

1 LESTER J. MARSTON
California State Bar No. 081030
2 RAPPORT AND MARSTON
405 West Perkins Street
3 P.O. Box 488
Ukiah, CA 95482
4 Telephone: 707-462-6846
Facsimile: 707-462-4235
5 e-mail: marston1@pacbell.net

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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6 Attorneys for Plaintiffs

E-filing

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

NJV

10 RESIGHINI RANCHERIA, FRANK DOWD,)
11 and GARY DOWD,)

cv11 Case No. 6710

12 Plaintiffs,)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

13 vs.)

14 CHARLTON H. BONHAM, individually and in)
his official capacity as Director of the California)
15 Department of Fish and Game,)

16 Defendant.)

[Handwritten signature]

18 INTRODUCTION

19 1. This is an action for declaratory and injunctive relief brought against Charlton H.
20 Bonham, Director of the California Department of Fish and Game ("Director"), by the
21 Resighini Rancheria ("Tribe"), Frank Dowd, and Gary Dowd seeking an order from this Court
22 declaring that: (1) the State of California ("State"), acting through the Director and the
23 California Department of Fish and Game's officers, agents, and employees (collectively the
24 "Department") has no jurisdiction to enforce the California Fish and Game Code against
25 members of the Tribe within the boundaries of the Klamath River Reservation, and (2) the
26 Director's and Department's actions have deprived Frank Dowd and Gary Dowd of their
27 federally reserved right to fish in the Klamath River, under color of state law, in violation of 42
28 U.S.C. §1983 and the 14th Amendment to the United States Constitution.

JURISDICTION

2. This Court has jurisdiction over Plaintiffs' claims based upon the following:

- (a) 28 U.S.C. § 1331, in that the Plaintiffs' claims arise under the Constitution and laws of the United States;
- (b) 28 U.S.C. § 1362, in that this civil action is brought by a federally recognized Indian tribe whose claims arise under the Constitution and the laws of the United States.

VENUE

3. Venue is proper in the Northern District of California ("District"), pursuant to 28 U.S.C. § 1391, in that all individual Plaintiffs reside in this District, the Tribe is located in this District, all of Plaintiffs' claims arose in this District.

PARTIES

4. Plaintiff Tribe is a federally recognized Indian tribe organized under the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, under a written Constitution which was approved by the Secretary of the Interior on April 10, 1975, and which designates the Resighini Tribal Council as the governing body of the Tribe. The Tribe is the beneficial owner of the Resighini Rancheria ("Reservation") which comprises approximately 266 acres of land located along the Klamath River in Del Norte County, California.

5. Plaintiff Frank Dowd is an enrolled member of the Tribe and resides on the Tribe's Reservation.

6. Plaintiff Gary Dowd is an enrolled member of the Tribe and resides on the Tribe's Reservation.

7. Defendant Charlton H. Bonham ("Director") is the Director of the California Department of Fish and Game. The Director is an officer of the State of California and is being sued in his official and individual capacity.

GENERAL ALLEGATIONS

8. Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been a mainstay of the life and culture of the Yurok Indians residing there, including their

1 lineal descendants, some of whom are members of the Tribe.

2 9. The members of the Tribe of Yurok descent are dependent upon the salmon
3 fishery for their livelihood.

4 10. The salmon fishery also holds significant cultural value for the Tribe and its
5 members.

6 11. By the Act of March 3, 1853, 10 Stat. 238, the President of the United States
7 was “authorized to make five military reservations from the public domain in the State of
8 California or the territories of Utah and New Mexico, bordering on said State, for Indian
9 purposes.”

10 12. The Act of March 3, 1955, 10 Stat. 699, appropriated funds for “collecting,
11 removing, and subsisting the Indians of California . . . on two additional military reservations,
12 to be selected as heretofore . . . provided, that the President may enlarge the quantity of
13 reservations heretofore selected, equal to those hereby provided for.”

14 13. Pursuant to the authority granted to him by the Acts of March 3, 1853, and
15 March 3, 1855, President Pierce issued an order on November 16, 1855, establishing the
16 Klamath River Reservation. In the order, President Pierce stated: “Let the reservation be made,
17 as proposed.” The Klamath River Reservation established by President Pierce encompassed “a
18 strip of territory one mile in width on each side of the [Klamath] river, for a distance of twenty
19 miles.” The Klamath River Reservation, as originally established by order of President Pierce,
20 is depicted on the map entitled “Appendix to Opinion of the Court,” which is hereby
21 incorporated by this reference as if set forth here in full and attached hereto as **Exhibit A**. The
22 lands comprising the Klamath River Reservation were occupied mostly by Yurok Indians, and
23 the Reservation encompassed what is today the Yurok Reservation.

