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### HOT TOPICS

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**Notes from closed meeting show how Interior aims to weaken environmental laws** – [The Washington Post](#) (10/5)

**Senator Heitkamp introduces bill to address ‘epidemic’ of missing and murdered Native women** – [Indianz.com](#) (10/5)

**Senator McCaskill unveils unprecedented bill to abrogate tribal sovereign immunity** – [Indianz.com](#) (10/5)

**House committee approves Native American Energy Act in near party-line split** – [Indianz.com](#) (10/5)

**The Navajo Nation has a wild horse problem** – [High Country News](#) (10/6)

**Savanna’s Act aims to bring justice for missing, murdered Native American women** – [The Bismarck Tribune](#) (10/5)

**BIA investigation into ‘Wino Round UP’ finds fault, fails to deliver justice** – [Great Falls Tribune](#) (10/5)

**Crow Tribe Water Authority says vandals used guns, fire to destroy water treatment plant** – [KTVQ.com](#) (10/5)

**BIA Floats Rule Changes For Tribal Land-Into-Trust Bids** – Law360/Attached (10/5)

**House Dems Want DOI Monument Review Info Released** – Law360/Attached (10/5)

### INDIAN LEGISLATIVE, LEGAL, JUSTICE AND PUBLIC SAFETY ISSUES

**Hoeven Examines Indian Gaming Three Decades After the Indian Gaming Regulatory Act** – [Senate Committee Press Release](#) (10/5)

**Hoeven Introduces Bill to Strengthen Public Safety Concerns in Indian Communities** – [Senate Committee Press Release](#) (10/5)

**Gaming compact (Tule River Indian Tribe) officially ratified by Governor** – [The Porterville Recorder](#) (10/5)

**Tribes push back on IGRA reforms, human trafficking concerns in Senate hearing** – [CDC Gaming Reports](#) – (10/5)

**Native American Weed? Not So Fast** – [Merry Jane](#) (10/5)

**How Recent Court Decision Could Affect Casinos on Tribal Lands** – [KGOU](#) (10/5)

**Graton casino suffers “data breach”** – [Focus Gaming News](#) (10/5)

**Spending up, taxes hold in county plan** – [Rome Sentinel](#) (10/5)

**Arrest revives animal-abuse concerns on Havasupai Reservation in Grand Canyon** – [Arizona Republic](#) (10/5)

**\$1.75M grant a boost for criminal justice reform** – [Rapid City Journal](#) (10/5)

**Consumer Financial Protection Bureau Applies 'Ability-To-Repay' Standard to Payday Loans** – Law360/Attached (10/5)

**Tribe Says Immunity Means Fishing Rights Row Must End** – Law360/Attached (10/5)

**School District Asks Justices To Weigh In On Tribal Forum** – Law360/Attached (10/5)

#### ENERGY, NATURAL RESOURCES AND ENVIRONMENT

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**Bureau of Reclamation and Bureau of Indian Affairs Issue Navajo Generating Station Extension Lease Environmental Assessment** – [PR Web](#) (10/5)

#### ECONOMIC DEVELOPMENT/FINANCE AND TECHNOLOGY IN INDIAN COUNTRY

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TRIBAL LEADERSHIP & COMMUNITY NEWS

**Tribes awarded funding for public safety – [Peninsula Daily News](#) (10/6)**

**Oglala Sioux Tribal Council endorses Harold Frazier for NCAI President – [Indianz.com](#) (10/6)**

**Navajo Housing Authority will forfeit \$26 million from feds over failed housing projects – [azcentral.com](#) (10/4)**

**Fry Bread Cook Off in Ukiah will celebrate Native American culture – [Daily Journal](#) (10/6)**

MISCELLANEOUS

**One of oldest Native American birch-bark canoes now on display – [Associated Press](#) (10/5)**

**Why so many people claim to be Cherokee – who aren't – and why that matters – Minneapolis Institute of Art (10/4)**

**NFL Assures Fans There's No Tolerance for Racial Slurs at Redskins Games – [Deadspin](#) (10/5)**

**Exhibits feature tiny art, contemporary Native American life – [Ashland Daily Tidings](#) (10/5)**

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Office of Public Affairs - Indian Affairs  
Office of the Assistant Secretary - Indian Affairs  
U.S. Department of the Interior  
1849 C St., N.W., MS-4004-MIB  
Washington, D.C. 20240  
Main Phone: 202-208-3710  
Press Line: 202-219-4152  
[as-ia\\_opa@bia.gov](mailto:as-ia_opa@bia.gov)

# House Dems Want DOI Monument Review Info Released

Share us on: By **Michael Phillis**

Law360, New York (October 5, 2017, 5:10 PM EDT) -- Saying the process has been far too secretive, 26 House Democrats introduced a resolution Wednesday that would direct Interior Secretary Ryan Zinke to release information on the Trump administration's review of national monuments.

