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THE EIGHTEEN UNRATIFIED TREATIES OF 1851-1852
BETWEEN THE CALIFORNIA INDIANS AND
THE UNITED STATES GOVERNMENT

by

Robert F. Heizer

Archaeological Research Facility
Department of Anthropology
University of California
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Introduction

Between April 29, 1851, and August 22, 1852, a series of eighteen treaties "of friendship and peace" were negotiated with a large number of what were said to be "tribes" of California Indians by three treaty Commissioners whose appointments by President Millard Fillmore were authorized by the U.S. Senate on September 29, 1850. Eighteen treaties were made but the Senate on July 8, 1852 refused to ratify them in executive session and ordered them filed under an injunction of secrecy which was not removed until January 18, 1905 (Ellison 1922, 1925).

A detailed account of the whole matter of the appointment of the three Commissioners (George W. Barbour, Redick McKee and O. M. Wozencraft), their travels and an analysis of the actual nature of the groups listed as "tribes" has been prepared (Heizer and Anderson, n.d.) and will, I hope, some day be published.

C. Hart Merriam in 1926 prepared, at the request of the Subcommittee of the House of Representatives Committee on Indian Affairs, a detailed identification of what he called "alleged tribes" signing the 18 treaties. His working papers are filed in the C. Hart Merriam Collection (identified more fully in the appended references: Merriam Collection [1926]). A similar and wholly independent analysis of this sort was made in 1955 for the Plaintiff's counsel in the Indian Claims Commission hearings on Dockets 31/37. This was introduced as Exhibit ALK-8. A copy of this analysis with a map (Heizer [1955]) is filed as Ms. No. 443 in the archives of the Archaeological Research Facility, Department of Anthropology, University of California, Berkeley. Use of both documents is presently restricted.

The texts of the unratified treaties were made public on January 19, 1905 at the order of the U.S. Senate which met in executive session on that day in the Thirty-second Congress, First Session. The treaties were published subsequently several times in connection with hearings held by the Subcommittee of the Committee on Indian Affairs, H.R. But copies of the treaties are somewhat difficult to find in the mountains of Senate and House documents published by the Government Printing Office, and it is hoped that the present partial reprinting may make their contents more readily available.^{1/}

The first and second treaties ("M" and "N") were negotiated by the Commissioners acting together as a board. But the urgency of the matter, the difficulties of treating with Indians over such a large area, and the slowness involved in the three men acting as a board, indicated the desirability of each Commissioner assuming responsibility for a large area so that the state could be covered more rapidly. As a result, and because they could not informally agree on who was to be responsible for which area, the Commissioners drew lots. Barbour arranged for treaties "A"- "D". Wozencraft arranged 8 treaties ("E"- "L"), and McKee for four ("O"- "R").

The treaties differ somewhat in their wording, but they are essentially all the same. We reprint here in full the first two treaties made ("M" and "N"), one of McKee's treaties ("O"), one of Barbour's ("C") and one of Wozencraft's ("K") which was the latest of the eighteen. For the rest we reprint only Articles 3 or 4 which define the area which was to be "set apart and forever held for the sole use and occupancy of said tribes of Indians", the tribal

^{1/} The present reprint is taken from a copy in the author's possession of the documents and treaties originally "printed in confidence for the use of the Senate" in 1852 and ordered reprinted on January 19, 1905 the day after the injunction of secrecy was removed. No attempt has been made to correct the numerous inconsistencies and obvious misspellings in the official version of 1905. These are due in part, no doubt, to the difficulty of the GPO compositor to read the handwriting of Barbour, McKee and Wozencraft or the secretary of two of the Commissioners who, curiously enough, usually bore the same surname as the Commissioner for whom he was working. Nepotism, at least, in Gold Rush times in California was not an issue.

designations, native representatives and the American participants. The reader can, without much difficulty, learn the content of the Articles which are here omitted. These deletions are indicated by an ellipsis in the center of the page.

Some treaties (for example "A"- "D") were "signed" by Indians who, almost without exception, had Spanish given names. We may assume that the treaty was read to them in Spanish by an interpreter who was attached to the treaty-making party, and that the provisions in the treaty were understood by the signatories. On the other hand, a number of treaties were "signed" by Indians who did not have Spanish given names and who, for the most part, probably did not know either Spanish or English. In some of these instances, it seems highly unlikely that the so-called interpreters knew the several native tongues of the people who were being parlayed with. And while there may have been some kind of communication, there is great probability that the literal wording of the treaties often was not, and indeed could not be, made intelligible to the Indians present.^{2/}

^{2/} Gibbs (1853:116) who accompanied McKee reports of the Northern Pomo near Willits: "We remained in this camp two days. A considerable number of men were brought in, but all attempts to assemble their families served only to excite their suspicions. In fact, the object of the agent, in the process of double translation through which it passed, was never fairly brought before them. The speeches were first translated into Spanish by one, and then into the Indian by another; and this, not to speak of the very dim ideas of the last interpreter, was sufficient to prevent much enlightenment under any circumstances. But the truth was, that the gentlemen for whose benefit they were meant by no means comprehended any possible motive on our part but mischief. That figurative personage, the great father at Washington, they had never heard of. They had seen a few white men from time to time, and the encounter had impressed them with a strong desire to see no more, except with the advantage of manifest superiority on their own part. Their earnest wish was clearly to be left alone."

A little further north Gibbs (op. cit.:119) notes that "Quite a number of Indians were assembled and presents distributed, but no treaty attempted; for our Clear Lake interpreter, although able to comprehend them, could not explain freely in turn." Among the Wiyot of lower Eel River Gibbs (op. cit.:130) notes, "As it had become evident that nothing could be effected with the Indians present, for want of interpreters, it was concluded to break up camp the next day, and proceed on." It would be interesting to know whether the several treaties negotiated by McKee were fully understood by all of the individuals signing as native representatives of their tribes.

It will be noted that not a single Indian actually signed his name -- without exception each made his "mark". It is probable that there were among the people who were treated with, on the assumption that they were the legal representatives of their groups, not a single literate individual.

But the distance between theory and practice went even further. None of the Commissioners had any knowledge whatsoever of California Indians or their cultural practices, especially those regarding land ownership and use. As treaty makers they were under orders to make certain arrangements with California Indian tribes. As they moved with their trains through the state they made "Camps,"^{3/} sent out the word that the treaty-making party was anxious to talk with the local people, visited Indians in villages and invited them to attend a treaty-making session. Some Indians were suspicious and refused to attend, with the result that troops might discipline them.^{4/}

Every group met with is listed as representing a "tribe". We do not know whether the Commissioners were aware of the true nature of the named groups which they were dealing with. George Gibbs who accompanied Redick McKee seemed to be conscious of the error that was being made in assuming that any named group was a tribe (Gibbs 1853:110). We know today that most of the so-called tribes were nothing more than villages. We can also assume that men listed as "chiefs" were just as likely not to be chiefs, or at least tribelet heads who are called chiefs by anthropologists. Further, since land was owned in common, even chiefs had no authority to cede tribelet or village lands. Rarely, if ever, in United

^{3/} Each Camp where a treaty was made was named by the Commissioner in charge (or by the Commissioners acting as a board in the case of treaties "M" and "N"), unless, of course, the treaty was made at an already named place such as Bidwell's Ranch (treaty "G"), Temecula (treaty "K"), etc.

^{4/} The Daily Alta California (newspaper) for May 10, 1851 ran an article on the progress of the treaty making then going on based on interviews with two of the Commissioners (probably Barbour and Wozencraft). Referring to the treaty-making session with the groups signing treaties "A" and "N", the article states, "There are parts of 2 or 3 tribes which would not come in to treat. Some of these, it is understood, are fractions of the Chow-chil-lies. The Commissioners finding it impossible to treat with them, Major Savage with 3 companies moved against them, came up with them with only a river between, and had a skirmish, killing 2 or 3 of them".

Reluctance of some groups to enter into treaties is attested by George Gibbs (1853:113).

States history have so few persons without authority been assumed to have had so much, and given so much for so little in return to the federal government. The three Commissioners did not have the slightest idea of the actual extent of tribal lands of any group they met with. Their orders were to secure Indian land title to California, and they managed to do this to their satisfaction by making treaties with some Indians and then dividing all of California west of the Sierra-Cascade crest into eighteen unequal cession areas which, happily, quite covered the entire region. If the Commissioners had made 12 treaties, the ceded areas would have been larger; if they had made 30 treaties the areas would have been smaller.

Taken all together, one cannot imagine a more poorly conceived, more inaccurate, less informed, and less democratic process than the making of the 18 treaties in 1851-52 with the California Indians. It was a farce from beginning to end, though apparently the Commissioners, President Fillmore and the members of the United States Senate were quite unaware of that. The alternative is that all of these were simply going through motions in a matter which did not in the slightest degree really concern them. What better evidence of the latter possibility do we require than the fact that the Senate rejected on July 8, 1852 the very treaties it had itself authorized and appropriated funds for their negotiation on September 29, 1850.

The 18 California treaties are listed in the chronological order of their signing by Royce (1899). He provides a map (Royce, 1899: Pl. CXIV) showing the area supposedly ceded by each treaty and the lands which were to be reserved "for the sole use and occupancy forever".

For some earlier Indian treaties, without exception equally ludicrous and dishonest in their intent, see Heizer and Hester (1970), and for a general discussion of treaty-making with California Indians see Heizer ([1972]).

Robert F. Heizer

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Stanford

References

Heizer, R. F.

[1955] Analysis of "tribes" signing the 18 unratified 1851-52 California treaties. Preface by A. L. Kroeber. Prepared for use in Dockets 31/37, Indian Claims Commission. Ms. No. 443 Archaeological Research Facility, Department of Anthropology, University of California, Berkeley. (Includes map, scale 1:1,000,000, showing actual territory controlled by the identifiable "tribal" groups).

[1972] Treaties. Article to appear in Vol. VIII of Handbook of North American Indians. Smithsonian Institution.

Heizer, R. F. and G. O. Anderson

Ms. The Eighteen Unratified Treaties of 1851-52 With the California Indians. (Ms. in possession of R. F. Heizer).

Heizer, R. F. and T. R. Hester

1970 Names and Locations of Some Ethnographic Patwin and Maidu Villages. University of California Archaeological Research Facility, Contribution No. 9:79-118. Berkeley.

Ellison, W. H.

1922 The Federal Indian Policy in California, 1846-1860. Mississippi Valley Historical Review 9:37-67.

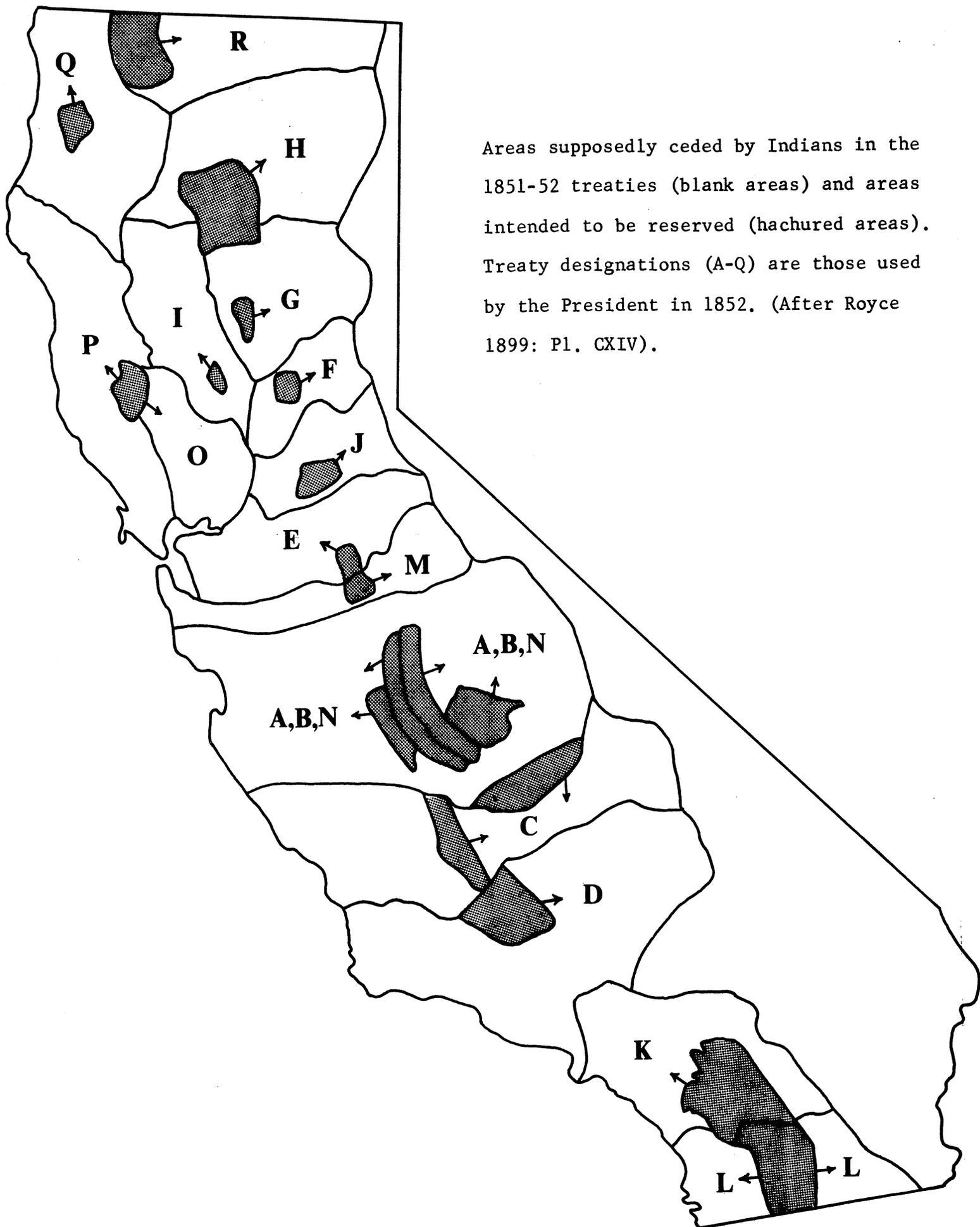
1925 Rejection of California Indian Treaties: a Study in Local Influence on National Policy. Grizzly Bear Vol. 36, No. 217 (May pp. 4-5); No. 218 (June pp. 4,5,7); No. 219 (July pp. 6-7).

Merriam Collection

[1926] Analysis of Indian "tribal" names appearing in the 18 unratified California treaties of 1850-52. C. Hart Merriam Collection, Archaeological Research Facility, Department of Anthropology, University of California, Berkeley. Filed under "Indian Welfare".

Royce, C. C.

1899 Indian Land Cessions in the United States. Bureau of American Ethnology, Annual Report No. 18, Part 2.



Areas supposedly ceded by Indians in the 1851-52 treaties (blank areas) and areas intended to be reserved (hachured areas). Treaty designations (A-Q) are those used by the President in 1852. (After Royce 1899: Pl. CXIV).

Map 1

For and in behalf of the Co-to-pla-ne-mis.

PA-KI-NO, his x mark. [SEAL.]

FE-RE-SETO, his x mark. [SEAL.]

For and in behalf of the Chap-pah-sims.

FE-LIPPE, his x mark. [SEAL.]

NI-CO-LAS, his x mark. [SEAL.]

For and in behalf of the Sage-wom-nes.

YO-MIL-LO, his x mark. [SEAL.]

Signed, sealed and delivered, after being fully explained, in presence of --

E. S. Lowell, Secretary.

A. Johnson, Agent.

F. Belcher,

John C. Dent,

S. D. Ent.

(F.)

TREATY MADE AND CONCLUDED AT CAMP UNION, NEAR YUBA RIVER, JULY 18, 1851, BETWEEN O. M. WOZENCRAFT, UNITED STATES INDIAN AGENT, AND THE CHIEFS, CAPTAINS, AND HEAD MEN OF THE DAS-PIA, YA-MA-DO, ETC., TRIBES OF INDIANS.

.

ART. 3. To promote the settlement and improvement of said tribes or bands, it is hereby stipulated and agreed that the following district of country in the State of California, shall be, and is hereby set apart

forever for the sole use and occupancy of the aforesaid tribes of Indians, to wit: commencing on Bear River, at the western line or boundary of Camp Far West; from thence up said stream twelve miles in a due line; from thence on a line due north to the Yuba river; thence down said stream twelve miles on a due line of the river; from thence south to the place of beginning, to have and to hold the said district of country for the sole use and occupancy of said Indian tribes forever. Provided, That there is reserved to the government of the United States the right of way over any portion of said territory, and the right to establish and maintain any military post or posts, public building, school houses, houses for agents, teachers, and such others as they may deem necessary for their use or the protection of the Indians. The said tribes or bands, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States, nor ever disturb the people of the United States in the free use and enjoyment thereof.

.

In testimony whereof, the parties have hereunto signed their names and affixed their seals this eighteenth day of July, anno Domini one thousand eight hundred and fifty-one.

O. M. WOZENCRAFT,

United States Indian Agent.

For and in behalf of the Das-pia.

WEE-MAR, his x mark.

[SEAL.]

For and in behalf of the Ya-ma-do.

OI-TA, his x mark. [SEAL.]

Yo-la-mir.

WAL-LE-PIE, his x mark. [SEAL.]

Wai-de-pa-can.

KA-MA-LA, his x mark. [SEAL.]

On-o-po-ma.

MAN-ARCK, his x mark. [SEAL.]

Mon-e-da.

WAL-LEM-HOOK, his x mark. [SEAL.]

Wan-nuck.

YU-ME-AN, his x mark. [SEAL.]

Nem-shaw.

WAS-HI-MA, his x mark. [SEAL.]

Bem-pi.

TI-CO-LA, his x mark. [SEAL.]

Sa-cum-na.

YO-LO, his x mark. [SEAL.]

Signed, sealed and delivered, after being fully explained, in presence of --

George Stoneman, Lieutenant first dragoons,

Commanding escort to Indian Commissioner.

John Campbell, Assistant Surgeon,

Escort to Indian Commissioner.

A. T. Stirling.

E. S. Lovell, Secretary, U. S. Indian Agency.

ADDENDA. -- It is understood that the above-named boundary, running north from Bear river, will pass between Rough and Ready and Penn Valley; and in the event that a line due north from said point on said river should fail to do so, it will deviate so far as to include said valley in the reservation, and exclude Rough and Ready.

(G.)

TREATY MADE AND CONCLUDED AT BIDWELL'S RANCH, ON CHICO CREEK, AUGUST 1, 1851, BETWEEN O. M. WOZENCRAFT, UNITED STATES INDIAN AGENT, AND THE CHIEFS, CAPTAINS AND HEAD MEN OF THE MI-CHOP-DA, ES-KUIN, ETC., TRIBES OF INDIANS.

.

ART. 3. To promote the settlement and improvement of said tribes or bands, it is hereby stipulated and agreed that the following district of country, in the State of California, shall be and is hereby set apart for the sole use and occupancy of the aforesaid tribes of Indians, to wit: commencing at a point on Feather river, two miles above the town of Hamilton, and extending thence northwesterly to the northeast corner of Neal's grant, thence northwesterly along the boundaries of Neal's, Hensley's and Bidwell's grant to the northeast corner of the last named grant, thence northeasterly six miles, thence southeasterly parallel with the line extending from the



The Campoodie of Nevada City

The Story of a Rancheria

Tanis C. Thorne

The Campoodie of Nevada City

The Story of a Rancheria

By

Tanis C. Thorne

About the author

A summertime resident of Nevada City, Tanis C. Thome (Ph.D. UCLA, 1987) is the Acting Director of the Interdisciplinary Native American Studies program at UC Irvine. She has authored many articles and books on California and Native American history.

Other Sansoucci Publications

The Indians of Nevada City in 1854 © 1997

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Charles Cully, Nisenan, photographed ca. 1890,

Introduction

While the tragic tale of the destruction of the Native Californians is generally known through the work of Robert Heizer and others, much less has been written about the lives of the California Indians who as individuals and groups adapted to life as a marginalized people in the years following the Gold Rush. The history of the long-lived Indian "campoodie" (or Indian village or encampment) of Nisenan (Maidu) people on the outskirts of Nevada City is one of these untold stories.

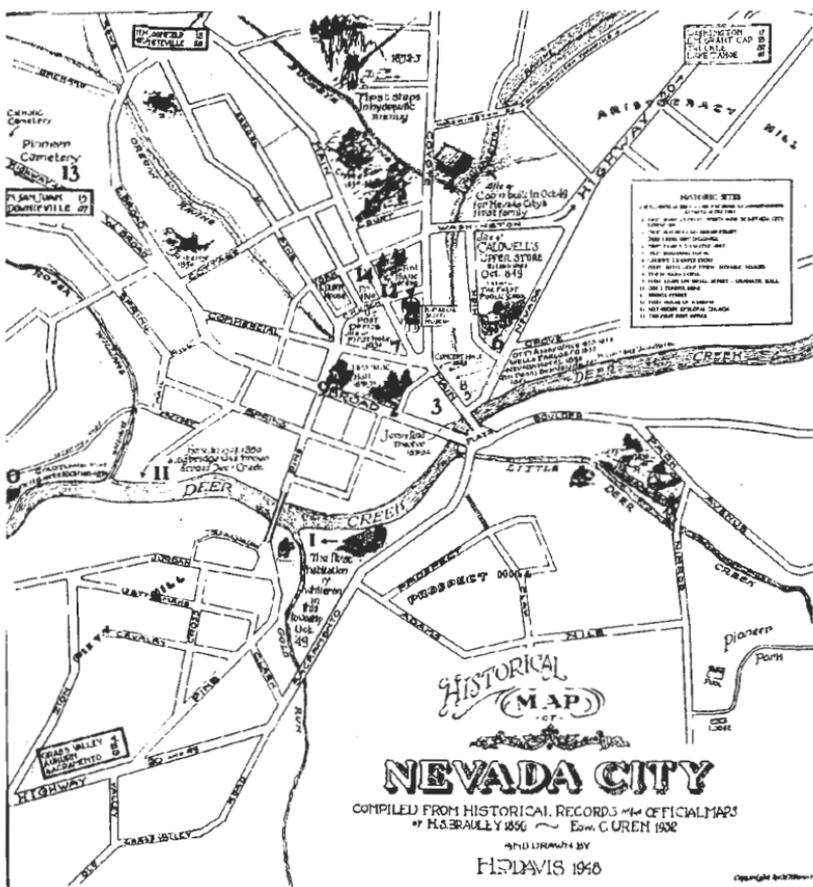
Nevada City and the Gold Rush

After the gold rush began in 1848, the city of Nevada in present day Nevada County became one of the busiest and richest centers of mining activity in the Sierras. Highway 49—once the well-trodden trail of the forty niners—bisects the community. With its Victorian homes and gas street lamps, Nevada City is the best-preserved Gold Rush town in California. Due to its exceptionally rich placer deposits, the city from its earliest beginnings was a magnet for miners and enjoyed urban amenities like theatres, gas lighting, restaurants, and newspapers. During the summer of 1850, for example, Nevada City experienced a boom: many of those tunneling into the earth to reach the pay dirt at the bedrock—a process called "coyoting"—were yielding \$10,000 to \$100,000 per coyote shaft. The number of stores and hotels tripled that summer, and the population grew from 1000 to 6000. This was the richest diggings in California, reported Forty-Niner Charles Churchill. Nevada County had a population of 20,000 by 1856.



Sinking a Shaft

The landscape underwent a rapid metamorphosis. Quite literally, the land was turned upside down as miners sought gold and other precious minerals. Trees were felled for housing and flumes, tunnels and coyote holes were burrowed in the earth, and ditches were dug to bring water from streams outside town to wash the gold-laden gravel. Not only was Nevada City particularly rich in placer gold; along with its sister city, Grass Valley, it enjoyed continuous prosperity because of the extensive gold-bearing quartz ledges in Nevada County. By the early 1850s, miners were al-



ready developing the technology to mine the quartz and also to expose the gold far below the surface in gravel beds of ancient river channels. Among the many mining innovations for which the town of Nevada is known, a nozzle called a monitor was developed for hydraulic mining. In this method, volumes of water under force wash away tons of earth to expose the gold at the bedrock. Nevada county was the largest producer of gold (\$440 million between 1848-1965), with an estimated \$50 - \$70 million in the Nevada City district alone.



Hydraulic Mining

Dispossession and Displacement of the Nisenan

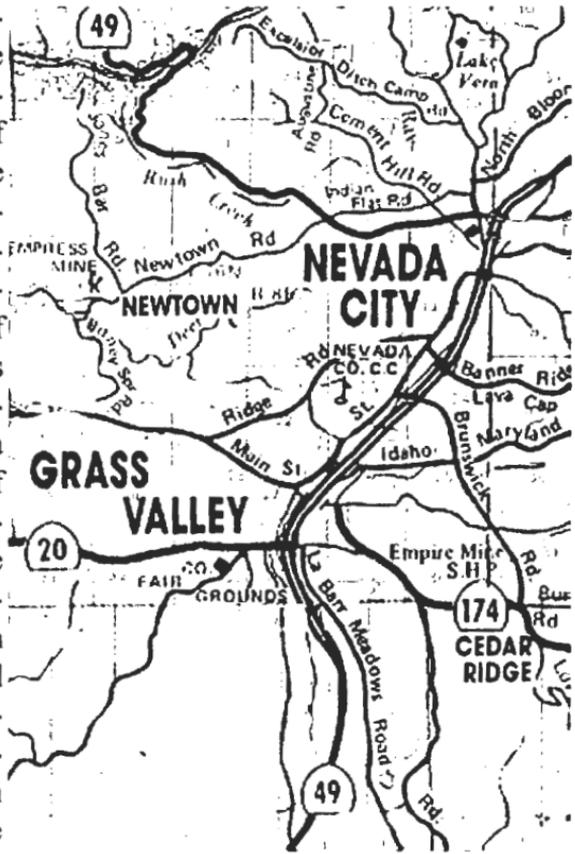
Due to the sudden invasion of thousands of miners and the radical changes they were making in the land, native village sites were displaced; native ways of livelihood were revolutionized almost overnight. A Nisenan village called Oustomah was located within what is now the city limits on the banks of Deer Creek.

Betsy's Memory of Gold Rush Nevada City

Betsy, a Nisenan, was born at Oustomah. She recalled that the Indians were fearful as the white population rapidly increased after 1848. There was a dispute over the white overkill of a deer, which caused some Nisenan to move to the outskirts of town. As "gold excitement advanced," she said, "we were moved again and again, each time in haste...." Promises were made to give material aid for land surrendered but these promises were not kept, recalled Betsy.

Many Oustomahs relocated northwest of Nevada City. Some of the white residents of Nevada City referred to these Indians outside the city limits (as Betsy did herself) as "Oustomahs." Whites more persistently referred to this vicinity as "Indian Flat" due to a

long history of Indian occupation from the 1850s to the 1960s. Into the 1960s, Indian students attended the Indian Flat school. Indian homes were clustered on a flat of land along what today is Indian Flat Road bisecting Cement Hill Road. "Cement Hill" received its name from its imperviousness to the hydraulic jets of water which upturned acres of earth at its base, exposing monolithic granite boulders. The Nisenan whose memories have been preserved referred to this area as "Granite" or "Wokodot" or simply "campoodie." Anthropologists have documented that a Nisenan village called Wokodot predating the Gold Rush was located west of Oustomah. The 1852 census enumerates 3226 Indians as living in Nevada County; 115 of these were listed as living at "Wolomack" perhaps a corruption of "Wokodot." Persons from the village of Hi'et had relocated to the Indian Flat/Cement Hill area by 1898 according to anthropologist William Henry Holmes of the Chicago Field Museum.



Contemporary map showing Indian Flat and Cement Hill Roads northwest of Nevada City

Contact, Conflict, and Coexistence



Wayside Scene in Gold Rush California

The local Nisenan Indians displayed a willingness to accommodate to the white presence and to coexist peacefully. Their non-threatening dispositions and behavior rapidly dispelled the apprehensions of incoming miners, women, and merchants. However, reports of Indian misbehavior—whether far distant or simply rumors—ignited latent fears and enflamed hostilities towards Indians. Though the local Nisenan were generally perceived as friendly, several minor incidents of conflict are preserved in the historical record. When Indians resisted the invasion of their territory, the theft of resources, or other crimes against them such as sexual misconduct by miners, whites swiftly responded with violence in the form of lynch law or other reprisals. In early 1851, for example, a young white man was killed by Indians near Spenceville; a posse formed to capture the culprits. Five hundred miners gathered to demand justice. Shortly, an Indian named Collo confessed to the crime. As a deterrent, one thousand Indians were assembled to witness Collo's execution.

Indian Attack



In late 1851, Indians from Camptonville engaged in a fight with the Indians at Indian Flat. Fighting with bows and arrows, one or two men on each side were killed. The fighting attracted a crowd of white on-lookers. After the battle, a miner

named Poor was killed when an arrow was fired into his cabin. A horse was also killed. Determined to deliver swift justice for these offenses, a posse of miners went to Indian Flat. With the assistance of a French Creole trapper, the Indians were able to communicate that their arrows differed from the type that killed Poor. A small party of miners led by a Texas Ranger set off to chastise the 'Yuba' Indians from Camptonville, killing four of five at the "Battle of Bloody Run." Upon its return to Indian Flat, the posse burned the Indians' wood and dirt council place. An old-timer named Thomas Marker who participated in this action was interviewed about the event in 1909. He recalled: "After this was done there was no more trouble and things assumed a peaceful aspect once more."

Accommodation and Adaptation

Such heavy-handed justice served to deter the Nisenan from giving offense and motivated them to conform to white expectations. In November 1857 a local newspaper reported that the local "digger" Indians were "becoming civilized." Whereas a few years earlier, the local Indians had burned a perfectly good cabin to the ground to put one of their grass and mud huts in its place, the editorial said, there were now two or three shingled houses at the campoodie, and one had a door and a window!

Like other Indians in the gold country, the Nisenan quickly adopted the market economy to survive. They panned for gold in order to purchase flour and beef. Miners sometimes permitted them to scrape the ends of sluice boxes for the gold flakes that might remain there and to wash the tailings. Ranchers and farmers employed them as laborers; some Indians worked only for table scraps to pay off debts. One of the ways Indians adapted to the white invasion, as a federal investigator W. P. Crenshaw observed in 1854, was to sub-divide their camps “so as to



Grass Valley Nisenan, ca. 1860s

be more convenient to the towns and ranches of the whites.” Also, Indian leaders relied upon white men for advice and counsel. Insofar as possible, traditional food sources such as deer meat, fish, acorns, grasshoppers, and mushrooms were gathered, but the streams were so muddied by hydraulic mining by 1854 that they yielded few fish. The wild game was depleted, and the acorn crop unaccountably failed in the early 1850s to compound the Indians’ miseries. Crenshaw estimated the Nisenan population of the foothills decreased fifty percent from 1848 to 1854. The causes were: the radical change in diet and mode of living, alcohol consumption, and disease.

Indian starvation was only partially mitigated by the generosity of sympathetic townspeople and the local ranchers and farmers. Betsy recalled bitterly that the townspeople were indifferent to the Indians’ sufferings and rapid depopulation. Betsy recalled, “[W]hen appeal was made for help (in caring for sick and indigent Indians), it was met with ridicule.”

California's Indian Removal Policy

The land was far too valuable in mineral wealth to contemplate any native claims to land or resources as valid during the 1850s. To alleviate the Indian's distress and simultaneously clear Indians from the mining areas, Crenshaw promoted the policy which his superior, California Superintendent Thomas Henley (as well as California Senators William Gwin and John Wilson) were advocating: Indian Removal. Despite food shortages, however, Indian leaders expressed reluctance to accept Crenshaw's urging for voluntary relocation to military reservations elsewhere. Indians did not want to leave their homelands and understandably feared these unfamiliar places might have fewer resources for survival (such as wage labor and gold) than what their homelands possessed. Because the California politicians, the Indian Office, and a vocal part of the Nevada County citizens favored removal, the policy was executed over the protests of the Indians and their few white advocates.



*Distribution of rations to Indians
at Round Valley, 1857*

Thomas Henley reported in November 1855, that approximately 200 Indians had been rounded up from Nevada, Grass Valley, Rough and Ready, all along Deer Creek, and from the Bear to the Yuba and quietly located at Nome Lackie Reservation twenty miles west of Tehema.

This initial relocation effort was a disorganized operation, however, and many Nisenan Indians of Nevada County successfully evaded the forced removal. In 1864, a massive sweep was made in which most of the Nisenan were taken to Sacramento and

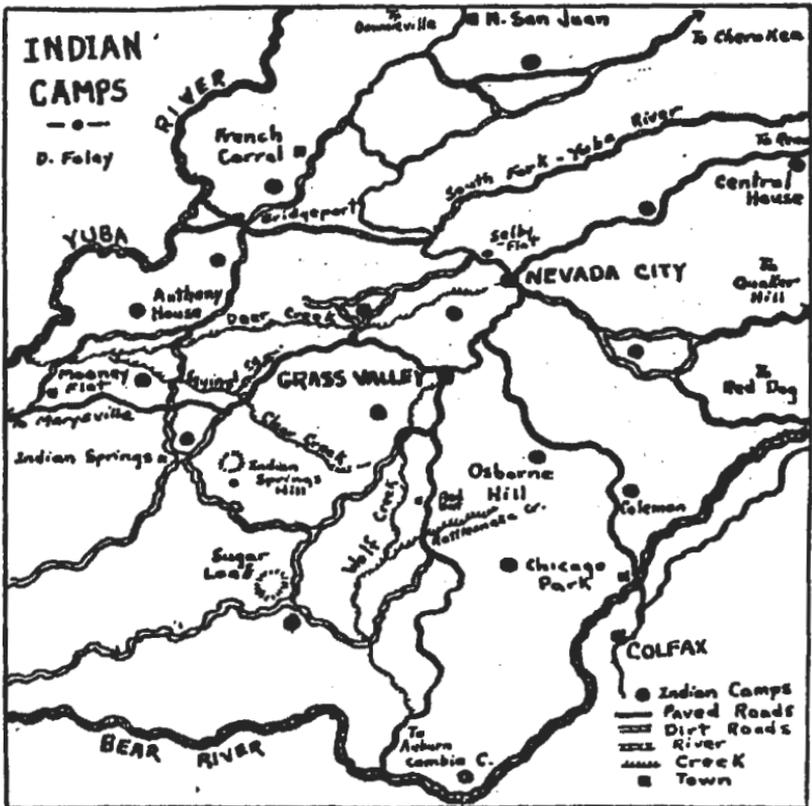
then to the Round Valley Reservation in Mendicino County. Among those taken from the Nevada City area was a man named Pete who was shot in the face by a soldier during the forced march. He made his way back to Nevada City. Many others who were fortunate to survive ultimately escaped and returned to their home territories, as there was insufficient food and protection at Round Valley.

Surviving Hard Times, 1860s-1870s

To describe the existence of the Nisenan in the post-Gold Rush era as precarious and marginalized seems to understate the hardships of their existence. Congress displayed an unwillingness to adequately subsidize a reservation program for California Indians. In the 1860s, 1870s and 1880s, the majority of California Indians eked out a living as best they could without the formal guardianship of the federal government and without land or resources to call their own. They faced considerable racial prejudice and discrimination under California state law. In 1867, there were only an estimated 500 Natives in all of Nevada County, a number which continued to decline due to whiskey and contagious diseases, according to a contemporary observer. The remnant population purchased (or received in trade for labor or as charity) flour, sugar, potatoes, and other articles of food from their white neighbors..

By the late 1800s, an estimated population of two to three hundred Indians lived in western Nevada County. As a map of Indian encampments reconstructed by Nevada City historian Doris Foley in 1953 based on old settler reminiscences reveals, there were approximately twenty of these (*see map on next page*). The residential pattern appears to reveal a preference for locations close to mining areas, farms, or ranches, or along travel routes. Indians coalesced around charismatic leaders, who served as labor brokers and intermediaries, thus assuring protection and a form of

livelihood for a band. One Nisenan leader encouraged the collection of pine nuts and then attempted to market the produce in San Francisco. Another long-time Nevada City campoodie resident's experiences are illustrative of Native resourcefulness under difficult conditions. 'Old Cisco' was kidnapped in his youth and sold to a sea captain. After many years, he found his way home to Nisenan territory, but no one remembered him. He became a trusted employee of a company that transported bullion during the heyday of hydraulic mining.



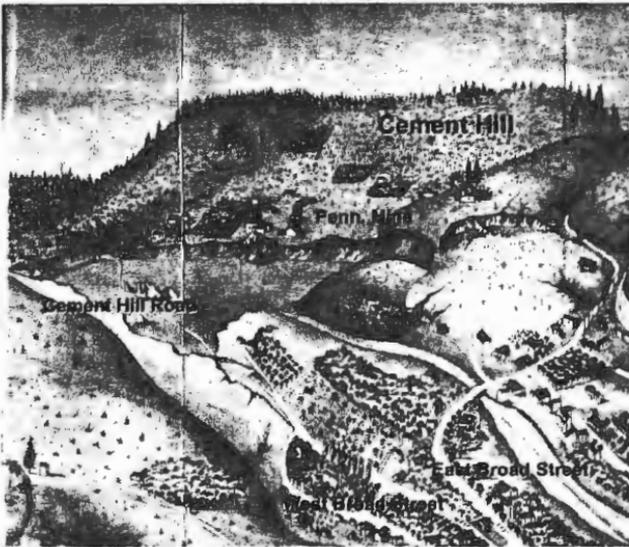
Reconstruction of Western Nevada County Indian Camps

Federal Recognition of the Rancheria

The Cully Homestead Grant

Of these many Indian camps, only the Nisenan of Nevada City received federal recognition. The story of how this happened is curious, for the location of the rancheria was a heavily-mined area, honeycombed with tunnels for lode and placer mining and laced with legal claims for surface and subsurface rights. In 1891, an Indian named Charles Cully made a permanent claim to land below Cement Hill under the terms of the Dawes Act of 1887, which allowed homeless, non-reservation Indians to apply for homestead allotments.

During the 1860s, historical occupation of the “Indian Flat” area along Indian Flat road was made impossible by hydraulic mining as graphically revealed by the 1871 **Birdseye view lithograph of Nevada City** (below): A roughly triangular area southwest of Sugar Loaf Mountain from Coyote Hill east through Wet Hill shows radical erosion.