24 14. The original Hoopa Valley Reservation was a twelve-mile square extending six
25 miles on each side of the Trinity River. The Superintendent of Indian Affairs for California
26 located and proclaimed it in 1864, pursuant to the 1804 Four Reservations Act, Act of April 8,
27 1864, 13 Stat. 39 (“1864 Act”), enacted that same year. The legislation authorized the
28 President to set apart up to four tracts of land in California “for the purposes of Indian

1 reservations, which shall be of suitable extent for the accommodation of the Indians of said
2 state, and shall be located as remote from white settlements as may be found practicable, having
3 due regard to the adaptation to the purposes for which they are intended.” 1864 Act. The
4 Reservation was mostly inhabited by Hoopa Indians. Although Congress itself thereafter
5 recognized the existence of the Hoopa Valley Reservation as early as 1868, it was not until
6 1876 that President Grant issued an Executive Order formally setting aside the Reservation “for
7 Indian purposes, as one of the Indian reservations authorized . . . by Act of Congress approved
8 April 8, 1864.”

9 15. Between 1864 and 1891, the legal status of the Klamath River Reservation as an
10 Indian reservation came into doubt. Although the Klamath River Reservation had been created
11 pursuant to the 1853 statute, the subsequent 1864 Act limited the number of reservations in
12 California to four and contemplated the disposal of reservations not retained under authority of
13 the 1864 Act. By 1891, the Round Valley, Mission, Hoopa Valley, and Tule River
14 Reservations had been set apart pursuant to the 1864 Act. Still, the Department of the Interior
15 continued to recognize that the Klamath River Reservation was critical to protecting the Indians
16 who lived there and for protecting their access to the fishery, and continued to regard it as a
17 Reservation throughout the period from 1864-1891.

18 16. Finally, in 1891, in order to eliminate any doubt regarding the status of the
19 Klamath River Reservation, and to expand the existing Klamath River Reservation to better
20 protect the Indians living there from encroachment by non-Indian fisherman, President Harrison
21 issued an Executive Order under the authority of the 1864 Act. The Order extended the Hoopa
22 Valley Reservation along the Klamath River from the mouth of the Trinity River to the ocean,
23 thereby encompassing and including the Hoopa Valley Reservation, the original Klamath River
24 Reservation, and the connecting strip between into one reservation. Thereafter, the original
25 Klamath River Reservation and the connecting strip have been referred to jointly as the
26 “Extension” or the “Addition,” because they were added to the Hoopa Valley Reservation in the
27 1891 Executive Order. The validity of the 1891 Extension (“Extension”) and the continuing
28 existence of the area included within the original Klamath River Reservation were subsequently

1 upheld by the United States Supreme Court in the cases of *Donnelly v. United States*, 228 U.S.
2 243, *modified and rehearing denied*, 228 U.S. 708 (1913), and *Mattz v. Arnett*, 412 U.S. 481
3 (1973).

4 17. By deed dated January 7, 1938 (“Deed”), Gus Resighini deeded to the United
5 States in trust all that real property situated in the County of Del Norte that presently constitutes
6 the Resighini Reservation. The warranty deed from Gus Resighini to the United States was
7 recorded on November 1, 1938, with the Del Norte County Recorder’s Office in Volume 56 of
8 Deeds, pages 450-551. A copy of the January 7, 1938, Deed is hereby incorporated by this
9 reference and attached hereto as **Exhibit B**.

10 18. The purchase of the land that presently constitutes the Reservation by the United
11 States in trust was made under the authority of § 5 of the Indian Reorganization Act, 25 U.S.C.
12 § 465, which authorized the Secretary of the Interior “to acquire through purchase,
13 relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface
14 rights to land, within or without existing reservations, including trust or otherwise restricted
15 allotments, whether the allottee be living or deceased, for the purpose of providing land for
16 Indians.”

17 19. By Proclamation dated October 21, 1939, the Secretary of the Interior, under the
18 authority of § 7 of the Indian Reorganization Act, 25 U.S.C. § 463, declared the land purchased
19 from Gus Resighini to be an Indian Reservation. The Proclamation described the land as
20 containing approximately 228 acres, more or less. The 1973 survey map of the Reservation
21 recorded by Richard B. Davis shows the Reservation as containing 238.78 acres.

