

YUROK ACQUISITION COOPERATIVE AGREEMENT

This Cooperative Agreement ("Agreement") is entered into by and among the Yurok Tribe ("Tribe"), the California State Water Resources Control Board ("State Water Board"), the California North Coast Regional Water Quality Control Board ("Regional Water Board"), the California Department of Forestry and Fire Protection ("CAL FIRE"), and the United States Bureau of Indian Affairs, Pacific Regional Office ("BIA") (each a "party" and collectively, "parties").

Background

1. The Tribe desires to purchase 22,737 acres, more or less, of forestland in Humboldt County ("Properties") from Green Diamond Resource Company for \$18.75 million ("Acquisition"). The purpose of the Acquisition is to: provide for sustainable harvest of forest products; protect, restore, and enhance water quality and salmonid habitat; improve forest stands and biodiversity; and enhance cultural resources.
2. The Tribe has applied to the State Water Board for financing in the amount of \$18.75 million pursuant to the Clean Water State Revolving Fund ("Financing") to assist with the Acquisition, which Acquisition will be subject to: (a) a Yurok Habitat Conservation Plan entered into by the Tribe, the United States Fish and Wildlife Service ("FWS"), and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NFS"); (b) a Carbon Sequestration Contract entered into by the Tribe and a third party; and (c) this Agreement among the parties to ensure proper use and management of the Properties.
3. Among other things, the State Water Board develops, monitors, and enforces statewide water quality policy, including regarding the Pacific Ocean, and the Regional Water Board develops, monitors, and enforces water quality objectives, waste discharge requirements, National Pollutant Discharge Elimination System permits, and the Water Quality Control Plan ("Basin Plan") for its hydrologic basin. CAL FIRE currently is responsible for wildland fire protection for the Properties, and the Tribe and the BIA are responsible for wildland fire protection for lands that are owned by the United States in trust for the Tribe or its members, some of which are adjacent to or intermingled with the Properties, and wildland fires on the Properties or these adjacent or intermingled lands may present a threat to the lands of the other.
4. The Properties consist of lands that lie within the Tribe's reservation boundary ("on-Reservation") and lands that lie outside the Tribe's reservation boundary ("off-Reservation"). For the off-Reservation portions of the Properties acquired by the Tribe, the State Water Board and the Regional Water Board will continue to exercise existing regulatory authority consistent with federal and California state law, and CAL FIRE will continue to exercise regulatory authority over forestry practices. For the on-Reservation portions of the Properties acquired by the Tribe, Region IX of the United States Environmental Protection Agency ("EPA") and the Tribe will exercise regulatory authority under the federal Clean Water Act, including for water quality standards ("WQS") and nonpoint source ("NPS") management activities, and the BIA and the Tribe will exercise regulatory authority over the Tribe's forestry practices.

5. This Agreement is being entered into in part pursuant to 25 U.S.C. § 3115(a)(1), under which the BIA may enter into a cooperative agreement with an Indian tribe regarding forestry and natural resource management, and in part pursuant to 16 U.S.C. § 583a, under which the BIA may enter into a cooperative agreement with a private owner of forest land for coordinated management of private and federally administered forest land. This Agreement also is being entered into in part pursuant to California Public Resources Code § 4799.03(a), under which CAL FIRE may enter into cooperative agreements with local and federal public agencies to encourage such agencies to undertake forest resource improvement work.

6. In light of the foregoing, the parties desire to enter into this Agreement to: (a) coordinate their respective authorities and responsibilities regarding the Properties following the Acquisition; (b) provide for sustainable forest products harvest; (c) protect, restore, and enhance water quality and salmonid habitat; (d) improve forest structure and increase natural biodiversity; (e) protect and restore tribal cultural resources; and (f) implement and maintain a functionally integrated fire protection system.

Agreement

1. Interim Management. The Tribe, the State Water Board, and the Regional Water Board will develop a cooperative approach for short- and long-term monitoring through the life of the Financing in order to ensure that the Tribe successfully protects beneficial uses of waters within the Properties. In addition, pending compliance with applicable California state law for off-Reservation portions of the Properties and federal approval of the Yurok Forest Plan and the Yurok NPS Program as described further below for on-Reservation portions of the Properties, the Properties will be managed in a manner consistent with the following general guidelines:

a. Forest Management. The Tribe will manage the Properties in accordance with the Yurok Forest Management Plan, which has been approved by the BIA and meets BIA criteria for sustainable forestry verification, as outlined by the Deputy Commissioner of Indian Affairs by memo on April 18, 2003. In addition, the Tribe will implement and comply with the following guidelines for the Properties:

- i. no harvest of trees after the closing date of the Acquisition pending approval of timber harvest by either CAL FIRE for off-Reservation portions of the Properties or the BIA for on-Reservation portions of the Properties;
- ii. eliminate use of pesticides, herbicides, and fungicides; and
- iii. establish minimum riparian buffers that are significantly wider than required under the California Forest Practice Rules in effect as of the closing date of the Acquisition.

