

HOOPA VALLEY TRIBAL COURT**HOOPA VALLEY TRIBE v. Roberta BUGENIG**

No. C-95-020 (July 11, 1996)

Summary

The Hoopa Valley Tribal Court holds that the plaintiff is entitled to judgment as a matter of law and issues a permanent injunction barring logging activities in the buffer no-cut zone except as approved and supervised by the Hoopa Valley Tribe Forestry Department and orders the defendant to clean up parcels of land within the no-cut zone.

Full Text

Before HARDING, Judge

Decision and Order**Background**

Defendant, Roberta Bugenig, a non-Indian, purchased fee land, No. 525-091-17 & 18, as recorded by Humbolt Land and Title Company on June 1, 1995, within the exterior boundaries of the Hoopa Valley Indian Reservation, Hoopa, California.

Less than 1% of the Hoopa Valley Indian Reservation is owned by non-Indians.

In January of 1995, the Hoopa Valley Tribal Council established a one-half mile no-cut buffer zone around the White Deerskin Dance Trail on Bald Hill, as a part of the Tribe's ongoing efforts to protect sacred sites on the reservation. The Tribe gave notice to all Bald Hill land owners by letter and publication in the Kourier News Paper which serves the local area including the Hoopa Reservation. The notice stated

The Hoopa Valley Tribe Forestry Department has prepared an Environmental Assessment (EA) of the Bald Hill 1995 Timber Sale Project. The environmental assessment evaluates two alternatives based on the Tribe's recently adopted forest management plan. Both alternatives propose harvesting about 10.4 MBF from the planning area during the coming year, issues addressed in the EA include effects to the cultural resources including the Deerskin Dance Site, effects of road use on prehistoric archaeological sites, effects to domestic water sources, right of way for hauling tribal timber, maintenance of habitat for owls and effects to other threatened or endangered wildlife and bear damage in conifer plantations. Copies of the EA and draft decision notice are available from Tribal Forestry (916-625-4284.) Published in The Kourier, Willow Creek, California, on Wednesday, Jan. 25, and Feb. 1, 1995.

The defendant's land purchase of June 1, 1995 in the Bald Hill area is subject to the provisions in the Tribe's forest management plan.

The defendant has made conflicting statements about the intended use of the land.

On or about June 5, 1995, the defendant met with Mike Duguay, Registered Professional Forester (RPF), to lay out a proposed timber harvest with the implied intent of converting approximately 2.5 acres of the property into pasture. In a letter to the California Department of Forestry, dated June 7, 1995, concerning a "Less Than 3 Acre Conversion" from Mr. Duguay stated that neighbors would be mailed copies of a notice of planned timber harvest. The letter went on to say that the notice was posted by Mike Duguay, RPF, on June 7, 1995, but that "no comments had been received to date." It is difficult for

the court to determine, from information provided, how comments could have been received. The letter to the California Department of Forestry was dated the same day as the posting.

The court has not received any information about where or how the notice was actually posted or testimony from neighbors who may have received or reviewed the notice.

A copy of the "Public Notice" provided to the court, indicates that it was received by the California Department of Forestry Region 1, per the date stamp, on June 26, 1995 and again per a second date stamp on the same document, on July 7, 1995.

The Public Notice also indicated that a permit would be filed with the California Department of Forestry and Fire Protection, 5 days from the date shown on the notice. A letter from the California Department of Forestry and Fire Protection to the defendant dated July 12, 1995, acknowledged receipt of the actual letter in their office on July 7, 1995. A copy of the "Exemption From Timber Harvesting Plan Requirements" Section 1104.1(a), title 14 of the California Code of Regulations, was to be given to the timber operator to keep at the work site. The court has not received information that assurances were met in compliance with California law and Forest Practice Act and Rules.

The court has reviewed a copy of a letter to the Hoopa Valley Tribal Council dated June 7, 1995 and a copy of the Hoopa Valley Tribal Council Agenda Request form provided, dated June 7, 1995. No information in these documents mentions a timber harvest plan or is a "Public Notice" indicated to have been attached to the letter or the agenda request. So far as can be determined from information provided to the court, the Tribal Realty Office and the Hoopa Valley Tribal Council Natural Resources Department and Forestry Division did receive copies of the public notice on June 20, 1995; thirteen calendar days after the notice was to be posted in a public place, and six calendar days before it was received by the California Department of Forestry, Region 1.