22 20. All of the lands that comprise the Reservation are located within the exterior
23 boundaries of the original Klamath River Reservation and are located at the intersection of
24 Highway 101 and the Klamath River in Del Norte County, California.

25 21. In 1998, Congress enacted the Hoopa-Yurok Settlement Act of 1988, 25 U.S.C.
26 § 1300i-1300i-11 (Sub. 1993), which partitioned the extended Hoopa Valley Reservation into
27 the present Hoopa Valley Reservation, consisting of the original twelve-mile square bisected by
28 the Trinity River and established under the 1864 Act, and the Yurok Reservation, consisting of

1 the area along the Klamath River within the old Klamath River Reservation, including the 1891
2 Extension, excluding the Resighini Reservation.

3 22. Under the Hoopa-Yurok Settlement Act, Congress “recognized and established”
4 each area as a distinct Reservation and declared that “[t]he unallotted trust land and assets” of
5 each Reservation thereafter be held in trust by the United States for the benefit of the Hoopa
6 Valley and Yurok Tribes, respectively.

7 23. The Tribe was recognized by the Secretary of the Interior as a federally
8 recognized Indian tribe thirteen years before the establishment of the Yurok Reservation under
9 the Hoopa-Yurok Settlement Act. The tribal governmental body of the Tribe, the Business
10 Council, has been in continuous operation since 1975.

11 24. Under Article I of the Tribe’s Secretarily-approved Constitution, the jurisdiction
12 of the Tribe, acting through its Tribal Council, extends to: (a) all land encompassing the
13 ancestral territory of the Klamath River Tribe . . . , including all that area from Damnation
14 Creek in the north, Little River Drainage Basin in the south, and from the Pacific Coast along
15 the Klamath River from its mouth to the Bluff Creek Drainage in the east; (b) . . . all lands,
16 water, and other resources within the exterior boundaries of those lands constituting what is
17 commonly known as the Resighini Rancheria purchased by the Secretary of the Interior on
18 January 7, 1938, under the authority of the Wheeler-Howard Act, June 18, 1934; (c) all of the
19 lands, water, and resources as may hereinafter be acquired by the Tribe, whether within or
20 without said boundary lines, under any grant, transfer, purchase, adjudication, treaty, Executive
21 Order, Act of Congress, or other acquisition; (d) all persons within any territory under the
22 jurisdiction of the Tribe; and (e) all tribal members, wherever located.

23 25. From time immemorial to 1938, the Yurok ancestors of current members of the
24 Tribe fished in the Klamath River within the old Klamath River Reservation/Extension.

25 26. From 1938 to the present, the members of the Tribe fished in the Klamath River
26 within the old Klamath River Reservation/Extension at traditional fishing sites located outside
27 the boundaries of the Resighini Reservation.

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FACTUAL ALLEGATIONS

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2 27. On August 29, 2010, deputized California Fish and Game Officer Josh Davis
3 issued a citation to Gary Dowd for violating the California Fish and Game Code for having an
4 unattended gill net in the Klamath River, fishing with a gill net on the Klamath River within a
5 closed area, and fishing with a gill net without a Yurok ID. The events that were the basis for
6 the citation took place at a location within the boundaries of the Klamath River Reservation.

7 28. On August 29, 2011, deputized California Fish and Game Officer Thorin
8 McCovey issued a citation to Frank Dowd for violating the California Fish and Game Code for
9 fishing on the Klamath River within a closed area; and fishing without a Yurok ID. The events
10 that were the basis for the citation took place at a location within the boundaries of the Klamath
11 River Reservation.

12 29. On August 31, 2011, the general counsel for the Tribe sent a letter (“the Letter”)
13 to John McCamman, former Director of the Department of Fish and Game, advising him that
14 the Department of Fish and Game has no jurisdiction to enforce the California Fish and Game
15 Code against members of the Tribe within the boundaries of the Klamath River Reservation.
16 The Letter also asked that the former Director inform the Tribe’s general counsel whether State
17 Game Wardens would be enforcing the State’s Fish and Game Code against members of the
18 Tribe.

19 30. The Department subsequently sent a letter to the Tribe’s legal counsel, Lester J.
20 Marston, advising him that the State does not recognize the Tribe as having any right to fish in
21 the Klamath River off of the Reservation.