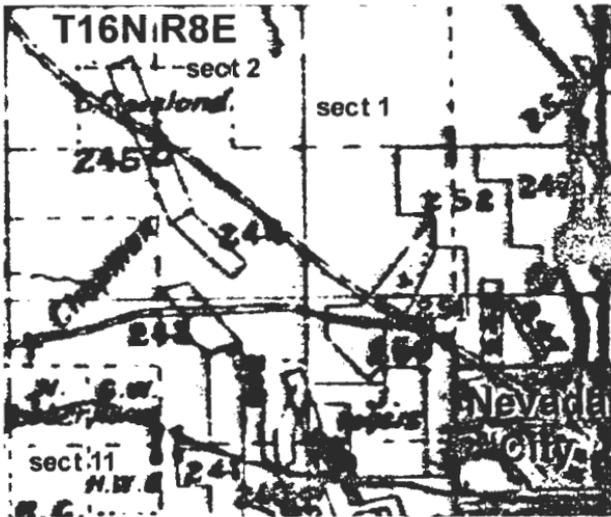


*1871
View
of
area
northwest
of
Nevada
City*

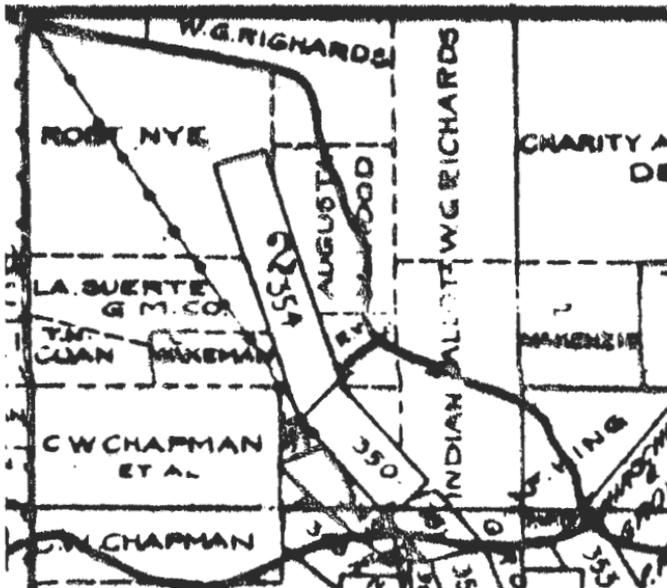
Massive amounts of earth were washed away, exposing granite boulders and quartz veins. Drift mining was another method by which miners reached gold-rich gravel of ancient river channels in this area. The simpler methods of pick and shovel of the 1850s had given way to heavily capitalized, corporate ventures for quartz mining, drift and hydraulic mining. For example, the Mount Auburn mine covering 40 acres (#245 on the 1880 Mineral Claims map on top of opposite page) had been developed to a depth of 600 feet by an inclined shaft. Incorporated in 1878, there were 30,000 shares issued and a capitalization of \$3,000,000. In 1880, there were two quartz mines, Mount Auburn and "Lord and Co." (#246) working the two to four foot wide Merrifield-Spanish vein containing gold, pyrite and granodiorite. To the southeast there were the Pennsylvania (#248) and the Eddy (#247) later called the Oustomah. A 1928 Nevada map of Section 2, T16 R8E; (*bottom of opposite page*) shows the Cully allotment bordered by a quartz mine (#350; #244 on the 1880 map) on the southwest corner and the McKenzie property on the east. Cully's 75½ acres abutted quartz mines and sat athwart the tunnels of the Golden Poppy Consolidated and the Knickerbockers Quartz Mines.

Nevada City Campoodie

One can only conjecture why and when Charles Cully and other Nisenan chose this site as a **permanent and legal** home. What is known, however, is that hydraulic mining slackened in the 1880s due in part to the 1884 Sawyer decision banning this activity. Claims in the vicinity were being abandoned or were inactive. Cully's claim had numerous assets: it was close to town and close to jobs in mining and lumbering; it had a good spring, flat acreage, a southern exposure, and a nearby water ditch. If the mineral deposits at Cement Hill were no longer profitable to be worked commercially, the Nisenan may have seen these mines as a resource from which to eke out a small but dependable income from



1880 Nevada County Mineral Claims map



1928 Nevada County Recorder's Office Map of Section 2, T16N R8E

the tailings, gravel and quartz deposits. Charley Cully's wife, Josie, is said to have had a necklace of gold nuggets.

According to the oral history of the campoodie's last official "chief," Louis Kelly (recorded in the 1970s), the local Nisenan, then living in scattered camps, were eager to solidify a permanent land base and pooled resources to pay for the land survey. (The campoodie was originally called "Pudnuse's camp," because Pudnuse was chief.) Permanent land ownership promised tangible benefits: freedom from eviction, freedom from charges of trespass, and protection from harassment. The neighboring whites assisted and encouraged Cully in making the homestead application, including signing the necessary affidavits that the land *was non-mineral in nature*. Once the report of the surveyor was registered at the County courthouse and other requirements were met over a five-year period, on April 6, 1891 Cully gave Hamilton McCormick power of attorney to file papers in the Sacramento Land office. Meanwhile, many Indians at the other encampments moved to the Cement Hill campoodie. Charley Cully was chief of this village from approximately the 1890s to 1911.



Charles Cully

The Contested Claim

Only non-mineral land was open to homestead entry, and Cully's claim was immediately challenged by those with mining claims impinging on the allotment. Charles Cully formally relin-

quished all right to the allotment in an affidavit, September 7, 1891, saying he applied “under a misapprehension, in that he was not aware” the land was more valuable for mineral than for agricultural purposes. The clouded title of the allotment created confusion, animosity, and legal conflicts for decades to come. Louis Kelly, for example, stated in his memoir that the allotment deed was duly received. Those with mining interests, on the other hand, claimed the allotment had been revoked. However, the fact was that Department of the Interior *would not and could not* revoke the deed, as all proper procedures had been followed with requisite supporting documents in the application. The Sacramento Land Office in its investigation found no legal conflicts with *active* mineral claims. The Assistant Attorney General for the Department of the Interior therefore rendered an opinion November 28, 1891, that Cully *could not relinquish* his application for the allotment “without the consent of the Secretary of the Interior.”

Alerted to the threat to their property rights, the mines’ shareholders redoubled their efforts to invalidate Cully’s claim. One shareholder charged that the Secretary of the Interior was violating a law of Congress in giving “the Indian a patent to our mining land” and called for a hearing by the Sacramento land office as the best strategy to set aside the Indian claim. A hearing date was set for 1895, but Cully did not respond. A registered letter informing him of these legal proceedings remained unclaimed. The General Land Office in Sacramento subsequently decided on April 7, 1900 to cancel the homestead entry. However, the invalidation of the the allotment by the Land Office was in direct violation of the earlier judgment that *only the Secretary of the Interior* had the authority to relinquish the Indian’s homestead entry.

The Indian’s Nemesis: W.A. McKenzie

The Indians’ most aggressive adversary in the legal battle over title to the contested acreage was W. A. McKenzie. McKenzie

operated on the assumption that the legal victory for mining interests was an established fact. With a crew of four, McKenzie began drifting and tunneling on the Eureka-Golden Poppy mine underneath the Indian settlement in the 1890s. McKenzie claimed he found gold in paying quantities, but this was contested by W.S. Waterhouse of San Jose. Waterhouse swore circa 1907 that his father (whose investment was in the Knickerbocker mine) had run a tunnel under the Cully allotment and searched for gravel and ledges for twenty-five years from 1877 to 1907 and found practically nothing, though he invested \$100,000. McKenzie remained adamant that there was a fortune to be made in mining on this property. He acquired the barren and abandoned mining land bordering Cully's allotment on the east. McKenzie consolidated the Golden Poppy Group of Quartz and Gravel Claims—formerly the Knickerbocker Placer claims and the Phoenix Claim—and the newly reorganized venture owned by McKenzie was renamed “McKenzie Mines Limited.”

An Era of Prosperity, 1890-1920

Despite McKenzie's periodic mining activities and legal challenges to Indian land rights, the Nisenan maintained their residency on the site, and even enjoyed a time of relative stability, prosperity, and peace at the turn of the century. Louis Kelly, grandson of long-time resident of the campoodie “Old Betsy” Wes[t]field—was born at the campoodie in 1886. He recalled the Nisenan were engaged in an active social life, visiting and feasting (Big Times) and observing intervillage mortuary practices (Big Cries). In addition to the campoodie below Cement Hill, there were at least two other Indian encampments within a five mile radius, one at Indian Flat (along Indian Flat Road west towards Newtown) and one at the site of the old Nevada City airport. There were social relations among the Indians in the Nevada City area and Indian bands in a larger radius as well. Louis Kelly recalled that there

were Big Times and Big Cries at Anthony House (now Lake Wildwood), at Chico, Auburn, Chicago Park, Colfax, Marysville, and Dobbins Ranch. At these social and ceremonial events, Indians met marriage partners. Marriage ties linked Indians from villages in different counties and different linguistic divisions. Charles Cully, for example, married Josie Peters, a woman of elite status from a Colfax band. Indian men worked as lumbermen and miners, but Indian identities and ways were sustained in other areas of their lives: in residential segregation for many, in life passage ceremonies, in social activities, and in native language use.

Visiting anthropologists, William Henry Holmes and C. Hart Merriam, confirm Louis Kelly's memories of Nevada City Indians enjoying security and coexisting peacefully with their white neighbors at the turn of the century. Holmes describes the village as being on table-land a mile west of the city, perched on brink of a mine. Though



*Nisenan woman collecting seeds
with a seed beater (1898)*

the village was recently burned out and the Indian families lived in improvised shelters, they were not ill favored or debased, he reported. The men worked in mines and did odd jobs; women gathered and prepared acorns and continued to make baskets. Merriam, who visited four years later in 1902, took a picture (opposite page) of a robust-looking woman surrounded by baskets.

"A Recollection about the Campoodie, ca 1880"

A rare personal recollection of a white man who as a child lived on Wet Hill survives: On a summer afternoon in 1887 or 1888 when he was ten or eleven, he and another boy were en route to a big baseball game of the season between the Indians and the whites when they decided to visit the Indian camp. There they discovered a beautiful, eleven-inch trout, in the spring in the lower part of the camp. This was the Indian's pet -- always there to greet them when they drew their water. Mischievously, the boys caught the trout and then went on to the ball game. The Indians became very excited when they discovered their pet had disappeared. The frightened boys sneaked away, threw away the fish, and avoided the Indian camp for a long time afterwards.



*Woman outside a conicle bark
slab dwelling (1902)*

From Federal Neglect to Guardianship of California Natives

Increased attention by anthropologists, humanitarian concern of Christian missionary organizations, and the political embarrassment following the “rediscovery” of the unratified treaties of 1851-52, combined to create a shift in federal policy. The federal government belatedly acknowledged its responsibility to provide services and legal protection for bands of impoverished and landless California Indians. (Only 5200 of 17,800 of the state’s Native populations were living on reservations in 1905). C. E. Kelsey of the Northern California Indian Rights Association began canvassing the northern California counties inquiring into the conditions of Indians in 1903. He wrote alarmed messages to the Christian watchdog organization, the Board of Indian Commissioners, about the indigent and vulnerable Indians he had discovered in the northern part of the state. The Board in turn influenced Congress to appropriate money for further investigations and subsequently purchase of small homesteads for the landless Indians of California. In 1911-1912, various small groups were loosely organized under the Reno Agency. The jurisdiction of the agency was defined as “all Indians of California and Nevada not under any other jurisdiction.” It included reservations and colonies, villages, camps and scattered bands of Indians. (On the map on opposite page only the “Digger” agency is identified in Nisenan territory.)

C.E. Kelsey’s Interventions to Preserve Indian Land Holdings

The timely intervention of the activist Kelsey checked McKenzie’s efforts to dispossess the Nisenan of Nevada City. (In Kelsey’s census of 1905-1907, sixteen persons are listed as residents of the “Indian Flat” settlement, including “big Charley Cully” and his wife, Johnson and wife, Raymond Joe and his grandmother,

Louis Dick, wife and child, Oscar Williams and wife, Selsa Cisco ("Old Cisco"), Pete and wife, Susie, and Maggie Damon. (Perhaps the fire of 1898 had dispersed a larger Native enclave.)

Kelsey's investigation into the contested title in 1905 and his recommendation of 1906 led to the reinstatement of the allotment by the Secretary of the Interior on June 29, 1907. McKenzie Mines Limited's mineral application for patent to the Golden Poppy Consolidated Quartz mine for 37.69 acres in Sections 1, 2 and 12 in T16N, R8E in August was denied by the Registrar of the Land Office. Expensive litigation and an ugly political fight loomed on the horizon as McKenzie adamantly refused to admit defeat. His lawyer, Fred Searls of Nevada City, filed protests with the Land Office and the U.S. District Attorney. McKenzie marshaled substantial political influence from state and national politicians who had built their careers in Nevada City as lawyers specializing in mining law, and who, moreover, had financial interests in McKenzie Mines. California Congressmen and Nevada City residents W.F. Englebright and John R. Tyrell were two of McKenzie's supporters.

An untiring advocate for the Indians, Kelsey was convinced that McKenzie's claim regarding the land's mineral value was spurious: Kelsey believed McKenzie was only claiming the land had mineral value because he had been so advised by a lawyer in order to evict the Indians. Charles Cully believed McKenzie wanted the land for pasture. Kelsey wrote to the Reno agent:

At first McKenzie tried to crowd the Indians off, but they would not go. Then he tried to buy them out and they would not sell, as they could not legally. Then he tried to make an agricultural filing, I believe, but found he could not contest an Indian allotment.... McKenzie occasionally would browbeat Cully, or try to, and tell him what he was going to do to Cully when he succeeded in getting the land away from Cully. A

San Francisco lady overheard one of these conversations and was so horrified and distressed that she wrote an account of it to the Indian Office.

Legal Battle Over Land's Mineral Value



The pivotal legal issue on which the clouded title hinged was the determination whether the land was of mineral or non-mineral character—a point which proved to be inconclusive despite several inquiries, hearings, and special reports by different federal agencies over the years. McKenzie claimed in an deposition of April 1908 that the ten placer locations and two quartz locations in this contested area were “splendid” producers of gold and part of valuable “channels” of high yield mines from which millions have been taken. He

described the extensive tunnel system: The Golden Poppy Tunnel Number One is four feet wide and over two thousand feet long with a number of branch tunnels. There were also two other tunnels, the thousand foot long Knickerbocker and the Golden Poppy Tunnel #2, which was over a thousand feet long with many branch tunnels.

When McKenzie tried to work his tunnels, he faced the steadfast opposition of Cully and the Indians, who engaged in sabotage. In McKenzie’s words:

When we was [sic] held up by the Indian allotment, the Indians that is Cully, and the few that was with him filled that air shaft up with big rocks and logs and dirt, that will all have to be cleaned out. They then went to the mouth of the tunnel, burnt big fires on Granite boulders. Then when red hot threw water on them that cracked them up. They put as much as they could in and around the mouth of the tunnel, and that costs lots of money....

The case of McKenzie vs. Cully remained unresolved from 1907 to 1911. C.E. Kelsey, appointed Special Agent for the California Indians, steadfastly defended the Nevada City Indian's claim and remained suspicious of McKenzie's motives and his claims. McKenzie meanwhile was able to persuade another Office of Indian Affairs employee, Calvin Asbury, that the evidence overwhelmingly supported *his* case. On February 3, 1909, Asbury wrote an extensive report to his superiors judging that the rights of the McKenzie's mining company were probably paramount to those of the Indians as the land was *clearly acknowledged mineral land years before the filing.*

Crisis and Resolution, 1911-1913

Two events were the catalysts for a renewal of the conflict in 1911-1912. First of all, Charles Cully died February 26, 1911. McKenzie argued the homestead patent was now clearly defunct; the homestead was empty and all the Indians had "died off." Secondly, on November 1912, gold and silver discoveries precipitated application of a mineral patent on a mine overlapping the corner of the Cully homestead. The North Star Mines Company applied for the Spanish Fraction embraced in Survey 5122—one half acre of the gold-bearing Merrifield quartz vein on the southwestern part of the Cully allotment. Nearby, the "Oustomah Mine" was operated at intervals in 1914, employed twenty men in 1915,

and had much modern equipment including a 10-stamp quartz mill, compressors, pumps, a hoist, and a blacksmith shop, but was idle after 1916. This renewed evidence of mineral wealth in and around Cully's allotment stimulated the government to expedite a final resolution regarding title. The recommendation was made in 1912 that some disinterested government official make a thorough examination regarding the mineral value of the land and thereafter adjust the claims of the parties.

The responsibility fell to Calvin Asbury of the newly-created Reno Agency. C.E. Kelsey again was sent in to investigate. Instead of finding the land vacant as McKenzie claimed, he found a number of Indians living on the property. (These persons were many of the same individuals Kelsey had enumerated in his census of 1905-1907.) Years earlier in 1908, in order to end the costly litigation, the compromise had been proposed that the Indians *surface* rights could be validated, while McKenzie would acquire title to *sub-surface* rights in order to work the drift gravel claim 100 feet or more beneath the surface. Now, Kelsey was open to such a compromise. He wrote to Asbury January 21, 1913, suggesting that if McKenzie was being honest about only wanting the mineral rights, he should be offered a lease. Paying the Indians 20% of the gross output of any mineral resources was standard. McKenzie would benefit by not having to pay taxes. If McKenzie would not agree to 20%, said Kelsey, the government would lease at 10%.

The 1913 Hearing

The Indian office decided to go ahead with a hearing on April 16, 1913 at the Indian camp to determine the heirs of Charles Cully. The various concerned parties were notified. McKenzie lived in San Francisco and decided not to attend, believing the hearings would discuss only the issue of who inherited the Cully allotment. This was a serious tactical mistake.



Born Nevada City, Belle's uncle was Tallman H. Rolf, editor of the Nevada Democrat, the second newspaper published in Nevada City; her father I.J.Rolf was also an early day journalist. C. B. Glasscock wrote after meeting the vivacious Mrs. Douglas in the 1920s or early 1930s: her "laugh would stir a movie sound-track into a convulsion of mirth....She makes me feel that Nevada City was a laughing town."

Belle Douglas -- one of the town's native daughters and one of the Indian's most vocal advocates -- attended the hearing and testified passionately that the allotment should be secured to the local Nisenans for all time. Other local Nevada City residents testified in a similar vein. Josie Cully agreed to relinquish all right as widow to free patent title on the condition that the land be set aside and reserved for the common use of the Indians residing there. Betsy of the "Digger Tribe," 80 years old, testified to her long acquaintance with Charles Cully and his lack of heirs. Others attested to the Indians long occupation of the site. For example, a white neighbor of forty years, Mrs. M.K.

Williamson, testified the village had been there for all of that time and much longer to her knowledge. These sympathetic white friends of the Nevada City Indians had adopted a paternalistic attitude towards their few remaining Native American neighbors, feeding and clothing them, and in this instance, taking it upon themselves to protect their legal rights.

Special Agent Asbury's visit to Nevada City included a meeting with the members of the Chamber of Commerce and the mayor of Nevada City, who urged him to make a *permanent* reserve for the Indians on the Cully homestead grant. The mayor was not inclined to compromise and grant McKenzie sub-surface rights: since Indians had made the site their home for many decades. It was their land, said the mayor, "*even if it was all gold.*" A couple days after the hearing, Belle Douglas forwarded a petition to the Department of the Interior. Endorsed by the Chamber of Commerce, the petition was signed by all but two of the City's prominent citizens: McKenzie's lawyer Fred Searls and an ex-Congressman, who contended the Cully allotment *did* have mineral value. As a non-resident, McKenzie received little sympathy from Nevada City's Native Sons and Daughters. Asbury was strongly impressed by the show of political support by the townspeople. In his letter to the Commissioner of Indian Affairs, Asbury noted the interest by the "leading citizens" and made the recommendation that the land be set aside as a permanent home for the Indians. As old Josie and the uncle were aged and there were no clear heirs, the setting aside of the property for common use would allow all the other long-time residents the continued use of the small orchard, garden, pasture for their few horses, and fuel for their needs.

Creation of the Executive Order Reservation, 1913

With Asbury's letter and the petition from the "leading citizens" in hand, the Secretary of the Interior wrote a letter to the

President May 3, 1913 recommending the cancellation of the Cully allotment and the creation of *an executive order reservation*. On May 6, 1913, the 75 1/2 acres was reserved for the dozen Indians of Nevada City's Indian village. Such small executive order reservations for colonies of California Indians were called "rancherias."

Remarkably, this decree coming from no less a person than the President of the United States, did not end the Nevada City Indian's insecurities over title. In the first place, California "rancheria" reservations created by executive order (unlike reservations created by treaties) did not have much security over resources or boundaries. For example, it was a confusing legal point



Betsy Westfield and Josie Cully, ca.1920

whether executive order reservation Indians owned sub-surface rights. If the land had mineral claims prior to the presidential decree, then the Indian office was bound to acknowledge these prior claims. In California

as elsewhere, the Bureau of Indian Affairs was vulnerable to political pressure to transfer Indian resources, such as, mineral rights, water rights, or rights of way. Secondly, the Bureau of Indian Affairs' Reno office, which supervised the many, small, dispersed rancherias and trust homesteads in the Sierra foothills, lacked the personnel and the budget for dealing with the day to day needs and grievances of the bands of Indians in its far-flung jurisdiction. Agents would make only periodic visits and reports.

In the interim, the Indian colonies could experience theft, trespass, and legal intimidation with no immediate access to anyone whose job it was to defend their interests, a role which the federal government in theory had assumed. Expenditure per capita for California Indians was only about half that expended by the Bureau elsewhere.

Confident in his political power and legal position regarding the land's mineral value, McKenzie appeared unruffled by the Presidential decree. He wrote to Asbury graciously offering to concede ten acres of the seventy-five to the Indians, which would "give them their camp and all that little flat that they could work clear down to the water ditch." He decried the Nevada City Native Daughters and Sons, who got up the petition to Secretary of the Interior as meddlers and liars. McKenzie concludes his letter to Asbury with a threat to write his Congressman.

Asbury did not relish being at the center of this interminable dispute over a technical question of mineral value, which he believed should be handled by the Land Office. He sought a compromise which would resolve the legal questions over mining rights. Asbury recommended in his 1916 report that the North Star be granted the Spanish Fraction to bring an end to the controversy; two years later, Asbury's successor, L.A. Dorrington, also favored the cession of .509 acres from the Indian reservation, being of only "nominal" value to the Indians anyway.

Belle Douglas As Intermediary and Guardian

Belle Douglas served as an intermediary between the Reno Agency and the Nisenan Indians of the Nevada City rancheria after 1913. As the Indian's unofficial guardian, Douglas was unwilling to cede the seemingly small portion in the North Star claim without a fight. The Native Sons and Daughters hired a lawyer, Mr. Arbogast, to advise them on the legal rights of the Indians. Douglas concluded that a cession of even a small amount would

set a dangerous precedent. A compromise was not reached until late 1918: the North Star agreed to settle the dispute by deeding back the *surface* rights to the half acre to the Indians.

Grateful for her efforts in their behalf, the Indians came to depend upon Douglas as their patron, advocate, and spokesperson. Douglas struggled to understand the peculiar regulations regarding timber and mineral resources of reservations created by executive order. She was also called upon to adjudicate internal disputes. Flattered but overwhelmed by the responsibility, Douglas wrote to the Indian agency asking about the propriety of appointing a local board of trustees to settle local Indian disputes: "I would be very glad to act for the Indians who already think me their Chief, but a committee of three would be better." Without a local Bureau presence to arbitrate internal disputes among Indians or guard against intrusion into resources, what individual or agency was empowered to deal with these difficulties, large and small, as they arose? The Reno Agency saw Douglas's protectiveness towards the Indians as "very commendable."

Reservation Revival, 1919

In late 1919, the Indian colony outside Nevada City experienced a small revival under the leadership of 31-year old Louis Kelly. Kelly made many improvements. He enclosed the property in good wire fence and was in the process of erecting a neat four-room cottage for his wife Naomi (daughter of George Wallace of Colfax) and his boy Lester. Lester attended public school at nearby Indian Flat with other Indian children in the vicinity. Louis Kelly's possessions included a good kitchen stove and an organ, demonstrating his "progressiveness." Several other nice cabins were erected for the Indians by the Native Daughters of Nevada City to replace those lost in the fire in the late 1890s. The residents included Old Josie and Old Betsy, Oscar Williams, and the Yamia family (father Dick, son Robert, wife Nellie, and Dick's mother).

The agent reported that Louis did not seem well informed about the status of the land, believing Old Josie held the title. The agent speculated that the above average circumstances of these mountain Indians was "the interest which was taken in them by the people of Nevada City." Seventy Indians were under Indian Flat jurisdiction in 1923, but most lived off the rancheria.

The Nemesis Returns, 1920; More BIA Investigations

In the early 1920s, McKenzie forcefully renewed his dormant claims using his standard arguments and methods: a combination of bluster, sophistry, name-dropping, and barely cloaked bribery. McKenzie claimed all of the Indians who formerly had an interest had passed "to the Great Beyond"; in fact all of their heirs were dead as well, he said. (Betsy died in 1923.) Cully had only been "permitted" to live on the land at McKenzie's discretion; moreover, this mineral location claims antedated the executive order, he argued. The Bureau of Indian Affairs conducted *yet again another investigation*. Ransom C. Boczkenciz visited the McKenzie Mine August 11, 1923, and McKenzie personally gave him a tour and described how unjust it was to be mistreated after working the better part of his life in the mine and investing \$50,000-\$75,000 in it. He then gave Boczkenciz a tour of the Indian camp, consisting of only four small shacks. Two or three Indians were then living there who, McKenzie said, did not belong. Their habitations covered 1 1/2 acres at most. There was only one permanent family and three more who made no use of the land except as a place to camp, cut fire wood, and graze their horses for a short time each year. McKenzie thought two acres would be quite ample "for me to set aside for them." He told Boczkenciz, he "would allow" the Indians and their visiting Indian friends to live there forever and would set up a five acre camp elsewhere to be turned over to the Indian agency "if I had my patent tomorrow." McKenzie's confidence in a favorable resolution was seconded

by his partner and lawyer, Senator John R. Tyrell. The Special investigator Boczkienciz made a favorable report to his superior, who in turn advised the Commissioner of Indian Affairs Charles Burke that the land was chiefly of mineral value. As long as Indians' surface rights were respected, the Bureau saw no obstacle to granting McKenzie the subsurface rights.

When McKenzie was advised of this decision November 22, 1923, he immediately responded that this compromise was not acceptable to him, for the reason that to carry on his mining operations, air shafts had to be sent to the surface:

It is impossible to work our Mine in that deep tunnel with out air, your idea is wrong, no man can work without air to breathe, and if you feel like that to deprive us of the surface, why we could not be able to live down there. We have got to have the Mineral right as it was originally located, and the patent applied for. There is (3000) feet of tunnel there and that cost us the around sum of over (\$75000) to run it. It will cost about (\$5000) more to open it. We have an air shaft over the tunnel 85 feet[;] that cost us \$5 foot to sink it. The North Star Company... did not need the surface of the [1/2 acre] tract of theirs for they have all the rest of the land around them for air shafts and everything else they want, but I have not.

McKenzie concluded his letter expressing "outrage" that he be deprived of surface rights and that he would file his complaint with his Senators and Congressmen. If the Indian camp could be relocated elsewhere, on his honor, it would never be taken from them, he pledged.

The Woodcutting Controversy

During the mid-1920s and early 1930s, the threatened resource was wood, and again Belle Douglas was propelled into action as the Indian's advocate. Louis Kelly provided the Land Office with a detailed inventory of the trees that had been illegally cut on the hilly portion of the Indian reservation in spite of the fact

that Kelly posted signs prohibiting such activity. Someone cut his wire fence. The thievery was reported to the Sheriff. Among those stealing wood was an off-reservation Indian named Frank Johnson who was taking wood for his personal use. Kelly locked the gate to the rancheria and refused to let Johnson have wood. Appeal made to an attorney did not end the trespass and pilfering. Finally, Kelly wrote to the Land Office in desperation.

I thought the govrmnt [sic] gave this to the Indian what being here. So I tried to set the law for cutting wood here and Hauling it away. But it was fruitless. So I have to call on you.

In October, 1930, McKenzie was charged with taking wood from the the Indian reserve. McKenzie appropriated the six cords of cordwood (cut in stove-length pieces) which Al Williams—an Indian man living in town and employed in a mine—had cut for his uncle (who was blind) and his aunt; the Yamias. The incident spurred Belle Douglas to protest to the Bureau. “McKenzie has pestered these poor individuals for years and has menaced their rights and their land” as well as everyone else near his mine, Douglas wrote. The Sacramento Superintendent of Indian Affairs ordered McKenzie to return the wood or face criminal charges. McKenzie claimed the District Attorney said he could lawfully confiscate the cordwood. McKenzie appealed to Congressman Englebright, and Englebright lobbied the Bureau on McKenzie’s behalf. An investigation by the Bureau ensued. Infuriated by the stalemate, Douglas wrote a blistering letter to the Superintendent, chiding the Bureau for its neglect and for its inefficiency: **“[I]nvestigating is the best thing they do and that doesn’t seem to feed starving people!”** Douglas called McKenzie’s claims to prior use before the Indian settlement as fabrications and his legal claims a “bluff” run on the public officials. Taking matters into their own hands, Belle Douglas and the Native

Daughters formed a committee to make sure McKenzie replaced the stolen wood.

For a second time, the defense of Indian rights and resources became a hot political issue in Nevada City. The Indians "have had quite a hectic time in holding their possessions and the Government and the Indians' friends at Nevada City have had to come to their rescue more than once," Douglas announced. The Native Daughters demanded prosecution of the dilatorious Mr. McKenzie. They blamed the District Attorney facing reelection for inaction in the matter. After a desperate political fight, the District Attorney was re-elected by a plurality of only twenty-seven votes.

Though making light of the tempest in a teapot in Nevada City in a letter of 1931 to his superior, the Sacramento Superintendent of Indian Affairs correctly foresaw that this "case of very old standing" was not about to go away any time soon. The obdurate McKenzie is "still going to continue his fight for the title of this land." McKenzie refused to return the appropriated wood until 1938. McKenzie's appeals for surface rights were ultimately unsuccessful. In the late 1930s, the Rascob mining interests obtained an option from McKenzie and applied to the Bureau for permission to begin work cleaning out the old mining tunnel located at the mouth of the canyon on the southern part of the rancheria. This was acceptable to the Bureau as long as Indians were not disturbed.

The Nisenan's Insecurity over Title and Resources

At one level of analysis, the Bureau of Indian Affairs' negligence towards its Nisenan wards seems criminal. Under funding and equivocation hampered long-term economic and community development on the Nevada City rancheria after the federal government assumed jurisdiction in 1913. On another level, an under-

standing of the daunting complexities of administering to California's many scattered, executive order reservations, make the Bureau's cautious and defensive posture understandable, if not justifiable. For instance, McKenzie repeatedly claimed the Indian population was dwindling; of the few remaining residents, entitlement to use to the rancheria and its resources was questionable as they were outsiders. In the 1930s, Mr. and Mrs. Lawrence, Indians from Butte County, were living on the Nevada City rancheria and were cutting wood, having obtained written Bureau approval. Louis Kelly complained they "were not of this tribe any way." Once the Bureau was informed the Lawrences were not originally from Nevada City, their timber rights were retracted, but the Lawrences were not evicted. The inability to resolve entitlement questions in order to defend reservation boundaries and resources from outsiders, fed into another unsolvable problem: the vacuum of authority to enforce discipline over troublesome people on the reservation. Belle Douglas substantiated McKenzie's argument when she stated, "Our camp has several occupants now, but only the widow Josie remained of the original group."

Fluid Residential Patterns

The fluid residential patterns on the Nevada City rancheria had a number of causes. Uncertainty over title to the campoodie, friction among individuals and families, economic opportunities of the 1920s and economic distress during the Depression, were all destabilizing forces affecting residency. A further explanation for movement to and from the campoodie by different persons was the complex kinship and social relations fully known and understood only by the Indians themselves. These connections resulted from multiple marriages and the necessity of finding marriage alliances with partners in other Indian communities. Louis Kelly's half brother was Pete Johnson (listed as a full-blood Yuba Indian from Dobbins on the 1933 census). Louis Kelly married Lydia

Martin of Anthony House. Lydia's half brothers were Gus and Irving Childs, who resided in the Nevada City area but not on the rancheria. After Lydia died in 1907, Louis remarried into the Wallace family of Colfax; some of this family subsequently relocated to Nevada City. The Yamias were living in Reno before their relocation to the Nevada City campoodie and were outsiders as McKenzie claimed; however, Mrs. Yamia's maiden name may have been Kelly, and her nephew was a Johnson, suggesting kin ties to the Nisenan. Louis Kelly's son Lester (born 1913) married a Washo woman whom he met in the Colfax area. Lester's daughter, Rose Kelly Enos, was born on the Nevada City campoodie in 1933-34 and was raised by her grandparents.

The constant harassment by McKenzie, and the ensuing uncertainty over land title and insecurity over resources, clearly played a part in the departure of at least one of the rancheria's residents—progressive leader, Louis Kelly. By his own account, Kelly sold all of his possessions “his plough and everything” after hearing a rumor that the reservation was being sold. (This rumor was perhaps the result of the 1923 decision to award McKenzie sub-surface rights.) Pete Johnson and many of the other Indians thought he was crazy to leave; they kept telling Kelly that the Indians would get a lot of money from the government when the land was sold if they maintained residency. Kelly told them he did not believe they would get a penny. He thought Pete was fooling himself when he ran up bills at the store in anticipation of a financial settlement. According to Louis, none of the Indians were reimbursed a penny from the sale of the reservation. Louis Kelly's granddaughter, Rose Enos, gives another explanation for Louis's faltering commitment to the reservation: the problem of alcohol abuse on the rancheria. In 1933, Louis signed an agreement to operate the Nevada City town dump at American Hill. He moved his family, including his granddaughter Rose, off the rancheria at that time, but was reported on Bureau censuses as being a resident in the late 1930s.

Chronic Problems Unresolved

Theft of wood, boundary violations, disorderly conduct, and trespass by intruders were chronic problems on the rancheria in the 1920s and 1930s. Belle Douglas, the Indian's unofficial guardian, alerted the Bureau to one boundary violation in early 1933. One of the landowners whose property bordered the Indian rancheria had lost 35 feet on one side of his property, and compensated for this loss by moving his property line 35 feet into the Indian's land on the other side. Douglas protested as the Indian fence had been on the old line for many years. There was considerable timber in the disputed area. Mining underground would not be detrimental to the interests of the Indians, but cutting the timber is "something else again," wrote Douglas. Douglas called for an investigation, but the Bureau replied that it lacked the funds to hire a surveyor. Frustrated, Douglass did not know if a survey had ever been done and recorded for the Indian's property.

Drunk and disorderly behavior also was a source of frustration. In the 1930s, a white neighbor, Mrs. Williamson, observed that a white man was selling alcohol and his promiscuous Indian companion, a woman named Martha, was engaging in what appeared to be prostitution. The Lawrences also frequently drank and raised the "devil at every opportunity," attested W.G. Robson, Nevada City Chief of Police. Robson protested: How was it that Kelly, a "square and peaceful Indian" known to be "sober, honest and industrious" was allowed to be abused by Lawrence, who claimed *he* had the power to evict Louis Kelly!



Louis Kelly with drum

Douglas's correspondence in the mid-1930s highlights the four

major problem areas inadequately addressed by the Bureau as she and the concerned citizens of Nevada City perceived them: 1) insufficient resources and unmet needs of the aged, infirm, or indigent; 2) lack of clear jurisdictional authority for dealing with internal disputes and crime on the rancheria; 3) questions about boundaries -- ethnic (entitlement to residency rights on the rancheria and to its resources) and geographic; and 4) the unresolved questions regarding ownership of mineral rights on executive order reservations. Some of these chronic areas of concern and confusion, which consumed the time and energy of the California Indian Agency personnel, were addressed by bureaucratic reorganization and reform legislation during the New Deal. Significantly for California Indian people, these reforms of the 1930s anticipated the passage of Public Law 280 in 1953 (which transferred criminal and civil jurisdiction for California Indians from the federal government to the state of California) and the Rancheria Act (Public Law 85-671) of 1958. The Rancheria Act authorized the transfer of title in California from federal trust to private ownership by Indian residents. Forty-one rancherias were transferred to private ownership subsequently, Nevada City's campoodie among them.

Epilogue: Termination of the Nevada City Rancheria

Suggestive hints of this movement towards termination of federal guardianship can be seen in the correspondence of Superintendent Roy Nash in response to Belle Douglas's complaints of Bureau negligence and inefficiency and for proposals for corrections during the late 1930s. Having to attend to the trivial and unremitting details of a handful of Indians in Nevada City was evidently a source of annoyance for Nash.

In contrast to two decades earlier when the Bureau was deferential and grateful to Douglas and her Nevada City activists for guarding Nevada City Indian's interests, Nash believed Douglas to be a meddling amateur, whose complaints were largely figments of her own imagination. In a barely-cloaked patronizing tone, Nash (representative of the new school of professional bureaucrats of the New Deal) explained that Douglas and the other members of the Nevada City Indian rights committee had a "misconception of the land situation." As for the problems of the indigent Indians, the Social Security Act of 1935 addressed their needs. Two new cabins were built for elderly women in the mid-1930s from federal funds. Nash responded to Douglas's suggestion that a kindly neighbor, Mrs. Williamson, be deputized to keep order on the campoodie by scoffing that this proposal was preposterous, provincial, and ethnocentric. "We are trying to get away from the concept that every white man or woman who considers herself her brother's keeper, has a right to invade the homes and the most intimate affairs of their Indian neighbors." "Moral indignation has little relation to legal right sometimes," he wrote. "[A]s a general proposition if we started running off all the erring sisters, California Indian rancherias soon would be depopulated."

In a restrained reply, Douglas patiently explained that local action by concerned citizens addressed the campoodie resident's needs. It may not be

needs for welfare support and criminal protection. It may not be Nash's idea of "enforcing the law," but he "could not get there in time."