The court reviewed the information provided concerning the volume of timber to be harvested from the site and the correspondence to the California Department of Forestry.

Correspondence to the defendant from Mike Duguay, RPF, a representative of Scott Valley Forestry, Etna, California, indicates that he performed a 100% cruise on the property for Stone Forest Industries in approximately September 1994. The volume of timber represented to timber buyers was, Black Oak at 137 MBF and Conifers at 228 MBF, is based on approximately 45 acres of land. 100% cruise means all species were considered. The court visited and inspected the subject property on two separate occasions. Applying timber cruise methods used by professional foresters to determine actual volume of timber, the court has determined that amounts of timber to be harvested as mentioned by the defendant, including conifers and hardwood, could not have been harvested from a 2.5 acre site as was indicated by application for a Less Than 3 Acre Conversion to qualify for "Exemption From Timber Harvesting Plan Requirements" — Section 1104.1(a), Title 14 of the California Code of Regulations. As was certified by Mike Duguay, RPF, this amount would have come from within the entire 45 acres, due to the scattered nature of the timber. Other documents received indicate that proceeds would be shared with another property owner. The amount of the proceeds was based on the amount of timber on 45 acres, not a 2.5 acre conversion as represented to the state by the defendant.

This court issued a temporary restraining order and notice of hearing in this matter on August 3, 1995. On August 10, 1995 the court issued an order of preliminary injunction, restraining the defendant and any persons from carrying out any timber operations on the subject property.

Summary

The Hoopa Valley Tribe is a sovereign government and has a government-to-government relationship with the United States of America. Affirmed at 25 U.S.C. § 1300i-7.

The Hoopa Valley Tribal Council is the governing authority of the Hoopa Valley Tribe, Article V, Hoopa Valley Constitution, passed August 18, 1972.

The tribal court has jurisdiction in this matter in accordance with Hoopa Valley Tribal Code, at Section 1.1.04. The jurisdiction of the tribal court includes all of the territory within the Hoopa Valley Reservation, including fee land.

As a land owner within the exterior boundaries of the Hoopa Valley Reservation, entering into activities and conducting business on the reservation, the defendant is clearly within the jurisdiction of the Hoopa Valley Tribal Court.

Consent to the jurisdiction of the tribal court has been accepted by the defendant in accordance with Title 1, Hoopa Valley Tribal Code, Section 1.11.01.

In the instant case, the Tribe has authority to regulate activities on non-Indian fee land within the exterior boundaries of the Hoopa Valley Reservation in order to preserve the Tribe's integrity and to protect tribal members' health and welfare.

The Tribe, in this case, has provided a letter sent in September 1994 from the Tribe to Bald Hill land owners regarding the proposed establishment of a buffer no-cut zone around the White Deerskin Dance area and trail. The letter invited public input and a chance for land owners to comment.

The defendant states to the court that the Tribe did not provide "proper legal notice to the public in a paper of general circulation." The defendant goes on to say: "I do not live by *there* [sic] religion and *there's* [sic] has caused me a great deal of health and welfare, and economic problems."

The defendant alleges that the Tribe has kept the defendant from the land, and states: "threats and bad feelings have now arisen."

The defendant created a situation that could have been handled differently and in accordance with tribal law.

The defendant purchased the land on the Hoopa Valley Indian Reservation after the establishment of the buffer no-cut zone. The defendant appeared at a Tribal Council meeting requesting a permit to haul logs over tribal regulated roads. A permit was not issued by the Tribal Council. The defendant, without permit authority, went ahead with plans to haul mixed species of hardwood and conifers off the reservation over reservation roads.

The United States Supreme Court in *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 [16 Indian L. Rep. 1044] (1989), found that a tribe's authority to regulate non-Indian activity within the exterior boundaries of an Indian reservation depended on the circumstances of the case. The test set by the Court takes into consideration: 1) the pattern of amounts of land ownership by non-Indians, the tribe and tribal members; 2) neutrality in application of the law or regulation; 3) protection of the peace and integrity, economic interests concerning health and welfare of the tribe; and 4) interference with state or county interest.

Humboldt County does not have authority or subject matter jurisdiction within the exterior boundaries of the Hoopa Valley Reservation to regulate land use. This jurisdictional authority lies exclusively with the Hoopa Valley Tribal Council and membership of the Hoopa Valley Tribe.