22 31. On March 30, 2011, the Del Norte County District Attorney dismissed the
23 charges against Gary Dowd citing the “interest of justice” as the reason for the dismissal.

24 32. On October 4, 2011, the Del Norte County District Attorney dismissed the
25 charges against Frank Dowd for lack of corpus due to insufficient evidence that a crime
26 occurred.

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FIRST CLAIM

[Lack of Jurisdiction to Enforce the Fish and Game Code]

33. Plaintiffs reallege each and every allegation set forth in Paragraphs 1-32 above and, by this reference, incorporate each such allegation herein as if set forth in full.

34. Indian tribes retain attributes of sovereignty over both their members and their Indian country, and tribal sovereignty depends on and is subordinate only to the United States. In Public Law 280, 18 U.S.C. § 1164 and 28 U.S.C. § 1360 (“P.L. 280”), Congress granted the State no authority to enforce its civil regulatory laws of California (“State”) against Indians in Indian Country.

35. California Fish and Game Code §§ 2000 and 8685.5 do not prohibit fishing or even fishing on the Klamath River. Instead, the State regulates the date, manner, and means by which people within the State can fish.

36. Because these provisions of the Fish and Game Code are civil and regulatory in nature, the State lacks jurisdiction to enforce these provisions against Gary Dowd, Frank Dowd, or any member of the Tribe for fishing within the Indian country boundaries of the old Klamath River Reservation, currently the Yurok Indian Reservation.

37. Unless the Defendant, the Department, and all persons acting in concert with the Defendant, are provisionally and permanently restrained and enjoined from citing members of the Tribe for violations of the civil regulatory provisions of the California Fish and Game Code for fishing within the old Klamath River Reservation/Extension, members of the Tribe will be restricted in their ability to fish in the Klamath River within the old Klamath River Reservation/Extension and the rights of the Tribe to authorize and regulate the fishing of its members within the old Klamath River Reservation/Extension will be frustrated, in direct violation of applicable federal law.

38. An actual and substantial controversy exists between the Plaintiffs and the Defendant in that the Plaintiffs contend that the Defendant has no jurisdiction to enforce the civil regulatory provisions of the State’s Fish and Game Code over Indians in Indian Country, while the Defendant contends that the State has jurisdiction to enforce its Fish and Game Code

1 against the individual Plaintiffs and the members of the Tribe within the old Klamath River
2 Reservation/Extension.

3 WHEREFORE, Plaintiffs pray as hereinafter set forth.

4 **SECOND CLAIM**

5 **[Director Lacks Civil Regulatory Authority Based on Public Law 280]**

6 39. Plaintiffs allege each of the allegations set forth in Paragraphs 1-38 above, and
7 by this reference incorporate herein each such allegation as if set forth in full.

8 40. When the Klamath River Reservation was created for Indian purposes, it
9 reserved to the Indians of the Reservation, including the Yurok Indians whose descendants are
10 currently members of the Tribe, a federally reserved right to fish in that portion of the Klamath
11 River that was within the boundaries of the Klamath River Reservation.

12 41. Prior to the creation of the Resighini Reservation, the Yurok Indians whose
13 descendants are members of the Tribe fished on the Klamath River within the old Klamath
14 River Reservation/Extension free of State regulation and control. In fact, both before and after
15 the creation of the Resighini Reservation, the Yurok Indians of the Resighini Reservation fished
16 on the Klamath River within the old Klamath River Reservation/Extension at their usual and
17 customary fishing stations pursuant to their federally reserved fishing right.

18 42. The Resighini Yurok's immunity from State law existed even though the State
19 had been granted criminal/prohibitory jurisdiction over "Indian Country" within California
20 under Public Law 280, because that statute provides that it shall not "deprive any Indian or any
21 Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal
22 treaty, agreement, or statute with respect to hunting, trapping, or fishing, or the control,
23 licensing, or regulation thereof."

24 43. Yurok Indians of the Resighini Reservation have federally reserved fishing
25 rights to fish on what is now known as the Yurok Indian Reservation, initially created in the
26 nineteenth century when the lands they occupied were set aside as the old Klamath River
27 Reservation/Extension for "Indian purposes." Numerous court decisions have recognized that
28 Congress intended to reserve for the Indians the right to fish in the Klamath River within the

1 Klamath River Reservation, free of State regulation and control.

2 44. This federally reserved fishing right did not vest in the Yurok Indians of the
3 Resighini Reservation ownership of any fish, but a right to an opportunity to obtain possession
4 of a portion of the resource, which can best be expressed by either the numbers of fish taken or
5 an allocation of the harvestable resource.

