute to their surrounding non-tribal communities, are the enduring legacy of those who made it possible.

¹¹ These Rancherias had been the subject of previous litigation, and/or had no surviving members/descendants or no remaining land.

Public Law 85-671

AN ACT

To provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes.

August 18, 1958
[H. R. 2824]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

Indian rancherias.
Land distribution.

SEC. 2. (a) The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians, shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common. The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act.

Distribution of assets.

(b) General notice shall be given of the contents of a plan prepared pursuant to subsection (a) of this section and approved by the Secretary, and any Indian who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments for the consideration of the Secretary. After such consideration, the plan or a revision thereof shall be submitted for the approval of the adult Indians who will participate in the distribution of the property, and if the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out. It is the intention of Congress that such plan shall be completed not more than three years after it is approved.

Referendum.

(c) Any grantee under the provisions of this section shall receive an unrestricted title to the property conveyed, and the conveyance shall be recorded in the appropriate county office.

Record of conveyance.

(d) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided*, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.

Taxation.

SEC. 3. Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:

(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or

Surveys.

appropriate for the conveyance of marketable and recordable titles to the lands.

Improvement of roads.

(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivisions thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.

Water systems.

(c) to install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

(d) To cancel all reimbursable indebtedness owing to the United States on account of unpaid construction, operation, and maintenance charges for water facilities on the reservation or rancheria.

Land exchanges.

(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value.

Water rights.

SEC. 4. 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 this 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. During the time such State law is not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

Conveyances.

SEC. 5. (a) The Secretary of the Interior is authorized to convey without consideration to Indians who receive conveyances of land pursuant to this Act, or to a corporation or other legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property on the reservations or rancherias subject to this Act that is not needed for the administration of Indian affairs in California.

(b) For the purposes of this Act, the assets of the Upper Lake Rancheria and the Robinson Rancheria shall include the one-hundred-and-sixty-acre tract set aside as a wood reserve for the Upper Lake Indians by secretarial order dated February 15, 1907.

(c) The Secretary of the Interior is authorized to sell the five hundred and sixty acres of land, more or less, which were withdrawn from entry, sale, or other disposition, and set aside for the Indians of Indian Ranch, Inyo County, California, by the Act of March 3, 1928 (45 Stat. 162), and to distribute the proceeds of sale among the heirs of George Hanson.

Disbursements.

SEC. 6. The Secretary of the Interior shall disburse to the Indians of the rancherias and reservations that are subject to this Act all funds of such Indians that are in the custody of the United States.

Claims.

SEC. 7. Nothing in this Act shall affect any claim filed before the Indian Claims Commission, or the right, if any, of the Indians sub-

ject to this Act to share in any judgment recovered against the United States on behalf of the Indians of California.

SEC. 8. Before conveying or distributing property pursuant to this Act, the Secretary of the Interior shall protect the rights of individual Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indians in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from such Indians, including but not limited to the creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians.

Appointment of guardians.

SEC. 9. Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.

Educational training.

SEC. 10. (a) The plan for the distribution of the assets of a rancheria or reservation, when approved by the Secretary and by the Indians in a referendum vote as provided in subsection 2 (b) of this Act, shall be final, and the distribution of assets pursuant to such plan shall not be the basis for any claim against the United States by an Indian who receives or is denied a part of the assets distributed.

Finality of plan.

(b) After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.

Laws applicable.

SEC. 11. The constitution and corporate charter adopted pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, by any rancheria or reservation subject to this Act shall be revoked by the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2 (b) of this Act.

Revocation.
25 USC 461-479.

SEC. 12. The Secretary of the Interior is authorized to issue such rules and regulations and to execute or approve such conveying instruments as he deems necessary to carry out the provisions of this Act.

Rules and regulations.

SEC. 13. There is authorized to be appropriated not to exceed \$509,235 to carry out the provisions of this Act.

Appropriation.

Approved August 18, 1958.

FILED
AUG - 2 1983

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LESTER J. MARSTON
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3 Post Office Box 488
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11 Attorneys for Federal Defendants

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IN THE UNITED STATES DISTRICT COURT

15

FOR THE NORTHERN DISTRICT OF CALIFORNIA

16

TILLIE HARDWICK, et al.,

) No. C-79-1710-SW

17

Plaintiffs

) STIPULATION FOR ENTRY
) OF JUDGMENT

18

v.

