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10 Attorneys for Plaintiff,  
11 KARUK TRIBE, a federally recognized Indian tribe

12  
13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15  
16 KARUK TRIBE, a federally recognized Indian  
17 tribe,

18 Plaintiff,

19 v.

20 UNITED STATES; UNITED STATES  
21 DEPARTMENT OF AGRICULTURE; UNITED  
22 STATES FOREST SERVICE; EDWARD T.  
23 SCHAFER, Secretary of Agriculture; ABIGAIL  
24 R. KIMBELL, Chief Forester United States  
25 Forest Service; RANDY MOORE, Regional  
Forester Pacific Southwest Region; TYRONE  
KELLEY, Forest Supervisor Six Rivers National  
Forest; PEG BOLAND Forest Supervisor  
Klamath National Forest,

26 Defendant.

Case No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Honorable \_\_\_\_\_



VENUE

10. This Court is the proper venue under 28 U.S.C. §§ 1391 and 1402, as it is a judicial district where a substantial part of the events giving rise to the claim occurred and where the real property is located.

PARTIES

11. Plaintiff, the Karuk Tribe is a sovereign aboriginal people and is a federally recognized Indian tribe.

12. Defendant United States Department of Agriculture is an Executive Department established by the Act of February 9, 1889, 25 Stat. 659, codified at 7 U.S.C. § 2202.

13. Defendant United States Forest Service is a federal agency established by the Forest Transfer Act of February 1, 1905, 33 Stat. 628, codified at 16 U.S.C. § 472.

14. Defendant Edward T. Schafer is the Secretary of Agriculture.

15. Defendant Abigail R. Kimbell is the Chief Forester of the United States Forest Service.

16. Defendant Randy Moore is the Regional Forester for the Pacific Southwest Region of the United States Forest Service.

17. Tyrone Kelley is the Forest Supervisor of the Six Rivers National Forest.

18. Peg Boland is the Forest Supervisor of the Klamath National Forest.

FACTUAL ALLEGATIONS

**I. The Karuk Tribe’s Possession, Occupation and Use of the Greater *Vunxarak* Area.**

19. From time immemorial and to the present, the Karuk Tribe and its members have continuously possessed, used and occupied the village of *Vunxarak* and the culturally associated surrounding area (collectively referred to as the “greater *Vunxarak* area”).

20. The Karuk Tribe’s, and its members’, right to the use and occupancy of the greater *Vunxarak* area was and remains exclusive of the claims of other Indian tribes and consistent with the way of life, habits, customs and usages of the Karuk Tribe.

1           **A.     The Greater *Vunxarak* Area.**

2           21.     The greater *Vunxarak* area is that real property encompassed by a perimeter  
3 beginning at a point at the mouth of *Thuuvang* Creek, then north to a point on the ridgeline  
4 above the Salmon River, then east along the ridgeline to a point on the bluff directly north of the  
5 Medicine Rock, then south to the Medicine Rock situated in the Salmon River, then westerly to  
6 the point of origin, including the entire bed of the Salmon River, in Township 11 North, Range 6  
7 East Humboldt Meridian. The exact boundaries will be proven at trial.

8           22.     The greater *Vunxarak* area lies along a bend of the Salmon River wholly within  
9 the Tribe’s 4,000 square mile ancestral territory in the Siskiyou and Salmon Mountains in what  
10 is now known as northern California.

11          23.     Within this ancestral territory are thirteen areas, each associated with a  
12 corresponding peak and an altar. Eleven of these areas are associated with particular families  
13 and two are medicine areas. The altars in the family areas are considered to be “family altars.”

14          24.     One such family altar, the “Tripp/Jacobs family altar” is located on the ridge to  
15 the north of the village of *Vunxarak*.

16          25.     The greater *Vunxarak* area is within the boundary of the area served by the altar.

17          26.     Tribal members continue to maintain the altar and leave traditional offerings of  
18 rocks and coins at the altar.

