HOOPA-YUROK RESERVATION PARTITION

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 4469

TO PARTITION CERTAIN RESERVATION LANDS BETWEEN THE HOOPA VALLEY TRIBE AND THE YUROK INDIANS, TO CLARIFY THE USE OF TRIBAL TIMBER PROCEEDS, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC
JUNE 21, 1988

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HOOPA-YUROK RESERVATION PARTITION

TUESDAY, JUNE 21, 1988

HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
Washington, DC.

The committee met at 10 a.m. in room 2257 of the Rayburn House Office Building, the Honorable Richard Lehman presiding.

Mr. LEHMAN. The committee will come to order.

Today we are taking testimony on H.R. 4469, sponsored by Congressman Bosco to petition the lands between the Hoopa Valley Tribe and the Yurok Indians and to clarify the use of tribal timber proceeds.

Without objection, a copy of the bill will be made a part of the record in the proceedings.

[The bill, H.R. 4469, follows:]

I

100TH CONGRESS
2D SESSION

H. R. 4469

To partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 1988

Mr. BOSCO (for himself, Mr. COELHO, and Mr. MILLER of California) introduced the following bill; which was referred jointly to the Committees on Interior and Insular Affairs, the Judiciary, Energy and Commerce, and Merchant Marine and Fisheries

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A BILL

To partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

As used in this Act—

(1) the term "Hoopa Valley Tribe" means the Hoopa Valley Tribe, organized under the constitutions and amendments approved by the Secretary on November 20, 1933, September 4, 1952, August 9, 1963, and August 18, 1972;

(2) the term "Yurok Tribe" means the Yurok Tribe as recognized by the Secretary;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "trust land" means an interest of an Indian or tribe in land held in trust, or subject to a restriction against alienation, by the United States; and

(5) the term "unallotted trust land" means those lands reserved for Indian purposes which have not been allotted.

SEC. 2. RESERVATIONS; DIVISION AND ADDITIONS.

(a) HOOPA VALLEY RESERVATION.—The area of land known as the "square" (defined as the Hoopa Valley Reservation established under section 2 of the Act of April 8, 1864 (13 Stat. 40), the Executive order of June 23, 1876, and Executive order 1480 of February 17, 1912) is hereby established as the Hoopa Valley Reservation. The unallotted Indian land and assets of the Hoopa Valley Reservation shall continue to be held in trust by the United States for the benefit of the Hoopa Valley Tribe.

(b) YUROK RESERVATION.—

(1) The area of land known as the "extension" (defined as the reservation extension under the Executive order of October 16, 1891, but excluding the Resighini Rancheria) is hereby established as the Yurok

Reservation. The unallotted trust land and assets of the Yurok Reservation shall continue to be held in trust by the United States for the benefit of the Yurok Tribe.

(2) Subject to valid existing rights, all national forest system lands within the Yurok Reservation are hereby held in trust for the use and benefit of the Yurok Tribe and shall be part of the Yurok Reservation. Such lands shall be transferred from the Secretary of Agriculture to the Secretary of the Interior.

(3) The Secretary shall seek to purchase land along the Klamath River, California, to be added to the reservation of the Yurok Tribe. There is authorized to be appropriated $2,000,000 to carry out this paragraph.

(c) BOUNDARY CLARIFICATIONS OR CORRECTIONS.—

(1) The boundary between the Hoopa Valley Reservation and the Yurok Reservation is the line established by the Bissel-Smith survey.

(2) The Secretary shall publish a description of the boundaries of the Hoopa Valley and Yurok Reservations in the Federal Register.

(d) MANAGEMENT AND GOVERNMENT OF THE YUROK RESERVATION.—

(1) The Secretary shall manage the unallotted trust land and assets of the Yurok Tribe and govern the Yurok Reservation until the tribe has organized pursuant to section 3. Thereafter, those lands and assets shall be administered as tribal trust land and the reservation governed by the Yurok Tribe as other reservations are governed by the tribes of those reservations.

(2) The Hoopa Valley Reservation and the Yurok Reservation shall be subject to section 1360 of title 28, United States Code, section 1162 of title 18, United States Code, and section 403(a) of the Act of April 11, 1968 (82 Stat. 79; 25 U.S.C. 1323(a)).

(e) LAND EXCHANGES AND RIGHTS-OF-WAY.—

(1) The Secretary may make or approve the exchange of trust land in the Yurok Reservation for an interest in land in or near the reservation.

(2) The Secretary may acquire an interest in land for a right-of-way needed for access to trust land in the Yurok Reservation. The interest may be taken in trust for the beneficial owner of the trust land.

(f) LIMITATION OF ACTIONS; REIMBURSEMENT OF UNITED STATES FOR DAMAGES AWARDED.—

(1) Notwithstanding any other provision of law, any action in any court for damages based on inad-

equate compensation or a taking resulting from the division of land provided under this section shall be forever barred unless the complaint is filed within two years after the date of enactment of this Act.

(2) If the United States is found liable to the Hoopa Valley Tribe or Yurok Tribe, or to the Indians of either tribe, for damages based on inadequate compensation or a taking resulting from the division of land between the tribes provided under this section, the United States shall be entitled to a judgment for reimbursement from the other tribe's future income. Such reimbursement may be sought by joinder of the other tribe in the proceeding against the United States or in a separate action against the other tribe by the United States in United States district court.

SEC. 3. SETTLEMENT OF PENDING LITIGATION.

(a) PARTIAL JUDGMENT AND PER CAPITA PAYMENTS.—For the purpose of providing for partial judgments under section 2517 of title 28, United States Code, the cases entitled Jessie Short against the United States (Cl. Ct. No. 102–63) and Charlene Ackley against the United States (Cl. Ct. No. 460–78) may be treated as cases subject to section 10(e) of the Contract Disputes Act of 1978 (41 U.S.C. 609(e)).

(b) DISTRIBUTION OF ESCROW FUNDS.—

(1) POST 1974 DAMAGES.—Out of amounts in the escrow fund, the Secretary of the Interior shall pay amounts to qualified Jessie Short plaintiffs equal to the per capita share of income from the joint reservation distributed to individual members of the Hoopa Valley Tribe after December 31, 1974. Each such payment shall include simple interest from the date on which each such distribution was made determined in accordance with section D of the opinion filed March 17, 1987, in the United States Claims Court in the two cases referred to in subsection (a).

(2) APPORTIONMENT OF REMAINDER.—

(A) Any amount remaining in the escrow fund after all payments are made under paragraph (1) shall be apportioned between the Hoopa Valley Tribe and the Yurok Tribe. The Hoopa Valley Tribe shall receive 50 percent of such amount and the Yurok Tribe shall receive 50 percent of such amount.

(B) Amounts distributed under subparagraph (A) may not be distributed per capita to any individual before the date which is 10 years after the date on which the apportionment is made under subparagraph (A); and

(3) DEFINITIONS.—For the purpose of this section—

(A) the term "escrow fund" means the moneys derived from the joint reservation which are held in trust by the Secretary in the account, "Indian Money, Proceeds of Labor";

(B) the term "qualified Jessie Short plaintiff" means any plaintiff in either of the two cases referred to in subsection (a) who is determined by the United States Claims Court to be entitled to recover pursuant to either such case; and

(C) the term "joint reservation" means the "square" (defined as the reservation established under section 2 of the Act of April 8, 1864 (13 Stat. 40), and the Executive order of June 23, 1876) and the "extension" (defined as the reservation extension established under the Executive order of October 16, 1891, but excluding the Resighini Rancheria).

SEC. 4. YUROK TRIBAL ORGANIZATION.

The Yurok Tribe may organize under sections 16 and 17 of the Act of June 18, 1934 (48 Stat. 987, 988; 25 U.S.C. 476, 477).

SEC. 5. SPECIAL CONSIDERATIONS.

(a) LIFE ESTATE GIVEN TO THE SMOKERS FAMILY.—The 20 acre land assignment on the Hoopa Valley Reservation made by the Hoopa Area Field Office of the Bureau of Indian Affairs on August 25, 1947, to the Smokers family shall continue for the lives of those family members resident on the assignment on January 1, 1987.

(b) RESIGHINI RANCHERIA MERGER WITH YUROK RESERVATION.—If three fourths of the members of the Resighini Rancheria vote in an election conducted by the Secretary to merge with the Yurok Tribe, and the governing body of the Yurok Tribe agrees, the Resighini Rancheria shall be extinguished and the area shall be part of the Yurok Reservation with the unallotted trust land therein held in trust by the United States for the Yurok Tribe. The Secretary shall publish in the Federal Register a notice of the effective date of the merger.

SEC. 6. HEALTH ISSUES.

(a) CLEANUP OF DUMP SITES.—The Secretary of Health and Human Services shall clean up all dump sites located on the Yurok Reservation on the date of enactment of this Act, with emphasis first given to the dump sites located along the banks of the Klamath River.

(b) SOLID WASTE DISPOSAL.—The Secretary of the Interior, through the Bureau of Indian Affairs, shall seek to enter into a memorandum of understanding with Humboldt

and del Norte counties, California, regarding the disposal of solid waste from the Yurok Reservation pending the organizing of the Yurok Tribe pursuant to section 3.

(c) HEALTH CARE FOR NON-HOOPA INDIANS LIVING ON THE HOOPA RESERVATION.—The Secretary of Health and Human Services, through the Indian Health Service, shall enter into a memorandum of understanding with the Hoopa Valley Tribe to ensure the continued health care for non-Hoopa Indians living on the Hoopa Reservation.

SEC. 7. TREATMENT OF MONETARY RECOVERY FOR TAX PURPOSES AND FEDERAL PROGRAMS.

Any monetary recovery by a plaintiff in the cases entitled Jessie Short against the United States, Charlene Ackley against the United States, Aanstadt against the United States or Giffin against the United States (Cl. Ct. No. 102–63, 460–78, 146–85L, and 746–85L, respectively)—

(1) shall be exempt from any form of taxation, Federal or State, whatever recovered by an original plaintiff or the heirs of a deceased plaintiff; and

(2) neither such funds nor their availability shall be considered as income or resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which any household or member would otherwise be entitled, under the Social

Security Act or any Federal or federally assisted program.

SEC. 8. KLAMATH RIVER BASIN FISHERIES TASK FORCE.

(a) IN GENERAL.—Section 4(c) of the Act entitled "An Act to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes" (16 U.S.C. 460ss–3) is amended—

(A) in the matter preceding paragraph (1), by striking out "12" and inserting in lieu thereof "13"; and

(B) by inserting at the end thereof the following new paragraph:

"(11) A representative of the Yurok Tribe, who shall be appointed by the Secretary until such time as the Yurok Tribe is established and Federally recognized, upon which time the Yurok Tribe shall appoint such representative beginning with the first appointment ordinarily occurring after the Yurok Tribe is recognized.".

(b) SPECIAL RULE.—The initial term of the representative appointed pursuant to section 4(c)(11) of such Act (as added by the amendment made by subsection (a)) shall be for that time which is the remainder of the terms of the members of the Task Force then serving. Thereafter, the term of such

representative shall be as provided in section 4(e) of such Act.

SEC. 9. TRIBAL TIMBER SALES PROCEEDS USE.

Section 7 of the Act of June 25, 1910 (36 Stat. 857; 25 U.S.C. 407), is amended to read as follows: "Under regulations prescribed by the Secretary of the Interior, the timber on unallotted trust land in Indian reservations or on other land held in trust for tribes may be sold in accordance with the principles of sustained-yield management or to convert the land to a more desirable use, as determined by the Secretary. After deduction for administrative expenses under the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), the proceeds of the sale shall be used—

"(1) as determined by the governing bodies of the tribes or reservations concerned and approved by the Secretary, or

"(2) in the absence of such a governing body, as determined by the Secretary for the tribe concerned.".

○

Mr. LEHMAN. H.R. 4469 seeks to resolve problems which have been created by various laws and Executive orders establishing reservations in northern California and court decisions construing those laws.

In a recent decision in the court case of *Puzz* v. *United States* the court has found that the Hoopa Valley Tribe had no right to manage the resources of the reservation and has ordered the BIA to assume management of the reservation.

We have a number of witnesses today and limited time. The witnesses are requested to submit their written statement and summarize.

The hearing record will remain open for the usual 2-week period, so anyone can submit testimony that will be part of the record although not spoken today.

Would either of my colleagues like to make an opening statement?

Mr. CAMPBELL. I do not have a formal statement. Just let me welcome my friends from California. I see several in the audience I knew from my California days when I was active in the Indian community out there. It is nice to see them back here.

I might just add, though, it does sadden me to see that we have a problem of some divisiveness. I hope we can resolve it in an equitable manner.

But there is no question in this day and age, when Indian people are doing their very best to try to hold the last fragments of their traditions together, that divisive disagreements often are the last thing that helps those traditions disappear.

I hope that when we complete these hearings and find solutions, that people in that area will be able to come back together and remember that even though we have disagreements, we have a much more important—I believe, a much more important—mission, and that is to preserve our traditions and our youngsters and our grandchildren.

So, if we can keep that in mind when we are all done here and remember that they are relying on us to find those solutions, perhaps we will be able to move ahead.

Thank you, Mr. Chairman.

Mr. LEHMAN. Thank you.

Our first witness is our colleague, the author of H.R. 4469, the Honorable Douglas Bosco.

Douglas?

STATEMENT OF HON. DOUGLAS H. BOSCO, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. BOSCO. I want to begin by expressing my deep personal appreciation to you and the other members for holding this hearing and allowing us, hopefully, to reach a resolve on one of the most complex and in some cases bitter disputes in the country.

I also want to thank your fine staff, and particularly Frank Ducheneaux, for the technical and other help that they have given us.

The legislation before you today will divide the Hoopa Valley Indian Reservation into two reservations, one for the use of the Hoopa Tribe, which has existed in its present homeland for centur-

ies, and the other for the benefit of the Yurok and other Indians who, for the most part, are absentee tribes members living in many different parts of the country.

The legislation will also speed the payment of money owed by the U.S. Government to individuals as the result of timber sales on the reservation, and provide revenues to tribes as well—to the Hoopas who are organized and the Yuroks should they someday decide to organize.

Mr. Chairman, I will not detail the saga that has brought us to your committee today. Before the 1950s the Hoopas and Yuroks lived amicably, though for the most part separately, along the banks of the Trinity and Klamath Rivers in some of the most remote and beautiful territory in northern California.

As the Hoopa Tribe began to take advantage of a booming market for timber, however, a dispute arose over the distribution of revenues from timber sales. This dispute turned people against each other. It brought them into the courtrooms of Eureka, San Francisco, and the U.S. Supreme Court in a legal battle that has lasted 25 years.

Sadly, these people are some of the poorest in our country, suffering unemployment of over 60 percent. The money and energy expended on lawyers and lawsuits has taxed them heavily indeed, for there are far better, more productive uses for their resources.

None of the Yuroks have received funds due them from the Government—hundreds of plaintiffs have already died without seeing the benefit of their legal efforts. Federal judges have thrown up their hands in exasperation. The case has outlasted two of them, and two mediators.