19

UNITED STATES OF AMERICA, et al.,

20

Defendants.

21

22

The parties to the above-entitled action, recognizing

23

the uncertainties in law and the burden of further litigation,

24

and in order to make mutually beneficial settlement of these

25

actions, subject to approval of the Court pursuant to Federal

26

Rules of Civil Procedure, Rule 23(c), stipulate that the Court

27

may enter judgment as follows:

28

/// // // //

PR

Copies mailed to parties
of Record

1 1. That the seventeen Rancherias which are the subject
2 of the provisions of paragraphs 2 through 13 inclusive, of this
3 stipulation, are as follows:

- 4 Big Valley
- 5 Blue Lake
- 6 Buena Vista
- 7 Chicken Ranch
- 8 Cloverdale
- 9 Elk Valley
- 10 Greenville
- 11 Mooretown
- 12 North Fork
- 13 Picayune
- 14 Pinoleville
- 15 Potter Valley
- 16 Quartz Valley
- 17 Redding
- 18 Redwood Valley
- 19 Rohnerville
- 20 Smith River

21 These rancherias are more fully described in the
22 attached Exhibit "A", which is incorporated herein by reference
23 as though set forth in full.

24 2. The Court shall certify a class consisting of all
25 those persons who received any of the assets of the rancherias
26 listed and described in paragraph 1 pursuant to the California

27 // // // // // //

1 Rancheria Act 1/ and any Indian heirs, legatees or successors in
2 interest of such persons with respect to any real property they
3 received as a result of the implementation of the California
4 Rancheria Act.

5 3. The status of the named individual plaintiffs and
6 other class members of the seventeen rancherias named and
7 described in paragraph 1 as Indians under the laws of the United
8 States shall be restored and confirmed. In restoring and
9 confirming their status as Indians, said class members shall be
10 relieved from the application of Sections 2(d) and 10(b) of the
11 California Rancheria Act and shall be deemed entitled to any of
12 the benefits or services provided or performed by the United States
13 for Indians because of their status as Indians, if otherwise quali-
14 fied under applicable laws and regulations.

15 4. The Secretary of the Interior shall recognize the
16 Indian Tribes, Bands, Communities or groups of the seventeen
17 rancherias listed in paragraph 1 as Indian entities with the same
18 status as they possessed prior to distribution of the assets
19 of these Rancherias under the California Rancheria Act, and said
20 Tribes, Bands, Communities and groups shall be included on the
21 Bureau of Indian Affairs' Federal Register list of recognized
22 tribal entities pursuant to 25 CFR, Section 83.6(b). Said Tribes,
23 Bands, Communities or groups of Indians shall be relieved from
24 the application of section 11 of the California Rancheria Act and
25 shall be deemed entitled to any of the benefits or services
26 provided or performed by the United States for Indian Tribes,
27

28 1/ Act of August 18, 1958, P.L. 85-671, 72 Stat. 69, as
amended by the Act of August 11, 1964, 78 Stat. 390.

1 Bands, Communities or groups because of their status as Indian
2 Tribes, Bands, Communities or groups.

3 5. The Court shall not include in any judgment entered
4 pursuant to this stipulation any determination of whether or to
5 what extent the boundaries of the rancherias listed and described
6 in paragraph 1 shall be restored and shall retain jurisdiction to
7 resolve this issue in further proceedings herein.

8 6. Any named individual plaintiff or class member who
9 received or presently owns fee title to an interest in any former
10 trust allotment by reason of the distribution of the assets of
11 any of the Rancherias listed in paragraph 1 shall be entitled to
12 elect to restore any such interest to trust status, to be held by
13 the United States for the benefit of such Indian person(s).