19           **B.     The Natural Laws and Traditional Responsibilities of the Karuk Tribe and**  
20           **Its Members.**

21          27.     Spirituality or religion within the Karuk Tribe begins with a great degree of  
22 objective and subjective understanding at the individual tribal member level.

23          28.     The individual tribal member’s reciprocal relationships and interactions with the  
24 larger living and spiritual community inform that individual’s understanding and performance of  
25 spirituality and religious exercise.

1           29.     The individual tribal members within a family then inform and structure that  
2 family’s communal understanding of spirituality and religious exercise because of their own  
3 relationships and interactions with one another and the larger living and spiritual community.

4           30.     This process of interconnected relationships, understandings of spirituality, and  
5 performance of religious exercise continues through increasing levels of community involvement  
6 at the village and tribal level.

7           31.     At the tribal level, there is a common set of spiritual beliefs, religious exercises  
8 and ceremonies.

9           32.     The reciprocal relationship of offerings and service to and from the Tripp/Jacobs  
10 family altar by individual male tribal members is grounded within the larger context of Karuk  
11 culture that is founded upon the mountainous and heavily forested environment around the  
12 Klamath and Salmon Rivers, and the individual Karuk tribal members’, families’, village  
13 groups’ and tribe’s relationships with each other and the larger living and spiritual community.

14           33.     The Karuk tribal members’ relationships with the living and spiritual beings  
15 inhabiting their ancestral territory have existed since time immemorial, when the Ancestral Spirit  
16 People, or *Ikxaéeyav*, were transformed, leaving a part of themselves behind to become every  
17 part of the world and all that is within it.

18           34.     Every part of the world and all that is within it is known to be living, possess  
19 spirit, have the ability to sense and be sensed, and to be related to everything else.

20           35.     From this relationship of connectedness arises a broad range of spiritual and  
21 ecological responsibilities, or natural laws, driven by spiritual beliefs, norms, and mores.

22           36.     Karuk tribal members are charged with traditional duties to care for, manage, and  
23 protect the greater *Vunxarak* area, and its spiritual and natural resources.

24           **C.     Traditional Duties Exercised Within the Greater *Vunxarak* Area.**

25           37.     Within the context of the greater *Vunxarak* area, these traditional duties are made  
26 manifest through the care, management and protections accorded by Karuk tribal members to:  
27  
28

- 1 a. the Tripp/Jacobs family altar;
- 2 b. the archeological and cultural resources within the greater *Vunxarak* area,
- 3 including the ancient village sites, a women’s pit house, and a shaman’s pit house;
- 4 c. the Karuk Flower-Dance, or *Ihuk*, ceremonial dance grounds;
- 5 d. the Medicine Rock;
- 6 e. burials, gravesites and cemeteries;
- 7 f. fish and game; and
- 8 g. plant resources.

9 **1. Occupation.**

10 38. Karuk tribal members continue to inhabit the greater *Vunxarak* area as their  
11 ancestors did under the right to occupy, possess and use the area in common with other members  
12 of the Karuk Tribe.

13 39. The very act of residing in the greater *Vunxarak* area is in furtherance of the  
14 traditional duty to maintain the life and spirit of the village and to protect the efficacy of  
15 ceremonies performed there.

16 **2. The Karuk Flower-Dance Ceremony.**

17 40. The Karuk Flower-Dance, or *Ihuk*, is a ceremony performed in celebration of the  
18 entry of adolescent girls into womanhood.

19 41. The *Ihuk* ceremony relays the responsibility attendant to womanhood within the  
20 greater living and spiritual community.

21 42. The *Ihuk* ceremony was traditionally performed within the greater *Vunxarak* area.

22 43. The *Ihuk* ceremony continues to take place in the greater *Vunxarak* area by Karuk  
23 tribal members today.

24 44. Rock shrines left by participants of the *Ihuk* ceremony are visible throughout the  
25 environs of the dance grounds.

