

# REAL PROPERTY LAW



*presents*

## **2024 Real Property Law Retreat**

#LandBack

Saturday, March 9, 2024  
12:45pm - 2:00pm

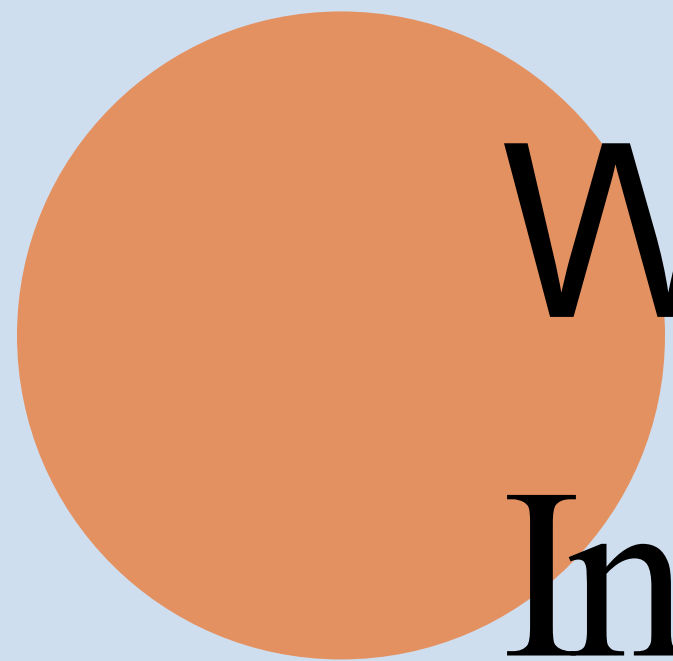
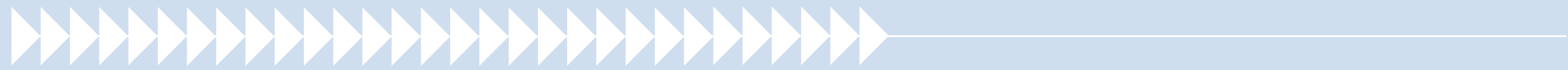
Speakers: Michelle Lee

### **Conference Reference Materials**

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# Weaving Land Back Into Our Lives

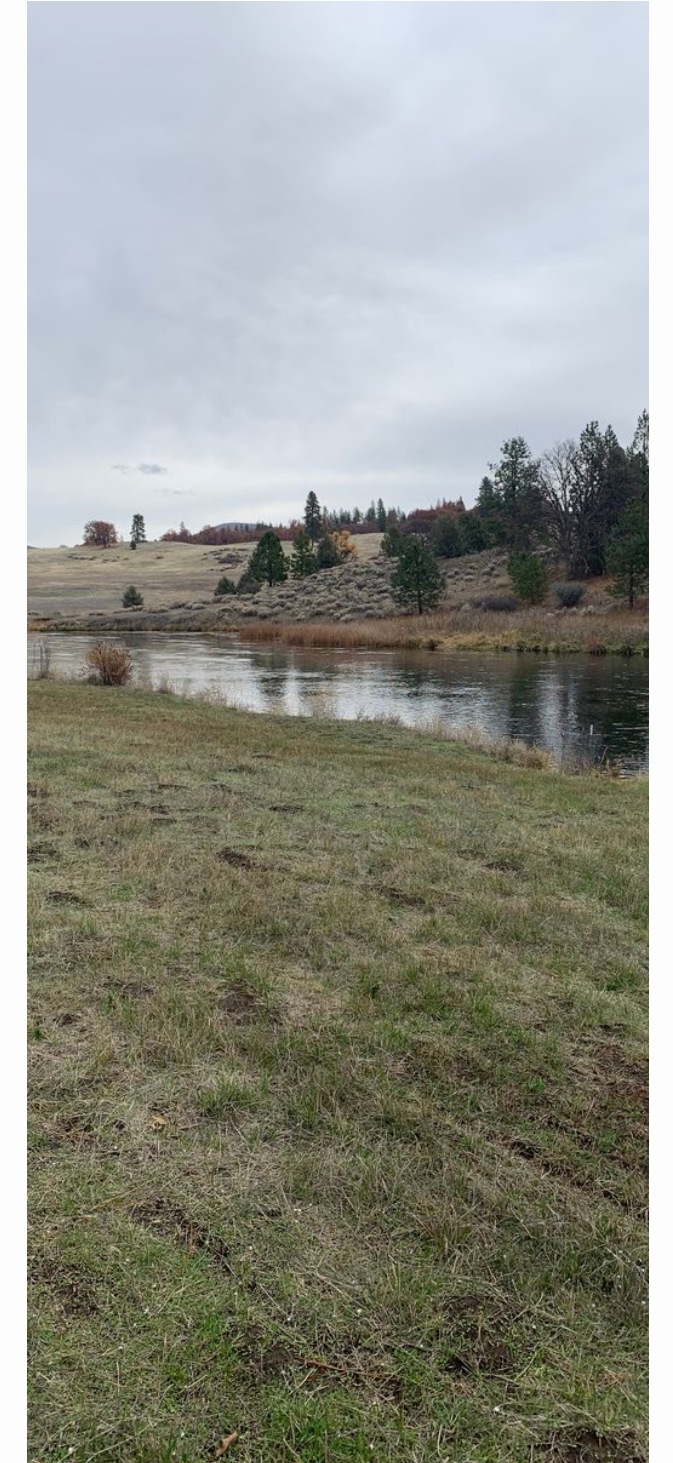
Michelle Lee



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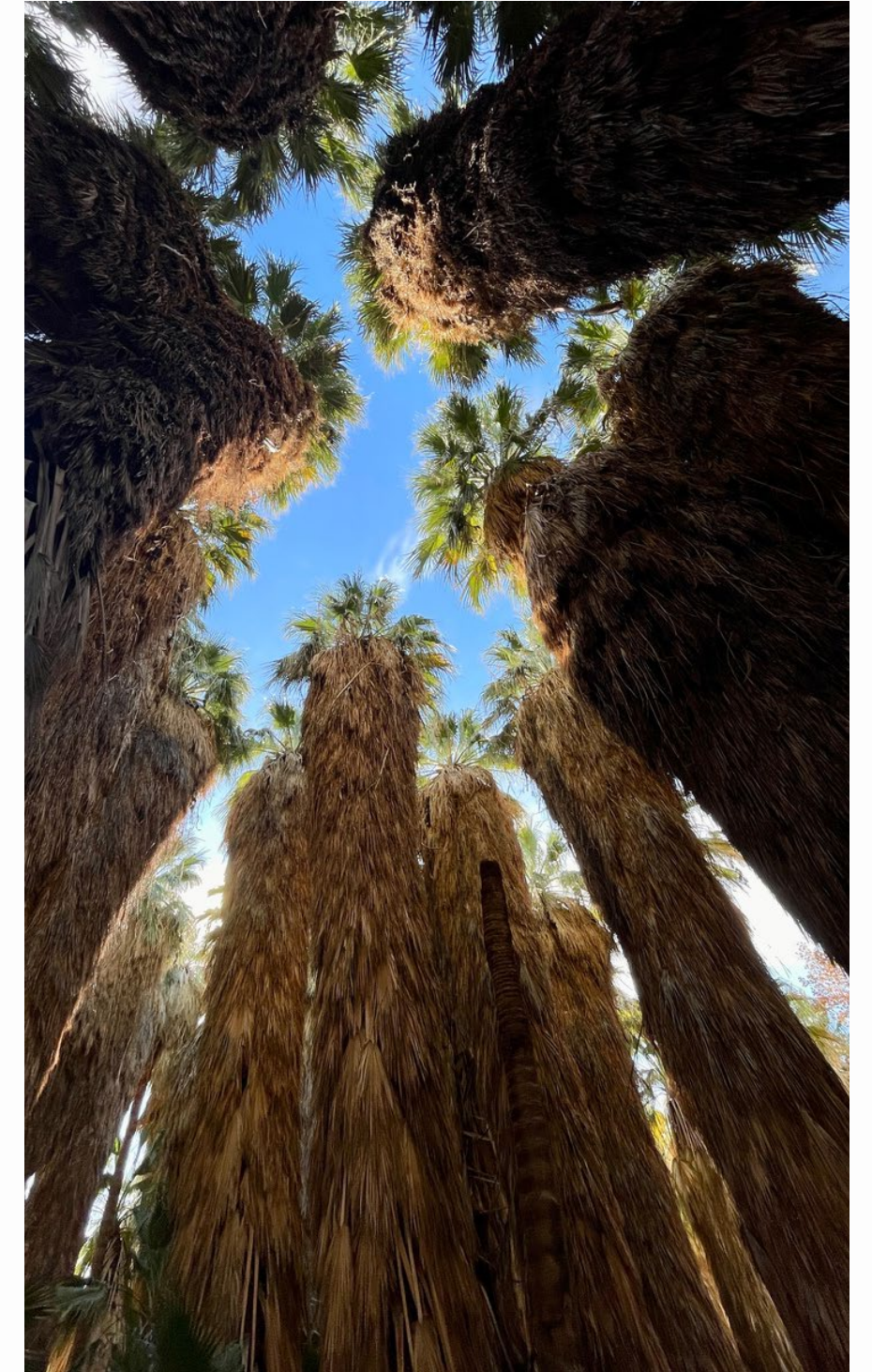


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# Indian, Indigenous, Native American, American Indian

Generally, an Indian is an individual that (1) is a descendant from people that lived in what is now the United States before colonization by Europeans, and (2) the individual is recognized as Indian by the individual's tribe or community.

Native American tribes are sovereign, independent governments. Before contact with Europeans, Native Americans were organized into upwards of 2,000 different groups with distinct languages, rituals, social systems, and methods of subsistence.



# California Indian Tribes

There are 110 federally recognized Indian tribes, including several tribes with lands that cross state boundaries. There are also approximately 80 tribal groups seeking federal recognition.