6 45. As an attribute of its inherent sovereignty, upheld by Congress in Public Law
7 280, the Tribe retains the right to regulate the conduct of its members to fish in the Klamath
8 River on the Klamath River Reservation. This includes the right to regulate the Tribe's and its
9 members' exercise of federally reserved fishing rights in the Klamath River on the Klamath
10 River Reservation in order to conserve this resource.

11 46. By citing members of the Tribe fishing at usual and customary fishing places
12 within the old Klamath River Indian Reservation for violations of the State Fish and Game
13 Code, the Director and the Department interfere with the Tribe's exercise of its federally
14 reserved fishing rights. The Director and the Department lack civil regulatory authority over the
15 Tribe's regulation of its fishery resources within Indian Country on the old Klamath River
16 Indian Reservation.

17 WHEREFORE, Plaintiffs pray as hereinafter set forth.

18 **THIRD CLAIM**

19 **[Violation of 25 U.S.C. § 1983 and the 14th Amendment to the United States Constitution]**

20 47. Plaintiffs allege each of the allegations set forth in Paragraphs 1-46 above, and
21 by this reference incorporate herein each such allegation as if set forth in full.

22 48. When the Klamath River Reservation was created for Indian purposes, it
23 reserved to the Indians of the Reservation, including the Yurok Indians whose descendants are
24 currently members of the Resighini Reservation, a federally reserved right to fish in the
25 Klamath River.

26 49. These federally reserved fishing rights cannot be extinguished in the absence of
27 an Act of Congress setting forth a clear and express indication of Congressional intent to that
28 effect.

1 of 25 U.S.C. § 1983.

2 4. Preliminarily and permanently enjoin the Director, his officers, agents, and
3 employees from citing members of the Tribe for fishing on the Klamath River within the old
4 Klamath River Reservation/Extension.


5 5. Award the Tribe its costs and reasonable attorneys' fees.

6 6. Grant the Tribe such other relief as the Court deems appropriate.

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8 DATED: December 28, 2011

Respectfully submitted,
RAPPORT AND MARSTON

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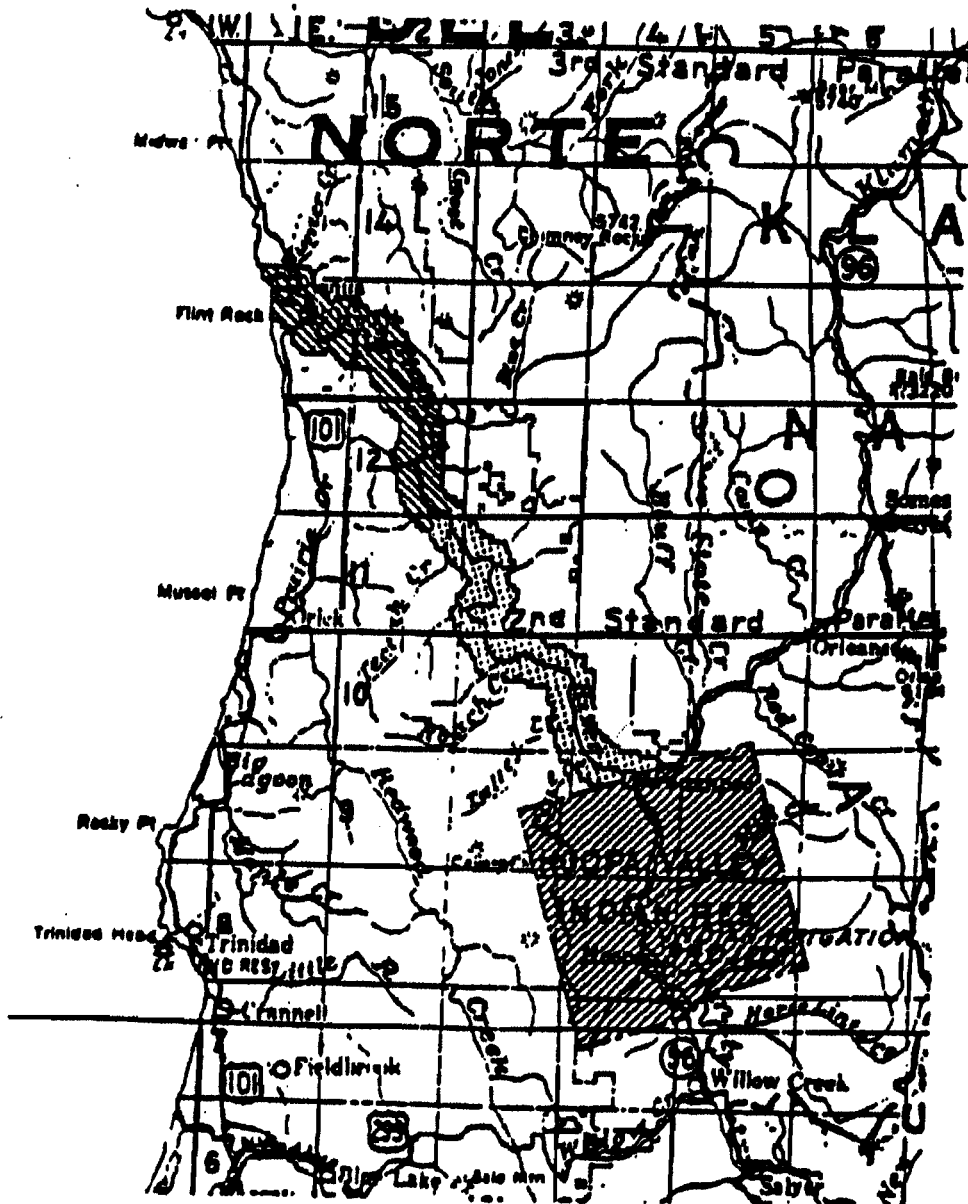
By: 
Lester J. Marston, Attorneys for Plaintiffs