26 45. Karuk tribal members maintain the clearing for the dance grounds through the  
27 traditional use of fire to control vegetative growth in accordance with their traditional duties.

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1                   **3.       The Protection of Medicine Rock.**

2           46.     The southeastern corner of the greater *Vunxarak* area is marked by a large boulder  
3 in the Salmon River. This boulder is a medicine site known as the Medicine Rock.

4           47.     The Medicine Rock is a medicine site for the use of male Karuk tribal members.

5           48.     Karuk tribal members continue to safeguard and use the Medicine Rock for  
6 traditional purposes.

7                   **4.       The Protection of Burials, Gravesites, and Cemeteries.**

8           49.     There are many burials, gravesites and cemeteries within the greater *Vunxarak*  
9 area.

10          50.     Karuk tribal members have safeguarded these burials, gravesites and cemeteries  
11 for millennia and continue to do so to the present day pursuant to their traditional duties.

12                   **5.       Ecological Management and Use of Subsistence Resources.**

13          51.     Karuk tribal members have ancient and ongoing traditional duties for the  
14 ecological management of fisheries, game, and vegetative communities, in the greater *Vunxarak*  
15 area.

16          52.     The exercise of traditional ecological management that is attendant to the  
17 traditional use of resources is the product and manifestation of the natural laws and customs of  
18 the Karuk Tribe.

19          53.     Karuk tribal members continue to exercise subsistence fishing activities within  
20 the greater *Vunxarak* area by right to use the resource and manage it.

21          54.     Traditionally, salmon were harvested from the Wooley Creek fishery associated  
22 with the greater *Vunxarak* area.

23          55.     Fishing weirs were built in the Salmon River within the greater *Vunxarak* area.

24          56.     Smokehouses in the greater *Vunxarak* area continue to be used for smoking  
25 salmon, eels, and sturgeon, as well as other fish species.

26          57.     Karuk tribal members continue to hunt for game in the greater *Vunxarak* area,  
27 exercising their aboriginal right to use and manage game resources.

28

1           58.     Karuk tribal members continue to exercise aboriginal gathering activities in the  
2 greater *Vunxarak* area for subsistence and other traditional purposes including basketry  
3 materials.

4           59.     The following botanical resources, among others, are gathered within the greater  
5 *Vunxarak* area: tan-oak mushrooms, hazel nuts, tan-oak acorns, Indian potatoes, leafy  
6 vegetables, blackberries, raspberries, apples, beans, cucumbers, onions and medicinal tea.

7           60.     There is an acorn pit within the greater *Vunxarak* area and a traditional tan-oak  
8 acorn gathering area by *Thuuvang* Creek. The acorn pit has been used for thousands of years to  
9 make *piish*, or acorn candy.

10          61.     In conjunction with the gathering activities, Karuk tribal members continue to  
11 exercise traditional burning practices within the greater *Vunxarak* area to increase productivity of  
12 the botanical resources and control pests.

13          62.     Karuk tribal members occupying the greater *Vunxarak* area continue to cultivate  
14 apples, blackberries, raspberries, potatoes, beans, cucumbers, and onions.

15          63.     Karuk tribal members get water from a pipe that is supplied by a spring in the  
16 greater *Vunxarak* area that is about a half mile up the slope from the Village site.

17 **II.     The Karuk Tribe’s Right to Continued Possession, Occupation and Use of the**  
18 **Greater *Vunxarak* Area.**

19          64.     The Karuk Tribe’s aboriginal Indian title right to possession, occupation and use  
20 of the greater *Vunxarak* area has never been conveyed, condemned or extinguished.

21          65.     By the Treaty of Guadalupe Hidalgo, February 2, 1848, there was ceded to the  
22 United States of America by the Republic of Mexico the territory now constituting the State of  
23 California.

