

Two tribes contest ruling on fishing rights

January 3, 2020



Press release from the Yurok Tribe

The Ninth Circuit Court of Appeals ruled on Dec.12 that the district court erred in dismissing the Yurok Tribe's claim against Resighini Rancheria member Gary Dowd for illegal fishing within the Yurok Reservation.

The court remanded the case back to the district court for further proceedings and did not decide whether the Yurok Tribe has exclusive fishing rights on the Yurok Reservation, as the Rancheria's recent press release asserted.

Instead, the Court stated it would not decide whether Yurok had exclusive tribal fishing rights within the Yurok Reservation without the full participation of the Rancheria. The Rancheria chose, at a late hour, to not pursue resolution of that claim by asserting sovereign immunity in the district court.

At the oral argument, the Appeals Court judges questioned why the Rancheria did not want to pursue its fishing rights claim—or, the exclusive fishing rights of the Yurok Tribe—before the Court, noting it was the

proper venue for resolving the claims the Rancheria was asserting as a defense. Yurok agreed the time was ripe for resolution of this issue.

“We vacate the [district court] judgment and hold that the district court abused its discretion in dismissing the Yurok Tribe’s [Hoopa-Yurok Settlement Act (HYSA)] claim against Dowd in his individual capacity and remand for further proceedings,” the court said after ruling in favor of Yurok.

The case will proceed against Dowd in the district court to decide whether Dowd terminated any rights he may have had to the Yurok Reservation by electing to receive \$15,000 in the HYSA.

“The Appeals Court made the right ruling and we are eager to get to the merits of this case,” Yurok Chairman Joseph L. James said. “Illegal fishing within the Yurok Reservation is a threat to the health of the fishery and an infringement on Yurok’s exercise of sovereignty over our lands and our waters. We are confident that resolution of this case in the district court will uphold our sovereignty.”

Dowd has been cited repeatedly for fishing on the Yurok Reservation without a state permit or other regulation. Dowd refuses to appear in Yurok Tribal Court, claiming he has a right to fish.

The issue in this case is narrow: whether Dowd gave up all rights—including fishing rights—to resources in the Yurok Reservation when he chose to take a \$15,000 buy-out in the HYSA rather than electing to become a Yurok tribal member, as the statute allowed.

Under the HYSA, individuals choosing the buy-out option would “[N]ot thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, ... the Yurok Reservation, or the Yurok Tribe.”

The Rancheria tribal government was also given the opportunity to merge with the Yurok Tribe through the HYSA. Yet, the Rancheria elected not to merge with Yurok and chose to remain a separate tribe.

Upon receiving the Yurok Tribe’s press release, the Triplicate reached out to the Resighini Rancheria for a responding statement. They sent the following:

The Resighini Rancheria Tribal Council fully understands both the decision of the District Court and the Ninth Circuit Court of Appeals. The two decisions taken together make it clear that the Yurok Tribe cannot sue the Resighini Rancheria or any of its officials to determine the extent and nature of the Resighini’s federally reserved fishing right.

Instead, the Court of Appeals limited the Yurok Tribe to only suing Gary Dowd, in his individual capacity, to determine under the Hoopa-Yurok Settlement Act, what tribal rights, if any, Gary Dowd gave up in the Yurok Tribe and the lands owned by the Yurok Tribe.

The Resighini Rancheria (Tribe) maintains that Gary Dowd, an elder fishing in his usual and accustomed places, was exercising a tribal right that he enjoys because of his membership in the Resighini Rancheria. Although the Court found that the Resighini Rancheria was not a required party to the case, they also held that the Tribe's interests would not be impaired or impeded if the limited action authorized by the Court against Gary Dowd in his individual capacity proceeds without the Tribe as a party.

The Court reasoned that the district court's decision as to whether Gary Dowd's decision to stay a Resighini Rancheria tribal member and not elect to become a member of the newly established Yurok Tribe, and the associated receipt of the lump sum payment mandated under the Hoopa-Yurok Settlement Act (HYSA), terminated his right to fish within the Yurok Reservation would not affect the rights of the Resighini Rancheria and its individual members to fish within the Yurok Reservation.

The Court also, in a footnote, rejected the Yurok Tribe's contention before the district court that Gary Dowd's fishing within the Yurok Reservation violated the Yurok Tribe's "exclusive federally reserved fishing right." In reaching this conclusion, the Court reasoned that its past decisions establish that an action to declare the scope of one tribe's rights in relation to those of neighboring tribes requires the latter to join the action.

A declaration that the Yurok Tribe's fishing right is "exclusive" would necessarily declare the fishing right of the Tribe to be nonexistent, and so the district court properly dismissed that claim. This is encouraging to the Resighini Rancheria because the implication here is that a federally reserved fishing right is a tribal right, not an individual right and that the Yurok Tribe does not maintain an "exclusive federally reserved fishing right."

The HYSA did not diminish an individual tribal member's fishing right because fishing rights are tribal rights and not individual rights, and neither the HYSA, nor a payment made to Gary Dowd in connection with timber proceeds litigation, extinguished the rights of the Resighini Rancheria and its members to fish at their usual and customary fishing places.

The Resighini Rancheria Tribal Council has always regulated its members and managed the fishing resources of the Klamath River to ensure that its fishery would thrive. It is unfortunate that the Yurok Tribe has chosen to litigate this inter-tribal matter instead of cooperating with the Resighini Tribe to manage the fishery on a sustained yield basis in furtherance and protection of both Tribes sovereign rights.

We look forward to continuing to try to work with all resource managers on the lower Klamath to protect the salmon and other fisheries in which we all rely. We will continue to work to protect the sovereignty and distinct rights of the Resighini Rancheria, as well as to build capacity to manage the natural resources of the Klamath River.