Rep. Raul M. Grijalva, D-Ariz., the ranking member of the House Committee on Natural Resources, and his colleagues said that Zinke has not been open about the administration's monument review process. The resolution, if passed, would require Zinke to give Congress the final version of his memo containing the monument review and recommendations, which has not been made public, along with other documents.

Zinke announced **in August** that he had sent the president a draft of his report but did not say what the findings and recommendations contained. Instead, a summary was published that recapped the process that had occurred rather than the report itself.

But the draft memorandum, which called for the Bears Ears National Monument in Utah and others to be shrunk, was leaked to the press. **In September**, a coalition of tribes, environmental groups and lawmakers criticized the Department of the Interior's recommendations after they surfaced.

Zinke's review stemmed from President Donald Trump's April **executive order** instructing DOI to review monuments designated or expanded by presidents under the Antiquities Act over roughly the last two decades.

"The Trump administration wants to wipe out our national monuments without an explanation or plan," Grijalva said in a statement. "The American people rely on our national monuments to provide a place for families to enjoy the outdoors and they drive economic growth for local business owners that count on the tourism industry. Too many hardworking people's livelihoods depend on Secretary Zinke's decision so we won't stop fighting until we get answers."

The resolution of inquiry, H.Res. 555, asks for a variety of documents and pieces of information from the DOI. The resolution demands Zinke's documents and communications relating to the monument review. It also wants information on how Zinke determined a designation was made without proper outreach. And it demands documents on any recommendations given to the president along with information on meetings.

A spokeswoman for the committee's Democrats said no Republicans had signed onto the resolution yet. Representatives for the committee chairman, Rob Bishop, R-Utah, and the DOI did not immediately respond to a request for comment Thursday.

A press release from Democrats announcing the resolution said the administration should go through an open review process if it wants to consider changes.

Zinke's memo also recommended that the president consider adding three monuments, including Badger-Two Medicine in Montana, which Zinke said is sacred to the Blackfeet Nation, and that co-management of a possible monument with the Blackfeet be considered. The memo noted that public comments were "overwhelmingly in favor of maintaining existing monuments."

--Editing by Jill Coffey.

# School District Asks Justices To Weigh In On Tribal Forum

Share us on: By **Kat Sieniuc**

Law360, New York (October 5, 2017, 5:25 PM EDT) -- A Ninth Circuit decision that allowed employment claims against two Arizona public school districts to be heard in a Navajo forum will lead to a constitutional crisis, one of the districts has argued in urging the U.S. Supreme Court to take up the case.

In a Sept. 25 petition for a writ of certiorari, the Window Rock Unified School District asked the high court to review the appellate panel majority's ruling, which remanded the case with instructions to dissolve an injunction blocking proceedings before the Navajo Nation Labor Commission on employment-related claims against Window Rock and the Pinon Unified School District. The districts operate schools on leased Navajo Nation land.

Window Rock told the high court that the Ninth's Circuit's decision is "at odds with the court's declaration that the membership status of the un-consenting party, not the title to the soil, is the primary jurisdictional factor."

The petition said the decision conflicts with Fifth, Sixth, Seventh, Eighth and Tenth Circuit rulings about the conduct of nontribal members on tribal land.

Some of the districts' employees alleged that the districts owed them merit pay under Arizona law, while others said the districts had violated their rights under the Navajo Preference in Employment Act, according to the documents.

The district told the high court, "authorizing tribal jurisdiction over these types of claims would wreak practical havoc," noting that Arizona has almost two dozen Indian reservations in 12 of its 15 counties and about one-fourth of the state's public schools on that land.

"The assertion of 'plausible tribal jurisdiction' over employment claims against these districts will force districts operating on reservations into a constitutional crisis by displacing the State's due process system with a tribal court process that permits an employee to bypass the mandatory state administrative remedies and avoid the state-imposed burden of proof," the district said.