While Nash was nominally willing to grant Louis Kelly authority to enforce rules on the campoodie grounds, arbitrate internal disputes, and eject trouble-making intruders, he did not specify what authority Kelly could legally exercise. Nor did Nash take action to have federal agents eject undesirable or unauthorized persons, though he stated all non-county Indians in principle could be evicted from the campoodie. Thus the problem of the vacuum of law and order was not addressed, but only sidestepped, by the Bureau. (The Indian Reorganization Act and its plan of self-government was not suited to small rancheria populations.). Mrs. Williamson continued to unofficially act as the Indian's guardian into the early 1940s.

In 1958, when the Rancheria Act terminated the Nevada City rancheria, two interrelated families, the Johnsons (Peter, Margaret, and children May, Jean, Harriet) and the Kellys (Louis, Naomi Wallace, and grandchildren Billy, Warren, and Rosie) were all that remained of the historical campoodie population. Others had died or relocated elsewhere. Only two people lived on the rancheria in 1959: Peter and Margaret Wallace Johnson.

The Johnsons requested that the Nevada City rancheria be sold. Fulfilling this request required resolution of the decades-old mineral rights controversy. When the Departmental Circulars were issued in 1884, 1887, and 1903 opening lands for Indian homesteads, doubt existed as to whether these lands precluded mining locations from being made on them. It wasn't until 1938-1939 that the ruling was made that Indian occupancy was to be protected whether or not the lands had mineral value. The Associate Solicitor in the Division of Public lands advised the solicitor in the Division of Indian Affairs that it was their opinion that all mining claims on the Nevada City rancheria were null and void. Though the land was offered for sale in September, 1959, disposal of the property awaited the decisions regarding the outstand-

ing claims of Golden Poppy #1-2, Golden Poppy Cross Ledge #1, Golden Poppy Cross Ledge Lodes, the North Star, the Knickerbocker, Golden Poppy and Golden Poppy Extension placers. Finally, on September 28, 1962 and May 8, 1963 these claims were finally ruled null and void.

Ultimately \$20,500 was obtained for the property: Mr. Johnson received half and the other half was distributed amongst Mrs. Johnson's heirs after being probated by the Examiner of Inheritance. The Kelly family received no share of the proceeds of the sale of the rancheria. The land was sold to Jack R. Wood around June 12, 1963. The last cabin at the campoodie burned to the ground in late 1964.



Photo of Nevada City Rancheria Structures, ca 1950

This story reveals the precarious position of California Indians. In Nevada City, local political support secured the Nisenan land title and federal recognition. Other bands were not so fortunate. Today, in the year 2000, over 200 California Indian bands are seeking federal recognition. The struggle for land and sovereignty continues.

Appendix I: Evidence of Racism, Degradation, and Violent

Hutching's Illustrated California Magazine I:7 (Feb 1857), p. 338 states that the dregs of what are left of the California Indians are inaccessible to any improvement, are but the dregs of what are left of them...Dressed in the loathsome cast off garments of chance, fed upon acorns, roots, and grass hoppers, they eke out a life of squalor, wretchedness and misery, and as if to aid in the extirmination of every relic of their race, burn the last remains of their untimely dead Nevada City Daily Transcript, Feb. 6, 1881: "There are a trio of Indians in the jail, and we propose to make an example of them." Polly Hamburg, a Chicago Park Nisenan, refused to ride the railroad when the engineer was on duty that raped Indian women, Bob Paine, "A History Lesson on the Indians of Nevady City," The Village (Penn Valley), Vol. 7, No. 20, Nevada City Library, Searls Library, Nevada County History File, "Indians."

Appendix II: Genealogy of Louis Kelly

Louis Kelly, (whose mother was Lilly Westfield, daughter of Betsy and Pete) may have been a direct descendant on his Father, Daniel Kelly's side, of John Keaala (corrupted to Kelly), one of John Sutter's Hawaiian workers who married a Maidu woman and whose family was relocated at Round Valley,..Searls, HC-4, p. 795 and "Lalook," p. 28.

Appendix III: Searls Family

Fred Searls (1854-1929), lawyer for McKenzie and other shareholders, was the son of Niles Searles (1825-1907), District Judge and Chief Justice of the California Supreme Court. The Nevada County Historical Society located in the Searls law office in Nevada City is named for this prominent founding family. The Searls law books and papers constitute the core of the county historical society's collection.

Appendix IV: Residents of the Nevada City Rancheria

Rancheria residents in the 1920s and 1930s included: Josie, Charlie Cully's widow (aka Josie Peters, born at Iowa Hill in 1854 and died in June 16, 1940 at the campoodie); Frank Johnson (whom Louis Kelly considered an outsider), wife Hazel and son John, Robert and Ellen Lawrence Yamia (originally from Reno reputedly), Polly Hamburg (who earlier lived at Chicago Park but who moved to become a companion to Josie after Betsy Westfield's death), Pete Johnson (from Dobbins, born 1881) and wife Margaret (Louis Kelly's wife, Naomi's sister). and Anita Prout, a woman originally from the Colfax Indian community, (born Burnt Flat) and relative of Josie. Louis Kelly, the camp's leader, temporarily relocated to Colfax to live with his wife, Naomi Wallace's relatives, during the late 1920s. Indians originating in Indian communities from Colfax, Chicago Park, Auburn, and as far distant as Plumas County and Washo counties periodically resided at the Nevada City rancheria from the 1910s to the 1950s. The Bureau monitored this fluctuating population by making census reports, but equivocated about who was entitled to residency and resource use and ownership. According to the census reports, five families were residing on the Nevada City rancheria in 1936; eighteen in mid-1937, and twelve in the late 1940s.

According to the 1928 California Indian Census (finalized 1933), the local Indians included: Louis Kelly born 7-7-87 in Nevada City (1/2 blood), wife born in Placer County 5-27-87 (3/4), son Lester born 7-7-1909, (5/8); Lee Wallace born 8-27-90 (3/4 a Maidu of Colfax); wife Martha or Margaret Johnson Wallace born 8-13-00 (3/4). Lee and sibling Gug (George?) born 5-25-05 (3/4) were children of George (1/2) and Lucy Wallace (full); Peter William Johnson born 7-20-81 (full, Yuba County from Dobbins); Johnnie Lawrence born 1886 and wife Ellen born 1895, originally living in Plumas County; Clayton and Myrtle Gould, both born ca. 1914, M. C. Murray born 1863 and Viola Murray, formerly of Auburn Rancheria; Frank Morgan born 1893; Robert Yamia [or Yemie or Yamie] born 1893 and wife Elsie Yamia born 1910. Doris Foley, Nevada County historian, says eight or ten lived on the rancheria in 1936. [Interview with Susan Book, 1975, Indian Scrapbook, Searls Library]

In a 1937 BIA report, the rancheria is described as 74.75 acres of hillside land three miles northwest of Nevada City. Forty acres are burnt-over pine and the rest is covered by dense brush. 14.75 acres are below a P.G. and E ditch that bisects the reserve, but the land below was not cleared for garden plots. Above the ditch lived six families; two were in two, new, one-room frame

houses, the other four homes were “decrepit and exceedingly ramshackle.” There were no stock animals or gardens, timber sales or lease returns; the only assets were firewood and accessible water from the ditch or from an all year spring nearby. The residents all spoke English well. None was willing to relocate without a trade for good farming land. Income for the one widow and adult spinster niece totalled \$91.50 for 1936. Neither widow had yet received their pensions and got by with the help of neighbors. Family #3 were two mixed blood young ladies living with a young man with a steady job at the mine, who spent much of their time in San Francisco and earning \$1530. The other three families were typical of other Indian families in the region, poorly educated, “living by W.P.A relief, acorn gathering, and panning gold for extra cash needs.” The total income for the last three families was \$900. They required much material assistance: stock, children’s clothing, cash, and agricultural assistance. They don’t seek relief or help, nor do they complain. The author implies they are bewildered: “life is too complicated for their reticent natures.” There were eighteen people on the rancheria: nine were full-bloods, three 3/4, two 5/8, and four 1/2. Eight were under fourteen years of age; only three were of adults of child-bearing age; there were seven men over 50 and four women over 45. Such a demographic profile suggests that the able-bodied adults were living a more transient lifestyle, or were living close to jobs in towns off the reservation, while the less economic self-sufficient, less mobile, elderly and younger people occupied the rancheria. Sydney J. Thomas, Soil Conservation Service Report, 1937, Nevada City Rancheria, Nevada County, May 1937 (3 pp.); Nash from EHH, August 21, 1939; Williamson to Nash June 8, 1941, San Bruno, RG 75..

Sources Consulted

The basis for much of this study is the correspondence in the National Archives Records Administration (NARA) Record Group 75, Bureau of Indian Affairs records for the Sacramento Agency, Box 38, files 308 and 311, San Bruno Federal Archives Center. The other major source is the Searles Historical Library: pioneer recollections, photographs, newspaper clippings, correspondence, maps, and other invaluable documents. Particularly useful for this study are: HC-A (The Golden Fifties: Tallman Rolfe's correspondence with brother H.C. Rolfe in the 1850s); DR 14-G42 and DR 7 C-8; HC 1-4 and 16 (the Indian volumes), in which items can be found, such as Catherine Webb's Journal, quoted in the Nevada City Independent 1-17-1979, Charles B. Kelly, "The Pet of the Indians," "Thomas Marker Fought Indians" Nevada Union, 1926). Also helpful invaluable are the articles on Indian published in the Nevada County Historical Society Bulletin, such as Belle Douglas's, "The Last of the Oustomahs," vol. 13, No. 4 (March 1960), Doris Foley's, "Indian Camps of Nevada County," Vol. 7, No. 2. May, 1953, and Herbert Nile's "The Indians... As I Remember Them."

Among the other primary documents consulted and quoted in this booklet are: Edwin Bean's History and Directory of Nevada County, (1867): a letter from W. P. Crenshaw to F.J. Henley, Superintendent of Indian Affairs, Dec. 16, 1854, NA RG-75, M-234, Letters Rec'd by the Office of Indian Affairs, 1824-1881, R-64 [published as "Indians of Nevada City," ed. Tanis C. Thorne (Nevada City, CA: Sanssouci Publications, 1993)]; Abstract of Census Indian of Nevada County, C-A115, Census, 1852, Bancroft Library, University of California Berkeley, CA 94720; the Merriam Papers, Ethnographic Materials on Oustomahs, Microfilm Reel 19 Series E, U20a-o/E38-U/20n/E44; Nevada County Records Office Maps and Nevada County Courthouse, Superior Court Records, Civil and Criminal actions, (On microfilm), Book 6 #2756; "Typescript of Revised Role, 1933" Census Roll of the Indians of California Authorized under the Act of May 18, 1928 (RG 75, Sacramento Area Office), recently microfilmed (Dec. 1996) Microfilm roll Federal Records Center, Laguna Niguel; the Board of Indian Commissioners. Report Annual Report #57 (1925-26), , Microfilm Reel 2 (Reports 22-63), 1890-1932;" C.E. Kelsey, Census of Non-Reservation California Indians, 1905-1906 (Archaeological Research Facility, Dept. of Anthropology, Berkeley, 1971); and the US House Committee on Interior and Insular Affairs, 1953), Map #53 Nev. City, Indian Population in

1951. Gold rush primary accounts consulted include: Fortunes are for the Few: Letters of a 49er by Charles William Churchill (San Diego Historical Society, 1977), The Diaries of Peter Decker: Overland to California in 1849; and Life in the Mines, 1850, edited by Helen S. Giffen (Talisman Press, Geortown, California 1966), J.D. Borthwick, The Gold Hunters (Gryphon Books, Ann Arbor, Michigan, 1971)

Hank Meals and I interviewed Rose Kelly Enos at Clipper Gap on September 2, 1999. Ruth Ann Gardner's "Life History of Lalook: Louis Kelly," (MA Thesis in Anthropology at California State University, Sacramento) May 10, 1977, [copy in the Searls Library]. Along with Betsy Westfield's reminiscences, these are the best for Indian memories.

The most useful of the secondary sources consulted are: Sherburne Cook Conflict between the California Indian and White Civilization (University of California Press, 1976); the many works of Robert Heizer, e.g., Destruction of California Indians (Lincoln: University of Nebraska Press, 1974), Albert Hurtado's Indian Survival on the California Frontier (New Haven: Yale University Press, 1988); Robert M. Peterson, Case Study of a Northern California Indian Tribe: Cultural Change to 1860 (San Francisco: R&L Research, 1977), and Norman E. Wilson and Arlean H. Towne's "Nisenan" in the Handbook of the North American Indians: California Vol. 8, (1978), ed. Robert Heizer. (see esp. flawed map p. 388 which omits Deer Creek); William Henry Holmes, Anthropological Studies in California, Report of National Museum, 1900, and Ralph Downs, Two Worlds of the Washo (Orlando, Florida: Holt, Rinehart, and Winston, 1966)

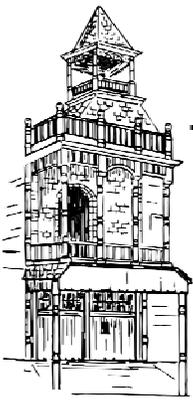
H.P. Davis's Gold Rush Days in Nevada City (Nevada City Berliner and McGinnis, 1948) and Juanita Browne's Nuggets of Nevada County History, (Nevada County Historical Society, 1983), is important for background on gold rush Nevada City. For mining history, California Division of Mines and Geology, Bulletin 193 and the Mines and Mineral Resources of Nevada County, Dec. 1918 issue of California State Mining Bureau publication (Sacramento: California State Printing Office, 1919) were very useful

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THE NEVADA COUNTY
**Historical
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Celebrating and Preserving
the History of
Nevada County, California

PO Box 1300, Nevada City, CA 95959
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www.NevadaCountyHistory.org

December 13, 2010

Mr. Don Ryberg
Chairperson of Tsi Akim &
Taylorsville Rancheria

Re: Historical Society Tsi Akim Endorsement

Dear Mr. Ryberg,

In June of 2010 a committee composed of members of Nevada County Historical Society (hereinafter referred to as NCHS) was convened to review the merits of the NCHS's 2000 endorsement of the Tsi-Akim. The matter was of considerable gravity, in view of the fact that the NCHS's endorsement was the basis for similar statements of support from other private organizations and government agencies. Most notably was the weighty 2001 resolution by the Nevada County's Board of Supervisors to support the Tsi Akim's bid for federal recognition. Should the Tsi Akim achieve this goal, the impact in Nevada County would be significant. Another impetus for reexamining the historic and ethnographic record is the Nevada City Rancheria Tribe's claim to represent the descendants of the local Indian population.

After three months of study of multiple primary and secondary sources, including the testimony made to the committee by you and others, as well as the circumstances surrounding NCHS's endorsement in 2000, a report prepared by the committee was presented to the NCHS Board of Directors on December 2, 2010. Based on these findings and recommendations, the NCHS voted to rescind the 2000 Tsi Akim endorsement. A copy of the report is attached.

In view of our recent action to revoke our endorsement, please immediately remove us from your list of endorsers on the Tsi Akim website and from all other tribal literature provided to the public, published or otherwise.

We remain, as always, eager to maintain a cordial working relationship between the Society and the Native people who reside in Nevada County. We invite your contributions to the Society and our museums. Please keep us informed about the membership, activities, and goals of the Tsi Akim as you move forward so your story can be accurately told as it relates to Nevada County history.

Respectfully submitted,

Daniel R. Ketcham
President – Board of Directors
(530) 477-8056

Nevada County ~ at the heart of California's golden history



Firehouse No. 1 Museum
214 Main Street
Nevada City, CA 95959
(530) 265-5468

**Nevada County
Narrow Gauge Railroad Museum**
#5 Kidder Court
Nevada City, CA 95959
(530) 470-0902

North Star Mining Museum
Mill Street at Allison Ranch Rd.
Grass Valley, CA 95945
(530) 273-4255

Searls Historical Library
214 Church Street
Nevada City, CA 95959
(530) 265-5910

Final Published Report as of December 9, 2010

Nevada County Historical Society

Committee to Investigate
The Society's 2000 Endorsement of the Tsi-Akim Maidu

November 4, 2010

Committee Report
November 4, 2010

Background

At a meeting on November 2, 2000, the Board of Directors of the Nevada County Historical Society (NCHS) approved a resolution written by Don Ryberg of the Tsi-Akim.¹

In June 2010, NCHS Board member Wallace Hagaman offered a motion (in the form of a draft letter) to recognize the Nisenan Tribe of the Nevada City Rancheria as the "only indigenous tribe of Nevada County". (See Appendix 1)

The Board appointed this committee to investigate the issue of conflicting claims.

1. The Ryberg Letter and NCHS Board of Directors

A letter dated October 30, 2000 from Don Ryberg to the NCHS Board emphasized the troubled and sometimes violent history of the indigenous peoples of this area including their forced removals during the 1850s. The letter also stressed efforts by the Tsi-Akim to reclaim their culture. The NCHS readily acknowledged this painful history in their endorsement, and gave its support to the tribe's efforts at cultural recovery. (See Appendix 2)

2. The Nevada County Board of Supervisors

On January 9, 2001, the Nevada County Board of Supervisors passed resolution 01-16 that, among other items, "formally supports and endorses the efforts of the Tsi-Akim Tribe to pursue Federal recognition..." The minutes of that meeting state that, "... the Nevada County Historical Society recommended approval of the resolution to support the Tribe". (See Appendices 3.1 & 3.2)

The Tsi-Akim subsequently used the Society's endorsement to gather approximately twenty-two similar resolutions.² (See Appendices 3.3 & 3.4)

¹ NCHS Board of Directors meeting 11/2/00. "New Business. Ed Tyson read a resolution (#114) that was given to him by Don Ryberg (sic), current tribal Chief of the Maidus. They requested assistance from the NCHS in gaining official recognition. Mr. Ryber (sic) felt our recognition would be a helpful first step. Motion for recognition was made by Maria Brower and seconded by June Rice. Motion was carried."

² The Tsi-Akim Maidu website cited these resolutions until recently. The "Who We Are" page included the statement "The Nevada County Historical Society was first to recognize the tribe in 2000". (See Appendix 3.4) A check of the website on October 2, 2010 found any reference to the NCHS gone, and the "Recognitions" page showed "Under Construction".

November 4, 2010

Page Two

3. The Maidu Connection

Research revealed factual inaccuracies regarding the Tsi-Akim's claim to Nevada County as its traditional territory.

The common perception that Nevada County is part of "Maidu" territory is inaccurate. The error is a common one, namely, that the term "Maidu" represents a political unit, specifically a single tribal unit. In fact, the term "Maidu" refers to a very large and diverse linguistic unit.

Don Ryberg and his immediate family, who constitute a significant number of the Tsi-Akim residents in Nevada County today, are indeed, Maidu. However, they are Mountain Maidu of the Taylorsville Rancheria of Plumas County. These Mountain Maidu are part of a linguistic group that linguists identify as the Northern Maidu and are distinct from the Nisenan of Nevada County. (See Appendices 4.1, 4.2 & 4.4)

The Northern Maidu and the Nisenan are sub-groups of a parent "Maidu" stock, which in turn is part of a larger Penutian language that included Miwoks, Wintus, Yokuts, and others. The Nisenan and Northern Maidu each had many different groups speaking many different dialects, as different as German is from Italian. Just as Germans and Italians (though tracing their roots to a common Latin base) developed different cultures and politics, so did the many different dialect groups among the Nisenan. Scholar Herber Luthin writes of the distinct languages spoken in California by indigenous peoples, "[e]ach language reflects a cultural division too." There is no ethnographic evidence to suggest that there were any political institutions or allegiances that extended between Maidu speakers of the many dialects. Rather current research depicts Native California as a politically decentralized place.

According to the authoritative Handbook of North American Indians, the Nisenan territory alone had more than a hundred identifiable and politically autonomous villages or rancherias. There were many different cultures, mutually-incomprehensible languages, and dozens and dozens of separate political units in the broad Maidu territory. (See Appendix 4.3)

4. Traditional Homeland

The claim that Nevada County is a part of the traditional homeland to the Tsi-Akim is clouded. (See Appendix 4.4)

November 4, 2010

Page Three

A letter from the Tsi-Akim's attorney seeking support from a member of the Yuba Co. Board of Supervisors states that the Tsi-Akim "...now has a living cultural village site just outside Nevada City..." There is no claim that Nevada County is the tribe's traditional land. The letter later refers to "an historical photograph of the Tsi-Akim (Ch'akom) village in Taylorsville...". (See Appendix 3.3)

In his discussion with this committee in August 2010, Don Ryberg stated that the "Tsi-Akim" name was assumed by members of the Taylorsville Rancheria of Plumas County to avoid the use of their "white man's name".

Mr. Ryberg further stated that membership in his tribe was open to anyone in thirteen surrounding counties who were acceptable to the Tribal Council. When asked if non-Indians could join, he said, yes. He further said that if the tribe received federal recognition, the Council would then reevaluate who would remain a member and who would not.

The Tsi-Akim produced no verifiable evidence or documentation that any of its members can trace their genealogical roots to historic Nevada County. Without such evidence, the NCHS cannot support the contention that Nevada County is the Tsi-Akim's (or the Taylorsville Rancheria's) traditional territory. The claim that their ancestors are buried in historic Nevada County remains unsupported.

5. Conclusion

The catalyst for the NCHS to examine its original endorsement was the assertion by another group, the Nevada City Rancheria tribe, which challenges the Tsi-Akim's claim to being the indigenous people of historic Nevada County.

This committee interviewed representatives from both groups and we thank them for their cooperation and candor. This committee did not investigate, nor reach any conclusion, as to the merits of either group's quest for Federal recognition.

The committee determined that upon closer examination, many of the claims in the original endorsement are unsupported by facts. It is understandable why the NCHS Board of Directors gave its original endorsement. Recollections of those present in 2000 suggest that the Board believed Don Ryberg had a direct genealogical connection to other, well-known Indians of Nevada City, like Louis Kelly.

November 4, 2010

Page Four

The Board may have been more cautious had it understood how its concurrence would be leveraged to gain endorsements in other localities.

The Board did not critically examine the resolution, but rather adopted it as a gesture of good will. In retrospect, this committee now sees that was a mistake.

Therefore, this committee recommends that the Nevada County Historical Society rescind its November 2, 2000 endorsement of the Tsi-Akim Maidu.

Committee Members:

Chair Daniel Ketcham, & President NCHS

Brian Blair, Director, NCHS

Maria Brower, Director, NCHS

Desmond Gallagher, Director, NCHS

Tanis C. Thorne, Ph.D., NCHS member in good standing

Appendices

Summary of Appendices

1. Draft letter presented to NCHS Board of Directors to recognize the "Nisenan Tribe of the Nevada City Rancheria as the only indigenous tribe of Nevada County".
2. Letter of Don Ryberg, Tribal Chairman, Tsi-Akim Maidu to Board of Directors, Nevada County Historical Society, October 30, 2000.
 - 3.1 Resolution No. 01-16 of the Board of Supervisors of the County of Nevada (January 9, 2001).
 - 3.2 Excerpt of the Board of Supervisors of the County of Nevada
 - 3.3 Letter to John Nicoletti, Supervisor-District 2, Yuba County Board of Supervisors, April 26, 2010.
 - 3.4 Screenshots of Tsi-Akim Maidu website.
- 4.1 Map 2 "California Linguistic Diversity" and Map 3 "California Language Families and Stocks" from Herbert W. Luthin, ed. *Surviving Through the Days: A California Indian Reader* (UC Press, 2002), pp. 574-575.
- 4.2 Jerald Johnson, emeritus professor, California State University, Sacramento: synopsis of select sources defining Nisenan as separate entity from the Northern Maidu, dated August 28, 2010.
- 4.3 William C. Sturtevant, General Editor and Robert F. Heizer, Volume Editor, *Handbook of North American Indians*, (Smithsonian Institution, 1978), Volume 8, pages 370-397.
- 4.4 Ethnohistorical Synopsis by Tanis C. Thorne, Ph.D. Sept. 29, 2010.

Appendix 1

DRAFT

Appendix 1

On letterhead Current Date

Nevada City Rancheria Tribal Council
P.O. Box 825
Nevada City, CA 95959

DRAFT

Attn: Richard Johnson, Tribal Chairman

Dear Mr. Johnson:

The Nevada County Historical Society has had a relationship with the Nisenan people of the Nevada City Rancheria since our inception in 1946, and our founding members even before that time. In addition to members of the society contributing Nisenan items for preservation and educational purposes, members of the society have had personal relationships with tribal members. For an example, Chief Louis Kelly, the last headman of the Nevada City Rancheria, entrusted photos and other personal items to the care of the society through his friend, Doris Foley.

A collection of Nisenan materials have been housed in the society's Firehouse Museum since 1946. Other records and photographs are preserved at the Searls Historical Library. Today, the Firehouse Museum display has been renewed and enhanced under the supervision of the Nisenan members of the Nevada City Rancheria.

Based on this historic relationship, along with careful, documented research, we recognize and fully endorse the Nisenan Tribe of the Nevada City Rancheria as the only indigenous tribe of Nevada County. We continue to support your efforts to preserve the rich heritage of the Nisenan people and their way of life in Nevada County.

Daniel Ketcham,
President, Nevada County Historical Society

Appendix 2

Tsi-Akim Maidu
PO Box 608 Cedar Ridge, CA
Phone (530) 272-1326 Fax (530) 274-7804

Appendix 2

October 30, 2000

Board of Directors
Nevada County Historical Society
Nevada City, CA 95959

Dear Directors,

I am Tribal Chair and representative of the 114 member Tsi-Akim Maidu Tribe, Approximately 40% of which live in Nevada County. We are a well-organized Tribe. We have a 5 member Tribal Council, a Constitution, Enrollment Ordinance with Resolutions and an Advisory Council consisting of local non-tribal professionals. Our non-profit status is pending and expected to be completed shortly.

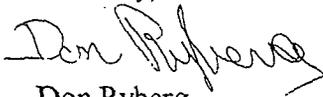
The Tribe is requesting the Nevada County Historical Society's assistance in helping us to achieve official County recognition by their endorsement of a Resolution. We believe it is important for the Historical Society to support our goal because it is an inherent right of everyone to have a heritage to pass onto their descendants. Nevada County is part of our traditional homelands, as home to us is where our dead lie buried. The people of Nevada County can assist us by offering their moral and ethical support.

The Maidu culture was strong and flourished in this, their traditional territories for 10,000 years. First contact with non-Indians started a cycle of cultural devastation. The Federal government destroyed or outlawed our culture, language, heritage and religion, but could not completely destroy our spirituality. The Federal government made treaties, which were never honored because the California State government opposed and fought vigorously against those treaties. The land and its resources were considered much too valuable for the Indian. The State made policies devastating to the Maidu Indian culture such as the California Indian Removal Policy of 1855. However, this could not prevent the few survivors from returning to their lands, the lands where their dead lie buried.

The present day tribal members are survivors of this once great Nation and are striving to restore and preserve what's left of their culture. The Tsi-Akim Maidu have been trying for 150 years to gain recognition. In honor of our ancestors, we are continuing to seek acknowledgment. Are you the generation that has the compassion to help us reach this goal?

On behalf of the Members of the Tsi-Akim Maidu, I thank you for your support and efforts toward the furtherance of our goal.

Sincerely,



Don Ryberg
Tribal Chairman
Tsi-Akim Maidu

Appendix 3



RESOLUTION No. 01-16

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

A RESOLUTION RECOGNIZING THE TSI-AKIM MAIDU TRIBE

WHEREAS, the Tsi-akim Maidu Tribe is a tribal organization of the indigenous Native Americans that inhabited the Nevada County region for thousands of years; and,

WHEREAS, the tribe claims Nevada County is a part of the traditional tribal homeland to the Tsi-akim Maidu Tribe, and is their current home, and is where their dead lie buried; and,

WHEREAS, the current members of the Tsi-akim Maidu Tribe are descendants of this once great Native American Nation; and,

WHEREAS, the Tsi-akim Maidu Tribe is dedicated to the preservation and perpetuation of its people's language, culture, history, heritage, religion, and spirituality; and,

WHEREAS the Tsi-akim Maidu Tribe is represented by a five member Tribal Council that has adopted a Tribal Constitution and Enrollment Ordinance listing its members; and,

WHEREAS the Tsi-akim Maidu Tribe is currently pursuing official Federal recognition so that their members and future generations can enjoy the rights and privileges that they are legally entitled to, including housing, health care, elder care, and education;

NOW THEREFORE BE IT RESOLVED, that the Nevada County Board of Supervisors does hereby:

1. Recognizes the Tsi-akim Maidu Tribe and further recognizes the importance and contribution of their history, and present cultural heritage in Nevada County; and
2. Formally supports and endorses the efforts of the Tsi-akim Maidu Tribe to pursue Federal recognition so the Tribe can further develop the cultures of which they were deprived; and
3. Formally supports the continuing efforts of the Tsi-akim Maidu Tribe to preserve their heritage, culture, language, and religion.

STATE OF CALIFORNIA, COUNTY OF NEVADA

BOARD OF SUPERVISORS MINUTES, JANUARY 9,

2001

Meeting held in the Board Chambers, Eric Rood Admin. Center, 950 Maidu Ave.,
Nevada City, CA

SCHEDULED ITEM: 11:15 A.M.

28. Resolution recognizing the Tsi-Akim Maidu Tribe, supporting and endorsing the efforts of the Tribe to pursue Federal recognition, and supporting the continuing efforts of the Tribe to preserve their heritage, culture, language and religion. (Supervisor Conklin)

ACTION TAKEN: Chair Martin introduced the agenda item.

Supervisor Conklin advised the Board that he was approached by the Tsi-Akim Maidu Tribe a couple of months ago, and he invited the representatives to come forward.

Mr. Don Ryberg, representing the Tsi-Akim Maidu Tribe and Tribal Chairman, asked for the Board's support to achieve their goals.

Ms. Irene Moon, Vice Chair of the Tribe, thanked the Board for considering their request for recognition.

Ms. Louella Jerdow(?), Secretary of the Tribe, noted that they were attempting to receive both County and Federal recognition.

Chair Martin asked how the County's support would make things different, or how would it help the Tribe and the County if they were to receive recognition as a Tribe. Discussion ensued. Supervisor Conklin asked if the Tribe was associated with laying claim to, or in ownership of any particular real estate in Nevada County that might become a rancheria. Mr. Ryberg stated theirs was a landless Tribe.

Chair Martin stated that the Nevada County Historical Society recommended approval of the resolution to support the Tribe.

Motion made by Supervisor Conklin, seconded by Supervisor Van Zant, to adopt Resolution 01-16. On a roll call vote, the motion passed unanimously.

LAW OFFICES OF LETTY LITCHFIELD

Appendix 3.3

716 D Street
Marysville, CA
(530) 673-4616
(916) 485-4253
FAX (530) 742-8576

Page 1 of 9

APRIL 26, 2010

JOHN NICOLETTI
Supervisor-District 2
Yuba Co. Board of Supervisors
915-8th Street, Ste. 109
Marysville, CA 95901

Re: Request for County Board of Supervisors Resolution
on behalf of the Tsi-Akim Maidu tribe

Dear Supervisor Nicoletti:

Thank you for meeting today with Tsi-Akim Maidu tribal Chairman, Don Ryberg, and I, about our request that the Board of Supervisors issue a Resolution of recognition and support for the tribe. As you know from the documentation that Chairman Ryberg shared with you today, many of the tribe's ancestors lived in Yuba County.

As we discussed, I am assisting the Tsi-Akim Maidu tribe (formerly known as "Taylorsville" of the Taylorsville Rancheria in Plumas County) in their quest to have their tribe returned to the list of Federally Recognized tribes. In doing so, it is not necessary to have local and state support, but we believe that every little bit helps. Therefore, the tribe has been gathering Resolutions from various County Boards of Supervisors and other organizations.

These Resolutions are nothing more than a showing of support for the tribe's continued existence, and their desire to preserve their heritage, culture, language and religion. It should be noted that the tribe is very moved by such Resolutions, and views them as a form of apology for the many atrocities that occurred during the Gold Rush era, including near annihilation of the Maidu people.

This tribe, which now has a living cultural village site just outside of Nevada City in Nevada County, has made it a goal to actively participate in coming together with Non-Indian communities for healing of the people, as well as healing of the land and waters. The Gold Rush left significant amounts of Mercury toxins throughout Northern California's lands and waters. Our Yuba River and its watershed areas stand much to gain from this tribe being

John Nicoletti
April 26, 10
Page 2

Federally Recognized. Indeed, the Tsi-Akim Maidu were consulted on, and supported, the very recent collaborative effort that resulted in Western Aggregate agreeing to put three miles of its land from the Parks Bar Bridge downstream into a Conservation Easement for a wild Chinook salmon restoration project.

On behalf of the Tsi-Akm Maidu, we greatly appreciate your time spent in listening to our request, and we appreciate you forwarding this request to the Board.

Towards that end, I am attaching a list of the numerous governing bodies and organizations that have signed Resolutions for the tribe, and I have provided actual copies of some of those Resolutions.

I am also attaching a copy of an 1840 map that shows the Maidu Tribal lands in Northern California, a copy of an historical photograph of the Tsi-Akim (Ch'akom) village in Taylorsville, and a sheet with chronological information on the tribe's Federal Recognition status.

Thank you very much for your interest in this tribe as a People of our state that is very historically significant, and for whom we should all be acting to help preserve their continued existence and well-being.

Sincerely,


Letty Litchfield

Enclosures
Cc: Chairman, Don Ryberg
Tsi-Akim Maidu

**The Tsi-Akim Maidu have gathered formal
Resolutions of Recognition and Support
from the following organizations:**

California Heritage Commission

California State Archives

Nevada County Historical Society

Nevada County Land Trust

Nevada Irrigation District

Nevada County Board of Supervisors

Plumas County Board of Supervisors

Sierra County Board of Supervisors

The Yuba Watershed Institute

South Yuba River Citizens League

Friends of Deer Creek

The Sierra Fund

American Rivers

Sierra Nevada Deep Ecology Institute

Shingle Springs Rancheria

Sierra Friends of Tibet

Wolf Creek Alliance

KVMR Radio Station

California State University, Chico

Colfax/Todds Valley Consolidated Tribe

Placer Land Trust

Maidu Summit Consortium

Consisting of:

Maidu Culture & Development Group

Roundhouse Council

Susanville Indian Rancheria

Tsi-Akim Maidu

Maiduk We'ye

Greenville Indian Rancheria

Mountain Maidu Preservation Association

Tasmam Koyom Cultural Foundation

United Maidu Nation

BACKGROUND:

THE TSI-AKIM MAIDU TRIBE OF THE TAYLORSVILLE RANCHERIA WAS ONCE ON THE FEDERAL REGISTER, AND IS SEEKING TO HAVE ITS NAME RETURNED TO THE FEDERAL REGISTER.

-In May 1923, the Department of Interior purchased the Old Allick Allotment, establishing the Taylorsville Rancheria as a home site for a band of homeless Indians of the Taylorsville area.

-In June, 1935, the approved voting members of the Taylorsville Rancheria voted to have the Indian Reorganization Act apply to the tribe.

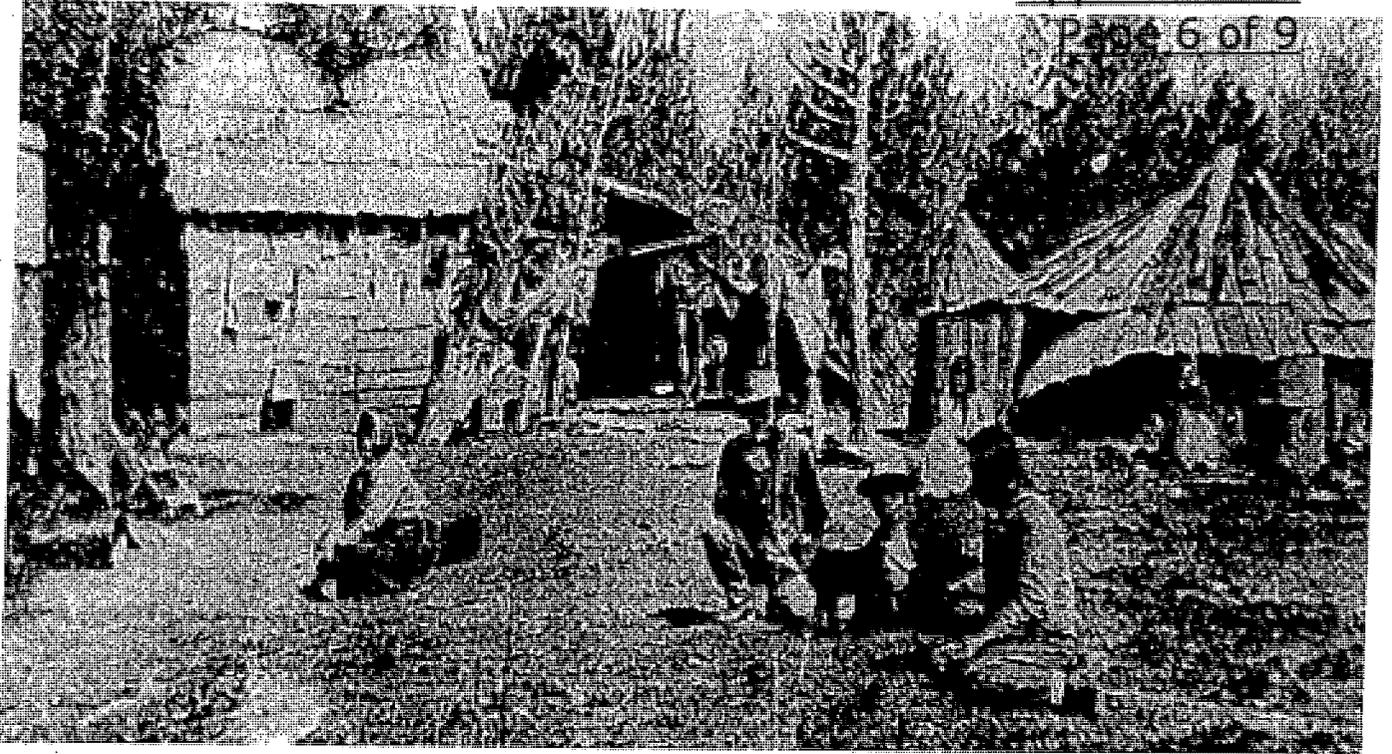
-On November 7, 1966, the Federal government sold the tribe's Taylorsville Rancheria lands to Plumas County. While there is no evidence of an Act of Congress terminating the tribe, and there has never been any notice to the tribe that it was terminated, its name disappeared from the Federal Register.