The defendant's application to the California Department of Forestry for a timberland conversion permit in accordance with California Code of Regulations, Section 1104.1.1(D) did not contain required information and was subsequently revoked by the California Department of Forestry.

The subject property lies within the half-mile no-action buffer zone as provided in the decision of the Hoopa Valley Tribal Council on January 28, 1995, protecting the White Deerskin Dance area and trail and surrounding sites. By notice to Bald Hill assigns/allottees/landowners by the Hoopa Valley Tribal Natural Resources Department and Forestry Division, on September 19, 1994, Bald Hill assigns/allottees and landowners were notified of the Tribe's Ten Year Forest Management Plan. Furthermore, the notice provided at page 3, number 5, paragraph 2, "Timber Harvest may be proposed on fee land within the trail buffer." Clearly this gave individuals who may have been affected opportunity to comment, give input and work with the Tribe on matters concerning property located in the area. The court has been provided with a copy of the Outgoing Mail Log of the Hoopa Valley Tribal Forestry Division, documenting that letters were mailed to Bald Hill landowners. According to this documentation, notice concerning the defendant's property, which was at that time owned by the Gould Family Partnership, was sent to P.O. Box 547, Bayside, California 95524-0547.

Order

The court having been fully advised concerning the issues presented, hereby finds:

1) The Hoopa Valley Tribal Council, acting on behalf of tribal membership, is dedicated to preservation of sacred sites within the exterior boundaries of the Hoopa Valley Reservation. The White Deerskin Dance Trail and sacred sites in the Bald Hill area are among the most sacred of the sites. The Tribal Council, by establishing the buffer no-cut zone in January of 1995, is working to preserve and protect the White Deerskin Dance area, trail and sites in the area.

2) By conducting logging activities not in compliance with tribal law, the defendant acted in contravention of tribal law, threatening and physically disturbing the integrity and sacred status of the White Deerskin Dance area and trail.

3) This blatant disregard of tribal law, threatened the health and welfare of the Tribe and the Hoopa Valley people's customs and traditions.

It is hereby ordered that:

The Hoopa Valley Tribe has the power and authority to define areas of sacred significance and, through establishment of the buffer no-cut zone in the Bald Hill area, has exercised that power. *U.S. v. Montana*, 450 U.S. 544, 566 [8 Indian L. Rep. 1005] (1981).

The plaintiff is entitled to a judgment as a matter of law.

1) A permanent injunction barring logging activities in the buffer no-cut zone, except as approved and supervised by the Hoopa Valley Tribal Forestry Department, is hereby ordered.

2) The defendant is further ordered to clean up the above mentioned parcels at the defendant's own expense and remove all cut logs and slash from the mentioned parcels under supervision of the Hoopa Valley Tribal Forestry Department within 60 days of the issuance of this order.

3) The Hoopa Valley Tribal Forestry Department is to work with the defendant to determine how the area might best be restored to its former state in conformance with tribal standards. A copy of these findings and plans are to be supplied to the court within 60 days of the issuance of this order.

4) The defendant is further ordered to pay costs associated with this action which were incurred by the Hoopa Valley Tribe, including attorney fees and related costs, and costs incurred by the Tribal Forestry Department. A list of these costs are to be supplied to the court for *review and approval* within 60 days.

5) In accordance with applicable Hoopa Valley Tribal Law and within the scope of California Code of Regulations and

licensing requirements, the Hoopa Valley Tribal Attorney's office is directed to investigate and determine, through a written report, provided to the court within 30 days, if the timber operator, Steve Ross, P.O. Box 986, Hoopa, California 95546 or the Registered Professional Forester, Mike Duguay, P.O. Box 9, Etna, California 96027, who engaged in the aforementioned activities with the defendant, should share in the cost of restoring the area, in conformance with tribal standards.

**NORTHWEST REGIONAL TRIBAL SUPREME
COURT FOR THE HOOPA VALLEY TRIBAL
COURT OF APPEALS**

Roberta BUGENIG v. HOOPA VALLEY TRIBE

No. A-95-020 (Apr. 23, 1998)

Summary

The Northwest Regional Tribal Court of Appeals reverses in part and affirms in part the ruling of the Hoopa Valley Tribal Court holding that the Hoopa Valley Tribe has the authority to implement neutrally applied regulations reasonably to restrict logging within a one-half mile buffer zone of a culturally-sacred site.

