

1 Cheryl A. Williams (Cal. Bar No. 193532)  
Kevin M. Cochrane (Cal. Bar No. 255266)  
2 caw@williamscochrane.com  
kmc@williamscochrane.com  
3 WILLIAMS & COCHRANE, LLP  
836 57th Street, Suite 472  
4 Sacramento, CA 95819  
Telephone: (916) 431-0126

5  
6 Attorneys for Plaintiff  
BERRY CREEK RANCHERIA

7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 **BERRY CREEK RANCHERIA OF MAIDU**  
11 **INDIANS OF CALIFORNIA**, a federally-  
12 recognized Indian tribe,

13 Plaintiff,

14 vs.

15 **ED LOWRY**, as Board Chair of the State of  
16 California Occupational Safety & Health Appeals  
17 Board; **SCOTT PEASE**, as Executive Officer of  
18 the State of California Occupational Safety &  
19 Health Appeals Board; **JOHN WENDLAND**, as  
District Manager for the Redding District Office  
of the State of California Department of Industrial  
Relations; and **DOES 1 THROUGH 10**;

20 Defendants.  
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Case No.:

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**[28 U.S.C. §§ 1331, 1362, 2201 & 2202]**

Case No.: \_\_\_\_\_

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## INTRODUCTION

1. This case concerns the State of California using a carefully-drawn grant of authority under a federal statute to do something that even the United States cannot – regulate a core function of a tribal government. To explain, Congress passed the Occupational Safety and Health Act in 1970 to regulate the practices of “employers,” a term the statute defines to mean “business[es] affecting commerce.” 29 U.S.C. § 652(5). This focus on “businesses” circa 1970 may help explain why Indian tribes are completely absent from the statute – with the Indian Commerce Clause not serving as the basis for Congress’ power to act and the term “tribe” not mentioned a single time in the statutory text. *See, e.g.*, 29 U.S.C. § 651(b) (“The Congress... through the exercise of its powers to regulate commerce among the several States and with foreign nations...”). And yet, in the years since its enactment, the federal courts created a common-law test that extends a generally-applicable statute like this to an Indian tribe so long as doing so does not impact what are known as “exclusive rights of self-governance in purely intramural matters.” *Donovan v. Coeur d’Alene Tribal Farm*, 751 F.2d 1113, 1115 (9th Cir. 1985) (“*Coeur d’Alene*”). To help explain what this means, various federal courts in this circuit have relied on this exception in recent years to make sure that generally applicable federal statutes do not regulate the traditional functions of tribal governments, whether those are the operation of a health clinic or a housing authority. *See* ¶¶ 17-18, *infra*.

2. This is not to say a state like the State of California cannot have a role in the regulation of health and safety issues under this federal statute. The way it works in this instance is the state enacts a “state plan” that sets safety and health standards at least as stringent as the federal ones and then obtains the federal government’s permission to enforce such standards. *See* 29 U.S.C. § 667. Following enactment, the state and the federal government then sit down and hammer out the terms of an “operational agreement” to detail the division of authority between the two sovereigns – namely, who is going to be responsible for regulating what “employers.” *See* ¶¶ 32-36, *infra*. The federal government and the State of California did all of this. *See id.* But, the State of California seems to have forgotten the importance of the term “employer” to this entire scheme, as the authorization for its (or any other state’s) state plan does not change the fundamental jurisdictional structure of the federal statute by enlarging the class of “employers” being regulated with the one exception of the state itself. *See, e.g.*, 29 U.S.C. § 667(c)(6)

1 (requiring a state plan to contain assurances a “State” will have its state plan cover “all employees of  
 2 public agencies of the State and its political subdivisions”). What is more, the text of the federal statute,  
 3 quite logically, does not include an express grant of authority allowing a state to assert jurisdiction over  
 4 forgotten “employers” that are only included in some capacity after the fact like Indian tribes – a pretty  
 5 important consideration since state regulations and fines can be (and often are) much more severe than  
 6 their federal counterparts. *See, e.g., Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 790-91 (2014)  
 7 (explaining one of the “enduring principles of Indian law” is that Congress must “unequivocally ex-  
 8 press” an intention to “abrogate [tribal] immunity,” even when the complainant is the surrounding state).

9 3. And yet, here, the State of California Department of Industrial Relations has used its well-  
 10 defined role under this federal statute to try and regulate a core governmental function of the Plaintiff  
 11 Berry Creek Rancheria of Maidu Indians of California. As to that, Berry Creek has a governmental  
 12 agency devoted to the protection of cultural resources known appropriately as the Cultural Resource  
 13 Department. *See* ¶¶ 52-55, *infra*. This is one of (if not) the largest arms of the Tribal government. *See* ¶  
 14 55, *infra*. One of the reasons for this is the area in which Berry Creek is situated is unusually prone to  
 15 wildfires, with historic ones that occurred in 2018 and 2020 either requiring the total evacuation of the  
 16 reservation or burning large swaths of remote trust land. *See* ¶¶ 49-51, *infra*. The Cultural Resource  
 17 Department exists to defend against these fires and do everything possible to ensure that the Tribe’s  
 18 lands and cultural resources – including remains and artifacts – are protected. *See* ¶ 53, *infra*. To that  
 19 end, a tribal-member employee of this Cultural Resource Department was traveling from a remote parcel  
 20 of trust land back to the Tribal reservation in August of 2025 when his utility task vehicle tipped over,  
 21 causing the employee to smash his hand. *See* ¶¶ 56-57, *infra*. The California Department of Industrial  
 22 Relations got involved and issued two citations against the Berry Creek Tribal government for failing to  
 23 comply with standards the State of California had set under its state plan that are included as part of the  
 24 Labor Code – ones that are much more stringent than under federal law. *See* ¶¶ 65-66, *infra*. What is  
 25 more, the total amount of proposed penalties for these citations is \$23,000, which, given the exponen-  
 26 tially-increasing fee schedule for “repeat” violations under State of California law, puts Berry Creek in  
 27 the position where a single accident by a governmental employee of its Cultural Resource Department in  
 28 the future could expose the Tribe to more than \$200,000 in State-issued penalties. *See* ¶¶ 67-68, *infra*.

1 And yet, the only way the California Department of Industrial Relations can get to the point where it can  
2 lawfully issue citations against a tribal government located on the reservation is if all the following are  
3 true:

- 4 • The definition of “employer” under the federal statute includes tribal governments;
- 5 • The State can regulate such tribal governments under the more stringent standards of its state  
6 plan without an express delegation of authority in the federal statute from Congress;
- 7 • The State can regulate such tribal governments despite the Secretary of Labor not giving it  
8 the authority to do so under its operational agreement with the federal government; and,
- 9 • The State is authorized to regulate such tribal governments despite its own definition of “em-  
10 ployer” for purposes of its state plan not covering Indian tribes.

11 Needless to say, the State of California fails the very first step of this analysis. What is more, allowing  
12 the State to continue pursuing its administrative process against Berry Creek will not only hollow out the  
13 very concept of sovereignty, but also put the Tribe in the untenable position where it needs to perform  
14 vital resource conservation activities, but is likely unable to do so given the sheer amount of fines the  
15 State of California imposes. For this and the other reasons set forth herein, the Court should issue  
16 appropriate declaratory and injunctive relief against the State actors named as Defendants in this action  
17 under *Ex parte Young* to shield Berry Creek from ongoing attempts to violate its sovereignty in contra-  
18 vention of federal law.

#### 19 JURISDICTION AND VENUE

20 4. The district court has original jurisdiction over this action pursuant to, *inter alia*, 28 U.S.C. §  
21 1331 and 28 U.S.C. § 1362, as well as supplemental jurisdiction over any State-law claims pursuant to  
22 28 U.S.C. § 1367(a). The district court has the power to issue the relief requested under this Complaint  
23 by, *inter alia*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

24 5. The State actors named as Defendants in this action do not have immunity from prospective  
25 equitable relief to halt ongoing violations of federal law under *Ex parte Young*, 209 U.S. 123 (1908).

26 6. This action presents an actual, concrete, and substantial controversy as to whether the State of  
27 California, through the California Department of Industrial Relations and its subordinate Occupational  
28 Safety & Health Appeals Board, is violating federal law by trying to assert jurisdiction over a tribal gov-

1 ernment without the requisite authority under the federal Occupational Safety and Health Act, 29 U.S.C.  
2 § 651 *et seq.*

3 **PARTIES**

4 7. The Berry Creek Rancheria of Maidu Indians of California is a federally-recognized Indian  
5 tribe located within the external boundaries of the State of California that is listed in the January 30,  
6 2026 issue of the Federal Register by such name. *See* 91 Fed. Reg. 4102, 4103 (Jan. 30, 2026).

7 8. Ed Lowry is the Board Chair of the Occupational Safety & Health Appeals Board for the State  
8 of California, and Berry Creek brings this suit against him in his official capacity under *Ex parte Young*.  
9 The office address for the Occupational Safety & Health Appeals Board is 2520 Venture Oaks Way,  
10 Suite 300, Sacramento, California 95833.

11 9. Scott Pease is the Executive Officer of the Occupational Safety & Health Appeals Board for  
12 the State of California, and Berry Creek brings this suit against him in his official capacity under *Ex*  
13 *parte Young*. The office address for the Occupational Safety & Health Appeals Board is 2520 Venture  
14 Oaks Way, Suite 300, Sacramento, California 95833.