14 7. Within two years of date of notice of this
15 judgment, as provided in paragraph 9, the Indian Tribes,
16 Bands, Communities or groups of the seventeen rancherias listed
17 in paragraph 1 that are recognized by the Secretary of the
18 Interior pursuant to paragraph 4 herein may arrange to convey
19 to the United States all community-owned lands within their
20 respective rancherias to which the United States issued fee
21 title in connection with or as the result of the distribution
22 of the assets of said rancherias, to be held in trust by the
23 United States for the benefit of said Tribes, Bands, Communities
24 or groups, authority for the acceptance of said conveyances
25 being vested in the Secretary of Interior under section 5 of
26 the Act of June 18, 1934, "The Indian Reorganization Act," 48
27 Stat. 985, 25 U.S.C. §465 as amended by section 203 of the

28 / / / / / / /

1 Indian Land Consolidation Act. Pub. L. 97-459, Title II, 96 Stat.
2 2515 and/or the equitable powers of this court.

3 8. Any named plaintiff or other class member herein may
4 elect to convey to the United States any land for which the United
5 States issued fee title in connection with or as the result of the
6 distribution of assets of said rancherias to be held in trust for
7 his/her individual benefit or the benefit of any other member or
8 members of the rancheria, authority for the acceptance of said
9 conveyances being vested in the Secretary of the Interior under
10 section 5 of the Act of June 18, 1934, "The Indian Reorganization
11 Act," 48 Stat. 985, 25 U.S.C. §465 as amended by section 203 of the
12 Indian Land Consolidation Act, Pub. L. 97-459, Title II, 96 Stat.
13 1512 and/or the equitable powers of this court.

14 9. Upon entry of judgment herein the United States shall
15 give personal mail notice to each individual plaintiff and other
16 class members (to the extent such persons can be identified and
17 located through the exercise of reasonable efforts) that said indi-
18 viduals may elect to return their lands to trust pursuant to the
19 judgment entered pursuant to this stipulation. Said notice shall
20 advise that the Bureau of Indian Affairs will assist those indivi-
21 duals desiring to convey lands to the United States, including pro-
22 viding for forms and instructions. In addition, the United States
23 shall aid and assist class members in perfecting said conveyances
24 by obtaining any necessary policies of title insurance or taking any
25 other actions administratively required to complete such conveyances.
26 Nothing in this Stipulation shall require the United States to pro-
27 vide funds for the payment of real property taxes which may have

28 //

1 accrued in the past or may accrue in the future with respect to
2 lands located on any Rancheria as described in Exhibit A; provided,
3 however, that this Stipulation does not represent a concession by
4 any party hereto that any of said property is subject to real
5 property taxes.

6 The United States shall also give general notice of the
7 rights provided by this paragraph 9 by publishing notice once each
8 week for one month in newspapers of general circulation most likely
9 to be read by class members, and by posting notice in a conspicuous
10 location on or near each of the seventeen rancherias named in
11 paragraph 1.

12 10. The Secretary of the Interior, named individual
13 plaintiffs, and other class members agree that the distribution
14 plans for these Rancherias shall be of no further force and effect
15 and shall not be further implemented; however, this provision shall
16 not affect any vested rights created thereunder.

17 11. All claims whatsoever for money damages against the
18 United States resulting from the distribution of the assets of the
19 seventeen rancherias named in paragraph 1 under the Rancheria Act
20 and arising out of the implementation of said Act shall be dismissed
21 with prejudice, plaintiffs having specifically considered the poten-
22 tial value of said claims, the probability of the success thereof,
23 and the value of the relief to be obtained under this settlement
24 agreement.

25 12. For the purpose of resolving any disputes which arise
26 among the parties in the course of implementing the judgment to be
27 entered pursuant to this stipulation, or for extending the time

28 //

1 within which any act may or must be performed under this Stipulation,
2 the Court shall retain jurisdiction over this matter for a period
3 of two (2) years from entry of judgment, or for such longer time as
4 may be shown to be necessary on a duly-noticed motion by any party.

5 13. Entry of judgment pursuant to this stipulation shall
6 constitute a final settlement of all claims which named plaintiffs
7 and plaintiff class members have or may have against the United
8 States and its officers and employees arising out of the implementa-
9 tion of the California Rancheria Act at the seventeen Rancherias
10 listed in paragraph 1.

11 14. Except as hereafter specifically provided in paragraphs
12 15-19, the claims asserted in this action by or on behalf of any
13 persons who received any of the assets of the Graton, Scotts Valley,
14 Guideville, Strawberry Valley, Cache Creek, Paskenta, Ruffeys, Mark
15 West, Wilton, El Dorado, Chico or Mission Creek Rancherias are
16 dismissed without prejudice to their being refiled in another action
17 and defendants shall not assert any laches defense to any such
18 subsequent action they could not have asserted prior to the date
19 this action was filed.