-The Plumas County Board of Supervisors has signed a Resolution supporting the tribe's ongoing mission to preserve their heritage, culture and language, and to be returned to the Federal Register.

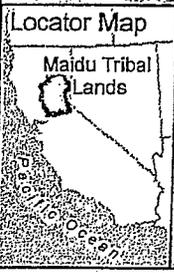
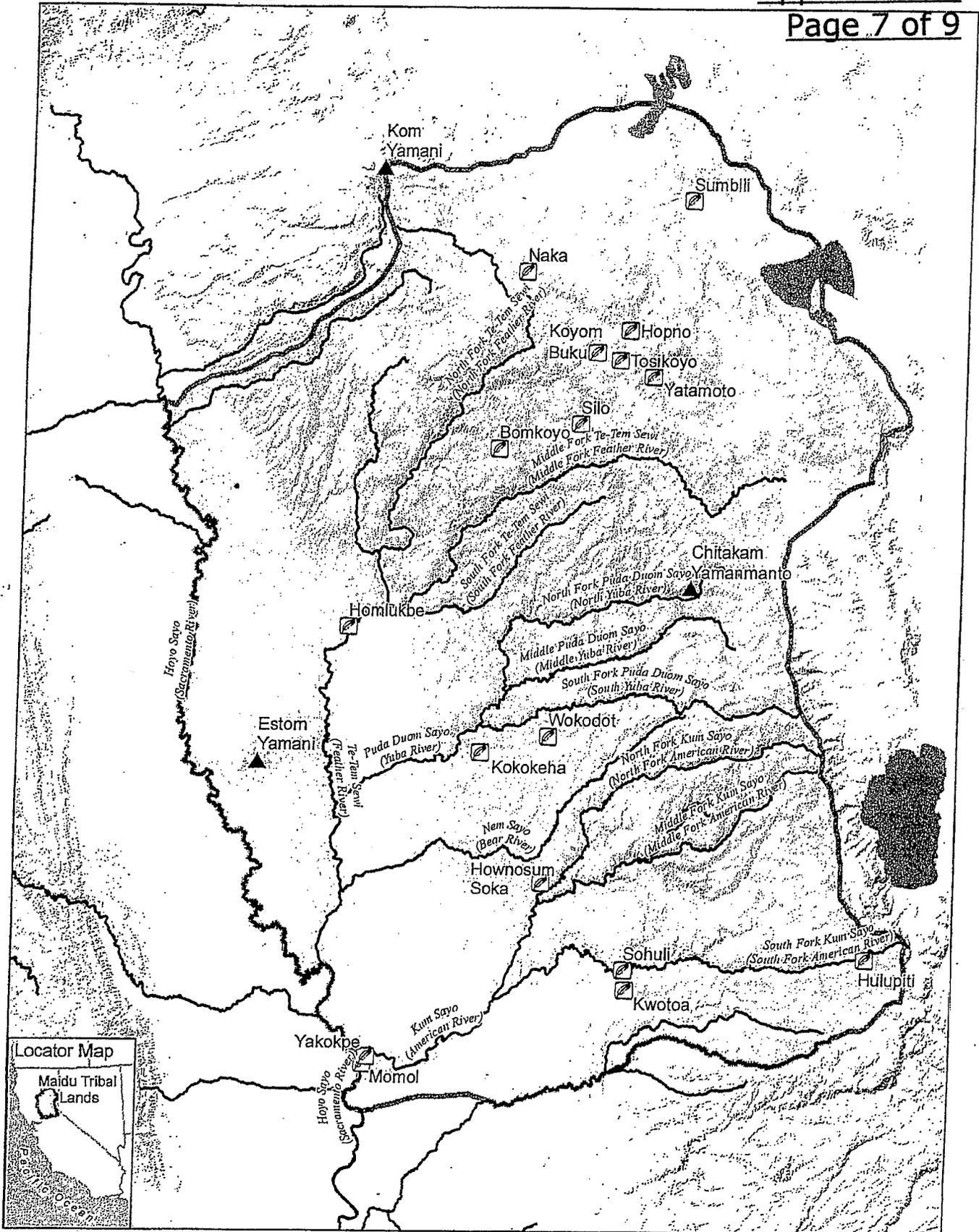
-The tribe is represented by a seven-member Tribal Council that has adopted a Tribal Constitution and Enrollment Ordinance listing its members. And, the tribe has a 501(c)(3) Non-Profit incorporation status.

CONTACT INFORMATION:

**Chairman, Don Ryberg
1275 E. Main Street
Grass Valley, CA 95945
Office of Tsi-Akim Maidu tribe: (530) 274-7497
Cell: (530) 559-8595**



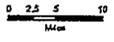
Ch'akom-duka Village aka: Taylorsville Rancheria
Courtesy of Dorothy Hill Collection CSU Chico



Legend

- ☐ Maidu Site
- ▲ Mountain
- ~ Rivers
- ▨ Lakes
- ▭ Maidu Tribal Lands

Maidu Tribal Lands 1840



**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

**RESOLUTION OF THE BOARD OF)
SUPERVISORS OF THE COUNTY)
OF YUBA RECOGNIZING THE)
TSI-AKIM MAIDU TRIBE)**

RESOLUTION NO. _____

WHEREAS, the Tsi-akim Maidu Tribe is a tribal organization of the indigenous Native Americans that inhabited the Yuba County region for thousands of years; and

WHEREAS, the Tribe claims Yuba County is a part of the traditional tribal homeland to the Tsi-akim Maidu Tribe, and is their current home, and is where their dead lie buried; and

WHEREAS, the current members of the Tsi-akim Maidu Tribe are descendants of this once great Native American Nation; and

WHEREAS, the Tsi-akim Maidu Tribe is dedicated to the preservation and perpetuation of its people's language, culture, history, heritage, religion and spirituality; and

WHEREAS, the Tsi-akim Maidu Tribe is represented by a five member Tribal Council that has adopted a Tribal Constitution and Enrollment Ordinance listing its members; and

WHEREAS, the Tsi-akim Maidu Tribe is currently pursuing official Federal recognition so that their members and future generations can enjoy the rights and privileges that they are legally entitled to, including housing, health care, elder care, and education.

NOW, THEREFORE, BE IT RESOLVED that the Yuba County Board of Supervisors does hereby:

Recognizes the Tsi-akim Maidu Tribe and further recognizes the importance and contribution of their history, and present cultural heritage in Yuba County; and

Formally supports and endorses the efforts of the Tsi-akim Maidu Tribe to pursue Federal recognition so the tribe can further develop the cultures of which they were deprived; and

Formally supports the continuing efforts of the Tsi-akim Maidu Tribe to preserve their heritage, culture, language and religion.

PASSED AND ADOPTED this _____ day of _____, 20____,
by the Board of Supervisors of the County of Yuba, by the following vote:

AYES:

NOES:

ABSENT:

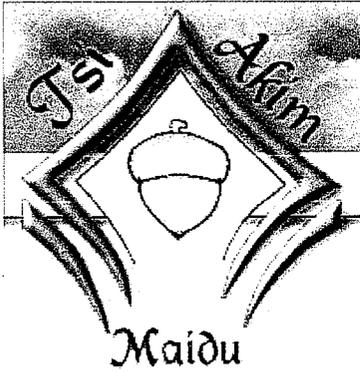
ABSTAIN:

CHAIR

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

APPROVED AS TO FORM: COUNTY COUNSEL
ANGIL MORRIS-JONES

Pat Johnson, Chief Deputy



Who We Are | What We Do | Where We Want to Go | Contact Us

Who We Are

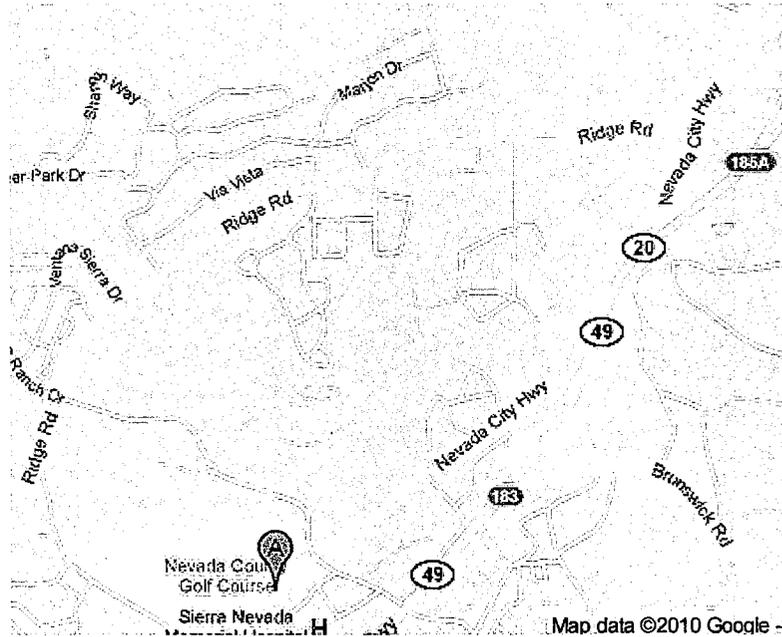
The Tsi-Akim Maidu tribe are indigenous American Indians that have inhabited the Nevada and Plumas County region for thousands of years. Nevada and Plumas County Supervisors officially endorse the tribe. The Nevada County Historical Society was first to endorse the tribe in the year 2000.

**TSI-AKIM Maidu
Tribal Office**

1275 E Main St
Grass Valley, CA
95945

530.477.0711

NEW Phone, Office & Thrift Store Directions: 1275 East Main, Grass Valley, CA 95945, 530.477.0711

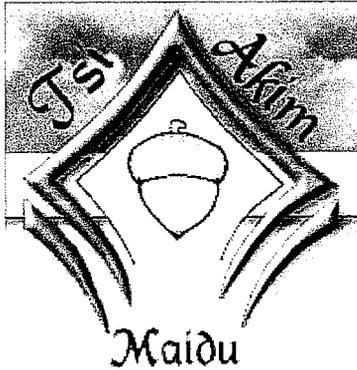


[View Larger Map](#)

Tribal Council:

Don Ryberg, Chairman
Eileen Moon, Vs
Chairman
Evelyn Davis, Treasurer
Louella Giordano,
Secretary

William Harrison, Co-Secretary
BettieRose Davis, Member at Large
Marvin Cunningham, Member at Large
Ben Cunningham, Member at Large



Who We Are — What We Do — Where We Want to Go — Tribal Council

Where We Want To Go

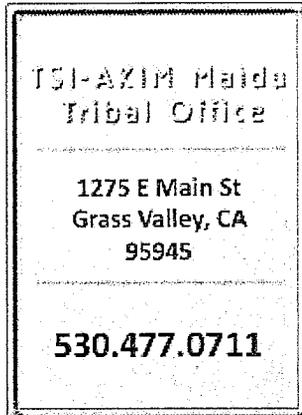
OUR VISION:

- To acquire a secured land base
- To better educate tribal members and non-Indian community
- Study the history of our tribe and all Indian peoples

We encourage you to join us in recognizing the importance of our goal, with your support we can achieve it.

"It seems a basic requirement to study the history of our Indian people. American has much to learn about the heritage of our American Indians. Only through this study can we as a nation do what must be done if our treatment of the American Indian is not to be marked down for all time as a national disgrace"

John F. Kennedy—1963



Appendix 4

Saturday, August 28, 2010, *Send attachment full John to F. Thomas*
Aug 28

Below you will find many sources that clearly define the Nisenan as a separate entity from the Northern Maidu who include the Taylorsville area. While many of these sources use much of the same information many of them present different data that further confirms the distinctiveness of the Nisenan as a well establish group that clearly were the occupants of the Nevada County and City areas. Let me know if this is sufficient for your purposes and if not I will see if I can scare up some additional sources.

Powers, Stephen

1877 Tribes of California. Reprinted by the University of California Press, Berkeley in 1976. Berkeley. Pages :282-345.

Powers collected his information in 1871-1872 and various chapters were published mostly in the 1870s in the Overland Monthly. His chapter 30 on the Maidu he discusses the Indians north of Bear River while in Chapter 31 he describes the Nisenan living from that river south to the Cosumnes Drainage. Since Powers was able to gather only a realitively small amount of information in his trip through California his boundaries are not always very precise. Later researchers virtually all agree that the Nisenan lived on the Yuba Drainage and the Maidu were further north on the upper Feather River and in Butte and Plumas counties and further north and not further south. It is important that as early as the 1870s, Powers who was not a trained ethnographer, recognized that the Maidu and Nisenan were distinct groups.

Kelsey, C. E.

1905-1906 Census of Non-Reservation California Indians. Archaeological Research Facility Department of Anthropology, Berkeley 1971 pages: 86-87.

Kelsey lists the Taylorsville Maidu as living in Plumas County at the southeastern end of Indian Valley. They are probably closely related to the Maidu at the Greenville Rancheria at the northwestern end of the valley. He lists Little Johnnie Smith with wife five children and his mother-in-law, Charley Redhead and wife and three children, Alec and wife with all of these families owning land. Mose and wife and seven children, Shoemaker Bob and wife and four children, Ike Tom and wife and two children, Jim Alec, Humbug Jim and Simmons Charley and wife who did not own land.

Dixon, Roland B.

1905 The Northern Maidu. Bulletin American Museum of Natural History. Vol. XVII. The Knickerbacher Press, New York. Pages 8-9.

Dixon also attributes the territory of the Maidu to north of the Yuba River and all of the land of the Nisenan occurring from the Yuba south to the Cosumnes River. He agrees with Powers assessment of the boundaries though he does not accept the Bear River as the northern boundary of the Nisenan.

Faye, Paul Louis

1923 Notes on the Southern Maidu. University of California Publication in American Archaeology and Ethnology. Vol. 20(3):37.

The Nisenan are also known as the Southern Maidu as Faye points out that they differ from Dixons Northern Maidu.

Kroeber, Alfred L.

1925 Indians of California. Bulletin 78 of the Bureau of American Ethnology. Smithsonian Institution, Washington D.C.

For over half a century this was considered the bible of California Indian Groups and their boundaries. On pages 392-393 Kroeber discusses the division between the two Northern Maidu groups and the southern or Nisenan. He indicates on Page 393 that the Nisenan held the territory from the Yuba Rivers and Bear Rivers south and the entire American River drainage. Even though these three groups are all considered Maidu the Nisenan consider themselves as distinctive from the others. Between Pages 446 and 447 Plate 37 is a map which shows the Nisenan controlling the Grass Valley and Nevada City Area.

Littlejohn, Hugh W.

1928 Nisenan Geography. Unpublished manuscript in the Bancroft Library at the University of California, Berkeley. Pages 10-12.

Littlejohn discusses the northern boundary of the Nisenan in detail and based his interpretation on the information provided by several Nisenan informants. They all indicated that the people living on the Yuba drainage were Nisenan and the Maidu north of there spoke a different dialect and had different customs.

Kroeber, Alfred L.

1929 The Valley Nisenan. University of California Publications in American Archaeology and Ethnology. Vol. 24(4):255.

This monograph was based on information provided by one Nisenan informant who was primarily familiar with the Sacramento Area but did have some knowledge of peoples upstream on the Sacramento River and establishes that Nisenan subgroup also controlled land between the Sacramento River and the Foothills.

Beals, Ralph L.

1933 Ethnology of the Nisenan. University of California Publications in American Archaeology and Ethnology, Vol. 31(6):335-410.

Beals map of Nisenan territory shows it between the Feather and Yuba River drainages and extending south to the middle fork of the Cosumnes River. This monograph is one

of the more complete descriptions of Nisenan Maidu and contains many items of culture and activities not found in Northern Maidu culture.

Duncan, John W.

1963 Maidu Ethnobotany. Unpublished Master Thesis, Department of Anthropology, California State University, Sacramento.

Duncan's thesis reflects extensive interviews and field trips with Lizzie Enos who had extensive knowledge of Nisenan botany and culture before White settlement and Brian Beavers who was a Maidu from the east of Oroville who similar knowledge from the area occupied by the Northern Maidu that differed in many ways from that collected from the Nisenan.

Heizer, Robert F.

1966 Languages Territories and Names of California Indian Tribes. University of California Press. Berkeley.

In this monograph Heizer compares information from Powers 1877, Powell 1891, Kroeber 1925 and unpublished notes of C. Hart Merriam. Of the four Merriam's Map probably reflects the reality of settlement better than the others. Unlike Kroeber who often placed boundaries along rivers this was seldom the case in California with land divisions in less occupied lands such as along mountain and ridge tops and alignments. Otherwise overall there is pretty good agreement between the sources on where the Maidu and Nisenan lived. Merriam also had many more dialectical divisions within the overall Maidu Group than the three main subdivisions of Kroeber.

Merriam, C. Hart

1967 Ethnographic Notes on California Indian Tribes III. Ethnological notes on Central California Indian Tribes. Reports of the University of California Archaeological Survey No. 68, Part III Pages: 305-313, 319-322. Department of Anthropology, Berkeley.

Merriam describes fieldwork between 1902 and 1906 among mostly the Nisenan from south of the Feather River drainage to the North Fork of the Cosumnes River. He visited many small camps on various drainages that had two or three families of mostly husband and wife and elderly individuals. He notes that there were no children at most of these camps. Once again the Nisenan are located in the same territory identified by Native American informants. Many of those Indians that were interviewed were born several years before the beginning of the gold rush in 1849.

Merriam, C. Hart and Zenaida Merriam Talbot

1974 Boundary Descriptions of California Indian Stocks and Tribes. Archaeological Research Facility, Department of Anthropology, Berkeley. Page:17.

This publication indicates that the Southern (Nisenan) includes Nevada City, Todd Valley, and south to Yankee Jims.

Gardner, Ruth Ann

1977 Life History of Lalook: Louis Kelly. Unpublished Masters Thesis, Department of Anthropology, California State University, Sacramento.

This work resulted from several months of interviews with Mr. Kelly over a period of two years. Mr. Kelly was born in 1885 in an Indian Camp west of Nevada City. He lived his entire life in the area and his grandparents were from the Nevada City group of Indians. His second wife Naomi was born in 1888 and was from the Colfax locality. His son Lester was born in 1909. Mr. Kelly's granddaughter gave said Naomi died in 1962. The individuals discussed in this thesis are all identified as Nisenan. Ms. Gardner uses Beal's map to show Nisenan Territory. Also discussed are Anthony House and other localities in Northern Nisenan Territory.

Johnson, Jerald J. and Dorothea J Theodoratus, Editors

1978 Cultural Resources of the Marysville Lake, California Project (Parks Bar Site), Yuba County, California. Prepared for the United States Army Corps of Engineers, Sacramento District, Sacramento.

Chapters seven through ten discuss the Indigenous Northern Hill Nisenan on and around the Yuba River. Pages 304-392. One of the Native American consultants said "the people from Lone, Fiddletown, Dobbins, Marysville, Sacramento, and Nevada City all spoke the same language"--- from Sacramento to Lake Tahoe, to Auburn all speak the same. This generally matches other descriptions of Nisenan Territory and clearly establishes the Nevada City area in that Indian groups territory.

Wilson, Norman L. and Arlean Towne

1978 Nisenan. Handbook of North American Indians. Vol. 8:387-397, Robert F. Heizer Editor. Smithsonian Institution, Washington D.C.

This article is a compilation of much of the information presented in the other sources cited above with additional unpublished data gathered by Wilson and others. As you can see it also distinguishes between the Southern or Nisenan Maidu as a distinct group from the Northern Maidu north of the Yuba River drainage. Their Figure 1 shows many Nisenan villages on the Yuba River drainage and no Northern Maidu settlements. Mr. Wilson was from the Auburn area and was familiar with many of the Nisenan in that area as well as Nevada City.

Riddell, Francis A.

1978 Maidu and Konkow. Handbook of the North American Indian, Vol. 8:370-386. Robert F. Heizer Editor. Smithsonian Institution Washington D.C.

Riddell's Figure 1 matches the southern boundary of the Maidu and the northern boundary of the Nisenan quite closely. An enlarged map showing the Indian Valley

locality places the Taylorsville area well within Maidu and not Nisenan territory. He also shows the locations of several Maidu settlements in that area. Riddell was originally from Susanville and became interested in Indians early in life. Over 50 years he collected information on the location of various Indian groups and their settlements including many of them that he mapped the villages and associated features, including in some cases remnants of roundhouses. In a 1996 article in a monograph called "Here Grows a Green Tree" in Honor of David A. Fredrickson published by the Center For Archaeological Research, Davis Riddell published many of the village maps that he had recorded and included information that had been collected from local Maidu and in some cases local Whites.

MacKenzie, Nancy Hines

2002 Restoring Federal Recognition to the Miwok Tribe of the El Dorado Rancheria, El Dorado County, California. Unpublished Master Thesis, Department of Anthropology, California State University, Sacramento

This thesis is based on genealogical work with many Indians living near or in the boundary area of the Southern Maidu Nisenan and Northern Hill Miwok. This makes clear that there is a clear distinction made between the Miwok and their northern neighbors the Nisenan. The federally recognized tribes at Shingle Springs Rancheria and at Auburn contains considerable genealogical information obtained when the Auburn Rancheria was terminated in the middle of the 20th century. In order to get rerecognized as a federally recognized tribe they had to do extensive genealogical research and this documents they location of the tribe and its affiliation with the Nisenan Maidu.

Appendix 4.3
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Handbook of North American Indians

WILLIAM C. STURTEVANT

General Editor

Appendix 4.3
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California

ROBERT F. HEIZER

Volume Editor

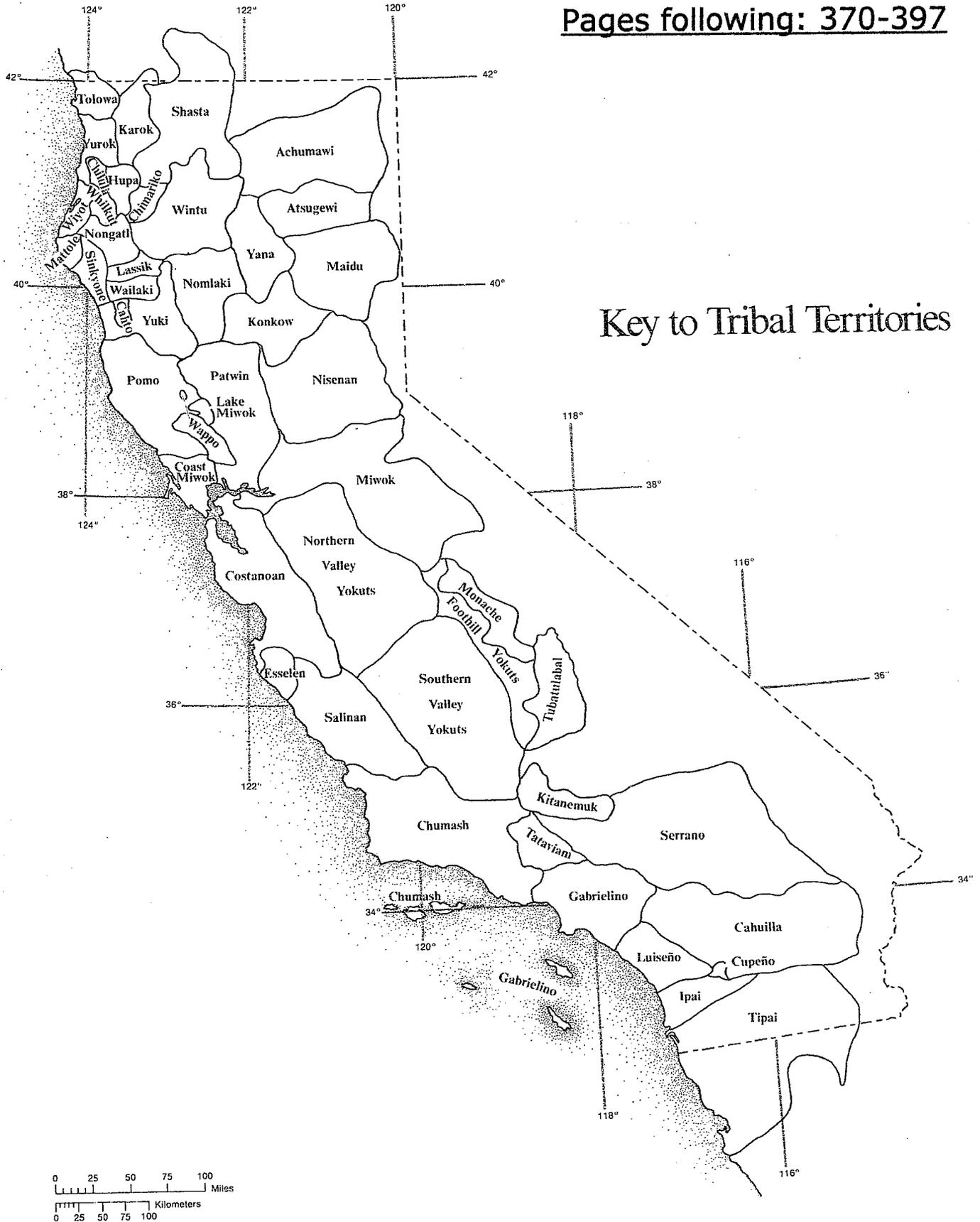


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FRANCIS A. RIDDELL

Language, Environment, and Territory

The term Maidu ('mī, dōō) as used here refers to those people also known as the Mountain Maidu or Northeastern Maidu, while the term Konkow ('kän, kăw) refers only to the Northwestern Maidu. The third form of Maidu speech is that of the Nisenan, also known as the Southern Maidu. The drainages of the American and Feather rivers of the northern Sierra of California approximate the extent of the area held by the Maidu people (fig. 1).

Maidu was spoken by people living in the high mountain meadows lying between Lassen Peak and the town of Quincy some 50 miles to the south and east, probably in four dialects (American Valley, Indian Valley, Big Meadows, and Susanville). Konkow was spoken in a number of dialects along the lower reaches of the Feather River Canyon up to about Richbar, in the surrounding hills, and in the adjacent parts of the Sacramento Valley

(Shipley 1963:1). Both forms are members of the Maidu-an family of languages, which is classified as California Penutian. Within the Maidu area, the dialects, in general, were quite closely related; however, the three forms of speech were mutually unintelligible at first contact.*

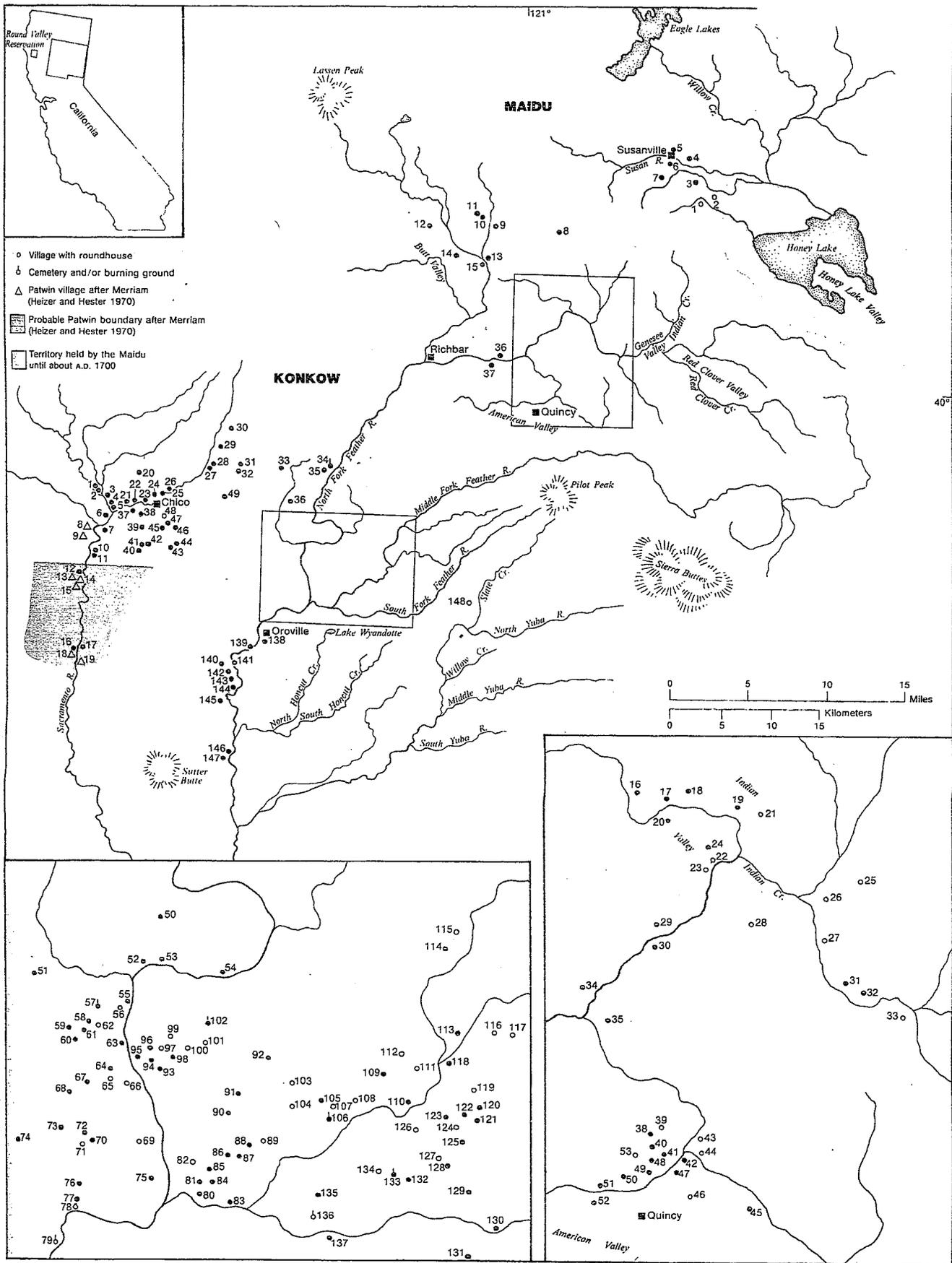
The Maidu inhabited a series of mountain valleys, the more important of which are Mountain Meadows, Big Meadows (now Lake Almanor), Butt, American, Indian, Genesee, and Red Clover. In each area, where winter weather would allow, permanent villages were established. In other areas, the Sierra and Mohawk valleys for

* The best orthography for Maidu and Konkow is that by Shipley (1963). To conform to Handbook standards, *i* is used for Shipley's *y* and *y* for his *j*. The *d* and *b* are implosive. Italicized words have been respelled by William F. Shipley (Maidu) and Russell Ultan (Konkow) in this orthography. Doubtful interpretations are indicated by a question mark.

Fig. 1. Tribal territory and village locations.

Maidu: 1, *witáyim*; 2, Lone Pine; 3, name forgotten; 4, name forgotten; 5, *sumbilim*; 6, name forgotten; 7, *Rásim*; 8, *pepépep cüm*; 9, *yòlim*; 10, *wisótpinim*; 11, *kólyèm*; 12, *cám bukúnayim*; 13, *manim báldiři*; 14, *táldinom*; 15, *potádi*; 16, *kóbatásdayim*; Kotasi? (D, Ka, S); 17, *kówkówri yakim*; 18, *kókitpe*; 19, *bunúk*; 20, *ʔolilimbe*; 21, *dókočòk dòyim*; 22, *ʔokóno*; 23, *ʔočó*; 24, *wayápom mòmi*; 25, *ʔóm koyò*; Ong-Koyo-diknom (Ka); 26, *yódawim* (R, Ka); 27, *čakámđři*; Kushdu? (Ka); 28, *čilwam ʔinkomi*; 29, *koyóm bukúm*; 30, *čiwisi*; 31, *konók wusúpa*; 32, *kóm koyò*; 33, *yolám motò* (R, D, Ka); 34, *kówówtáyi*; 35, *púslem koyò*; 36, *tohánom*; 37, *nòRóm pino*; 38, *wayápom mòmim ʔustu*; 39, *wayápom mòmim čálá hibé?*; 40, *wayápom mòmi*; 41, *pítelím* (R, Ka); 42, name forgotten; 43, *sátkini walám Rùmú*; 44, name forgotten; 45, *kawa*; 46, *bábe*; Omhübe? (Ka); 47, *čákám?* or *čákim?*; 48, *pečama*; 49, *bukúlisa ʔinkomi*; 50, *čilwam ʔinkomi*; 51, *dásim yodá*; 52, name forgotten; 53, *boléywi*; Opüle? (Ka). Konkow: 1, Shidawi (Kb); 2, Se-dow-we (M); 3, Sook-soo'-koo (M); 4, Muli (Kb); 5, Pah'-kem (M); 6, *čéno* (Kb); 7, Pe-dow-kah (M); 8, *čéno* (M); 9, Chan-no? (M); 10, Soo'-noos (M); 11, Sunusi (D, Kb); 12, Batsi (Kb); 13, Baht-che (M); 14, Yoot'-dok-kah (M); 15, Mo-ning-we (M); 16, Momingwi (Kb); 17, Pinuk (Kb); 18, Mau'mah (M); 19, Bo'-do (M); 20, Pake (D, Ka); 21, O'-tah'-ke (M); 22, Bay'-he-yu (M); 23, Bah-hahp'-ke (M); 24, Wah-nah'-tahm (M); 25, Tse'lim-nah (M); 26, Yow'-koo (M); 27, Yauko (D, Ka); 28, O'dawi (Kb); 29, Otaki (D, Ka); 30, *ʔotakimme* (P); 31, Tsulumsewi (Ka); 32, Nem'sá-wá (M); 33, *némséwi* (Ka); 34, Tatumpan'a; 35, Tā-tan wu-ta (M); 36, *kóyo-mkáwi*; Konkau (Ka); 37, Yu'dow (M); 38, Bahyu (D, Ka); 39, Tadoiko (D, Ka); 40, Pe-tut'-taw (M); 41, Sap'-se (M); 42, ki-dak'-te (M); 43, Utapi; Ushtupedi (P); 44, *ʔéskeni* (M); 45, Wil-lil'-lim hoo'-loo-ko (M); 46, *ʔéskeni* (R, Ka, Kb); 47, *mičupda* (M); 48, *mičupda* (R, D, Ka, Kb); 49, Yum-mut-to (M); 50, Olimi; 51, Taikuš (D, Ka); 52, Oltibe; 53, Koto; 54, *čéno*; 55, *sá-klemkoyo*; 56, Wilewimkumbali; 57, Pumeku; 58, Waywushuno; 59, Bachakumlulumi; 60, Kusukuyamanimkoyo; 61, Weleudeh (P); 62, Yahankumbali; 63, Hapaiya or Hapumbasa; 64, Tatbemkoyo; 65, Tsiwopemkoyohukuma; 66, Lolingkumbali; 67, Kupno; 68, Tsamhenom; Tsambahenom (D, Ka); 69, Seleskoting; 70, Lowingkoyo; 71, *pókpoko*; 72, *hámsimkoyo*; 73, *pókpoko* (M); 74, Hule; 75, Ukiali; 76, Lolosimboda; 77, Dimidoli; 78, Sukleli or Tobewimhukuma; 79, Shilteamomahukuma; 80, Bistamcha; 81, Kawitumtumi; 82, Taiwaia; 83, Tsaktomo (Ka); 84, Shushumlami; 85, *piye-to*; 86, *tá-yimkoyo*; 87, Hayembenke; 88, Pahumi; 89, *čá-mpíli*; 90, *tá-yimkoyo* (M); 91, Omolkoyo; 92, *ʔá-lemyáda*; 93, Shudokoyoloma; 94, Lasito; 95, Bipyan; 96, Tokoto; 97, Pambisku; 98, Pamtali; 99, Pulewi; 100, Palangkumbali; 101, *tó-toRúmi*; *tó-tommá'a* (D, Ka); 102, *tó-tom'čísti*; 103, Tsitsimpakani; 104, Manimkaipa; 105, Yowitoma; 106, *sito*; 107, Benkumkumi (R, D, Ka); 108, *piwbe*; 109, Watchahu; 110, Munmunpani; 111, Hikinimkumbali; 112, *yinomkumbali* (R); *yino* (Ka); 113, Kotano; 114, Watama; 115, Pikimkumi or Pikingkumbali; 116, Dowoli; 117, Wonomkoyo; 118, Hokoma (Ka); 119, *pólomkoyo*; 120, Piudusi; 121, Yakiowa; 122, Lukumbuni; 123, Titikyani; 124, Chikimaia; 125, *kálkalyá-ri*; Kalkalya (D, Ka); 126, *séwimkumbali*; 127, Chichi; 128, Lumlumi; 129, Kukumbisi; 130, Kulaiapto (D, Ka); 131, Tsuka (D, Ka); 132, Witakasi; 133, Chatono; 134, *ʔá-lemkumbali*; 135, Yuhemui; 136, Ta'a; 137, *holholholto(m)*; *holholto* (D, Ka); 138, Yumam (D, Ka); 139, Botoko (D, Ka); 140, Wabusi; 141, *ʔólolokpa* (R, Ka); 142, Botok (Kb); 143, Taichida (Ka); 144, Hincho; 145, Bauka (D, Ka); 146, Bieyem; 147, Tomcho (Kb); 148, Bupumkumi.

The following villages in the Oroville region cannot be located: Naka; Nikdompakani; Onihulia; Pokibay; Shumemheno; Tektaka; Tsunpem. Sources: Riddell 1960-1974 (unmarked, except with R in the case of duplication); Dixon 1905 (D); Kroeber 1925 (Ka); Kroeber 1932a (Kb); Merriam in Heizer and Hester 1970 (M); Powers 1877 (P); Swanton 1952 (S).



