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Clerk of the Board, Air Resources Board

1001 I Street

Sacramento, CA 95814

<http://www.arb.ca.gov/lispub/comm/bclist.php> (electronic submittal)

Re: Clarification 95975 (1) (1)

Dear California Air Resources Board:

This letter is a summary of our oral comments to the proposed cap and trade regulations. The Yurok Tribe appreciates ARB's thoughtful recognition of Tribal governments as Native sovereign nations. Your staff was excellent to work with and responsive to Native concerns.

The Yurok Tribe fully supports robust ARB enforcement of cap and trade regulations. Section 95975(1)(1) as drafted, however, seemingly would allow punitive damages against federal, State, local and Tribal governments. By law this cannot happen for the federal government, State government or political subdivisions thereof. It is the Yurok Tribe's understanding that ARB will not seek punitive damages, in Tribal waivers of Sovereign Immunity. This is true in the same way such damages are not applicable to federal, California, and local governments. Otherwise the regulations would be discriminatory against tribal governments. Staff has given assurances that tribes will be treated the same as all other governments and that punitive damages will not be required in tribal limited waivers of sovereign immunity. They gave the further assurances that a language change was not necessary.

The Yurok Tribe appreciates the complicated nature and ARB's time considerations in adopting these regulations. Given these factors, the Yurok Tribe submits this comment to make clear our understanding based on conversations with ARB staff that punitive damages will not be required in tribal government waivers of Sovereign Immunity.

Sincerely,



John Corbett,
Senior Attorney



Yurok Tribe

Nathan Voegeli
Yurok Tribe Office of the Tribal Attorney

Section 95975(l)(1)

- ▶ “This [limited waiver of sovereign immunity by a Tribe] must include a *consent to suit* by the State of California, Air Resources Board, in the courts of the State of California, with respect to any action in law or equity commenced by the State of California, Air Resources Board to enforce the obligations of the Tribe with respect to its participation in the Cap-and-Trade Program, *irrespective of the form of relief sought, whether monetary or otherwise.*”
- ▶ As drafted, section 95975(l)(1) does not explicitly prohibit ARB from seeking punitive damages against Tribes

Punitive Damages Inapplicable to Government Entities

- ▶ Cal. Govt. Code section 818 generally prohibits punitive damages against state government entities:
“Notwithstanding any other provision of law, a *public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.*”
- ▶ ARB staff have assured the Yurok Tribe that Tribal governments will be treated the same as other government entities and no language revision to section 95975(l)(1) is needed
- ▶ Yurok Tribe understands that ARB will not seek punitive damages in Tribal waivers of sovereign immunity under section 95975(l)(1)

Conclusion

- ▶ Yurok Tribe fully supports robust ARB enforcement of Cap-and-Trade regulations
- ▶ Punitive damages are inapplicable to Tribal governments in the same way such a remedy is inapplicable to State and Federal government entities
- ▶ Section 95975(l)(1) does not authorize discriminatory treatment of Tribal governments