15 10. John Wendland is the District Manager for Redding Regional Office of the California  
16 Department of Industrial Relations, and Berry Creek brings this suit against him in his official capacity  
17 under *Ex parte Young*. The office address for the Redding Regional Office of the California Department  
18 of Industrial Relations is 381 Hemsted Drive, Redding, California 96002.

19 **GENERAL ALLEGATIONS**

20 **I. THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT**

21 11. The federal Occupational Safety and Health Act (“OSH Act” or “Act”) was enacted by  
22 Congress in 1970 through the exercise of two of the three prongs of the Commerce Clause in Article I,  
23 Section 8, Clause 3 of the United States Constitution – namely, its power to “regulate commerce among  
24 the several States and with foreign nations.” 29 U.S.C. § 651. The policy section of the OSH Act that  
25 sets forth the foregoing text completely omits any reference to Congress’ power to “regulate commerce  
26 with... Indian tribes” as being one of the bases for the statute, an omission that carries over to the rest of  
27 an Act that is equally as silent as to Indian tribes.

28 12. This same policy section of the OSH Act also sets forth the purpose of the statute, explaining

1 that personal injuries and illnesses have become a substantial burden on interstate commerce and thus  
2 the Act would authorize “the Secretary of Labor to set mandatory occupational safety and health stand-  
3 ards applicable to *businesses* affecting interstate commerce.” 29 U.S.C. § 651(a) & (b)(3) (emphasis  
4 added).

5 13. This terminology of “businesses affecting commerce” comes straight from the definition of  
6 “employer” that is set forth in the ensuing section of the OSH Act. The particular definition for this term  
7 explains that it “means a person engaged in a business affecting commerce who has employees, but does  
8 not include the United States (not including the United States Postal Service) or any State or political  
9 subdivision of a State.” 29 U.S.C. § 652(5).

10 14. “Commerce,” too, has its own unique definition, and one that keeps with the pattern of  
11 silence towards Indian tribes. That definition explains that commerce means “trade, traffic, commerce,  
12 transportation, or communication among the several States, or between a State any place outside thereof,  
13 or within the District of Columbia, or a possession of the United States (other than the Trust Territory of  
14 the Pacific Islands), or between points in the same State but through a point outside thereof.” 29 U.S.C.  
15 § 652(3).

16 15. Thus, when broken down, the constituent parts of the definition for “employer” are a  
17 “business” that affects “trade, traffic, commerce, transportation, or communication” amongst or between  
18 various jurisdictions, none of which are Indian tribes.

19 16. Despite this silence, the United States Court of Appeals for the Ninth Circuit (“Ninth  
20 Circuit”) has interpreted the OSH Act as being a “statute of general applicability.” *Coeur d’Alene*, 751  
21 F.2d at 1115. What this means for Indian tribes in particular is that the OSH Act applies in the face of  
22 such silence absent one of three exceptions: “(1) the law touches ‘exclusive rights of self-governance in  
23 purely intramural matters;’ (2) the application of the law to the tribe would ‘abrogate rights guaranteed  
24 by Indian treaties;’ or (3) there is proof ‘by legislative history or some other means that Congress intend-  
25 ed [the law] not to apply to Indians on their reservations.’” *Id.* at 1116 (citing *United States v. Farris*,  
26 624 F.2d 890 (9th Cir. 1980)).

27 17. Subsequent opinions from the Ninth Circuit have fleshed out the meaning of the first “self-  
28 governance” exception, explaining it looks at whether the entity subject to the contested regulation is an

1 “arm of the [] Tribe and provided a governmental service,” and whether the “dispute at issue was ‘purely  
2 intramural,’ because it was between a member of the [] Tribe, and the tribe itself.” *Consumer Fin. Prot.  
3 Bureau v. Great Plains Lending*, 846 F.3d 1049, 1055 (9th Cir. 2017).

4 18. Thus, in keeping with the “business affecting commerce” language of the OSH Act, a clear  
5 dichotomy has emerged under the first “self-governance” exception between governmental functions on  
6 the one hand and “commercial enterprises open to non-Indians from which the Tribe intends to profit”  
7 on the other. *Ridola v. Lytton Rancheria of California*, 2019 U.S. Dist. Lexis 253326, \*7-\*8 (N.D. Cal.  
8 2019) (citing *Fla. Paralegic Ass’n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126, 1128-34  
9 (11th Cir. 1999) (“The business does not relate to the governmental functions of the Tribe, nor does it  
10 operate exclusively within the domain of the Tribe and its members.”)); *cf. Coeur d’Alene*, 751 F.2d at  
11 1116 (“The operation of a farm that sells produce on the open market in interstate commerce is not an  
12 aspect of tribal self-government.” (citing *Farris*, 624 F.2d at 893)).

13 19. This analysis has guided other determinations by the Ninth Circuit and sister district courts,  
14 decisions which have found that activities such as running housing programs and health clinics are es-  
15 sential governmental functions that fall within the first self-governance exception to other federal stat-  
16 utes of general applicability. *See, e.g., EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1080 (9th Cir.  
17 2001) (refusing to apply the generally-applicable Age Discrimination in Employment Act, 29 U.S.C. §§  
18 621-34, to a housing authority of the Karuk tribe); *Meglitsch v. Southcentral Found.*, 2022 U.S. Dist.  
19 Lexis. 207415, \*8-\*19 (D. Alaska 2022) (same for the generally-applicable Fair Labor Standards Act,  
20 29 U.S.C. § 203, to a health care program operated by eleven tribes that serviced both Natives and non-  
21 Natives alike).

22 20. As for the standards with which “employers” have to comply under the OSH Act, that subject  
23 is detailed in more depth in Section 655. *See* 29 U.S.C. § 655. That section begins by explaining that the  
24 Secretary of Labor shall as soon practicable following the “effective date” of the OSH Act promulgate  
25 regulations that create applicable standards out of national consensus standards and established Federal  
26 standards, and then goes on to detail the process for doing so.

27 21. Notably, this particular section of the OSH Act devoted to the creation of federal standards  
28 for “employers” does not alter the definition of the term discussed above.

1 22. In fact, the “employer” terminology runs throughout the section, with it explaining how a  
 2 particular employer can go about obtaining a variance from any standard promulgated by the Secretary  
 3 of Labor through this process. *See* 29 U.S.C. § 655(b)(6)(A).

## 4 II. CALIFORNIA STATE PLAN

5 23. However, the federal government is not the only jurisdiction capable of issuing standards  
 6 pursuant to the scheme created by Congress through the OSH Act. As explained by District Judge Ishii  
 7 in a recent order, “[i]n enacting the Occupational Safety and Health Act of 1970, Congress provided a  
 8 mechanism for cooperative federalism – it allows state governments to create plans for state enforce-  
 9 ment of any occupational safety or health issue with respect to which the Secretary of Labor has promul-  
 10 gated a standard under... [Section] 655.” *United States v. Gibson Wine Co.*, 2017 U.S. Dist. Lexis  
 11 39820, \*12-\*13 (E.D. Cal. 2017). The language being referenced is set forth in Section 667 and explains  
 12 that any state that “desires to assume responsibility for development and enforcement therein of occu-  
 13 pational safety and health standards relating to any occupational safety or health issue with respect to  
 14 which a Federal standard has been promulgated under [Section 655] shall submit a State plan for the  
 15 development of such standards and their enforcement.” 29 U.S.C. § 667(b).

16 24. The Secretary of Labor is then empowered to approve a plan submitted by a state so long as  
 17 it complies with a number of conditions.

18 25. Those conditions are set forth in Section 667(c) of the OSH Act and require amongst other  
 19 things that the state standards be “at least as effective” as the commensurate federal standards under  
 20 Section 655. *See* 29 U.S.C. § 667(c)(2). The obvious takeaway of this language is that a state plan – if  
 21 approved – will position a state to end up enforcing its own safety and health standards that are more  
 22 strict than the ones under federal law. *See id.*

23 26. However, nothing in the stated requirements for approval of a state plan alter the basic juris-  
 24 dictional structure of the OSH Act. As to that, the express conditions for approval of a state plan make  
 25 sure that regulated “employers” will still provide reports to the Secretary of Labor in states where such  
 26 plans are in effect, and the state plan will provide “for a right of entry and inspection of all workplaces  
 27 subject to the Act.” 29 U.S.C. § 667(c)(3), (c)(7). The only express way in which the definition of “em-  
 28 ployer” is enlarged is through the language in Section 667(c)(6) that allows a state to regulate its own

1 otherwise-exempted administrative entities under the state plan. *See* 29 U.S.C. § 667(c)(6) (explaining  
2 an approvable state plan shall contain “satisfactory assurances that such State will... establish and main-  
3 tain an effective and comprehensive safety and health program applicable to all employees of public  
4 agencies of the State and its political subdivisions”).

5 27. What is more, there is no language within Section 667 of the OSH Act that expressly author-  
6 izes a state, through its own state plan, to assume jurisdiction over those functions of an Indian tribe that  
7 actually do come under the ambit of the OSH Act.

8 28. This is noteworthy because the general rule that the federal government can regulate certain  
9 functions of a Indian tribe by silence in the case of a federal statute of general applicability does not ex-  
10 tend to other entities (including states), as, for those “generally applicable laws may be enforced against  
11 tribes only if an intent to do so is clear, rather than if there is no clear intent to the contrary.” *Manzano v.*  
12 *S. Indian Health Council, Inc.*, 2021 U.S. Dist. Lexis 126475, \*8 (S.D. Cal. 2021) (citing *Casino Pauma*  
13 *v. Nat’l Labor Relations Bd.*, 888 F.3d 1066, 1078 (9th Cir. 2018)).