The district argued that the district's "non-member status" is the primary fact to take into account for jurisdiction questions, saying "school districts' decisions over its employees pursuant to state law are not essential, or even relevant, to tribal self-government or internal relations."

The Ninth Circuit panel majority found in **June** that it was "colorable or plausible" that the commission had jurisdiction because the claims arose from conduct on tribal land — over which the Navajo Nation had the right to exclude nonmembers — and the claims didn't implicate any state criminal law enforcement interests.

Circuit Judge Morgan Christen, however, dissented, saying the majority opinion created a circuit split and was "notable for what it leaves out."

"First, the majority does not explain that, before they filed claims in tribal court, five out of the seven employee claimants had already received adverse state-court rulings on their claims against the school districts," Judge Christen said. "The majority also overlooks that two of the employee claimants had employment contracts specifying that jurisdiction for any employment disputes would exclusively lie in state or federal court."

The district court had held that tribal jurisdiction "was so plainly lacking that exhaustion in the tribal forum was not required," and it enjoined further tribal proceedings. But the appellate panel reversed that decision.

The parties were not immediately available for comment.

The school districts are represented by Eileen Dennis GilBride and Georgia A. Staton of Jones Skelton & Hochuli PLC and Patrice M. Horstman of Hufford Horstman Mongini Parnell & Tucker PC.

The Navajo Nation Labor Commission appellants are represented by Paul Spruhan of the Navajo Nation Department of Justice.

The employee appellants are represented by David R. Jordan of the Law Offices of David R. Jordan PC.

The case is Window Rock Unified School District v. Ann Reeves et al., case number 17-447, in the Supreme Court of the United States.

--Editing by Jill Coffey.



# CFPB Applies 'Ability-To-Repay' Standard To Payday Loans

Share us on: By **Evan Weinberger**

Law360, New York (October 5, 2017, 12:46 PM EDT) -- The Consumer Financial Protection Bureau on Thursday rolled out first-of-their-kind rules for the payday lending market, mandating that lenders conduct a “full-payment test” to determine whether borrowers can afford a loan before issuing one.

The rules, which had been hotly anticipated by consumer advocates and the industry and under development for five years, apply an ability-to-repay test to all payday loans with a 45-day repayment term as well as vehicle title loans with 30-day terms and other small-dollar loans. Lenders can get out from under the test and give borrowers two extensions to repay the loans if they provide a principal repayment option on all loans valued at \$500 or less, the CFPB said.

“The CFPB’s new rule puts a stop to the payday debt traps that have plagued communities across the country,” CFPB Director Richard Cordray said in a statement. “Too often, borrowers who need quick cash end up trapped in loans they can’t afford. The rule’s common sense ability-to-repay protections prevent lenders from succeeding by setting up borrowers to fail.”

Payday loans are small — typically \$500 or less — short-term loans that are designed to be repaid around consumers’ pay schedule, usually two weeks. Rather than a straight interest rate, payday loans usually come with a fee of between \$10 to \$20 for every \$100 borrowed, which could work out to an annual rate of about 400 percent if a borrower falls behind, according to research released by the CFPB.

Vehicle title loans, which are also covered by the rule, have similar characteristics but give the lender the right to take a car or truck if the borrower falls behind on the loan.

Consumer advocates and other critics of the payday lending industry argue that the fee structure and other loan characteristics can trap consumers in debt. When they are unable to pay back their loans, borrowers tend to take out another loan in order to keep afloat, inflating the fees they must pay.

More than four out of five payday loans are re-borrowed by consumers, making up the bulk of payday lenders' revenue, Cordray said on a conference call with reporters.

"Lenders actually prefer customers who will re-borrow repeatedly rather than repay the loans in full when they come due," Cordray said.

The CFPB's rule is intended to break what critics of the industry call the "cycle of debt" that payday loans and other short-term lending products can cause.

"With each renewed loan, the consumer pays more and more fees on the same debt," Cordray said.

The CFPB's rule, which will largely take effect 21 months after being published in the Federal Register, mandates that lenders determine whether borrowers can afford their payday loans before issuing them.

The bureau said that for short-term loans of 45 days or less, that means verifying income and determining whether borrowers can afford to repay the loan at the end of a repayment cycle, plus any fees and costs, and still meet basic living expenses and other financial obligations. On longer-term installment loans with balloon payments, the CFPB wants lenders to determine whether borrowers can afford each of the payments, including the balloon payment at the end and 30 days following the largest payment.