MAIDU AND KONKOW

example, only seasonal villages or camps were in use, occupied only during the warmer months of the year. Each of the other valleys had one or more villages, and the people in each were, to a degree, considered as a separate social entity. For example, those living in American Valley were known as the *silóm maʔá*, from *silóm koyó*, their name for the valley. Those living in Indian Valley were the *tasáy dim*, after *tasím koyó*, their name for that valley; and those living in Genesee Valley were the *yetámmetom maʔá* after *yetámmetom*, their name for Genesee Valley. It is evident that group differentiation for the Maidu was dictated by geographical considerations (Riddell 1968).

The northern portion of Maidu holdings is an area typified by a juniper-sage environment; however, demonstrating that portions of this region were economically productive is the archeological recording of an unnamed, abandoned village three miles east of Susanville with some 22 observed house pits remaining. Susan River and Willow Creek, with their sloughs, meanderings, and tributaries, support extensive meadows and marshes before flowing into Honey Lake, thus providing a superb habitat for fish and waterfowl. In addition, the ever-important acorn-bearing oak groves are within easy collecting distance.

Whereas the Maidu occupied an area generally 4,000 feet above sea level or higher, the Konkow territory included a portion of the Sacramento Valley floor and a section of the sierra foothill east of Chico and Oroville. The valley floor generally presented a vast savanna environment in which grasses and oaks formed a natural parkland.

The climate of the Konkow region was characterized by a wet winter and a dry summer season; in winter there were occasional freezing temperatures, and fog and rain occurred with varying intensity.

As to tribal territory, some difference of opinion might exist between the Maidu and their neighbors, Paiute, Achumawi, Washo, and Yana, although certain prominent physiographic features were used as boundary markers to generally delimit the Maidu territory. Border areas of value for hunting and gathering might be used by both the Maidu and their neighbors by consent or by incursion.

The Maidu penetration into the Great Basin was greater in earlier times than at the first American contact around 1850 (see fig. 1). By their own admission, the Maidu at some earlier date held all of Honey Lake Valley and its environs. At some time in the relatively recent past, possibly circa A.D. 1700, the Maidu withdrew to the west side of Honey Lake, and the vacated area was taken over by the Paiute. Although the Maidu traditionally claim the area, they cannot name any villages and few physiographic features. This is in contrast to the Paiute who are able to give explicit details of use and village and camp names; as well as being able to name all the

significant physiographic features (Riddell 1960). Although this loss was apparently not insignificant to the Maidu, the gain to the Paiute certainly was of considerable importance as the marshlands of the mouth of Susan River at Honey Lake, as well as two hot spring areas, provided new territory of higher economic potential than the strictly sage desert environment from which the Paiute emerged. In fact, groves of oaks on the western edge of Honey Lake in the vicinity of Milford became directly available to the Paiute for the first time.

The Konkow people derive their name from the anglicization of the native term *kóyo mRáwi* 'meadowland' (see Hodge 1907-1910, 1:725). The division line between the Konkow and their Maidu neighbors, the Nisenan, lacks clarity for a diversity of reasons, among which is the early decimation by disease, slaughter, and removal of people who would be in a position of authority on the subject. Also, it seems probable that the boundary between the two groups did not have quite the same importance as it might have between the Konkow and Nomlaki, for example. In fact, the people living along Honcut Creek, between the Yuba and Feather rivers, appear as possibly being dialectically transitional between the Konkow and the Nisenan (Kroeber 1925:393). The line may have gone from the Feather River up Honcut Creek to the North Fork of Honcut Creek and up the latter to its headwaters at Wyandotte Lake, and then sharply east to the North Yuba River and then northeasterly up Slate Creek to its headwaters at Pilot Peak.

The Konkow were divided into several village communities: *Kewsayomaʔa* (*kiwsewimáʔa*), *yinomnáʔa*, *Totomaʔa* (*tó:tommáʔa*). The last two, along with several others now forgotten, composed a larger unit called *táʔyi* 'west people'. (Merriam gives a number of divisions for the Konkow and Maidu that provide a somewhat different set of boundaries from that given here; cf. Heizer 1966:42-43.)

External Relations

In terms of cultural similarities and differences between the Maidu and Konkow on the one hand and their non-Maidu neighbors on the other, there are few outstanding elements of difference and many of similarity. One difference is the occurrence of the Kuksu cult among the Konkow but not among the neighboring Yana or among their kinsmen, the Maidu. They did share this cult trait with the Nisenan and many non-Maidu central California people (Dixon 1905:322).

Differences recognized by the people themselves stem from language and locational considerations. Although the Maidu and Konkow territories were laced together by a network of trails, it would have been unusual for a person living in a village to go more than 20 miles from home during his lifetime. This distance might have been

somewhat greater among those Konkows living within the flat Sacramento Valley. Mountain people are recorded to have been driven west to a low elevation in the foothill area because of famine during a harsh winter. The lowland people were reported to have responded with compassion, possibly because their distant mountain kinsmen were, in that instance, few in number and thus posed no threat according to informant Tom Epperson (Riddell 1960-1974).

Although an individual may not have traveled far, trade items were widely distributed from village to village and from group to group. Such items changed hands at intervillage gatherings through the hand game, a form of gambling. Trade of local goods for those more common to other areas also took place.

Settlement Pattern

A settlement pattern of "village communities" (Kroeber 1925:398) served as the only political organization of the Maidu. A village community was recognized as an autonomous unit and consisted of several adjacent villages. Central to the village community was the village displaying the largest *kúm* (Konkow *kúmi*), a semisubterranean earth-covered lodge (fig. 2) provided as a ceremonial assembly chamber. The central village, although not always the most populous, was probably the residence of the most authoritative man of the village community, who used the *kúm* as a regular dwelling (Kroeber 1925:397). Among the Maidu and Konkow, this headman was primarily an advisor and spokesman (Dixon 1905:224). The separate villages were self-sufficient and not bound under any strict political control by the community headman. The central location around the largest assembly chamber of one village was primarily for ceremonial and subsistence activities.

On a basis of five persons in a house and seven houses in a village, precontact village population can be estimated at 35 persons. The number of villages in a community varied, but it is estimated that the group size did not exceed 200 (Kroeber 1925:397). Each village-



NAA, Smithsonian.

Fig. 2. Konkow semisubterranean earth-covered dance house at Chico. Photograph by Henry W. Henshaw, 1893.

community, therefore, probably consisted of from three to five villages. A village-community defended a known territory, which was a common hunting and fishing ground for all members of the community. In the mountains, the Maidu villages were segregated into existing valleys, and each village-community was well defined. Because the Konkow, in the northwestern foothills, settled in a more widely dispersed pattern along river canyons, the territory of a single community was less determined (Kroeber 1925:398).

In the mountain environment of the Maidu, soft-bottomed glacial valleys were covered with snow during the winter months. Melting snow transformed the valleys into spongy meadow or marsh and sustained a heavy river flow during the summer season (Kroeber 1925:396). The Maidu "selected sites along the edges of these valleys, and rarely lived out in the middle of the level stretches" (Dixon 1905:175). Archeological evidence, too, shows that the village sites were located above the meadow or marshy valley floor (Riddell and Pritchard 1971). This placement provided excellent views of the surrounding country and enabled the dwellings to be constructed among a mixed coniferous forest. The winter months were difficult; preserved and stored food provided the main sustenance. Some families moved to lower elevations for the winter; however, most groups of Maidu remained in the permanent village sites throughout the winter months (McMillin 1963:63).

In Konkow territory, the Feather, Yuba, and American rivers wind their way through the northwestern foothills: carving deep, narrow canyons. The Konkow settlements were situated by preference on the ridge, high above the rivers and generally on small flats on the crest of the ridge, or part way down the canyon side (Dixon 1905:175). Sites were further located on elevated knolls in reference to attack and defense considerations.

Subsistence

The Konkow followed a yearly gathering cycle that took them away from their winter dwellings on the river ridges. In the summer, they journeyed up into the mountains for hunting, and dried deer meat was brought back to the winter villages. Food gathering during the spring took the Indians into the valley areas to collect grass seeds, especially wild rye (Duncan 1964:15). At the summer camps the Konkow constructed a roofless, circular brush enclosure large enough to house three or four families, which could also be used for ceremonies. There was a fireplace in the center and two openings oriented toward the east and west or south (Voegelin 1942:62). Maidu knowledge of the native flora and fauna was complete. Most plants and animals had multiple uses serving subsistence, religious, and material necessities. They utilized the flora and fauna to the fullest: the root, stems, leaves, and seeds of plants and the flesh, skins,

horns, bones, and hoofs of fauna were used for specific items of food, shelter, clothing, tools, and medicine.

Women and children gathered nuts by hand and collected seeds with the aid of a seed beater. The seed beater was used to strike the grass or plant head causing the seeds or grass head to fall off into a tray-basket held underneath (Dixon 1905:187). Both nuts and seeds were transferred, after gathering, to burden baskets held on the back by a shoulder or head strap.

Acorns provided by oak species were the primary source of nut meats. Three varieties were distinctly preferred: those from the black oak (*Quercus kelloggii*), the canyon or golden oak (*Quercus chrysolepis*), and the interior live oak (*Quercus wislizenii*). Two other species are particular to the northeastern mountain region: huckleberry oak (*Quercus vaccinifolia*) and bush chinquapin (*Castanopsis sempervirens*) (McMillin 1963:35-36).

The acorn flour was bitter because of tannin in the acorns and had to be made edible by leaching with warm water. Flour was spread over the interior of a flat, shallow excavation in sand. Cedar sprigs laid over the flour prevented it from being disturbed as warm water was poured into the basin. As the water seeped through the meal, it was absorbed by the sand. This was repeated numerous times, each time using hotter water, until the bitter tannin was leached out. The dough was then cooked with water by adding hot stones to the cooking basket to form a soup, or if thicker, mush. Bread was made from the dough by wrapping it in oak (Dixon 1905:187) or wild grape (Duncan 1964:78) leaves and baking under a pile of hot stones. "The resulting bread is very solid and heavy, resembling almost a lump of putty, and is, like the soup and mush, almost tasteless" (Dixon 1905:187).

In the foothills the Konkow gathered nuts from the digger pine (*Pinus sabiniana*). The nuts were eaten whole or ground into flour and the shells made into beads. The Maidu used the mountain species, sugar pine (*Pinus lambertiana*) and yellow pine (*Pinus ponderosa*). They ate the nuts plain or cooked into a soup or patties. Hazelnuts (*Corylus cornuta*), the nut of the buckeye (*Aesculus californica*), and wild nutmeg (*Torreya californica*) were other nut-meat sources. The buckeye nut had to be processed, as the acorn, but it took more thorough leaching to remove the poisonous, bitter-tasting prussic acid. The nutmeg required even more processing, and these nuts were first cracked and then buried in the ground for several months. They were then dug up and roasted in ashes (Dixon 1905:188).

The Maidu and Konkow drank a wild mint tea and manzanita cider. The cider was prepared in large quantities by crushing manzanita berries and mixing with water to form a stiff dough. The dough was placed on a willow sieve over a soup basket. Water poured over the dough dissolved the sweet berry flavor. The resulting

liquid was a light amber color and had a strong, sweet taste not unlike that of a **Appendix 43** (Dixon 1905:191).

Roots were eaten raw, roasted, boiled, dried, or pounded and mixed with berries, then baked in small, flat cakes (Dixon 1905:189). A digging stick aided in gathering roots and bulbs. This was a straight stick, a yard or more in length, with one end hardened by fire. Utilized roots included blue camas (McMillin 1963), the Indian root, cattail root, and the tule root (Duncan 1964:47, 76, 77).

Yellow jacket larvae, angleworms, locusts, grasshoppers, and crickets were caught and eaten. To gather locusts and grasshoppers, a fire was started around a large hole in a meadow and the insects were driven into the pit and collected in quantity. They were eaten dry or roasted and were stored for use during the long winter months (Dixon 1905:191).

Eels were speared and the meat was cut into small pieces and stewed. Salmon were caught with a salmon-gig, fashioned from bone or antler, and dried by hanging on a pole. The whole fish when dried was pounded into a coarse powder, stored in baskets, and eaten dry (Dixon 1905:185). The Konkow regarded the first salmon catch of the season as an occasion for ceremony. The first fish had to be speared by a shaman, and after it was cooked each man ate a piece. Only then was fishing begun in earnest (Dixon 1905:198).

Fishing was also accomplished with the use of nets or fish traps. The nets varied in size with heavy or light cord woven into a large or small mesh, depending on the use of the net. The Maidu nets were of the bag type, which were held open at the mouth by a piece of elastic willow wand. A pole tied to the opposite side of the net mouth was raised when fish entered, thus closing the mouth and trapping the fish. Seine nets of the Konkow were large and capable of stretching across the width of a stream (Dixon 1905:143, 147).

Animals, as a food source, were hunted or captured. Of the species available in the Maidu and Konkow environments, only the coyote, dog, and wolf were not eaten. The Konkow also did not eat bear and mountain lion. Buzzards were avoided, as were lizards, snakes, and frogs (Dixon 1905:185).

Hunting necessitated knives, spears, bows and arrows. Hard black basalt was used for knives and spears. The stone was fastened to a handle of wood and secured with pitch. Spearpoints were inserted in the end of a wooden spearshaft, pitched and wrapped with sinew. Arrow points were made from obsidian, which was obtained through trade. Silicate material was also used, and some came from a cave near Oroville. The Table Mountain Cave was regarded as sacred, and a person going to get flint brought with him offerings of meat and beads for the spirits. Exploitation of this resource was somewhat controlled, and "a person was allowed to take only as much flint as he could break off at a single blow" (Dixon

1905:133). Having obtained the stone, the person in respect had to crawl out backwards. Bad luck or poor quality stone would result if these customs were not followed.

The Maidu, living in the mountains, depended much more on game than did the lowland people and, thus, became more skillful hunters (Dixon 1905:192). Good hunting dogs were highly prized. Hunting could be attempted as a single or collective (deer drives and bear hunts) effort.

The grizzly bear was hunted for its hide, which was used in ritual dances. In the spring a ceremony was held in the front of the cave of a bear nearing the end of his hibernation. In the ceremony, the men addressed the bear, instructing it to stand up and let them shoot, as its life had already been paid for. The participants concealed themselves behind trees in the vicinity of the cave. The first man would approach the bear and shoot one or two arrows. He then ran, with the bear in pursuit, to the hiding place of another hunter. This continued until the bear, his body full of arrows, finally succumbed (Dixon 1905:194).

Deer could be hunted alone, but were more often caught during large deer drives. Such a hunting effort involved great numbers of men, lasted several days, and ranged over a large extent of land. Deer were either driven over a steep cliff or routed along their favorite runways and then shot by concealed hunters. Squirrel, rabbit, and elk were shot with arrows. The elk were followed for days and killed with arrows when exhausted. Rabbits were caught in nets and then clubbed to death. Quail were snared along known runways. Because it brought bad luck, the eagle was never shot. Geese and duck were either shot or caught in nooses that were hung by a cord above the water's surface (Dixon 1905:192, 195).

Meat was prepared by baking or roasting. Fire was started with a buckeye fire drill, which was twirled between the palms of the hands to ignite dry grass and tinder wood (Dixon 1905:191, 181). In baking, rocks placed in a hole were heated by a fire and then the fire was raked out. The meat, wrapped in broad, flat maple leaves, was placed in the pit and the hot stones were piled on top. The hole was filled with earth, and in one or two hours the meat was ready. For roasting, meat was placed directly on the coals (Dixon 1905:191; Duncan 1964:32).

The hides of animals were used for clothing, for adornments such as headbands and belts, and for sinew for tools. Tanning was an occupation of the women. Bone or stone scrapers were used to remove hair and the hide was then placed on a slanting post set in the ground. A cake of dried deer brain was dipped into warm water and rubbed over the skin. Following this, the hides were soaked in water, wrung out, and rubbed down before a fire until dry (Dixon 1905:142).

Salt was obtained from local salt deposits but was not

used extensively (Dixon 1905:191). Among the Konkow, other condiments used included dandelion, deerbrush flour, hazelnuts, watercress, wild garlic, and onion (Duncan 1964:12).

Culture

Clothing and Adornment

Although the climate of the Maidu and Konkow environments differed considerably, the same clothing was worn by both groups and did not vary with the seasonal temperatures. All year around, the clothing was scant. In the heat of summer, men, as a rule, went naked or wore only a breechcloth of buckskin (Dixon 1905:155). Women wore an apron skirt consisting of two tassels in front and back. In the foothills, the tassels were of grass or of willow or maple bark. In the mountains, the apron was made of buckskin or bark.

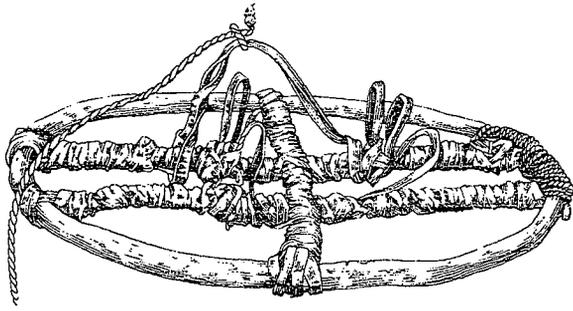
Moccasins were worn only by the Maidu. In the severe cold of winter, grass was stuffed inside to give added warmth. Moccasins were of unsoled deer skin. They were sewed with a seam up the front and reached above the ankle. For protection against the snow, an additional piece of deer hide was worn from the ankle to the knee. This legging was worn with the hair side in and fastened at the knee and around the bottom of the moccasin. Snowshoes were also used in winter (fig. 3) (Dixon 1905:162-163, fig. 34; Kroeber 1925:405).

Robes of deer or mountain lion skin were worn with the fur side in, draped over the shoulders. Older men in the mountain area wore a netted cap called the *ʔolé* (Konkow *wiKa'*). This was used during dances to attach ceremonial headdresses. Maidu women wore as a head covering a basket hat or cap made of tules in a manner characteristic of those worn by the Achumawi, Klamath-Modoc, and Sahaptin women. Thus, they differ from those worn by the Shasta, Yurok, and Karok (Dixon 1905:162).

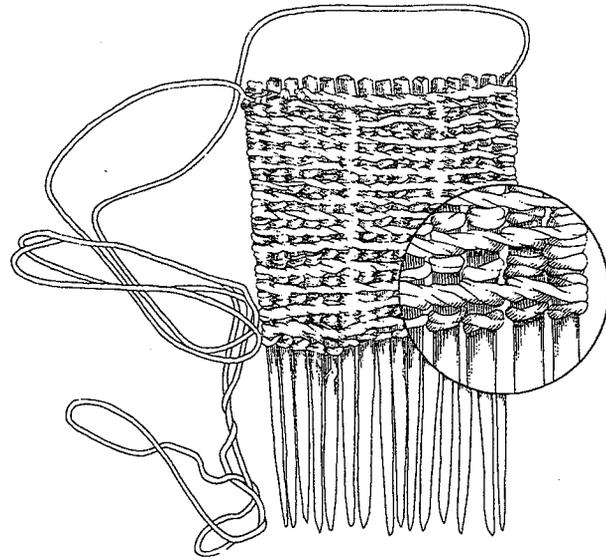
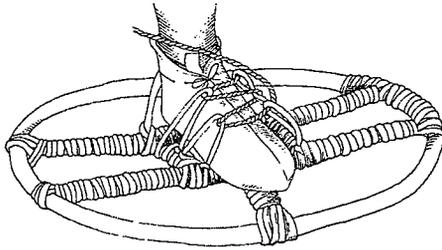
The Maidu wore their hair long and left hanging loosely, while the Konkow cut their hair shorter. Soap-root was used for washing, and hair was trimmed with a hot ember. Beaten pine cones and porcupine tails were used as hairbrushes. The Konkow men plucked beard and mustache growth, while the Maidu did allow mustache growth that was slight (Dixon 1905:163).

Ornaments were of shell, bone, feathers, and wood (Dixon 1905:164). Necklaces were made from colored shell and dentalia. Women pierced their ears and wore ear ornaments (fig. 5) of bone or wood with woodpecker scalps or quail tips attached. Men pierced the septum of the nose and wore one or two woodpecker feathers. Among the Konkow, the nose was pierced as a part of the initiation into the secret society.

Paint was made of white or red clay, a red stone, fir tree fungus, or charcoal. It was applied before ceremonial

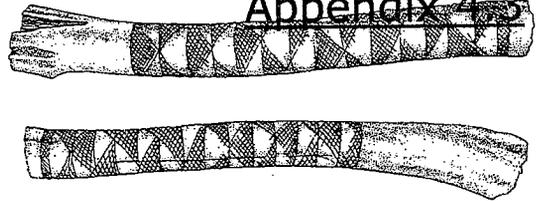


after Dixon 1905: fig. 34.
Fig. 3. Maidu snowshoes.



Dept. of Anthr., Smithsonian: 131142.
Fig. 4. Konkow comb. Whittled wood splints fastened together by twined cord. Length 11.5 cm; collected 1889.

dances, and the patterns were simple dots and rough streaks. The Maidu tattooed by puncturing the skin with fish bones, pine needles, or bird bones. Then a red pigment was rubbed into the skin. Men were more often tattooed with patterns of vertical lines on the chin or a single vertical line rising from the root of the nose. Tattooing was also applied to the breast, arms, and



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Fig. 5. Ornaments worn in pierced earlobes. Bird bones with design incised and filled with dark pigment. Average length 13 cm; collected 1838-1842.

abdomen. The Konkow tattoo designs were made by cutting the skin with sharp flint or obsidian, then rubbing the area with charcoal or a reddish pigment. Women were more elaborately tattooed with three, five, or seven vertical lines on the chin. Lines or dots were occasionally applied to the backs of the hands (Dixon 1905:167).

Structures

Three dwelling structures were used as the seasons varied during the year. The semisubterranean earth-covered lodge (fig. 2) and the conical bark dwelling were used only for four or five months beginning in November (Dixon 1905:175). In the summer, shade shelters were constructed close to hunting and gathering sites off and away from the main village. The summer shade was built on upright poles supporting a flat roof of oak branches and leaves. There were no walls and there was space enough for ceremonial activities.

The semisubterranean multifamily winter living and assembly house was constructed in spring when the ground was soft (Voegelin 1942:182). It was of circular ground plan, was excavated to a depth of about four feet, and had a diameter of 20 to 40 feet. The earth removed was used later as a part of the roof cover.

The dwellings which the Konkow built above the river canyons were, as among the Maidu, of three structural types. The semisubterranean lodge, excavated in the spring when the earth was soft enough for digging, was constructed in a form somewhat different from its Maidu counterpart (Dixon 1905:169).

Technology

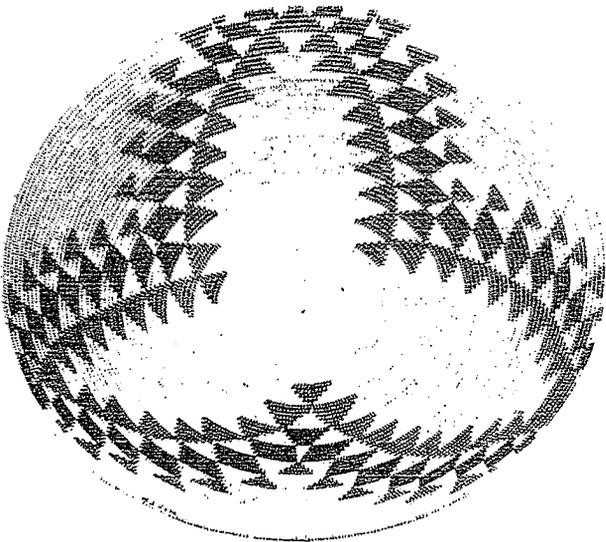
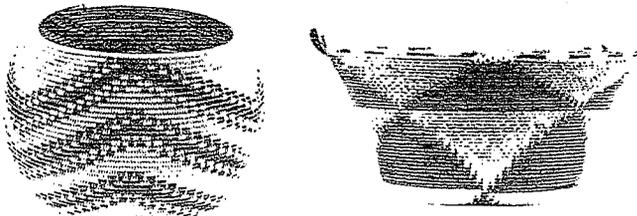
Basketry was both an art and a necessity. Twining was used for burden baskets, milling or mortar baskets, storage or dish baskets, seed beaters, and fish traps. Material varied with the species available in the environment. The Maidu used roots of yellow pine and bear grass (*Xerophyllum tenax*), together with the roots of the common brake (*Pteridium aquilinum*) or the stems of the maidenhair fern (*Adiantum pedatum*). The Konkow used willow (*Salix* spp., including *S. hindsiana*) or the redbud (*Cercis occidentalis*) with shoots of hazelnut (*Corylus cornuta*) forming the radial elements in burden baskets.

The Konkow used a simple twining while the Maidu used a twining with a double overlay. Designs were worked in with different colored sewing splints made from redbud, willow, and pine root dyed black with charcoal (Dixon 1905:145-146). Patterns were simple diagonals, either parallel or zigzag (Kroeber 1925:414).

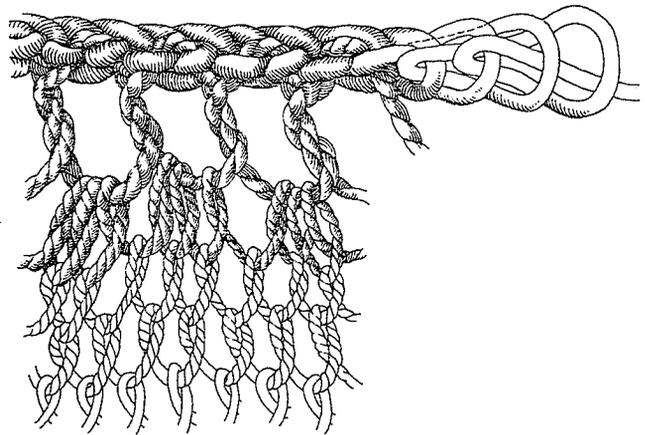
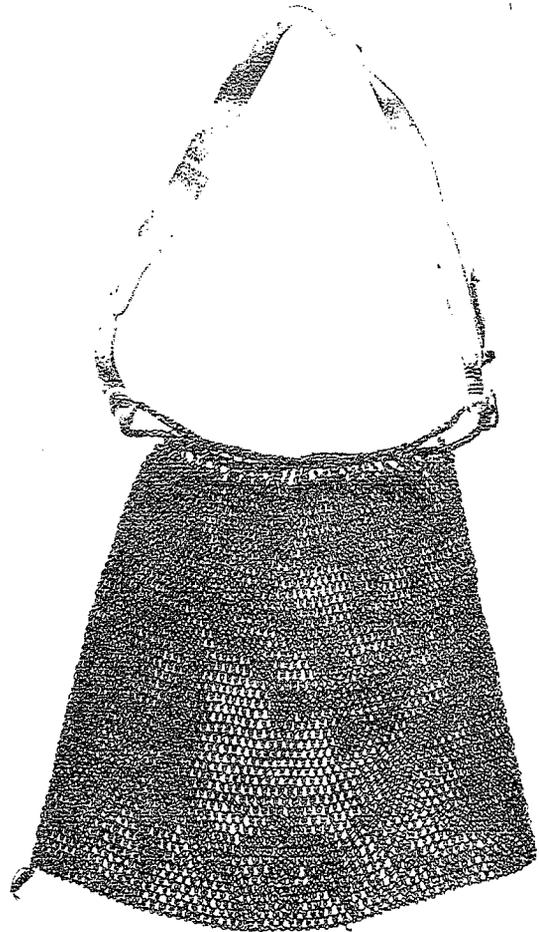
Coiled basketry was more complicated (fig. 6). These baskets were very firm and water-tight. They were normally either a brownish red or black on a white or neutral background (Kroeber 1925:414). A bundle of three twigs was coiled tightly to another bundle with the sewing splint. The separate bundles of three were joined together by passing the sewing splint over the first three twigs and then under the upper twig of the bundle below. Baskets were made in varying sizes, with a proportionately varied stitch.

The Maidu make a twined overlay design, but only on their burden baskets. This idea was possibly taken up from their northern neighbors. The Konkow do not use overlay designs on their twined baskets, although in general the technical aspects of Konkow twining are similar to those of the Nisenan and the Maidu. The

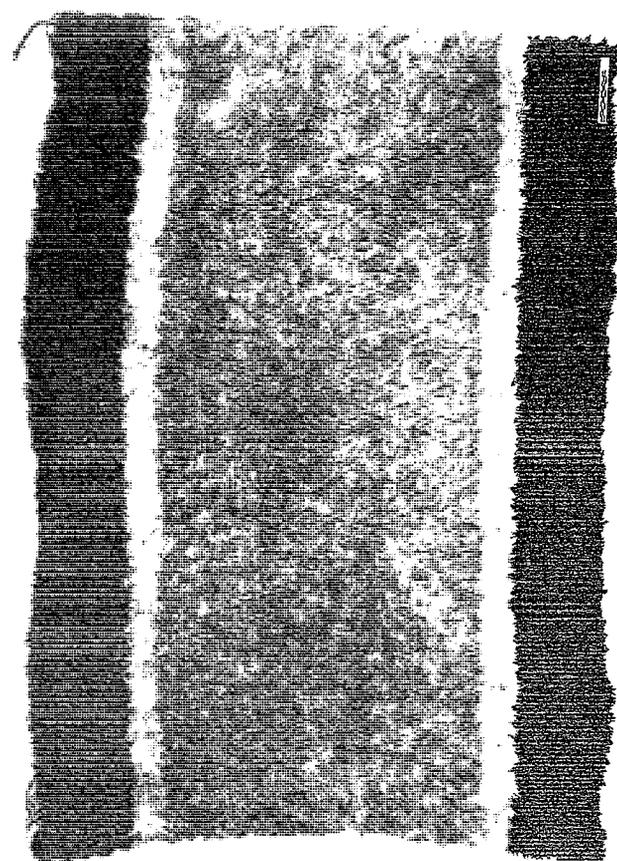
Konkow usually employ diagonal twining for burden baskets and weave designs into them. They have come from coiled basket antecedents and from the ancient-style horizontal band patterns. The Nisenan do not use the



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 Fig. 6. Maidu coiled baskets. right, Basket woven with red woodpecker feathers, rim decorated with quail plumes and shell beads; diameter 22 cm. collected 1889. center and left, Same scale; collected before 1921.



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 Fig. 7. Konkow carrying sack. Knotless netting of 2-ply milkweed fiber cord with leather strap; detail shows construction of rim. Length 38 cm; collected 1889.



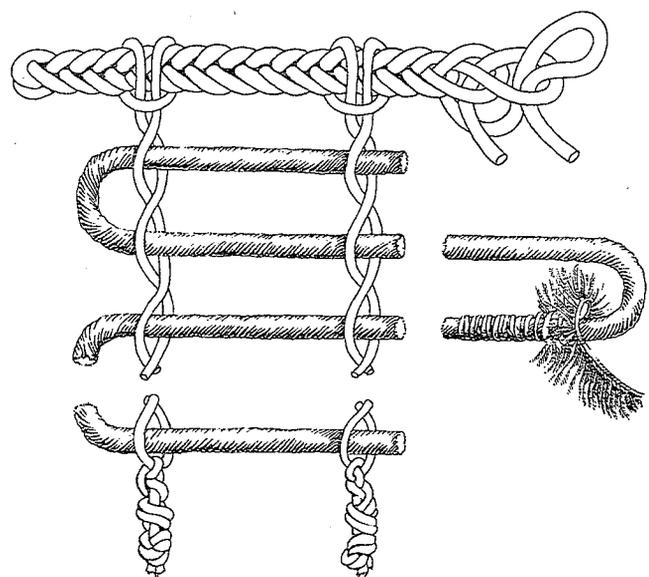
coiled-type patterns for their twined baskets. Konkow burden baskets are so similar to those woven by Pomo and Patwin that they are nearly indistinguishable. In overall appearance they are more closely related to these two groups than they are to their Nisenan kinsmen (Lawrence Dawson, personal communication 1974).

The tule mat was made from the rushes along rivers and served as seats, beds, roofing, and doors (Kroeber 1925:415). Tule leaves were used shredded for skirts, rafts, mats, beds, coverings of the summer shelter, dance headdresses, and doors (Dixon 1905:148, 198, 292, 304). In a twined form, they were used as sacks, mats, headbands, and in basketry (Voegelin 1942:62, 80, 102, 198).

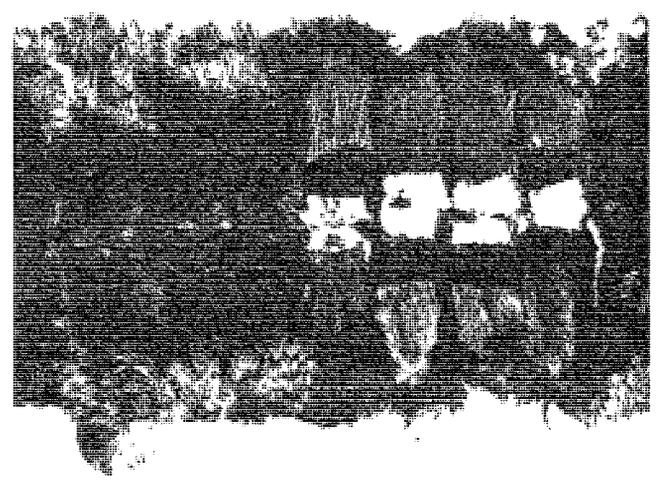
Other textile art included blanket making (fig. 8). Woven rabbit skin, wildcat skin, and geese and crow skins were used as blankets and robes. Feather work was created for dancing implements, headdresses, belts (fig. 9), and ornamental ropes. Feather plumes were made by tying the feathers to small sticks that were then bound and decorated with strings of beads.

Transport

Since the rivers of the foothill region were too swift for navigation, the Konkow did not manufacture watercraft, although the Maidu used canoes in the mountain regions. There were dugout boats made by burning out the center of logs. Single paddles or poles were used for steering. In addition to the canoe, simple log rafts were constructed for crossing rivers.



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 Fig. 8. Maidu feather blanket. The weft cord is closely wrapped with webs of feathers stripped from their shafts. The warp cords are attached to a braided cord on the upper edge of the blanket and are twined to hold the continuous weft cord. They are finished on the lower edge by knotting. The feathers used are wood duck, mallard, and Canada goose. Width 108 cm; collected 1841.



Dept. of Anthr., Smithsonian: 131114.
 Fig. 9. Konkow woman's dance belt. Buckskin covered with woodpecker scalps; abalone pendants attached along lower edge. Length 103 cm; collected 1889.

Tobacco

Tobacco (*Nicotiana attenuata*) was the only cultivated plant. Pipes were one piece and tubular. An elderwood pipe was used for social gatherings or bedtime smoking. A stone pipe was smoked by shamans for ceremonies where tobacco was used as an offering (Voegelin 1942:92-93).

Political Organization

• **LAW AND PROPERTY** Land for fishing and hunting was held in common. Any member of the village community could procure food from the defined tribal territory. The boundaries of the community property were guarded by different pairs of men selected each week to protect against poachers. They wore a single magpie feather upright on the top of the head. The men were selected for their steadiness of temper and good judgment. The underbrush was kept clear by burning in order to make hunting easier and to define territory in war. Within the common land, certain families could claim fishing holes as their own and if any other tribe member wished to use the private property, permission had to be secured. Among the Maidu, it was common for families to erect and own private deer fences. The fishing holes and deer fences were inherited in the direct male line (Dixon 1905:224-227).

Other property was owned by men or women according to need and service. The men owned their hunting and fishing implements such as nets, bows, arrows, spears, canoes, clothing, and knives. The *kum* was also the property of the male. Women owned those materials necessary for housekeeping, cooking, and gathering. Baskets, utensils, acorn pestles, mats, blankets, digging sticks, seed beaters, and basketmaking supplies were among the woman's possessions. Due to the custom of burning all the personal property of a man at his death, there was little to be inherited. Those things that were not destroyed went first to the eldest son and then the rest was shared by the other children (Dixon 1905:226).

Theft of material possessions within the tribal community was punished by reprisal. If the thief was caught, he had to pay the aggrieved with something of equal value. If the thief did not pay, the aggrieved had the right to kill him. Theft or murder committed on the person of another tribal community was not regarded as wrong and involved no blame or punishment by the home people. The most important means of dealing with murder was by blood revenge. In both intertribal and intratribal murder, the victim's family had the right to kill the murderer. Effort was made to kill the offender in the same way that the original victim lost his life. The same weapons were used, the same wounds inflicted. Among the Konkow, the murder could be appeased by payment if the victim's family was willing to bargain. According to custom, if the offense was between two villages, parties from both sides,

dressed in war dress, met and agreed on a price and a price was agreed upon. The customs were the same for the Maidu, except that the murderer had to fast, eating no acorns or meat. Often, even after a price was paid, blood revenge was exercised. When a woman was killed, the aggressors often gave a woman of their own village or tribe to the aggrieved in order to avoid blood revenge or reprisal (Dixon 1905:227).

Oaths of any kind were not given, perhaps were not necessary, as evidenced by the Konkow belief, "the man with a crooked tongue is like the man with the crooked arrow." Lying was therefore avoided but it was not usual to curse another man. "The worst that could be said to a person was to wish that a snake might bite him" (Dixon 1905:227-228).

• **LEADERSHIP** The group headman played a relatively minor role in village community organization and was not selected by inheritance. Rather, he was chosen through the aid of a shaman who conveyed the choice of the spirits to the people. The chief was chosen for his maturity, wealth, ability, and generosity. He could also be removed by the word of the shaman, again a messenger of the spirits (Dixon 1905:223-224).

The Konkow chief was primarily an advisor; he was responsible to a council composed of elder members of the Kuksu cult. His duties in war involved leading his tribe into battle. The chief could declare war and, among the Maidu, could negotiate for peace. The chief had special rights to the ceremonial earth-covered lodge as his place of residence, and it was often burned at his death. There were no redistribution advantages; the chief hunted and received food as did other members of the village community. In addition, he provided food for visitors and ceremonies; apparently he depended on support from relatives and possibly others to do this. The chief directed communal activities of deer drives, fishing, and gathering (Voegelin 1942:106).

War

Most warfare involved feuding between villages within a village-community or between village-communities. Often war was associated with blood revenge and could be avoided by meeting a demanded price as restitution. There were also traditional foreign enemies to contend with. To the north, the Maidu had conflicting interests with the Washo, Yana, and Achumawi but were on better terms with the Paiute. The Konkow fought the Yana (Dixon 1905:205-206).