14 29. When it comes to states, this rule aligns with how federal law traditionally operates in Public  
15 Law 280 states like California, where a state does not have civil/regulatory authority over Indian reser-  
16 vations, as a grant of such power “would result in the destruction of tribal institutions and values.”  
17 *California v. Cabazon Band of Indians*, 480 U.S. 202, 208 (1987).

18 30. The State of California ultimately entered into a state plan under Section 667 of the OSH Act  
19 in 1973 once it made necessary changes to its existing program in order “to bring it into full conformity  
20 with the requirements of [Section 667] of [the] OSH A[ct].” 38 Fed. Reg. 10717 (May 1, 1973); *see* Cal.  
21 Labor Code § 6300 *et seq.*

22 31. This California state plan was initially approved by the Secretary of Labor on May 1, 1973  
23 (*see* 38 Fed. Reg. 10717 (May 1, 1973)), and finally took effect on August 19, 1977. *See* 42 Fed. Reg.  
24 41857 (Aug. 19, 1977).

25 32. However, the Secretary of Labor exercised its discretion under Section 667(e) of the OSH  
26 Act to continue federal administration of safety and health regulation within the State of California fol-  
27 lowing the execution of the California state plan, meaning the federal OSH Act standards under Section  
28 655 and the agency’s enforcement authority under Section 659 still apply. *See, generally, Gibson Wine*

1 Co., 2017 U.S. Dist. Lexis 39820 at \*14.

2 33. The involvement of both the federal government and the State of California in the regulation  
3 of health and safety standards has resulted in the sovereigns entering into an operational agreement that  
4 defines “the scope of the exercise of Federal authority under [Section 667(e)] in the State of California  
5 with respect to occupational safety and health standards promulgated under [Section 655], by specifying  
6 areas of State responsibility and delineating continuing Federal responsibilities.” Put differently, the fed-  
7 eral government and the State of California determined which of the two would be responsible for ensur-  
8 ing those within the common universe of “employers” complied with health and safety standards under  
9 Sections 655 and 667 of the OSH Act.

10 34. The most-recent operational agreement was executed on September 15, 2022, with it going  
11 into effect upon its publication in the Federal Register on January 5, 2024. *See* 89 Fed. Reg. 702 (Jan. 5,  
12 2024).

13 35. According to the terms of the operational agreement, when it comes to Indian tribes, “Federal  
14 responsibility under the Act will continue to be exercised with regard to... Private sector employers and  
15 Native American-owned or tribal workplaces within the borders or confines of all U.S. Government rec-  
16 ognized Native American Reservation or on lands held in Trust for the various tribes in California.”

17 36. As for the State of California, the scope of the state plan is supposed to cover “State and local  
18 government employers whose establishments are located within the borders of Reservations or Trust  
19 lands *and Tribal member employers located outside the territorial borders of Reservation or Trust*  
20 *land.*”

21 37. Nothing in the operational agreement says anything about the regulation of tribal govern-  
22 ments as “employers,” let alone the State of California doing so according to the terms of its own state  
23 plan.

24 38. As for the specifics of the California state plan, the statutory definition of “employer” for the  
25 state plan references the State of California’s workers’ compensation law and explains that the term  
26 “shall have the same meaning as in Section 3300” therein. Cal. Labor Code § 6304.

27 39. This separate definition of “employer” is stated as meaning “(a) The State and every State  
28 agency[;] (b) Each county, city, district, and all public and quasi public corporations and public agencies

1 therein[;] (c) Every person including any public service corporation, which has any natural person in  
2 service[;] and (d) The legal representative of any deceased employer.” Cal. Labor Code § 3300.

3 40. The general definition of “person” for purposes of the California Labor Code, including the  
4 residual provision in subsection (c) above, is set forth earlier on in Section 18 of the statute. That section  
5 provides that “person” means “any person, association, organization, partnership, business trust, limited  
6 liability company, or corporation.” Cal. Labor Code § 18.

7 41. A California court of appeal has already held that the definition of “employer” must have the  
8 same meaning under both the California state plan and the workers’ compensation law, and thus “cases  
9 construing [S]ection 3300 [are treated as] equally applicable to [S]ection 6304.” *Sully-Miller Contract-*  
10 *ing Co. v. California Occupational Safety & Health Appeals Bd.*, 138 Cal. App. 4th 684, 693 (3d Dist.  
11 2006) (citing, e.g., *Mercer v. Dep’t of Motor Vehicles*, 53 Cal. 3d 753, 763 (1991)).

12 42. And yet, a California court of appeal has also previously held that the California Workers’  
13 Compensation Appeals Board does not have jurisdiction over Indian tribes as employers on account of  
14 their sovereign status. *See, e.g., Middletown Rancheria v. Workers’ Comp. Appeals Bd.*, 60 Cal. App.  
15 4th 1340 (1st Dist. 1998).

16 43. This decision has subsequently been applied to a tribal health clinic “located outside of tribal  
17 land” (*see Shingle Springs Band of Miwok Indians v. Workers’ Comp. Appeals Bd.*, No. C032701, 66  
18 Cal. Comp. Cases 1283 (3d Dist. 2001)), and even a tribally-created “nonprofit corporation established  
19 under California law” that acts as a subcontractor to provide health care services on behalf of an eight-  
20 teen-member “tribal organization called the California Rural Indian Health Board.” *United Indian Health*  
21 *Servs. Inc./Tribal First v. Workers’ Comp. Appeals Bd.*, 111 Cal. App. 5th 1064, 1071 (1st Dist. 2025).

22 44. What is more, another recent California court of appeal opinion interpreted the term “person”  
23 under the State of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17201 &  
24 17204, with a definition facially more broad than the one under the California Labor Code in a way as to  
25 exclude Indian tribes. *See Rincon Band of Luiseno Mission Indians v. Flynt*, 70 Cal. App. 5th 1059 (4th  
26 Dist. 2021). In *Rincon*, a coalition of Indian tribes brought suit against cardrooms throughout the state  
27 under the UCL for allegedly engaging in banked versions of card games that are only authorized to  
28 Indian tribes under the California Constitution. *See id.* at 1072 (citing Cal. Const. art. IV, § 19(f)). In

1 defending against the action, the cardrooms argued the plaintiff tribes did not have standing to bring the  
2 suit because they are not “persons” for purposes of the UCL. *Id.* at 1089. The definition of “person” for  
3 the UCL is set forth in Section 17201 of the Business and Professions Code and provides that the term  
4 “mean[s] and include[s] natural persons, corporations, firms, partnerships, joint stock companies, associ-  
5 ations” and, unlike the definition in the California Labor Code, “other organizations of persons.” *Id.* In  
6 interpreting this language, the court of appeal explained that “[t]he Tribes are none of those things” and  
7 instead “are unique sovereign governmental entities, recognized by the federal government.” *Id.*  
8 (citations omitted) To the court, the tribes’ status as sovereigns meant they had to be excluded from the  
9 definition of “person” under the long-recognized rule that the term “person” as used “in common usage”  
10 “does not include the sovereign,” and thus “statutes employing the phrase are ordinarily construed to  
11 exclude it.” *Id.* at 1090.

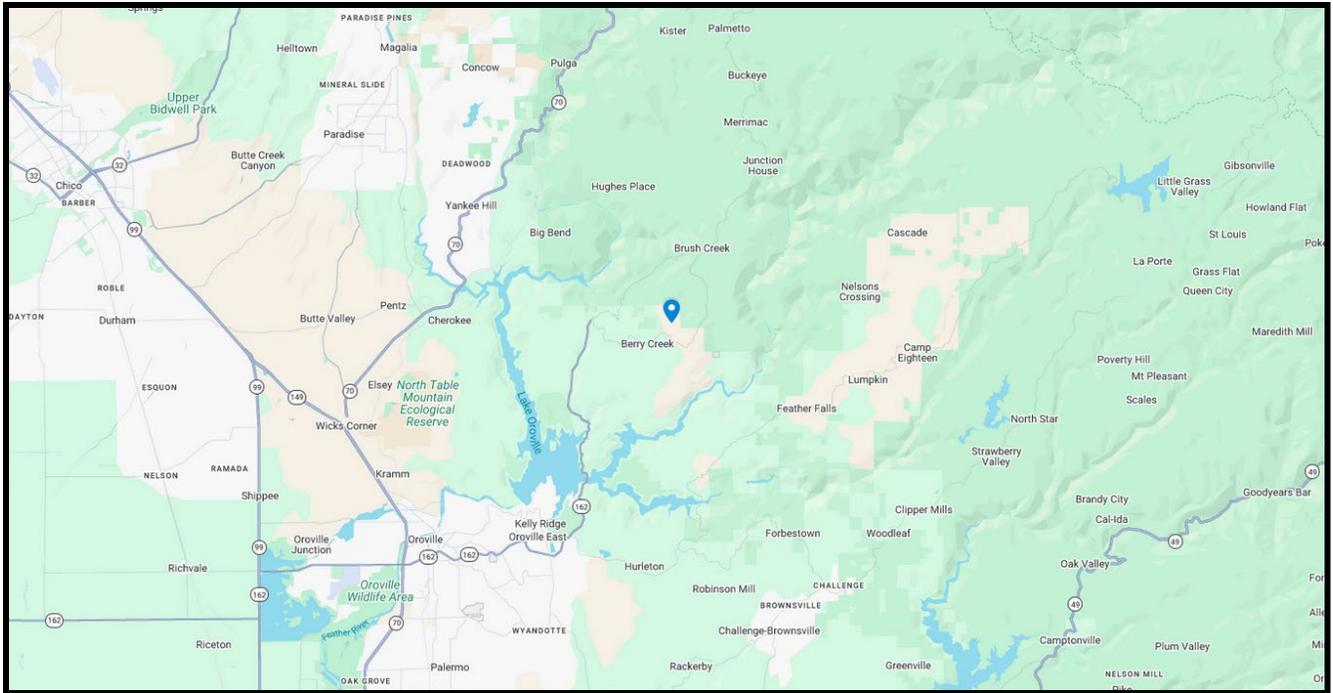
12 **III. BERRY CREEK RANCHERIA**

13 45. The Berry Creek Rancheria is a federally-recognized Tribe that has historically resided in the  
14 foothills of the Sierra Nevada mountains along the various tributaries of the Feather River.