20 15. The claims of Ethel Whiterock, Minerva Pike, Jesse
21 Elliott, Nora Cooper and Irene Young who received assets from the
22 termination of the Guideville Rancheria under the California
23 Rancheria Act shall be dismissed on grounds of res judicata based
24 on the stipulation and judgment entered in Whiterock et al. v.
25 Udall, Fed. Dist. Ct. N.D. Cal. No. 50584 SAW.

26 16. The claims of all the named and unnamed class members
27 represented in Taylor et al. v. Hickel, C-70-719 SAW (N.D. Cal.)

28 //

1 from the Auburn Rancheria shall be dismissed on grounds of res
2 judicata.

3 17. The claims asserted in this action against the United
4 States on behalf of Frank Truvido and Gloria Truvido of Graton
5 Rancheria who were parties to Frank Truvido and Gloria Truvido
6 v. Morton, C-72-181 GBH (N.D. Cal.), shall be dismissed on grounds
7 of res judicata.

8 18. The claims asserted in this action on behalf of Teresa
9 Boggs of the Scotts Valley Rancheria who was a party to Teresa Boggs
10 and Bessie Ray v. Rogers C.B. Morton, C-71-1714 RFP (N.D. Cal.),
11 shall be dismissed on the grounds of res judicata.

12 19. The claims asserted in this action by any person who
13 received any of the assets of the Robinson or Table Bluff Rancherias
14 pursuant to the California Rancheria Act shall be dismissed from this
15 action since prior to filing of this action those persons had filed
16 independent actions in Duncan et al., v. Andrus, Fed. Dist. Ct.,
17 N.D. Cal. No's C-71-1572 WWS, C-71-1713 WWS and Duncan et al., v.
18 U.S., (Ct. Cls.) No 19-75 and Table Bluff Band et al., v. Andrus,
19 No. C-75-2525 WWS, which actions are still pending.

20 ENTERED IN CIVIL DOCKET 3 AUG 1983, 19
21 CALIFORNIA INDIAN LEGAL SERVICES

21 Dated: July 19, 1983

22
23 By: David J. Rapport
24 DAVID J. RAPPORT
Attorneys for Plaintiffs

25 Dated: July 15, 1983

26 JOSEPH P. RUSSONIELLO
United States Attorney

27 IT IS SO ORDERED

28 Joseph P. Russoniello
U. S. DISTRICT JUDGE

By: Paul E. Locke
PAUL E. LOCKE
Assistant United States Attorney
Attorneys for Federal Defendants

EXHIBIT A

RANCHERIA DESCRIPTIONS

BIG VALLEY

The Big Valley Rancheria, 118.45 acres, is located on the south shore of Clear Lake near Finley in Lake County, California.

Tract 1: SE1/4NW1/4, NE1/4SW1/4 and Lot 3 (being the fractional NE1/4NW1/4), Section 32, T. 14 N., R. 9 W., Mount Diablo Meridian, California.

Tract 2: That portion of the SE1/4SW1/4 Section 29 and NE1/4NW1/4 Section 32, T. 14 N., R. 9 W., Mount Diablo Meridian, which is north of the United States Meander Line for Clear Lake and which is above the low water line of Clear Lake, subject to a flowage easement.

BLUE LAKE

The Blue Lake Rancheria, 30.92 acres, is located adjacent to the city of Blue Lake, Humboldt County, California.

A tract of land situate in a portion of the SE1/4SW1/4 Section 19 and in a portion of the NE1/4NW1/4 Section 30, T. 6 N., R. 2 E., Humboldt Meridian and more particularly described in a Warranty Deed recorded in Volume 107 of Deeds, page 224 in the records of Humboldt County, California.

BUENA VISTA

The Buena Vista Rancheria, 67.5 acres, is located in Amador County, California.

Commencing at the NE corner of Section 19, T. 5 N., R. 10 E., Mount Diablo Meridian, California, thence running west along section line 578 feet, thence at right angles south 5280 feet, thence at right angles east 578 feet, thence at right angles north 5280 feet to place of beginning.

CHICKEN RANCH

The Chicken Ranch Rancheria, 40 acres, is located in Tuolumne County, California.