California's Tribes are everywhere throughout the state, including:

- Near highly populated cities like Los Angeles, the Bay Area and Sacramento
- In rural areas
- Close to the borders (and sometimes across the borders) of other states, such as Arizona, Oregon, and Nevada
- In the mountains of northern and eastern California
- In the high deserts of southern and southeastern California
- On the coast, on the rivers, and around the lakes



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# The Land Grab

- 1769: Spanish colonists arrive in California
- 1849: Gold discovered in Coloma and soon bounty-hunting was legalized to “clear” the land for non-Indian settlement.
- 1853: Indian Reservations created in California to segregate surviving Indians from settlers and free Indian lands for settlement. Originally the \$275,000 federally appropriated budget was for the purpose of “collecting, removing, and subsisting the Indians of California.”
- 1855: Thomas J. Henley, Superintendent of Indian Affairs in CA Henley proposed to “finally rid the State of this class of population.”
- Two reservations were established in Mendocino County: The Mendocino Reservation, on the coast, and the Nome Cult Farm in Round Valley.
- July 1856: Pomo and others from as far away as Eureka and Chico were force marched to the Mendocino Reservation and Nome Cult Reservation.



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# The Land Grab

- During the 1850's and 1860's, the land that Native people had lived on for thousands of years was completely taken over by new settlers through homesteading.
- Forced removal to Indian reservations disrupted Native land tenure and left land "vacant" for legal taking.
- The Homestead Act of 1862 furthered Native impoverishment by enabling all adult male non-Indian citizens to claim 160 acres of as long as they physically possessed it and filed the appropriate claim.
- While beneficial for the new settlers, Native peoples could not claim the land they already lived on since they were not granted legal U.S. "citizen" status until 1924.



# Land Return & Federal Recognition

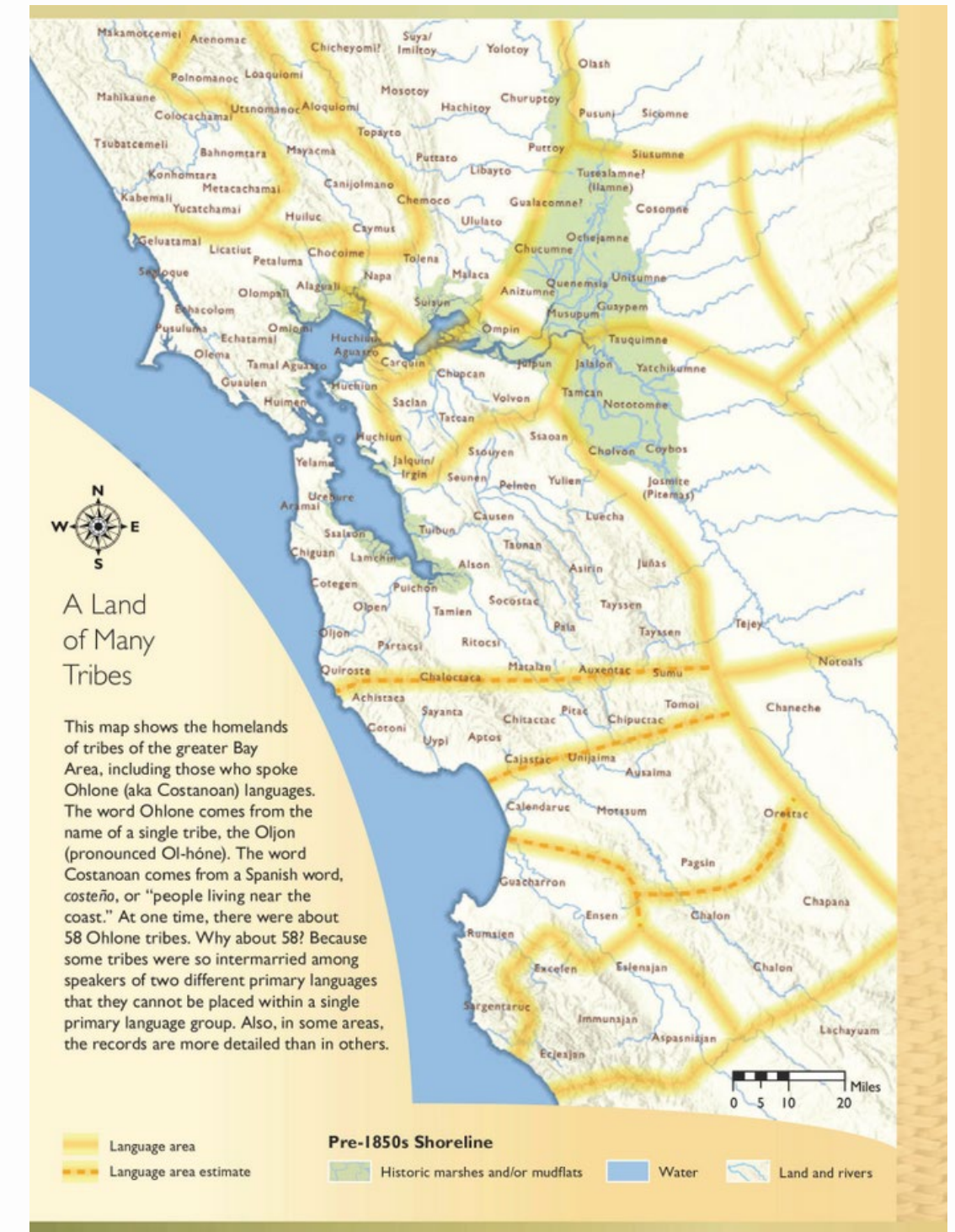
Due to the missions established throughout the California coast, including the Bay Area, there are many tribes that do not have federal recognition. Because of this, many utilize alternative tools of land acquisition, such as land trusts and non-profits, although these tools can also be used by tribes with federal recognition, as they pose a different set of benefits & challenges.

Confederated Villages of Lisjan - The Sogorea Te' Land Trust

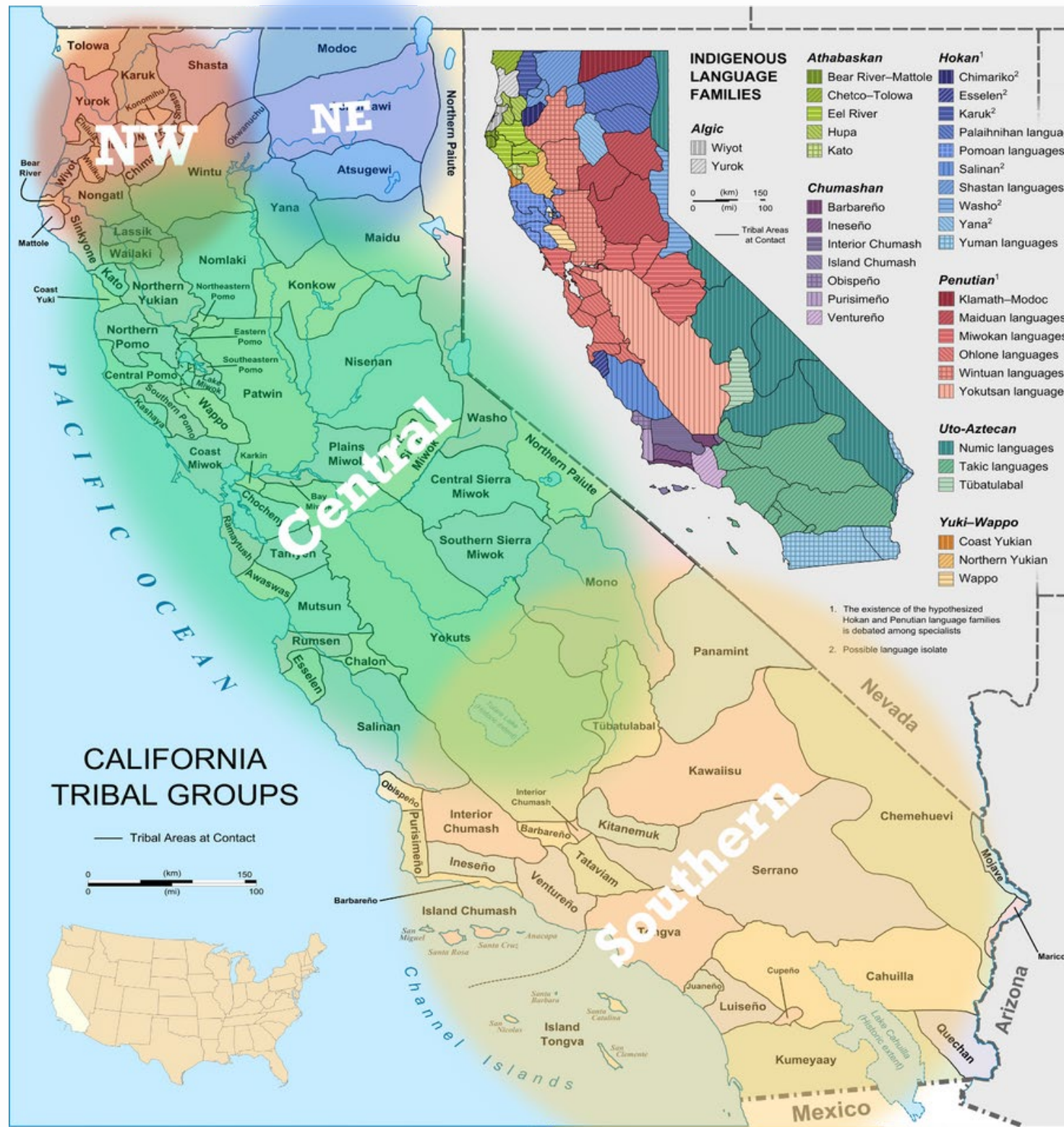
Amah Mutsun Tribe - Amah Mutsun Land Trust

Tongva Tribe - Tongva Taraxat Paxaavxa Conservancy

Wiyot Tribe - Dishgamu Humboldt Community Land Trust







# TRIBAL CULTURAL RESOURCES

Over 160 tribes in the state

# Protecting California Indian Culture

1948	1968	1978	1990	2004	2013	2020
American Indians' right to vote in federal elections recognized	Indian Civil Rights Act grants 1 <sup>st</sup> and 14 <sup>th</sup> Amendment Freedoms	American Indian Religious Freedom Act & Indian Child Welfare Act	NAGPRA & Native American Language Act	SB 18 Consultation b/w Cities/Counties and Tribes re: general plan amendments and open space designation	AB 52 Consultation b/w Lead Agency and Tribes re: proposed project's impact on Tribal Cultural Resources	AB 168 Consultation b/w Local Government and Tribes re: proposed project's potential impact on Tribal Cultural Resources

## Truth and Healing Council- 2019-2024

Through recent policies, the state and federal govt's have just begun to address the impacts of their over 200 year campaigns of genocide and ethnic cleansing.



