

On the evening of Thursday July 22, 2021, residents of the Klamath Community Services District (KCSD) were met by members of the Yurok Tribe Council, Executive staff and helpers who expeditiously delivered cartons of bottled water *and* the "BOIL WATER NOTICE" intended for KCSD to print, post and disperse (as directed by the California State Water Resources Control Board - Division of Drinking Water (DDW)). The Yurok team also promised to return Monday with water-filters they had procured for the residents of upriver water systems owned and operated by the Yurok Tribe. The Press Release misled readers to believe all 900 donated filters were for the KCSD community, however, the District only services the immediate area of the Klamath Townsite which includes: 43 residential and 16 commercial properties.

The **FACT** that the Yurok Tribe stepped outside their jurisdiction to orchestrate a PR event to provoke reckless panic within the KCSD community is a prime example of the unethical tactics that KCSD has come to expect. The current basis and blasphemous Press "EMERGENCY" are **based on KCSD water storage-tank damage that occurred 4-1/2 years ago** and has **nothing** to do with the quality of water that has been served to the community.

The **PROBLEM**, that existed then is the same problem that exists today and boils down to the **FACT** that the land (and road) the KCSD water storage tank sets on (and has for 40+ years) was owned by the US Forest Service who provided the land use permit. Now, the land (and road) belongs to the Yurok Tribe, who for years, has been uncooperative to provide the same permit, without strings of threat or endangerment to KCSD resources. Until KCSD can provide said permit from the landowner, granting access to repair and maintain the tank, neither contractors nor staff can be hired and/or insured to provide mandatory repairs.

All attempts made by the KCSD to legally gain access and repair the water-storage tank have been hindered or ignored by the Yurok Tribe. The turnover rate in Yurok leadership, positions and staffing have created continuous negligence and loss of: project history, knowledge, consultations, ethical and legal processes, and workable agreements. One hand simply does not know what the other hand is doing and until it does, it is incapable of producing helpful results.

Although Yurok Chairman Joe James' Press Release, proudly proclaimed offers of "help" and funding to the KCSD, the history and actions of his team can easily be interpreted to the district as hindrance. They are self-serving at best. The brand-new construction of his Yurok Tribe Emergency Operations Center sets without water and this vendetta is the real **TRUTH** behind his publicity stunt.

### **Background History:**

#### **2012 - YUROK TRIBE JUSTICE CENTER**

In December 2012, an announcement was made that a \$1 Million dollar grant had been received by the Yurok Tribe to construct a brand-new 3,500 square-foot Justice Center facility. Although a water-service connection was already in existence, there were no more sewer connections available. The KCSD had been under a cease-and-desist order by the State of California barring any new sewer connections since 2006. Despite this knowledge, the Yurok Tribe Planning Department continued with the project construction.

During the final building phase, the contractor illegally connected the new building sewer-line into the KCSDs sewer main without KCSD's knowledge or permission. The KCSD sent a letter to the Yurok Tribe Planning Department stating they had learned of the connection and billed them accordingly. A representative of the Tribal Planning Department replied to the letter disputing the fee and denied the fact that the Contractor had connected into the KCSD sewer main.

Only after receiving proof from the Engineer's technical drawings and photographic evidence of the illegal connection this same member of the Yurok Tribe Planning Department stated to the KCSD Board President that the connection to the sewer main was a mistake and agreed to pay the connection fee in full. At no point did the Planning Department take action to disconnect or remove their line from the KCSD sewer system and to this day remains intact.

#### **2012 - REDWOOD HOTEL & CASINO**

In early 2012, the Yurok Tribe began construction of the \$11.45M Redwood Hotel and Casino (49,000 square-foot). Prior to construction, the Yurok Tribe requested three water system connections into the KCSD water main. At that time, the KCSD denied all connections because the KCSD did not have the capacity to serve the daily demands of

the Hotel/Casino and continue to provide fire-flows in the event of a structure fire in the community. Under State Fire Code, a 40,000 square foot building (the size of the hotel) requires 2,000 gallons per minute in fire hydrant flow for two hours, which the KCSD storage tank could not provide. At that rate, the tank would be emptied within one hour after which the community would have no water and no fire-suppression. By agreeing to allow connections to the Hotel/Casino, KCSD would have violated the State Fire Code.