E1/2E1/2NE1/4 Section 20, T. 1 N., R. 14 E., Mount Diablo Meridian, California.

EXHIBIT ACLOVERDALE

The Cloverdale Rancheria, 27.50 acres, is located adjacent to and south of the town of Cloverdale, Sonoma County, California.

All these certain lots, pieces or parcels of land, situate, lying and being in the Township of Cloverdale, County of Sonoma, State of California, and bounded and particularly described as follows, to wit: Beginning at a point in the center of the main public road leading from Cloverdale to Healdsburg and at the northwesterly corner of the land formerly owned by Louis Bee, which is an iron pipe two (2) inches in diameter, two (2) feet long, driven below the surface of the ground, from which a fir tree five (5) feet in diameter marked "R.M.", and known as station 8 on the Muscalacon Grant Line bears south 47 W., 39.38 chains distant; thence N. 47 40' E., along the northerly line of the land formerly owned by Louis Bee, 49.25 chains; thence north 59 15' W., 6.071/2 chains to the southerly line of the land of Helena M. Woolsey, thence S. 47 28' W., along the southerly line of the land of Helena M. Woolsey, 46.68 chains to the center line of the hereinbefore mentioned public road; thence S. 34 15' E., along the center line of said road 5.71 chains to the place of beginning, containing 27.50 acres. (Note - above area included Northwestern Pacific Railroad right of way.)

ELK VALLEY

The Elk Valley Rancheria, 100 acres, is located near the town of Crescent City, Del Norte County, California.

SE1/4SE1/4, S1/2S1/2NE1/4SE1/4 Section 22; SW1/4SW1/4, S1/2S1/2NW1/4SW1/4 Section 23, T. 16 N., R. 1 W., Humboldt Meridian, California.

GREENVILLE

The Greenville Rancheria, 275 acres, is located approximately three miles east of Greenville, Plumas County, California.

Parcel 1: N1/2 Lot 4, Section 5; N1/2 Lot 1, Section 6, T. 26 N., R. 10 E., Mount Diablo Meridian, California.

Parcel 1A: SE1/4 Section 31, T. 17 N., R. 10 E., Mount Diablo Meridian, California.

Parcel 2: Beginning at the S.E. corner of Plumas County Swamp and Overflowed Land Survey No. 37, N. 31 1/4 E., 3.72 chains from the 1/4 Section corner on the South line of Section 6, T. 26 N., R. 10 E., M.D.M., and running thence N.

EXHIBIT A

72 1/2 W., 15.80 chains; thence N. 4 E., 42.00 chains, thence E. 2.06 chains, thence N. 14.03 chains; thence E. 7.97 chains to the North and South centerline of said Section 6; thence S. 23.85 chains to the center of said Section 6; thence E. 5.00 chains; thence S. 4 1/2 W., 36.88 chains to the place of beginning, containing 75 acres.

MOORETOWN

The Mooretown Rancheria, 160 acres, is comprised of two parcels, one-half mile apart. It is located in Butte County, California.

Parcel 1: N1/2NE1/4 Section 22 T. 20 N., R. 6 E., Mount Diablo Meridian, California.

Parcel 2: N/1/2NE1/4 Section 23, T. 20 N., R. 6 E., Mount Diablo Meridian, California.

NORTH FORK

The North Fork Rancheria, 80 acres, is located about two miles from the town of North Fork, Madera County, California.

SE1/4NE1/4 Section 20, and SW1/4NW1/4 Section 21, T. 8 S., R. 23 E., Mount Diablo Meridian.

PICAYUNE

The Picayune Rancheria, 80 acres, is located three miles south of Coarsegold in Madera County, California.

N1/2NE1/4 Section 29, T. 8 S., R. 21 E., Mount Diablo, Meridian.

PINOLEVILLE

The Pinoleville Rancheria, 99.53 acres, is located in Mendocino County, California.

Tract 1: A portion of Lot 142 of Healey's Survey and Map of the Yokayo Rancho containing 3 acres and more particularly described in deed filed in Book 123 of Deeds, page 148, Recorder's Office, County of Mendocino.

Tract 2: A portion of Lots 141 and 142 of the Yokayo Rancho containing 96.53 acres and more particularly described in deed filed in Book 133 of Deeds, page 283, Recorder's Office, County of Mendocino.