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# Context Takeaways

Only since SB 18 in 2004 (Planning Law) and AB 52 (CEQA) in 2014 have Tribes had a formal seat at the table in California planning and land use decisions.

This is a step in the right direction, but it's a small benefit considering the ongoing development impacts, including:

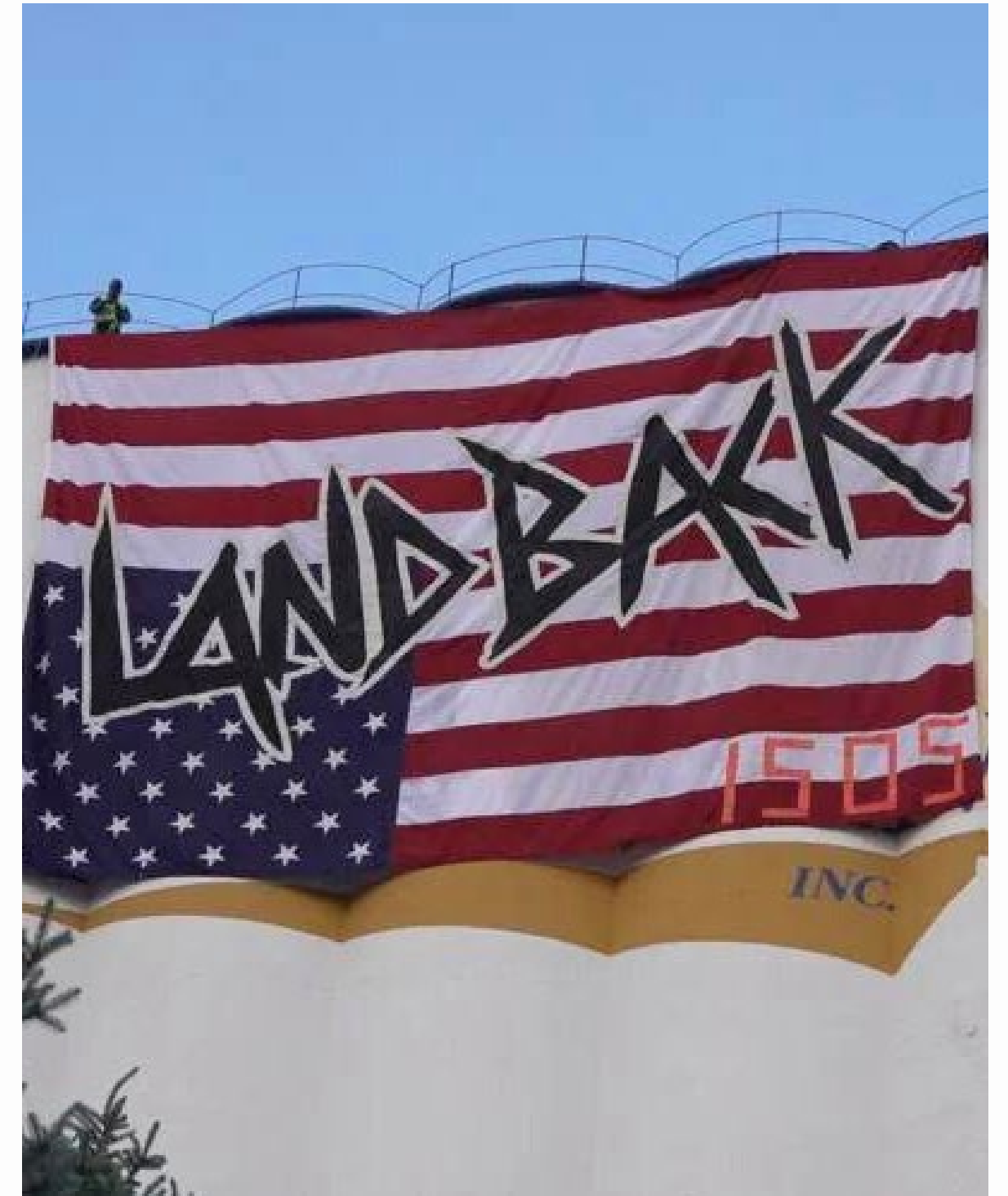
- Destruction of tribal cultural resources (TCR's) and sacred sites
- Irreplaceable loss of TCR's
- Removal of ancestors' remains and funerary objects
- Lack of protections for TCR on par with other historical sites and structures



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# LandBack Overview

NDN Collective, an Indigenous-led organization dedicated to building Indigenous power, defines LANDBACK as “a movement that has existed for generations with a long legacy of organizing and sacrifice to get Indigenous Lands back into Indigenous hands. Currently, there are LANDBACK battles being fought all across Turtle Island, to the north and the south.”



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RinihmuPulte'irekne:  
Returning Indigenous  
Land to Indigenous  
Stewardship



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# RinihmuPulte'irekne

Rinihmu Pulte'irekne is a site of land return between the Sogorea Te Land Trust, The Confederated Villages of Lisjan Nation, and the City of Oakland, through the process of a cultural easement.

This is the first land return of it's kind-- a land return by a City to a Tribe via a land trust, in an urban environment within a City park (Joaquin Miller Park) with the highest foot traffic in the region.

This was generally a simple land return, however, has been 7 years in the making. The cultural easement was signed in December of 2022, yet, even with the support of the entire City of Oakland, still has components in need of finalization.



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# Rinihmu Pulte'irekne

Cultural Conservation Easement - development & signing of the easement itself, as well as a baseline report, including a multitude of assessments and surveys (biological resources, watershed, traffic, etc.).

The easement that was developed provides STLT & CVLN with primary stewardship & management, and while the City continues to hold the title deed, they must be in conversation with the STLT & CVLN to access the site.



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# Rinihmu Pulte'irekne

Rezoning - After the easement was signed, the land was rezoned to open space, which although restrictive, relies on the MOA to identify activities that are allowed on site, and opened the doors to establishing signage and restrictions on public access for conservation.

MOA - The MOA outlines the activities that can occur onsite, as well as any limitations, and works in relation to the easement & the zoning. The Tribe created wish lists of activities on they wanted to do onsite and worked with the City to incorporate nearly all of them, with a few restrictions given the City fire codes.



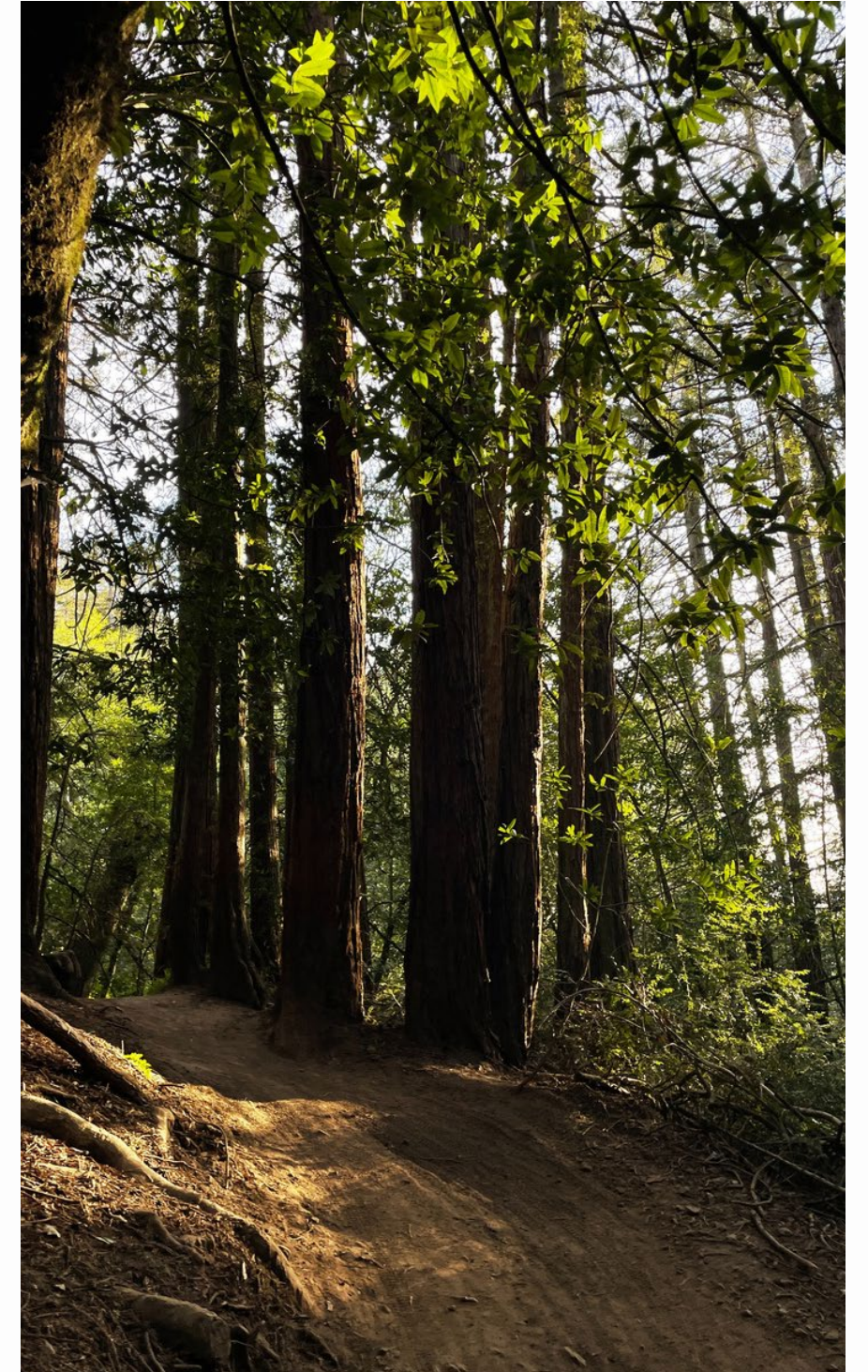


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# Rinihmu Pulte'irekne

Annexation - The site currently does not have access to water due to a small parcel of the land lying outside of the City boundaries, and in another jurisdiction. We are exploring the annexation of this site into the local water district so that the Tribe can establish water on site.