Regardless of this fact, the Yurok Tribe allowed their contractor to connect 2-inch, 3-inch and 4-inch water lines from the Hotel/Casino into the KCSD water main without KCSD's knowledge. When anyone purposefully accesses the KCSD water system illegally they are stealing from the community.

Once KCSD had learned of the connections, they issued a Notice to Disconnect to the Yurok Tribe and scheduled to shut down the service lines to the Hotel/Casino on August 19, 2014. The Yurok Tribe never responded to KCSD and when the date arrived, members of the KCSD Board and Staff were served with an injunction signed by the Yurok Tribal Court Judge to prevent the shutoff.

Over fear of losing the water connections to the Hotel/Casino and potential Federal lawsuit, the Yurok Tribe was forced to help negotiate a solution to solve the community need and resource situation.

After much negotiation, Yurok Chairman Thomas O'Rourke signed a written agreement with KCSD in December 2014 to install an additional 125,000-gallon water storage-tank in the community and acquire an easement for KCSD to have access to the Green Diamond well by September 1, 2015. Funds for the 125,000-gallon tank were to be secured by the Yurok Tribe from a FEMA grant in the amount of \$250,000.00. This additional water storage would benefit both tribal enterprises and the growing community.

On August 23, 2015, ten days before violating the agreement, KCSD received a letter from Yurok Chairman O'Rourke stating that due to a delay with CEQA issues he was requesting an extension be granted to September 1, 2016. KCSD granted the extension, but to this date, the Easement to the Green Diamond Well has been attained by the Yurok Tribe (no copy to KCSD), there is still no new tank. The KCSD, however, has made no attempt to shut-off the water to the Hotel/Casino and has not referred, nor taken action to the matter as a theft of utilities, in anticipation that the Yurok Tribe would begin to act reasonably in due course.

## **2018 - TREE FALLS FROM YUROK PROPERTY ONTO KCSD WATER STORAGE TANK**

On June 15, 2018, the KCSD President sent a letter to Yurok Chairman Thomas O'Rourke stating a large tree (3' in diameter) had fallen on and severely damaged the KCSD water storage tank and would need major repairs. The KCSD asked the Yurok Tribe for a utility easement in order to repair and/or replace the tank using insurance money they would receive (at that time the KCSD's insurance carrier informed the KCSD that any KCSD Employee working on private property would not be covered). The letter also requested that Yurok Tribal Council make the granting of the utility easement a "top priority for the health and well-being of the Klamath Community." The letter went on to state that the KCSD **"cannot guarantee that the water the KCSD provides would continue to be safe to drink until the repairs were made"** and that a boil water notice due to bacterial contamination would have severe impacts on the local economy and may pose a health risk to the community. The letter concluded by asking for immediate Council Action. One month later, on July 11, 2018, the action was approved for Council Agenda (#CA-302) but **no action** was taken and the item was deferred to a later date.

The item returned to the Yurok Council on July 27, 2018, was APPROVED and an easement was to be completed by August 10, 2018. To date, there is no easement.

On August 21, 2019, the KCSD sent a letter to Yurok Chairman Joe James requesting assistance from the Yurok Tribe in getting the water tank repaired. Since KCSD staff were not insured without an easement, they requested that a Yurok Tribe Water Technician climb the tank and reseal it to protect the water quality until permanent repairs could be made. Within days of the request, the KCSD President was contacted by the Yurok Tribe's Legal Department who made inquiries about the repairs, but since then, no action or help has been received by KCSD.

Beginning in 2014, KCSD has made several formal requests for an easement to access the water storage tank for maintenance, upgrades and/or repairs, however, each of the four documents drafted by the Yurok Tribe's Legal Department contain clauses that benefit the Yurok Tribe and threaten the interest of the KCSD such as:

- "All buildings, structures, and improvements on the premises shall be owned by the permittee (KCSD) during the term of this permit."
- "Permittee (KCSD) shall have 90 days from the expiration, cancellation or termination of this permit to remove any buildings, or improvements remaining on the property after this period shall become property of the permitter (Yurok Tribe).

In other words, 90 days after the tank repairs are complete, the water tank could automatically become property of the Yurok Tribe unless the tank is removed from the property. This legal clause is not from an easement agreement but a six-year Revocable Land Use Permit. This permit automatically expires in six years and is also revocable for any reason at any time during the six-year permit term. The KCSD cannot and would not agree to such terms as would any other Utility District.

