

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT W. BYRNE  
Supervising Deputy Attorney General  
3 CECILIA DENNIS  
MATTHEW G. BULLOCK  
4 Deputy Attorney General  
State Bar No. 243377  
5 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
6 Telephone: (415) 703-1678  
Fax: (415) 703-5480  
7 E-mail: Matthew.Bullock@doj.ca.gov  
*Attorneys for Defendant Charlton H. Bonham*  
8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 **RESIGHINI RANCHERIA, FRANK**  
14 **DOWD, and GARY DOWD,**

15 Plaintiffs,

16 v.

17 **CHARLTON H. BONHAM, individually**  
18 **and in his official capacity as Director of the**  
19 **California Department of Fish and Game,**

20 Defendant.

1:11-cv-6710-EMC

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO DISMISS, AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: June 15, 2012  
Time: 1:30 p.m.  
Dept: 5  
Judge: Edward M. Chen  
Trial Date TBD  
Action Filed: Dec. 29, 2011

21 **NOTICE OF MOTION AND MOTION**

22 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

23 PLEASE TAKE NOTICE that on June 15, 2012, at 1:30 p.m., or as soon thereafter as the  
24 matter may be heard, in Courtroom 5 of the above-entitled Court, Defendant will move and  
25 hereby does move this Court to dismiss with prejudice all claims against Defendant. Defendant  
26 brings this motion under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

27 Defendant submits this motion to dismiss the case based upon this notice of motion and  
28 motion, the memorandum of points and authorities in support of motion set forth below, all

1 pleadings and documents filed in this matter, and oral argument before this Court.

## 2 INTRODUCTION AND STATEMENT OF ISSUES

3 On December 29, 2011, Plaintiffs Resighini Rancheria, Frank Dowd, and Gary Dowd filed  
4 a complaint against Defendant Charlton H. Bonham, individually and in his official capacity as  
5 Director of the California Department of Fish and Game (Department). The complaint alleges  
6 that the Department lacks authority to regulate Plaintiffs' fishing activity along the Klamath River  
7 on a reservation set aside for the Yurok Tribe. Pursuant to the Hoopa-Yurok Settlement Act of  
8 1988, 25 U.S.C. §§ 1300i-1300i-11, Plaintiffs are not members of the Yurok Tribe.

9 Plaintiffs argue 1) the Defendant lacks jurisdiction to enforce the California Fish and Game  
10 Code on the Yurok Reservation against the Plaintiffs; 2) Public Law 280 (18 U.S.C. § 1162; 28  
11 U.S.C. § 1360; 25 U.S.C. §§ 1321-1326) does not grant civil regulatory authority on the  
12 Department; and 3) the Defendant violated 42 U.S.C. § 1983<sup>1</sup> and the 14th Amendment of the  
13 United States Constitution.

14 As the sole named defendant, Director Bonham moves to dismiss this case pursuant to  
15 Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure because Plaintiffs have failed  
16 to establish the existence of a case or controversy. In their complaint, Plaintiffs erroneously  
17 attribute conduct of two Yurok Tribal Police to the Department. Because the conduct alleged in  
18 the complaint cannot be attributed to the Defendant, and because Plaintiffs otherwise fail to  
19 establish a case or controversy, Defendant respectfully requests this Court to grant his motion to  
20 dismiss.

## 21 STANDARD OF DECISION

22 This motion to dismiss is brought under Federal Rule of Civil Procedure 12(b)(1) and  
23 12(b)(6). When ruling on a motion to dismiss, the court accepts as true factual allegations  
24 contained in the complaint. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th  
25 Cir. 2003). However, the court is not required to accept as true conclusory allegations which are  
26 contradicted by documents referred to in the complaint, even if the documents are not attached to

27 <sup>1</sup> The complaint references both 25 U.S.C. § 1983 and 42 U.S.C. § 1983. Because 25  
28 U.S.C. § 1983 does not exist, Director Bonham assumes this was a typographical error.