Challenges - Land that is returned is usually not well managed— it is land that has been neglected-- Rinihmu is no exception. This site poses many challenges, including it's ongoing treatment as a dumping ground, it's need for restoration of unsanctioned trails imposing on an ongoing relationship with public access, and its history of neglect for fire and land management.



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# Rinihmu Pulte'irekne

We need real property lawyers to understand Land Return!

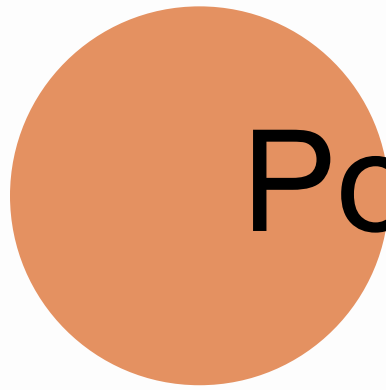
By having the background knowledge of the simple methods for land return, we can begin expanding on those methods, and exploring new ways of making land return happen, whether it's with municipalities, cities, private landowners, or otherwise.



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# A Case Study of Returning Ancestral Potter Valley Tribal Land





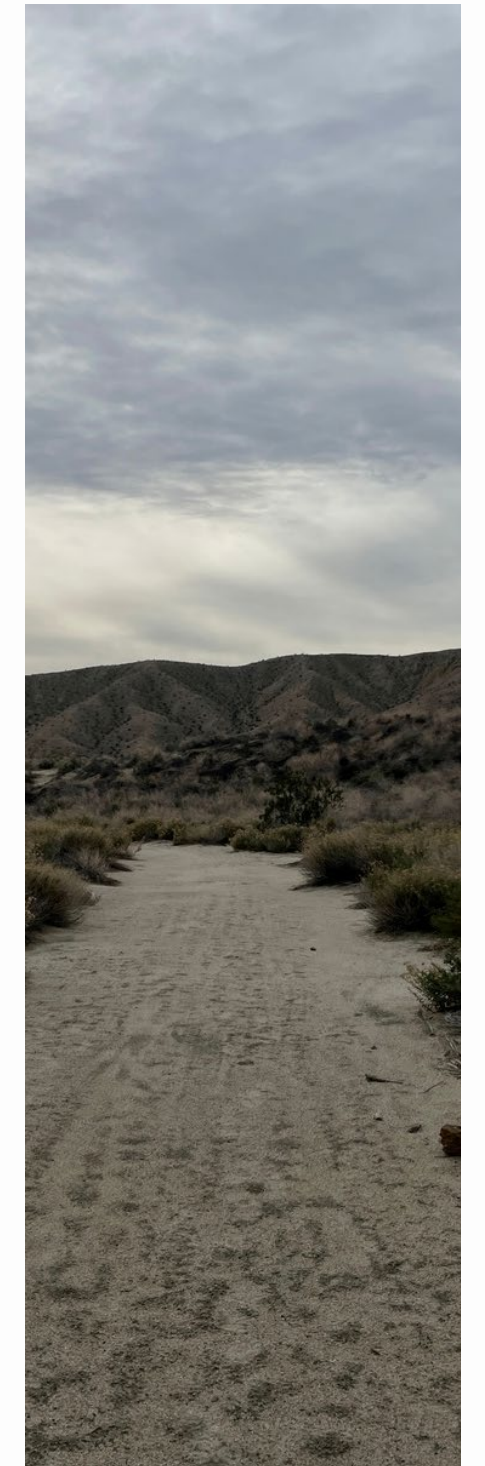
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# Potter Valley Tribe

The Potter Valley Tribe (“Tribe”) is located in Potter Valley, CA, but the Tribe’s aboriginal territory encompasses parts of modern-day Sonoma, Mendocino, and Lake Counties.

The Tribe’s original rancheria was 96 acres and purchased by the government in 1909 and 1913. In 1958, Congress passed legislation terminating 44 tribes, including the Potter Valley Tribe, causing them to lose their trust land.

In the mid-1970’s the Tribe sued to restore federal recognition and in 1981, the Tribe was restored. However, no land remained in trust for the Tribe. Since that time, the Tribe has sought land return.



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# The Pacific Forest and Watershed Lands Stewardship Council

In 2003, the California Public Utilities Commission (“CPUC”) approved a bankruptcy settlement agreement regarding PG&E’s 2001 bankruptcy filing. The agreement provided for the environmental benefits and conservation of lands that are important to maintaining the quality of life of all Californians. This included approximately 140,000 acres of PG&E’s watershed lands associated with its hydroelectric system.

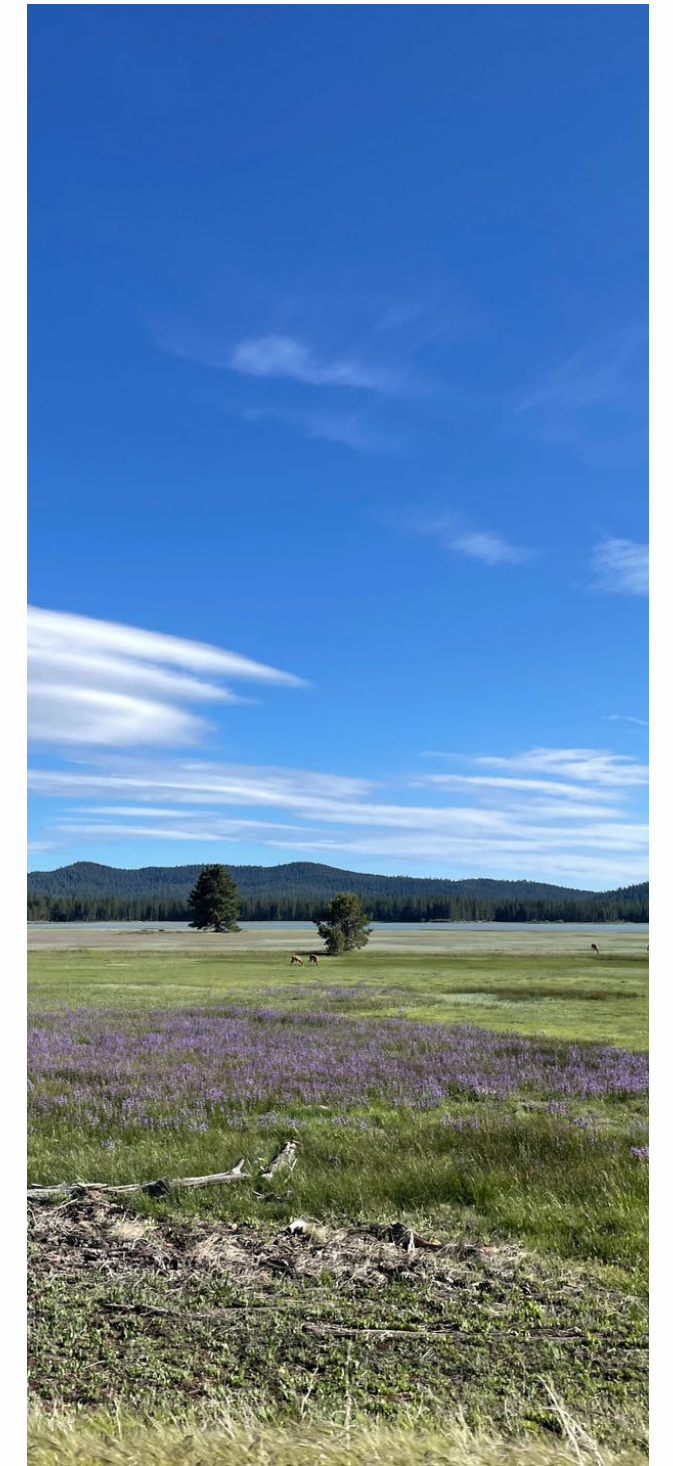
The lands include those that were grabbed from tribal stewardship by land speculators in the earlier eras of genocide, forced removal and homesteading.



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# The Pacific Forest and Watershed Lands Stewardship Council

