

EXHIBIT B: YUOK ACQUISITION DRAFT COOPERATIVE AGREEMENT

This Cooperative Agreement (“Agreement”) is entered into by and among the Yurok Tribe (“Tribe”), the California State Water Resources Control Board (“State Board”), the California North Coast Regional Water Quality Control Board (“Regional Board”), the California Department of Forestry and Fire Protection (“CAL FIREal-Fire”), ~~the United States Environmental Protection Agency, Region IX (“EPA”), and the United States Bureau of Indian Affairs, Pacific Regional Office (“BIA”)~~ (each a “party” and collectively, “parties”).

Background

1. The Tribe desires to purchase 22,737 acres, more or less, of forestland in Humboldt County (“Properties”) from Green Diamond Resource Company for \$18.75 million on or before December 31, 2010 (“Acquisition”). The purpose of the Acquisition is to: ~~ensure the permanent protection of the Properties from intensive commercial timber harvest;~~ provide for sustainable harvest of forest products; protect, restore, and enhance water quality and salmonid habitat; improve forest stands and biodiversity; and enhance cultural resources.
2. The Tribe has applied to the State Board for ~~a loan~~ local match financing in the amount of \$18.75 million pursuant the State Revolving Fund under the Clean Water Act (“Loan”) to assist with the Acquisition, subject to: (a) a Yurok Habitat Conservation Plan entered into by the Tribe, the United States Fish and Wildlife Service (“FWS”), and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (“NFS”); (b) a Carbon Sequestration Contract entered into by the Tribe and a third party; and (c) this Agreement among the parties to ensure proper use and management of the Properties.
3. The State Board develops, monitors, and enforces statewide water quality policy, including regarding the Pacific Ocean, and the Regional Board develops, monitors, and enforces water quality objectives, waste discharge requirements, and an implementation plan for its hydrologic basin. ~~CAL FIRE~~al-Fire currently is responsible for wildland fire protection for the Properties, and the Tribe and the BIA are responsible for wildland fire protection for lands that are owned by the United States in trust for the Tribe or its members, some of which are adjacent to or intermingled with the Properties, and wildland fires on the Properties or these adjacent or intermingled lands may present a threat to the lands of the other.
4. For portions of the Properties acquired by the Tribe outside the Yurok Reservation (“off-Reservation”), the State Board and the Regional Board will exercise regulatory authority over water quality standards (“WQS”) and nonpoint source (“NPS”) pollution management activities, and CAL FIRE will exercise regulatory authority over forestry practices. For portions of the Properties acquired by the Tribe within the Yurok Reservation (“on-Reservation”), Region IX of the United States Environmental Protection Agency (“EPA”) and the Tribe will exercise regulatory authority over WQS and NPS management activities, and the BIA and the Tribe will exercise regulatory authority over the Tribe’s forestry practices.
5. This agreement is being entered into in part pursuant to 25 U.S.C. § 3115(a)(1), under which the BIA may enter into a cooperative agreement with an Indian tribe regarding forestry and natural resource management, and in part pursuant to 16 U.S.C. § 583a, under which the BIA may enter into a cooperative agreement with a private owner of forest land for coordinated management of private and federally administered forest land. This agreement also is being entered into in part pursuant to California Public Resources Code § 4799.03(a), under which

CAL FIRE may enter into cooperative agreements with local and federal public agencies to encourage such agencies to undertake forest resource improvement work.

6. In light of the foregoing, the parties desire to enter into this Agreement to: (a) coordinate their respective authorities and responsibilities regarding the Properties following the Acquisition; (b) provide for sustainable forest products harvest; (c) protect, restore, and enhance water quality and salmonid habitat; (d) improve forest structure and increase natural biodiversity; (e) protect and restore tribal cultural resources; and ~~(f)~~ implement and maintain a functionally integrated fire protection system.