1 the complaint. *Id.*; *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other*  
 2 *grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). Nor does the  
 3 court necessarily assume the truth of legal conclusions merely because they are cast in the form of  
 4 factual allegations. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).  
 5 A jurisdictional challenge per Rule 12(b) may be made either on the face of the pleadings or by  
 6 presenting extrinsic evidence. *Id.* Where jurisdiction is intertwined with the merits, the court  
 7 assumes the truth of the allegations in the complaint unless controverted by undisputed facts in  
 8 the record. *Id.*

9 In evaluating the motion, the Court may take judicial notice of matters of public record,  
 10 including “records and reports of administrative bodies” without converting the motion to one for  
 11 summary judgment. *Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).  
 12 The motion can attack the substance of the complaint's jurisdictional allegations, despite their  
 13 formal sufficiency, and can rely on affidavits or any other evidence properly before the court. *St.*  
 14 *Clair v. Chico*, 880 F.2d 199, 201 (9th Cir. 1989). It then becomes necessary for the party  
 15 opposing the motion to present affidavits or any other evidence necessary to satisfy its burden of  
 16 establishing that the court, in fact, possesses subject matter jurisdiction. *Id.*

#### 17 ARGUMENT

18 **I. THERE IS NO ACTUAL CASE OR CONTROVERSY, DEFENDANT HAS NOT ACTED  
 19 NOR THREATENED TO ACT. THE CASE SHOULD BE DISMISSED UNDER  
 FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1) AND 12(B)(6).**

20 Plaintiffs’ complaint is predicated on a letter from the Department and on actions allegedly  
 21 taken on August 29, 2010 and August 29, 2011. Plaintiffs allege that on those dates they were  
 22 cited by Officers Josh Davis and Thorin McCovey. Compl. ¶¶ 27-28. According to the  
 23 declaration of Richard Banko, Captain of the Law Enforcement Division for the Department’s  
 24 Northern District, filed concurrently with this motion, these officers are not employed by the  
 25 Department. Banko Decl. ¶¶ 4, 5. The declaration of Mary McQuillen, Chief of Police for the  
 26 Yurok Tribe, also filed concurrently with this motion, and the Banko declaration establish that  
 27 Officers Davis and McCovey are employees of the Yurok Tribe. McQuillen Decl. ¶¶ 3, 4; Banko  
 28 Decl. ¶ 6. The declarations show that the citations allegedly issued against Plaintiffs were not

1 issued by the Department. Banko Decl. ¶¶ 4-8; McQuillen Decl. ¶¶ 3, 4.

2 The declarations further show that neither the Yurok Tribe nor the Department has a record  
3 of a citation issued against Gary Dowd on August 29, 2010. Banko Decl. ¶ 7; McQuillen  
4 Decl. ¶ 5. Yurok Tribal officer Josh Davis seized an unattended net on that day, which was later  
5 determined to have belonged to Gary Dowd. McQuillen Decl. ¶ 5. The Department did not play  
6 a role in that seizure. Banko Decl. ¶¶ 4, 7. Finally, neither the Yurok Tribe nor the Department  
7 has a record of a citation issued against Frank Dowd on August 29, 2011. Banko Decl. ¶ 8;  
8 McQuillen Decl. ¶ 6.

9 As no citations were issued by the Department, and the officers alleged to have issued the  
10 citations identified in this complaint are not employed by the Department, the only factual  
11 allegation in the complaint supporting Plaintiffs' action against the Department is referenced in  
12 paragraph 30, wherein Plaintiffs allege the Department sent a letter to Plaintiffs' attorney  
13 "advising him that the State does not recognize the [Resighini] Tribe as having any right to fish in  
14 the Klamath River off of the [Resighini] Reservation." Compl. ¶ 30. An actual case or  
15 controversy does not exist simply because the Department sent a letter, at Plaintiffs' request,  
16 advising Plaintiffs of the Department's understanding of the law. Plaintiffs are therefore not  
17 entitled to declaratory relief. Const., Article III, § 2, clause 1; 28 U.S.C. § 2201(a).

18 Under Article III of the Federal Constitution, federal courts may adjudicate only actual,  
19 ongoing cases or controversies. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). To  
20 invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an  
21 actual injury traceable to the defendant. *Id.* Article III confines the courts to resolving real and  
22 substantial controversies admitting of specific relief through a decree of a conclusive character, as  
23 distinguished from an opinion advising what the law would be upon a hypothetical state of facts.  
24 *Id.* One of the "irreducible constitutional minimum" elements of standing is "an 'injury in fact,'  
25 i.e., an invasion of a legally protected interest which is (a) concrete and particularized, and (b)  
26 actual or imminent, not conjectural or hypothetical." *Chandler v. State Farm Mut. Auto. Ins. Co.*,  
27 598 F.3d 1115, 1122 (9th Cir. 2010) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-  
28 61 (1992)). Here, there is no actual injury, no controversy, and thus no standing. Plaintiffs fail to

1 allege that they have suffered, or been threatened with, actual injury traceable to the Department.  
2 An opinion from this Court would be upon a “hypothetical state of facts,” advisory, and therefore  
3 improper. *Aetna Life ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937).