EXH. A

Matts v. Arnett, 412 U.S. 481 (1973)
APPENDIX TO OPINION OF THE COURT

MAP OF HOOPA VALLEY INDIAN RESERVATION, CALIFORNIA*

Scale: 1 inch = 12 miles



- LEGEND:
-  Old Klamath River Reservation.
 -  Connecting Strip.
 -  Original Hoopa Valley Reservation.

*United States Department of Interior, General Land Office 1944.

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EXHIBIT A

EXH. B

CALIFORNIA--MENDOCINO RESERVE.

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standingly, of course nothing definite can now be done. But it may not be improper to consider the subject in connection with the general intent as to the particular locality in which it is proposed to make the location.

The reserve proposed on the Klamath River and Pacific coast does not appear from the map of the State of California to be very far removed from Cape Mendocino, or a point between that and Russian River; and as provision is made only for two reserves in the State other than those already in operation, the question arises whether it should not be situated farther in the interior, or perhaps eastern part of the State, than the point referred to. The Noome Lacke Reserve is situated in one of the Sacramento valleys, at about the latitude of 40 degrees north and 122 degrees of longitude west, about the center of that portion of the State north of the port of San Francisco. As, therefore, the proposed Klamath Reserve, being northwest from the Noome Lacke Reservation, would appear to be adapted to the convenient use of the Indians in that direction, the question is suggested whether the other reserve should not be located farther east and north, say on the tributaries of either Pitt or Feather Rivers. As in the case of the proposed reserve of the Klamath, I am desirous of obtaining your opinion and that of the President of the United States, with such decision as may be arrived at under the circumstances, in season to communicate the same by the next California mail, for the government of the action of superintendent Henley.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., November 12, 1856.

SIR: I have the honor to submit herewith the report from the Commissioner of Indian Affairs of the 10th instant, and its accompanying papers, having relation to two of the reservations in California for Indian purposes, authorized by the act of 3d March last.

The precise limits of but one of the reservations, viz, a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River, are given, no sufficient data being furnished to justify any definite action on the other.

I recommend your approval of the proposed Klamath Reservation, with the provision, however, that upon a survey of the tract a sufficient quantity be cut off from the upper end thereof to bring it within the limit of 25,000 acres authorized by law.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

The PRESIDENT.

Let the reservation be made, as proposed.

FRANKLIN PIERCE.

NOVEMBER 16, 1855.

Mendocino Reserve.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, April 16, 1856.

SIR: Referring to the report I had the honor to submit for your consideration on the 10th of November last, relative to the establishment



EXHIBIT B