15 46. Due in part to the range of this territory, the land holdings of Berry Creek are fragmented and  
16 located in various parts of Butte County.

17 47. The Tribe’s original land base is a 33.04-acre parcel of land located in the unincorporated  
18 area of Berry Creek that the federal government purchased from the Central Pacific Railway Company  
19 on March 1, 1916. This parcel of land, which the federal government holds in trust for the Tribe, is ap-  
20 proximately twenty-seven miles east of the City of Oroville, but largely unoccupied due to the topog-  
21 raphy of the area and the lack of accessible utilities.

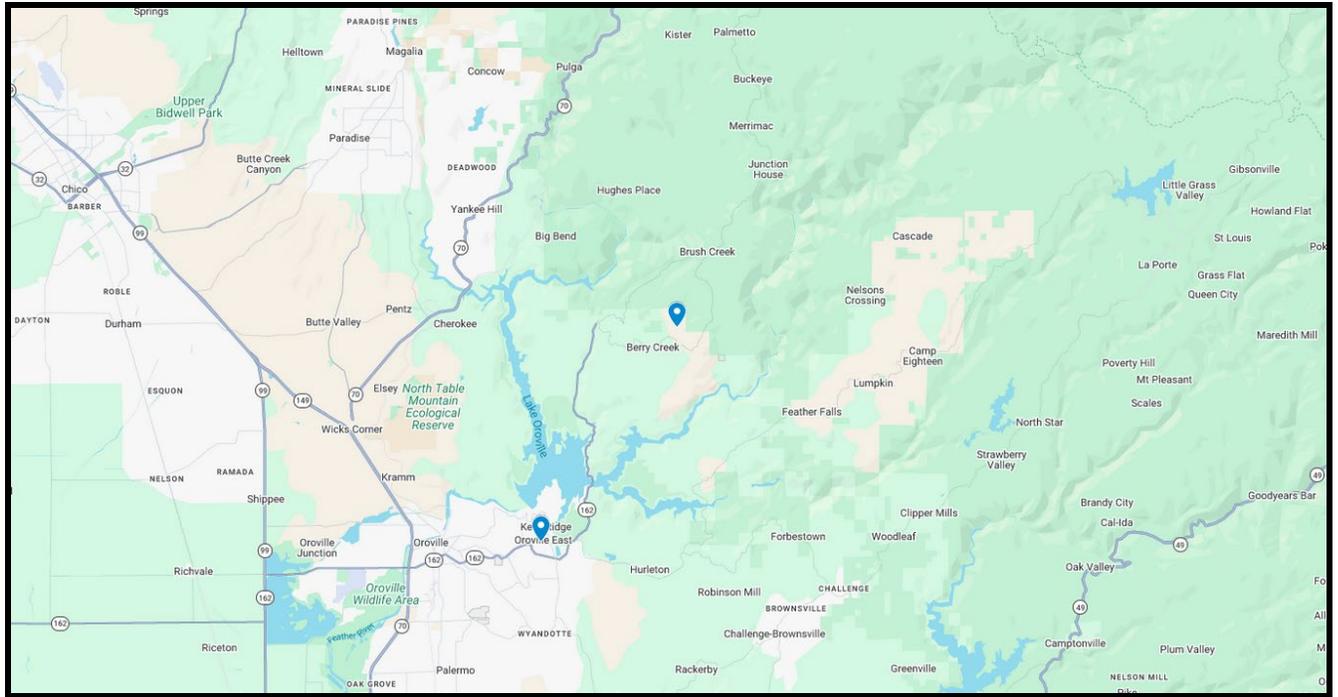
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48. Since this time, the Tribe has acquired other parcels of land in the area, including a cemetery that serves as a historical resting place for deceased members of the Tribe.

49. However, Berry Creek’s primary land base is its reservation that is approximately two miles east of the limits of the City of Oroville, the main part of which was established on August 3, 1988 when the federal government took the land into trust under the Indian Land Consolidation Act of 1983, P.L. 97-459. The Tribe purchased this land with funds provided by the United States Department of Housing and Urban Development, and the reservation now serves as the residential community for Tribal members, the headquarters for the Tribal government (including the various government agencies), and the area in which the Tribe’s various on-reservation business enterprises operate. The address for the Tribal governmental building on the reservation is 5 Tyme Way, Oroville, California 95966.

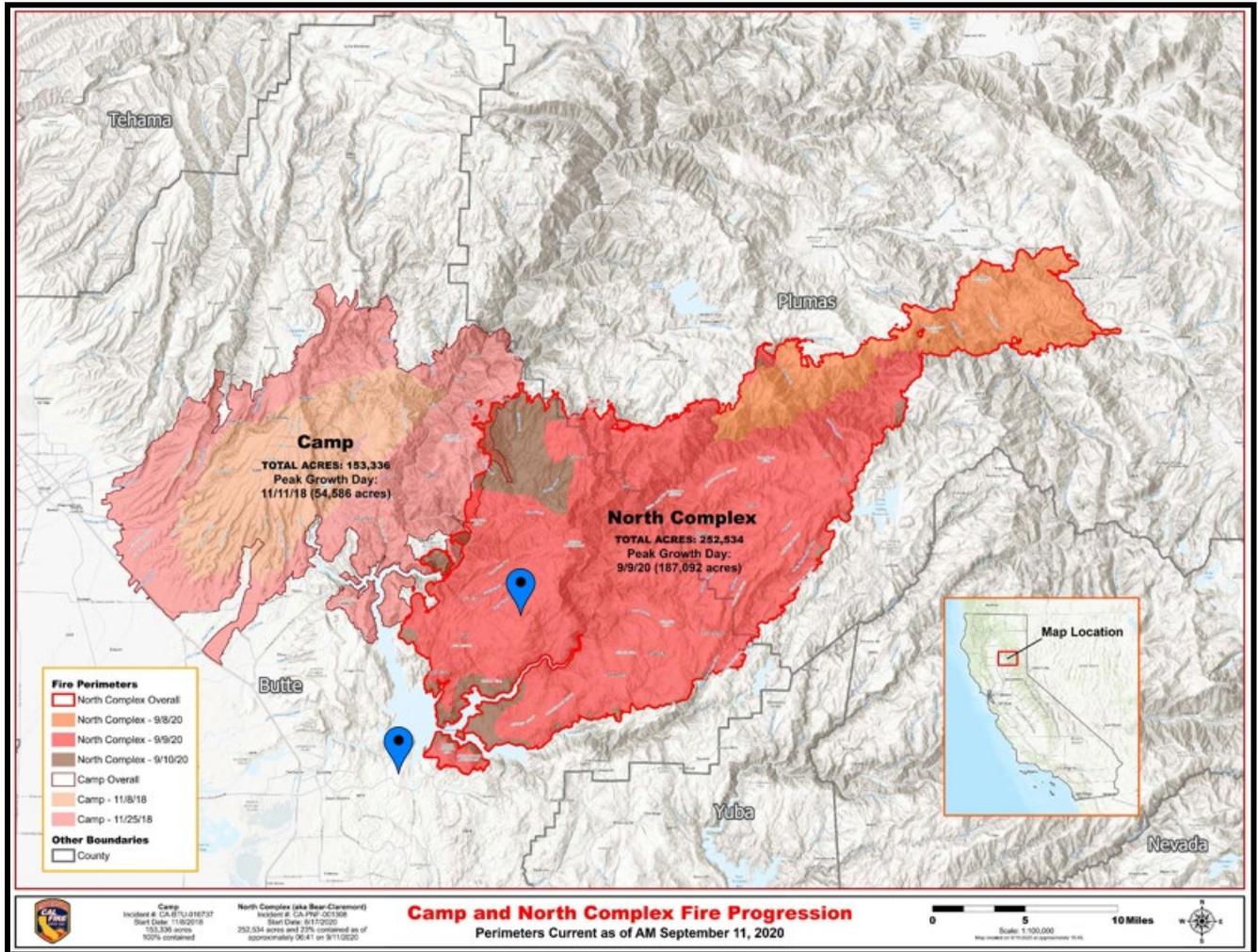
**[CONTINUED ON NEXT PAGE]**



50. A major issue with the locations of Berry Creek’s various landholdings is the area has been beset by wildfires. In the fall of 2018, the Camp Fire erupted and ended up consuming 153,336 acres of land before fire-fighting personnel were able to fully extinguish it. Extinguishing it was no easy task either, as the fire ripped through Butte County and destroyed more than 18,800 structures and killed 85 people before the 1,065 fire fighters tasked with suppressing the fire were able to complete their job. Certain areas were completely impacted, like Paradise – a town in the Sierra Nevada foothills that was destroyed within hours of the start of the Camp Fire. For Berry Creek, the fire ultimately came within a mile of the northern border of the Tribe’s reservation, requiring the complete evacuation of the reservation. Once the Camp Fire was fully suppressed, the Tribe then used some of the more-spacious buildings on its reservation to serve as shelters for those from the surrounding community who had been displaced by the Camp Fire.