Taking a full wall in the Federal Courthouse in San Francisco, 2 years ago thousands of legal documents from the case became too heavy for their shelves and came crashing to the floor. Today it would be difficult indeed to put a positive light on all that has happened. It would be difficult to separate the winner from the losers in this legal thicket that they have gotten themselves into.

Sadly, also, the Hoopas, a model Indian Tribe who have governed themselves admirably for decades, have now lost their right to govern themselves—to collect and distribute their resources. Instead, the Federal court has recently made all the Indians of this reservation wards of the Bureau of Indian Affairs, surely a regression for any of us who believe in the right of all Americans to govern ourselves.

On a personal note, Mr. Chairman, there are no political benefits to stepping into this fray. Five years ago I told the plaintiffs, defendants, and lawyers for both sides that I hoped they would resolve this matter. Many people have advised me not to get involved, because the feelings run very deep and it is not difficult to stir deep antagonism. Yet, I am convinced that if it is allowed to continue, no one will come out the winner.

Though this matter can be analyzed many different ways, and one can employ as much complexity as the imagination would allow, my decision to introduce this legislation came down to a simple principle. I believe that people who have lived together over the years as a community, who have organized to run their own affairs—to educate their children, build their roads, take care of

the sick—have a right to keep their homeland and to govern it themselves.

This right is more important than dollars and cents. I would like to think it is more deeply embedded in our sense of justice than is the almighty dollar. While both sides in this dispute have financial interests, I am convinced the Hoopas' interest is not primarily financial, but goes to their very survival as a community and as dignified, self- directed human beings able to chart their own course.

The legislation before you derives no one of the benefits they have won in court. It will, hopefully, allow many to receive those benefits during their lifetimes. It gives the Yuroks the same opportunities and funds as the Hoopas. It gives them the land that was their ancestral home, should they decide to organize into a tribe.

But in apportioning benefits, the legislation recognizes that with rights come responsibilities, and those who have taken on the responsibilities over the years of providing for each other in a tribal community will be further rewarded by the right to govern themselves.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Bosco follows:

TESTIMONY OF
CONGRESSMAN DOUGLAS H. BOSCO
BEFORE THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

June 21, 1988

The legislation before you today will divide the Hoopa Valley Indian Reservation into two reservations: one for the use of the Hoopa Tribe, which has existed in its present homeland for centuries; the other for the benefit of the Yurok and other Indians, who are, for the most part, absentee tribes-members, living in many different parts of the country. The legislation will also speed the payment of monies owned by the U.S. government to individuals as the result of timber sales on the reservation, and provide revenues to tribes as well -- to the Hoopa's who are organized, and the Yuroks should they someday decide to organize.

Mr. Chairman, I will not detail the saga that has brought us to your committee room today. Before the 1950's, the Hoopas and Yuroks lived amicably, though for the most part separately along the banks of the Trinity and Klamath Rivers in some of the most remote and beautiful territory in northern California. As the Hoopa Tribe began to take advantage of a booming market for timber, however, a dispute arose over the distribution of revenues from timber sales. This dispute turned the people against each other. It brought them into the courtrooms of

Eureka, San Francisco, and the United States Supreme Court in a legal battle that has lasted twenty-five years.

Sadly, these people are some of the poorest in our country, suffering unemployment of over 60 percent. The money and energy expended on lawyers and lawsuits has taxed them heavily indeed, for there are far better, more productive uses for their resources. None of the Yuroks have received funds due them from the government -- hundreds of plaintiffs have already died without seeing the benefit of their legal efforts. Federal judges have thrown up their hands in exasperation. The case has outlasted two of them, and two mediators. Taking a full wall in the Federal Courthouse in San Francisco, two years ago thousands of legal documents from the case became too heavy for their shelves and came crashing to the floor. Today it would be difficult indeed to put a positive light on all that has happened. It would be difficult to separate the winner from the losers in this legal thicket that they've gotten themselves into.

Sadly, also, the Hoopas, a model Indian Tribe who have governed themselves admirably for decades, have now lost their right to govern themselves -- to collect and distribute their resources. Instead the Federal Court has recently made all the Indians of this reservation wards of the Bureau of Indian Affairs, surely a regression for any of us who believe in the right of all Americans to govern themselves.

On a personal note, Mr. Chairman, there are no political

benefits to stepping into this fray. Five years ago I told the plaintiffs, defendants, and lawyers for both sides that I hoped they would resolve this matter. Many people have advised me not to get involved, because the feelings run very deep and it is not difficult to stir deep antagonism. Yet, I am convinced that only Congress can resolve their dispute. I am also convinced that if it is allowed to continue no one will come out the winner.

Though this matter can be analyzed many different ways, and one can employ as much complexity as the imagination would allow, my decision to introduce this legislation came down to a simple principle. I believe that people who have lived together over the years as a community -- who have organized to run their own affairs (to educate their children, build their roads, take care of the sick), have a right to keep their homeland and to govern it themselves. This right is more important than dollars and cents. I'd like to think it is more deeply imbedded in our sense of justice than is the almighty dollar. While both sides in this dispute have financial interests, I am convinced the Hoopa's intrest is primarily not financial -- but goes to their very survival as a community. And as dignified, self-directed human beings able to chart their own course.

The legislation before you deprives no one of the benefits they have won in court. It will hopefully allow many to receive those benefits during their lifetimes. It gives the Yuroks the same opportunities and funds as the Hoopas. It gives them the land that was their ancestral home, should they decide to organize

into a tribe. But in apportioning benefits, the legislation recognizes that with rights come responsibilities, and those who have taken on the responsibilities over the years of providing for each other in a tribal community will be further rewarded by the right to govern themselves.

# # #

Mr. LEHMAN. Thank you.

Your bill would divide the reservation and give one portion of the property of the land mass to one tribe and one to another; right?

Mr. Bosco. Yes.

Mr. LEHMAN. And in talking with the Indians themselves prior to today, it seemed to me the contention is with what they call the "Square," which most of them contend has most of the timber, I guess, that is harvestable and that is the main economic base.

How did you decide how it should be apportioned?

Mr. Bosco. I decided based on where these groups have lived for hundreds of years. The Hoopas have always lived on the Square. That is their homeland. And the Yuroks, though, they are not organized as a tribe, have always lived in what we call the Extension that was added to the original reservation and includes land some 25 miles from the Square and along the Klamath River.

Now, people have migrated back and forth from these areas, but my decision was based on where the ancestral homes of these people were.

Mr. LEHMAN. So, in antiquity or whatever, these were two distinct groups of Indians?

Mr. Bosco. Yes, they were.

Mr. LEHMAN. Is that the case today?

Mr. Bosco. It is. There has been some intermarrying, and as I say, people have migrated back and forth. These areas are separated physically, but nevertheless there has been some intermingling of people.

But basically, the Hoopas have organized in that area and they have lived as a tribe on this Square for centuries. The Yuroks, as I say, are not organized and they have refused to organize as a tribe. Most of the Yurok people are spread all around the United States. Only some 400, I believe, live in this vicinity that we are talking about.

Mr. LEHMAN. But it is fair to say that the area called the Square is the more valuable portion of the property?

Mr. Bosco. That is hard to say. The timber resources have existed all along the Klamath River and on the Square. There is certainly more timber resource on the Square now than anywhere else. There used to be far more timber on the Extension, but the Yuroks and others harvested that timber very early on.

However, we are developing a major fishery on the Klamath River. In fact, the Congress has appropriated or authorized some $100 million to restore the Klamath and Trinity Rivers. And it is our hope that that enormous fishery would accrue to primarily the benefit of the Yuroks in the years to come.

So, it would be difficult to judge which parcel is more valuable.

We also provide in the legislation that in the event that a lawsuit were to determine that, in effect, the Yuroks lost value because of this legislation, then the Hoopas would have to transfer to the Yuroks the amount of that lost value.

Mr. LEHMAN. How does your bill affect Federal payments to the Indians?

Mr. Bosco. The bill would require for those that we know we owe money to, that the Treasury start paying them. This litigation,

which was a Court of Claims case, has gone on forever now, and as I mentioned, some 300 or 400 people have already died who were plaintiffs.

What our hope is to start giving individuals the benefit of money that is due and owing them, and it would require the Treasury to start paying that money.

Mr. LEHMAN. And those are both the Yuroks and the Hoopas?

Mr. BOSCO. For the most part is Yuroks because the suit, although it is complicated, judged that the Hoopas have been, I think, illegally paid money from the Federal Treasury, to the detriment of the Yuroks. So, now it is the Yuroks as individuals who have a right to certain proportion of money that is held in trust.

So, it would be the Yuroks primarily that would be getting this payment under the legislation, and that has already been adjudged by the Claims Court as due and owing them. It is just that the Treasury for its own reasons has been advantaged by keeping this case going.

Mr. LEHMAN. Obviously, this dispute existed prior to the court litigation. That's how it got into the court. What was the Bureau of Indian Affairs' position on it?

Mr. BOSCO. The Bureau of Indian Affairs has historically allowed the Indians living in the area of the timber harvest to get the benefit from that harvest. As I say, many Yuroks got the benefit of harvest early on in the beginning of the century, and it was only in the 1950's when the timber harvest started to move up to the Square where the Hoopas lived that the Bureau of Indian Affairs and the Government started paying the Hoopas the money for this timber just as they had paid the Yuroks earlier on.

But that is when the trouble started. The people said, "Well, hey, this money really does belong to everyone because it is one reservation," and that is what the legal case has been. And the courts have decided it technically, but I think correctly. It is one reservation. It didn't used to be, but when it was expanded, there was no intention, it seems, on Congress' part to have two reservations, even though you have two distinct and separate groups of people on it.

Mr. LEHMAN. Do you have any questions?

Mr. RHODES. No.

Mr. CAMPBELL. No. No questions.

Mr. LEHMAN. Thank you very much. We appreciate your testimony.

Mr. BOSCO. Thank you, Mr. Chairman.

Do you mind if I wait and listen to some of the testimony?

Mr. LEHMAN. Certainly. Why don't you come up and sit with the committee?

Mr. BOSCO. Thank you very much.

Mr. LEHMAN. Let's bring up Mr. Swimmer and Mr. Byrnes right now.

Now we will hear from Mr. Swimmer, the Assistant Secretary of Indian Affairs.

PANEL CONSISTING OF ROSS O. SWIMMER ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; AND JAMES BYRNES DEPUTY ASSISTANT ATTORNEY GENERAL FOR LAND AND NATURAL RESOURCES U.S. DEPARTMENT OF JUSTICE

Mr. SWIMMER. Thank you, Mr. Chairman.

I am Ross Swimmer, Assistant Secretary for Indian Affairs. I appreciate the opportunity to testify before you today on this particularly controversial matter in northern California.

We have a statement. I will ask that it be submitted for the record and I will try to summarize it quickly.

I would like to compliment the congressman from northern California for his taking the action and introducing this legislation. I might say that in a little over 2½ years of my experience with the Department, this was one of the first issues that I took up and perhaps will be one of the last issues that I deal with on my way out.

It is particularly controversial and does not lend itself to an easy solution. I met with groups over these 2½ years to see if something could not be worked out between them. It was apparent that at no time were the groups known then as Jessie Short plaintiffs and Hoopa tribal representatives willing to come together and try to settle their differences.

We also encouraged the Jessie Short plaintiffs, many of whom are Yurok, many of whom are other tribal members, many are mixed tribe, to come together and form an organization that could negotiate with the Hoopa Valley Tribe.

The Hoopa Valley Tribe was created about 1950, a relatively new tribe in the scheme of things. But they certainly do represent the descendants of aboriginal people living in that area who were known as the Hupa—H-u-p-a—Tribe for perhaps centuries.

Some of the contentious issues now surround the membership of the Hoopa Valley Tribe, whether it properly includes all that it should and whether some members who are in fact descendants of Hupa members from years past can be included in their role. And as a result of that, great dissention has arisen on the reservation concerning who gets the revenue.

That, of course, led to the Jessie Short case which was a group of individuals using to try and recover some of the revenues that we the Bureau years ago had improperly allowed to be paid to the Hupa Valley Tribe. As it is now, the Hoopa Valley Tribe administers the Square, as we know it. We administer the rest of the reservation, the Extension, for instance, and other programs for the benefit of the other Indians on the reservation.

We believe that a solution, or at least perhaps the beginning of a solution to this problem, would be a partition of the reservation that would recognize two distinct groups, at least two, one being the current Hoopa Valley Tribe. They would have certain jurisdictions over certain pieces of land.

The other group which we would all the Yurok Tribe, they would consist of members essentially those who are eligible or aren't Jessie Short plaintiff members as citizens of their tribe, and they would have a voice then in the rest of the reservation.

Now, hopefully, then, with a division of the reservation, with the two tribal groups coming together then, being organized, they could begin to work out problems, differences, and solutions of their own.

We feel very much ill at ease at being here, in the Bureau of Indian Affairs, trying to promote a solution, because we do believe that it really is up to these groups out there to get together and work this out.

We also feel strongly that the main issue, at least one of the main issues here, is money. It is revenue coming from the timber lands and other resources on the reservation, and that perhaps by dividing the reservation resources, hopefully equitably, between the two groups and using that money or timber or land or whatever to make up the equitable balance there, that would take away one of the arguments and one of the disputes at least and give both tribes, tribal groups, the opportunity to manage their respective resources and to govern on that part of the reservation.

As far as the bill itself is concerned, we support the concept of the partition in the separation. There are several other things added to the bill conveying some forest lands from the U.S. Forestry Department, some items about partial judgment payments from Jessie Short plaintiffs, paying out a few before we get to final judgment of all of it.

There are some Indian Health Service items creating solid-waste districts, and those things. We would rather not deal with those kinds of issues at this time, and stick with a partition bill that would separate the reservation and give us the two distinct entities that could operate that reservation as tribal governments, and that would then help with the Bureau of Indian Affairs in getting us further removed from the reservation and letting them settle their own differences.

I think that the partition is one of several options. There might be another way of doing this that we just didn't have the knowledge or the wisdom to come up with at the time this bill was introduced. And again I thank Congressman Bosco for taking this on, because it is not certainly a popular issue in that part of California.

One side is going to be upset, and you will hear that in the testimony, and one side will be in favor. But we do believe it is necessary that we move forward with some action out there. The inaction, leaving it up to the courts to decide and litigation expense is just incredible, and I think it is time that Congress acted and that we try to act responsibly and try to be fair and equitable to everyone there.

As the justice will testify to in 1 minute, there are some overriding concerns that we also have about how this is structured so that the issue is truly between the tribes and does not come down and exacerbate the situation by creating another taking on behalf of the U.S. Government. We would like to avoid that at all costs and make sure that the tribes divide their resources but don't add the Federal Government into it as a third party here.

So, with that, I would like to turn the table over to Mr. Byrnes from the Justice Department and let him express his views on this bill. And if you would like, we will take questions then after that.

[Prepared statement of Mr. Swimmer follows.]

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS ON H.R. 4469, A BILL TO PARTITION CERTAIN RESERVATION LANDS BETWEEN THE HOOPA VALLEY TRIBE AND YUROK INDIANS.

June 21, 1988

Good morning Mr. Chairman and members of the Committee. I am pleased to be here today to discuss H.R. 4469, a bill "To partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes."