b. Water Quality. In addition to implementation of the forest management measures described above, the Tribe will enhance water quality within and from the Properties by meeting or exceeding applicable provisions of the California Nonpoint Source Program Control Strategy and Implementation Plan 1998-2013 ("California NPS Plan") or any

superseding California NPS Plan. In addition, the Tribe will implement and comply with the following for the Properties:

- i. for off-Reservation portions of the Properties, all applicable California state law including without limitation the Regional Water Board's Basin Plan, the Klamath River Total Maximum Daily Load for Sediment, and Waste Discharge Requirements or a Waiver of Waste Discharge Requirements for any timber harvest activities, provided that any more stringent Yurok Nonpoint Source, Water Quality, or Water Pollution standards that apply to the on-Reservation portions of the Properties will govern for the off-Reservation portions of the Properties instead of any lesser upstream Regional Water Board standards;
- ii. for on-Reservation portions of the Properties, the Yurok Tribe Nonpoint Source Assessment and Management Program, as approved for funding by EPA on March 8, 2000, the Yurok Tribe Water Quality Control Plan, as adopted by the Yurok Tribe in Resolution No. 04-46 of August 25, 2004, and the Yurok Water Pollution Control Ordinance, of October 5, 2004; and
- iii. for all of the Properties, all downstream beneficial uses must be protected in the Klamath River Estuary and in ocean waters of California, including without limitation the Redwood National Park Area of Special Biological Significance, in compliance with the currently effective California Ocean Plan and other applicable statewide water quality control plans and policies as adopted by the State Water Board, provided that any such more stringent applicable statewide plans or policies will govern instead of any lesser upstream Yurok or Regional Water Board standards.

2. Off-Reservation Activities.

- a. **Generally.** At all times, the Tribe will comply with applicable provisions of California state law for activities undertaken on off-Reservation portions of the Properties, including without limitation compliance with the California Forest Practices Act, the California Porter-Cologne Water Quality Control Act, the California NPS Plan, the Basin Plan, and any superseding applicable legal authorities.
- b. **Forest Practices.** In accordance with 16 U.S.C. § 583a, the BIA and the Tribe will manage the terms, conditions, time, rate, and method of harvesting timber and other forest products from off-Reservation portions of the Properties in a coordinated manner with the on-Reservation portions of the Properties, other lands owned in fee by the Tribe, and land owned by the United States in trust for the Tribe. The regulatory jurisdiction of CAL FIRE, the State Water Board, and the Regional Water Board over the off-Reservation portions of the Properties will not be impacted or otherwise changed by management of the Properties in accordance with 16 U.S.C. § 583a.
- c. **NPS Management.** The State Water Board and the Regional Water Board will implement the California NPS Plan regarding the off-Reservation portions of the Properties

consistent with the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program in cooperation with the Tribe.

3. Yurok Forest Plan.

Date?
a. Timing and contents. No later than two years after the closing date of the Acquisition, the Tribe will submit to the BIA a proposed Forest Management Plan ("Forest Plan"), in accordance with the National Indian Forest Resources Management Act, 25 U.S.C. §§ 3101-20, and other applicable authorities. The Forest Plan will provide for silvicultural management, use, restoration, and protection of on-Reservation portions of the Properties in a perpetually productive state in coordination with other lands owned in fee by the Tribe and land owned by the United States in trust for the Tribe, in accordance with 16 U.S.C. § 583a and 25 U.S.C. § 3104. The Forest Plan will include such additional elements as the Tribe and the BIA may agree to include in the Forest Plan.

b. Development. Leading up to submission of the Forest Plan to the BIA, the Tribe will invite and encourage the participation of public agencies, the local community, and other stakeholders. The public agencies involved will include at least the parties, the EPA, the FWS, the NFS, and the California Department of Fish and Game ("DFG").

c. Approval. The BIA will have 60 days after the date that the Tribe submits the Forest Plan and after completion of compliance with the National Environmental Policy Act to provide provisional notice of approval for the Forest Plan. The BIA will work with the Tribe to resolve any specific issues with the proposed Forest Plan once identified. Final approval of the Forest Plan will not be unreasonably delayed or withheld.

d. Implementation. Upon final approval of the Forest Plan by the BIA, the on-Reservation portions of the Properties will be managed in a manner consistent with the Forest Plan, or any superseding approved Forest Plan.