24          66.     At the time the territory of California was ceded to the United States of America  
25 the Karuk Tribe was in exclusive possession, occupation and use of the greater *Vunxarak* area.

26          67.     Under the laws of Spain and the Republic of Mexico, the Karuk Tribe was  
27 entitled to the undisturbed possession, occupancy and use of the greater *Vunxarak* area.

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1           68.     The Karuk Tribe’s right to undisturbed possession, occupancy and use of the  
2 greater *Vunxarak* area was guaranteed by articles VIII and IX of the Treaty of Guadalupe  
3 Hidalgo.

4           69.     Following the cession of the California territory to the United States of America,  
5 the Karuk Tribe remained in continuous and exclusive possession, occupation and use of the  
6 greater *Vunxarak* area.

7           70.     Under the laws of the United States of America, the Karuk Tribe possesses the  
8 right to continued undisturbed possession, occupancy and use of the greater *Vunxarak* area,  
9 which right can only be taken with the Karuk Tribe’s consent or by clear and unambiguous act of  
10 the United States Congress.

11 **III.    The Klamath National Forest.**

12           71.     The Klamath National Forest was created by presidential proclamation of  
13 Theodore Roosevelt on May 6, 1905. 34 Stat. 3001.

14           72.     Most of the Karuk Tribe’s ancestral territory, and the greater *Vunxarak* area, lie  
15 within the external boundaries of the Klamath National Forest.

16           73.     The Six Rivers National Forest exercises jurisdiction over the area of the Klamath  
17 National Forest in which the greater *Vunxarak* area is located.

18           74.     Under the common law doctrine of aboriginal Indian title, the Karuk Tribe’s  
19 aboriginal Indian title right to possession, occupation and use of the greater *Vunxarak* area, from  
20 time immemorial to the present, coexists with the Defendants’ fee title ownership of the Klamath  
21 National Forest.

22           **A.    Confrontation in the 1980’s.**

23           75.     In the early 1980’s, the Defendants took steps intended to result in development  
24 of a National Forest, Fire Station and Residential Site within the greater *Vunxarak* area.

25           76.     Karuk tribal members felled trees across the access roads and patrolled the area to  
26 prevent the Defendants from entering and to prevent other people from camping on the burials,  
27 graves, family cemeteries and the Flower-Dance grounds.

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1           77.     In or about 1981, the actions of the Karuk tribal members, taken in furtherance of  
2 their traditional duties to protect the greater *Vunxarak* area, led to a confrontation with the  
3 Defendants.

4           78.     An archeological resources and historic properties report regarding the greater  
5 *Vunxarak* area was prepared by the Defendant United States Forest Service in the wake of the  
6 confrontation.

7           79.     This report and subsequent reports have determined that sites within the greater  
8 *Vunxarak* area and the whole area meet the eligibility requirements for the National Register of  
9 Historic Places.

10          80.     Following the confrontation, in or about 1981, an agreement was reached between  
11 the Defendants, the Karuk Tribe, and tribal members living in the greater *Vunxarak* area, which  
12 provided that the Defendants would install a gate to protect access to the area, including the  
13 Flower-Dance grounds, and that Defendants would not enter the area unless there was a fire  
14 emergency.

15          81.     This agreement provided that the Defendants would not interfere with the  
16 *Vunxarak* water pipe, which supplies water for tribal members in the greater *Vunxarak* area.

17           **B.     Assertion of Control in 2003.**

18          82.     On or about August 8, 2003, agents acting under the authority of the Defendants  
19 asserted for the first time a right of exclusive control and possession over the greater *Vunxarak*  
20 area and claimed that the area was National Forest property.

21          83.     On or about August 8, 2003, agents acting under the authority of the Defendants  
22 sought the removal of a Karuk tribal member who was residing within the greater *Vunxarak* area.

23          84.     On May 31, 2008, the Karuk tribal member was required by court order to  
24 remove her residence from the ancestral village of *Vunxarak*.