### **2020 - YUROK TRIBE EMERGENCY OPERATIONS CENTER**

On July 10, 2020 the Yurok Tribe broke ground for a brand new Emergency Operations Center. The 19,000 square foot facility includes a command center, several multi-purpose rooms, kitchen, laundry facilities, fitness area, restrooms, showers and a locker room. The Yurok Emergency Operations Center was constructed with funds of an undisclosed amount from the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The construction site is located next door to the Redwood Hotel and Casino and began without **any** prior consultation with the KCSD to determine if the community Water System had the capacity to serve the building and its intended uses. On August 6, 2020, nearly a month after construction began, the KCSD received an application from the Yurok Tribe for both a 2-inch and 4-inch water service connection into the KCSD's water main. Due to the water systems capacity issues the request was denied. Regardless of the fact, construction ensued.

Prior to completion, KCSD's Water Operator discovered that the contractor had installed the 2-inch and 4-inch water service lines out to the street and was preparing to connect into the KCSD water main. The operator informed the contractor that the connection request had been denied by the KCSD and he had no authority to proceed with the connection. The contractor understood he would be named in a civil lawsuit along with the contracting agency for illegally connecting into the water main without the KCSD's consent. The Yurok Tribe has made no effort to meet with the KCSD to resolve any of the outstanding issues and the Emergency Operations Center currently stands without water.

On May 6, 2021, KCSD sent a letter to the Chairman of the Yurok Tribe requesting an easement, which should remove most of the obstacle on the Land Use Permit. KCSD received a response from Don Barnes, Executive Director, stating that KCSD needs to draft their own easement. He said that the Bureau of Indian Affairs (BIA) may require a bond and going through the BIA would be a very, very long process.

## 2021 - YUROK TRIBE PLANNING DIRECTOR FILES COMPLAINT AGAINST KCSD

On May 19, 2021, Michael Gerace, the current Yurok Tribe Planning Director, submitted a complaint against the KCSD via email to several members of the Environmental Protection Agency (EPA). Aside from the two truths that, the KCSD leech fields were located within in a flood plain (as is much of Klamath) and that the KCSD Board President and General Manager were one in the same person, the rest of the statements were **FALSE**. The results of his claim, have however, added yet another layer of collateral damage, at the expense of the KCSD community members:

- Immediate Cease-and-Desist of ANY new water hook-ups
- Unnecessary mandate to the KCSD community to BOIL WATER despite routine clean water test results.

Barry Sutter, the California KCSD Engineer who oversees the Klamath Water KCSD operations was also included in Gerace's email and shares his professional opinion of why the complaint was submitted: *"My guess is that the concern has something to do with the KCSD's damaged tank and the Yurok Tribe's apparent refusal to allow even DDW and KCSD Staff access to inspect the tank because it is located on the Yurok Tribe's land... Also, additional service connections for Tribal interests may be at play (Emergency Operations Center) but the KCSD apparently does not have the capacity to add additional services... Also, we (DDW) intend to take enforcement action based on the lack of access to the tank which is a violation of DDW's inspection authority."*

Each of the claims made by the Yurok Tribe Planning Director - Michael Gerace are **FALSE or INACCURATE:**

Gerace - *"The Yurok Tribe has observed a lack of regular testing, monitoring or reporting of the KCSDs well"*

KCSD - The Yurok Tribe has no access to the KCSD well or monitoring logs. All logs are in State compliance.

Gerace - *"There is no site gauge on the tank or telemetry and this has led to the tank being empty on occasion"*

KCSD - Telemetry was destroyed when the tree fell on the storage tank. Tank levels are currently maintained by pressure difference and a well timer however, the tank was emptied once in the last 8 years due to a broken 2" service-line which was repaired within 15 minutes and water restored.

Gerace - *"KCSD is billing the Yurok Tribe for sewer services not provided and not legally allowed under a cease and desist order"*

KCSD – The connection in question was made illegally and with full knowledge of the repercussions.

Whether sewer service is used or not, the owner is responsible for the flat monthly fee.

Gerace - *"KCSD does not post minutes, agendas or have a website"*

KCSD – Agendas are and have always been posted in public locations within 72 hours in advance of KCSD Board meetings. Minutes are provided upon request and the State does not mandate websites for small CSD's such as the KCSD.

Gerace – *"KCSD does not respond to requests for minutes, bylaws on board decisions"*

KCSD – The minutes, bylaws and decisions have been provided in repeat to the same agencies, staff and departments.