We object to enactment of the bill to partition the Hoopa Valley Reservation into two separate reservations unless it is amended to meet our concerns.

Since the 1950's there has been a dispute among the Indians of the Hoopa Valley Reservation in Northern California as to who is entitled to share in the timber proceeds from the "Square" portion of that Reservation. (The Square is in Hoopa Valley, and the "Extension" follows the Klamath River to the Pacific.) Following a 1958 opinion of the Solicitor's Office that the Hoopa Valley Tribe was entitled to receive all the timber income, individual Indians, now numbering some 3800 of Yurok and other tribal groups, brought suit in 1963 to obtain shares in the income (Jessie Short, et al. v. United States, No. 102-63, United States Court of Claims Court. The Yurok Tribe has never organized itself as a political or corporate entity, and thus has no spokesmen or official representatives.

At the time the litigation was begun, the Square was treated as a separate reservation from the Extension. In 1973, the Court of Claims held that there was but a single reservation.

Subsequently, the Court ruled that all the "Indians of the Reservation" are entitled to participate in per capita distributions of the income from the timber on the unallotted (tribal) lands of the Square. From 1974-1978 efforts were made to determine the identity of the "Indians of the Reservation" and to mediate a settlement.

In 1979, the Government moved to substitute the Yurok Tribe for the 3800 individual plaintiffs and the Hoopa Valley Tribe, as intervenor, moved to dismiss the case. In 1981, the Court of Claims denied the motions and ruled that successful plaintiffs would be determined on standards similar to the standards for membership in the Hoopa Valley Tribe. The Federal Circuit Court of Appeals affirmed. The petitions for certiorari filed by the Hoopa Valley Tribe and 1200 of the plaintiffs, the third unsuccessful effort to obtain certiorari in the case, were denied June 19, 1984.

In 1980 another suit was filed (Lillian Blake Puzz, et al. v. United States et al., No. C-80-2908 TEH, U.S.D.C., N.D. California) by six individuals claiming to be Indians of the Hoopa Valley Indian Reservation whose rights to participate in reservation administration and to benefit from the reservation's resources were allegedly violated by the Federal Government in violation of their constitutional rights to equal protection. Plaintiffs' claims were initially premised on individual Indian ownership of the unallotted reservation resources, although they later also asserted that all "Indians of the Reservation" constituted one tribe, and that all individual Indians should have a vote in that tribe's government. The Government's position was that the reservation was created for Indian tribes, not individual Indians, and that the recognition of Indian tribes

is a political question traditionally within the discretion of Congress and the Executive and not reviewable by the courts.

On April 8, 1988, the court issued an order in which Judge Henderson agreed with the Government that the reservation was created for Indian tribes except that the Hoopa Valley Reservation was not created for a single tribe but for "all tribes which were living there and could be induced to live there." Order at p. 7. Therefore, the court concluded that Federal recognition of the Hoopa Tribe did not give the tribe sovereign control over reservation lands and resources.

The court also found that the plaintiffs, as individuals, have standing to litigate the political rights of such tribes, and that the 1864 statute authorizing the creation of the reservation imposed a trust responsibility on the U.S. Government extending to individual Indians of the Reservation.

Having addressed these issues the court ordered three specific actions:

1. The Federal defendants may lawfully allow the Hoopa Business Council (HBC) to participate in reservation administration, and the HBC may lawfully conduct business as a tribal body sovereign over its own members, and as an advisory body participates in reservation administration;

2. Federal defendants shall not dispense funds for any project or services that do not benefit all Indians of the reservation in a nondiscriminatory manner. Federal defendants shall exercise supervisory power over reservation administration, resource management, and spending of reservation funds, to ensure that all

Indians receive the use and benefits of the reservation on an equal basis. Specifically, Federal defendants shall not permit any reservation funds to be used for litigation among Indians or tribes of the reservation.

3. To fulfill the requirements of this Order, Federal defendants must develop and implement a process to receive and respond to the needs and views of non-Hoopa Valley tribal members as to the proper use of reservation resources and funds.

Obviously, this decision (if not overturned on appeal) will change the management of the reservation and its resources. However, we do not believe that it will result in a satisfactory permanent resolution to all the problems on the Hoopa Valley Indian Reservation.

Although we are proceeding to comply with the court's order, we believe that partitioning the reservation and encouraging the Yuroks to organize as a tribe would lead to more satisfactory results.

Now I would like to address our concerns regarding specific provisions in H.R. 4469.

Section 2(b)(2) would transfer all United States forest system lands located in the reservation to the Secretary of the Interior to be held in trust as part of the Yurok Reservation. We do not support this automatic transfer but would be pleased to work with an organized Yurok Tribe and the United States Forest Service to see if there are lands that may be excess to the needs of the Service.

Section 2(b)(3) would require the Secretary to seek to purchase land along the Klamath River to be added to the Yurok Reservation. $2,000,000 is authorized for such purchases. We do not believe that expanding the reservation along the river is necessary at this time, particularly if excess Forest Service land may be available. Currently, there are approximately 400 Yuroks living on tne "Extension" which includes 5,373.9 acres (including tribal land and allotments). We recommend that this paragraph be deleted.

Section 2(f) provides for a two year period for either the Hoopa Tribe or the Yuroks to file suit for damages based on inadequate compensation or a taking resulting from the partitioning of the Reservation under this act. If the United States is found liable and required to pay one tribe or group of individuals, then the United States shall be entitled to a judgment for reimbursement from the other tribe's future income.

The Administration is very concerned about the possibility of the Federal Government being found liable for a Fifth Amendment taking as a result of the partitioning of the reservation. Mr. Byrnes from the Department of Justice will present an option for the Committee to consider that would limit the liability of the Federal Government. We agree with the concerns of the Department of Justice and will continue to work with that Department as well as with [redacted] Committee to explore other ways of limiting the Federal [redacted]ility while still providing a feasible long-term solution.

Section 3 provides for partial judgments in the Jessie Short case by distributing per capita payments to qualified Jessie Short plaintiffs for the same amount that members of the Hoopa Valley

Tribe have received since December 31, 1974. These payments would be made from the escrow fund that was established in 1974 which has grown to approximately $51 million. Any funds remaining after per capita payments are made would be divided equally between the Hoopa Tribe and the Yurok Tribe. Per capita payments could not be made from the tribal shares for 10 years after the tribes receive their money.

We defer to the Department of Justice on these provisions since they relate to partial judgments based on pending litigation.

Section 5(a) provides for a life estate for the Smokers family now residing on the Hoopa Valley Reservation. We believe this should be a general provision to cover all similar situations that might exist on the reservation.

Section 6(a) and (c) place certain requirements on the Secretary of Health and Human Services. That agency has provided us with the following statement regarding these provisions.

"We object to section 6. With regard to sections 6(a) and 6(c) the Indian Health Service (IHS) role is already appropriately defined in existing law. Under P.L. 86-121, IHS has the authority to work with a tribe in planning an environmental health program. However, IHS does not have the resources to perform services which would be prescribed by section 6(a) of the bill for consideration. The provisions of section 6(c) are already being carried out under authority of P.L. 93-638 and are therefore redundant and unnecessary."

Mr. Chairman, I am certain that the IHS would be pleased to answer in writing any questions you may have of them regarding those provisions.

Section 6(b) requires the Secretary of the Interior to enter into an agreement with Humboldt and del Norte counties regarding the disposal of solid waste from the Yurok Reservation. Although we are not opposed to working with the local counties we do not believe such a requirement should be mandated. We recommend the provision be deleted.

Section 7 would exempt any monetary recovery by a plaintiff in the Jessie Short, Charlene Ackley, Aanstadt or Giffin cases against the United States from any form of Federal or state tax. The funds could not be considered as income or resources in denying or reducing the financial assistance or other benefits entitled under the Social Security Act or any Federal or federally assisted program. We understand that the Department of the Treasury objects to this section and we defer to them on this section.

Section 8 would amend Section 4(c) of the Act entitled "An Act to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes" (16 U.S.C. 460ss-3) to include a representative of the Yurok Tribe on the Task Force. We have no objection to this provision.

Section 9 would amend the Act of June 25, 1910, to clarify that proceeds from timber sales on unallotted lands of an Indian reservation would be for the benefit of the tribe or tribes involved rather than for individuals. We strongly support this

provision because we believe it will avoid possible future situations similar to the Hoopa/Yurok conflict.

We would like to mention that the Department of the Interior agrees with the Department of Justice recommendation that the bill define Yurok Tribe to mean "All individuals found qualified to recover money judgments in Jessie Short v. United States, Charlene Ackley C. United States, Aanstadt v. United States, or Giffin v. United States (Cl. Ct. Nos. 102-43, 460-78, 146-85L and 746-85L, respectively), and all other individuals who demonstrate that they meet the standards set forth in Jessie Short v. United States."

Mr. Chairman, as you can see, the issues surrounding the problems of the Hoopa Valley Reservation are tremendous. The courts and the Executive Branch have struggled to find resolution for more than 25 years. We do not believe that the Hoopa and Yurok Tribes will reach an agreement on their own. Therefore we think it is time for Congress to intervene. We believe that partitioning the reservation is the logical solution and we will be pleased to work with the Committee on this important effort to assure that no Federal liability results.

This concludes my prepared statement. I will be pleased to answer any question you may have.

Mr. LEHMAN. We will take your written statement for the record, and you may proceed.

Mr. BYRNES. I have submitted a written statement. I would like to summarize that briefly.

On behalf of the Department of Justice, I am pleased to have the opportunity to present our views on H.R. 4469, legislation to partition reservation lands between the Hoopa Valley Tribe and other Indians of the Hoopa Valley Reservations, as introduced by Congressman Bosco.

The Department of Justice strongly encourages a legislative solution to the management of the difficulties that have existed on the Hoopa Valley Reservation for the last three decades. However, we must oppose enactment of H.R. 4469 unless amended to meet our concerns.

Within the limits of time we have had to consider H.R. 4469, we have concluded that it represents a significant step in the direction of a policy solution and we commit to working with Congress, including honing language which will address our concerns which I now wish to raise.

I would like to focus my comments on three areas of concern to us. Our concerns involve section 1 of the bill, the definitions provision; section 3(a) of the bill, which provides for partial judgments and per capita payments; and section (f)(2) of the bill concerning reimbursement to the Government for damages, if any, awarded as a result of the Fifth Amendment taking judgments.

First, in our view, section 1(2) should be amended to define Yurok Tribe as: all individuals found qualified to recover money judgments in *Jessie Short* v. *United States, Ackley* v. *United States, Aanstadt* v. *United States,* or *Giffin* v. *United States,* and all other individuals who demonstrate that they meet the standards set forth in *Jessie Short* v. *United States.*

Next, section 3(a) provides Jessie Short and Charlene Ackley cases may be treated as cases subject to section 10(e) of the Contract Disputes Act. In other words, the United States may award partial judgments for some plaintiffs in some of those cases.

We strongly oppose this provision and recommend that it be deleted. Partial judgments would not completely resolve a claim, cannot be awarded under 28 U.S.C. 2517(a) which governs payments of judgments by the United States. The language of H.R. 4469 would create an exception to this general prohibition.

Moreover, in our view, the awarding of any partial judgments, Short and Ackley and Aanstadt and Giffin would both delay the completion of litigation and force the United States to pay awards before the conclusion of litigation at the trial level, let alone the appellate level.

In addition, it would be impossible in any of the four lawsuits to equitably divide the total award before the conclusion of the litigation because it cannot be determined prior to the entry of a final judgment what the total award will be.

Finally, section 2 of the bill governs potential claims by the Hoopa or non-Hoopa members of the reservation for Fifth Amendment takings allegedly suffered as a result of the partition.

We believe the following substitute language, which is in my written testimony, would protect the public first from future expo-

sure. Should the plaintiff prevail in a claim against the Government for a Fifth Amendment taking, we believe the language as submitted in my testimony affects the dual purpose of achieving the Secretary's desire that the partition take place and at the same time avoiding the risk of a substantial judgment against the United States.

The bill's remaining provisions largely involve matters of policy, and we defer to the Department of the Interior on them.

The Department of Justice looks forward to working with the members of this committee on legislation to address the serious concerns of the Hoopa Valley Reservation.

Mr. Chairman, I would be pleased to answer any questions you may have.

[Prepared statement of Mr. Byrnes follows:]

JAMES L. BYRNES
DEPUTY ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

Mr. Chairman and Members of the Committee:

On behalf of the Department of Justice, I am pleased to have this opportunity to present our views on H.R. 4469, legislation to partition reservation lands between the Hoopa Valley Tribe and other Indians of the Hoopa Valley reservation, as introduced by Congressman Bosco. The Department of Justice strongly encourages a legislative solution to the management difficulties that have existed on the Hoopa Valley reservation for the last three decades. However, we must oppose enactment of H.R. 4469 unless amended to meet our concerns.

In 1876, a 12-mile square tract of land in Northern California (the Square), occupied mainly by Hoopa Indians, was set aside by President Grant as the Hoopa Valley Indian Reservation. Then, in 1891, President Harrison extended the boundaries of the Reservation to include the adjoining 1-mile wide strip of land on either side of the Klamath River (the Addition or Extension) which was occupied mostly by Yurok Indians.

Beginning in the 1950's, the Hoopa Valley Tribe, a federally recognized and organized tribe, began receiving proceeds from the harvesting of timber from the Square. Some of the proceeds from the timber harvests were distributed on a per capita basis to individual members of the Hoopa Valley Tribe. This prompted suits by other Indians who were not members of the tribe and thus did not receive per capita payments. Short v. United States, No. 102-63, Cl.Ct.; Ackley v. United States, No. 460-78, Cl.Ct.;

Aanstadt v. United States, No. 146-85L, Cl.Ct.; Giffen v. United States, No. 746-85L, Cl.Ct.

In these cases, the United States Claims Court held, contrary to the government's position, that the Square and the Extension were a single reservation and that all Indians of the Reservation were entitled to share in a money judgment based on past distributions of individualized monies, i.e. the per capita payments. Since the initial ruling in 1973, efforts have been made to identify the qualified plaintiffs, to settle the litigation and to mediate the dispute which is focused on the conflicting positions of the organized Hoopa Valley Tribe and the federally recognized but not organized Yurok Tribe.

The Department of Justice recognizes the potential value of a legislative solution to the Reservation's management difficulties. Within the limits of the time we have had to consider H.R. 4469, we have concluded that it represents a significant step in the direction of a policy solution. We commit to working with Congress, including honing language which will address the concerns I now raise, in order to achieve that critical goal.

I would like to focus my comments now on three areas of concern to us. Our concerns involve section 1 of the bill, the Definitions provision; section 3(a) of the bill, which provides for "Partial Judgments and Per Capita Payments"; and section f(2) of the bill, concerning reimbursement to the government for

damages, if any, awarded as a result of Fifth Amendment taking judgments.

First, in our view, section 1(2) should be amended to define "Yurok Tribe" as "All individuals found qualified to recover money judgments in Jessie Short v. United States, Charlene Ackley v. United States, Aanstadt v. United States, or Giffin v. United States (Cl.Ct. Nos. 102-63, 460-78, 146-85L and 746-85L, respectively), and all other individuals who demonstrate that they meet the standards set forth in Jessie Short v. United States." Although it would be inappropriate for the Claims Court to attach tribal status to these individuals, Congress could look to its plenary power in Indian matters to include this provision. This definition more accurately reflects the composition of the Indians of the Hoopa Valley Reservation.