Full Text

Before COOCHISE, Chief Justice, HUTCHINSON and KEEFE, Jr., Justices

KEEFE, Justice

This matter came before the Hoopa Valley Court of Appeals on August 19, 1997 on appeal of a decision and order of the Hoopa Valley Tribal Court (David L. Harding, Judge) entered on July 11, 1996 [25 Indian L. Rep. 6137]. Appellant's timely appeal challenged the jurisdiction of the Hoopa Valley Tribal Court to assert jurisdiction over activities that occur on the appellant's fee land located within the exterior boundaries of the Hoopa Valley Indian Reservation. Appellant urged this court to review *de novo* the conclusion of law reached by the court below in its decision and order that tribal jurisdiction exists over all the territory within the Hoopa Valley Reservation, including fee land such as appellant Bugenig's. Both parties provided extensive briefs in support of their respective positions, and counsel appeared on behalf of each to present oral arguments before this court.

Scope of Review

We agree that *de novo* review of the conclusions of law reached in this case is desirable, and perhaps even necessary, to a proper disposition of this matter. A full *de novo* review of the facts relied upon by the tribal court in reaching its conclusions of law, in the absence of clearly erroneous factual determinations, is deemed unnecessary. (*See Pullman-Standard v. Swint*, 456 U.S. 273, 102 S. Ct. 1781 (1982).) However, some reference to additional facts appearing in the record are necessary, partially occasioned by the fact that the decision and order entered in the court below provides no clear delineation between findings of fact and conclusions of law. Nevertheless, the pertinent

underlying facts of this case upon which the court relied to reach its legal conclusion are clear.

Background

This case presents an unfortunate collision between the interests of appellant Roberta Bugenig, whose ancestors migrated to the area of the Hoopa Valley nearly 150 years ago, and the Hoopa Valley Indian Tribe who have occupied that region since before recorded time. At issue is a restriction in the Tribe's ten year forest management plan that prohibits all logging activities within a one-half mile buffer zone adjoining the Hoopa Valley Tribe's sacred White Deerskin Dance Ground and the trail leading thereto.

Appellant purchased land within the restricted area within weeks after the Hoopa Valley Tribal Council action to establish the no logging zone. Her actions in logging a portion of her fee simple property, in apparent compliance with state authorization (later revoked) but in violation of tribal restrictions, brought appellant Roberta Bugenig into conflict with the Tribe. The Hoopa Valley Tribe takes the position that it has regulatory authority over all land located within the boundaries of the Hoopa Valley Indian Reservation. Appellant Bugenig asserts that as a non-tribal member owning a fee simple interest in land located on the reservation, her activities on her land are beyond the jurisdiction of the Hoopa Valley Tribal Court.

At an August 10, 1995 court hearing in which the Hoopa Valley Tribe sought and obtained an injunction against Roberta Bugenig from cutting trees within the one-half mile buffer surrounding the White Deerskin Dance Ground and trail, tribal elder Byron Nelson, Jr. testified:

The White Deerskin Dance is a world renewal dance. And the intent of the dance ... is to put everything back in balance that's gotten out of balance from dance to dance. And that's the main emphasis of the dance, is not only for the good of the Hoopa Tribe, but for all people.¹

Mr. Nelson further stated:

This dance site is the most important dance site of ... all dances that the Tribe has, particularly the White Deerskin dance. The site is very ancient. There's scientific evidence that indicates it could be one of the oldest dance sites, oldest ceremonies in the country. The White Deerskin Dance is called Along the River Dance. As you can clearly see, this particular site isn't really along the river.

When I was doing research on the history book, I kept running across these legends that told when the river went out the other way, meaning going left as it left the valley instead of the right direction. It goes now easterly toward Weitchpec.

And so I had these geologists go out and study the area, and they found that the river did in fact go out to the left up through where Beaver Creek is now and come out in Martins Ferry in the Klamath River. And they stated that it was at least fifty thousand years ago that the river did go off this way.

So this dance and the trail could very well have gone along the river a long time ago. And the dance site was along the river at one time. So this site is very old.... This points to indicating that this is a very ancient site and it's been going on for thousands of years and it should be protected.²

The book referred to in Mr. Nelson's testimony, entitled *Our Home Forever: The Hupa Indians of Northern California* (Nel-

¹Testimony of Byron Nelson, Transcripts of Proceedings; August 10, 1995, p. 48.

²*Ibid*, p. 52.