Gerace – *"KCSD has not held board elections in several years"*

KCSD – It is not required to hold annual elections. When a seat on the board becomes available it is filled through the proper procedures as deemed by Del Norte County Registrar.

### **In Conclusion**

With all the work that the Yurok Tribe claims to do towards resource restoration and renewal, it has forgotten to honor and include the same reverence for the water which flows out of the tap. The staff and leadership have become greedy to build big and drain the resources at community expense. While new growth is admirable, neglecting to maintain what we already have, is not. The Yurok Tribe's excessive demand for water has maxed-out the KCSD resource and threatens the safety of its citizens. Water is life and it is not the responsibility of the low-income and/or elderly residents to foot the cost for your grand commercialized dreams. It is time for the Yurok Tribe to stop worrying about the "integrity of the KCSD's antiquated drinking water system" and focus on owning its own integrity by following through with the promises and agreements it has already made. And you have also forgotten, or chosen not to remember, that the KCSD you criticize and insult, is comprised of your Yurok Elders and tribal members and you may begin exhibiting respect, integrity, and true leadership at any time. You can be part of the problem or part of the solution, but you cannot be both.

When	Who	What & Why
1/1/2006	KCSD	SWRCB issues Cease & Desist order for new Sewer Connections. Current system has reached capacity.
1/1/2012	Yurok Tribe	Construction of Redwood Hotel & Casino. Water Hookup is Denied and Contractor illegally connects to KCSD water line (2", 3", 4")
12/1/2012	KCSD	Margaret Caldwell joins KCSD Board of Commissioners
8/19/2014	Yurok Tribe	Police serve injunction from Yurok Tribe Judge to stop KCSD from shutting off the water
12/1/2014	KCSD	Working with Amanda Manger (Planning), Nathan Voegeli (OTA), Engineer (KCSD) on CONDITIONAL "Will Service" Agreement
12/17/2014	KCSD	Thomas O'Rourke signs CONDITIONAL "Will Service" Agreement
12/23/2014	KCSD	Agreement Condition 1: Yurok Tribe will install 125,000 gallon water storage tank by September 1, 2015
12/23/2014	KCSD	Agreement Condition 2: Yurok Tribe will acquire an easement for the Green Diamond well for the KCSD by September 1, 2015
12/23/2014	KCSD	Agreement Condition Funding: Yurok Tribe had received notice of award for FEMA Grant \$250K
5/12/2015	Yurok Tribe	Yurok Tribe Justice Center - Illegal hookup to KCSD Sewer Connection. Refusal to pay Connection Fee (has since been paid)
8/23/2015	Yurok Tribe	Extension Request from Thomas O'Rourke to September 1, 2016 to meet CONDITIONAL agreement for Green Diamond Well (due to CEQA issues). Request granted by KCSD.
9/1/2015	Yurok Tribe	BREECH of "Will Service" Agreement
2/1/2017	KCSD	KCSD Insurance covers the repair expenses however, KCSD is informed that their staff are not covered by the insurance while on private land without owner permission
2/20/2017	KCSD	KCSD Water Storage Tank Damaged - A tree (3' in diameter), falls on top of the tank, from the Yurok hillside above. The top edge is severely dented and cracked the steel exterior. Opening allows for contamination.
2/21/2017	DDW	Notified DDW of KCSD Water Storage Tank damage and immediate/temporary repairs.
2/21/2017	DDW	Advised KCSD to collect monthly samples - KCSD complies
3/1/2017	KCSD	KCSD Water Operator removed log and woody debris from top of tank and sealed the opening with screen-mesh and expanding foam
6/15/2018	ble	KCSD Request to Yurok Tribe for Permanent Easement within 60 days. Without easement, construction of new tank cannot begin
6/15/2018	KCSD	KCSD Request to Yurok Tribe for Easement to provide Water Storage Tank repairs from tree damage
7/26/2018	Yurok Tribe	Approves CA18-302 "To approve Right of Way for KCSD. To have easement completed by August 10, 2018" (Submitted by: Gensaw, Motion: Ray, 2nd:VanLandingham)