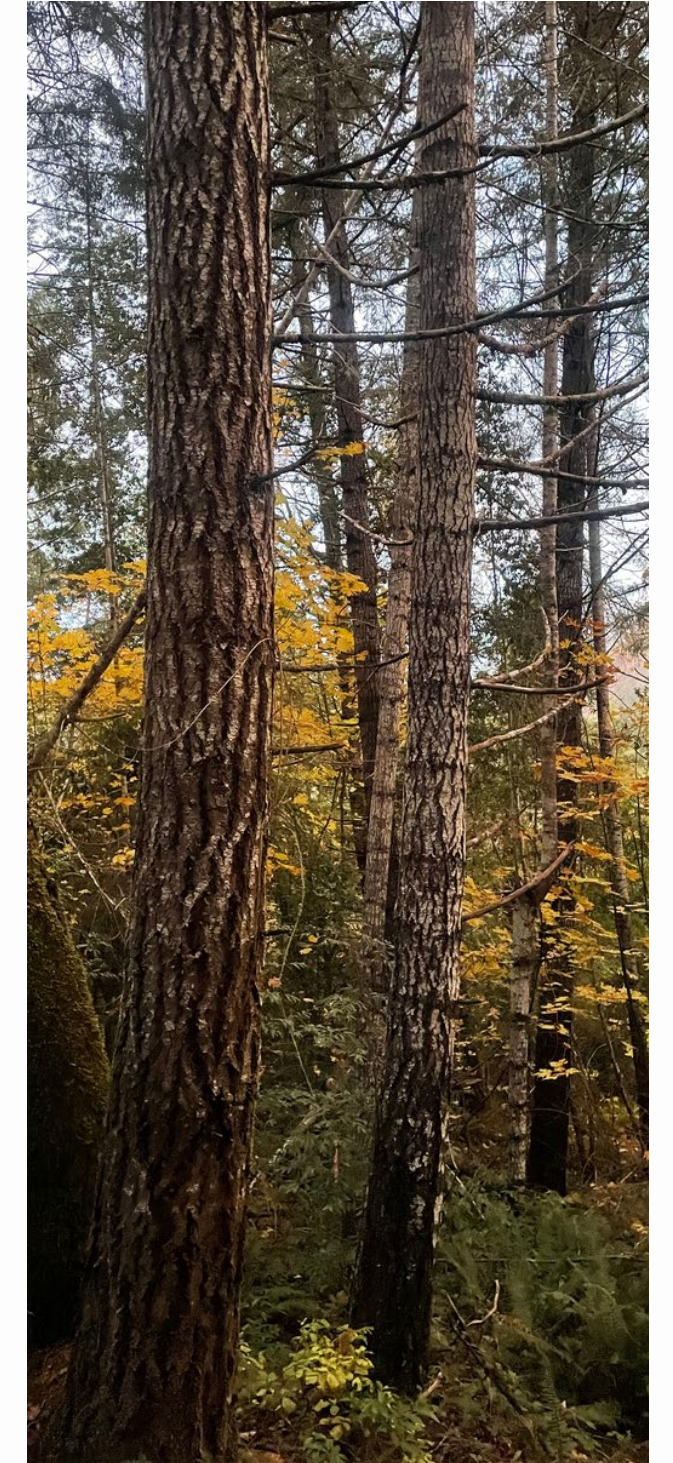
- PG&E was going to sell off its hydro-facilities and watershed lands to the highest bidder in the divestiture proceeding, but litigation stopped it.
- The Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) was established pursuant to the Settlement Agreement and a Stipulation approved by the CPUC in the bankruptcy.
- Dec. 18, 2003- The Stewardship Council Board of Directors included appointees from state and federal agencies, water districts, Native American (not really) and rural interests, forest and farm industry groups, conservation organizations, the CPUC, and PG&E.



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# Donative Lands from PG&E

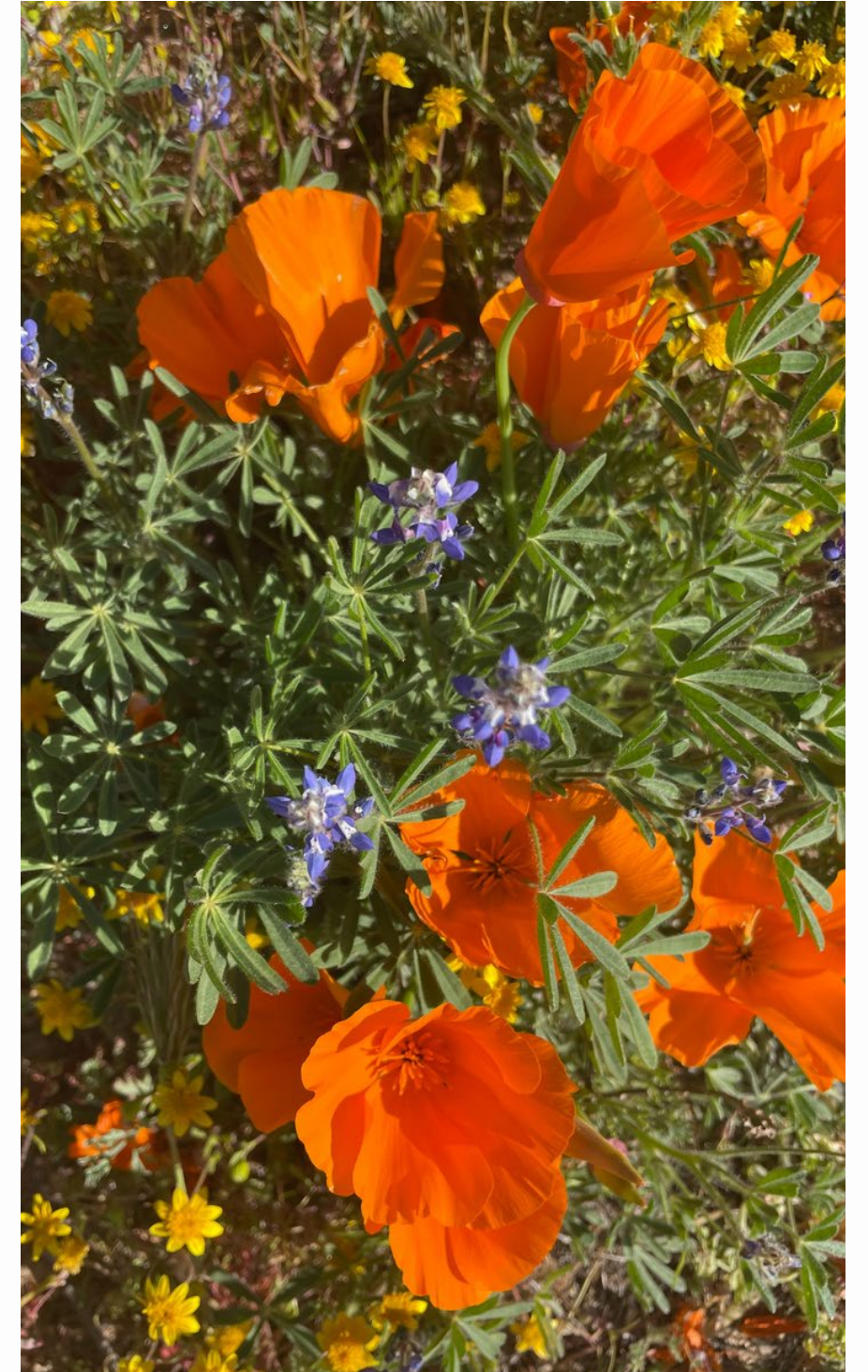
- In 2011, three proposals, including one by the Tribe, were submitted to the Stewardship Council for consideration for a donation of fee title to certain lands located within the Eel River planning unit.
- In 2012, the Stewardship Council Board of Directors recommended the Tribe to receive approximately 723 acres of land at the Eel River Planning Unit located in Mendocino County. The transaction required a conservation easement on the land and a limited waiver of sovereign immunity from the Tribe, as well as agreement from the Tribe not to have the land placed into trust.
- In 2014, the Stewardship Council Board of Directors recommended the Tribe to receive approximately 219 acres of land at the Eel River (Lower Trout Creek) Planning Unit located in Mendocino and Lake Counties.



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# Donative Lands from PG&E

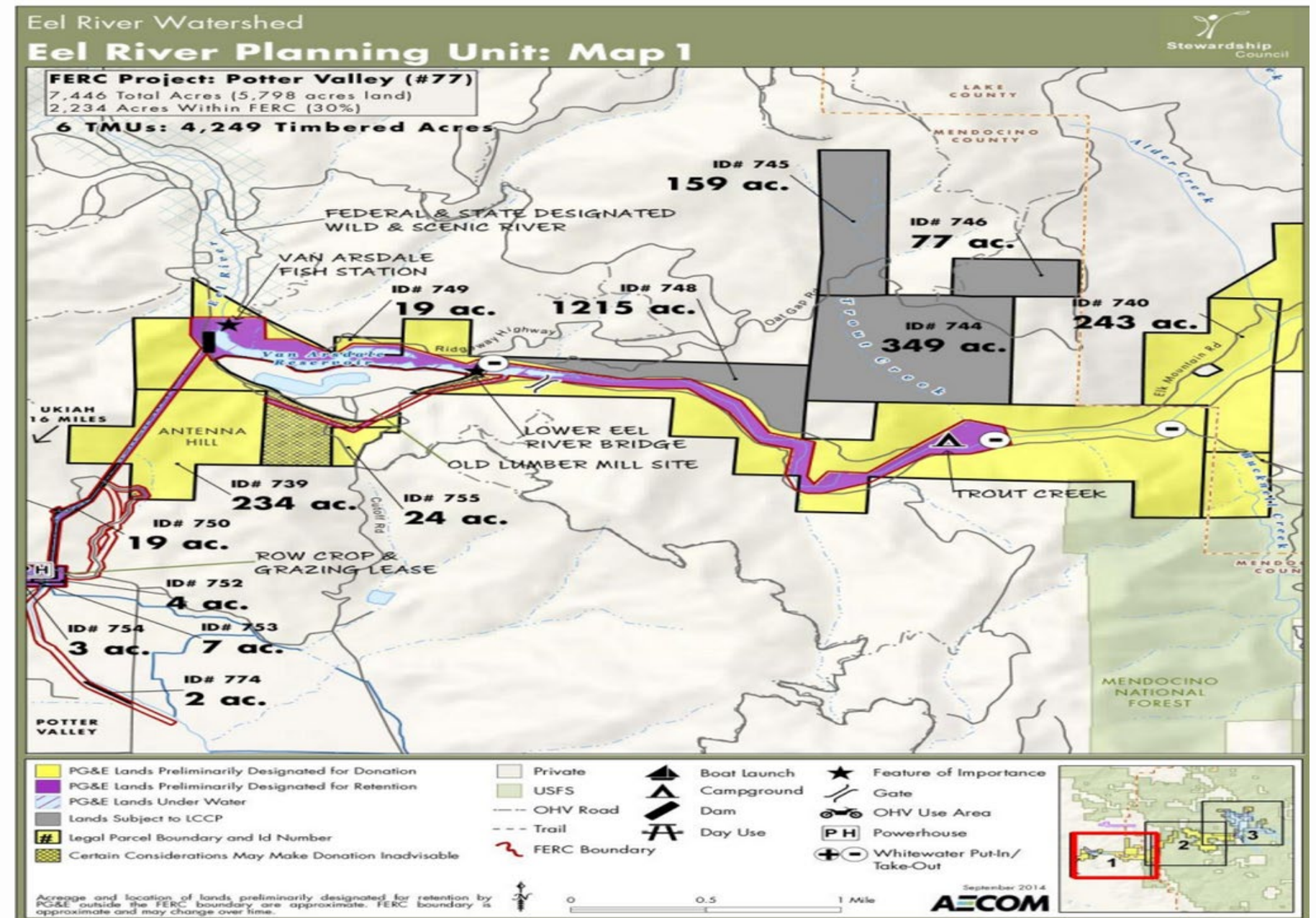
- On July 24, 2019, after over 12 years of effort, the Tribe and PG&E finally closed on the donative fee transfer property.
- The Potter Valley Tribe received a total of 879 acres back of its ancestral lands.
- However, the Potter Valley hydro project and adjacent land was retained by PG&E. The ability to transfer orphaned hydro projects to California tribes remains an open question.