Next, section 3(a) provides that the Jessie Short and Charlene Ackley cases may be treated as cases subject to section 10(e) of the Contract Disputes Act; in other words, the United States may award partial judgments to some plaintiffs in those cases. We strongly oppose this provision and recommend that it be deleted. Partial judgments which do not completely resolve a claim cannot be awarded under 28 U.S.C. §2517(a), which governs payment of judgments by the United States. The language of H.R. 4469 would create an exception to this general prohibition.

Moreover, in our view, the awarding of any partial judgments in Short, Ackley, and two related suits, Aanstadt v. United States and Giffin v. United States, would both delay the

completion of the litigation and force the United States to pay awards before the conclusion of litigation at the trial level, let alone the appellate level. In addition, it would be impossible, in any of the four lawsuits, to equitably divide the total award before the conclusion of the litigation, because it cannot be determined, prior to the entry of a final judgment, what the total award will be. Such a process risks interference with existing jurisdiction of the Claims Court and the reviewing appellate courts.

Finally, section 2 of the bill governs potential claims brought by Hoopa or non-Hoopa members of the Reservation for Fifth Amendment takings allegedly suffered as a result of the partition. In this context, while we are confident that we have several good defenses to a taking claim, we are concerned that H.R. 4469 poses a risk of adverse judgment against the United States. Despite our confidence in our legal position, our potential exposure is of significant concern because of the high value of the property that would be claimed taken. We believe the following substitute for section 2(f) would protect the public fisc from future exposure, should a plaintiff prevail in a claim against the government for Fifth Amendment taking:

> 2(f)(1) The division of the lands provided for under this section shall become immediately effective but the Secretary shall escrow all Reservation proceeds for a period of two years from the date of enactment of this

legislation, except for such proceeds as, in his judgment, are necessary to assure basic services for the Reservation dependent Indian interests and to preserve Reservation resources. Upon the completion of two years from the date of enactment of this legislation, the obligation to escrow shall end except that the Secretary will retain the discretion, in his judgment, to continue to escrow such funds as he deems appropriate.

(2) Any claim challenging the division of lands provided for under this section as having effected a taking under the Fifth Amendment or otherwise having provided inadequate compensation shall be brought, pursuant to 28 U.S.C. §1491 or 28 U.S.C. §1505, in the United States Claims Court. Any such claim shall be forever barred if not brought within 180 days from the date of enactment of this legislation.

(3)(a) If the United States is found liable for damages based upon inadequate compensation or for a taking in such action, the division of land shall become null and void, and the status of the lands of the Hoopa Valley Reservation shall return to the status prior to the enactment of this legislation; provided that the Secretary may, at his option, determine to continue the division of land, and in the event of such a determination any just compensation found due will be

payable, notwithstanding 28 U.S.C. §2517, from funds made available to the Secretary by Congress for that purpose.

(b) In the event the division of land becomes null and void, the Reservation shall be managed in such manner as the Secretary, in his discretion, deems fit. In addition, the Secretary shall distribute, to the extent necessary, the funds escrowed pursuant to section 2(f)(1) in a manner consistent with a court ruling, if any, that the division of land (prior to its nullification) effected an interim taking.

We believe this language effects the dual purpose of achieving the Secretary's desire that the partition take place and at the same time avoiding the risk of substantial judgment against the United States in addition to the judgments that exist as a result of Short and related litigation.

The bill's remaining provisions largely involve matters of policy, and we defer to the Department of the Interior on them. The Department of Justice looks forward to working with Members of this Committee on legislation to address the serious concerns of the Hoopa Valley Reservation. I would be pleased to answer any questions you might have.

Mr. LEHMAN. Thank you, Mr. Byrnes.

Is the Department appealing the Jessie Short decision, or is that matter resolved?

Mr. BYRNES. I believe we are about resolved. The Department has appealed the case a number of times since 1963, when it was first filed. But we are getting close to resolution. We are currently identifying the last group of plaintiffs who may be entitled to receive funds under the judgment of the Claims Court.

Mr. LEHMAN. Is there litigation in progress at the present time?

Mr. BYRNES. Yes.

Mr. LEHMAN. What litigation is that?

Mr. BYRNES. In both Short and the Ackley cases and the Puzz case as well.

Mr. LEHMAN. And where are those cases?

Mr. BYRNES. The Short case is currently in the Claims Court, and we are going through the approximately 3800 plaintiffs in the case and determining which are entitled to judgments.

Mr. LEHMAN. So, you are acting pursuant to the judgment that the court rendered?

Mr. BYRNES. That is correct.

Mr. LEHMAN. Trying to sort out who is entitled to get what the court said they are entitled to.

Mr. BYRNES. That is correct. And Judge Margolis of the Claims Court is in the process of doing that. We currently don't have any motions, any Government motions, pending in that case.

Mr. LEHMAN. And then your concern with the provisions of Mr. Bosco's bill in general with respect to that are that those decisions would not be made via this process but are made in a blanket fashion in the bill?

Mr. BYRNES. Ultimately, we cannot determine what the per capita distribution would be until we determine how many people there are to divide into the per capita formula. There is a certain amount of money involved, and the entitlement to that is based on, ultimately, the number of plaintiffs who are entitled to recover. And as soon as that final determination is made, then a final award can be completed.

Mr. LEHMAN. How does the Bosco bill affect that?

Mr. BYRNES. The Bosco bill would create an exception to the general payment under the Judgments Act by making it subject to the provisions of the Contract Disputes Act. At this point, in our opinion, it would be impossible to determine how much to pay certain plaintiffs right now until the litigation is ultimately completed and all of the people who are entitled to recover are identified.

Mr. LEHMAN. And not to go over the whole history of this, but this emanates from a past situation where they were entitled to money and did not receive it?

Mr. BYRNES. Yes.

Mr. SWIMMER. The Short case we are referring to now resulted from—following the 1950 recognition of the Hoopa Valley Tribe. The Hoopa Valley tribal members were given some per capita payments from revenues generated off of the reservation. Those payments were made to the exclusion of a class of people that have come to be known as the Jessie Short plaintiffs, about 3,800.

Where we are now is the court found on behalf of those 3,800 and said you couldn't pay out one group, you've got to—everybody was entitled to a certain amount of that revenue. And so the court has ordered us to—the Federal Government—to pay because it was, in effect, a taking. So, we are paying the 3,800, but we have to identify who they are and who else might be in that plaintiffs class. And that is what we are finishing up now.

The judge has entered his order. We have agreed to pay. We did not agree to pay, but he ordered us to pay, and we are trying to determine who is entitled to that, and we don't want to make out partial payments until we have completed our roll. That is one set of lawsuits.

There is a current lawsuit called the Puzz case, which involves in essence what Short said was that you cannot—correct me on any of these if I am wrong; I am trying to speak generally—in essence, what the Short case said is that you cannot give per capita payments out but you can use the money for the benefit of Indians on the reservation.

So, the last several years, the Hoopa Tribe being the only organized tribe there that we can deal with as a Government to Government tribe——

Mr. LEHMAN. The Yuroks do not have an elected leadership?

Mr. SWIMMER. That's right. They are recognized. They are on a list of federally recognized tribes, but they are not organized where they have a Government that can deal with us at this point.

So, the Hoopa Tribe has been given some of the income from the reservation resources with which to manage the reservation, at least the Square. So, we have a timber sale that brings in—let's just give a figure—$4 million. We have then allowed the Hoopa Tribe to take $2.5 million of that and provide some fisheries management, some timber management, some health care, and things like that on the reservation.

The Puzz decision—and the Puzz plaintiffs essentially asked the court to enter an order prohibiting the Hoopa Tribe from spending that money exclusively for Hoopa tribal members and ordered the Bureau of Indian Affairs to develop a plan that would ensure that any revenues from the reservation, from the Square or any place else, I presume, be used for the benefit of all members on the reservation—or all Indians on the reservation. I'm sorry.

Now, the problem with that is a complication of ongoing programs, established projects that the tribe—the Hoopa Tribe—was working on. They have been using the reservation accounts to do that, and we are going to have to change the way we have been doing business with them to some extent. We are not quite sure how.

But we submitted a plan to the court and just today got an order from the court approving the plan on an interim basis, at least for the next fourth quarter, that allows us to sort of stay in business with the Hoopa Tribe for the next 3 months.

But in the meantime, we are directed, the Bureau is directed, to work out a plan that will ensure that any income from the reservation is used for the benefit of all Indians.

Obvious questions come up. Well, is payment of tribal salaries, Hoopa tribal salaries, is that a benefit to all Indians on the reser-

vation? One of the prohibitions that the court entered was that no money can be spent on litigation fees or attorneys fees. The Hoopa Tribe has been using some of that reservation wide money to pay their attorneys fees in defending against some of these other suits and prosecuting suits.

There are several pieces of litigation going on out there, but this is just the latest and that is additionally complicating this whole matter and why we believe that instead of the courts continuing to deal with it for another 50 years, that maybe if we could get some congressional action to divide the reservation equitably one tribe would manage its part and another would manage its part.

And we believe that it must be equitable. We are not exactly sure how that will happen, but that is one of the premises is that there be an equitable division.

Problems involved in that, of course, are that it is alleged that the Hoopa Valley tribal membership represents about one-third of the Indians on the reservation while the others represent two-thirds. Just additional problems that we deal with.

Mr. LEHMAN. Interior supports the concept of dividing the reservation into two reservations. And do you think that the manner in which the Bosco bill has done that is equitable?

Mr. SWIMMER. Yes. We believe the Bosco bill provides that equity can be fairly achieved using the reservation, the Square and the Extension as a reservation, and then dividing it in a way that is equitable. And that can be done by dividing the land at a certain point. It can be done by dividing the land at that point and allocating so much of the revenue from the Square or the Extension, whichever one is generating the greatest revenue. It will be difficult, but I think that we can do it in a manner that is fair.

And the bill does provide, of course, that if the court later determines it to be unfair, one of our amendments recommends that we go back to the beginning and that the partition is voided.

Mr. CAMPBELL. As I understand from reading the information turned in from your testimony, the Yuroks don't want to organize. So, if we passed H.R. 4469, who would be responsible for administering the resources? Would the Bureau do that?

Mr. SWIMMER. Yes.

Mr. CAMPBELL. Can you tell me why they wouldn't want to organize?

Mr. SWIMMER. I think they can probably give you that information better than I. I can only surmise. I really don't know. I think part of it is they obviously fear that there might be some jeopardy in their position.

Now, my understanding is that the Jessie Short plaintiffs believe that they are entitled to all of the reservation resources or to a share of everything on that reservation. If they formed a tribe, there might be some exclusion to that. I don't know.

Mr. CAMPBELL. According to this information, everyone who is found qualified to recover money under the *Jessie Short* v. *United States* would be defined as a Yurok. Does that mean all of the Yuroks—the Yuroks were all party to that? It has been mentioned that other Indians live there, there is a lot of intermarriage, and a number of other complicating factors.

Mr. SWIMMER. The names Hoopa and Yurok are generic. They don't have any particular basis. They are mixed blood, and the Hoopa Tribes of all different tribes, there are mixed bloods all over the reservation of Yurok and——

Mr. CAMPBELL. The point I am getting at is are some of the people also somewhere else?

Mr. SWIMMER. Yes.

Mr. CAMPBELL. OK.

Mr. SWIMMER. In fact, there are Yuroks who are members of other Rancho Rios in California.

Mr. CAMPBELL. They are enrolled somewhere else. You would have a tremendous job of trying to find them so they wouldn't be on two rolls and getting benefits from another source.

Mr. SWIMMER. There is no prohibition about that except with the tribe itself. It can prohibit dual membership. We proposed in the membership that anybody who is a Jessie Short plaintiff or meets the eligibility requirements would be a member of this other tribal group.

Mr. CAMPBELL. Let me ask another question. In some places of the U.S. confederations have worked relatively well when there is more than one tribe on the same land base. Would you give me your thoughts on that, if that would be a feasible solution to this?

Mr. SWIMMER. Certainly it could be. The Yuroks could get organized and could negotiate with the Hoopa group and come up with a reservation wide management plan. I don't expect that to happen in my lifetime. But it is feasible, and that is what we would prefer, frankly.

Mr. CAMPBELL. That would be the preferred alternative. Okay. Thank you.

Now, one last question to the gentleman from the Justice Department. Do you have any idea how much has been spent on litigation so far?

Mr. BYRNES. No, I do not. But the litigation began in 1963, when President Kennedy was in office and when I was 11 years old. So, I assume it has been a fair amount on both sides.

Mr. CAMPBELL. Do we have any way of finding that out?

Mr. BYRNES. I don't think there has been anything submitted to the court.

Mr. SWIMMER. We can give you information on what we are aware of because we have had to approve the budgets. I don't know——

Mr. CAMPBELL. Would you make that available to the committee, please?

Mr. LEHMAN. Without objection, we will request that you make that available.

[EDITOR'S NOTE.—At time of printing, the Department had not yet supplied the information requested by Mr. Campbell. When received, that material will be placed in the committee's files of today's hearing.]

Mr. CAMPBELL. I have no further questions, Mr. Chairman.

Mr. LEHMAN. Mr. Murphy?

Mr. MURPHY. I have no questions, Mr. Chairman.

Mr. LEHMAN. Mr. Bosco, without objection, we would like to ask you?

Mr. BOSCO. No questions.

Mr. LEHMAN. Thank you very much, gentlemen.

We are now going to hear from representatives of the Hoopa Valley Indians. I have Mr. Wilfred Colgrove, chairman of the Hoopa Valley tribal council; accompanied by Mr. Dale Risling, councilman; Mr. George, tribal ceremonial leader; and Tom Schlosser, the tribal attorney.

PANEL CONSISTING OF WILFRED COLGROVE CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL; DALE RISLING, COUNCILMAN, HOOPA VALLEY TRIBAL COUNCIL; MERVIN GEORGE, TRIBAL CEREMONIAL LEADER, HOOPA VALLEY TRIBAL COUNCIL; AND TOM SCHLOSSER, TRIBAL ATTORNEY

Mr. LEHMAN. You can proceed in whatever manner you decide. I have Mr. Colgrove's name down first. And you each have a separate statement?

Mr. COLGROVE. Yes, we do.

Mr. LEHMAN. Your written statement is submitted for the record, and please summarize, if you will.

Mr. LEHMAN. Thank you, Mr. Chairman and members of the committee.

I and the Hoopa Tribe appreciates the opportunity to speak before this body today. We live—I live in California on a portion of the Hoopa Valley Reservation known as the Square, where the tribe has lived and governed its affairs for over 10,000 years.

We are here today to express our views of our people. The tribal officials who will be speaking here today are elected officials, and we are speaking in favor and support of H.R. 4469.

I would like to introduce Mr. Mervin George, who is the spiritual leader of the Hoopa Tribe and a keeper of our sacred religious dances. And on my right is Mr. Dale Risling, member of the Hoopa Tribe and former chairman who has been involved in Indian affairs for much of his adult life. Finally, I have on the far right Mr. Tom Schlosser, our tribal attorney who will cover legal considerations.