4/1/2019	KCSD Water Test	Water Testing - 1 residential site location - Tests POSITIVE for coliform bacteria but Tests NEGATIVE for e-coli
4/1/2019	KCSD Water Test	30 days to research and determine why one site is testing positive for coliform bacteria while others are not
4/1/2019	KCSD Water Test	Site re-testing performed and four additional location sites - Four sites tests NEGATIVE for both Coliform bacteria and/or e-coli. Same location test positive for Coliform bacteria.
4/9/2019	Yurok Tribe	Resolution to Purchase Green Diamond Water Well
5/1/2019	KCSD Water Test	Test Results continue to be NEGATIVE for coliform bacteria and/or e-coli through October 2020
5/16/2019	DDW	Citation issued - for Boil Water Notice
5/16/2019	Yurok Tribe - PR	Unbeknownst to the Tribe until only recently, the Klamath Community Services District was issued a citation on May 16, 2019, for violating California's Clean Drinking Water Act. (Isolated event - test positive for Coliform only)
5/31/2019	KCSD	KCSD Letter to Clients explaining the circumstance of Boil Water Notice. Yurok Tribe claims they did not receive it
8/21/2019	KCSD	KCSD Request assistance from Joe James for Yurok Tribe Water Tech to seal the water-tank
9/18/2019	Yurok Tribe	Yurok Tribe Attorney Dawn Baum contacted KCSD with questions regarding the request
10/16/2019	Yurok Tribe	Yurok Tribe OTA brought letter to KCSD Board Meeting stating they have tried and believe that is sufficient to fulfill the contract of 2014. KCSD disagrees
3/19/2020	IHS	Funding offered to KCSD - Because of High Score O&M, Indian Health Service Offers \$1.2M to KCSD if KCSD can contribute \$236K
3/19/2020	Yurok Tribe	Notice of secured FEMA funding (\$236K)
6/1/2020	Yurok Tribe	Emergency Operations Center - Contractor proceeds with construction to connect 2" and 4" water lines to KCSD water main, but is prevented from access by KCSD
7/8/2020	Yurok Tribe	Groundbreaking for 19,000 sqft Emergency Operations Center without consultation from KCSD
8/6/2020	Yurok Tribe	Yurok Tribe applied for 2" and 4" KCSD water-connection. Connection DENIED because system is at capacity
11/1/2020	KCSD	Added chlorination disinfecting system as temporary measure
11/1/2020	DDW	Requests KCSD install a chlorination injection system at the Green Diamond Well
11/1/2020	KCSD Water Test	Test Results return with a POSITIVE for coliform bacteria and NEGATIVE for e-coli at the same location site that tested POSITIVE in April 2019
11/1/2020	KCSD	It is determined that the location site testing POSITIVE for coliform bacteria is an anomaly and is confined to the residence which may have an old inline filter that has not been serviced. This site is removed from testing.
11/18/2020	Yurok Tribe	Emergency Operations Center - Requests 2" & 4" hook-up/Connection. KCSD Denied.
12/1/2020	KCSD	KCSD sends Conditions letter to IHS - KCSD date timed-out but Yurok can do work
12/1/2020	Yurok Tribe	Yurok Tribe Proposes Conditional Agreement - Ownership of TV Engineering Plans. KCSD Declined.
5/6/2021	KCSD	KCSD Requests Easement from Yurok Tribe
5/6/2021	Yurok Tribe	Executive Director Don Barnes requested KCSD to DRAFT the easement and informs that the BIA process may be lengthy
7/19/2021	KCSD Water Test	Test Result: NEGATIVE for coliform bacteria NEGATIVE for e-coli
7/20/2021	Yurok Tribe	COMPLAINT Submitted to EPA by Planning Director Michael Gerace against KCSD
7/24/2021	Yurok Tribe	Emergency PRESS RELEASE -- BOIL WATER Press Release
7/29/2021	Yurok Tribe	PRESS RELEASE - Water Filters Donated to More Than 900 Yurok Households; KCSD Board President Says Lab Sample of System Shows It's 'Absent of Anything That Would Harm Anybody'
8/1/2021	KCSD Water Test	Test Result: NEGATIVE for coliform bacteria NEGATIVE for e-coli
8/21/2021	KCSD	No: easement to KCSD Water Storage Tank. No: 125,000 gallon new tank
8/21/2021	Yurok Tribe	Emergency Operations Center remains without water yet continues to utilize the facility for public gatherings
8/21/2021	KCSD Community	KCSD Community Volunteer offers to setup website, scan and upload backlog of KCSD Meeting Minutes, Policies and for Public Information