51. Just two years later, an even larger wildfire impacted Butte County. During the late summer of 2020, a fire known as the North Complex Fire started in the Plumas National Forest and then quickly spread southeast until it, too, came within mere miles of the limits of the City of Oroville. The North Complex Fire was more than double the size of the Camp Fire, covering 318,935 acres in total, and burned a massive swath of land from the Sierra Nevadas to the eastern shore of Lake Oroville –

1 including the unincorporated area of Berry Creek and virtually all of the Tribe's landholdings in the  
 2 area.



19 52. The prevalence of fires in the eastern half of Butte County is due to a confluence of factors  
 20 that include recurrent droughts, a build-up of vegetation on public lands as a result of inadequate land-  
 21 management practices (like forest thinning), and utilities failing to do the near impossible of proactively  
 22 maintaining hundreds of thousands of miles of power lines. For instance, investigators with the Cali-  
 23 fornia Department of Forestry and Fire Protection traced the Camp Fire to a single suspension hook on a  
 24 single transmission tower owned by PG&E (#27/222), one that had failed as a result of continual friction  
 25 from high winds, caused the associated power line to lash against the steel edifice, and ultimately led to  
 26 sparks and molten alloys showering the grasslands below as a result.

27 53. The Tribe has long had a Cultural Resource Department devoted to preserving Tribal lands  
 28

1 and cultural assets, and the recurrent threat of forest fires has simply amplified the need to adequately  
2 staff and utilize this department. Like other tribes, one of the core principles of Berry Creek is the need  
3 to protect its heritage through the preservation of the natural environment and cultural sites thereon,  
4 whether those are cemeteries or historic living/gathering areas where ancestral remains and cultural  
5 artifacts are otherwise buried. *See Colorado River Indian Tribes v. United States Dep't of Interior*, 2012  
6 U.S. Dist. Lexis 195295, \*37 (C.D. Cal. 2012) (explaining the “importance of these [cultural] sites tran-  
7 scends their spiritual value to the Tribes and evidences their cultural significance to the general public”);  
8 *Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 142 (1960) (Black, J., dissenting) (“It  
9 may be hard for us to understand why Indians cling so tenaciously to their lands and traditional tribal  
10 ways of life. The record does not leave the impression that the lands of their reservations are the most  
11 fertile, the landscape the most beautiful or their homes the most splendid specimens of architecture. But  
12 this is their home – their ancestral home.”). To that end, maintaining the status quo of the natural envi-  
13 ronment in the Tribe’s ancestral territory is of paramount importance to Berry Creek, and it does this pri-  
14 marily through its Cultural Resource Department. This department is responsible for a myriad of tasks  
15 related to the preservation and/or restoration of the native ecosystem, including managing vegetation  
16 (such as clearing brush and removing fallen trees), removing invasive species, replanting native plants,  
17 and taking other protective measures to ensure the natural environment is insulated from outside, exis-  
18 tential threats.

19 54. In other words, this Cultural Resource Department is responsible for the restoration and pro-  
20 tection of the Tribe’s lands, including the 33.04-acre parcel of trust land located in the unincorporated  
21 area of Berry Creek that already suffered significant damage as a result of the North Complex Fire.

22 55. The Cultural Resource Department functions as an arm of the Tribal government, as the  
23 department is funded through a mix of governmental revenues and grant funds, does not make a profit  
24 from any of its activities, and reports directly to the Tribal Council. What is more, the main office of the  
25 Cultural Resource Department is located in the Tribal governmental building, just down the way from  
26 the Tribal Council’s office.

27 56. All told, the Cultural Resource Department consists of 21 employees, all of whom are Tribal  
28 members save for a single employee who is a member of a related, neighboring Tribe. With the Tribal

1 government having a total staff of 87 employees, the Cultural Resource Department is one of – if not –  
2 the largest governmental agencies – comprising nearly twenty-five percent of the total workforce.

3 **IV. THE CAL/OSHA DISPUTE**

4 57. On August 4, 2025, members of the Cultural Resource Department were stationed on the  
5 33.04-acre parcel of Tribal trust land in the unincorporated area of Berry Creek in order to perform work  
6 related to restoring the natural habitat. Given the steep terrain of the area, the workers had traveled to the  
7 33.04-acre parcel from the main reservation with the aid of utility task vehicles (“UTV”), or off-road  
8 “side-by-side” vehicles that, unlike standard motor vehicles, are specially equipped to handle such ter-  
9 rain through unique design features like having low centers of gravity, specialized tires, and reinforced  
10 chassis/roll cages to protect the occupants.

11 58. At the end of the work day, a tribal member employed with the Cultural Resource Depart-  
12 ment named Daylen Edwards was returning to the main reservation from the 33.04-acre parcel when he  
13 lost control of his UTV. Mr. Edwards reflexively braced for impact by grabbing the bar for the roll cage  
14 above the driver-side seat, causing his hand to get pinned under the UTV when it fell on its side.

15 59. Mr. Edwards was then transported to the hospital and the office manager for the Tribal gov-  
16 ernment – LaShane Harper – began to address the situation in accordance with the Tribe’s policies. As  
17 part of that, Ms. Harper helped file a workers’ compensation claim with the Tribe’s insurer and then  
18 notified the federal Occupational Safety and Health Administration of the incident as a courtesy until the  
19 Tribe could figure out who, if anyone, would have jurisdiction in this situation.

20 60. Just days later, the federal Occupational Safety and Health Administration (“OSHA”) had  
21 notified the California Department of Industrial Relations (“Cal/OSHA”), and soon thereafter, on  
22 August 14, 2025, an associate safety engineer with the Redding Regional District Office for Cal/OSHA  
23 named Benjamin Snyder called Ms. Harper and explained he would be investigating the incident.

24 61. In short order, on August 18, 2025, Mr. Snyder transmitted a “document request sheet” to the  
25 “employer” recognized by Cal/OSHA in this instance – the “Berry Creek Rancheria of Maidu Indians of  
26 California” – demanding the production of a number of documents that the Tribe was supposedly re-  
27 quired to maintain under the California Labor Code and its implementing regulations. For instance, Mr.  
28 Snyder requested a copy of the Tribe’s written “injury and illness prevention program” under 8 C.C.R. §

1 3203 and its “emergency action plan” under 8 C.C.R. § 3320.

2 62. Shortly after receiving the form, on August 22, 2025, Ms. Harper sent an email to Mr. Snyder  
3 in which she asked for more time to respond to the document request, explaining the Tribal Council was  
4 presently conferring with the Tribe’s attorneys about which jurisdiction should be handling the investi-  
5 gation since the “employer” in this instance was a tribal government acting in its governmental capacity.

6 63. Nevertheless, Mr. Snyder sent a response email later the same day in which he explained that  
7 “federal OSHA” had already “determined that jurisdiction fell into Cal/OSHA’s responsibility,” and that  
8 the Tribal Council could simply contact the “federal OSHA representative” (rather than its own legal  
9 counsel) to have its concerns addressed.

10 64. Cal/OSHA then carried on with its investigation, which involved Mr. Snyder making a trip  
11 out to the Tribe’s main reservation in order to inspect the type of UTV involved in the accident. During  
12 that trip, Mr. Snyder arrived at the Tribal governmental building and interviewed the Tribe’s operations  
13 manager, asking him to drive him out to the place of the accident in the process.

14 65. After the completion of its investigation, Cal/OSHA ended up issuing two citations against  
15 Berry Creek on January 23, 2026, a true and correct copy of which is attached to this Complaint as  
16 **Exhibit A**. The citation forms identify the employer being cited for the violations as the “Berry Creek  
17 Rancheria of Maidu Indians of California,” and the location of the employer as the address of its Tribal  
18 governmental building – 5 Tyme Way, Oroville, California 95966.

19 66. According to the document, Cal/OSHA issued a regulatory citation against Berry Creek  
20 under 8 C.C.R. § 342(a) for failing to notify the agency of a serious injury within eight hours’ time (the  
21 jurisdictional issue notwithstanding), and a serious-accident-related citation under 8 C.C.R. § 3203(a)(7)  
22 for supposedly neither requiring all Cultural Resource Department employees to read the owners manual  
23 for the UTV before operating the vehicle nor training them to “always keep hands and all other body  
24 parts inside the vehicle at all times.”