# Donative Lands from PG&E

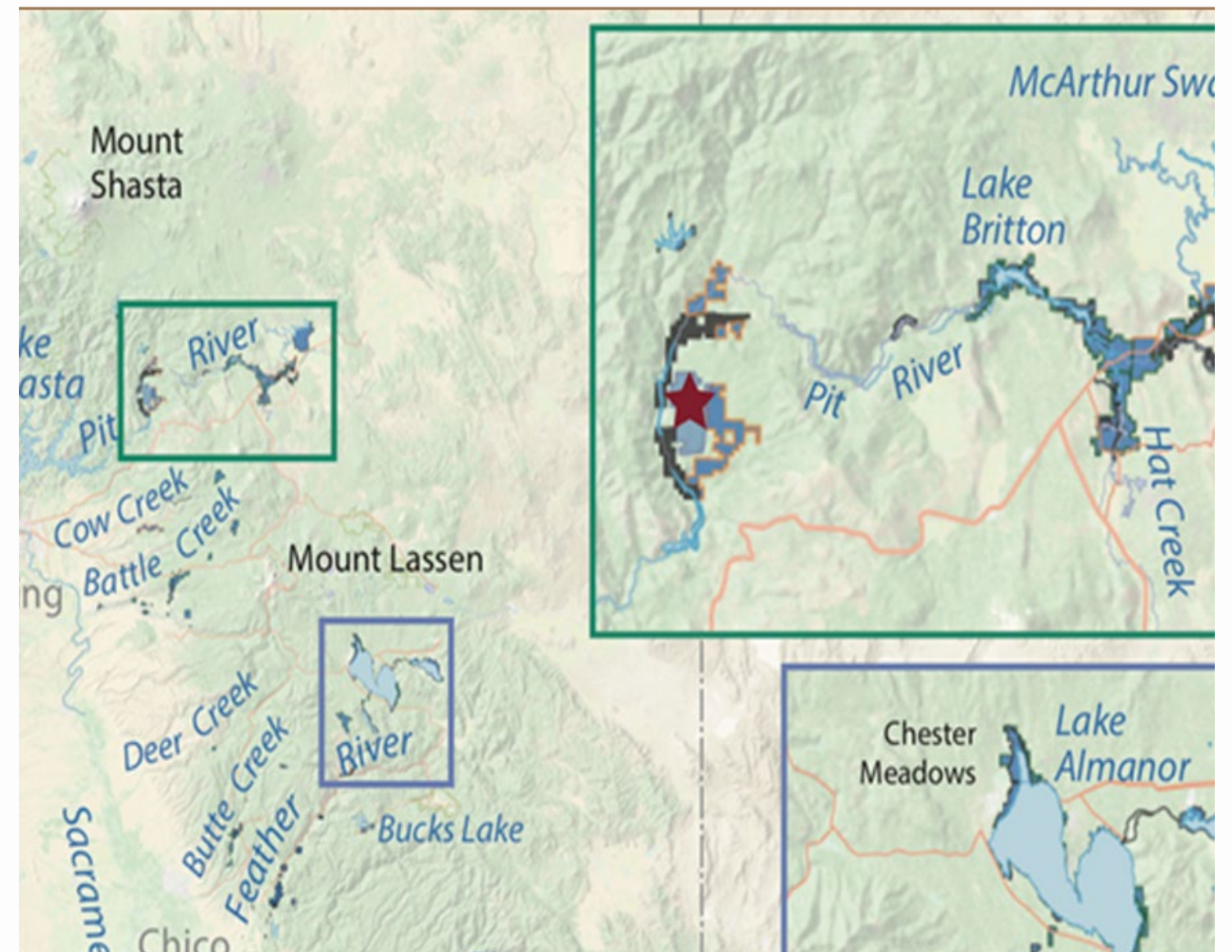
- The Tribe sought to obtain the rest of the land associated with the PVP.
- 2013- Requested balance of retained lands and the PVP.
- 2013- Followed up with clarification re Parcel 748.
- 2017- Proposed a compromise.
- 2019 – Requested retained lands again.
- 2020-2023- Sought to join orphaned project discussions.



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# PG&E Retained 70% of the Land Proposed to be Donated

- Historic and momentous as it was, the Settlement Agreement promised more than it delivered.
- Conservation groups fully expected new owners to take possession of at least half of the 140,000 acres, preserving and improving them after decades of neglect.
- Sixteen years into implementation of the deal, the reality is harshly different. With most of the land transactions at or near completion, PG&E will remain the owner of more than 70 percent of the original donation. -- Bay Nature Magazine, Summer 2020.



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# CPUC Tribal Land Return Policy

After several PG&E tribal land donations, on April 26, 2018, the California Public Utilities Commission (Commission) adopted a **Tribal Land Return Policy**. Consistent with the goals of the **Tribal Consultation Policy** and **Executive Order B-10-11**, this policy provides a first right of offer by California Native American tribes for: any future disposition of surplus real property currently owned by investor-owned utilities (IOUs), including any future disposition of PG&E retained lands pursuant to the Stipulation, not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.



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# Mooretown Reacquisition

Anthropologists believe that Concow-Maidu people have inhabited the lands between the Middle Fork and South Fork of the Feather River for thousands of years.

Traditional Maidu boundaries were roughly from Mount Lassen and Honey Lake on the north (Northern or Mountain Maidu) to the Cosumnes River on the south (Southern Maidu or Nisenan), and from the Sacramento River on the west to the crest of the Sierra Nevada Mountains on the east (Northwestern or Concow-Maidu).



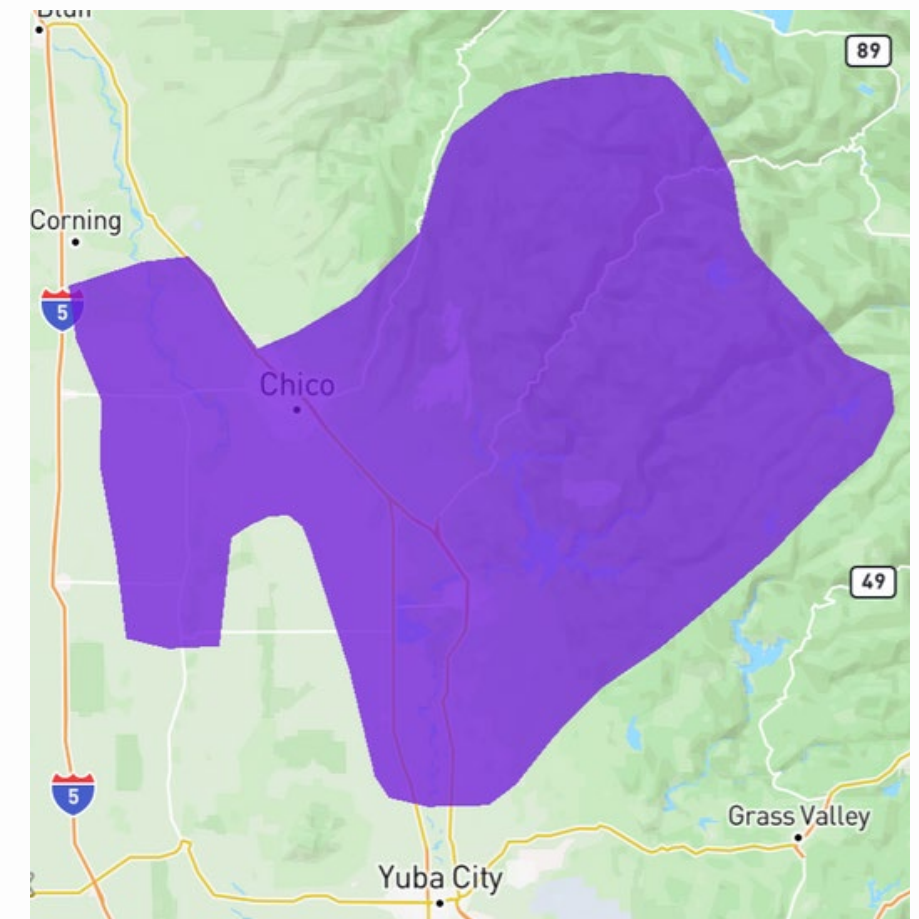
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# Mooretown Rancheria Genocide and Land Theft

**Pre-1840's** The Concow-Maidu of Mooretown Rancheria are descendants of Northwestern Maidu who have lived in the foothills east of Oroville in Butte County, California since time immemorial.

**1850's:** State-funded massacres of local Native tribes resulted in well-documented genocide. Conflicts with new settlers resulted in forced removal of Natives to reservations.

**1851:** The California Land Claims Act required tribes to make a claim to their lands in California, but the government didn't inform them about the Act.