4 If there is a real and substantial controversy to be resolved, it is between Plaintiffs and the  
5 governmental actors who actually cited Plaintiffs for fishing on the Yurok Reservation. Those  
6 actors are noticeably absent as defendants in this suit. Accordingly, this lawsuit, naming Director  
7 Bonham as sole defendant, should be dismissed in its entirety.

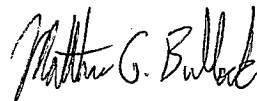
8 **CONCLUSION**

9 Plaintiffs seek a purely advisory opinion. Plaintiffs lack standing to maintain their case  
10 because there is no actual case or controversy between the Plaintiffs and the Defendant. The  
11 Court should dismiss Plaintiffs’ action in its entirety with prejudice pursuant to Federal Rule of  
12 Civil Procedure 12(b)(1) and 12(b)(6).

13 Dated: March 28, 2012

Respectfully submitted,

14  
15 KAMALA D. HARRIS  
16 Attorney General of California  
17 ROBERT W. BYRNE  
18 Supervising Deputy Attorney General



19 MATTHEW G. BULLOCK  
20 Deputy Attorney General  
21 *Attorneys for Defendant*

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 Attorney General of California  
 2 ROBERT W. BYRNE  
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 3 MATTHEW G. BULLOCK  
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 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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12  
 13 **RESIGHINI RANCHERIA, FRANK**  
**DOWD, and GARY DOWD,**

1:11-cv-6710-EMC

14 Plaintiffs,

15 v.

**DECLARATION OF RICHARD BANKO  
 IN SUPPORT OF DEFENDANT'S  
 MOTION TO DISMISS**

16  
 17 **CHARLTON H. BONHAM, individually**  
**and in his official capacity as Director of the**  
**California Department of Fish and Game,**

Judge: Edward M. Chen  
 Trial Date TBD  
 Action Filed: Dec. 29, 2011

18 Defendant.

19  
 20  
 21 I, Richard Banko, declare as follows:

22 1. I make this declaration based on my personal knowledge of the facts set forth herein.

23 I am willing and able to testify under oath if called as a witness before the Court.

24 2. I am employed by the California Department of Fish and Game (the Department). I  
 25 am a Captain of the Law Enforcement Division for the Northern District, which encompasses Del  
 26 Norte County and the Yurok and Resighini Reservations. I have been employed in the Law  
 27 Enforcement Division since June 29, 1987.





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 Attorney General of California  
 2 ROBERT W. BYRNE  
 Supervising Deputy Attorney General  
 3 MATTHEW G. BULLOCK  
 Deputy Attorney General  
 4 State Bar No. 243377  
 455 Golden Gate Avenue, Suite 11000  
 5 San Francisco, CA 94102-7004  
 Telephone: (415) 703-1678  
 6 Fax: (415) 703-5480  
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 7 *Attorneys for Defendant California  
 Department of Fish & Game*

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 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION  
 12

13 **RESIGHINI RANCHERIA, FRANK  
 DOWD, and GARY DOWD,**

1:11-cv-6710-EMC

14 Plaintiffs,

15 v.

16 **DECLARATION OF MARY  
 MCQUILLEN IN SUPPORT OF  
 DEFENDANT'S MOTION TO DISMISS**

17 **CHARLTON H. BONHAM, individually  
 and in his official capacity as Director of the  
 California Department of Fish and Game,**

Judge: Edward M. Chen  
 Trial Date TBD  
 Action Filed: Dec. 29, 2011

18 Defendant.  
 19  
 20

21 I, Mary McQuillen, declare as follows:

- 22 1. I make this declaration based on my personal knowledge of the facts set forth herein.  
 23 I am willing and able to testify under oath if called as a witness before the Court.  
 24 2. I am employed by the Yurok Tribe as Chief of Police. I have been employed in that  
 25 position since February 7, 2011.  
 26 3. Josh Davis has been employed as a Yurok Tribal Police officer since April 26, 2010,  
 27 and presently is employed as such.  
 28



1           4. Thorin McCovey has been employed as a Yurok Tribal Police officer since June 3,  
2 2005, and presently is employed as such.