25 67. Section 3203 of the California Code of Regulations is what is known as the Illness and Injury  
26 Prevention Program (“IIPP”) provision. *See* 8 C.C.R. § 3203. As it happens, the IIPP requirements under  
27 8 C.C.R. § 3203(a) that serve as the basis for the second citation against Berry Creek are much more  
28 stringent than the federal-law counterparts. The Cal/OSHA standard makes it a legal requirement for

1 every “employer” to maintain a written IIPP that meets at least eight specific conditions, including train-  
2 ing employees before they use any new piece of machinery or new work method, regardless of whether  
3 a specific Cal/OSHA standard exists for either of such. *See, e.g.*, 8 C.C.R. § 3203(a)(2). The exhaustive  
4 requirements of this subject under the California regulations have turned the IIPP standards into the  
5 most frequent basis for citation by Cal/OSHA, with reports indicating it accounts for upwards of thirty  
6 percent (30%) of all citations issued. *See* State of California Department of Industrial Relations, *Top 10*  
7 *Most Frequently Cited Standards*, available at [https://www.dir.ca.gov/dosh/statistics/Frequently-cited-](https://www.dir.ca.gov/dosh/statistics/Frequently-cited-standards.html)  
8 [standards.html](https://www.dir.ca.gov/dosh/statistics/Frequently-cited-standards.html) (last visited Feb. 25, 2026). In comparison, federal OSHA does not mandate a written  
9 IIPP for most “employers” who actually do come under the ambit of the OSH Act, and instead just ad-  
10 dresses the subject through recommended practices that are aimed at encouraging employers to volun-  
11 tarily take proactive measures to manage workplace safety and health. As such, there is no blanket re-  
12 quirement under the OSH Act that an employer have a written IIPP mandating that employees be trained  
13 in each and every new machine and method, as OSHA will instead just review the situation under the  
14 “General Duty” clause of Section 654(a)(1) of the OSH Act to ensure the workplace is free from what  
15 are known as “recognized hazards.” 29 U.S.C. § 654(a)(1).

16 68. Returning to the citations, the total amount of proposed penalties Cal/OSHA issued against  
17 Berry Creek is \$23,000 – \$5,000 for the failure-to-notify regulatory violation and another \$18,000 for  
18 the serious-accident-related one.

19 69. And yet, the maximum penalty for a serious-accident citation by Cal/OSHA is significantly  
20 higher than for one by OSHA itself. The California Code of Regulations indicates that civil penalties for  
21 such serious violations may be up to “25,000 for each such violation,” with a floor of “\$18,000.” 8  
22 C.C.R. § 336(c). In contrast, the schedule of fines set by OSHA indicates that the maximum penalty the  
23 agency can assess is actually below the Cal/OSHA floor – coming in at \$16,550.

24 70. Not to mention, the penalty schedule utilized by Cal/OSHA incorporates near exponential in-  
25 creases for any repeat violations. That schedule is set forth in Section 336 of the California Code of Reg-  
26 ulations and indicates that the reoccurrence of any “regulatory, general, or serious violation” will result  
27 in the initial proposed penalty being “multiplied by two” on the first “repeat,” then by four on the second  
28 repeat, and then by ten on the third repeat. 8 C.C.R. § 336(g)(1). This schedule does include a cap, but

1 the cap is set extremely high at \$162,581 per individual violation. *See id.* What is more, this is the penal-  
2 ty cap for each individual violation, not for all of the citations issued in connection with a particular  
3 incident. *Id.* What this means is that if the Berry Creek Cultural Resource Department has just a few  
4 more accidents over the span of the next five years, Cal/OSHA could impose penalties of \$50,000 for  
5 failing to notify the agency of the incident within an eight-hour period and another \$162,851 if there is  
6 any perceived evidence of inadequate training – including an employee not reading the owner’s manual.  
7 In other words, a single accident by the Cultural Resource Department could soon result in more than  
8 \$200,000 in penalties being assessed by the State of California.

9 71. More importantly, Cal/OSHA has somehow turned the silence about Indian tribes in the  
10 OSH Act into a way to single out tribal governments for unique treatment under federal law. The way  
11 the OSH Act is structured, federal agencies are required to maintain occupational safety and health pro-  
12 grams (*see* 29 U.S.C. § 668), but they are omitted from Section 666 of the OSH Act and thus not them-  
13 selves subject to civil penalties. *See, e.g.,* U.S. Department of Labor – Occupational Safety and Health  
14 Administration, *Field Operations Manual* ch. 13, § I(B)(8), *available at* <https://www.osha.gov/fom> (last  
15 visited Mar. 3, 2026) (explaining “Notices, rather than citations, are issued to federal agencies” and “that  
16 financial penalties cannot be applied for OSHA violations”). As for states, Congress left it up to the  
17 states to determine whether or not to penalize themselves for violations under the OSH Act, as “[s]tate  
18 [p]lans are not required to impose monetary penalties on state and local government employers.” *See,*  
19 *e.g.,* U.S. Department of Labor – Occupational Safety and Health Administration, *OSHA Penalties,*  
20 *available at* <https://www.osha.gov/penalties> (last visited Mar. 3, 2026). Thus, the underlying citations by  
21 Cal/OSHA are an attempt to make tribal governments the *only* sovereigns that – when acting in their  
22 governmental capacity – have penalties involuntarily imposed against them through the OSH Act.

23 72. The specter of penalties of this magnitude hanging over the operations of a not-for-profit  
24 governmental agency tasked with preserving the natural environment will make it impossible for Berry  
25 Creek to continue operating its Cultural Resource Department in the future, thus exacerbating the threat  
26 of wildfire spread in the area as well as the destruction of the Tribe’s territory and cultural resources.

27 73. What’s more, the need for Court’s immediate involvement in resolving this situation comes  
28 from the structure of California law, which (1) only provides an aggrieved “employer” with fifteen (15)

1 working days in which to administratively appeal a citation, and (2) allows Cal/OSHA to immediately  
2 enforce a civil penalty in superior court should the employer not participate in the appeal process. *See,*  
3 *e.g.*, Cal. Labor Code § 6650(c) (“The clerk, immediately upon the filing of a notice of civil penalty by  
4 the department... shall enter judgment for the state against the person assessed the civil penalty in the  
5 amount of the penalty, plus interest due for each day from the date of issuance of the notice of civil  
6 penalty that the penalty remains unpaid.”).

7 **FIRST CLAIM FOR RELIEF**

8 **[Declaratory Judgment and Injunctive Relief under 28 U.S.C. §§ 2201-02]**

9 **[Against all Defendants]**

10 74. Berry Creek incorporates by reference the preceding general allegations as if set forth in full.

11 75. Berry Creek brings this action against the State actors named as Defendants in this action in  
12 their official capacities for a declaratory judgment pursuant to 28 U.S.C. § 2201 that Cal/OSHA, and the  
13 California Occupational Safety & Health Appeals Board in particular, does not have civil/regulatory  
14 jurisdiction over the Tribe’s government.

15 76. An actual and substantial controversy exists between the parties regarding the scope of the  
16 OSH Act and specifically whether it authorizes Cal/OSHA to assert jurisdiction over Berry Creek’s  
17 Tribal government.

18 77. Berry Creek contends its Tribal government is immune from Cal/OSHA jurisdiction for,  
19 amongst other reasons, (i) the definition of “employer” in Section 652(5) of the OSH Act not covering  
20 Indian tribes (and their governmental operations in particular); (ii) the state plan provisions in Section  
21 667 of the OSH Act not expressly authorizing a state to assert jurisdiction over new “employers” other  
22 than itself, especially ones like Indian tribes who are generally immune from a state’s civil/regulatory  
23 jurisdiction; (iii) the operational agreement between the federal government and the State of California  
24 not authorizing Cal/OSHA to exercise jurisdiction over a tribal government; (iv) the definition of  
25 “employer” in Sections 6304/3300 of the California Labor Code that the State of California uses for  
26 purposes of its state plan not covering Indian tribes; and (v) Sections 666 and 667 of the OSH Act not  
27 expressly, unequivocally, and validly waiving the immunity of Indian tribes (and tribal governments in  
28 particular) to civil penalties issued by states pursuant to their state plans.

1 78. Cal/OSHA, through the State actors named as Defendants in this action, conversely contend  
2 that it can apply the provisions of the California state plan against the Berry Creek Tribal government,  
3 issue penalties against it, require the Tribe to adjudicate the issues before the California Occupational  
4 Safety & Health Appeals Board, and enforce any resultant order in the State of California court system.

5 79. The dispute over Cal/OSHA's ability to subject Berry Creek to the State agency's juris-  
6 diction is ripe for adjudication, and the Court can resolve such by issuing declaratory relief in the Tribe's  
7 favor.

8 80. What is more, in connection with a declaratory judgment, Berry Creek shall also seek prelim-  
9 inary and permanent injunctive relief under 28 U.S.C. § 2202 to restrain Cal/OSHA, through the State  
10 actors named as Defendants in this action, from asserting jurisdiction over the Tribe and/or enforcing  
11 any order or decision that results from the Cal/OSHA administrative process in a court of competent jur-  
12 isdiction, whether by filing a notice of civil penalty in superior court under California Labor Code §  
13 6650 or otherwise.

14 81. The actions of Cal/OSHA, through the State actors named as Defendants in this action, vio-  
15 late the long-established principle of federal Indian law that – with tribes being sovereigns – a state does  
16 not have civil/regulatory jurisdiction over a Tribal government located on the reservation.

17 82. Unless restrained and enjoined, Cal/OSHA, through the State actors named as Defendants in  
18 this action, will violate the foregoing principle and cause Berry Creek to suffer irreparable harm, breach-  
19 ing its sovereignty and forcing the Tribe to defend itself in a forum for which it has not waived its sover-  
20 eign immunity under threat of default and the immediate enforcement of a \$23,000 proposed penalty.

21 83. The balance of equities overwhelmingly favors the issuance of injunctive relief since there is  
22 strong public interest in preserving tribal sovereignty from state encroachment and ensuring tribes are  
23 able to carry out core aspects of their government – like cultural preservation – without threat of serious  
24 financial harm from the State.