Lenders are also required to abide by a 30-day cooling off period after issuing the third short-term or balloon payment loan to an individual borrower in quick succession.

The ability-to-repay standard will not apply to long-term installment loans. Cordray said that the CFPB is still studying what protections are needed for those products.

Other options will allow for borrowers to get two extensions to repay their loans with a principal balance of \$500 or less if the lender allows them to repay at least one-third of the outstanding principal balance each time. Such options are not available on vehicle title loans.

To avoid pushing consumers into so-called debt traps, the CFPB won't allow lenders to

issue loans with flexible repayment plans if a borrower has outstanding short-term or balloon-payment loans. The rule also bars lenders from extending principal repayment loans more than three times to an individual customer in quick succession, or if the borrower has taken out more than six such loans or has been in debt on short-term loans for 90 days over a rolling year-long period.

The rule does not extend to similar, safer products offered by community banks, credit unions and some financial technology firms.

Companies would also be barred from accessing consumers' bank accounts to collect on short-term loans without permission if they've had two unsuccessful attempts. The bureau said those protections would give borrowers a chance to dispute unauthorized attempts to get into their accounts, and allow them to plan for any unexpected charges.

Critics say current law lets payday lenders repeatedly access an account, allowing the lenders to take first priority over other consumer necessities. The result is that borrowers can often be hit with additional overdraft fees and even see their bank accounts closed when payday lenders withdraw from their accounts, critics of the industry say.

The CFPB unveiled proposed rules for the payday loan market last June, and the interest was high. The bureau said it received more than 1.4 million comments, making it the most commented-on rule in its history.

Already, consumer groups are vowing to defend the rule from a likely attempt to nullify it by Republicans in Congress using the Congressional Review Act.

"Curbing the ability to push loans that borrowers clearly cannot repay is a key protection, and enshrining and enforcing this rule as federal policy should let Americans keep billions of hard-earned dollars," Lisa Donner of Americans for Financial Reform said in a statement.

The industry is likely to push for such an effort to repeal the rule. The CFPB estimates that payday loan volumes could fall between 62 and 68 percent, and vehicle title loans could drop by between 89 and 93 percent.

Those decreases will result in a fall in the number of storefront payday loan stores. The bureau noted that in states where payday lending restrictions have been put in place,

consumers have had to drive an additional five miles to get access to payday loans.

Brian Shearer, an attorney with the CFPB, told reporters that the main effects will be on lenders, since the bureau estimates that consumers will be able to get access to the initial loans they need 94 percent of the time. In addition, 14 states and the District of Columbia already effectively ban payday loans.

The CFPB also expects that consumers will be able to get access to more long-term, safer credit options, according to the rule.

The industry was quick to warn that cutting off access to multiple loans could ultimately harm consumers.

The Online Lenders Alliance, an industry group for online payday and other lenders, said it was “deeply concerned” that the rule would be “devastating to consumers seeking access to credit” and do “irreversible harm” to borrowers the CFPB “purports to be helping.”

“It will crush innovation in the fintech industry at a time when more Americans than ever need these products and services. We will continue urging the administration and members of Congress to help everyday Americans, and demand regulations that protect access to credit and put consumers first,” the group said in a statement.

Along with hostility from the industry, the rule has met a frosty response from at least one fellow regulator. Acting Comptroller of the Currency Keith Noreika on Thursday rescinded 2013 guidance outlining requirements for national banks that offer so-called deposit advance products, in effect opening the door to banks offering them. Those products are small-dollar, short-term loans that are more highly regulated and potentially safer than payday loans.

Noreika said that the 2013 guidance may not be in conformance with the CFPB rule on small-dollar, short-term credit and that further study was needed.

The guidance itself may have harmed the consumers it was intended to help by pushing them into more dangerous financial products, Noreika added.

“Consumers who would rely on highly regulated banks and thrifts for these legitimate and

well-regulated products to meet their financial needs turn to other, lesser regulated entities, which may result in consumer harm and expense,” he said.

Representatives for the CFPB declined to comment on the OCC’s move.

The Federal Deposit Insurance Corp. issued similar guidance in 2013. Representatives for the FDIC declined to comment.

--Editing by Emily Kokoll.