Raiding and ambush were the most common tactics as there was little feeling of tribal unity. At times, several villages would band together against a common enemy but these unions were only temporary. Attack was usually at dawn, and warning of an attack was given with smoke signals and fire. On the battleground, the men stood with their side to the enemy and kept in constant motion to dodge arrows, which were often poisoned.

Spears, sticks, and slings were also employed in fighting. Elkhide armor covered the body from the knees to the shoulders. Straight round sticks of mountain mahogany were also made into armor; these were bound into the form of a waistcoat with a high collar that enabled the warrior to withdraw his head entirely from an approaching wave of arrows (Dixon 1905:205).

The Konkow were known to torture their captured male enemies. If the prisoner were an ordinary person, women were allowed to take part in the ceremony that led to the eventual death of the prisoner. If he were an important or influential person, only the men took part and the ceremony was led by the shaman. Here the victim was shot with arrows. In the warfare of the Maidu, male prisoners were usually killed. The slain were then scalped and the scalps were suspended on a pole on the return of the warriors to their village. Women were carried off by their captors but usually escaped after a short time. Slaves were not common, although often the captured women would serve in the families of the enemy until they could escape (Dixon 1905:206-207).

Trade

Trade was with immediate neighbors who could provide goods that the Maidu and Konkow could not ordinarily obtain. The Konkow secured from neighboring groups shell beads, pine nuts, and salmon. In return they gave arrows, bows, deer hides, and several sorts of food to Maidu and to the Wintuan peoples. The Maidu traded with the Achumawi despite their mutual enmity, giving bows and deerhides and receiving beads, obsidian, and a green pigment for dye. In exchanges, beads were counted individually, not by the string. Currency was a standard circular, disk-shaped shell bead. These beads, when traded, were often rough and the Maidu performed much of their own bead finishing. Strung clamshell disk beads and baked magnesite cylinder beads were also highly prized. The Konkow received abalone shell from the Wintuans, which went primarily into ear ornaments and necklace pendants rather than currency. Dentalia were valued highly and were too rare for use as standard money (Dixon 1905:201-202; Kroeber 1925:399, 421).

Life Cycle

•MARRIAGE Marriage was simple, being established by the couple living together. The customs of initial courtship differ somewhat between the Maidu and Konkow. Common to both groups were the practices of patrilocal residency and the levirate. There was no rule of exogamy; in either group a man was free to wed within his village but usually went elsewhere to find a wife. Before residing permanently in the husband's village, the married couple lived for a time with the bride's family, and the new husband rendered service to them by providing food. After this initial service it was not uncommon for the husband to occasionally provide for his wife's family, and

Appendix 4.3
it was considered an advantage to see a daughter married to a good hunter. In both groups, the Maidu and Konkow had many wives. According to the practice of levirate, a man had first claim to his wife's sisters; if he failed to exercise his right, it passed to his brother (Kroeber 1925:403). Divorce in both groups was simply a matter of the wish of either party involved.

Among the Konkow, when a man wanted to marry he repeatedly visited the girl's home and engaged in topical conversation with her father. He then brought gifts of his own hunting and fishing efforts, and if these were accepted, he visited once more. This time, without further discussion, the couple was given a separate bed and were considered married. They continued to reside in the girl's home for a few months before taking up their patrilocal residence. The Maidu courtship was somewhat more abrupt. A man would visit a girl's family and plan to spend the night. If the girl did not want him, she would sit up all night. Her decision was greatly influenced by her parents, and an important consideration was of the man's worth as a good provider. After the initial decision, the couple resided for a time in the girl's home and the husband provided the family with fish and game (Kroeber 1925:401).

•BIRTH A woman took considerable care during her pregnancy; she ate no meat or fish and, during the last part, did not leave her home. At this time, the husband was restricted from hunting and fishing. Among the Maidu, the parturient was assisted by a midwife and remained in her dwelling house or the summer shade shelter for the delivery. The Konkow woman left the village and went to a secluded spot outdoors to deliver her child. She was assisted by an old woman of the village and gave birth in a sitting position. To hasten delivery, hot herbal teas were administered and immediately after birth, heated stones would be placed on the mother's abdomen. The afterbirth was buried directly by the Konkow, while among the Maidu it was kept, wrapped in skin, grass, or bark, until the navel cord dropped off (Voegelin 1942:115). The child was immediately washed with warm water and the umbilical cord was cut with a sharp shell. The Maidu carefully preserved the cord and tied it to the baby's cradleboard (Dixon 1905:228-230).

Following the birth, the parents abstained from labor and the father did not hunt or fish. The period of rest and quiet for the new parents varied. The Maidu couple remained at home until the remnants of the umbilical cord fell away. The Konkow father remained at home while his wife stayed in the menstrual hut until she could again walk easily. In the case of a stillborn child, these restrictions were more severely enforced. The Konkow husband would fast for one month, and his wife remained in seclusion and fasted for three months. The Maidu husband and wife went off into the mountains for some months; the man returned alone while the woman stayed behind for additional seclusion. It was considered un-

lucky by the Konkow to give birth to twins. The mother often was killed with the children (Dixon 1905:230).

Until a child was about two or three years old, its designation was "boy," "girl," or "baby." The Konkow gave a name that either fit a characteristic of the child or pertained to some circumstance at the time of birth. Names were descriptive, such as 'snoring bird' or 'climbing girl'. The woman's name was changed at puberty, childbirth, and again at old age. The male received a new name on entering the Kuksu cult or secret society. These were given by older members and would be characteristic names such as 'wing-tied-up', 'pine-nut-eater', 'stick-it-in-the-ear', or 'licking-head'. In the Maidu families a child might be named after a deceased relative one year after the death, as this would remove the taboo placed on the dead person's name (Dixon 1905:230-231).

•PUBERTY At the first menses, the Konkow girl observed several restrictions while she remained quietly at home. She did not eat meat or fish and was fed only acorns, seeds, and roots by her mother. Five vertical, parallel stripes, alternating red and black, were painted on each cheek. When the last marks were removed, the girl was considered ready to marry.

At adolescence, a close friendship between two Indian girls among the Konkow is noted as being relevant to the female puberty rites. The older of the two served as the attendant for the younger who was experiencing her first menstrual period. On the first day, the girl and her friend stood with heads covered in the center of a ring of pine needles. These were set on fire and the two girls had to escape and run a short distance away. They then returned to the circle of women. There was much singing and laughter and they were given a warm bath. Afterward all retired to the girl's house, and at nightfall dancing and singing began and continued for five nights, lasting each night until dawn. The old women would sing and dance a ceremonial dance called the *wulu* (Maidu *wulu*), which tells of their desire that the girls have eternal youth. Since, according to tradition, old people were eaten by the crow or *?áRa* (Maidu *?a?á* or *kákRa*), one song in translation reads, 'put the two girls on the bridge so the crow cannot get them' (Densmore 1958:48; Dixon 1905:233-234).

The Maidu girl, at the first day of menstruation, journeyed with her mother into the mountains. She observed strict food restrictions and had to eat from her own dishes and drinking vessels. A scratching stick was used, and during the entire period the girl carried with her a deer-hoof rattle. At the end of the first day, the mother and child built numerous fires in the hills to signal to the village below that the ceremonies were to begin. They returned to the village where relatives had assembled and the dancing and song was begun outside around a large fire. The girl joined in the dances and at their finish the deer-hoof rattle was thrown to the girl, who ran off from the circle at top speed, signifying the end to that evening's dancing. The dances continued for four more

nights. After two nights of fast, the girl's ears were pierced at dawn of the eighth day. Dancing resumed that night and continued the following night. The morning of the tenth day, the girl painted her body in red, black, and white and joined in the *wulu* dance in which only the women took part. At noon the girl was bathed and the remainder of the day was spent in feasting. At the subsequent period, one month later, the entire ceremony was repeated and ended with a final dancing of the *wulu* (Dixon 1905:236-237).

There were no formal boys' puberty rites for the Maidu. The Konkow initiation of boys into the secret society took place at age 15 or older and could be considered a ceremony of adolescence rites. These new members were called *yéphoni*. The shaman, as head of the *yéphoni*, received from the voices of spirits the names of those to be initiated. It was to his advantage to name "bad" men so that they would not be inclined to harm the society. After a meeting or ceremony in the dance house, the shaman would attempt to capture those chosen by closing the door of the chamber. The candidates would attempt to escape while all others were made to leave. The doors were again shut and the shaman distributed to each candidate a wand that was hung up inside the dance house. The ceremony continued as a sacred acorn and birch-seed meal was sprinkled on the hair of each boy. The shaman ran around the initiates with a stick from the fire and then sprinkled water upon them. He called for food, and goods were distributed among the old and new members. One initiate was appointed to give a feast on the following day. The new members were then taught the dances of the *yéphoni* and during this time observed restrictions involving a taboo against eating any flesh and the use of a scratching stick. The ceremonies and dance lessons lasted for eight days, at the end of which new names and the wands were given to the initiates. Each was allowed to wear a netted cap as an insigne of membership. Following the eight days of initiation each new member gave a feast, and so there was a period of continued merriment (Dixon 1905:322-326).

•DEATH In the mythology, it is related that the Creator Wanome (Konkow *wó-nommi* 'immortal [one]') brought death to the people although he originally did not want the Indians to die. Coyote, who is spoken of in many myths, wanted the people to die because he wanted burials and memorial burnings. When Coyote's own son died he tried to make Wanome bring him back to life, but Wanome made his final decision: "You wanted it this way, and this is the way it will be from now on" (D. Hill 1969:5). And so, the Maidu and Konkow observed burial customs and the latter participated in an annual mourning ceremony during which goods and materials were displayed and burned.

The Maidu and Konkow acknowledged the existence of the soul, which they referred to as "heart." At a person's death it was said that "his heart has gone away"

(Kroeber 1925:439; Dixon 1905:259). The soul left "like wind" from the mouth of the Konkow and then had to retrace every step taken in life. During this journey it haunted well-known places. The Milky Way was a path to the other world that the soul could follow after its time of haunting the past world. The good souls followed the left-hand fork of the Milky Way, which led to the "Heaven Valley." Bad people were changed into rocks and bushes. When a Maidu died, his soul stayed for a time and "blew about" crying constantly. The soul then left for the other world and was guided by deceased relatives toward the east, where the Creator lived, and passed through a gate into a paradise of food and pleasure (Dixon 1905:261-262).

Burial was the method of corpse disposal for both the Konkow and the Maidu. The Konkow dressed the body in the finest clothing and placed it in a flexed position in a bear skin. It was buried facing the west, along with some food and material possessions. The Maidu dressed their dead in beads and feathers and wrapped the body in otter skin. The body was buried in an extended position facing the east. Personal property and gifts were tied into a bundle and placed in the grave (Dixon 1905:243-244). Cremation was used by the Konkow when a person died away from home, the ashes then being carried back to the village and buried there.

Initial mourning customs were practiced by both groups. This may be accounted for by the belief that the soul stayed in among the people before journeying to the other world. The Konkow widow and widower cut their hair short and covered themselves with a mixture of pine pitch and charcoal. The widow remained in the house all day and spent her time weaving baskets that were to be burned during the annual mourning celebration. The widower refrained from gambling or dancing until after participation in the burning ceremony (Dixon 1905:243-244). Among the Maidu, only the women usually showed outward signs of mourning by covering themselves with the pitch and cutting the hair short. Men would do the same only on the occasion of the death of their father.

The mourning anniversary of the Konkow was an elaborate means of generating offerings to the dead and an economic exchange of material goods. When a person died his house and belongings were initially burned. Then, once each year for usually five consecutive years, the deceased's family participated in the anniversary burning ceremony during which they displayed, exchanged, and burned material goods that were prepared during the year for the ceremonies. Each village community had a designated burning ground ruled by a shaman of one of the villages. At the death of a family member, the mourners paid for a "string" with beads, furs, or food. The arrangement of the beads on the string indicated the family's membership to a particular burning ground where they would participate in the next burning cere-

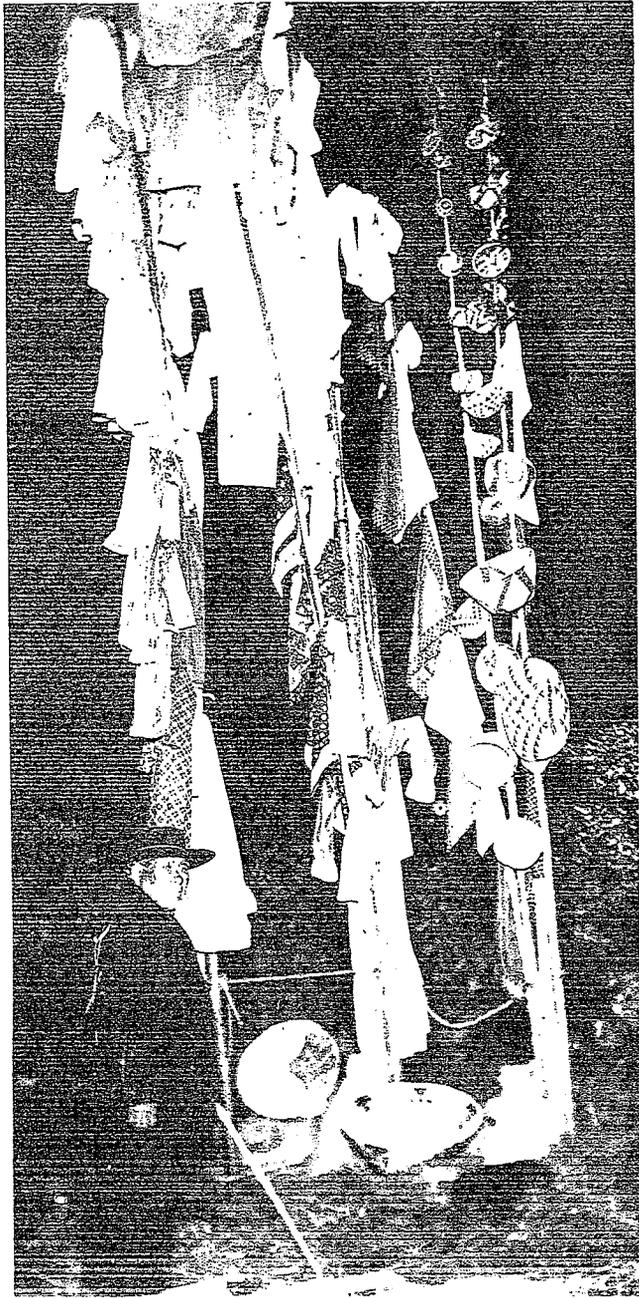
mony. If another family member died in this time, the necklace was worn for five days following the most recent death. At the end of five years, the necklace was returned (Dixon 1905:246).

On the first evening of the mourning anniversary rites, the mourners cried at the graves of the deceased, which were then covered with "flour" and then with earth. The second evening, all proceeded to the designated burning ground, which was a circular enclosure 50-100 feet in diameter and surrounded by a brush fence. Each family brought its own poles, which were designed to display the materials made for burning (fig. 10). The poles were planted on the north and south sides of a central fire. A period of bargaining ensued during which many materials were exchanged and a family might elect to burn poorer materials in exchange for higher quality goods. The fire was lit by an old man and the shaman delivered an invocation. For the rest of the ceremony the mourners danced about the fire and cried out for their departed; there was much wailing and singing. At this time it was also believed that the ghosts or souls of the deceased could be seen to dance slowly about the fire. The ceremony climaxed when the poles were lifted down and the material goods removed. These were thrown into the fire and the mourners would enter a period of frenzy. The ceremony ended as the shaman instructed the people to go back to the dance house for the remainder of the day. There the mourners would engage in celebration; they were instructed to "eat, gamble, and make merry" (Dixon 1905:245-250; Kroeber 1925:431).

Religion

A background to the Maidu and Konkow cosmogony, numeration, superstitions, and religious life may be found in the content of the creation myth. The myth involves an initial meeting between the Creator or Earth Initiate and Turtle. Turtle was floating upon a raft over the surface of the earth, which was at that time covered only with water. From the sky, a radiant Earth Initiate descended and sat in the raft with Turtle. A conversation followed during which Turtle requested land and the Creator asked how he would be able to create dry land. To provide the land Turtle dived for mud and returned six years later. The land expanded at the word of the Earth Initiate and he then was able to instruct his sister the sun and his brother the moon to travel the skies and provide the land with light. He called forth the stars, birds from the air, trees, and animals and provided the great oak tree with its many varieties of acorns. He made man, whom he called *küksu*, and woman, named Morning Star Woman, from dark red earth mixed with water. The Earth Initiate expressed the desire that the men and women he created live easy lives and he gave them a means of eternal life. This done, he left the earth for the world above.

Coyote, a mythological troublemaker, who involved himself in various Maidu and Konkow myths, arrived to



Amer. Mus. of Nat. Hist., New York.

Fig. 10. Poles with clothing and baskets attached to be burned by mourners to honor the dead and for their use, as part of the Konkow annual mourning ceremony. Photograph probably by S.A. Barrett, near Mooretown, 1904.

learn how easily the people were living. Coyote said, "That is no way to do. I can show you something better. We will have a mourning ceremony and burn property." It was for this objective that Coyote brought death to the people.

küksu, on the instruction of the Earth Initiate, taught the people how to cook and hunt, gave them their laws, dances, and festivals, and then they were suddenly made to speak many different languages. *küksu* sent them to all

different parts of the world and they became the forefathers of different Indian tribes (Dixon 1930:85-91).

The world created by the Earth Initiate was believed to be a flat, circular island floating on the surface of the sea. The Creator stretched ropes to anchor the land mass. The number of ropes used for this security differs according to the numeration beliefs and the geographic directions recognized among the Maidu and Konkow. The Maidu saw the earth anchored by five ropes stretching to the north, south, east, west, and northwest. Five was considered the sacred number and it was to the above five directions that the Maidu oriented himself. The Konkow practiced the ritualistic *Küksu* cult and believed in the number four, which was a characteristic sacred number among the cult. The Konkow oriented themselves to the four directions from which the supportive ropes of the earth were stretched: north, south, east, and west (Dixon 1905:264-265).

Natural, climatic phenomena were explained in reference to variations of a myth concerning how fire was brought to the people. In general, fire was kept by a man and his daughters and, after Lizard discovered fire, it was stolen from the sentinel bird guarding it and brought back by a group of animals. In the race to bring the fire to man, Thunder and his two daughters, Rain and Hail (Northwind is also referred to as a daughter of Thunder), are seen as the pursuers. Stars were soft like buckskin, and the constellations were given names and purposes. Falling stars were thought to be "taking or carrying fire" and the rainbow was believed to be the urine of Coyote (Dixon 1905:265).

Mythology deals with numerous animals such as the hummingbird, lizard, dog, rattlesnake, and coyote. The coyote is noticeable in most myths, and there are Coyote stories that trace adventures of this character who is seen as opposite of the benevolent and wise Creator. Coyote is a trickster, and he causes most of the original creations to be modified to their present and less ideal states as utilized by man in daily life. There are stories concerning his roguish sexual adventures.

Charms were employed to stop storms or to bring rain or protection. Burning feathers, wild pepperwood, or oak leaves would stop a storm. Smoking or praying ceremoniously was the recourse during the periods of drought. Thunder was heard when a person was bitten by a rattlesnake or when a great man died or a woman had a miscarriage. Charms used to insure luck in hunting were in the form of stones found inside a deer and were worn about the neck. The shaman used charms to "rub out" pains of illnesses. Gambling charms were stones that were found and kept because of unusual shape or color. Roots could also serve as good-luck charms (Dixon 1905:266-267).

The Maidu and Konkow environs were occupied by mysterious powers and spirits. These lived in natural

geographic sites such as rocky peaks, cliffs, rapids, waterfalls, and mountain lakes and also in the sky. Each shaman had one or many of these spirits as his guardians and sources of power (Dixon 1905:265).

The shaman was an important figure in Maidu and Konkow society. Since there was no complex political organization, the shaman, with his mysterious powers and spiritual communication, provided a sense of unity among the village community. He functioned in the festivals, Kuksu cult ceremonies and dances, and political relations with other tribes. He also served as a medical doctor, capable of healing the sick or causing sickness to fall upon an individual or entire village. The Maidu shamans inherited their office. The son, only following the death of his father, would become very ill and after a period of ceremony within the dance house he left the village and spent some months in the mountains where he met and won the favor of the spirits who were to be his guardian powers. These were thought to be the same spirits as identified with the father and were sometimes the ghosts of kinsmen. Among the Konkow there was a tendency toward hereditary shamanism, although there were defined methods for a person to become a shaman without family predecessors. The Konkow distinguished between dream shamans, who held assemblies in the dance house that were primarily clairvoyant proceedings, and the doctor shamans, who possessed the greater powers of healing or of causing sickness. The Maidu recognized only the all-powerful shaman who inherited his powers. Shamans underwent a period of instruction from older shamans and learned the art of curing "pains." This involved the sucking out of disease-causing agents that the shaman would display, like bits of wood, stone, bones, teeth, or small live animals. Shamans were not totally benevolent. They were known to possess different magical poisons that they administered by, for instance, touching or casting a shadow on the person they intended to kill. The pains a shaman sucked out of a person might be used against him later. Female shamans were known to be primarily malevolent and caused great trouble with their numerous poisonings (Dixon 1905:267-283). Among the Konkow there was also the Kuksu cult, the leader of which was also a powerful shaman. The cult functioned primarily as a ceremonial and dance organization rather than as a group involved in tribal politics or warfare. The Kuksu cult had spirit impersonations and followed a dance cycle in which dances were representative of the different spirits. The dances began with the Hesi Dance (Valley Konkow *hési*), which was celebrated in late September or early October. This feast lasted three to four days; only the men were allowed to participate. The next dance was the Waima or Duck Dance, also only celebrated by the men. This was followed by the *pá'no* 'grizzly bear' Dance, in which the women and chief participated. The Oleil (Maidu *ólél* 'coyote') Dance lasted 48 hours and was called the chief's

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dance. The Kaima was performed by old people while children 8 to 10 years old were singing verbal explanation. The *móloko* 'vulture' Dance was performed by women. In the *sími* 'deer' Dance, the dancers dressed to impersonate deer. The Aki (Valley Konkow *á'kí*) was a ceremony for the increase of the acorn crop in which the dancers wore costumes much like that worn in the Hesi, but the women were allowed to take part in this dance. The cycle concluded with the repetition of the Hesi Dance in May. These dances were known among the Maidu although there was not the connection with a Kuksu cult. Dances were held inside the dance house. The large ceremonial dances such as the Hesi were usually followed by festivities, including gambling, straw games, and races (Nelson 1909a:5).

Knowledge

The Hesi Dance cycle marked off the year's passing but was not the only means of designating annual divisions. The Maidu and Konkow recognized four seasons and a further subdivision into moons or months. The four seasons were spring, *yóm mení* (Konkow *yóhmèní*) 'flower month'; summer, *káwkati* 'dust, earth'; autumn, *sém mení* 'seed month'; and winter, *kóm mení* 'snow month'. The Maidu divided the year into 12 moons, beginning in the spring. Each lunation had a name and meaning such as 'big month', 'ground-burning moon', or 'bread moon'. The Konkow referred to nine moons beginning their year in autumn. Some of the meanings given to the names of the months were 'seed moon', 'big-tree freeze moon', and 'little-tree freeze moon' (Dixon 1905:217-218).

Music, Games, and Art

Music and song accompanied the ceremonial dances, social dances, and game dances. Drums were called *kílemi* (in Konkow) and were made of a huge log usually of sycamore. Its sound was said to be "like the sound made by the bear." The rattles were named *wasóso* (in Maidu) and suggested the sound of swishing pebbles. Rattles, which were used by shamans, were also important in the adolescent rites of the Maidu girls. These were often made of green elder wood with the pith removed. A musical bow was played by holding one end in the mouth and tapping a single long string with the nail of the index finger. Flutes and whistles were used for melody (Densmore 1958:12-13). Song and dance were a form of amusement. A jumping dance was performed to the words, "I jump down and dance, then I jump back up and dance" (Densmore 1958:322). A dance using a sliding step was enacted by two men carrying bow and arrow and pretending to shoot.

A hand or grass game played by the men was a popular form of gambling. Bone cylinders were hidden in the hands under a bundle of grass. These cylinders were in pairs, with one bone marked, the other unmarked. The game was played by guessing which hand held the

unmarked bone. The gamblers sat opposite one another, and large quantities of goods were wagered on the results (Densmore 1958:43). A game much like football was played between the men of two villages. Players stood in parallel lines and tried to kick a buckskin ball stuffed with deer hair to the goal, which was two poles set at the ends of the lines. The winning team was the one that reached the goal first. The women played a similar game, except that ropes or sticks were tossed toward the goals by means of a long pole (Kroeber 1925:419).

Art forms were recognized in basketry, bead work, and feather work. The only object decorated with paint was the bow. A greenish-blue pigment was applied with a feather tip to make a design that "looked like a snake" (Dixon 1905:221). In addition, there is poetry, as recognized in the words of a Maidu chant:

The world above
in the on-top land
mortal men wanting to talk
on your dark trail
by power, pour (it) over hither.
Superb superb
tobacco smoke drift away
you will inhale deeply, drying
out your throat
Thus is that land (Shipley 1963:81).

History

Maidu and Konkow life was little affected by White contact until after the gold discovery at Coloma in 1848. In 1808 Gabriel Moraga explored up the Sacramento River to the lower reaches of the Feather River, in close proximity to Konkow country. In an expedition up the Feather River in 1820, Capt. Luis A. Arguello gave the river its name (El Rio de Las Plumas) (McGowan 1961). In 1828 Jedediah Smith with his band of trappers spent several months in Konkow territory (Sullivan 1934:74). From 1828 to 1836, brigades of Hudson's Bay Company trappers visited Konkow territory trapping fur-bearing animals. Michel Laframboise and John Work (Leader 1928) were leaders of such groups of trappers, both of whom spent the winter of 1833 at the Sutter Buttes to avoid high water. Capt. Charles Wilkes of the United States Exploring Expedition sent boats up the Sacramento River to a Konkow village in 1841 (Wilkes 1845, 5:185).

Captain John A. Sutter established New Helvetia, now Sacramento, in 1839. Although Sutter's Fort was in Nisenan territory, it provided a focal point for ultimate penetration into the lands of the Konkow and Maidu people by settlers and then gold seekers. In 1844, Gov. Manuel Micheltorena issued to two Americans grants to land in Konkow territory, not far from the present city of Chico. A year earlier the first group of overland immi-

grants led by Lansford Hastings passed through Konkow country on their way to Sutter's Fort. Some of the Indian haters in this party fired on the Indians as they went through the area (Bidwell 1906:75-79). In 1847 John Bidwell (D. Hill 1970:26) wrote to John Sutter that 82 White people lived in the upper Sacramento Valley. It was in this year that Bidwell moved out of Sutter's Fort and began to develop his domain in the Chico area.

Probably the first of many disasters to befall the Konkow was an epidemic of what may have been malaria, which decimated them in 1833 (Cook 1955a:322). This was a blow from which the natives never effectively rallied. What disease did not do the influx of thousands of gold seekers after 1849 did. By this time even the remote Maidu country was overrun with exploring parties and gold hunters. First into the Maidu heartland, except possibly for occasional mountain men, was Peter Lassen, who reached Honey Lake in 1850 (Bruff 1949). By this time the barriers were down and the Maidu and Konkow soon became aliens in their own land. The miners hired Indians to work for them but usually paid them poorly for their work. In ensuing years the Konkow people worked as ranch hands and farm laborers.

With the arrival of the Whites with their livestock and farms, the Konkow and Maidu ecological balance was upset. Food sources formerly available became extinct or scarce or otherwise unavailable. The Indians began killing and eating the settlers' livestock; and retaliation by the settlers, miners, and immigrants was swift and excessive. Often defenseless and innocent groups of Indians were killed by excited White men when oxen or other livestock were missed. It is true that the Indians, too, killed the newcomers with or without provocation; however, it was most often the Whites who did the killing.

In 1850, in an attempt to settle conflict between Indians and Whites, Congress authorized treaties to be made with the Indians to place them upon reservations. The Konkow signed a treaty that would have given them a limited portion of their own land (D. Hill 1970:40-46). Senators from California opposed ratification of these treaties and further demanded that the Indians be removed from the state. The issue as far as the Konkow were concerned was resolved when a reservation was established at Nome Lackee in 1854 and some Konkow were removed there in 1855 (McGowan 1961:137). Throughout the 1850s and 1860s Indian "trouble" flared up, but by 1870 resistance by the Indians was essentially at an end. In 1863 mounted soldiers marched 461 Indians to Round Valley Reservation; 32 Indians died or were killed on the way. This two-week trek is still remembered by the survivors' descendants (D. Hill 1970:74-78).

As regards Maidu population (in this case only the Konkow and Nisenan) and its decline, the following figures (adapted from Cook 1943a) clearly show that the coming of the Whites was a great disaster:

<i>Aboriginal</i>	
	8,000
1846	8,000
1850	3,500-4,500
1852	5,000
1856	2,300
1865	1,550
1880	1,000
1910	900

To the 1910 figure can be added an estimate of 200 Maidu to make a total of 1,100 Maidu people (Maidu, Konkow, and Nisenan).

Kroeber (1925) estimates that the Maidu people (including the Nisenan) numbered 9,000 aborigines. Of this number probably two-thirds were Maidu and Konkow, with the Konkow total probably somewhat greater than the Maidu. The Konkow homeland nearly coincides with the present political boundary of Butte County, while that of the Maidu coincides with Plumas County. Indians in Butte County in 1940, 1950, and 1960 numbered 261, 207, and 421, respectively. Many of these are Konkow with varying degrees of Indian ancestry. For Plumas County the censuses for the same years recorded 235, 218, and 240 Indians. A large proportion of them are Maidu, both full- and mixed-blood. An undetermined number of Maidu live in adjoining Lassen County and would thus increase the Maidu total by somewhat less than 100 people more.

Possibly one of the best sources of information regarding the number of people claiming California Indian ancestry is the listing of those California residents who filed applications for enrollment to participate in the distribution of the California Judgment (Indian Claims) funds in 1973. The number who filed from Butte County was 1,435, from Plumas 422, and from Lassen County 375. Not all these claimants were necessarily Maidu or Konkow, nor necessarily full-blood Indians.

The present condition of surviving Konkow and Maidu Indians is essentially the same as for other California Indians. They have a very high unemployment rate, poor housing and sanitation, and a low level of educational achievement. Economic advancement is slow in part due to the difficulty of acquiring loans for improving housing, for establishing small businesses, and for improving livestock, water supplies, or land resources. Heartening in the case of the Maidu and Konkow is a renewed interest in their traditional values and cultural expression. The former shame felt by these people in being Indian has changed to pride. One tangible manifestation of this is the vigorous continuation of the annual Maidu Bear Dance held each spring at Janesville. The affair is attended by Indians of numerous tribes, but the two-day gathering is primarily a Maidu-sponsored ceremony. Attempts at the

preservation of their language, ceremonies, and the art of basket making, for example, coupled with their pride in being Konkow and Maidu, indicate a continuing struggle for personal and tribal identity and advancement.

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Synonymy

The Maidu have been referred to as: Mai'-deh and Mai'-du (Powers 1877), Meidoos (Powers 1874), Midu (Merriam 1904), and Pujunan (Powell 1891). Their name is from their self-designation *maydi* 'person' (Shipley 1963:149).

The Konkow have been called: Cancons (Keane 1878), Cancow (ARCIA 1874), Caw-Caw (ARCIA 1868), Con-Con's (ARCIA 1870), Con-Cous (ARCIA 1867, 1868), Con-Cow (ARCIA 1863, 1864); Concow (Round Valley Cultural Project 1974), Cou-Cows (ARCIA 1864, 1865), Cow-Cow (ARCIA 1868), and KānKau (Curtin 1885).

The Konkow term *nóto'koyo'* refers to the Maidu people from Quincy in the south to Susanville in the north—the Maidu proper. As *kíwsewimmá'á* the Konkow designate the people on the Middle Fork of the Feather River and up to Belden on the North Fork.

Sources

The primary source of information on the Maidu is the excellent work done by Dixon (1905). An earlier source of merit is that of Powers (1877). Kroeber (1925) is a good and generally available source containing data gathered on the Maidu from a number of early sources to provide a synthesis of their life and culture. Details of village locations and other ethnogeographic information are provided by Riddell (1968). Sensitive works by Robert Rathbun (Coyote Man 1973, 1973a) deal with aspects of Maidu life and mythology in a less formal, academic manner than has been done by others.

Sources for the Konkow that give the best coverage include, of course, Kroeber's works (1925, 1932a). Aspects of Konkow life and culture are found in D. Hill's (1970) ethnohistoric study, an ethnogeography by Riddell (1960-1974), and Rathbun's (1973, 1973a) publication.

The language of the Maidu and Konkow has been treated in considerable detail by Shipley (1963). Possibly the best tool for those interested in the Maidu people is the bibliography prepared by Wilson and Towne (1972), which, while not complete, is quite extensive and is annotated.

Only limited professional archeological work has been done in Maidu territory (Riddell and Pritchard 1971). Archeological work done in the Oroville area, thus referable to the Konkow (Olsen and Riddell 1963), has resulted in a tentative archeological chronological table that gives a cross-dating with areas contiguous to the Konkow.

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Language, Territory, and Environment

The Nisenan (¹nēsə, nān), sometimes referred to as the Southern Maidu, were the southern linguistic group of the Maidu tribe. The word Nisenan (*nisena'n* 'from among us; of our side') was used as a self-designation by the Nisenan who occupied the Yuba and American river drainages.

Nisenan together with Maidu and Konkow form a subgroup of the California Penutian linguistic family.* Kroeber (1925:393) distinguished three dialects of Nisenan—Northern Hill Nisenan, Southern Hill Nisenan, and Valley Nisenan—although it is possible to make finer dialectal distinctions (see "Native Languages of California," this vol.).

The Nisenan territory was the drainages of the Yuba, Bear, and American rivers and the lower drainages of the Feather River (fig. 1). The western boundary was the west bank of the Sacramento River, a few miles upstream from the mouth of the Feather River southward to a few miles below the confluence of the American River. The northern boundary has not been clearly established due to the similarity of language to the neighboring groups (Kroeber 1925:393). The first true Nisenan was spoken in the drainage of the Yuba. The eastern boundary was the crest of the Sierra Nevada. The southern boundary was probably a few miles south of the American River with a large area between the American and Cosumnes rivers occupied by the Miwok to the south (Bennyhoff 1961:204-209).

The west-east orientation of Nisenan landscape varied from the plain of the Sacramento River near sea level to 10,000-foot peaks on the Sierra crest, bisected with intermittent and year-round streams. East of the river is a flat, oak-studded grassland with denser vegetation along the streams and marshes. About 15 miles from the river the land rises into foothills covered with grasses, oak, pine, and chaparral, grading into oak and conifer forest, bisected by deep canyons supporting year-round streams. Above 5,000 feet are dense stands of conifers, rocky exposures, and small, grassy meadows. This entire

region supported abundant game, waterfowl, fish, and plant resources.

The Nisenan recognized several political divisions within their territory, accepting the leadership of the headman of a specific village during times of major decisionmaking, group hunts, and ceremonies. The river-plain encompassed three such tribelet areas, each densely populated with several large villages. It is not clear which villages exercised major influence.

One center was at the mouth of the American River extending east a few miles and north and south on the Sacramento River. Pusune (*pusu'ne*) was an important village. Another center was at the mouth of the Bear River including the valley drainage of the Bear and a stretch of the Feather River. One major village was Hok. A third area was at the mouth of the Yuba River and reached the northern Nisenan boundary.

Hill Nisenan, between the Cosumnes River and the south fork of the American River near Placerville, formed another tribelet with strong affiliations with groups living in the lower drainages of the American River and in ridges that lay along the south fork of the American.

People occupying the ridges between the Bear River and the middle fork of the American River, including the ridges between the middle fork of the American and the Bear, formed another tribelet area. The territory of the upper drainages of the Bear and the Yuba rivers also is identified as forming another tribelet (Littlejohn 1928:10-15).

Few Indian villages existed on the valley plain between the Sacramento River and the foothills; the area provided hunting and gathering grounds for the valley people.

External Relations

Nisenan had few contacts outside their tribelet area of influence. These contacts were limited to trade, warfare, and ceremonial gatherings (Beals 1933:365).

Native communication followed the large streams, so familiarity was to the north and northwest in the Sacramento Valley. The San Joaquin portion of the valley was unknown to the Nisenan. Groups tended to identify themselves along physiographic lines, which were defined in the valley by stream systems and in the mountains by ridges. The Valley Patwin, Northern Maidu, and Valley Nisenan seem to have shared a consciousness of cultural

* Nisenan words cited here in italics have been transcribed by Richard Smith in the phonemic system described in Uldall and Shipley (1966), with the substitution of *ɨ* for their *y* and *y* for their *j*. Words not recorded by Uldall and Smith appear here in roman, with Kroeber's [ü] being interpreted as *i*.

kum but to accommodate four or five men, was used for curing and purification. Caves are rare; however, a few occupied rockshelters, one ceremonial cave, and a sweating cave have been reported in Nisenan territory (Payen 1961a:22).

Hill Nisenan villages were located on ridges and large flats along major streams. They were smaller than in the valley, and it was common for family groups to live away from the main village. Houses were conical-shaped and covered with slabs of bark, skins, and brush. Brush shelters were used in the summer. Most villages had bedrock mortar sites.

Other sites included seasonal camps, quarries, ceremonial grounds, trading sites, fishing stations, cemeteries, river crossings, and battlegrounds.

Nisenan territory was crisscrossed with well-established trails, and the Nisenan gave most physical features a local place-name. They had intimate knowledge of their tribelet area and its boundaries.

Subsistence

The Nisenan area offered abundant year-round food sources. Food-gathering quests were based on seasonal ripening but hunting, gathering, and fishing went on all year with the greatest activity in late summer and early fall. They did not depend on one crop but gathered many different staples.

Seasonal harvests could be personal or communal property. Much activity and social behavior such as status, sharing, trading, ceremonies, and disagreements were important adjuncts to the gathering and distribution of food.

Extended families or whole villages of hill people would gather acorns. Men would hunt while the women and children gathered the nuts knocked from the trees. Buckeye nuts, digger and sugar pine nuts, and hazelnuts were also gathered.