With your permission, I will summarize my testimony, and I know it is a very complicated issue.

Mr. LEHMAN. Please.

Mr. COLGROVE. First, we should clarify that whereas Mr. Swimmer earlier mentioned that it is a very young tribe, on the contrary, it is a very old, old tribe. In 1950 a new constitution was put together. However, ever since the advent of the tribe was entered into the State of the Union, there have been organizations within the tribal structure. This was basically a new constitution in 1950 as the membership rolls were stabilized or officialized.

What we are here for today is to present a problem and, hopefully, come up with a solution. The present reservation must be separated into two reservations, each governed by a tribe for its own people.

Basically, the problem for corrective legislation action revolves around a technicality that happened in 1891, about 100 years ago. On a map that we have on the right here, shown in the green is this Square. And the blue portion was the old Klamath River Reservation, which was established for the Klamath River Yuroks in

1855. The yellow portion was basically the Extension put together as a result of an Executive order in 1891. And we will submit this for the record.

100 years ago, the Hoopas were the only people who lived in the Hoopa Valley, and this is true today. Less than 10 percent of the Indians in the valley are not enrolled as Hoopa tribal citizens. Today you will hear otherwise, and we would be glad to supply you with the names and addresses of the people who are living within the Hoopa Square.

Historically, in the 1850's and in 1860's there was war in California between the Indians and the settlers, and consequently the U.S. soldiers.

To help bring about the peace, in 1860 Congress authorized establishment of four tracts of land in California for Indian reservations. Under that act, the Federal superintendent negotiated an agreement with our tribe for the protection of our traditional homeland.

Big Jim, one of the leaders who was instrumental in formulating this agreement, was the grandfather of my grandfather. This agreement was confirmed in 1876, which recognized the boundaries of our present reservation.

Our troubles began in the coastal area. Non-Indians challenged the validity of the Klamath River Reservation when they argued that it constituted a fifth reservation in California and thus violated the 1864 act.

To protect that land for the Klamath River Yuroks, the Executive order expanded the boundaries of the Hoopa Reservation to link up with the Klamath River Reservation, thereby reducing the number of reservations in California. Despite the merger of their exterior reservation boundaries, the Hoopa Valley Tribe and the Klamath River Yuroks have continued to conduct their affairs separately.

In the early 20th century the landholdings on the Klamath River Extension were allotted or individualized and individual Yuroks consequently sold much of their timber and their lands.

The Interior Department also took the position and sold the surplus lands of the Extension and used it for the benefits of the Yurok Tribe and it was not for us, the Hoopa Tribe. Most of the Hoopa Square remains—remained unallotted, and today only a very small parcel for houses were allotted for tribal members.

Major portions of the land still are in common. Because of better access to the coastal transportation systems, most of the Extension land has been harvested by the 1950's, when Interior began to harvest and sell the Hoopa tribal timber.

At that time, the income from our timber was used by the Hoopa Tribe generally for reservation operations and the remainder was given out in per capita payments to the individuals. This started the case.

In 1957 the Department of the Interior handed down an opinion saying that the Hoopas basically were the benefactors of the land. But in 1963 a few people brought the Short lawsuit and challenged the exclusion of Indians of the Klamath River Reservation from per capita distributions.

This brought in the claims attorneys. The claims attorneys now number eight law firms, with some of the largest law firms on the

Pacific coast. And in destroying the Hoopa Tribe, they will have gained a large amount of money for themselves.

In any case, they rounded up 3,800 individual plaintiffs to intervene in this suit, and as I mentioned earlier, it is understood that the plaintiffs were not and are not Hoopa or all Yurok tribal members. Many of the plaintiffs were descendants of the pre-1900 Indians of the Klamath River Reservation.

The allotments given to them and their ancestors had, with few exceptions, been sold. The descendants lived in non-Indian cities, and today the plaintiffs live in 36 States and territories. Fewer than 20 percent of the Short plaintiffs live on the Extension or the Hoopa Square. This is illustrated on the pie graph which we asked also be part of the record.

Mr. LEHMAN. Without objection.

Mr. COLGROVE. In 1973 the Court of Claims ruled that the Interior Department had been wrong to use the proceeds from our timber sales solely for our own tribal membership, and that narrow decision has turned into a public disaster over the years. It held that all Indians of the reservation were entitled to share when timber proceeds are distributed. The court invented the term "Indians of the reservation."

Please be aware that the overwhelming majority of the Indians of the reservation do not live on the reservation or any part of the reservation. For the last 15 years the court has tried to figure out which plaintiffs are Indians of the reservation and therefore entitled.

One thing we know, though, the Indians on the reservation are not the Yurok Tribe, and you will hear today the majority of reservation Indians are not benefited by tribal government.

Please understand that the entitled Short plaintiffs are not the majority of the Indians living on the reservation or anywhere near it.

You will also hear today that we are well-to-do and it is unfair for the Square to be ours. You should know that in 1891 the Klamath River Reservation contained some of the finest redwood forest in the world. The reservation at the Klamath River, which provided some of the largest chinook salmon on the Pacific coast, the productivity of the mighty Klamath River, which runs nearly 50 miles through the Yurok territory is far greater than the stumpage value of our remaining trees.

In summary, because the Interior Department used the 1891 Executive order to protect the Klamath River Reservation, it created the technicality under which the BIA and the courts are destroying our tribal government today, which will turn the clock back on Indian policy, Federal policy on Indians, over 150 years.

Mr. Risling and Mr. Schlosser will explain to you why and how this has happened, and we ask Congress not to let this occur. We urge the Congress to enact the legislation with the modifications specified in our written submission. This legislation does not provide a windfall to the Hoopa Valley Tribe. It only restores to us what was ours prior to the 1891 Executive order.

This bill will reaffirm the 1876 Executive order which protects our homeland. Mr. Chairman, during the past 25 years the lawsuits have assumed lives of their own, becoming institutionalized, hurting Indian people from both sides, and we ask you to help us solve this tragedy. Thank you.

[Prepared statement of Mr. Colgrove follows:]

Testimony of Wilfred K. Colegrove
Chairman, Hoopa Valley Tribe of California
Before the
House Interior and Insular Affairs Committee
On H.R. 4469
June 21, 1988

My name is Wilfred Colegrove and I am the Tribal Chairman of the Hoopa Valley Tribe. I live on that portion of the Hoopa Valley Indian Reservation known as the "Square," where our Tribe has lived and governed its affairs for over 10,000 years. The tribal officials testifying today are elected in a democratic election by the tribal membership. Today, we are expressing the views of our people. On behalf of the Hoopa Valley Tribe, I want to thank this Committee for the opportunity to be here today and testify in support of H.R. 4469.

The Hoopa Valley Tribe and the Reservation are in the midst of an urgent crisis that only Congress can resolve. Since 1963, our community has been trapped in a vicious cycle of claims lawsuits that are destroying tribal government and causing human misery.

Without regard for Indian people and precedent setting bad Indian law which may affect other Tribes, these claims lawsuits are perpetuated by eight law firms seeking huge financial rewards if they are successful in destroying the Hoopa Valley Tribe. These law firms are led by one of the largest law firms on the Pacific coast.

The courts cannot solve the problems caused by the lawsuits, and the Bureau of Indian Affairs (BIA) has exploited the problems. Because of a court decision handed down in April of this year, the BIA is taking over Hoopa tribal government. Essential human services have been drastically curtailed and economic development projects have ground to a halt. The BIA has withheld tribal budget funds we are entitled to, and as a result Hoopa tribal government is shutting down. Congressional action is long overdue, and without it there is no end in sight to the lawsuits, the bureaucracy, and the suffering.

H.R. 4469 would put a stop to this BIA takeover of tribal government, and permit the Congressional policy of tribal self-determination to succeed on our Reservation. This bill would also correct a problem which undermines timber management at Hoopa, and threatens every federally recognized Tribe that has timber.

This is what we need: <u>the present Reservation must be separated into two reservations, each governed by a tribe for its</u>

own people. An act of Congress can free the Hoopa Valley and the Yurok Tribes of excessive court and BIA interference. You can end the pressure to terminate our tribes that is coming from distant urban areas, from people who do not want to participate in tribal life on the reservations.

In my testimony I will discuss the historical background that has led to the current mess. After that, we have three more Hoopa witnesses who will speak. Mr. Mervin George is the recognized spiritual leader of the Hoopa Tribe and keeper of our sacred religious ceremonial dances. Mr. Dale Risling is a member of our Tribal Council and a former Tribal Chairman who has been involved in Hoopa tribal affairs for all of his adult life. Finally, Mr. Tom Schlosser, Tribal attorney, will cover legal considerations.

Basically, the problem needing corrective legislative action was caused by the joinder in 1891 of two historically separate, non-contiguous reservations through an Executive Order. Let me show you on our map, which we ask be made a part of the record. This area was the historic Hoopa Valley Reservation, and is known as the "Square" of the present-day reservation. The area at the mouth of the Klamath River was the historic Klamath River Reservation, and along with this stretch of land in between it and the Square, is known as the "Extension" of the present-day reservation.

One of the most important points we want to make is that the Hoopa Valley Tribe is a genuine traditional tribe with a continuous tribal identity dating back to time immemorial. We have always dealt in good faith with the United States, beginning with the Treaty we signed in 1851. No California Indian treaties were ratified, but the United States has repeatedly recognized the Hoopa Tribe's right to live on and govern its ancient homeland, the Hoopa Square.

In the 1850s and 1860s there was war in California. To help bring about peace in 1864, Congress authorized establishment of four tracts of land in California for Indian reservations. The limit on the number of reservations, and other parts of the 1864 Act, were later repealed by Congress, as detailed in our written submissions. In any event, under the 1864 Act, the federal Superintendent negotiated an agreement with our Tribe and our allies, by which the federal government protected our traditional homeland. In fact, "Big Jim," one of the leaders from Matilton Village, who was instrumental in formulating this agreement, was the grandfather of my grandfather.

The Reservation reserved by the 1864 agreement is about 45 miles upstream from the Pacific coast, and was entirely unrelated to the Klamath River Reservation which had been established along the coast in 1855 for the Klamath River Yurok Indians. Both we

and the Interior Department considered the 1864 agreement to be a binding inter-governmental agreement. It was not submitted to the Senate for ratification, but it was performed through Congressional appropriation acts; and, finally, issuance of an Executive Order.

Our trouble began when non-Indians living in the coastal area challenged the validity of the Klamath River Reservation which at the time contained some of the finest stands of redwood forest in the world. Through the Reservation ran the Klamath River which provides some of the largest chinook salmon runs on the Pacific coast. They argued that it constituted a fifth reservation in California and, thus, violated the 1864 Act. A court agreed with the non-Indians, and bills were introduced in Congress to abolish that Reservation completely.

To protect that land for the Klamath River Yuroks, the Interior Department suggested a new Executive Order, extending the boundaries of the Hoopa Square to link up with the Klamath River Reservation, and this was done on October 16, 1891. Despite the merger of the reservations' exterior boundaries, the Hoopa Valley Tribe and the Klamath River Yuroks conducted their affairs separately.

Beginning in the early 20th Century, land holdings on the Klamath River Extension were individualized (allotted), and individual Yuroks sold their timber and their lands. The Interior Department sold the "surplus" land of the Extension for the benefit of the Yurok Tribe, not for us. Most of the Hoopa Square remained unallotted, and only small parcels for house lots were distributed to members of our Tribe.

Because of better access to the coastal transportation systems, the major portion of the Yurok timber had been harvested in the 1950's when the Interior Department began selling Hoopa tribal timber. Under federal law, income from our timber was used by the Hoopa Tribe for essential governmental functions, and the remainder was distributed to individual tribal members per capita.

But in 1963, the Short lawsuit challenged the exclusion of Indians of the Klamath River Reservation (and descendants) from the per capita distributions. The suit was brought by 3,800 individual plaintiffs who were and are not members of any tribe. Many of the plaintiffs were descendants of the pre-1900 Indians of the Klamath River area, but the land allotments given to the plaintiffs or their ancestors had, with few exceptions, been sold and the descendants lived in non-Indian cities. Fewer than 20% of the Short plaintiffs live on the Klamath River Reservation or the Hoopa Square. This is illustrated on the pie graph which we ask be made a part of the record.

Nevertheless, in 1973, the Court of Claims ruled that the Interior Department had been wrong to limit the per capita distributions to our tribal members. For the past 15 years, the court has tried to figure out which plaintiffs are truly entitled to damages payments. You are going to hear that the majority of the reservation Indians are being excluded. Please understand that the entitled Short plaintiffs are not a majority of the Indians living on the Reservation or anywhere near it.

In summary, because the Interior Department thoughtlessly used an 1891 Executive Order to protect the Klamath River Reservation, it created a technicality under which the BIA and courts are destroying our tribal government today, turning back the clock on federal Indian policy by 100 years. Congress cannot allow this result to occur. I urge enactment of H.R. 4469, with the modifications specified in our written submission. Thank you.

Mr. LEHMAN. Thank you very much.

Mr. Risling?

Mr. RISLING. Thank you. My name is Dale Risling, and I am a member of the Hoopa tribal council. I have lived on the Square portion of the Hoopa Reservation all of my life. I would like to thank you for this opportunity to speak before you today in support of H.R. 4469.

Like Mr. Colgrove, I am here as an elected, democratically elected, representative of the Hoopa Tribe, and I support this legislation at the direction of our people, and this direction comes from referendum votes, from general meetings, from public hearings, from council meetings, and from district meetings.

This is the way we speak on our reservation: from our people to our elected officials. And this is the way tribes across the country of tribal governments speak on issues that affect them.

I want to describe a nightmare that 25 years of litigation has caused on our reservation. The original Short decision, which has never been reviewed by the Supreme Court, was handed down in 1973. In 1974 the Bureau of Indian Affairs began confiscating 70 percent of our timber revenues from the Square at our expense.

In 1978 the BIA tried to persuade the Yuroks of the Klamath River Reservation to organize into a tribe so that they could take responsibility for reservation management. But the Bureau of Indian Affairs allowed the Short plaintiffs to vote in this election. And it was overwhelmingly rejected, and a lawsuit was filed against Interior to block future organization of the Yurok Tribes.

You must understand that the Short plaintiffs are not and do not claim to be a tribe. They are widely scattered persons of partial Indian descent whose only community of interest is as coplaintiffs in a lawsuit. They live in 36 States and Territories. They have no political or governmental structure. And they are not united behind any political leadership.

It is beyond me how this group of plaintiffs, witnesses here today, was selected from this large and diverse group of people.

In 1982 the BIA began to publish notices in the newspapers before making any decision affecting reservation management on our reservation. For example, every September our tribe submits a budget to the Bureau of Indian Affairs. Under this process it takes 9 months for the Bureau to publish a notice to seek input from around the country from different citizens, and then to finally fund our programs on the reservation.

In 1987 the Claims Court helped put Short in its proper perspective by clarifying that Indians of the reservation cannot complain about the workings of tribal government. This gave us hope that tribal government on our reservation could progress as Congress has always intended.