3           5. Attached hereto as Exhibit A is a true and correct copy of the incident report from  
4 August 29, 2010, involving seizure by Yurok Tribal Police officers Josh Davis, Thorin McCovey,  
5 and Jerry Abasolo of a net later determined to have belonged to Gary Dowd.

6           6. Our office has no record of a citation issued against Frank Dowd on August 29, 2011.

7           I declare under penalty of perjury under the laws of the State of California and the United  
8 States that the foregoing is true and correct.

9           Executed this 20 day of March, 2012, at Klamath, California.

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Mary McQuillen

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# Exhibit A

### Yurok Tribal Police Department

247 Salmon Ave., Klamath, CA 95548

**CONTROLLED DOCUMENT**

#### Offense / Incident Report

Duplication or reissuance controlled by law  
Released to: F. G. R. Benko

By: [Signature] Date: 2-13-12

Complaint No. 20100392 Case Status CLOSED  
YUROK DEPT. OF PUBLIC SAFETY

Report Date **08/29/2010 0419** Type of Incident **HMP- FISHING DURING CLOSURE**

Occurred on **08/29/2010 0115** to **08/29/2010 0200**

**Incident Location**

Street Address	City	State	Zip Code
	<b>KLAMATH</b>	<b>CA</b>	<b>95548</b>
Sector	Precinct	Geo	Ward
		Latitude	Primary Location
			<b>HIGHWAY 101 BRIDGE</b>
		Longitude	Secondary Location
			<b>KLAMATH RIVER</b>

**Dispatch Information**

Received Date / Time	Call Received Via	Dispatched Date / Time	Call Dispatched As
<b>08/29/2010 0115</b>	<b>OFFICER</b>		
Arrived Date / Time	Departed Date / Time	Offense Category	TTY Ref.#
<b>08/29/2010 0115</b>	<b>08/29/2010 0200</b>	<b>TRIBAL ORDINANCE</b>	
			Telc/Type Operator

**Officers**

ID	Name	Role	Primary	Arrived Scene	Departed Scene
404	ABASOLO, JERRY	ADDITIONAL	<input type="checkbox"/>		
2404	JOSH DAVIS	REPORTING	<input checked="" type="checkbox"/>		
402	MCCOVEY, THORIN	ADDITIONAL	<input type="checkbox"/>		

**Offenses**

Charge	Cause Number	Local Code	Jurisdiction	State Statute	State Charge Code	Category
HMP- FISHING DURING CLOSURE						TRIBAL ORDINANCE
		HMP FISHING D		INFR		
HMP-UNATTENDED NETS- COMMERCIAL						TRIBAL ORDINANCE
		HMP UNATTEN		INFR		
UNLAWFUL USE OF A GILL NET				F&G 8685.5	F&G 8685.5	FISH & GAME
		F&G 8685.5		MISD		

**Offense / Incident Narrative**

On August 29, 2010 at approximately 0115 hours, Officer Abasolo and I were patrolling the Klamath River near the Highway 101/Klamath River bridge. We observed a gill net that appeared to be set and anchored to one of the bridge's pillar supports. During our investigation of the gill net, we were not approached by anyone claiming the net as theirs nor did we observe any people in the area to

Reporting Officer	2404 JOSH DAVIS	Approving Officer (1)	402 MCCOVEY, THORIN
		( Cover Pages Only )	

**Yurok Tribal Police Department**

247 Salmon Ave., Klamath, CA 95548

**CONTROLLED DOCUMENT**

Duplication or reissuance controlled by law

Released to: F B G R. Banks

**Offense / Incident Report**

By: NAB Date: 2-13-12

YUROK DEPT. OF PUBLIC SAFETY

Report Date  
08/29/2010 0419

Type of Incident  
HMP- FISHING DURING CLOSURE

Complaint No.  
20100392

Case Status  
CLOSED

whom the net might belong.

I seized the gill net and a Chinook salmon found within it pursuant to violations of the Yurok Tribe Harvest Management Plan. I issued a Notice of Seizure Complaint #0430 and secured a copy of same to the bridge support pillar where the net was found.

The owner was not attending the net nor present to claim the net as theirs, a violation of the HMP unattended net-commercial tribal ordinance. The net was in the water after the Yurok tribal fishery had closed for the day, a violation of the HMP fishing during closure tribal ordinance.

The net was a 75-100 foot single-strand monofilament gill net with 20 white corks on a blue/green/red corkline. The leadline was green/white with a single rubber tire chinaman.