Acorns were removed from the granary, cracked on an acorn anvil, and shelled. They were ground into flour using a bedrock mortar and a soaproot brush to control scattering (fig. 2). After leaching to remove the tannin (fig. 3), the flour was cooked in watertight baskets. During the cooking process fire-heated stones were lifted with two sticks, dipped in water to clean them, and then dropped into the cooking basket. Enough mush and soup was prepared for several days.

A headman could ask for acorns for a ceremony or a family in need. There were lazy people who never had enough acorns. These people would not be helped and they would often move in with relatives at another village during the winter (Wilson 1972:36).

Roots, dug with a digging stick in the spring and summer, were eaten raw, steamed, baked, or dried and pounded in mortars and pressed into cakes to be stored for winter use. Wild onion (*chan*), wild sweet potato



Fig. 2. Lizzie Enos using a soaproot brush to sweep back into the mortar acorn meal scattered during pounding. A Maidu winnowing tray lies nearby. Photograph by Norman Wilson, Oct. 1958.

(*sikum*), and "Indian potato" (*dubus*) were most desired. Wild garlic was used to wash the head and body, and wild carrot (*ba*) was used as medicine (Littlejohn 1928:30).

Grasses, herbs, and rushes provided food and material for baskets and clothing. Seeds were gathered using a seed beater and tray. They were parched, steamed, dried, or made into mush.

Many varieties of native berries, wild plums, grapes, and other native fruits were eaten. Manzanita berries were traded to the valley or made into a ciderlike drink.

Game was roasted, baked, or dried.

Deer drives were common with several villages participating, the best marksmen doing the killing. A circle of fire could be used where the animals were driven to the center and killed. Deer were also hunted using deerskin and antler decoys, snares, and deadfalls. They were run down in soft ground or snow. Antelope was taken by the surround, drives, and flag decoys. Elk was usually killed along waterways in soft ground.

Much ceremony surrounded the bear hunt. Black bears were hunted in the winter. Lighted brands were used to drive them from their dens. Grizzlies on the valley floor were greatly feared and rarely hunted (Wilson 1972:34).

Wildcats and California mountain lions were hunted for food and their skins.

Rabbits and other small game were killed with sticks and blunted arrows. Traps, snares, nets, fire, and rodent hooks were also used. In the valley and foothills nets were made into a fence where driven rabbits were entangled and clubbed. Other small animals were caught and killed except the coyote. Drives usually took place in late spring. The catch was divided by the man in charge of the drive.

Weirs, nets, harpoons, traps, and gorgehooks, as well as tule balsas and log canoes were used in fishing. Fish were poisoned using soaproot and turkey mullein or driven into shallow water and caught by hand. Freshwater clams and mussels were obtained in the big rivers. On

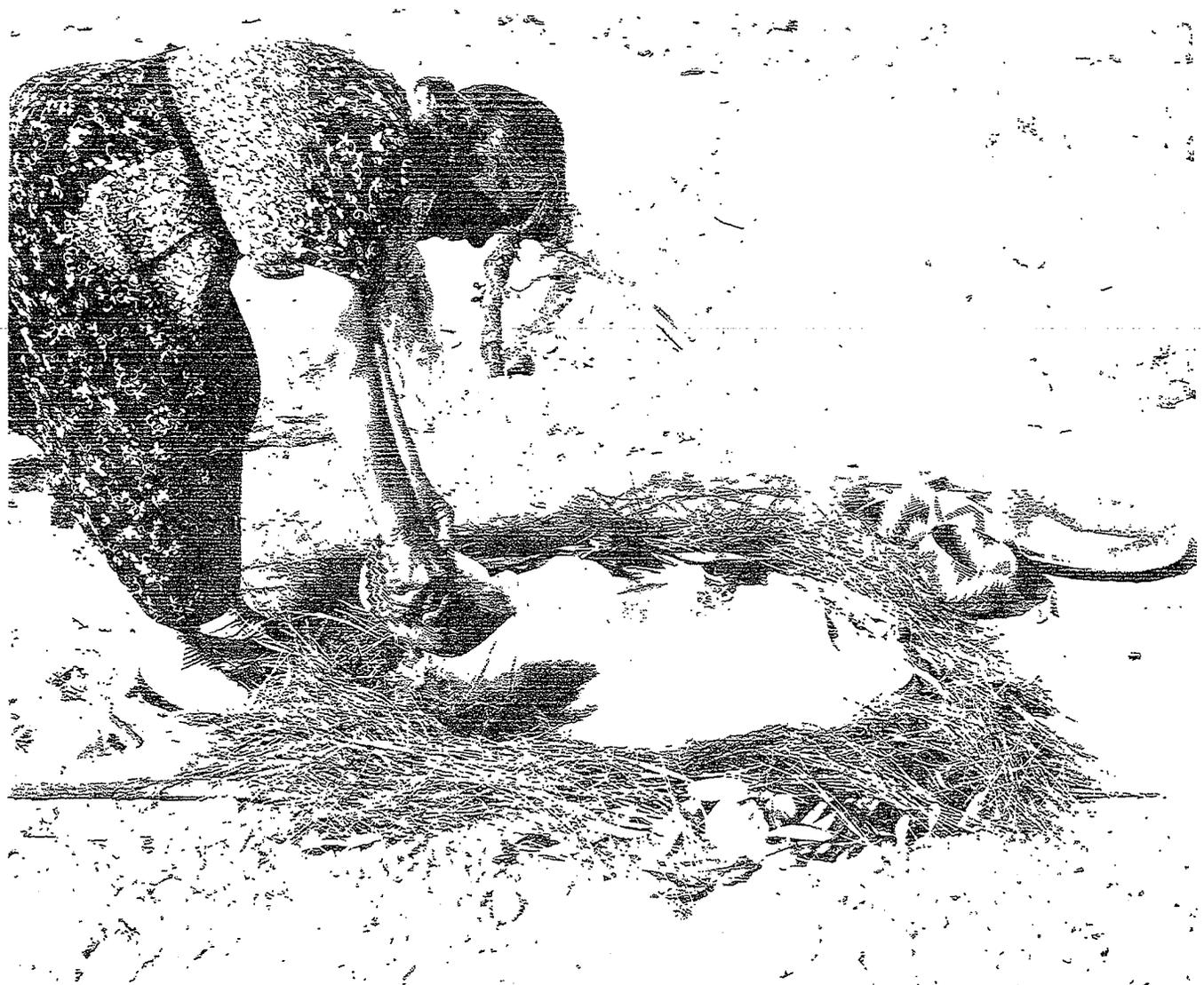


Fig. 3. Lizzie Enos leaching acorn meal. A bedsheet is placed in a sand basin and surrounded with pine needles. The meal is put in the sheet and warm water is poured over it. Photograph by Norman Wilson, Oct. 1958.

the lower courses salmon and sturgeon were netted and speared. Suckers, whitefish, and trout were caught at higher elevations. Waterfalls were traditional eel-fishing stations; Salmon Falls, on the south fork of the American River, was one such location (Wilson 1972:35).

Birds were taken with arrows, nets, snares, traps, and nooses. Owls, vultures, and condors were not killed. Feathers and birdskins were used for regalia, clothing, and decoration.

Grasshoppers were gathered in meadows in the summer. They were chased into conical pits by drivers beating the grass. A smoking grass bundle was thrown into the pits for killing. They were soaked in water and baked in an earth oven. A light crushing with a handstone on a basketry tray broke off the wings and legs, which were winnowed away. They were eaten whole, crushed into a meal, cooked like a mush, or stored (Wilson 1972:36). A ring of fire was also built to creep through the

underbrush roasting the grasshoppers and other insects (Wilson 1957-1963).

Larvae and pupae as well as ants and other insects were eaten. Some were gathered for medicinal use and for poisons. Lizards and frogs were also eaten (Powers 1877).

Salt was taken from springs near Lincoln, Cool, and Latrobe. It was also obtained from a plant with cabbage-like leaves gathered in the summer.

Culture

Clothing and Adornment

Clothing was scant and adornment moderate. Men went naked or wore a breechclout of deerskin or pounded wire grass. The women wore short aprons made of wire grass, tule, or shredded maple or willow bark.

Fur blankets and skins were worn by Hill Nisenan while bird-feather robes were more common to the valley



NAA, Smithsonian.

Fig. 4. Captain Tom of Auburn wearing a rabbit-fur robe, flicker quill headband, a stick with woodpecker scalps and flicker feathers, and an abalone gorget. Photograph probably by A.W. Chase, before Aug. 1874.

people as protection from the cold. Rabbit robes (fig. 4) required about 40 skins, cut into strips, and were woven on a framework of pegs on the ground (Wilson 1972:35). Duck feathers were wrapped into two-ply cordage and woven into blankets. "Shawls" of round-stemmed tule were also worn by the men (Kroeber 1929:260).

Snowshoes consisted of a circular hoop of willow or redbud with two crosspieces tied with sinew.

Men wore their hair long, allowing it to hang loose, tucked under a netted cap, or held back by a band of fur. Women had long hair, either loose or tied with a band. Men sometimes grew beards. A sharp stone or glowing ember was used to cut the hair. Whiskers were pulled using a shell. Soaproot was used to wash the scalp and hair.

Ears were often pierced at infancy as was the nasal septum of some women. Tattooing was accomplished with pine needles and juice of a blue flower. A three-line tattoo was most common for the women.

Bead necklaces of steatite, clamshell, and whole olive-la shells, as well as abalone pendants were traded from the Patwin and Maidu. Bead value depended on kind, size, number, and quality (fig. 5) (Kroeber 1925:421, Littlejohn 1928:35). Pine nut and seed necklaces, and flowers attached to cordage were worn by the woman.

Body painting using overall dots or streaks was common. White clay, red ocher, and charcoal provided three colors.

Technology

Stone objects included knives, arrow and spear points, club heads, arrow straighteners, scrapers, pestles, mortars, pipes, and charms. Basalt, steatite, chalcedony, jasper, and obsidian were used. Pressure and percussion flaking, grinding, and pecking were methods of manufacture. Bowl mortars were valued but informants stated that neither they nor their ancestors ever made them (Wilson:1957-1963).

Wood was mainly for utilitarian objects. Simple bows were two to three feet long and sinew-baked. Grass



NAA, Smithsonian.

Fig. 5. Captain Tom's wife wearing 10 yard necklace of 1,160 "money" beads made of clam (probably *Saxidomus* sp.) and a deerskin girdle and headband decorated with abalone. Photograph probably by A.W. Chase, before Aug. 1874.

knives, skin-dressing tools, and digging sticks were used. Wooden mortars were common in the valley.

Arrows were simple and compound. Shafts were made of willow, arrowwood, or cane and the foreshaft made of hardwood. Blunts and pointless arrows were reported. They were painted and fletched with hawk feathers.

Preparation of skins was done by women. After the hair was removed with bone or stone scrapers, the skins were soaked and rubbed with deer brains. They were not smoked. Bags for equipment, quivers, bow cases, and clothing were made. Sinew was taken from the back or leg of a deer.

Tule provided material for mats. Cordage and netting, made from the fiber of milkweed and hemp, ranged from thread size to rope one-half inch in diameter. It was used for rabbit and fish nets, seines, netted caps, snares, ropes, carrying nets, and tumplines.

Balsa canoes of round or triangular-stemmed tule and a single log or two logs tied with grapevine with a simple, flattened deck were used. These were pushed with a pole 12 to 15 feet long. Composite paddles were used with a single blade lashed to a shaft.

Baskets were coiled clockwise on a three-rod foundation of willow. Burden baskets and seed beaters were twined. All Nisenan girls learned basketmaking, but its construction fell to the older people as a winter activity.

Basketry material was gathered during the year with willow and redbud preferred. Shoots of hazel, roots of yellow pine and common brake, and stems of maidenhair ferns were used. The base color of baskets was practically white when new but changed with use to a pleasing yellowish-white or cream. Designs were imbricated generally of a reddish-brown color. A triangular decorative feature might represent an arrow point, mountain, or a tree to different basketmakers.

Women measured their basket designs for symmetry with a knotted string. Evenness of stitch, composition, and geometric accuracy were admired.

Baskets for storage, cooking and processing, "show," traps, cradles, cages, seed beaters, and winnowing were woven. Small feathered "treasure" baskets were special.

Life Cycle

Hill Nisenan women were assisted by old women, usually relatives, during childbirth. The mother remained quiet for several days being careful no cold air or cold water touched her. Taboos prevented parents from eating salt, meat, or grease, and from working, combing hair, or rubbing the eyes; all these activities were believed to cause damage to the child (Faye 1923:35; Beals 1933:368).

The baby was put into a "first" cradle made of tule, which was disposed of in a week or two, and the baby was then placed in a regular cradleboard. After 16 days a feast was prepared and the baby displayed to relatives (Beals 1933:368).

A girl was isolated in a menstrual hut for first menses. She fasted for 16 days and was not allowed outside alone. She could not touch her body but used a scratching stick. She could not step on a log or stick for fear of being bitten by a snake. On the sixteenth day she was bathed and a celebration was held. In subsequent menses the girl abstained from eating meat, salt, and fat for four days and slept in a menstrual hut. Husbands had no food restrictions. If they hunted, anything shot died in an inaccessible place. Women could talk to their husbands but could not touch their hunting equipment (Beals 1933:369).

Marriage customs varied. In the valley gifts sent to the girl's parents included beads and shells, but usually food was presented to prove the man's ability to provide. Consent of the girl was usually obtained before the man's intentions were made known to her family. If accepted, the man lived with the girl's family and hunted and fished for them. After six months they went to live with his people. In the mountains, the man made his intentions known and hunted and fished, bringing the results to the girl's home. A separate bed would be made and the couple considered married. A man might simply come to visit and stay. If the girl did not approve, she would discourage the suitor from joining her.

Child betrothal, of children the same age or a young girl promised to an older man, was practiced (Kroeber 1925:400; Beals 1933:370-371).

Residence was usually patrilocal but couples could make a residence choice.

Time before remarriage varied from six months to three years with a man permitted to marry sooner. A woman could marry her husband's brother but no other close relative. Permission and advice were obtained from the dead spouse's family (Beals 1933:372).

Divorce was by the desire of either party. Adultery was the most common cause. A man justifiably killed his wife's lover or walked out. He avoided his ex-spouse but maintained friendly relations with the family except the sister-in-law. Children belonged to the husband's family and were often adopted by the grandparents. When a widow remarried, her husband supported her children.

Mother-in-law taboos prevailed. In the valley the two would neither converse nor look at each other. If the mother-in-law met her son-in-law she would cover her head (Kroeber 1925:402).

Disposal of the dead was by cremation. Property was burned with the deceased and the house moved or destroyed. Burning usually occurred the morning following death. Friends and relatives wept and wailed. Bones and ashes were gathered and buried in the cemetery (Kroeber 1929:265; Faye 1923:37; Beals 1933:376; Wilson 1957-1963). Preinterment burning and primary burial were rarely practiced. After the burial the relatives returned to their houses and continued crying and wailing. A mixture of pitch and acorn black was used on the

widow's face and hair and she often cut her hair as a sign of mourning (Kroeber 1929:265; Faye 1923:37).

When a person died away from his village, the body was cremated at the death site and the remains returned to the village. It was important to be buried at the village of birth.

Political Organization

The headman or captain served as an advisor to a village or associated villages but each extended family had its leader who assisted the village headman. The headman had little direct authority, but when supported by the villagers and the shamans his word was mandatory. If he proved unwise he could be replaced. Chieftainship was usually hereditary, but a headman could be chosen by the villagers. He often named his successor, making an assistant before his death. It was possible for a female to succeed if no competent or favored male relative were available. The headman advised his people, restrained them from trespass, called and directed special festivities, arbitrated disputes, saw to the welfare of his people, and called family leaders into council. He acted as official host at ceremonial gatherings and supervised accumulation, preparation, and distribution of food (Beals 1933:359-360).

His food was supplied by the village. He had considerable wealth and often several wives. The village attitude is summed up in the expression: "Everyone wants their chief to have a good name" (Beals 1933:360).

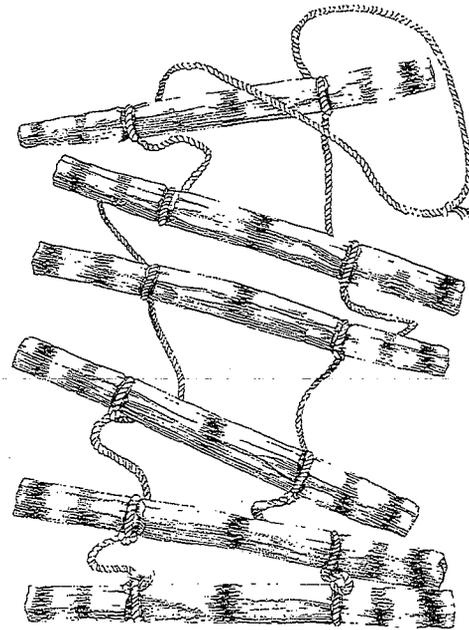
Each community or group of communities controlled its territory, including hunting and fishing grounds. Certain fishing sites, oak groves, and specific trees were family-controlled. Deer-drive fences and blinds were the property of the people who erected them.

•**LAW AND PROPERTY** Men owned nets, hunting equipment, canoes, their clothing, and the house if occupied by one family; if inhabited by several families it was property in common to the heads of the families. Women owned their clothing, baskets and basketry material, mats, cooking and food-processing equipment (Littlejohn 1928:33-34; Wilson 1957-1963).

Men hunted, fished, trapped, built houses, and made weapons and tools. Women gathered, prepared, and cooked food; dressed skins; made clothing and baskets; and cared for the young. Children were trained in their respective roles at about eight years of age.

Gifts were common, and sharing and generosity were admired traits. Loans and debt payments were practiced, and feuds were often generated over misuse of this trust (fig. 6).

Dishonesty and cruelty were seldom forgiven and resulted in avoidance. Theft was overlooked if restitution was quickly made but killing resulted otherwise. Minor food thefts were ignored. Murder or rape was followed by retaliatory killing of the guilty or, preferably, a close relative or friend. A person often hired a shaman to do



Dept. of Anthr., Smithsonian: 21474.

Fig. 6. Dunning sticks. Wood whittled and painted with red and black pigment, tied with milkweed fiber string. These were tossed into a debtor's house by the creditor, as a reminder that the debt should soon be paid. Average length of sticks 9.5 cm; collected 1876.

the killing. The shaman was not accountable if he publicized the name of the person hiring him immediately following the killing. Payment for crimes could be arranged by the headman (Beals 1933:364).

•**WAR** Large-group, organized warfare was uncommon. Differences were usually caused by trespass and ranged from random feuds between families to raids and surprise attacks. Often challenges were sent and battleground and time agreed upon before the battle. A surprise attack against the enemy was made at daybreak. Reliance was placed on dodging arrows in open warfare, and constant dancing movements were made.

Men were taken prisoner only to be killed. Women prisoners became part of the captor's household (Faye 1923:43-44; Beals 1933:366-367; Wilson 1957-1963).

Religion

All natural objects were endowed with potential supernatural powers. One informant remarked "that a tree could kill you if it wanted to" (Beals 1933:379). This power might be used to bring "luck" with the possession of certain "medicines." A lucky individual differed from a shaman only in degree and in not being formally initiated. The Nisenan world contained many supernatural beings and ghosts. It was believed that people would go to the west at death (Beals 1933:379-380).

Some people believed that the world was always here but in different form; others told of everything being made by someone and that the birds and animals were



Field Mus., Chicago.

Fig. 7. Event at a Maiduan, possibly Nisenan, feast. Woman preparing acorn mush while holding a mush stirrer in her left hand. Photographed about 1900-1910. Figs. 8-10 show other events at the feast.



Field Mus., Chicago.

394 Fig. 8. Men carrying basket of mush using a rope tied around the outside of the basket.



Field Mus., Chicago.

Fig. 9. Shaman blessing the food.



Field Mus., Chicago.

Fig. 10. Baskets of acorn mush, loaves of bread, and sacks of flour ready for distribution.

once human. Still others spoke of a flood that killed the first people because they were not good. In creation stories there was an Earth Creator and a culture hero who actually created the earth, and Coyote, the trickster, who created death and conflict from a once-perfect existence (Kroeber 1929:275-276; Beals 1933:379-382).

The Nisenan calendar named only the six winter months. Stars were little known, but they recognized and named the Big Dipper, morning and evening stars (Beals 1933:357).

• CEREMONIES Resistance to discuss their religion, disruption, the epidemic of 1833, and reported variations in practices make detailed descriptions difficult. However, certain central systems hold true for the Nisenan nation. Gifford (1927:220-223) divided Nisenan religious ceremonies into three strata. The earliest was indigenous dances. The second stratum came from the north; all dances were performed in the dance house, indicating they were of the generic type called Kuksu or god-impersonating. The latest stratum was introduced about 1872; it was a revival of the Kuksu religion adapted to the Ghost Dance religion.

The major religious system of Central California, the Kuksu cult, appeared in varied form. Cult membership was limited to persons initiated and instructed in its esoteric rites. *The disguised dancers represented spirits of deities* (Heizer 1962:11-12).

Other religious ceremonies included the mourning ceremony, known as the "cry" or "second burning," an annual ritual to the dead performed in the fall (Wilson 1957-1963). In the mountains this ceremony was conducted at a traditional location away from the village. There was a central pyre or fire surrounded by a brush wall within which the dancers and mourners performed, burned property, wailed, and cried. After the ceremony, gambling, feasting, and games occurred. Little is known about the mourning ceremony of the Valley Nisenan. Accounts by early travelers note large gatherings, wailing, and faces covered with ashes.

Important dances were the Kamin Dance (*kámin*) performed in late March for the first clover or beginning of spring; Weda (*wéda*) or Flower Dance of late April; Lole Dance (*lô-le*) in honor of the first fruits; Dape (*dáppe*) or Coyote Dance; Omwulu or Rabbit Dance; Shamans' Dance; Nemusla or Big Time (*ném húsla* 'big festival'), where people came from some distance; and Husla (*húsla* 'festival'), a local festive dance (Gifford 1927:233-238).

• SHAMANISM The Nisenan had two types of doctors or shamans, curing and religious. Both used the dance house in their performances. Curing doctors or yomuse (*yómmise* pl.), had limited contact with the spirit world and could be either sex (Loeb 1933:180). They were in possession of certain charms and medicines contained in

their doctor's kit. They diagnosed by feeling, then sucked at the area of pain and removed the offending object. This could be a dead fly, a clot of blood, or a small bone or stone that was taken from the mouth, displayed, then buried immediately. A woman shaman with a good heart was often preferred to a man because she was considered less likely to use poison (Kroeber 1929:273-274). In curing, the shaman drank his "medicine" before administering it to alleviate the fear of poisoning. Shamans were paid only if they cured the patient and the amount was decided by the patient.

Doctors poisoned people by throwing pains (*sila*), by touching them with charms, or by simply letting their shadow fall on a person (Loeb 1933:181).

The Shamans' Dance was held in the spring. The sucking doctors danced around an outside fire trying to see who was the strongest or "which had the loudest voice" (Loeb 1933:180).

The religious doctor or oshpe gained control over the spirits by dreams and through esoteric experiences. He represented the supernatural and was a dominant figure in the ritual of the dance house. It was believed that a shaman could conjure up spirits and voices of the deceased.

Other specialized shamans were poison doctors, bear doctors, singing doctors, weather shamans (called *'áykaí*, the name of the Creator), and rattlesnake doctors (Kroeber 1929:273-274; Wilson 1957-1963).

Music, Games, and Art

The most important musical technique was the human voice, individual and group. Instruments accompanied singing and were used in dances and ceremonies. These included the flute and musical bow, clapper sticks, whistles, bull-roarers, cocoon rattles, split-stick swishers, and the foot drum.

Games were part of most social gatherings and included hand and guessing games, ball games, and games of skill such as target shooting, arrow dodging, foot races, rock throwing, wrestling, and a form of stick and ball game. Agility and trickery were heartily applauded and gambling on contestants was common.

Petroglyphs are found in the foothill areas consisting of dots, lines, geometric and curvilinear forms, pecked and grooved on natural rock faces. Paint may have been used (Payen 1959:66). Other forms of art included incising on birdbone, basket designs, feathers for decoration, and the use of paint especially on ceremonial objects.

History

Early contact with the Spanish was limited to the southern edge of Nisenan territory and most knowledge came from early penetrations of Spanish into Plains Miwok territory and minor explorations across their land.

By 1776, José Canizares had explored Miwok territory. Soon after, systematic removal to the missions and resistance by Miwok occurred on the southern border of the Nisenan. In 1808 Gabriel Moraga crossed Nisenan territory. In 1813 a major battle was fought between the Spanish under Luis A. Arguello and the Miwok, near the mouth of the Cosumnes River (Cook 1960:265).

No record exists of the Nisenan being removed to the missions. They did receive escaping missionized Indians into their area, as well as pressures of displaced Miwok villages on their southern borders.

In the late 1820s American and Hudson's Bay Company trappers began trapping beaver and establishing camps in their territory. This occupation was peaceful.

In 1833, a great epidemic, believed to be malaria, swept through the Sacramento Valley (Cook 1955a:308). This sickness was disastrous to the Valley Nisenan, wiping out entire villages. Survivors retreated into the hills. It is estimated that 75 percent of the native population died in this epidemic, and only a shadow of the Valley Nisenan was left to face the settlers and gold miners who soon followed (Cook 1955a:322).

Capt. John Sutter first settled in Nisenan territory in 1839. He had few problems with the remaining Nisenan. After making alliances with the Miwok villages on the Cosumnes River, he moved them close to the fort. Through persuasion and force he soon had most of the remaining Valley Nisenan on peaceful terms.

The mountain people were little affected by the epidemic or early settlers although their lands were crossed by Whites. But with the discovery of gold, the lands of the Hill Nisenan were overrun in a period of two or three years. James Marshall discovered gold near the Nisenan village of Culloma in 1848, and soon thousands of miners were living in the area. Widespread killing, destruction of villages, and the persecution of Nisenan, called Diggers by Whites, quickly destroyed them as a viable culture.

The few surviving Nisenan lived at margins of foothill towns and found work in agriculture, logging, ranching, and domestic pursuits.

In the 1870s there was a resurgence of native culture and modified ceremonialism under the influence of the Ghost Dance revival. This movement ended in dissolution in the 1890s. By the 1930s no living Nisenan could recall the times before White contact.

In the 1960s the condition of these Indians is described by low educational attainment, high unemployment, poor housing and sanitation, a high incidence of alcoholism, violent crimes, and suicide. Many have disappeared into the mainstream of White culture through marriage and movement to new areas.

The 1960 United States census (see California State Advisory Commission on Indian Affairs 1966:54) reported 1,321 Indians from the counties that the Nisenan originally held as their territory but with no tribal identification. Sacramento County listed 802 Indians, of

which only three or four were known descendants of the Valley Nisenan. El Dorado, Nevada, Placer, and Yuba counties in the 1970s have several Hill Nisenan families who are descendants of the mountain people, can speak their language, and retain some knowledge of the earlier lifeways. A few people still make baskets and practice other Nisenan customs; but for all intents, the old ways are lost. Some of these people participate in pan-Indian activities and enjoy private celebrations and gambling games, and many are active in social movements and organizations to better the Indian situation in the White culture.

Synonymy

The English term Nisenan derives from their self-designation *nisena:n* 'from among us, of our side' (Uldall and Shipley 1966:86, 222). The spelling Nishinam (or Ni-shinam) was used by Powers (1874b:21-31, 1877:313-330), Dixon (1910b:75), Merriam (1904:914), and Kroeber (1925:391-442). Merriam (1904) also cited Nis-se-non, and Kroeber (1925) Nisinin. Merriam (1966-1967, 1:19) adds Nis'-sim Pa'-we-nan and Nis-se Pa-we-nan. Only the form Nisenan is used by Littlejohn (1928:1), Kroeber (1932a:266, 376), Wilson (1957-1963, 1970:124), and Riddell (1972:1). Faye (1923:35-57) and Gifford (1927:214-257) called the group Southern Maidu, while Loeb (1933:140-206) called them Valley Nisenan or Southern Maidu and Beals (1933:335-413) referred to the Nisenan and Southern Maidu.

Maidu names for the Nisenan are reported as Tainkoyo, Tanko (both presumably for *tá'ŋki* 'Hill Nisenan'), Tankum, Tan'köma (both these probably for *iŋki'mmá'a* 'Valley Nisenan') (Dixon 1905:128, 1910b; the phonemic spellings for Konkow from Russell Ultan, personal communication 1974). A Nisenan village named Tanku is located by Kroeber (1932a:268) at the mouth of the Feather River; others call this village Wo'lok.

Writers of the mid-nineteenth century often referred to the Nisenan according to the names of their villages, which was the traditional manner of self-identification by Central California Indians. Hoc (Hock, Hok), Culloma (Coloma, Culooma, Koloma), Kiske, Yuba (Uba, Yupu) are among the major villages that appear in the literature in a variety of spellings. The village most often referred to

was Pusune, which according to Dixon (1910b) was a Nisenan settlement near Barnard Slough between the American and Sacramento rivers. Among the spelling variants of this name are: Pu-su'-ne, Pu-su'-na, Poosoonas, Pushune, Puzhune, Puzlumne, Pūjuni (all these in Dixon 1910b, citing original sources), and Pujune (Kroeber 1929:256). Powell's (1891:99) label Pujunan for the Maidu linguistic family was based on Pūjuni from Hale (1846:630-632).

The derogatory term Digger is still in the 1970s sometimes used in reference to the Nisenan as well as other Central California Indians (Heizer 1974:xiv-xv).

Sources

Kroeber's (1925) general work on California is the base point for reading about the Nisenan, but other ethnographic descriptions are important (Kroeber 1929, 1932a; Faye 1923; Beals 1933). Studies of special topics include Nisenan geography (Littlejohn 1928), religious ceremonies (Gifford 1927), the Kuksu cult (Loeb 1933), and Nisenan environment and subsistence (Ritter and Schulz 1972:1-58).

Descriptions of Nisenan life after contact are provided by Bryant (1849:265-272), Buffum (1850:40-51), Delano (1854:248-320), and Cook (1943b:16). Cook (1955a:316) gives some population estimates for the contact period. Little has been written on the twentieth-century Nisenan.

Nisenan linguistics are best represented in a grammar (Uldall 1930), and in a text and dictionary (Uldall and Shipley 1966). Culture element distribution lists are most complete in Voegelin (1942:49-162).

Representative museum collections in California are found at the State Indian Museum, Sacramento; Lowie Museum of Anthropology, Berkeley; The Oakland Museum, Oakland; and the University of California, Davis. Collections are also housed at the National Museum of Natural History, Smithsonian Institution, Washington.

An extensive annotated bibliography of the Maidu containing most published and unpublished sources on all Maidu groups, including the Nisenan, with historic and ethnographic references has been compiled by Wilson and Towne (1972). Kenton's (1972) bibliography surveys Maidu archeology. These are the most complete lists of sources for the in-depth researcher on Nisenan.

Appendix 4: Ethnohistorical Synopsis by Tanis C. Thorne, Ph.D., Sept. 29, 2010.

A primary argument is made by Tsi-Akim that Nevada County is part of their "traditional" or "indigenous" territory as "Maidu" people. Don Ryberg is also the Chairperson of the Taylorsville Rancheria in Plumas County, and frequently identifies himself as such at public gatherings. Of the 40 per cent of the Tsi-Akim membership that are alleged to live within Nevada County as of the year 2000, a substantial number are members of the Ryberg family, all with roots in the Taylorsville community. The scholarly consensus is that the "Nisenan" were the indigenous people to occupy the Sierra foothills of the American, Bear, and Yuba River watersheds in present-day Nevada County.

Much public confusion stems from a misunderstanding of the distinction between the Northern Maidu language originally spoken by Plumas County's indigenous people and the Nisenan language spoken by the indigenous peoples of Nevada County. Confusion also arises in confusing these pre-contact linguistic groups as political entities or "tribes," which they were not.

The Maidu and the Nisenan are sub-groups of a larger Maiduan language group that in turn is a subgroup of the larger California Penutian linguistic group (that includes Miwoks and Yokuts and Wintus, etc), according to the authoritative Handbook of North American Indians.¹ The Konkow, Michoopda, Nisenan, and Maidu were separate "speech communities" that sprung from a common root, called "proto-Maidu" deep in the past. On maps of California culture areas, the "Nisenan" and "Maidu" sub-groups are defined as distinct and separate territories. [Refer to App. 2]

Nisenan (sometimes referred to as "southern Maidu") simply translates as "the people"--or as Indian informants said, "Indian people." The area within the Nisenan linguistic sub-group is further sub-divided into groups speaking mutually incomprehensible dialects of Nisenan. Kroeber (1925) defined these as Northern Hill, Southern Hill, and Valley. Scholar Sheri Tatsch in a recent Ph.D. thesis, further refines the boundaries of these separate dialects and argues that the Colfax-Auburn-Clipper Gap Indians of historic times spoke one-dialect, and the people of Grass Valley-Nevada City-Downieville spoke another. She calls the latter "Nisem k'auwak" ("relatives of this place"). Tatsch agrees with others who have argued that dialect or district boundaries were defined by the ridges going in a generally east-west direction separating the deep canyons of the large rivers: the American, Bear, Yuba, and Feather.² Naming different geographical features and villages in one's own mother tongue was a form of claiming sovereignty over the landscape and its resources. Over 100 pre- and early contact Indian towns (rancherias)--each politically separate--are identified in the Nisenan territory alone in the Handbook.³ Commenting on the linguistic diversity of California with at minimum eighty to one

¹ Norman L. Wilson and Orlean H. Towne, "Nisenan," Volume 8, ed. Robert Heizer (1978) pp. 387-397.

² Sheri Jean Tatsch, "The Nisenan: Dialects and Districts of a Speech Community (UC Davis, Native American Studies, 2006).

³ Norman L. Wilson and Orlean H. Towne, "Nisenan," Volume 8, ed. Robert Heizer (1978) pp. 387-397.

hundred “distinct languages [Nisenan being distinct from Maidu, see Appendix 2, Map 2],” scholar Herbert Luthin writes, “Each language reflects a cultural division too.”⁴

The confusion and controversy arise from this semantical distinction: Nisenan are part of a larger Maidu-speaking parent group, but they are distinct from the Plumas County “Maidu” (as a sub-dialect set of the parent Maidu) as well as the Konkow of Yuba County (another sub-group of the parent Maidu.)

To illustrate this crucial difference, the Tsi-Akim is correct at one level of analysis when they say Nevada County is part of traditional “Maidu” territory, much like an Italian saying his ancestors are indigenous to Europe for thousands of years and Europe is their “traditional” land. However, at another level of analysis, the Tsi-Akim’s statement is incorrect; it is as wrong for Plumas County Northern Maidu to claim Nevada County as their “traditional” territory as it would be for a modern-day German to say Italy are lands where their ancestors are buried. The general nature of the statement therefore is impossible to prove or disprove because it is very general and subject to interpretation. Important questions the public should ask are: What proportion of the Tsi-Akim can document their lineage to Maidu ancestors, and how many, if any, can trace their ancestry to indigenous peoples of the historic era known to have lived in Nevada County? It is not enough to simply imply that Tsi-Akim’s ancestors are buried here; tangible evidence must be supplied. Without such evidence of direct descent, public policy decisions may favor the Tsi-Akim (as in an appointment to an Indian cemetery committee or donations of land or artifacts), overlooking the rightful “direct descendants.” Since the NCHS has not been supplied with any such documentary evidence linking the Tsi-Akim’s current membership and their direct lineal ancestors (parents/grandparents/great-parents) to historic occupancy in the historic period since the Gold Rush, we cannot evaluate its truth or falsehood of this implication.

What is seriously misleading is the identification of Ryberg as “current Chief of the Maidus” (as recorded in the NCHS Board of Directors’ minutes of November 2, 2000. Ryberg’s statement in his letter of Oct. 30, 2000, “The Tsi-Akim Maidu have been trying for 150 years to gain recognition” is also a misconstruction of the historical and anthropological record, for it implies a political organization of people extending over the thirteen counties, from which Tsi-Akim currently draws membership. “Tsi-Akim” was not politically organized 150 years ago, and has maintained no imaginary political cohesion, a stable membership, or joint purpose (under this or any other name) that can be demonstrated through evidence. Further, the Plumas County community of Taylorsville of which Ryberg and other current members of the Tsi-Akim community was federally recognized in the for a 30 or 40 year period in the 20th century; as Ryberg’s family/tribe in Taylorsville had federal recognition for a considerable length of time, they had no reason to seek it.

Historical Contact:

⁴ Herbert W. Luthin, ed. *Surviving Through the Days: A California Indian Reader* (UC Press, 2002), p. 545

Once colonization by non-Europeans commenced, these indigenous place names (like Wau'kau dok for the rancheria west of Nevada City and Oustomah for the rancheria where Nevada City now stands) were replaced by American names, and thus Native names were erased along with Native claims to sovereignty. By claiming Nisenan territory as their own, the Plumas County Maidu, are engaging in a similar kind of erasure. This is an erasure of the rightful claims of the current residents of Nevada County, who trace their genealogical connections directly to the people of the Wau'kau dok community, who are not members of the Tsi-Akim tribe. The Wau-kau dok village persisted into mid-20th century (albeit only with a handful of residents) and became the federally-recognized Nevada City rancheria in 1913.

The Tsi Akim is engaging in an erasure of over 100 years of scholarship by Steven Powers, Alfred Kroeber, Hugh Littlejohn, C. Hart, Merriam, Hans Uldall, William Shipley, Ralph Beals, John P. Harrington, Richard Smith, and many, many others. (See Appendix 3 for a short annotated bibliography prepared by emeritus professor Jerald Johnson of California State University, Sacramento.) These scholars may disagree upon the nature of political organization in Nisenan territory, the boundaries of dialect groups, and the extent of trade, intermarriage, or resource sharing, but they all agree that Nisenan and Maidu territories are distinct and separate--though at some time, perhaps a thousand years earlier, they had a common parent language. These scholars' voluminous research is based upon interviews with such members of the Nevada City campoodie (aka Wau'kau dok) as Old Betsy, Dick Jaimie, Dick Childs, and Louis Kelly as well as Lizzie and Ed Enos of Clipper Gap and George Nye of Dobbins.