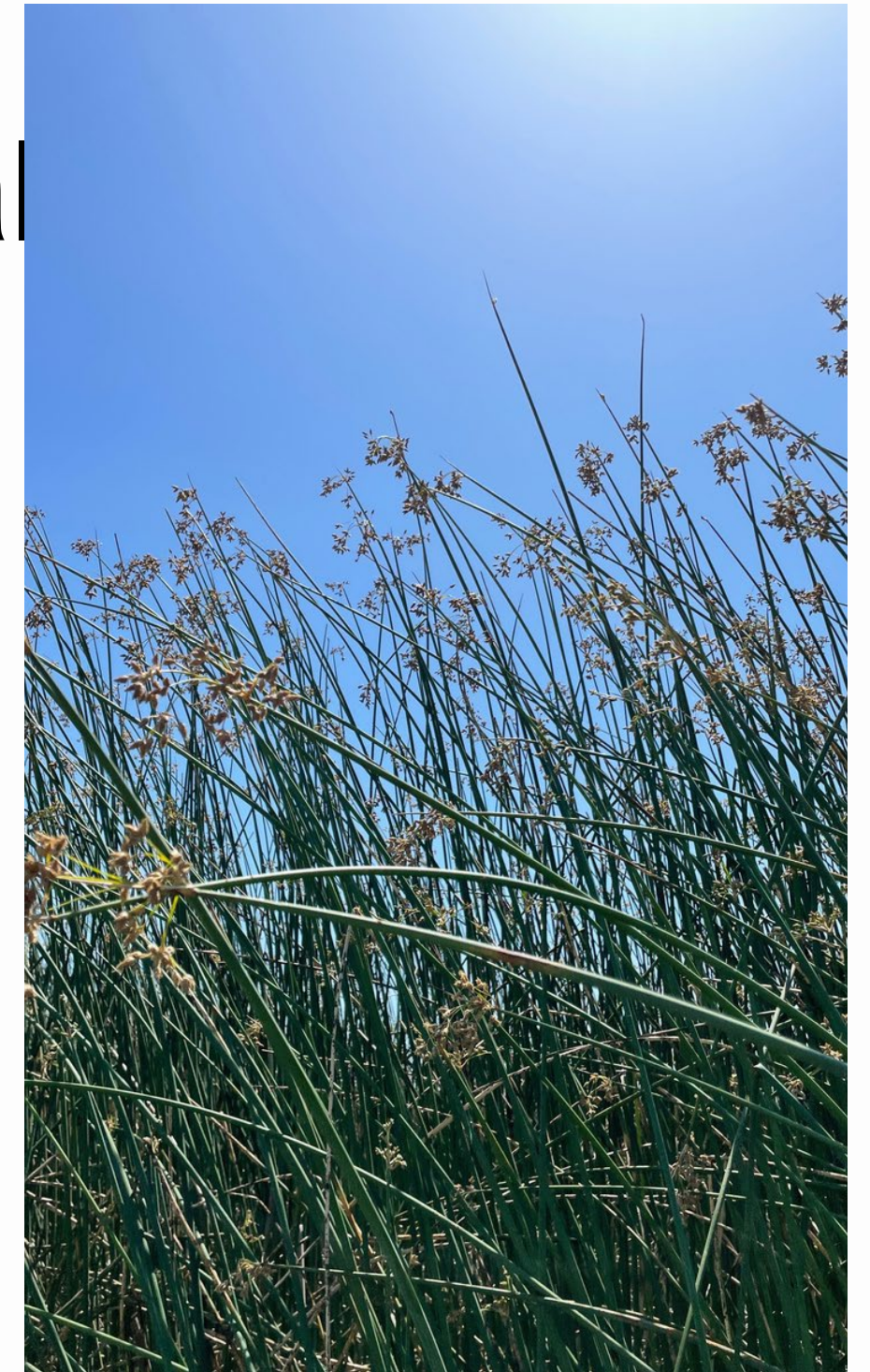
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# Reservations and Forced Removal

**1853:** Indian Reservations created in California to segregate Indians from settlers and free Indian lands for non-Indian settlement. Two reservations were established in Mendocino County: The Mendocino Reservation, on the coast, and the Nome Cult Farm in Round Valley.

**July 1856:** Natives from as far away as Eureka and Chico were force marched to the Mendocino Reservation and Nome Cult Reservation.

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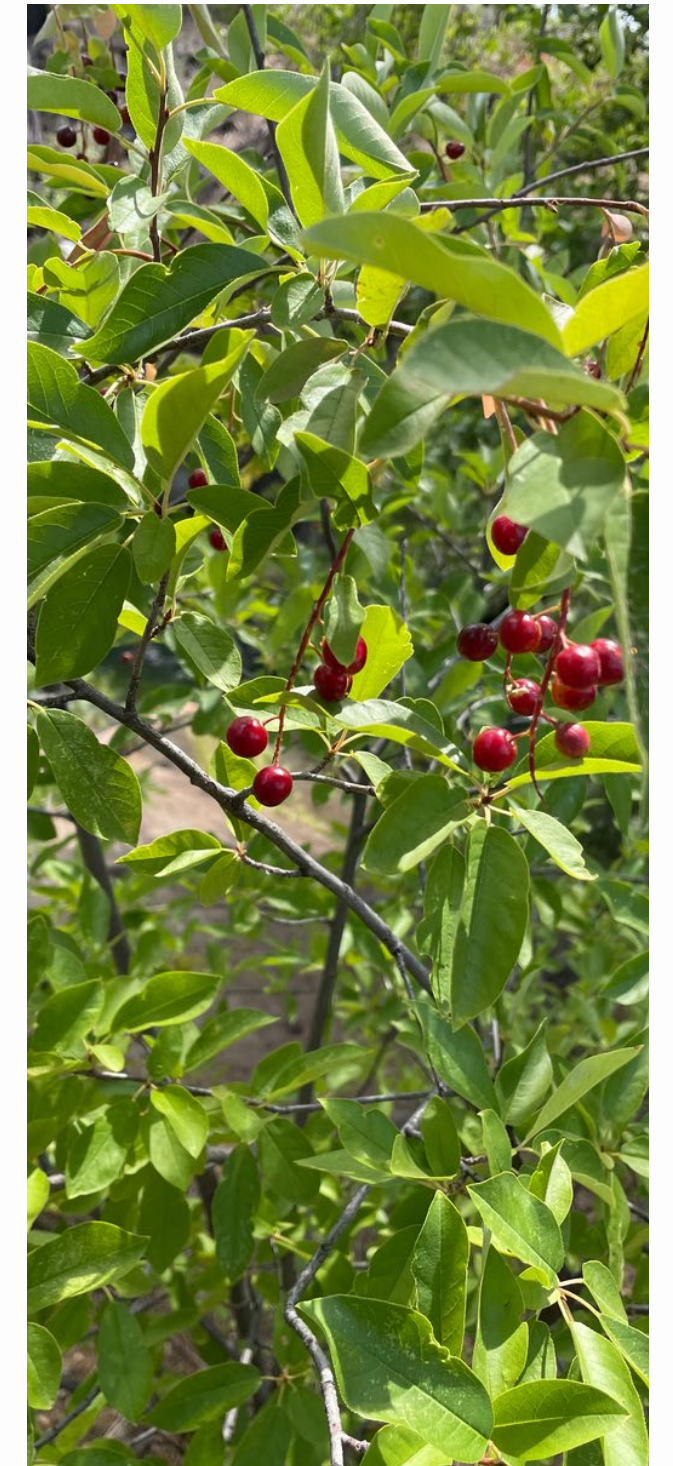


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# Indian Allotments Taken by Improper/ Non-Legal Means

## **Beth Rose Middleton Manning: Upstream: Trust Lands and Power on the Feather River:**

- Documents the way land speculators, including the original owners of Great Western Power Company (predecessor to PG&E) acquired Indian allotments in the Feather River watershed through unlawful means from 1880-1920.
- Edwin and Guy Earl worked with Julius Howell to acquire lands in the Feather River watershed and form power companies that built dams on the rivers that today are in the PG&E portfolio of lands sought by tribes.
- The GWP (PG&E's predecessor) took allotted land from Native people without compensation.
- Tribal People deserve a chance to recover the lands that were wrongfully taken across Northern California.

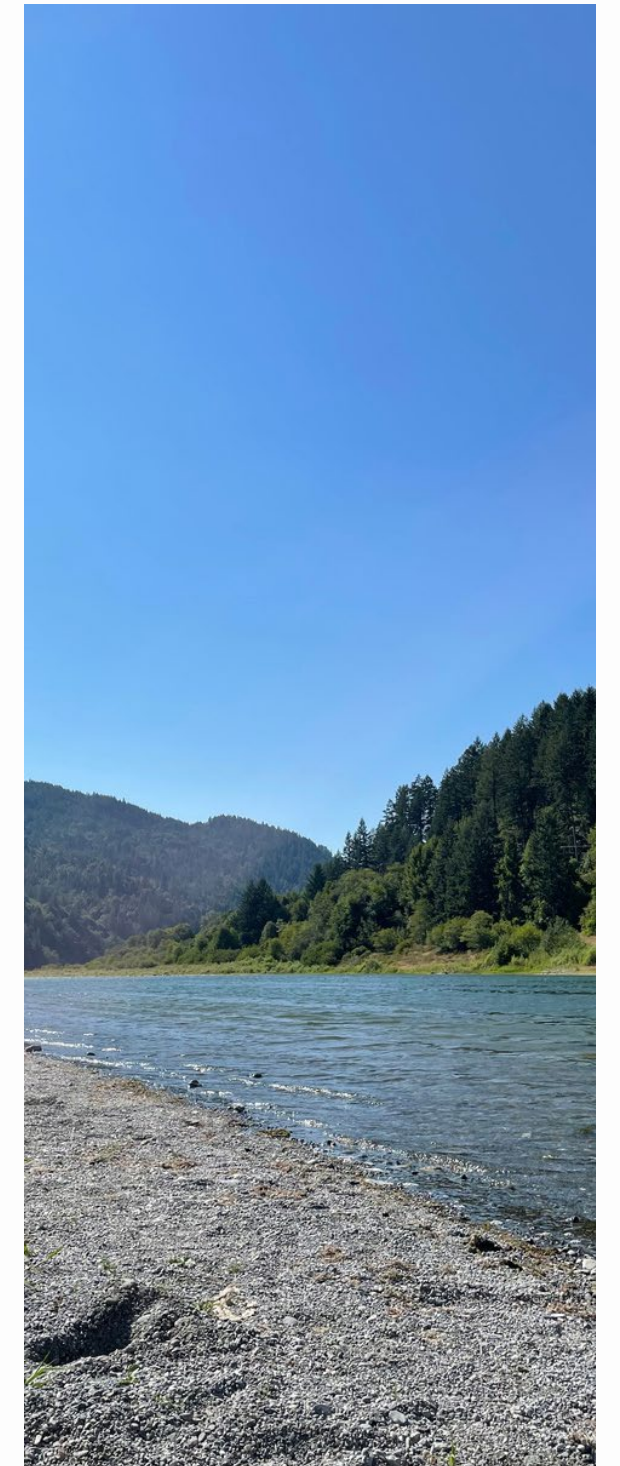


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80 + 80 = 160 Acres for

## Mooretown Indians

- As most of the terrain of the Tribe's original 80-acre parcel was rough and undevelopable, the 7-12 Indian families had to reside on the 8 usable acres in the center of the parcel to establish 4 small cabins. The families lived there for over 50 years planting fruit trees and cultivating gardens.
- In 1916 an additional 80-acre parcel was acquired by the federal government for the Tribe following Special Agent John Terrell's field visit to assess land needs of the Mooretown Indians.
- Frank, and Rosie Taylor, were residing on land owned by the Central Pacific Railroad located a 1/2 mile away from the 80-acres set aside in 1894.
- Terrell recommended that the federal government purchase the land from the railroad to establish a permanent home for the Mooretown Indians.