25 84. Moreover, the public interest also supports Berry Creek in protecting its sovereign right to  
26 maintain its territory and cultural resources and thereby reduce the threat of wildfire spread in the area as  
27 a result. *See Colorado River Indian Tribes*, 2012 U.S. Dist. Lexis 195295 at \*25 (“[I]t is obvious that the  
28 protection and preservation of cultural resources serves an important public interest.” (citing, *e.g.*,

1 *Colorado River Indian Tribes v. Marsh*, 605 F. Supp. 1425, 1440 (C.D. Cal. 1985))).

2 85. Cal/OSHA’s conduct, through the State actors named as Defendants in this action, presents a  
3 continuing violation of federal law, one that is still ongoing, and one that will continue (and continue to  
4 inflict harm on Berry Creek) unless enjoined by the Court.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the Berry Creek Rancheria of Maidu Indians of California prays as follows:

7 1. That the Court enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that: (i) Berry  
8 Creek’s Cultural Resource Department is an arm of the Tribal government; (ii) that the definition of  
9 employer under Section 652 of the OSH Act does not cover Indian tribal governments, including Berry  
10 Creek’s Cultural Resource Department; (iii) that the state plan provision of Section 667 of the OSH Act  
11 does not authorize states to assert jurisdiction over Indian tribal governments, including Berry Creek’s  
12 Cultural Resource Department; (iv) that the operational agreement between the federal government and  
13 the State of California does not authorize Cal/OSHA to assert jurisdiction over Indian tribal govern-  
14 ments, including Berry Creek’s Cultural Resource Department; (v) that the definition of “employer” in  
15 Section 6304/3300 of the California Labor Code that the State of California uses for purposes of its state  
16 plan does not cover Indian tribes, including Berry Creek; and (vi) neither Section 666/667 of the OSH  
17 Act nor Section 336 of the California Code of Regulations expressly, unequivocally, and validly waive  
18 the immunity of Indian tribes, including Berry Creek and its Cultural Resource Department, to civil pen-  
19 alties issued by the State of California pursuant to its state plan;

20 2. That the Court issue preliminary and permanent injunctive relief restraining and enjoining  
21 Cal/OSHA, through the State actors named as Defendants in this action, from asserting jurisdiction over  
22 Berry Creek’s Tribal government, including by continuing to prosecute the citations at issue in this  
23 matter and/or seeking to enforce the proposed penalties associated with such in a court of competent jur-  
24 isdiction;

25 3. That the Court award Berry Creek its costs of suit and attorneys’ fees as allowed by law or  
26 equity; and,

27 4. That the Court award such other relief that it deems just or appropriate, or that is allowed by  
28 law.

1 RESPECTFULLY SUBMITTED this 4th day of March 2026

2 BERRY CREEK RANCHERIA

3 By: /s/ Kevin M. Cochrane

4 Cheryl A. Williams

5 Kevin M. Cochrane

6 caw@williamscochrane.com

7 kmc@williamscochrane.com

8 WILLIAMS & COCHRANE, LLP

9 836 57th Street, Suite 472

10 Sacramento, CA 95819

11 Telephone: (916) 431-0126

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# EXHIBIT A

DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Occupational Safety and Health  
Redding District Office  
381 Hemsted Drive  
Redding, CA 96002  
Tel. # (530) 224-4743 Fax # (530) 224-4747



**NOTICE OF VERIFICATION OF ABATEMENT OF SERIOUS VIOLATIONS**

Berry Creek Rancheria of Maidu Indians of California  
5 Tyme Way  
Oroville, CA 95966

During the course of an inspection or re-inspection at a place of employment located at:

39.6093957 -121.3716356 , 543 Rockefeller Rd.  
Street  
Berry Creek CA 95916  
City State Zip

The Division has verified abatement of the following Citation(s) alleging a serious violation or Special Order(s) or Orders(s) to Take Special Action:

Citation or Order No.	Number of Instances	Date Division Verified Abatement
2-1	2	12/30/2025

Signature:   
Compliance Safety and Health Officer

Date of Issuance: 1/23/2026

This notice is provided to the employer in accordance with the provisions of California Labor Code Section 6318(b). The employer is required to post this notice for three (3) working days at or near the location of the alleged violation.

0950623 RID      1843807 Inspection Nr.      M1478 CSHO ID      010-26 Optional Report Nr.

Division of Occupational Safety and Health

Redding District Office

381 Hemsted Drive

Redding, CA 96002

Tel. # (530) 224-4743 Fax # (530) 224-4747



### NOTICE OF ACCIDENT-RELATED VIOLATION AFTER INVESTIGATION

Berry Creek Rancheria of Maidu Indians of California  
5 Tyme Way  
Oroville, CA 95966

An investigation of an industrial accident or occupational illness was conducted by Benjamin Snyder at a place of employment located at 39.6093957 -121.3716356, 543 Rockerfeller Rd., Berry Creek, on 08/18/2025.

Describe the condition(s) inspected:

A Polaris Ranger rollover accident.

It has been determined by the Division that the fatal or serious injury, illness or exposure described above was related to the following serious, willful or repeat violation:

Serious Accident Related

Classification of Violation

3203(a)(7)

Title 8 CCR Section

Signature

Compliance Safety and Health Officer

Signature

District Manager

Date of issuance: 01/23/2026

Date investigation completed: 01/22/2026

Upon request, the Division will provide the employer with a copy of its inspection report pertaining to this investigation.

0950623  
RID

M1478  
CSHO ID

010-26  
Optional Report Nr.

1843807  
Inspection Nr.

State of California  
Department of Industrial Relations  
Division of Occupational Safety and Health  
Redding District Office  
381 Hemsted Drive  
Redding, CA 96002  
Phone: (530) 224-4743 Fax: (530) 224-4747



## CITATION AND NOTIFICATION OF PENALTY

**To:**  
Berry Creek Rancheria of Maidu Indians of  
California  
and its successors  
5 Tyme Way  
Oroville, CA 95966

**Inspection #:** 1843807  
**Inspection Date (s):** 08/18/2025 - 01/22/2026  
**Issuance Date:** 01/23/2026  
**CSHO ID:** M1478  
**Optional Report #:** 010-26  
**Reporting ID:** 0950623

**Inspection Site:**  
39.6093957 -121.3716356, 543 Rockefeller Rd.  
Berry Creek, CA 95916

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

**This Citation and Notification of Penalty** (hereinafter Citation) is being issued in accordance with California Labor Code Section 6317 for violations that were found during the inspection/investigation. **This Citation or a copy, including the enclosed multilingual employee notice, must be prominently posted upon receipt by the employer at or near the location of each violation until the violative condition is corrected or for three working days, whichever is longer.** Violations of Title 8 of the California Code of Regulations or of the California Labor Code may result in some instances in prosecution for a misdemeanor.

**YOU HAVE A RIGHT** to contest this Citation and Notification of Penalty by filing an appeal with the Occupational Safety and Health Appeals Board. To initiate your appeal, you **must** contact the Appeals Board, in writing or by telephone, or online, within 15 working days from the date of receipt of this Citation. If you miss the 15 working day deadline to appeal, the Citation and Notification of Penalty becomes a final order of the Appeals Board, not subject to review by any court or agency.

**Informal Conference** - You may request an informal conference with the manager of the district office which issued the Citation within 10 working days after receipt of the Citation. However, if the citation is appealed, you may request an informal conference at any time prior to the day of the hearing. Employers are encouraged to schedule a conference at the earliest possible time to assure an expeditious resolution of any issues. At the informal conference, you may discuss the existence of the alleged violation(s), classification of the violation(s), abatement date or proposed penalty.

Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an agreement which resolves this matter without litigation or contest.

## APPEAL RIGHTS

The Occupational Safety and Health Appeals Board (Appeals Board) consists of three members appointed by the Governor. The Appeals Board is a separate entity from the Division of Occupational Safety and Health (Cal/OSHA or the Division) and employs experienced administrative law judges to hear appeals fairly and impartially. To initiate an appeal from a Citation and Notification of Penalty, you must contact the Appeals Board in writing, or by telephone, or online via the Board's OASIS system, within 15 working days from the date of receipt of a Citation.

After you have initiated your appeal, you must then file a completed appeal form with the Appeals Board, at the address listed below, or online via the Board's OASIS system, for each contested Citation. Failure to file a completed appeal form with the Appeals Board may result in dismissal of the appeal. Appeal forms are available to print online at: <https://www.dir.ca.gov/oshab/appealform.pdf>. You may also file the appeal through the Board's online OASIS system at: <https://www.dir.ca.gov/oshab/>. Hard copies can also be picked up from district offices of the Division, or from the Appeals Board:

Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
Telephone: (916) 274-5751 or (877) 252-1987  
Fax: (916) 274-5785

If the Citation you are appealing alleges more than one item, you must specify on the appeal form which items you are appealing. The appeal form also asks you to identify the grounds for your appeal. Among the specific grounds for an appeal are the following: the safety order was not violated, the classification of the alleged violation (e.g., serious, repeat, willful) is incorrect, the abatement requirements are unreasonable or the proposed penalty is unreasonable.

**Important:** You must notify the Appeals Board, not the Division, of your intent to appeal within 15 working days from the date of receipt of the Citation. Otherwise, the Citation and Notification of Penalty becomes a final order of the Appeals Board not subject to review by any court or agency. An informal conference with Cal/OSHA or the Division **does not** constitute an appeal and **does not** stay the 15 working day appeal period. If you have any questions concerning your appeal rights, call the Appeals Board, at (916) 274-5751 or (877) 252-1987.