Agreement

1. ~~1.~~ **Interim Management.** The Tribe, the State Board, and the Regional Board will develop a cooperative approach for short- and long-term monitoring through the life of the Loan in order to ensure that the Tribe successfully protects beneficial uses of waters within the Properties. In addition, p~~Pending compliance with applicable state law off-Reservation and federal approval of the Water Plan and the Yurok Forest Plan and the Yurok NPS Program~~ -as described further below, the Properties will be managed in a manner consistent with the following general guidelines:

a. **Forest Management.** The Tribe will manage the Properties in accordance with the Yurok Forest Management Plan, which has been approved by the BIA and meets BIA criteria for sustainable forestry verification, as outlined by the Deputy Commissioner of Indian Affairs by memo on April 18, 2003. In addition, the Tribe will implement and comply with the following guidelines for the Properties:

- i. ~~n~~No harvest of trees for two years after the closing date of the Acquisition;
- ii. ~~e~~Eliminate use of pesticides, herbicides, and fungicides; and
- iii. ~~e~~Establish minimum riparian buffers that are significantly wider than required under the California Forest Practice Rules in effect as of the closing date of the Acquisition.

b. **Water Quality.** In addition to implementation of the forest management measures described above, the Tribe will enhance water quality within and from the Properties by meeting or exceeding applicable provisions of the California's Nonpoint Source Program Control Strategy and Implementation Plan 1998-2013 ("California NPS Plan"). ~~Consistent with or in addition to these measures,~~ the Tribe will implement and comply with the following for the Properties:

- i. for off-Reservation portions of the Properties, the Regional Board's Water Quality Control Plan for the North Coast Region ("Basin Plan"), including without limitation m~~Management measures consistent with the Klamath River Total Maximum Daily Load for Sediment developed by the EPA ("Klamath TMDLs"), as adopted by the Regional Board in Resolution Nos. R1-2010-0025 and R1-2010-0026 on March 24, 2010, and amendments thereto by the Regional Board, and;~~
- ii. ~~a~~Appropriate provisions of the Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, as provided in the

Regional Board's Order R1-2004-0030 of June 23, 2004, based on guidance from the Regional Board;

iii. for on-Reservation portions of the Properties, the Yurok Tribe Nonpoint Source Assessment and Management Program, as approved for funding by EPA on March 8, 2000, the Yurok Tribe Water Quality Control Plan ("Yurok WQCP"), as adopted by the Yurok Tribe in Resolution No. 04-46 of August 25, 2004, and the Yurok Water Pollution Control Ordinance, of October 5, 2004, provided that in any conflict between any such more stringent the Yurok standards WQCP and the will govern instead of any lesser upstream Regional Board standards Klamath TMDLs, the Yurok WQCP will govern; and

iiiv. for all of the Properties, downstream beneficial uses must be protected in the Klamath River Estuary and in ocean waters of California, including without limitation the Redwood Area of Special Biological Significance, in compliance with the currently effective California Ocean Plan ("Ocean Plan"), the Enclosed Bays and Estuaries Plan, and other applicable statewide water quality control plans and policies as adopted by the State Board, provided that in any conflict between any such more stringent applicable statewide plans or policies the Ocean Plan and will govern instead of any lesser the upstream Yurok WQCP or Regional Board standards, the Ocean Plan will govern.

2. Off-Reservation Activities.

a. Generally. At all times, the Tribe will comply with applicable provisions of state law for activities undertaken on off-Reservation portions of the Properties, including without limitation compliance with the California Forest Practices Act, the California NPS Plan, the Basin Plan, and any superseding applicable legal authorities.

b. Forest Practices. In accordance with 16 U.S.C. § 583a, the BIA and the Tribe will manage the terms, conditions, time, rate, and method of harvesting timber and other forest products from off-Reservation portions of the Properties in a coordinated manner with the on-Reservation portions of the Properties, other lands owned in fee by the Tribe, and land owned by the United States in trust for the Tribe.

c. NPS Management. In accordance with 33 U.S.C. § 1329(b)(4), the State Board and the Regional Board will, to the maximum extent practicable, develop and implement the California NPS Plan on a watershed-by-watershed basis regarding the off-Reservation portions of the Properties. In accordance with 33 U.S.C. § 1329(c)(1), the State Board and the Regional Board will develop and implement the California NPS Plan regarding the off-Reservation portions of the Properties in cooperation with the Tribe.

2.