EXHIBIT A

POTTER VALLEY

The Potter Valley Rancheria, 96 acres, is located near the town of Potter Valley, Mendocino County, California.

Tract 1: A metes and bounds description in Section 19, T. 17 N., R. 11 W., Mount Diablo Meridian and more particularly described in Deed recorded in Book 116 of Deeds, Page 197, Mendocino County, containing 16 acres.

Tract 2: NW1/4SE1/4, SE1/4NW1/4 Section 35, T. 18 N., R. 12 W., Mount Diablo Meridian, containing 80 acres.

QUARTZ VALLEY

The Quartz Valley Indian Reservation, 604 acres, is located in Siskiyou County, California.

Tract 1: NW1/4, W1/2SW1/4 Section 2, T. 43 N., R. 10 W., E1/2SE1/4 Section 3 and a fractional portion of the NE1/4NE1/4 Section 3, T. 43 N., R. 10 W., Mount Diablo Meridian, containing 364 acres.

Tract 2: E1/2SE1/4 Section 34 and SW1/4 Section 35, T. 44 N., R. 10 W., Mount Diablo Meridian, containing 240 acres.

REDDING

The Redding Rancheria, 30.89 acres, is located south of Redding in Shasta County, California.

Tract No. 8 of the Anderson Valley Farms, situate, lying and being on the Rancho Buena Ventura or Reading Grant, in the County of Shasta, State of California.

REDWOOD VALLEY

The Redwood Valley Rancheria, 80 acres, is located north of the town of Redwood Valley, Mendocino County, California.

NE1/4SW1/4, fractional part of SE1/4NW1/4 Section 32, T. 17 N., R. 12 W., Mount Diablo Meridian and fractional part of Lot 131 of Healey's Survey and Map of Yokayo Rancho.

ROHNERVILLE

The Rohnerville Rancheria, 15.22 acres, is located near Fortuna, Humboldt County, California, and overlooks the village of Ronherville.

EXHIBIT A

Tract 1: A parcel of land situate in the E1/2SE1/4 Section 1, T. 2 N., R. 1 W., Humboldt Meridian containing 15 acres and more particularly described in a deed recorded in Volume 116 of Deeds, page 93 in the records of Humboldt County, California.

Tract 2: Commencing at the NW corner of the above tract and running thence N. 37 20' W. 215.5 feet; thence S. 10.6 feet; thence W. 40 feet; thence N. 60 feet; thence E. 40 feet; thence S. 37 20' E. 277 feet; thence S. 89 W. 37.5 feet to place of beginning, containing 0.22 acres, together with a spring.

SMITH RIVER

The Smith River Rancheria, 163.96 acres, and an unsurveyed island known as Prince Island, 14.25 acres, are located in Del Norte County, California.

Tract 1: Frac. W1/2, N1/2NW1/4NE1/4, NE1/4NE1/4 Section 17, T. 18 N., R. 1 W., Humboldt Meridian, California, containing 163.96 acres.

Tract 2: Unsurveyed island in the Pacific Ocean about 3/4 mile north of Smith River in Section 17, T. 18 N., R. 1 W., Humboldt Meridian, designated on the official plat of survey as Hunters Rock and on the U.S.C. & G. Chart No. 5900 as Prince Island, 14.25 acres.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

I am a citizen of the United States, over the age of eighteen years, with my business address at 200 West Henry Street, Ukiah, California 95482, employed in the County of Mendocino and am not a party to the within action.

On the 20th day of July, 1983, I served the within: Stipulation For Entry Of Judgment

on Defendants in said action, by placing a true copy thereof enclosed in a sealed envelope with the correct postage thereon fully prepaid in the United States post office mail box at Ukiah, California, addressed as follows:

Paul E. Locke
Asst. U.S. Attorney
P.O. Box 36055
450 Golden Gate Ave.
San Francisco, CA 94102

Robert L. Bridges
Deputy County Counsel
255 N. Forbes Street
Lakeport, CA 95453

John C. Drummond
County Counsel
County of Mendocino
Courthouse, Rm. 304
Ukiah, CA 95482

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 1983 at Ukiah,
California.

Lisa Elgin
LISA ELGIN