And then, on April 8 of this year, a Federal district judge in San Francisco made a new and devastating ruling in a different case called *Puzz* v. *United States.* The district court judge more or less reversed the 1987 Claims Court decision that I have just mentioned.

The judge ordered the BIA to take over the Government on our reservation. The BIA filed a Puzz compliance plan with the court on June 7 under the new BIA Government tribal involvement will

be by contract with the BIA only. A 6-member body of Indians will advise the BIA.

For example, if the BIA approves, we may be allowed to use some of our own unallotted lands for economic development purposes if we lease it at full market value.

This Federal compliance plan is unworkable and depressive, and all parties to the Puzz case have appealed.

Mr. Chairman, I have several years of experience as a tribal leader. I have been on the executive board of the National Tribal Chairmen's Association. I am the area director for California, on the National Congress of American Indians. I am the past president of the California Tribal Chairmen's Association and a former tribal chairman.

I am in continual discussion with tribal leaders across the country that are confronting our people, our tribes. The attacks against tribal Governments, the anti-Indian movements in this country—and, Mr. Chairman, these lawsuits fit into those categories—and tribal governments across the country are alarmed and are getting behind us and are supporting us to fight these anti-Indian lawsuits.

The Puzz ruling terminates the Hoopa Tribe's territorial sovereignty and leaves us powerless to cope with the complexities of modern life.

For instance, survival of the Hoopa Tribe depends on its ability to protect its natural resources. We do this through the adoption of codes and ordinances that protect us against trespass, illegal wood cutting, stealing of our trees, stealing of our fish and wildlife.

But the Puzz decision says that we cannot enforce it, enforce these ordinances against outsiders. The BIA can't simply step into the shoes of tribal government. It has no authority to expend tribal money to run its operations. The BIA compliance plan in Puzz will clearly run aground on Federal statutes that forbid use of tribal funds for BIA expenses.

Let me summarize some of the serious problems that the Puzz ruling has already caused. The reservation hospital, which serves everyone in the Hoopa area, was closed down on June 15, this month, due mainly to the tribe's inability to provide continued subsidies, staff, and administrative support. The nearest acute hospital with emergency rooms is over 50 miles away, across rugged terrain. This creates a life-and-death situation for all of the residents in our area.

The invalidation by the Puzz court of our Memorandum of Understanding between the tribes and the BIA means that our Hoopa forest industry can no longer participate in reservation timber harvesting, which provides jobs to up to 170 residents, many of whom are Short plaintiffs.

The BIA has refused approvals necessary for the tribe to proceed with a $1 million project to build a motel. Bids have already been accepted, but with Puzz delays we may not have this project this year or we may lose it forever. This project would have provided 57 construction jobs and 7 full-time motel service jobs.

Blaming Puzz, the BIA has breached a settlement agreement in another case, the *Hoopa Valley Tribe* v. *Christie.* Under this settlement, the Bureau of Indian Affairs agreed to turn over their abandoned BIA facilities and properties to the Hoopa Tribe. They also

agreed to sign contracts which would allow the Hoopa Tribe to assume responsibilities of road maintenance, timber and realty functions on our reservation.

Puzz has also denied the Hoopa Tribe due process of law by depriving it of funds for attorney's fees, even though the 1987 Short ruling upheld such expenditures. This ruling prevents the tribe from effectively defending its rights in lawsuits and claims, no matter how ridiculous.

The Hoopa business council is the only full service local governmental organization in the area. It has been a major government service provider for the extremely isolated and rural northeastern Humboldt County. The council funds a whole series of vital services through its own budget. It also administers many projects funded through grants and matching programs.

Programs range from education and day care to community water services, from natural resources protection to natural resources utilization, fire protection, economic development, job creation.

Congress has selected our tribe as one of two model tribes nationwide to participate in a demonstration project on what tribes can do without BIA hindrance or interference, yet the BIA has told us that Puzz prevents them from funding our budget after June 30. On July 1 we will be forced to shut down our government and close the following programs:

A governmental structure that employs over 250 people.

An education system.

A comprehensive natural resources division.

A planning department.

A public utilities district that provides safe drinking water, irrigation, and fire protection to all residents of the Square.

The closure of tribal government by the Puzz Court's interpretation of the 1891 Executive order helps no one. Ending tribal services on the reservation threatens to make reservation life impossible.

The giant law firms that have been suing us are hoping that people will leave the reservation and it will be declared surplus and sold. This will maximize their fees under the provisions of their contract, which gives them a percent of all that is gained by individual plaintiffs for up to ten years after the case is over, and this group of attorneys say that the reservation is worth billions of dollars. So if the land is individualized and sold like it has been in the past under the Extension, it will be worth millions of dollars to these firms, or billions of dollars to these firms or millions.

Our tribe, our reservation should not be controlled by technicalities and Federal mistakes dating back to 1864 and 1891. There will not be a Fifth Amendment taking of anybody's interest because this is also a fair solution. No reservation lands will be sold. Instead, lands will be restored to the Yurok Reservation. No one will have to be relocated.

As explained in our written material, the future income from the resources of the Hoopa and Yurok Reservation are very comparable. The Yurok income will come mostly from the abundant Klamath River fisheries. Hoopa income will come from some fish and

some timber. The Klamath fisheries is clearly a far greater value of the Hoopa fish and timber combined.

Mr. Chairman, I would like to make one other point. The circle that we are in is clearly not an Indian against Indian dispute. It is a dispute between a formally recognized tribal government and a group of co-plaintiffs in a lawsuit made up of many different types of Indians, and when the case first started there were many non-Indians in it, and I think it should be made clear that this is not—that our tribes and our governments are not based on race, but they are based on our government-to-government relationships.

There is no reason not to pass this bill. If Congress wants to prevent a disaster for tribal government and Indian people, it must enact H.R. 4469.

Thank you.

[Prepared statement of Mr. Risling follows:]

Testimony of Dale Risling
Hoopa Valley Tribe
Before the
House Interior and Insular Affairs Committee
On H.R. 4469
June 21, 1988

My name is Dale Risling and I am a member of the Hoopa Tribal Council. I live on the Square of the Hoopa Indian Reservation. Thank you for the opportunity to testify in support of H.R. 4469.

I want to describe the nightmare that 25 years of litigation has caused us as we have struggled to manage our Reservation's resources and address the severe unemployment problem and social service needs on our Reservation.

The original Short decision, which has never been reviewed by the United States Supreme Court, was handed down in 1973. In 1974 the Bureau of Indian Affairs (BIA) started impounding 70% of the timber revenues from the Hoopa Square to protect federal interests, at our expense.

In 1978 the BIA tried to persuade the Indians of the Klamath River Reservation to organize as the Yurok Tribe so they could take responsibility for Reservation management. But the BIA permitted all the Short plaintiffs to out vote the small on-Reservation community of Klamath River Yurok Indians. The result was not only that the Short plaintiffs overwhelmingly rejected Yurok Tribal organization. They also sued the Interior Department to block future organization of the Yurok Tribe.

You must understand that the Short plaintiffs are not and do not claim to be a tribe. They are widely scattered persons of partial Indian descent whose only community of interest is as co-plaintiffs in a lawsuit. They live in 36 states and territories. They have no political or governmental structure, either formal or informal, and are not united behind any political leadership.

In 1982, the BIA began to publish notices in newspapers before making any decision affecting resource management on the Reservation. For example, every September the Tribe submits a budget for BIA approval. In response the BIA frequently takes up to nine months to publish notices, review input from individuals around the country, and make its decision on how tribal programs will be funded.

In 1987 the Claims Court helped put Short in its proper perspective by clarifying that Indians of the Reservation cannot complain about the workings of Tribal government. This gave us hope that tribal government on our Reservation could progress as

Congress intends.

Then on April 8 of this year a federal district court judge in San Francisco made a new ruling in a different case, called Puzz v. United States. The district court judge more or less reversed the 1987 Claims Court ruling I just mentioned. The judge ordered the BIA to take over government of our Reservation.

The BIA filed a Puzz Compliance Plan with the court on June 7. Under the new BIA "government," tribal involvement will be by contract with the BIA only. A six member body will advise the BIA. For example, the BIA decides the "fair share of the approved programs" that can be administered by the Hoopa Valley Tribe. If the BIA approves, we may be allowed to use some of our own unallotted land for tribal development projects--if we lease it at full market value. This federal Compliance Plan is unworkable and oppressive. All parties to Puzz case have appealed.

Because the Puzz ruling terminates the Hoopa Tribe's territorial sovereignty, we are now left powerless to cope with the complexities of modern life. For instance, survival of the Hoopa Tribe depends on its ability to protect natural resources, and yet our Tribal Court system now has no jurisdiction to enforce tribal ordinances to protect resources, zone commercial development on the Reservation or regulate outsiders who may trespass or steal tribal timber.

And without territorial sovereignty there is no way to continue tribal jurisdiction under environmental laws such as the Clean Water Act, which implements express federal policy that Indian tribes have primary authority over environmental and natural resources regulation on their reservations.

The BIA cannot simply step into the shoes of a tribal government. It has no authority to expend tribal monies to run its operations. The BIA's Compliance Plan in Puzz clearly will run aground on federal statutes that forbid use of tribal funds for BIA expenses. Funds will remain unexpended in the face of urgent needs. For this reason alone, the crisis on our Reservation cannot be resolved without Congressional action.

Let me summarize some of the serious problems that the Puzz ruling has already caused:

1. The Reservation hospital, which served everyone, closed down on June 15 due to the Tribe's inability to provide continued subsidies, staff, and administrative support. The nearest acute care hospital with an Emergency Room is over 50 miles away across rugged terrain.

2. Invalidation by the Puzz court of a Memorandum of

Understanding between the Tribe and the BIA means that the Tribe's Hoopa Forest Industries can no longer successfully participate in Reservation timber harvest or provide jobs for up to 170 Reservation residents, including Short plaintiffs.

3. The BIA has refused to issue approvals necessary for the Tribe to proceed with a one million dollar project to build a motel. Bids had already been accepted, but with the Puzz delays, the project may be lost for this year and possibly forever. It would have provided 57 construction jobs and 7 full-time motel service jobs.

4. The BIA has confiscated equipment from the Tribe that is essential to the preparation of this year's timber sales. These sales, which provide most of the Reservation's income, will probably not take place this year.

5. Blaming Puzz, the BIA has breached a settlement agreement in another case, Hoopa Valley Tribe v. Christie. Under the settlement, BIA agreed to transfer property and buildings to the Hoopa Valley Tribe from what was the BIA's "compound" on the Reservation. It also agreed to sign "self-determination contracts," pursuant to P.L. 93-638, under which the Tribe would assume Reservation road maintenance obligations and management of timber and realty functions on the Reservation. Loss of the agency compound jeopardizes two important social service grants because the Tribe intended to use the buildings for those grant programs. One program would tutor disadvantaged children; the other involves operation of a regional substance abuse project. Loss of the 638 contracts means the direct loss of 70 jobs on the Reservation and denies the Tribe the increased role in self-government intended by Congress.

6. Puzz has also denied the Hoopa Tribe due process of law by depriving it of funds for attorneys fees, even though the 1987 Short ruling upheld such expenditures. This ruling prevents the Tribe from effectively defending its rights in lawsuits and claims, no matter how ridiculous.

The Hoopa Business Council is the only full-service local governmental organization on the Hoopa Valley Reservation. It has been the major government service provider in the extremely isolated eastern half of Humboldt County. The Council funds a whole series of vital services through its own budget. The Tribe also administers many other projects funded through grants and matching programs. Our programs range from education and day care to community water services, from natural resource protection to natural resource utilization, from police and fire protection to economic development and job creation. Congress has selected us as one of ten model tribal governments for a demonstration project on what tribes can do without the BIA's hinderance. Yet the BIA has told us that Puzz prevents them from

funding our budget after June 30. Thus on July 1 we will be forced to shut down our government, and close the following programs:

(1) A governmental structure that employs over 250 people.

(2) An education and day care system.

(3) A comprehensive Natural Resources Department that includes Forestry, Fisheries, Water Rights, and Environmental Protection Divisions. The BIA simply cannot match our proven resource management capability, but in order to comply with Puzz it will have to try.

(4) A Planning Department that is developing a disaster plan for the Reservation and helps direct Reservation economic development.

(5) A Public Utility District that provides safe drinking water to all residents of the Hoopa Square.

The closure of tribal government caused by the Puzz court's interpretation of the 1891 Executive Order and Short helps no one. Ending tribal services on our Reservation threatens to make Reservation life impossible. The giant law firms that have been suing us are hoping that people will leave, and the Reservation will be declared surplus and sold.

Our Tribe and our Reservation should not be controlled by technicalities and federal mistakes dating back to 1864 and 1891. H.R. 4469 is a realistic and necessary solution to these problems because it will restore the sovereignty of Tribes over their homelands. And it will not be a Fifth Amendment "taking" of anybody's interests because it is also a fair solution: No reservation lands will be sold; instead lands will be restored to the Yurok Reservation. No one will have to relocate. As explained in our written materials, the future income from the resources of the Hoopa and Yurok Reservations is very comparable. The Yurok income will mostly come from the abundant Klamath River fishery; Hoopa income will come from some fish and some timber. The Klamath fishery clearly has a far greater value than Hoopa fish and timber combined.

In other words, there is no reason not to pass this bill. If Congress wants to prevent a disaster for tribal government and Indian people, it must enact H.R. 4469.

Mr. LEHMAN. Thank you.

Mr. Mervin George.

Mr. GEORGE. Good morning, Mr. Chairman and committee members.

My name is Mervin George, and I, along with my mother Winnie George, are the spiritual leaders of the Hoopa Valley Tribe.

We prepare for, put on the sacred religious ceremonial dances, which includes the White Deer Skin Dance and the Jump Dance. These dances are world renewal dances, we believe. We dance for good health, good food, and they are done on the Square. We have always done these dances, and they are done every other year.

The leadership that I hold is handed down through our family generation to generation. Our White Deer Skin Dance follows a specific path along the Trinity River, which flows through our valley. The Jump Dance stays at the place we call the center of the universe. This is a spot along the valley, along the river in the valley.

The Great Creator, whom the Hoopa people call Kehenia, set up these special places for us to dance. The land we consider is our church. The other Indian people who come to view these dances are invited to participate in these dances as guests. We Hoopas, we respect other peoples, so we invite them to dance at our ceremonies. They have no say in the preparation of these dances because they are in Hoopa.

The Hoopa people, we are called Nah-tin-o-whey, have always lived in this valley called Hoopa. We have been there centuries. We believe we came into being there.

The Hoopa language is an Athapascan language, which is very distinct from the language spoken by the neighboring tribes.

The Klamath River Yuroks, known to the Hoopas as Kenuk, which means downriver, are another traditional Indian tribe who have always lived down the river, on the lower stretches of the Klamath and along the Pacific Coast area. They live in redwood country. We live in Douglas fir country.

We have always had a belief that—or they had the belief that Douglas fir wasn't worth nothing at one time, only for burning and firewood. Their redwoods is worth lot more. They always said, what do you do with this redwood? We make money off ours. You just burn yours for firewood.

The two places are separated by a large, rugged gorge of the Trinity River and by the Klamath River Gorge itself.