4. Yurok NPS Program.

a. Timing and contents. No later than two years after the closing date of the Acquisition, the Tribe will submit to the EPA a proposed Nonpoint Source Management Program ("Yurok NPS Program"), in accordance with 33 U.S.C. § 1329(b). The Yurok NPS Program will include all the contents required by 33 U.S.C. § 1329(b)(2), including without limitation all water quality improvement elements specified for the Properties in Exhibit A, section 1 of the final Financing agreement approved and executed by the Tribe and the State Water Board. The Yurok NPS Program will be consistent with the California Enclosed Bays and Estuaries Plan and will include such additional elements as the Tribe and the EPA may agree to include in the Yurok NPS Program.

b. Development. Leading up to submission of the Yurok NPS Program to the EPA, the Tribe will invite and encourage the participation of public agencies, the local community, and other stakeholders in accordance with 33 U.S.C. § 1329(b)(3). The public agencies involved will include at least the parties, the EPA, the DFG, the FWS, and the NFS.

c. **Approval.** The EPA will approve or disapprove the Yurok NPS Program in accordance with 33 U.S.C. § 1329(d).

d. **Implementation.** Upon final approval of the Yurok NPS Program by the EPA, the on-Reservation portions of the Properties will be managed in a manner consistent with the Yurok NPS Program, or any superseding NPS Program.

5. **Fire Plan.**

a. **Existing Agreements.** Fire protection activities regarding the Properties will be addressed by the Tribe, the BIA, and CAL FIRE in accordance with in the California Master Cooperative Wildland Fire Management and Stafford Act Response Agreement entered into among CAL FIRE; the United States Department of Agriculture, Forest Service Region Four, Five and Six; the United States Department of the Interior, Bureau of Land Management, California and Nevada, National Park Service, Pacific West Region, the BIA, and the FWS, dated December 2007 ("CFMA"), as well as the Statewide Annual Operating Plan entered into by CAL FIRE and the BIA, dated May 2008, or any superseding operating plan therefor.

b. **Protection Areas.** Pending acquisition of the Properties by the United States in trust for the Tribe, the Properties will remain within the State Responsibility Area for fire protection as defined in the CFMA.

6. **General Provisions.**

a. **Effective Date, Applicability, and Term.** This Agreement will become effective upon Acquisition of the Properties by the Tribe. This Agreement will remain in effect until at least the date when the Financing is repaid in full, and will continue in effect thereafter until terminated or superseded by amendment which explicitly replaces this Agreement.

b. **Amendment.** This Agreement may not be altered, amended, changed, or modified except by written amendment approved and executed by the parties.

c. **Termination.** Following full repayment of the Financing, any party may terminate its involvement in this Agreement without cause by giving at least sixty days advance written notice to the other parties, and without affecting provisions herein among other parties.

d. **Legal effect.** This Agreement is not intended and shall not be deemed to change any governmental jurisdiction of the parties.

e. **Notices.** Notices and other communications between the parties should be delivered to the following representatives:

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Thomas P. O'Rourke, Chairman
Yurok Tribe
190 Klamath Blvd.
Klamath CA 95548
torourke@yuroktribe.nsn.us
telephone: 707-482-1350
facsimile: 707-482-1363

with copy to:
John Corbett, Senior Counsel
jcorbett@yuroktribe.nsn.us

Gerald Jones, Assistant Regional Forester
Branch of Forestry
Pacific Regional Office
U.S. Bureau of Indian Affairs
2800 Cottage Way, W-2820
Sacramento, CA 95825
gerald.jones@bia.gov
telephone: 916-978-6076

Crawford Tuttle, Chief Deputy Director
California Department of Forestry and
Fire Protection
1416 9th Street
Sacramento, CA 94244
Crawford.tuttle@fire.ca.gov
telephone: 916-653-5123

with copy to:
Giny Chandler, Chief Counsel
giny.chandler@fire.ca.gov

Esteban Almanza, Deputy Director
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento CA 95814
ealmanza@waterboards.ca.gov
telephone: 916-341-5425
facsimile: 916-341-5705

with copy to:
Anne Hartridge, Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
ahartridge@waterboards.ca.gov

Catherine Kuhlman, Executive Officer
North Coast Regional Water
Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
ckuhlman@waterboards.ca.gov
telephone: 707-576-2220
facsimile: 707-523-0135

with copy to:
David Rice, Staff Counsel
DavidRice@waterboards.ca.gov

7. **Execution and Counterparts.** This Agreement may be signed in multiple counterparts.

YUROK TRIBE


Chairman

3-1-11
Date

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Thomas Howard
Executive Director

1/14/2011
Date

CALIFORNIA NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

Catherine Kuhlman
Executive Officer

1/20/2011
Date

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

Chief Deputy Director

Date

U.S. BUREAU OF INDIAN AFFAIRS, PACIFIC REGIONAL OFFICE

Regional Director

Date

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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Thomas Howard
Executive Director

1/19/2011
Date

CALIFORNIA NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

Executive Officer

Date

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

[Signature]
Chief Deputy Director

1/20/2011
Date

U.S. BUREAU OF INDIAN AFFAIRS, PACIFIC REGIONAL OFFICE

[Signature]
Regional Director

1/24/11
Date