*Update: This story was updated with a response from the FDIC.*

# BIA Floats Rule Changes For Tribal Land-Into-Trust Bids

Share us on: By **Andrew Westney**

Law360, New York (October 5, 2017, 7:19 PM EDT) -- The head of the Bureau of Indian Affairs sent a letter to Native American tribal leaders Wednesday that laid out proposed changes to the process tribes must follow to request that the federal government take their land into trust, including provisions that could make it harder for tribes to launch off-reservation casinos.

John Tahsuda III, who was **named** as the principal deputy assistant secretary for the Office of the Assistant Secretary for Indian Affairs in September, told tribal leaders in the letter that the U.S. Department of the Interior agency is considering changes to “reduce the burden on tribal applicants” to have land taken into trust “in consideration of the often-times limited tribal resources.”

Those steps include establishing a new two-phase process for off-reservation trust bids that would make tribes meet certain “threshold criteria” before they can go on to the more complicated second stage, which would mean that tribes could see their applications fail before submitting the full array of information they currently submit to the DOI.

And the proposed changes also include having different standards for applications to have off-reservation land parcels taken into trust, depending on whether the land is meant to be used for a gaming project like a casino or for another purpose. Under the DOI’s current rules, applications for off-reservation trust actions have the same requirements regardless of how tribes plan to use the land.

“Distinguishing acquisitions for gaming purposes allows the [interior] secretary to better assess the unique issues raised by off-reservation gaming and reduces the burden on applications that do not include gaming,” according to a summary of the proposed revisions provided to the tribal leaders.

Those “unique issues” appear to include the effects of tribal casinos on states and local communities, as specifics of the proposal accord more weight in the DOI’s land-into-trust process to non-Indian communities impacted by tribal gaming projects.

The “consultation draft” of the proposed revisions, prepared ahead of three planned formal consultations with tribal governments in November in Seattle, Sacramento and Phoenix, would require information in four additional areas for off-reservation trust proposals for gaming projects.

Those areas are the tribe’s on-reservation employment rate and the potential impact on that rate of the gaming project; the on-reservation benefits, including the potential creation of jobs, from the proposed project; intergovernmental agreements with state and local governments or other deals to mitigate impacts “or an explanation as to why no such agreements or efforts exist”; and any economic benefit to the local community from the project.

The proposal to require information about intergovernmental agreements may give projects that boast such deals a leg up in getting federal approval, and conversely, put tribes that haven’t put together those agreements at a disadvantage.

For both on-reservation and off-reservation land-into-trust requests, the proposal would put back in place a 30-day wait following a DOI trust decision before a land parcel is actually taken into trust.

In his letter, Tahsuda asked tribal leaders for comments on the proposed regulatory revisions, and asked for further comment about what circumstances support the DOI approving or disapproving an off-reservation application, what criteria the department should use, whether gaming-related applications should be treated differently, whether different criteria should apply for trust acquisitions related to economic development, and whether agreements with local governments help to improve off-reservation projects.

The letter was mailed the same day that Tahsuda, who signed as acting assistant secretary for Indian affairs, appeared before the Senate Committee on Indian Affairs alongside several tribal leaders to discuss tribal gaming.

Tahsuda tackled the impact of tribal off-reservation casinos on non-Indian communities, saying at the hearing that tribes’ land-into-trust requests for off-reservation gaming projects “require particular attention to issues of jurisdiction and taxation,” including “the potential to raise jurisdictional uncertainties in local communities, as well as complicating land-use

planning and the provision of services,” and “tax revenue consequences if payments in lieu of taxes are not agreed upon” with non-Indian communities.

And off-reservation trust actions may lead to tribes launching gaming projects after their land is taken into trust “even though that was not in the original plan,” Tahsuda said.

“This matter continues to complicate and isolate some communities near these facilities,” according to Tahsuda’s testimony. “In those instances, local communities that may have offered support or participated in the process could now need to engage in a new public input process.”

The Bureau of Indian Affairs will hold a listening session on Oct. 16 at the National Congress of American Indians convention in Milwaukee, then hold formal tribal consultation sessions on Nov. 14 in Seattle, Nov. 16 in Sacramento and Nov. 29 in Phoenix.

--Additional reporting by Juan Carlos Rodriguez. Editing by Aaron Pelc.