The Yurok people have a different style of dance which they do. For instance, their Jump Dance is danced in a hole in the ground, where all the Hoopas dance on top of the ground. They have a sacred high country that is different from ours, in a different place than our sacred high country.

The Yurok language is an Algonquin language, which is very different than our language. We are different people. different tribes.

I sit here and look at these people. I look around behind me. I see not very many of them that come to our dances in Hoopa. Some of them do, some of them don't. But they claim to be part of that valley.

I am saying we are different peoples. We talk different languages. We come from different places. I am wondering when, if

this thing don't pass, what is going to happen to our ceremonies. Are they going to come up and tell me how to put my ceremonies on that the Hoopa has been doing it their way for centuries?

I am pleading to leave this with their own land down the river. Let them have their own land down the river. Let the Hoopas have their own land where they live now. Maybe we can—they can organize their affairs—maybe we can peacefully coexist again. This thing is tearing everybody apart.

I speak to you from my heart on this. I am not an eloquent speaker. I come here to plead. I am at a loss how money can be involved in some of these things, what is going to take the traditional things away. Money.

Thank you for your time.

[Prepared statement of Mr. George follows:]

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Testimony of Mervin George
Hoopa Valley Tribe
Before the
House Interior and Insular Affairs Committee
on H.R. 4464
June 21, 1988

My name is Mervin George and I am the spiritual leader of the Hoopa Valley Tribe and the keeper of our sacred ceremonial dances which include the sacred white deer skin dance and the jump dance. Thank you for allowing me to testify in support of H.R. 4469.

The Hoopa people known as the [say in Hoopa language], came into existence in Hoopa Valley, on the Trinity River. Carbon dating shows that our ceremonial fire pits have been used for over 10,000 years. This is the center of our universe. The Hoopa Valley Tribe existed as a system of villages along the Trinity River. Our ceremonial dances follow a specific path from place to place; these dances are special to Hoopa, although we do invite other Indians to participate as our guests in many of these dances. The Hoopa language is an Athapascan language, very distinct from the language groups of neighboring Indian tribes.

The Klamath River Yuroks are another traditional Indian tribe who have lived along the lower stretches of the Klamath River and the Pacific coast nearby since before the whites came. They live in Redwood timber country, not Douglas fir country like our own. Although not very far from our sacred Hoopa Valley by

air miles, the Klamath River country is geographically very distinct from our own. It is separated from us by the rugged gorge of the Trinity River before it joins the Klamath, and by the narrow Klamath River gorge itself.

The Yurok people have a different style of dances. They use sacred high country that is different than our own. And they are from an Algonkian language group. Their tribe always brings its people home for burial to their traditional areas on the Klamath, and we bury our people in Hoopa Valley. The Hoopa people know who they are and the Yurok people know who they are. I am sad to find some Indians who do not know to what tribe they belong.

In our written submission are studies by Dr. Verne Ray, a noted anthropologist, concerning the distinction between the Hoopa, Yurok, and other Indian groups in northwestern California. I was happy to learn that even the Puzz court, in its recent disastrous order, recognized that our Tribe had never been consolidated with the Yurok Tribe and that such consolidation would be illegal. Please pass this bill to make it possible for the Yurok Tribe to organize its affairs and for their Tribe and ours to co-exist peacefully on separate reservations. Thank you.

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Mr. LEHMAN. Thank you.

And our final witness on this panel will be Mr. Schlosser, tribal attorney.

Mr. SCHLOSSER. Thank you, Mr. Chairman, members of the committee.

Since 1981——

Mr. LEHMAN. Are you with a law firm, Mr. Schlosser?

For the record, why don't you tell us, are you with a law firm?

Mr. SCHLOSSER. Yes. I am a member of the Pirtle, Morisset, Schlosser & Ayer law firm.

Mr. LEHMAN. And where is that located?

Mr. SCHLOSSER. We have an office in Seattle and one here in Washington.

Mr. LEHMAN. Thank you.

Mr. SCHLOSSER. Since 1981, I have been the litigating attorney for the tribe in the Short and Puzz cases and some related cases, and this morning I wanted to briefly go over three points:

The citizenship standards used by the tribe for defining who would participate.

No. 2, some of the key holdings in the cases thus far.

And, No. 3, whether this bill would change rights in a way that might be seen as unconstitutional.

No. 1, the Hoopa Valley Tribe's membership standards are important to its political identity, and I want to recount that a little bit.

Forty years ago, the Bureau of Indian Affairs demand a current and complete list of tribal members. They suggested that the tribe use some official records about the Indians who were on the Square in the valley. The tribe chose to do that. They used the list of Indians who had been allotted pieces of land on the Square. That list, with the children and grandchildren of some of the allottees, made up about 90 percent of the tribal enrollment 40 years ago.

The tribe also adopted a constitution requiring that future members be descendants of the people on that list 40 years ago.

Now, since some of the allottees—well, let me back up. Since the Square was so firmly in Hoopa traditional territory, virtually all of the people who were allotted land on the Square were from long family lines of Hoopa language speakers. There were a few who had become affiliated with the tribe over the years through adoption and marriage, and so on, but very few. But by definition under the constitution and adoption of the roll, all the people enrolled 40 years ago were Hoopas.

Now, it is quite possible for there to be second, third, fourth cousins of people on that list 40 years ago or people today who are not descendants of those allottees because, of course, the cousin relationship goes out very broadly in just a couple generations.

But these membership standards are typical of the way Indian tribes are organized all over the country, and the power to define membership standards, citizenship standards, and to define immigration policies for admitting new citizens is a common power of Indian tribes and of the United States.

The Supreme Court has often and plainly said that Indian tribes have the power to set their membership standards, their citizen-

ship criteria because they are the ones who have to live with the consequences.

Now, you have heard about the holdings of Short, and I don't want to spend a great deal of time on that. But to decide whether or not this bill respects the adjudicated rights of Indians of the reservation, the class defined in Short, one has to separate some of the holdings of Short from the dicta, and that is very hard because of the unique way this case came up. It was a recommended opinion of a trial judge in the old Court of Claims under which trial judges could not make final decisions and had to recount the evidence at great length.

There are paragraphs in there to support everything. As a former trial judge himself recently said, there was a fantasy land of big issues to be litigated.

What Short has also made clear is that in deciding which one of these people should have been paid when money was distributed to individuals, that the court was not deciding who were members of the Yurok Tribe. Instead, what the court was doing, Judge Margolis, the judge in Short who has been trying desperately to wrap this case up since 1983, what the court was doing was defining who should sensibly and equitably share in the damages, since there was no Yurok tribal roll to use.

Well, what did these litigants get when the court decided to treat them sensibly and equitably?

What they got was the right that if communal property was distributed they would be entitled to share. They can't compel a distribution, but they would get a share if there was a distribution.

Now, there is much other language in Short and the other opinions, and I noticed that for the record the Plaintiffs have submitted a decision in *Hoopa Valley Tribe* v. *United States,* an entirely separate case. That case is not an accurate statement of what Short has decided, and it has been superseded by a number of other opinions.

But in the Puzz case, for example, which has been discussed, the court had to decide what the core holdings of Short were because Puzz was a case brought by 6 people, now 5, which was built on the premise of Short, saying if we have this right to share we must have political powers as well.

And there is one point there that is important. It said that Short decided that there are no tribes having vested rights to the income of undivided lands.

Well, vested rights. This vested rights issue is really very important to analysis of this bill because if Hoopa rights in the Square had been vested in 1891, when the Executive order extended the boundaries, the people in the Extension wouldn't have gotten anything, and yet the court said they did get something, and the reason they did was because the rights weren't vested.

Well, just for clarification, what are vested rights? They are rights that have so completely and definitely accrued that they are not subject to being canceled, and the government can't deprive a person of vested rights arbitrarily. That would be a taking.

But to view this bill as a taking, one has to ignore the fundamental holding of Short and Puzz, that there aren't vested rights on this reservation.

Now, it is true that the bill limits the power of the Hoopa and the Yurok Tribes to make per capita payments during the next 10 years, and to that extent it deprives the entitled people of an expectancy that they might be able to share if a per capita had been declared.

It is sort of like a stockholder. You hope that a dividend will be declared, in which case you will get something. But if a dividend is not declared, you don't get anything.

But the Supreme Court in Indian cases, many of the old allotment cases and more modern cases, such as *United States* v. *Jim, Delaware Tribal Business Committee* v. *Weeks,* has frequently said that expectancies or hopes of receiving future distributions may be taken away without a violation of the Fifth Amendment.

Now, Puzz goes beyond that perhaps and talks about other rights. It says, for example, that plaintiffs may have a right to participate in decisionmaking, but what does this come down to, a right to send cards and letters to the BIA? There is no taking involved for Congress to require that participation in decisionmaking be done through a tribe. That is what is done in local governments and the Federal Government. Through tribal governments tribes are governed by elected officials as other governments are.

Puzz also seems to indicate that plaintiffs have a right to participate in use of the reservation, but again this is a noncompensable expectancy, that if the tribe's rights to the reservation aren't vested how can the individuals' hope of using it be vested? They aren't, and it is rational for Congress to treat differently people who are members of political entities, tribal governments, than unorganized individuals.

Now, I know we are running short on time, and I will try to be brief here.

Mr. LEHMAN. Please. Can you summarize because we only have a few minutes left for this panel?

Mr. SCHLOSSER. Yes.

Mr. LEHMAN. And we have to let the other side have their say as well.

Mr. SCHLOSSER. Thank you, Mr. Chairman.

Enactment of a public law after Puzz is essential because of one of the bases of Puzz. The court said that no tribe can govern this reservation and that only when Congress has conferred on a tribe by treaty or statute a right of territorial management could tribal government manage this reservation.

And so even if the unlikely happened and decades of strife were laid aside and a harmony was achieved in this room, that group would not have governmental powers unless Congress conferred them on that group.

And what lies ahead if Congress doesn't act? What lies ahead is permanent uncertainty about who participates in what. The process has taken 25 years in Short, and about 16 percent of those cases remain undecided.

Mr. Chairman, Congress must restore Indian tribal management to this reservation. There are at least four different definitions of this term of art, "Indians of the reservation," that are in contention now, and we still have to apply those each time a decision has to be made to know who could participate.

We have tried to convey the reality that this tribe is an endangered species. It is in a battle for its life. These leaders have lived in a state of siege for years, and why?

It is because of an unanticipated consequence of something that was done in 1891.

Mr. George described how Hoopa culture is tied to this place. These are their sacred places. Mr. Risling showed that tribal programs are being lost.

Mr. Chairman, I have worked with tribes, many tribes, during my 13 years in this field, and these tribal leaders take their responsibilities very seriously, and in spite of the controversy they have continued to hire Yurok people, Short plaintiffs who live on the reservation, and they continue to do so today.

This siege can only be lifted by you, and we ask you to fulfill your responsibility to encourage tribal self- government.

Thank you.

[Prepared statement of Mr. Schlosser, with attachments, follow:]

Testimony of Thomas P. Schlosser
Hoopa Valley Tribe
Before the
House Interior and Insular Affairs Committee
On H.R. 4469
June 21, 1988

My name is Thomas Schlosser. I have been the defending attorney for the Hoopa Valley Tribe since 1981. I want to summarize the key matters that have and have not been decided in the two main cases, Short and Puzz.

The Short case is a dinosaur, now in its 26th year. Section 2 of the bill, by saying who the tribal beneficiaries of certain resources are, will narrow the issues, reduce the number of parties and hasten the end of this complex case.

Expediting Short is a worthy goal, but passage of a Public Law is essential after the Puzz decision. Puzz, if it withstands appeal, precludes government of the Hoopa Valley Reservation, or any part of it, by Indian tribes. Tribes, the court ruled, have the right to govern that Reservation "only when [Congress] has conferred on them, by treaty or statute, a right of territorial management." Order at 6 (April 8, 1988). Obviously this a wrong statement of the law. But until it is corrected, even if the Short plaintiffs and the Hoopa Valley Tribe laid aside their decades of strife, and unanimously agreed on how to manage the parts of the Reservation, they would lack governmental powers; they would be collaterally attacked by newcomers claiming to have the necessary ancestral ties to California, and seeking new privileges or payments. Only an Act of Congress can rectify this.

Can Congress restore self-governance to the parts of this Reservation while respecting the adjudicated rights of the successful plaintiffs in Short? Absolutely, yes. To see why this is so one must separate the holdings from the dicta in these cases. This is particularly hard to do since the 1972 opinion in Short was a recommended ruling of a trial commissioner of the old Court of Claims. Trial Commissioners could not make final decisions and were forced to explain the evidence at great length for submission to the Court of Claims. The 1972 opinion is an extreme example of that, exceeding 100 pages. There are paragraphs in there to support "a fantasyland of issues," as the former judge himself recently said. However, since the Puzz suit was built on the foundation of Short, the Puzz court had to decide just which points in the Short opinion were its holdings. There are only four; one is important here: "There are no tribes having vested rights to the income" of undivided Reservation land. Order at 14.

The Short ruling that tribes have no vested right to income from the Reservation's lands is critically important. If the Hoopa Tribe and its allies had acquired vested property rights in the Hoopa Square decades before the Connecting Strip and the Klamath River Reservation were appended to the Square, then in 1891 when the reservations were joined the ancestors of the Short plaintiffs could not have acquired anything. Short, however, decided that plaintiffs did acquire something by the 1891 Executive Order, and it had to do so by concluding that vested rights are not generally found on this Reservation. Both Puzz and Short have expressly ruled--though the plaintiffs repeatedly attack this conclusion--that neither individual Indians, nor tribes, nor groups, nor other aggregations nor descendants of Indians hold vested property rights in the Reservation lands, its resources, its income stream, or its accumulated funds.

Therefore, one who says now that private property rights would be taken--a violation of the Fifth Amendment--if Congress separates the parts of the Reservation, is ignoring the express holdings in Short and Puzz, and ignoring the logic that if there would be a taking by passage of H.R. 4469, it would have been unconstitutional to take Hoopa rights in 1891.

Let us turn away from what Short did not decide, and see what it did decide. Judge Margolis, the judge who since 1983 has been slaving to wrap this case up, put it best (paraphrasing):

> The unique situation on the Hoopa Valley Reservation, where the only formally organized tribal government includes only some of the Indians for whom the communal lands were available, required the approach taken by the Court of Claims in 1973. Faced with the unusual situation of no organized Yurok tribal government with an existing tribal roll to determine which plaintiffs where unjustly excluded, the court adopted approximations of the Hoopa Valley Tribe's enrollment standards to identify those who should have been included in per capita distributions.

However, the judge stressed that the Short court was "not determining which individuals are members of a `Yurok Tribe' through the qualification process." Instead, the court was doing the only "sensible and equitable" thing under the circumstances. And what did the individuals get when the court decided to treat them "sensibly and equitably?" They got a right to be included when communal property was distributed to individual tribal members. They cannot compel a distribution of communal property, but they must share if the property is divvied up.