Tragically, the Native California Indian population rapidly collapsed after contact. The foothill population may have decreased by 75% in the 19th century, according to demographer Sherburne Cook, necessitating the abandonment of most pre-contact villages and the consolidation of the survivors. Doris Foley of the NCHS documented many such small communities in Nevada County in the late 19th century, but the number steadily decreased into the 20th century either because of population decline or assimilation into the large population through marriage or residential change. Special Investigator C.E. Kelsey provided one of the first censuses of the Indians of northern California in 1906. One of these communities of Native Americans he identified was the campoodie outside Nevada City, which became a refuge for some of the surviving local Indians like well-known Betsy Westerfield, born at Oustomah around 1850. Population decline, forced deportation, migrant labor patterns all disrupted traditional indigenous culture. "We had become a few little bands of people huddled here and there in what had once been our country," writes Pomo Essie Allen [born 1899], "fighting to stay alive by working for the ranchers usually at sheepshearing or wood chopping and in the hopfields."⁵ California Indians sought employment as laborers in mining, lumber, and agriculture (while continuing to gather wild foods like acorns insofar as this was possible) and joining together for ceremonies in larger groups. Thus, people speaking many different dialects of the Penutian language family interacted and intermarried and formed new families and communities; people from the Colfax and Nevada City Indian communities intermarried, for example. Nisenan-speakers also mixed with Miwoks,

⁵ Pomo Basketmaking (Happy Camp, CA: Naturegraph Publ. 1972), p. 7.

Washos, Wintuns, and Hawaiians (as well as non-Indians) in the latter half of the 19th and early to mid 20th centuries.

In 1913, the federal government took the Cully homestead into federal trust status, acknowledging the Nevada City rancheria as a “reservation” and its inhabitants as “Indians” under federal protection. The Taylorsville Rancheria in Plumas county also received federal trust protection following Special Agent C.E. Kelsey’s recommendations. However, both rancherias were terminated along with many other tribes subsequent to the passage of the California Rancheria Act of 1958 and Public Law 108 (1953) as federal government policy shifted to termination after World War II. The Johnson family of the Nevada City Rancheria received the revenue once the reservation land was sold (but none of the members of the Louis Kelly family received money from the land sale).⁶ Because most of the northern California Indian reservations regained federal recognition subsequent to the Tillie Hardwick class action suit (save four, one of which was the Nevada City rancheria), the reorganized Nevada City Rancheria “tribe” has court action available to them for re-recognition. The United Auburn Rancheria, after litigation, regained federal recognition with Congressional legislation, combined with judicial action, in the early 2000 and commenced a very lucrative gaming operation with their Thunder Mountain casino.

The Taylorsville rancheria also was terminated, but because no one was living on that rancheria, the BIA could find no distributees for the money from the sale. The land there was sold and privatized, leaving the Taylorsville people without trust land, but in a kind of legal limbo (viz: no trust land, but not technically “terminated” from the federal trust relationship as a “tribe”).

⁶ Tanis Thorne, The Campoodie of Nevada City: The Story of a Rancheria, (Sansouci Publications, 1997).

United States District Court
For the Northern District of California

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E-Filed 3/7/2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

TILLIE HARDWICK, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 5:79-cv-01710-JF

NISENAN TRIBE OF THE NEVADA CITY
RANCHERIA; RICHARD JOHNSON, in his
official capacity as Tribal Chairman and in his
individual capacity as the heir/legatee/successor
to the distributees Peter Johnson and Margaret
Johnson,

Plaintiffs,

v.

S.M.R. JEWELL, Secretary of the Interior;
KEVIN K. WASHBURN, Assistant Secretary –
Indian Affairs for the United States Department
of the Interior,¹

Defendants.

Case No. 5:10-cv-00270-JF

**ORDER GRANTING PLAINTIFFS’ MOTION
TO CORRECT A CLERICAL MISTAKE IN
HARDWICK; GRANTING PLAINTIFFS’
MOTION TO AUGMENT THE
ADMINISTRATIVE RECORD IN NISENAN;
GRANTING DEFENDANTS’ MOTION FOR
JUDGMENT ON THE PLEADINGS IN
NISENAN; AND DISMISSING THE NISENAN
ACTION WITH PREJUDICE**

¹ S.M.R. Jewell and Kevin W. Washburn are substituted as the defendants in this action in place of their predecessors, Ken Salazar and Larry Echo Hawk. See Fed. R. Civ. P. 25(d).

1 Plaintiffs move to correct a clerical mistake in the *Hardwick*² action and to augment the
2 administrative record in the *Nisenan*³ action; Defendants move to dismiss the operative first
3 amended complaint (“FAC”) in the *Nisenan* action or, in the alternative, for judgment on the
4 pleadings. *Hardwick* ECF No. 356; *Nisenan* ECF Nos. 87, 93. The Court concludes that these
5 motions are appropriate for disposition without oral argument pursuant to Civil Local Rule 7-1(b).
6 For the reasons discussed below, all three motions will be granted, and the *Nisenan* action will be
7 dismissed with prejudice.

8 I. BACKGROUND

9 Early in the twentieth century, the United States sought to improve “the landless, homeless
10 or penurious state of many California Indians” by purchasing numerous small tracts of land known
11 as “rancherias.” *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007) (internal quotation marks and
12 citation omitted). The United States held these lands in trust for Indians who resided thereon. *Table*
13 *Bluff Band of Indians v. Andrus*, 532 F. Supp. 255, 258 (N.D. Cal. 1981). Trust lands could not be
14 taxed or conveyed to others. *Id.* “The United States controlled the rancheria lands under the special
15 fiduciary duty owed by the United States to the Indian people.” *Id.* Among the rancherias
16 established during this time frame was the Nevada City Rancheria, which was established by
17 executive order of President Woodrow Wilson on May 6, 1913. *Nisenan* Admin. R. (“AR”) 001.⁴

18 A. Rancheria Act

19 In 1958, Congress passed the California Rancheria Termination Act (“Rancheria Act” or
20 “Act”), which provided that the lands of forty-one enumerated California rancherias were to be
21 removed from trust status and distributed to the individual Indians of those rancherias. Cal.
22 Rancheria Termination Act, Pub. L. No. 85-671, 72 Stat. 619 (1958), *amended by* Pub. L. 88-419,
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² *Tillie Hardwick, et al. v. United States, et al.*, No. 5:79-cv-01710-JF.

³ *Nisenan Tribe of the Nevada City Rancheria, et al. v. S.M.R. Jewell, Secretary of the Interior, et al.*, No. 5:10-cv-00270-JF.

⁴ The United States manually filed the administrative record in *Nisenan* on October 30, 2012. *Nisenan* ECF No. 79.

1 78 Stat. 390 (1964).⁵ The Act directed the Indians of each enumerated rancheria, or the Secretary of
2 the Interior after consulting them, to prepare a plan for distributing the rancheria's lands or for
3 selling the lands and distributing the proceeds. *Id.* § 2(a). Upon approval of such plan by the
4 Secretary of the Interior, general notice of the plan was to be given and individual Indians were to
5 be afforded an opportunity to object. *Id.* § 2(b). Upon subsequent approval of the plan by a
6 majority of adult Indians who were to participate in the distribution, the plan was to be executed. *Id.*
7 Prior to distribution, the Secretary of the Interior was to complete certain tasks, including making
8 improvements to rancheria lands and appointing guardians to protect the rights of Indians who were
9 minors or otherwise in need of assistance in conducting their affairs. *Id.* §§ 2, 3, 8.

10 Under the Rancheria Act, approval of a distribution plan was to be considered final; the
11 distribution of assets was "not be the basis for any claim against the United States." *Id.* § 10(a).
12 Upon final approval of a plan, the Secretary of the Interior was to revoke the tribal constitution and
13 corporate charter adopted by the Indians of the subject rancheria. *Id.* § 11. Following distribution,
14 former rancheria lands no longer would be exempt from state and federal taxes. *Id.* § 2(d).
15 Moreover, Indians who received any part of a rancheria's assets, and the dependent members of
16 their immediate families, no longer would be entitled to federal services or immunities based on
17 Indian status. *Id.* § 10(b).

18 **B. Termination of the Nevada City Rancheria**

19 The Nevada City Rancheria was one of the forty-one rancherias enumerated by the
20 Rancheria Act. *Id.* § 1. The Bureau of Indian Affairs ("BIA") prepared a distribution plan dated
21 June 8, 1959. AR 189-192. The plan indicated that: Peter Johnson and his wife Margaret Johnson
22 ("the Johnsons") were the only Indians living on the Rancheria; the Johnsons were the only
23 individuals entitled to share in distribution of the Rancheria lands and assets; the Johnsons had
24 requested that the BIA sell the Rancheria lands and assets on their behalf; no minor children would

25 _____
26 ⁵ On August 11, 1964, the Rancheria Act was amended to provide for the distribution of lands and
27 assets of any California rancheria upon request by a majority vote of the adult Indians of the
28 rancheria. Cal. Rancheria Termination Act, Pub. L. No. 85-671, 72 Stat. 619 (1958), amended by
Pub. L. 88-419, 78 Stat. 390 (1964). The Nevada City Rancheria lands at issue here were
distributed prior to the date of the amendment.

1 receive funds from the sale of the Rancheria lands and assets; and the Johnsons were capable of
2 handling their own affairs. *Id.* On July 17, 1959, the acting BIA Area Director sent the BIA
3 Commissioner a letter stating that general notice of the distribution plan had been given on June 16,
4 1959, and no objections had been received. AR 199. On July 29, 1959, the BIA Commissioner
5 responded by letter, advising that the distribution plan was approved and should be presented to the
6 Johnsons for their acceptance. AR 201.

7 On August 4, 1959, the BIA Area Director sent the Johnsons a letter informing them that the
8 distribution plan had been approved by the United States and that a general meeting of distributees
9 would be held for the purpose of voting on the plan. AR 202. The letter advised that the Johnsons
10 could vote by written ballot in lieu of attending the general meeting. *Id.* On August 14, 1959, both
11 Peter and Margaret Johnson voted to approve the distribution plan. AR 212. However, distribution
12 was delayed by other individuals claiming mining rights in Rancheria lands. AR 224. The
13 Johnsons were permitted to remain on the property during this period of delay. *Id.* Margaret died
14 on May 24, 1963. AR 256. A few days later, on May 27, 1963, the Rancheria lands were sold for
15 \$20,500. AR 258. The grant deed was delivered to the purchasers on June 10, 1963. AR 261.

16 On September 22, 1964, the Secretary of the Interior published a Notice stating as follows:
17 Notice is hereby given that the Indians named under the Rancherias listed below are
18 no longer entitled to any of the services performed by the United States for Indians
19 because of their status as Indians, and all statutes of the United States which affect
20 Indians because of their status as Indians, shall be inapplicable to them, and the laws
of the several States shall apply to them in the same manner as they apply to other
citizens or persons within their jurisdiction. Title to the lands on the Rancherias has
passed from the United States Government under the distribution plan of each
Rancheria.

21
22 29 Fed. Reg. 13,146 (Sept. 22, 1964), copy provided at AR 340-42. The Notice listed the Nevada
23 City Rancheria and identified Peter Johnson as the sole distributee. *Id.*

24 **C. *Hardwick Action***

25 In 1979, individuals from a number of terminated rancherias, including the Nevada City
26 Rancheria, filed the *Hardwick* action in this district. *Hardwick* Compl., attached as Ex. A to Pls.’
27 Opp. to Mot. to Dismiss, *Nisenan* ECF No. 96-1. The *Hardwick* plaintiffs sought restoration of their
28 status as Indians, entitlement to federal Indian benefits, and the right to reestablish their tribes as

1 formal government entities. *Id.* In 1980, Judge Williams certified a class consisting of all persons
2 who received assets of thirty-four enumerated rancherias pursuant to distribution plans prepared
3 under the Rancheria Act; any heirs or legatees of such persons; and any Indian successors in interest
4 to real property so distributed. Order Re: Class Cert., attached as Ex. B. to Pls.’ Opp. to Mot. to
5 Dismiss, *Nisenan* ECF No. 96-2.

6 In 1983, the *Hardwick* court entered a “Stipulation For Entry Of Judgment” (“1983
7 Stipulation”). *Hardwick* 1983 Stipulation, attached as Ex. D to Pls.’ Opp. to Mot. to Dismiss,
8 *Nisenan* ECF No. 96-2. The 1983 Stipulation divided the class members into three subclasses. The
9 first subclass consisted of individuals who received assets of seventeen enumerated rancherias⁶; the
10 United States agreed to restore those individuals to Indian status, restore recognition of their tribes
11 as Indian entities, and provide a mechanism by which individuals holding former rancheria lands
12 could reconvey those lands to the United States to be held in trust. *Id.* at ¶¶ 1-8. The second
13 subclass consisted of individuals who received assets of twelve different enumerated rancherias⁷; as
14 to those individuals, the action was dismissed without prejudice. *Id.* at ¶ 14. The third subclass
15 consisted of individuals whose claims were barred under the doctrine of *res judicata*; as to those
16 individuals, the action was dismissed with prejudice. *Id.* at ¶¶ 15-19.

17 For unknown reasons, the 1983 Stipulation failed to mention the Nevada City Rancheria.
18 *See id.* ¶¶ 1-19. On May 20, 1992, Judge Williams dismissed the *Hardwick* action and closed the
19 case. *Hardwick* ECF No. 258.

20 **C. *Nisenan* Action**

21 On January 20, 2010 – more than forty years after the Nevada City Rancheria’s lands were
22

23 ⁶ The seventeen rancherias were: (1) Big Valley; (2) Blue Lake; (3) Buena Vista; (4) Chicken
24 Ranch; (5) Cloverdale; (6) Elk Valley; (7) Greenville; (8) Mooretown; (9) North Fork; (10)
25 Picayune; (11) Pinoleville; (12) Potter Valley; (13) Quartz Valley; (14) Redding; (15) Redwood
26 Valley; (16) Rohnerville; and (17) Smith River. *Hardwick* 1983 Stipulation at ¶ 1, attached as Ex.
27 D to Pls.’ Opp. to Mot. to Dismiss, *Nisenan* ECF No. 96-2.

28 ⁷ The twelve rancherias were: (1) Graton; (2) Scotts Valley; (3) Guideville; (4) Strawberry Valley;
(5) Cache Creek; (6) Paskenta; (7) Ruffeys; (8) Mark West; (9) Wilton; (10) El Dorado; (11) Chico;
and (12) Mission Creek. *Hardwick* 1983 Stipulation at ¶ 14, attached as Ex. D to Pls.’ Opp. to Mot.
to Dismiss, *Nisenan* ECF No. 96-2.

1 sold and more than seventeen years after *Hardwick* was closed – the Nisenan Maidu Tribe of the
2 Nevada City Rancheria filed an action challenging the sale of the Rancheria’s lands and the
3 termination of the Tribe. *Nisenan* ECF No. 1. The *Nisenan* action was related to the *Hardwick*
4 action under this Court’s Civil Local Rules. Order Relating Cases, *Nisenan* ECF No. 21.

5 On August 5, 2011, the Nisenan Maidu Tribe filed a motion for leave to proceed with its
6 claims in the *Hardwick* action. Pl.’s Mot to Reopen *Hardwick*, *Nisenan* ECF No. 48. The Tribe
7 argued that those claims were still viable because they had not been disposed of by the *Hardwick*
8 judgment. *Id.* On September 22, 2011, this Court issued an order deferring consideration of the
9 Tribe’s motion, noting that despite the Tribe’s references to *Hardwick* as “pending,” the case had
10 been closed since 1992. Order Deferring Consideration of Pl.’s Mot. at 5 n.4, *Nisenan* ECF No. 67.
11 The Court opined that the proper procedural vehicle for seeking to reopen *Hardwick* was a motion
12 pursuant to Federal Rule of Civil Procedure 60(b). *Id.* at 6. However, the Court indicated that it
13 would not be inclined to grant relief under Rule 60(b) unless the Nisenan Maidu Tribe could
14 demonstrate that its members would have been in the subclass entitled to relief under the *Hardwick*
15 settlement and not in one of the subclasses whose claims were dismissed. *Id.* at 6-7.

16 On October 30, 2012, the United States filed the administrative record in the *Nisenan* action.
17 *Nisenan* ECF No. 79. The Nisenan Maidu Tribe thereafter abandoned its attempt to reopen
18 *Hardwick*, conceding that its members would have been in the second *Hardwick* subclass of
19 individuals whose claims were dismissed without prejudice. Pl.’s Mot. for Correction of Clerical
20 Mistake at 5, *Hardwick* ECF No. 356. The Tribe now asserts that the Nevada City Rancheria’s
21 omission from the list of rancherias enumerated in connection with the second *Hardwick* subclass
22 was the result of a clerical error, and it requests that the error be corrected pursuant to Federal Rule
23 of Civil Procedure 60(a). *Id.* The Tribe also requests that the Court dismiss claims relating to the
24 Nevada City Rancheria from *Hardwick* without prejudice and that such dismissal be effective as of
25 the date of the dismissal order rather than *nunc pro tunc*. *Id.* at 7.

26 On March 13, 2013, the Nisenan Maidu Tribe filed the operative first amended complaint
27 (“FAC”), adding an individual, Richard Johnson, as a named plaintiff both in his official capacity as
28 Tribal Chairman and in his individual capacity as the heir/legatee/successor to Peter and Margaret

1 Johnson. *Nisenan* ECF no. 84. Claims 1-4 of the FAC assert that during the process of distributing
2 the lands of the Nevada City Rancheria and terminating the Tribe’s status, Defendants breached
3 obligations imposed by the Rancheria Act and by their fiduciary duty to Plaintiffs. Claim 5 of the
4 FAC seeks review of those alleged wrongs pursuant to the Administrative Procedure Act (“APA”),
5 5 U.S.C. § 701 *et seq.* Plaintiffs have filed a motion for leave to augment the administrative record
6 with documents that they contend are relevant and support their claims. Defendants oppose the
7 motion to augment and seek dismissal of the *Nisenan* action with prejudice.

8 **II. MOTION TO CORRECT CLERICAL MISTAKE IN *HARDWICK***

9 The Nisenan Maidu Tribe asserts that the Nevada City Rancheria was one of the rancherias
10 that was the subject of the *Hardwick* litigation; claims arising from distribution of the Nevada City
11 Rancheria’s lands were subject to dismissal without prejudice pursuant to the terms of the 1983
12 Stipulation; and the Nevada City Rancheria was omitted from the 1983 Stipulation as result of a
13 clerical mistake. The Tribe requests that the Court correct that mistake.

14 “The court may correct a clerical mistake or a mistake arising from oversight or omission
15 whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). The
16 record strongly suggests that the Nevada City Rancheria in fact was omitted from the 1983
17 Stipulation as a result of a clerical mistake. The Nevada City Rancheria was listed on the
18 “Summary Sheet” of “Terminated Rancherias” that was attached to the *Hardwick* complaint as
19 Exhibit A. *Hardwick* Compl., attached as Ex. 1 to Mot. to Correct Clerical Error, *Hardwick* ECF
20 No. 356-1. The Nevada City Rancheria also was one of the thirty-four rancherias enumerated in the
21 *Hardwick* court’s order granting class certification. Order Re: Class Cert., attached as Ex. 4. to Mot.
22 to Correct Clerical Error, *Hardwick* ECF No. 356-5. The attorney who acted as lead plaintiffs’
23 counsel has submitted a declaration saying that Nevada City Rancheria was a party to the *Hardwick*
24 action. Decl. of David Rapport ¶¶ 14-15, *Nisenan* ECF No. 37. The attorney who acted as lead
25 counsel for the federal defendants has submitted a declaration stating that he does not know why the
26 Nevada City Rancheria was omitted from the 1983 Stipulation but he believes that the Nevada City
27 Rancheria was omitted from the 1983 Stipulation as a result of a clerical error. Decl. of Paul Locke
28 ¶¶ 5-7, *Nisenan* ECF No. 38.

1 The Tribe asserts, and Defendants do not dispute, that had the Nevada City Rancheria been
2 included in the 1983 Stipulation the Tribe's members would have been in the second subclass whose
3 claims were dismissed without prejudice. Defs.' Opp. at 2, *Hardwick* ECF No. 359. Defendants
4 nonetheless oppose the motion to correct, arguing that there is insufficient evidence to show that the
5 Nevada City Rancheria was omitted from the 1983 Stipulation because of a clerical mistake. *Id.* at
6 2-3. However, Defendants offer no alternative explanation for the omission of the Nevada City
7 Rancheria. Based upon the record as a whole, the Court concludes that the Nevada City Rancheria
8 was omitted from the 1983 Stipulation as a result of a clerical mistake.

9 Defendants point out that if the motion to correct is granted, the Nisenan Maidu Tribe and
10 the Nevada City Rancheria may be able to take advantage of a provision of the 1983 Stipulation
11 limiting Defendants' ability to assert a laches defense. Defendants argue that they would be
12 prejudiced if that limitation were extended to the Nisenan Maidu Tribe at this late date. However,
13 the fact that the Court's correction of its clerical error may afford the Tribe and the Nevada City
14 Rancheria an additional defense does not constitute a basis for the Court to decline to correct the
15 error.

16 Without citation to authority, the Tribe requests that the Court grant its motion effective as
17 of the date of the present order rather than *nunc pro tunc* to the date of the 1983 Stipulation. Rule
18 60(a) motions generally are treated as motions for relief *nunc pro tunc*, and the Tribe does not offer
19 a compelling reason why the Court should depart from that practice. *See, e.g., Miller v.*
20 *Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983) (equating request for entry *nunc pro*
21 *tunc* with Rule 60(a) motion); *Retail Clerks Union v. Food Employers Council, Inc.*, 351 F.2d 525,
22 528 (9th Cir. 1965) (discussing Rule 60(a) modification of an injunction *nunc pro tunc*); *Ford v.*
23 *City of Cape Girardeau*, 151 F.R.D. 116, 117 (E.D. Mo. 1993) (amending judgment *nunc pro tunc*
24 pursuant to Rule 60(a)). The Rule 60(a) motion will be granted *nunc pro tunc* to the date of the
25 1983 Stipulation.

26 III. MOTION TO AUGMENT ADMINISTRATIVE RECORD IN NISENAN

27 On October 29, 2012, Defendants filed an administrative record containing fifty-two
28 documents in the *Nisenan* action. *Nisenan* ECF No. 78. Plaintiffs attached nineteen additional

1 documents to their FAC filed March 13, 2013. *Nisenan* ECF No. 84. The parties subsequently
2 agreed that eleven of the additional nineteen documents should be included in the administrative
3 record, and Defendants filed a supplement to the administrative record on May 22, 2013. *Nisenan*
4 ECF No. 91. Plaintiffs now move to add the remaining eight documents.

5 Plaintiffs' motion is governed by the APA, which provides the waiver of sovereign
6 immunity in this case.⁸ *See* 5 U.S.C. § 702. The APA provides for judicial review of "final
7 agency action" and "[a]gency action made reviewable by statute." 5 U.S.C. § 704. The agency
8 action will be set aside if it is "unsupported by substantial evidence or arbitrary, capricious, an abuse
9 of discretion, or otherwise not in accordance with the law." *Thompson v. United States Dep't of*
10 *Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (internal quotation marks and citations omitted).
11 "[J]udicial review is to be based on the full administrative record before the agency *when it made its*
12 *decision.*" *Id.* at 555-56. "The whole administrative record, however, is not necessarily those
13 documents that the agency has compiled and submitted as 'the' administrative record." *Id.* at 555
14 (internal quotation marks and citation omitted). The record to be reviewed "consists of all
15 documents and materials directly or indirectly considered by agency decision-makers and includes
16 evidence contrary to the agency's position." *Id.* (internal quotation marks and citation omitted).
17 "The reviewing court can go outside the administrative record but should consider such evidence
18 relevant to the substantive merits of the agency decision only for the limited purpose of background
19 information or to determine whether the agency considered all the relevant factors." *Id.*

20 The agency actions about which Plaintiffs complain are Defendants' termination of the
21 Nevada City Rancheria without first taking certain actions required by the Rancheria Act, and
22 Defendants' failure to reinstate the Nevada City Rancheria and the Nisenan Maidu Tribe to
23 protected Indian status. FAC ¶¶ 112-16, *Nisenan* ECF No. 84. As noted above, the Nevada City
24 Rancheria lands were sold in 1963 and members of the Nevada City Rancheria were stripped of

25 _____
26 ⁸ The FAC asserts waiver of sovereign immunity pursuant to "the APA, and the United States'
27 fiduciary and trustee obligations owed to the Nevada City Rancheria and its members." FAC ¶ 7,
28 *Nisenan* ECF No. 84. However, "[t]ribes cannot allege a common law cause of action for breach of
trust that is wholly separate from any statutorily granted right." *Gros Ventre Tribe v. United States*,
469 F.3d 801, 810 (9th Cir. 2006). The APA is the only statute identified in the FAC that provides
for waiver of sovereign immunity.

1 their Indian status by means of a notice placed in the Federal Register in 1964. The Nevada City
2 Rancheria and the Tribe have not been reinstated to Indian status since then.

3 It does not appear that the eight documents at issue would have been materials directly
4 considered in taking these agency actions. One document is a letter dated 1936 – well before the
5 enactment of the Rancheria Act in 1958 – discussing the Nevada City Rancheria; five documents are
6 BIA letters, memoranda, or reports dated between 1956 and 1958, discussing other rancherias or the
7 Rancheria Act generally; one document is a 1975 memorandum from the Commissioner on Indian
8 Affairs interpreting the Rancheria Act; and one document is a 1978 notice in the Federal Register
9 describing the terms of judgments entered in other lawsuits. Arguably, the documents may have
10 been considered indirectly by agency decision-makers, as they all relate to the Nevada City
11 Rancheria, to the Rancheria Act as applied to other rancherias, or to the Rancheria Act generally.
12 Even if the documents were not actually considered by Defendants when taking the agency actions
13 challenged here, they provide useful background information. Defendants have not articulated any
14 prejudice that would result from the Court’s consideration of the documents. Accordingly, the
15 motion to augment the administrative record also will be granted.

16 **IV. MOTION FOR JUDGMENT ON THE PLEADINGS IN *NISENAN***

17 Defendants seek dismissal of the FAC or, in the alternative, judgment on the pleadings.
18 Because Defendants filed an answer to the FAC before filing the present motion, the motion
19 properly is construed as a motion for judgment on the pleadings rather than as a motion to dismiss.
20 *See* Fed. R. Civ. P. 12(b) (motion to dismiss under Rule 12(b) must be made before responsive
21 pleading); Fed. R. Civ. P. 12(c) (motion for judgment on the pleadings may be brought after
22 pleadings are closed); *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980) (a Rule 12 motion
23 filed after an answer may be construed as a motion for judgment on the pleadings under Rule 12(c)).

24 Because a motion for judgment on the pleadings under Rule 12(c) is “functionally identical”
25 to a motion to dismiss under Rule 12(b)(6), the same legal standard applies to both motions.
26 *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). A motion to dismiss tests
27 the legal sufficiency of the plaintiff’s claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
28 When determining whether a claim has been stated, the Court accepts as true all well-pled factual

1 allegations and construes them in the light most favorable to the plaintiff. *Reese v. BP Exploration*
2 (*Alaska Inc.*, 643 F.3d 681, 690 (9th Cir. 2011)). However, the Court need not “accept as true
3 allegations that contradict matters properly subject to judicial notice or by exhibit” or “allegations
4 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re*
5 *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations
6 omitted). While a complaint need not contain detailed factual allegations, it “must contain sufficient
7 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
8 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A
9 claim is facially plausible when it “allows the court to draw the reasonable inference that the
10 defendant is liable for the misconduct alleged.” *Id.*

11 As noted above, the APA provides the only waiver of sovereign immunity for the claims
12 asserted in the FAC. The APA does not contain a specific statute of limitations; however, in
13 general “every civil action commenced against the United States shall be barred unless the
14 complaint is filed within six years after the right of action first accrues.” 28 U.S.C. § 2401(a).
15 “Indian Tribes are not exempt from statutes of limitations governing actions against the United
16 States.” *Sisseton-Wahpeton Sioux Tribe v. United States*, 895 F.2d 588, 592 (9th Cir. 1990).

17 On their face, the claims relating to termination of the Nevada City Rancheria accrued in
18 1964 when the notice of termination was published in the Federal Register. Plaintiffs filed the
19 *Nisenan* action in January 2010, well outside the limitations period. With respect to the claims
20 relating to Defendants’ failure to reinstate the Nevada City Rancheria and the Nisenan Maidu Tribe,
21 Plaintiffs contend that those claims were tolled during the pendency of the *Hardwick* action.
22 However, even assuming that the claims had not expired before the filing of *Hardwick* and that they
23 were tolled during its pendency, *Hardwick* was closed in 1992. Plaintiffs filed the *Nisenan* action
24 more than six years later, in January 2010. Accordingly, all of the claims asserted in the *Nisenan*
25 action appear to be time-barred.

26 Plaintiffs assert that Defendants waived the defense of statute of limitations by failing to
27 raise it in their answer in *Hardwick*. However, Defendants raised the defense in their answers to
28 both the complaint and FAC in the *Nisenan* action. *See Nisenan* ECF Nos. 13, 88. Plaintiffs argue

1 that Defendants are judicially estopped from “taking contrary positions” in the *Hardwick* and
2 *Nisenan* actions. “Judicial estoppel is an equitable doctrine invoked by a court at its discretion.”
3 *United States v. Ibrahim*, 522 F.3d 1003, 1009 (9th Cir. 2008). When deciding whether to apply the
4 doctrine, a court considers: “(1) whether a party’s later position is clearly inconsistent with its
5 original position; (2) whether the party has successfully persuaded the court of the earlier position;
6 and (3) whether allowing the inconsistent position would allow the party to derive an unfair
7 advantage or impose an unfair detriment on the opposing party.” *Id.* (internal quotation marks and
8 citation omitted). “[J]udicial estoppel seeks to prevent the deliberate manipulation of the courts, and
9 therefore should not apply when a party’s prior position was based on inadvertence or mistake.” *Id.*
10 (internal quotation marks and citation omitted).

11 The Court concludes that judicial estoppel is not warranted in *Nisenan*. The fact that
12 Defendants did not assert the statute of limitations in *Hardwick* is not “inconsistent” with their
13 assertion of the defense in a different case filed thirty years later. *Hardwick* was a class action
14 involving numerous rancherias and tribes. The record does not disclose why the statute of
15 limitations was not raised as a defense. *Hardwick* ultimately settled, and the statute of limitations
16 never was addressed by the Court. In contrast, Defendants asserted the statute of limitations at the
17 first available opportunity in *Nisenan*. The Court is at a loss to understand how Defendants’
18 assertion of a limitations defense in *Nisenan* allows Defendants to “derive an unfair advantage” over
19 Plaintiffs.

20 It is clear from this record that Plaintiffs have a deep and sincere desire to regain federal
21 recognition of Indian status. However, the *Nisenan* action – filed more than forty years after
22 termination of the Nevada City Rancheria and more than seventeen years after *Hardwick* was closed
23 – simply was filed too late. “Statutes of limitation are primarily designed to assure fairness to
24 defendants and to promote the theory that ‘even if one has a just claim it is unjust not to put the
25 adversary on notice to defend within the period of limitation and that the right to be free of stale
26 claims in time comes to prevail over the right to prosecute them.’” *Albillo-De Leon v. Gonzales*,
27 410 F.3d 1090, 1095 (9th Cir. 2005) (quoting *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 428
28 (1965)).

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V. ORDER

Accordingly, and good cause therefor appearing,

- (1) the motion to correct a clerical mistake in *Hardwick* is GRANTED;
- (2) the motion to augment the record in *Nisenan* is GRANTED;
- (3) the motion for judgment on the pleadings in *Nisenan* is GRANTED without leave to amend; and
- (4) the *Nisenan* action is DISMISSED WITH PREJUDICE.

DATED: March 7, 2014



JEREMY FOGEL
United States District Judge

FILED

MAY 25 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NISENAN TRIBE OF THE NEVADA
CITY RANCHERIA; et al.,

Plaintiffs - Appellants,

v.

SALLY JEWELL, in her official capacity
as Secretary of the Interior; et al.,

Defendants - Appellees.

No. 14-15541

D.C. No. 5:10-cv-00270-JF

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeremy D. Fogel, District Judge, Presiding

Submitted May 13, 2016**
San Francisco, California

Before: WARDLAW, PAEZ, and BEA, Circuit Judges.

Plaintiff-Appellants, The Nisenan Tribe of the Nevada City Rancheria,
Richard Johnson, and other individual members of the Nevada City Rancheria

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(“Appellants”), assert that the district court erred in dismissing their claims with prejudice on the grounds that such claims were time-barred under the Administrative Procedure Act’s (“APA’s”) six-year statute of limitations. *See* 28 U.S.C. § 2401. We find no error in the district court’s analysis, and we affirm.

I.

The district court did not err in granting Appellant’s Rule 60(a) motion to correct a clerical error in the 1983 Stipulation for Entry of Judgment (the “Stipulation”) in the *Hardwick* action *nunc pro tunc*,¹ rather than as of the date of the court’s March 7, 2014 order. To the extent Appellants are challenging the district court’s jurisdiction to enter such order *nunc pro tunc*, our review is *de novo*. *See United States v. Sumner*, 226 F.3d 1005, 1009 (9th Cir. 2000). To the extent Appellants challenge the district court’s exercise of its discretion to issue an order *nunc pro tunc*, we review the court’s ruling for abuse of discretion. *Atkins v. Wain, Samuel & Co.*, 69 F.3d 970, 973 (9th Cir. 1995).

A court’s jurisdiction to enter an order *nunc pro tunc* “is limited to making the record reflect what the district court actually intended to do at an earlier date,

¹“Nunc pro tunc signifies now for then, or in other words, a thing is done now, which shall have the same legal force and effect as if done at [the] time when it ought to have been done.” *United States v. Allen*, 153 F.3d 1037, 1044 (9th Cir. 1998) (quoting Black’s Law Dictionary 964 (5th ed. 1979)).

but which it did not sufficiently express or did not accomplish due to some error or inadvertence.” *Sumner*, 226 F.3d at 1010. Appellants asserted in their motion to correct the *Hardwick* court’s clerical error that, absent the error, the Nevada City Rancheria would have been among the parties whose claims were dismissed without prejudice by the 1983 Stipulation. By granting Appellants’ motion *nunc pro tunc*, the district court merely corrected the record to make it “reflect what the [*Hardwick*] court actually intended to do at an earlier date, but which it did not sufficiently . . . accomplish due to some error or inadvertence.” *Id.* The district court’s actions here fell well within the authority recognized in *Sumner*.

We are not persuaded by Appellants’ argument that a court lacks authority to correct an error *nunc pro tunc* if the correction would adversely affect a party’s “substantive” right. Appellants cite no case that has so held. Indeed, in *United States v. Inocencio*, 328 F.3d 1207 (9th Cir. 2003), we affirmed a district court’s authority to correct an earlier failure to revoke a defendant’s naturalization *nunc pro tunc*, where such revocation should have (but for a clerical error) followed automatically from the defendant’s conviction for naturalization fraud. *Id.* at 1208–11. The later revocation of naturalization clearly affected the defendant’s substantive rights in *Inocencio*. Accordingly, we reject Appellants’ argument that the district court erred because correcting the *Hardwick* court’s error *nunc pro tunc*

restarted the statute of limitations on Appellants' current claims as of 1983—thus rendering Appellants' present action untimely.

In sum, we conclude that the district court neither exceeded its jurisdiction nor abused its discretion in granting Appellants' motion to correct a clerical error *nunc pro tunc*.

II.

Appellants next argue that the district court erred in permitting the government to raise the APA's statute of limitations as an affirmative defense. We review *de novo* whether an affirmative defense has been waived, *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001), and again find no error in the district court's analysis. The government timely asserted the APA's six-year statute of limitations in both its answer to Appellants' original complaint and in its answer to Appellants' first amended complaint. The government therefore timely raised that defense. *See* Fed. R. Civ. Proc. 8(c).

No law supports Appellants' position that waiver of a statute of limitations defense in an earlier action bars the assertion of that defense in a *different action*,

filed nearly forty years later.² The cases Appellants cite merely hold that “[t]he filing of a class action tolls the statute of limitations as to all asserted members of the class,” until, for instance, the class action is dismissed or the class decertified, *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 350 (1983) (internal quotation marks omitted), or a plaintiff opts out of the class, *see Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 550 (1974). Because we reject Appellants’ premise that the *Hardwick* action remained pending (and the Nevada City Rancheria remained a party to that action) until 2014, these cases do not compel a ruling in Appellants’ favor. Here, one of two things occurred: (1) the Nevada City Rancheria claims were dismissed as of 1983 by the Stipulation, corrected *nunc pro tunc*, or (2) the Nevada City Rancheria claims were dismissed in 1992, when the court entered a “Judgment” closing the *Hardwick* case and finally disposing of “all” remaining claims. Either way, the current action, filed in 2010, was time-barred by the APA’s six-year statute of limitations.

²Appellants are correct that the government waived any statute of limitations defenses it may have had in the *Hardwick* action. The district court found—and Appellants do not dispute—that Appellants’ claims relating to the Nevada City Rancheria accrued in 1964 when the notice of termination of the Nevada City Rancheria was published in the Federal Register. *Cf.* 28 U.S.C. § 2401(a). Thus, the APA’s six-year statute of limitations had run before the 1971 *Hardwick* action had been filed.

That the 1983 Stipulation dismissed Appellants' and similarly situated Rancherías' claims *without* prejudice does not compel a different result. A dismissal without prejudice does not indefinitely preserve a party's right to bring a new action. Nor does the 1983 Stipulation contain any provision that would preclude the government from raising the statute of limitations as a defense in a later action.

In sum, there is no basis for finding that the government waived its statute of limitations defense in the present action. The district court correctly dismissed Appellants' suit as time-barred.

III.

We need not reach Appellants' argument that the government has waived its laches defense. Regardless whether the government may raise that defense, the district court's order must be upheld on statute of limitations grounds.

For the foregoing reasons, we **AFFIRM** the district court's order dismissing Appellants' action.