One end of the net was drifting free with the current. The other end of the net that had appeared to be anchored was determined to be caught on debris on the bottom of the river. Officer Abasolo and I pulled as much of the net out of the water and into our boat as we could before cutting the net's corkline, webbing, and leadline. As we retrieved the end of the gill net, we discovered a Chinook salmon in the net. We also found a yellow buoy marked with the number: RR-0007. It is possible the net belonged to a member of the Resighini Rancheria Tribe as it was marked with the preceding number and found downstream from the Resighini Rancheria.

The net was stored in the Yurok Tribal Police net locker in container N-10. The salmon was stored in the Yurok Tribal Police fish freezer as evidence.

**Disposition:**

Case cleared by issuance of Notice of Seizure Complaint.

**Recommendation:**

Forward to the Yurok Tribal Court.

**Property**

Reporting Officer 2404 JOSH DAVIS

Approving Officer (1) 402 MCCOVEY, THORIN

(Cover Pages Only)

**Yurok Tribal Police Department** CONTROLLED DOCUMENT

247 Salmon Ave., Klamath, CA 95548

Duplication or reissuance controlled by law  
Released to: FB Sr R. Banko

Offense / Incident Report By: SAW Date: 2-13-12

YUROK DEPT. OF PUBLIC SAFETY

Report Date: **08/29/2010 0419** Type of Incident: **HMP- FISHING DURING CLOSURE** Complaint No.: **20100392** Case Status: **CLOSED**

Quantity	Description	Make	Model	S/N	Ref. No.	Disposition	Value	Recovered ID/Date
1.00	CHINOOK SALMON							
1.00	75-100 FT GILL NET, BLUE/GREEN/RED CORKLINE, 20 WH							
Number of Line Items		2		Total Value		0.00		
Number of Recov. Items		0		Total Recov. Value		0.00		

**Victim - Entity**

Name: **YUROK TRIBE** Type: **BUSINESS**  Willing to Prosecute Rel. to Sus: **NONE**

**Suspect Information**

Name (Last, First Middle Suffix): **DOWD, GARY MITCH** Race: **NATIVE AMERICAN** Sex: **M** DOB: **11/19/1955** Age: **54** Juvenile: **N** SSN: Moniker:

**Addresses**

Type: Street Address: **151 KLAMATH BLVD** City: **KLAMATH** State: **CA** Zip Code: **95548** Country: **USA**

**Phone Numbers**

Type: Phone: Ex/PIN:  
**HOME (707) 482-0604**  
**BUSINESS**

**Email Addresses**

Type: Email Address:

**Physical Description**

Height: **5'11"** Weight: **185** Build: Skin Color: Complexion: Eyes: **BROWN** Type of Eyewear: Place of Birth: City: State:  
Hair: **BLACK** Hair Length: Hair Style: Beard: Mustache: Side Burns: Mannerisms: Country:  
Voice: Teeth: Deformities:

Drugs  Alcohol  Suspect Identified  Suspect Located  Suspect Near Scene  Serious Repeat Offender

**Employment**

Company Name: Job Title: **PARK MANAGER** Schedule:  
Street Address: City: State: Zip Code: Phone No.: Ext:

Reporting Officer: **2404 JOSH DAVIS** Approving Officer (I): **402 MCCOVEY, THORIN**  
(Cover Pages Only)

**Yurok Tribal Police Department**

247 Salmon Ave., Klamath, CA 95548

**Offense / Incident Report****CONTROLLED DOCUMENT**

Duplication or reissuance controlled by law

Released to: Ed G. R. BankoBy: Yurok Date: 2-13-12YUROK DEPT. OF PUBLIC SAFETY  
Case 8161  
CLOSED

Report Date	Type of Incident	Complaint No.
08/29/2010 0419	HMP- FISHING DURING CLOSURE	20100392

**Supplemental Report**

Supp. No.	Date / Time	ID	Officer Name
0001	8/31/2010 3:33 PM	402	MCCOVEY, THORIN

## ADDITIONAL INFORMATION

On 8/31/10 at about 1530 hours, I was contacted by Gary Dowd at the Yurok Tribal Police office, he stated the following:

He wanted to know why his gill net was seized. He showed me a copy of a Yurok Seizure notice that was left where he was fishing under the 101 bridge. The violation cited was the FHP section dealing with fishing during closure. He claimed that he could not pull his net because it was hung up. When asked if he was still an enrolled member of Resighini Rancheria he stated that he is currently enrolled.