3. Yurok Forest Plan.

1.

a. Timing and contents. No later than two years after the closing date of the Acquisition, the Tribe will submit to Cal Fire and the BIA a proposed Forest Management ("Forest Plan"), in accordance with the National Indian Forest Resources Management Act, 25 U.S.C. §§ 3101-20, and other applicable authorities. The Forest Plan will provide for silvicultural management, for use, restoration, and protection of the on-Reservation

~~portions of the Properties in a perpetually productive state in coordination with other lands owned in fee by the Tribe and land owned by the United States in trust for the Tribe, in accordance with 16 U.S.C. § 583a and 25 U.S.C. § 3104. a perpetually productive state in accordance with principles of sustained yield and the terms of an approved tribal integrated resource management plan, including without limitation: (i) analysis of short and long term effects; (ii) implementation of sound silvicultural principles for forest product harvest, forestation, and timber stand improvement; (iii) regulating water run-off and minimizing soil erosion; (iv) maintenance and improvement of timber productivity, watersheds, fisheries, wildlife, and traditional cultural values; and (v) a program of action including a harvest schedule to be updated annually.~~ The Forest Plan will include such additional elements as the Tribe, Cal Fire, and the BIA may agree to include in the Forest Plan.

b. Development. Leading up to submission of the Forest Plan to ~~Cal Fire and the BIA~~, the Tribe will lead the work necessary to develop the Forest Plan. ~~The Tribe will invite and encourage the participation of public agencies, the local community, and other stakeholders. The public agencies involved will include at least the parties, the EPA, the FWS, the NFS, and the California Department of Fish and Game (“DFG”).~~

c. Approval. ~~Cal Fire and t~~The BIA will have 60 days after the date that the Tribe submits the Forest Plan ~~to them~~ to provide provisional notice of approval thereof. ~~Cal Fire and the BIA~~ will work with the Tribe to resolve any specific issues with the proposed Forest Plan once identified. Final approval of the Forest Plan will not be unreasonably delayed or withheld.

d. Implementation. Upon final approval of the Forest Plan by ~~Cal Fire and the BIA~~, the on-Reservation portions of the Properties will be managed in a manner consistent with the Fire Forest Plan, or any superseding approved Forest Plan.

4. Yurok 3- NPS Program. **Water Plan.**

a. Timing and contents. No later than two years after the closing date of the Acquisition, the Tribe will submit to ~~the State Board and the Regional Board (collectively, “Water Boards”) and the EPA~~ a proposed Water Quality Management and Restoration Nonpoint Source Management Program (the “Yurok Water NPS Program”), in accordance with 33 U.S.C. § 1329(b). The Water Yurok NPS Program will explain the measures the Tribe will implement to correct and prevent deterioration of the water quality within the watersheds of the Properties due to past, current, and proposed forest management practices, and how performance and benefits of water quality improvement activities undertaken on or otherwise affecting the Properties will be measured include all the contents required by 33 U.S.C. § 1329(b)(2). ~~The Water Plan will including without limitation~~ all of the water quality improvement elements specified for the Properties in Exhibit A, section 1 of the final agreement for the Loan approved and executed by the Tribe and the State Board. The Yurok NPS Program will include, and such other additional elements as the Tribe, ~~the Water Boards,~~ and and the EPA may agree to include in the Water Plan Yurok NPS Program.

b. Development. Leading up to submission of the Water Plan Yurok NPS Program to ~~the Water Boards and the EPA~~, the Tribe will lead the work necessary to develop the Water Plan. ~~The Tribe will invite and encourage the participation of public agencies, the~~

local community, and other stakeholders in accordance with 33 U.S.C. § 1329(b)(3). The public agencies involved will include at least the parties, the EPA, the DFG, the FWS, and the NFS.

~~c. **Approval.** The Water Boards and the EPA will have 60 days after the date that the Tribe submits the Water Plan to them to provide provisional notice of approval thereof. The Water Boards and the EPA will work with the Tribe to resolve any specific issues with the proposed Water Plan once identified. Approval of the Water Plan will not be unreasonably delayed or withheld.~~The EPA will approve or disapprove the Yurok NPS Program in accordance with 33 U.S.C. § 1329(d).