# Tribe Says Immunity Means Fishing Rights Row Must End

Share us on: By **Michael Phillis**

Law360, New York (October 5, 2017, 7:57 PM EDT) -- The Resighini Rancheria and one of its members said Wednesday that a lawsuit alleging its members have been fishing in a portion of the Klamath River allegedly reserved for the Yurok Tribe should be dismissed, arguing in California federal court that its sovereign immunity prevented the claims from proceeding.

The motion to dismiss filed by the Rancheria and member Gary Mitch Dowd said the tribe did not waive its sovereign immunity and therefore the Yurok's complaint cannot continue. In addition, any allegations against members in their individual capacity cannot stand because the tribe is a "necessary and indispensable party" of the suit. The tribe's sovereign immunity means, however, it cannot be joined and the claims must be dropped, the motion said.

In its September motion for summary judgment, the Yurok tribe alleged the Rancheria and Dowd violated the Hoopa-Yurok Settlement Act and do not have a right to fish within the Yurok's reservation. The Yurok asserts its exclusive right to fish in those waters means that Dowd and others who continue to fish there violate that right.

"The tribe has neither given its consent to be sued by the plaintiffs nor waived its sovereign immunity in favor of the plaintiffs," the Rancheria motion to dismiss said. "Notably, the plaintiffs have pled neither the existence of any documents that could plausibly constitute a waiver of tribal sovereign immunity, nor offered any evidence of the tribe's intent to abrogate the tribe's immunity so as to subject the tribe to suit by the plaintiffs."

There will be a hearing on the motions in mid-November. The Rancheria said they have sovereign immunity as a tribe listed on the Federal Register.

"Where, as here, a federally recognized Indian tribe properly raises sovereign immunity, the court is deprived of jurisdiction to adjudicate any of the claims alleged against the tribe in the complaint," the motion to dismiss said.

And because the suit deals with fishing rights and whether or not they belong to the Rancheria, which is a significant issue for the tribe, they must be party to the case, according to the motion to dismiss. But the Rancheria's sovereign immunity prevents the tribe from being joined and therefore all claims must go, the motion said.

"The tribe has a protectable interest in the outcome of the litigation," the motion to dismiss said. "It has a federally reserved fishing right that could either be eliminated or made subject to the Yurok Tribe's regulation. A decision eliminating the tribe's fishing right or subjecting the tribe's fishing right to Yurok regulation would have devastating effects on the tribe's sovereign authority."

Lester J. Marston, attorney for the defendants, said the case demonstrated selfishness on the part of the Yurok. He said both tribes should be able to fish in the river without one pushing the other around.

"The Yurok are getting greedy," Marston told Law360. "They don't want to share the resource."

According to the **motion for summary judgment** filed by the Yurok tribe, the members of the Rancheria, including Dowd, fish without a license and hurt the Yurok's conservation efforts.

The summary judgment motion says that the tribe expends millions of dollars to keep careful stock of the fish that are in the river and makes sure to keep fishing quotas. Having those who aren't supposed to fish in the river do so hurts the river's health, the summary judgment motion said.

The Resighini Rancheria's land, which is surrounded by the Yurok reservation, was established in the 1930s for "individual, homeless, and other Indians not affiliated with a tribe," the Yurok's motion said. The Rancheria had the opportunity to merge with the Yurok Tribe under language in the Hoopa-Yurok Settlement Act, but declined to do so in an election that was authorized in 1988 by the Bureau of Indian Affairs. Individual members also had the opportunity to join the Yurok tribe, but Dowd decided against it, according to the Yurok.

Those who declined to join were given larger lump sum payments in the form of a "buyout"

compared to those who joined the Yurok. The larger amount paid under the buyout option was "solely ... a mechanism to resolve the complex litigation and other special circumstances," the summary judgment motion said.

That buyout specifically prevented people who decided against joining the tribe from fishing on the Yurok's land, the summary judgment motion argued.

A representative for the Yurok did not immediately return a request for comment.

The Yurok tribe is represented by Scott W. Williams and Curtis G. Berkey of Berkey Williams LLP and Cheyenne Sanders of the Yurok Tribe Office of Tribal Attorney.

The defendants are represented by Lester J. Marston of Rapport and Marston.

The case is Yurok Tribe et al. v. Resighini Rancheria et al., case number 1:16-cv-02471, in the U.S. District Court for the Northern District of California, Eureka Division.

--Editing by Orlando Lorenzo.