I told him that the violation had to be heard in Yurok Tribal Court as it is the court with jurisdiction to hear the violation.

Disposition: Forward information to Yurok Tribal Court for prosecution of Yurok Tribe Fishing Rights Ordinance. Also forward to the Del Norte County District Attorney's office for a violation of Fish and Game code section 8685.5 as Dowd has no federally recognized hunting and fishing rights on the Klamath River/ Yurok Reservation.

Reporting Officer 2404 JOSH DAVIS

Approving Officer (1) 402 MCCOVEY, THORIN  
( Cover Pages Only )

CONTROLLED DOCUMENT

Duplication or reissuance controlled by law

Released to: F36. Rban Yo

By: VW Date: 2.13.12

YUROK DEPT. OF PUBLIC SAFETY

# NOTICE

0430

## YUROK DEPARTMENT OF PUBLIC SAFETY

### NOTICE OF SEIZURE

### COMPLAINT

THE YUROK TRIBE PUBLIC SAFETY OFFICERS SEIZED A GILL NET AT:

HIGHWAY 101/KLAMATH RIVER BRIDGE

ON THE YUROK INDIAN RESERVATION.

DATE OF SEIZURE: 08-29-10 . TIME OF SEIZURE: 0150

SAID GILL NET WAS WILLFULLY AND UNLAWFULLY FISHED IN VIOLATION OF SECTION: HMP UNATTENDED NET/HMP OF THE YUROK TRIBAL FISHING RIGHTS ORDINANCE. FISHING AFTER CLOSURE/

NUMBER OF FISH AND TYPE IN NET: 1 SALMON

THIS NET WAS SEIZED IN ACCORDANCE WITH THE YUROK TRIBAL FISHING RIGHTS ORDINANCE.

THIS COMPLAINT HAS BEEN FILED WITH THE YUROK TRIBAL COURT TO CLAIM OWNERSHIP, NOTIFY:

YUROK TRIBAL COURT  
P.O. Box 963  
KLAMATH, CA 95548  
(707) 482-2841

DESCRIPTION OF SEIZED ITEMS AND GEAR: 75-100 FT NET  
BLUE/GREEN/RED CORKLINES  
WITH 20 WHITE CORKS/1 YELLOW, 1 ORANGE BOUY/GREEN/WHITE  
LEADLINE WITH ONE RUBBER TIRE CHINAMAN

ANY CLAIM OF OWNERSHIP OF THE ABOVE NET, FISH OR GEAR MUST BE MADE IMMEDIATELY.

Joshua L Davis  
SIGNATURE OF SEIZING OFFICER

08-29-10  
DATE COMPLETED

NET TAG #: \_\_\_\_\_

REPORT #: 20100392



1 KAMALA D. HARRIS  
 Attorney General of California  
 2 ROBERT W. BYRNE  
 Supervising Deputy Attorney General  
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*Attorneys for Defendant Charlton H. Bonham*  
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13 **RESIGHINI RANCHERIA, FRANK**  
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 16 v.  
 17 **CHARLTON H. BONHAM, individually**  
 18 **and in his official capacity as Director of the**  
 19 **California Department of Fish and Game,**  
 20 Defendant.

1:11-cv-6710-EMC

**[PROPOSED] ORDER GRANTING  
DEFENDANT'S MOTION TO DISMISS**

Date: June 15, 2012  
 Time: 1:30 p.m.  
 Dept: 5  
 Judge: Edward M. Chen  
 Trial Date TBD  
 Action Filed: Dec. 29, 2011

21 The Defendant's motion to dismiss came on for hearing in Department 5 of this Court on  
 22 June 15, 2012 at 1:30 p.m. Cecilia Dennis and Matthew Bullock, Deputy Attorneys General,  
 23 appeared on behalf of Defendant. Lester Marston appeared on behalf of Plaintiffs.

24 Having read and considered the motion, the memoranda of points and authorities filed by  
 25 the parties, all papers filed therewith, and having heard the argument of counsel, the court finds:

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 27 ///  
 28 ///

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Dismissal of the case with prejudice is proper pursuant to Federal Rule of Civil Procedure 12(b) because Plaintiffs have failed to state a claim, and because there is no actual case or controversy present. The motion to dismiss with prejudice is granted.

IT IS SO ORDERED.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Edward M. Chen  
District Court Judge

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