~~d. **Implementation.** Upon final approval of the Water~~Yurok NPS Program~~Plan by the Water Boards and~~by the EPA, the on-Reservation portions of the Properties will be managed in a manner consistent with the Water PlanYurok NPS Program, or any superseding WaterNPS Plan.

~~5. 4. ———~~**Fire Plan.**
~~Fire Plan.~~

~~a. **Existing Agreements.** Fire protection activities regarding the Properties will be addressed by the Tribe, the BIA, and Cal Fire~~CAL FIRE ~~in accordance with in the California Master Cooperative Wildland Fire Management and Stafford Act Response Agreement entered into among Cal Fire~~CAL FIRE~~; the United States Department of Agriculture, Forest Service Region Four, Five and Six; the United States Department of the Interior, Bureau of Land Management, California and Nevada, National Park Service, Pacific West Region, the BIA, and the FWS, dated December 2007 ("CFMA"), as well as the Statewide Annual Operating Plan entered into by Cal Fire~~CAL FIRE ~~and the BIA, dated May 2008, or any superseding operating plan therefor ("Fire Plan").~~

~~b. **Protection Areas.** Pending acquisition of the Properties by the United States in trust for the Tribe ("Trust Acquisition"), the Properties will remain within the State Responsibility Area for fire protection as defined in the CFMA. Following Trust Acquisition, the Properties will be within the Federal Responsibility Area as defined in the CFMA. Regardless of Trust Acquisition, the Properties will be within Cal Fire's Direct Protection Area as defined in the CFMA.~~

~~c. **Billing Practices.** Following Trust Acquisition, billing for performance of fire protection activities by Cal Fire~~CAL FIRE ~~regarding the Properties will be addressed as provided in the Fire Plan.~~

~~6. 5. ———~~**General Provisions.**

~~a. **Effective Date, Applicability, and Term.** This Agreement will become effective upon Acquisition of the Properties by the Tribe. This Agreement will apply notwithstanding Trust Acquisition, and will remain in effect until at least the date when the Loan is repaid in full, and will continue in effect thereafter until terminated or superseded by amendment which explicitly replaces this Agreement.~~

~~b. **Amendment.** This Agreement may not be altered, amended, changed, or modified except by written amendment approved and executed by the parties.~~

c. Termination. Following full repayment of the Loan, any party may terminate its involvement in this Agreement without cause by giving at least sixty ~~thirty~~-days advance written notice to the other parties, and without affecting provisions herein among other parties.

d. Legal effect. This Agreement is not intended and shall not be deemed to change any existing governmental jurisdiction of the parties.

e. Notices. Notices and other communications between the parties should be delivered to the following representatives:

Thomas P. O'Rourke, Chairman
Yurok Tribe
190 Klamath Blvd.
Klamath CA 95548
torourke@yuroktribe.nsn.us
telephone: 707-482-1350
facsimile: 707-482-1363

with copy to:

John Corbett, Senior Counsel
jcorbett@yuroktribe.nsn.us

~~Barbara Evoy~~Esteban Almanza, Deputy Director
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 16th Floor
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ealmanza~~bevoy~~@waterboards.ca.gov
telephone: 916-341-5425632
facsimile: 916-341-5705

with copy to:

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ahartridge@waterboards.ca.gov

Gerald Jones, Assistant Regional
Forester
Branch of Forestry
Pacific Regional Office
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~~Alexis Strauss,~~
~~Director~~

~~Water Division, Region IX~~
~~U.S. Environmental Protection Agency~~
~~75 Hawthorne Street, _____~~
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~~With copy to:~~

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Crawford Tuttle, Chief Deputy Director
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with copy to:
Giny Chandler, Chief Counsel
giny.chandler@fire.ca.gov

7. 6.—Execution and Counterparts. This Agreement may be signed in multiple counterparts.

YUROK TRIBE

Chairman

Date

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Executive Director

Date

CALIFORNIA NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

Executive Director

Date

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

Chief Deputy Director

Date

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX

Regional Administrator

Date

U.S. BUREAU OF INDIAN AFFAIRS, PACIFIC REGIONAL OFFICE

Regional Director

Date