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1           **C.     Removal of Karuk Tribal Member in 2008.**

2           85.     The Defendants, by removing a tribal member from her home within the greater  
3 *Vunxarak* area, have interfered with the Karuk Tribe’s right to undisturbed possession,  
4 occupancy and use of the area.

5           86.     The Defendants, by evicting a tribal member from her home within the village of  
6 *Vunxarak*, have imposed a substantial burden on the exercise of the Karuk Tribe and its  
7 members’ exercise of traditional religious duties and religious ceremonial practices.

8           **D.     Damage to the Greater Vunxarak Area in 2008.**

9           87.     On or about September 22, 2008, agents acting under the direction of the  
10 Defendants entered the greater *Vunxarak* area and used heavy equipment to conduct extensive  
11 ground disturbing activities, causing damage to an archeological site, artifacts and the physical  
12 integrity of the site.

13          88.     The Defendants failed to make any timely, meaningful, or good faith effort to  
14 consult with the Karuk Tribe to identify and resolve adverse effects of the ground disturbing  
15 activities in the greater *Vunxarak* area.

16          89.     The greater *Vunxarak* area is known and documented by the Defendants to be of  
17 archeological, historical, cultural and religious significance to the Karuk Tribe, and its members.

18          90.     After numerous communications from representatives of the Karuk Tribe  
19 requesting that the ground disturbing activities within the greater *Vunxarak* area cease, on  
20 September 22-23, 2008, the Defendants used heavy equipment to conduct extensive ground  
21 disturbing activities, resulting in further damage to the physical integrity of the site.

22          91.     The Defendants, by repeatedly undertaking ground disturbing activity and altering  
23 the archeological, historical and cultural integrity of the greater *Vunxarak* area, have imposed a  
24 substantial burden on the exercise of the Karuk Tribe and its members’ traditional duties and  
25 ceremonial practices.

26          92.     A preliminary injunction restraining the Defendants from taking any actions  
27 within the greater *Vunxarak* area that may have any adverse effect upon the qualities of the area,  
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1 including archeological sites, ceremonial sites, graves, burials, cemeteries, sacred sites, and  
2 cultural resources within the area, or against the Karuk Tribe and its members to remove them  
3 from possession, occupancy, or to prevent their traditional use of the greater *Vunxarak* area is  
4 necessary to prevent further damage to the Karuk Tribe and its members.

5 93. The Karuk Tribe and its members will suffer irreparable injury unless the  
6 injunction is granted.

7 94. The threatened injury to the Karuk Tribe and its members outweighs any damage  
8 the injunction might cause the Defendants.

9 95. The injunction will not be adverse to the public's interest.

10 96. There is a substantial likelihood the Karuk Tribe will prevail on the merits.

11 97. The Karuk Tribe requests, in light of the public interest in preserving the freedom  
12 of religious exercise, that bond requirements be waived or that only a nominal bond be required  
13 to avoid a hardship on the Karuk Tribe.

14 **PRAYER FOR RELIEF**

15 The Karuk Tribe respectfully requests this Court grant judgment in its favor as follows:

16 1. Enter a declaratory judgment that the Karuk Tribe enjoys the right to occupy, possess  
17 and use the greater *Vunxarak* area;

18 2. Enjoin the Defendants from acting in a manner that is inconsistent with or interferes  
19 with the Karuk Tribe's right to occupy, possess and use the greater *Vunxarak* area;

20 3. Enter a declaratory judgment confirming that the actions of the Defendants interfered  
21 with the Tribe's and its members' rights to freedom of religious practice associated with the  
22 greater *Vunxarak* area;

23 4. Enjoin the Defendants from acting in a manner that interferes with the Karuk Tribe's  
24 and its members' rights to freedom of religious practice associated with the greater *Vunxarak*  
25 area;

26 5. Award the Karuk Tribe its reasonable attorneys' fees, costs and expenses for this  
27 action; and,

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