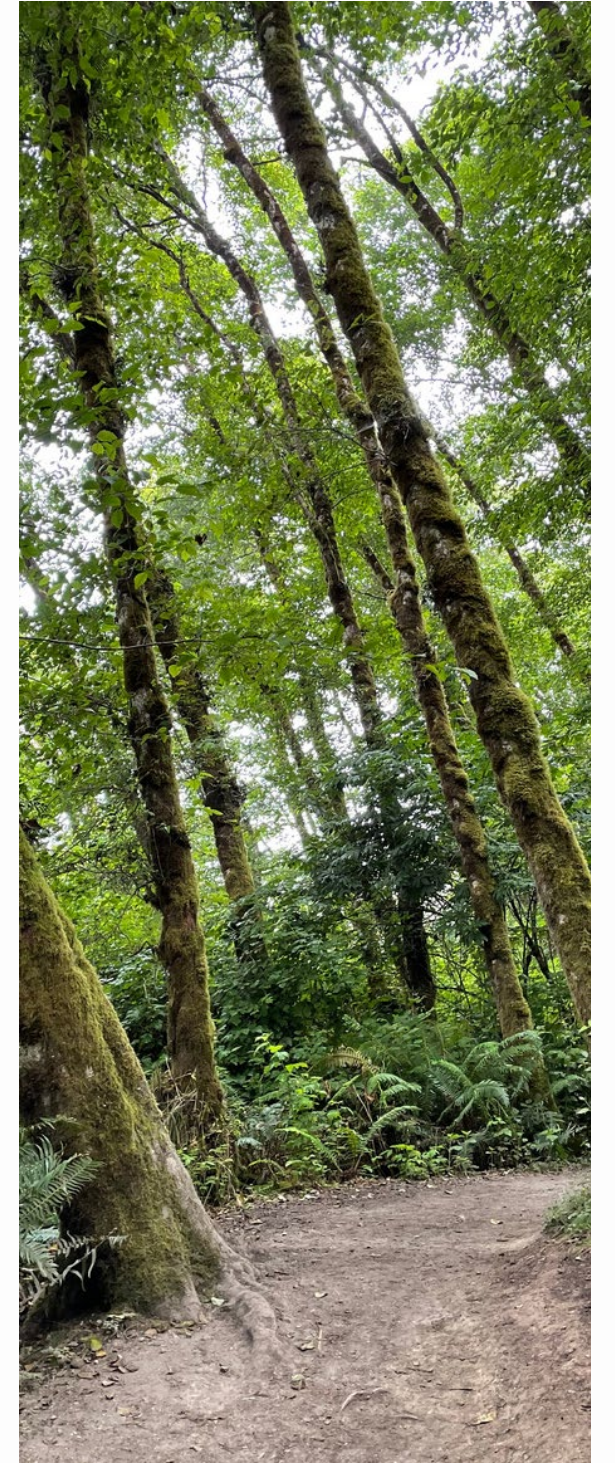
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# Termination of the Tribe

In 1958, Congress passed the first “Rancheria Act” - termination of forty-one (41) Rancherias in California, including Mooretown Rancheria.

With Termination, the Tribe’s trust land was transferred back into fee status and the Indian status of Mooretown tribal members was terminated.

**Termination** revoked the Tribe’s federal status, excluded members from receiving further assistance as Indians, and distributed land assignments to eligible members. On July 21, 1961, the Secretary of the Interior approved the distribution of the Tribe’s assets thus terminating the Tribe’s recognition by the federal government.



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# Restoration of the Tribe

In 1979, the Tribe and other sued the federal government for unlawful termination.

**December 22, 1983-** federally recognized status was restored.

**December 1987,** the Tribe adopted the Constitution of the Mooretown Rancheria and established its government

Although the original Rancheria lands were restored as Indian Country, the land had been taken out of trust and distributed after the illegal termination of the Tribe in 1961. The divided parcels were owned in fee by Indian individuals, and not restored into tribal trust.



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# Request for Land Return & Demand for Information

The Tribe has requested that lands in the Oroville Lake area be returned to Mooretown Rancheria from the hands of PG&E.

The Tribe has also purchased over 3,000 acres in the Tribe's aboriginal area, as well as over 1,000 acres in the area that surrounds their current Tribal trust lands.

Rebuying land that was originally taken during prior eras is not an option for all Tribe's and creates new issues about land use and taking the land into trust so that it will no longer be alienable.



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# Challenges of Land Return

- Prior Mismanagement & Neglect of Land
- Lack of Access to Water & Utilities
- Property Taxes
- Staff Capacity
- Funding
- Zoning
- Restraints for Land Use (ie. Conservation Easements)
- Cost of acquisition and taking into trust



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# Opportunities for Land Return

- Municipalities
- Cities
- Churches
- Academic Institutions
- Non-Profits
- Private Landowners
- State & National Parks
- And More!



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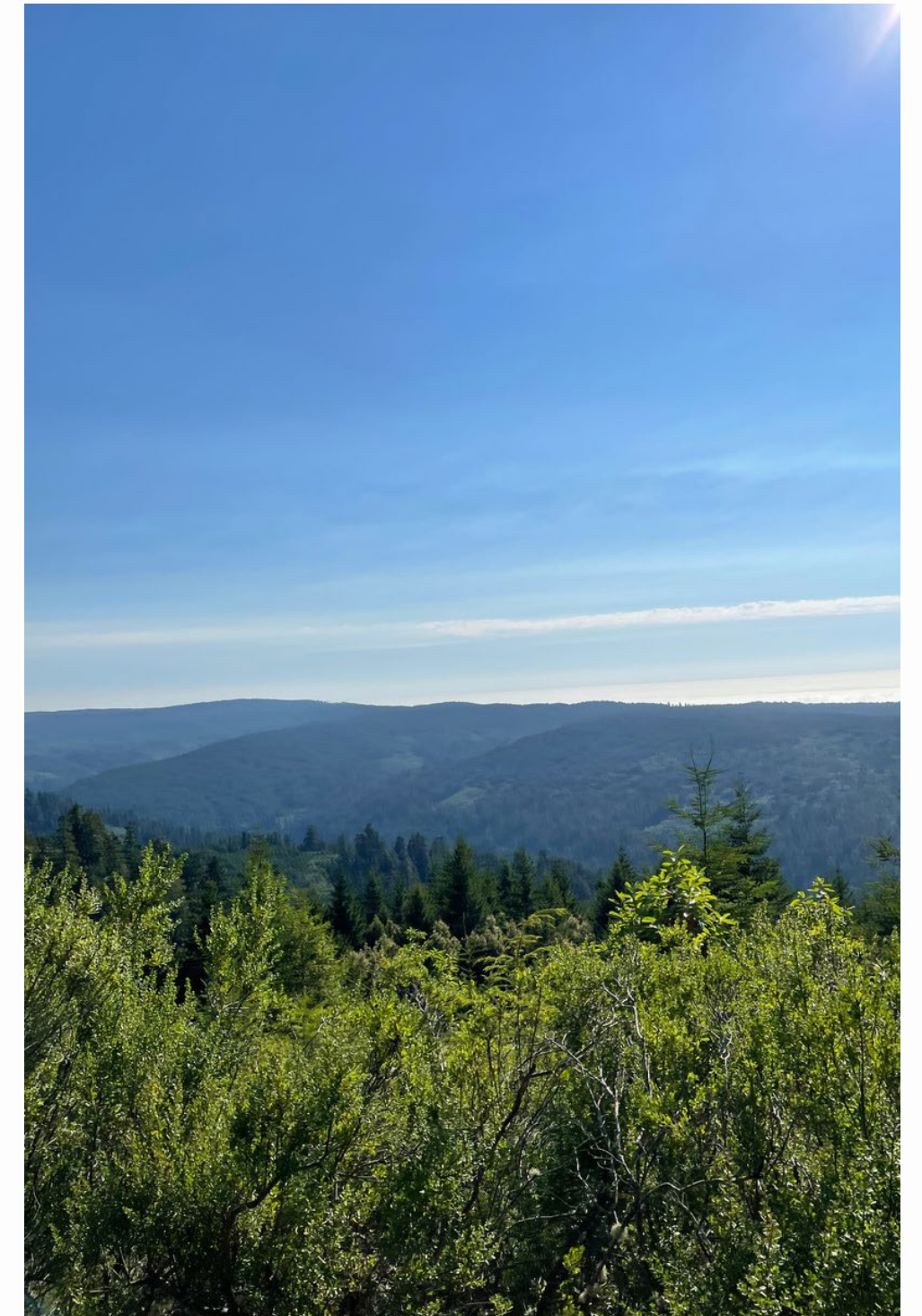
# Resources!

## Sogorea Te' Land Trust

- [Seeds of Land Return](#) (in collaboration with the Sustainable Economies Law Center)
- [How to Come Correct](#)
- [Rematriation Resource Guide](#)

## NDN Collective

- [LandBack](#)





# Thanks!