## PENALTY PAYMENT OPTIONS

Penalties are due within 15 working days of receipt of this Citation and Notification of Penalty unless contested. If you are appealing any item of the Citation, remittance is still due on all items that are not appealed. Enclosed for your use is a Penalty Remittance Form for payment.

If you are paying electronically, please have the Penalty Remittance Form on-hand when you are ready to make your payment. The company name, inspection number, and Citation number(s) will be required in order to ensure that the payment is accurately posted to your account. Please go to: [www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html) to access the secure payment processing site. **Additionally, you must also mail the Penalty Remittance Form to the address below.**

If you are paying by check, return one copy of the Citation, along with the Notice of Proposed Penalties Sheet and the Penalty Remittance Form and mail to:

Department of Industrial Relations  
Cal/OSHA Penalties  
P. O. Box 516547  
Los Angeles, CA 90051-0595

Cal/OSHA does not agree to any restrictions, conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

## NOTIFICATION OF CORRECTIVE ACTION

For violations which you do not contest, you should notify the Division of Occupational Safety and Health promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation and Notification of Penalty. Please inform the district office listed on the Citation by submitting the Cal/OSHA 160 form with the abatement steps you have taken and the date the violation was abated, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc. The adjusted penalty for general violations has already been reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The adjusted penalty for serious violations, if any, has already been reduced by 50% because abatement of those violations has been completed.

**Note:** Return the Cal/OSHA 160 form to the district office listed on the Citation and as shown below:

Division of Occupational Safety and Health  
Redding District Office  
381 Hemsted Drive  
Redding, CA 96002  
Telephone: (530) 224-4743  
Fax: (530) 224-4747

## EMPLOYEE RIGHTS

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under Labor Code Section 6310 or 6311. An employee who believes that he/she has been discriminated against may file a complaint no later than six (6) months after the discrimination occurred with the Division of Labor Standards Enforcement.

**Employee Appeals** - An employee or authorized employee's representative may, within 15 working days of the issuance of a citation, special order, or order to take special action, appeal to the Occupational Safety and Health Appeals Board the reasonableness of the period of time fixed by the Division of Occupational Safety and Health (Division) for abatement. An employee appeal may be filed with the Appeals Board or with the Division. No particular format is necessary to initiate the appeal, but the notice of appeal must be in writing.

If an Employee Appeal is filed with the Division, the Division shall note on the face of the document the date of receipt, include any envelope or other proof of the date of mailing, and promptly transmit the document to the Appeals Board. The Division shall, no later than 10 working days from receipt of the Employee Appeal, file with the Appeals Board and serve on each party a clear and concise statement of the reasons why the abatement period prescribed by it is reasonable.

Employee Appeal Forms are available from the Appeals Board, or from a district office of the Division.

**Employees Participation in Informal Conference** - Affected employees or their representatives may notify the District Manager that they wish to attend the informal conference. If the employer objects, a separate informal conference will be held.

## DISABILITY ACCOMMODATION

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the programs of the Division of Occupational Safety and Health, should contact the Disability Accommodation Coordinator at the local district office or the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The Statewide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY - Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing or conference.

**State of California**  
 Department of Industrial Relations  
 Division of Occupational Safety and Health  
 Redding District Office  
 381 Hemsted Drive  
 Redding, CA 96002  
 Phone: (530) 224-4743 Fax: (530) 224-4747

**Inspection #:** 1843807  
**Inspection Dates:** 08/18/2025 - 01/22/2026  
**Issuance Date:** 01/23/2026  
**CSHO ID:** M1478  
**Optional Report #:** 010-26



**Citation and Notification of Penalty**

**Company Name:** Berry Creek Rancheria of Maidu Indians of California  
**Establishment DBA:** and its successors  
**Inspection Site:** 39.6093957 -121.3716356, 543 Rockefeller Rd.  
 Berry Creek, CA 95916

Citation 1 Item 1 Type of Violation: **Regulatory**

T8 CCR 342(a): (a) Every employer shall report immediately to the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment. The report shall be made by the telephone or through a specified online mechanism established by the Division for this purpose. Until the division has made such a mechanism available, the report may be made by telephone or email. Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

Prior to and during the course of investigation, including but not limited to 8/4/2025, the employer failed to report immediately to the Division of Occupational Safety and Health a serious injury that occurred in a place of employment at Bean Creek Rd. and Rockefeller Rd. Berry Creek, CA on 8/4/2025. Employer reported the serious injury on 8/8/2025.

<b>Date By Which Violation Must be Abated:</b>	<b>Corrected During Inspection</b>
<b>Proposed Penalty:</b>	<b>\$5000.00</b>

State of California  
Department of Industrial Relations  
Division of Occupational Safety and Health  
Redding District Office  
381 Hemsted Drive  
Redding, CA 96002  
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**Citation and Notification of Penalty**

**Company Name:** Berry Creek Rancheria of Maidu Indians of California  
**Establishment DBA:** and its successors  
**Inspection Site:** 39.6093957 -121.3716356, 543 Rockefeller Rd.  
Berry Creek, CA 95916

Citation 2 Item 1 Type of Violation: **Serious Accident Related**

T8 CCR 3203(a)(7): Injury and Illness Prevention Program. (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: (7) Provide training and instruction: (A) When the program is first established; (B) To all new employees; (C) To all employees given new job assignments for which training has not previously been received; (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard; (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and, (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

Prior to and during the course of investigation, including but not limited to, on 8/4/2025, the employer failed to ensure an employee operating a Polaris Ranger XP 1000 UTV was provided effective training and instruction as described in the Owners Manual.

Instance 1. Employer failed to ensure new operators read the Owner's Manual that came with the vehicle.

Instance 2. Employer failed to ensure an employee was trained and instructed to always keep hands and all other body parts inside the vehicle at all times.

As a result, on or about 8/4/2025, an employee was involved in a vehicle rollover causing an amputation to his left hand. This is an accident-related citation.

**Date By Which Violation Must be Abated:** **Corrected During Inspection**  
**Proposed Penalty:** **\$18000.00**

  
\_\_\_\_\_  
John Wendland  
Compliance Officer / District Manager

State of California  
 Department of Industrial Relations  
 Division of Occupational Safety and Health  
 Redding District Office  
 381 Hemsted Drive  
 Redding, CA 96002  
 Phone: (530) 224-4743 Fax: (530) 224-4747



**NOTICE OF PROPOSED PENALTIES**

**Company Name:** Berry Creek Rancheria of Maidu Indians of California  
**Establishment DBA:** and its successors  
**Inspection Site:** 39.6093957 -121.3716356, 543 Rockerfeller Rd., Berry Creek, CA 95916  
**Mailing Address:** 5 Tyme Way, Oroville, CA 95966  
**Issuance Date:** 01/23/2026  
**Reporting ID:** 0950623  
**CSHO ID:** M1478

**Summary of Penalties for Inspection Number 1843807**

Citation 1 Item 1, Regulatory	\$5000.00
Citation 2 Item 1, Serious Accident Related	\$18000.00
<b>TOTAL PROPOSED PENALTIES:</b>	<b>\$23000.00</b>

Penalties are due within 15 working days of receipt of this notification unless contested. If you are appealing any item of this citation, remittance is still due on all items that are not appealed. Enclosed for your use is a Penalty Remittance Form.

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If you are paying by check: Mail this Notice of Proposed Penalties, the Penalty Remittance Form, along with a copy of the Citation and Notification of Penalty to:

**DEPARTMENT OF INDUSTRIAL RELATIONS  
 CAL/OSHA PENALTIES  
 P. O. BOX 516547  
 LOS ANGELES, CA 90051-0595**

Cal/OSHA does not agree to any restrictions, conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions or endorsements do not exist.

**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH – CAL/OSHA**  
**Accounting Office - Cashiering Unit**  
 Phone (415) 703-4325  
 Email: AccountingCalosha@dir.ca.gov

**PENALTY REMITTANCE FORM**

<b>CIVIL PENALTY INFO</b>	<b>INSPECTION NO.:</b> 1843807	<b>REPORTING ID:</b> 0950623
<b>COMPANY NAME:</b>	Berry Creek Rancheria of Maidu Indians of California	<b>FEIN/SEIN:</b>
<b>ESTABLISHMENT DBA:</b>		
<b>CONTACT PERSON:</b>	LaShane "LaLa" Harper	
<b>PHONE NO.:</b>	(530) 534-3859	<b>FAX NO.:</b>
<b>SITE ADDRESS:</b>	39.6093957 -121.3716356, 543 Ruckerfeller Rd., Berry Creek, CA 95916	
<b>MAILING ADDRESS:</b>	5 Tyme Way, Oroville, CA 95966	

**CITATION INFORMATION:**

Penalties are due within 15 working days of receipt of this notification unless contested. If you are appealing any item of this Citation, remittance is still due on all items that are not appealed.

**PAYMENT INSTRUCTIONS:**

For check or money order: please make check or money order payable to Department of Industrial Relations. Write the inspection number and total amount enclosed on the payment coupon below and on the check or money order.  
 For credit card or EFT payment, go to: [www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html)

----- Detach here and return bottom portion with check or money order payment -----

**PAYMENT COUPON**



Inspection No.: 1843807

Amount Enclosed: \$ \_\_\_\_\_

**Mail payment to:**

For credit card or EFT payment, go to:  
[www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html)

DEPARTMENT OF INDUSTRIAL RELATIONS  
 CAL/OSHA PENALTIES  
 P.O. BOX 516547  
 LOS ANGELES, CA 90051-0595