This bill limits the ability of the Hoopa and Yurok Tribes to make per capita distributions in the next ten years. But that practice is well recognized to have been an unwise policy anyway. Nevertheless, this is a direct effect of the bill on qualified

Short plaintiffs: it takes away the expectancy they would otherwise have that if money or something else is individualized in the future, they would have a right to share. A deprivation of this kind is not a compensable event. The Supreme Court has never--to my knowledge--required compensation to individual Indians where hopes of receiving future communal property were lost or taken away before communal property was individualized. There are many allotment cases expounding on this, also Gritts v. Fisher, United States v. Jim, and Delaware Tribal Business Committee v. Weeks. Perhaps there is an analogy in the situation of a corporate stockholder: until a dividend is declared, an individual has only an expectancy--a hope of gain--not a right to assets. A mere hope that a government or a corporation acting entirely in its discretion, will make a payment to you, can be taken away by Congress when it is necessary to best serve the interests of Indian tribes in general.

Puzz claimants also now have the right to participate in decision-making. They won the right to send cards and letters to the BIA, but this is not a compensable property right. It is no taking to require that input to policy decisions be made through participation in tribal governments rather than by advising the BIA. Under federal law, Indian reservations are governed by elected officials, just as states and localities are.

Puzz plaintiffs can also participate in use of the Reservation. This, too, is not a compensable property right, because if the Tribes themselves have no vested rights, neither do the plaintiffs. They may have an entitlement to participate in benefits as long as they exist, but they have no right to compensation when those benefits are taken away.

Maybe Puzz gives plaintiffs the right to be benefitted by expenditures of reservation income too. Congress isn't being asked to change the equities of this, only to apportion the income stream in a fair and workable manner. It is not a taking rationally to apportion the source of reservation income when the present arrangement is so unmanageable as to destroy tribal government; particularly here, where the courts have specifically held that no one has vested rights in that source.

Since the Hoopa Valley Tribe's citizenship standards are important to its political identity, let me describe them. In 1949, the BIA induced the Tribe to formalize its enrollment standards. The BIA demanded a list of the current members, and suggested use of the censuses of Indians living on the Reservation, or use of some similar official Government document as a basis. This was the approach commonly used on other reservations whose government structure was formalized and westernized around the time of the Indian Reorganization Act of 1934.

The Hoopas chose to start with the list of persons holding individual pieces of land (allotments) on the Square. They made up about 90% of the list from that basic source, because those were the people who were part of the tribal community on the Square. Of course, some of the Indians allotted land on the Square were ones who had been admitted to the Tribe under familiar anthropological affiliation terms--marriages, adoptions, etc., but the Square was so isolated and so firmly in Hoopa aboriginal territory, that most allottees there were from long family lines of Hoopa-language speakers.

The base roll of 1949 was enlarged by about two dozen people who were not allottee or children of the allottee, to accommodate long-term resident Indians who were plainly part of the tribal community. By definition, those placed on the tribal rolls were deemed to be Hoopas, Hoopa citizens, and under the Tribal Constitution, all future members would have to be both descendants of that set and 1/4 Indian or more. Citizenship limitations like this are common among Indian nations, and among foreign nations as well. Immigration policy and citizenship are inherent rights of governments, and the U.S. Supreme Court has very plainly and very often said that Indian tribes retain the rights to set and live by their own membership standards.

What lies ahead if Congress delays action? Permanent uncertainty about who participates in what. There is too little law and no mechanism other than the courts to resolve what really are policy issues. The reach of the term "Indians of the reservation" is the most troublesome: it is a problem with two parts--(1) what standards will be fair and equitable to use, and (2) which people meet the standard.

The Short case has consumed 25 years answering these questions with respect to the 3851 persons and estates before the court. The court has qualified 2,445, dismissed 802, and has 604 yet to consider.

But Puzz, if it withstands appeal, clearly indicates that others may qualify for the advisory opportunities available under that court's orders. The court has approved only the five plaintiffs before it, thus far. But Puzz states that all claimants who "can trace their origins" and "have connections with any of the various Indian groups, organized or not, for whom the reservation was created," are "Indians of the reservation." Order at 10.

Already the Puzz judge and the parties are struggling with the classes of potential litigants that vague standard may encompass. Puzz generally speaks of the rights of non-Hoopas; this is very broad. There are at least four different definitions of Puzz "Indians of the reservation" under discussion now. Identifying these people every time a decision must be made

or whenever a benefit can be viewed as distributed to an individual will be a never-ending process. This can never work; a court has neither the personnel nor the skill to make timely management decisions that will work for Indian tribes. Ahead lie only lawsuits from those omitted by the BIA from the groups thought to be "Indians of the reservation."

Congress must restore Indian tribal management to its rightful role. Puzz acknowledges that Congress can confer on Reservation tribes the usual rights of tribal governments; there is no legal obstacle in your way.

Hoopa Valley Tribe's Comments on H.R. 4469

June 19, 1988

The Hoopa Valley Business Council and the Advisory Group of the Hoopa Valley Tribe have carefully reviewed H.R. 4469 on behalf of the Hoopa Valley Tribe. The Tribe strongly supports the remedial purposes of H.R. 4469, and endorses the language of the bill, with the corrections and revisions noted below. Our Tribe and Reservation have suffered greatly from the long delay in enactment of legislation concerning the Hoopa Valley Reservation. We urge quick action to amend the portions of the bill indicated below, and to pass it.

Section 1(5) [page 2, lines 8-10] Change "lands reserved for Indian purposes which have not been allotted." to "trust land reserved for Indian purposes which has not been allotted to individuals under an allotment act."

Comment: Clarifies consistency with existing law and definitions. Trust land prior to allotment is held for Indian tribes, not individuals.

Section 2(a) [page 2, line 18] Change "Indian land" to "trust land".

Comment: For consistency with definitions.

Section 2(b)(3) [page 3, line 14]

Comment: No change recommended. The appropriation to purchase land along the Klamath River is well justified in light of the United States' sale or relinquishment of more than 10,000 acres of "surplus" land from the Yurok Reservation under the authority of the Act of June 17, 1892, 27 Stat. 52, and the General Allotment Act, the Act of February 8, 1887, as amended. This will help restore to Indian ownership lands that have been lost.

Section 2(d)(1) [page 4, line 4] Change "Section 3" to "Section 4."

Comment: Corrects a typographical error.

Section 2(f)(1) [page 4, line 24 - page 5, line 4] Reword subsection to read as follows:

> Notwithstanding any other provision of law, any action in any court alleging inadequate compensation or a taking resulting from this Act or the Executive Order of October 16, 1891 shall be forever barred unless the complaint is filed within two years after the date of enactment of this Act.

Comment: A statute of limitations is very necessary to avoid uncertainty about the possible applicability of 28 U.S.C. §§ 2501 (six years), 2409a (12 years) and County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985)(no statute of limitation). However, the statute of limitations should be worded more broadly to cover all suits, whether or not they seek damages, that result from any portion of this Act, not just the land division of § 2. The reference to the Executive Order of October 16, 1891 is also important because, to the extent that this Act can be viewed as "taking" any interest in the Hoopa Valley Reservation held by persons or entities other than the Hoopa Valley Tribe, the interest now "taken" is precisely the interest which was "taken" from the Hoopa Valley Tribe by the Executive Order of October 16, 1891, as interpreted by the court in Short v. United States, 202 Ct. Cl. 870 (1973). The Hoopa Valley Tribe believes that no taking of rights protected by the Fifth Amendment actually occurred or would occur by virtue of either the Executive Order of October 16, 1891 or the passage of this Act. See Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977); Short v. United States, 12 Cl. Ct. 36, 42 (1987) (citing cases); Puzz v. United States, N.D. Cal. No. C 80 2908 TEH (April 8, 1988) (Slip. Op. 7-9, 14) (citing cases). Nevertheless, in fairness, if litigation is to be commenced by some of the aggrieved individuals who have entrapped this Reservation in litigation battles for nearly 30 years, and if that litigation could affect future tribal income per Section 2(f)(2), then the Hoopa Valley Tribe must be permitted a fair defense, by allowing as a set off against any plaintiffs' claim, the value of rights "taken" from the Hoopa Valley Tribe by the 1891 Executive Order.

Section 2(f)(2) [page 5, lines 5-15] Delete this subsection in its entirety.

Comment: The need to re-divide Reservation lands between the Hoopa Valley Tribe and the Yurok Tribe arises from an unintended consequence of the Executive Order of October 16, 1891. President Harrison's Executive Order was a federal action which has caused great damage to the Hoopa and Yurok Tribes, and tribes elsewhere, due to the way the Order has been construed by the courts. The risk that undoing these federal actions will create new liability should fall upon the federal government that created the problem, not upon the Indian tribes.

Section 3(b)(1) [page 6, lines 1-11] Delete this subsection in its entirety.

Comment: Use of the escrow fund to pay for what the courts have held was the Secretary of the Interior's breach of trust obligation to over 2,000 individual plaintiffs in Short v. United States is an improper use of tribal money. As worded, this subsection also allows each "entitled" Short plaintiff to be paid twice by virtue of the per capita payments made after December 31, 1974. Judge Margolis squarely rejected the government's argument that the escrow funds

could be used to pay to the plaintiffs amounts equal to what Hoopa members received after 1974, Short v.U.S., 12 Cl. Ct. 36, 41 (1987). The judge said:

> It is also without consequence that the monies were first distributed by the Secretary to the Hoopa Valley Tribe for subsequent distribution to the Tribe's individual members. Where the Secretary's action or failure to act permits a violation of his fiduciary obligations to occur, the United States is liable for the damages sustained. Per capita distributions made after 1974 will be accounted for in the damage award in the manner indicated above.

Id., 12 Cl. Ct. at 41 (emphasis added; citations omitted). Assuming approximately 2,445 Short plaintiffs are held "entitled," Judge Margolis' ruling provides a post-1974 award from the Treasury which fully compensates for these damages. Unless deleted, this subsection would also award to the same individuals, by virtue of the same breaches of trust, millions of Indian tribal money. This is an improper double recovery.

Section 3 (b)(2)(A) [page 6, lines 13-19] Reword subsection to read as follows:

> Amounts in the escrow fund shall be apportioned between the Hoopa Valley Tribe and the Yurok Tribe. The Hoopa Valley Tribe shall receive 85 percent of such amount and the Yurok Tribe shall receive 15 percent of such amount.

Comment: Division of the amount in the trust accounts (commonly but inaccurately called the "escrow account"), in accord with this formula will result in placing the Hoopa Valley Tribe on the one hand, and the Yurok Tribe and "entitled" Short plaintiffs on the other, on an equal financial basis. "Entitled" Short plaintiffs will be awarded approximately $47 million from the Treasury. Assuming $67 million in the trust accounts, the formula will result in $10 million of tribal money from sale of Hoopa Square timber being paid to the Yurok Tribe and $57 million, to the Hoopa Tribe. Thus, the Yurok Tribe and "entitled" plaintiffs will have a financial base of $57 million and the Hoopa Valley Tribe will also.

The escrow account contains trust funds from sale of timber on the aboriginal homeland of the Hoopa Valley Tribe. The Yurok Reservation once contained valuable timber, but thousands of acres of reservation land were lost to tribal ownership through sales by the United States, homesteading by non-Indians, and allotment to individuals. Allottees then sold their valuable land and its timber. It is unfair to take the tribal timber income from the Hoopa Square to pay for the wrongful actions of the federal government or the improvident actions of the individual allottees. Nevertheless, the

Hoopa Valley Tribe is willing to contribute 15 percent of the trust accounts to the Yurok Tribe because it wishes to promote the establishment of responsible tribal government on the Yurok Reservation. The "entitled" Short plaintiffs who are qualified for membership in the Yurok Tribe should be required to allocate a portion of their individual judgment awards to the Yurok Tribe.

Section 3(b)(3)(A) [page 7, lines 5-6] Change "the account, 'Indian Money, Proceeds Of Labor'" to "the accounts, 'Proceeds of Labor-Hoopa Valley Indians-California 70% Fund', 'Proceeds of Labor-Hoopa Valley Indians-California 30% Fund', 'Proceeds of Klamath River Reservation, California', 'Proceeds of Labor Yurok Indians of Lower Klamath River, California', 'Proceeds of Labor Yurok Indians of Upper Klamath River, California', 'Proceeds of Labor Hoopa Reservation for Hoopa Valley and Yurok Tribes', and 'Klamath River Fisheries';"

Comment: Several tribal accounts derived from sales of resources of the Hoopa Valley Indian Reservation bear names different from the name indicated in this subsection. All of the funds derived from the Reservation, whether from the sale of salmon, sale of Reservation land, or other income, should be addressed by the bill. These funds totalled approximately $65.3 million on March 31, 1988.

Section 4 [page 7, line 21] Change "the Yurok Tribe may" to "the Yurok Tribe and the Hoopa Valley Tribe may".

Comment: The ability to charter tribal corporations and the other benefits and powers of the Indian Reorganization Act, referenced in this section, should be made available to both the Hoopa Valley Tribe and the Yurok Tribe. Additional provisions may also be necessary to assure that the existing reservation community of several hundred persons on the Yurok Reservation is not overwhelmed, in the organization process, by the thousands of plaintiffs from around the world who are involved in Short. In addition, organization of the traditional Yurok Tribe, as opposed to the Indian community of the Yurok Reservation, could jeopardize the property rights and governmental structure of the Trinidad, Resighini, Big Lagoon, Blue Lake and other Yurok rancheria tribal organizations. The Hoopa Valley Tribe is concerned by these complications but does not support a particular means of resolving them at this time; instead, the Tribe defers to the Indians residing on the Yurok Reservation for a recommendation.

Section 6(b) [page 9, line 3] Change "section 3" to "section 4".

Comment: Corrects a typographical error.

Section 6(c) [page 9, lines 4-9] Change "Hoopa Reservation." to "Hoopa Valley Reservation."

Comment: This subsection in its entirety is unnecessary since,

pursuant to federal regulation and tribal law, health benefits are available to Indians living on the Hoopa Valley Reservation whether or not they are members of the Hoopa Valley Tribe. The Hoopa Valley Tribe does not discriminate. Nevertheless, the Hoopa Valley Tribe does not object to inclusion of this subsection, with the clerical correction indicated.

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EXPLANATORY REPORT:

THE NEED FOR CONGRESSIONAL ACTION TO RESOLVE THE PROBLEMS ON THE HOOPA VALLEY RESERVATION

I. WHAT IS THE PROBLEM ON THE HOOPA VALLEY RESERVATION?

A. A SUMMARY VIEW.

The problem on the Hoopa Valley Reservation stems from an action of the federal government that resulted in a Court of Claims decision in a case known as *Jessie Short v. United States.* [1] This threatens to exterminate tribal self-government on that Reservation. The reservation, located in Northern California (see map attached), encompasses the aboriginal homeland of two separate and distinct Indian tribes: the Hoopas and the Klamath River Indians.[2] The Hoopas inhabit a 12-mile Square located in the coastal range of mountains some 45 miles upstream from the mouth of the Klamath River on the Pacific Ocean. Klamath River Indians inhabit nearby lands along the Klamath River. The lands of these two groups of people are physically distinct from and partly inaccessible to each other.

The Klamath River Reservation was established in 1855 by a Presidential Executive Order for the benefit of the Yurok and other Indians living along the Klamath River. The Hoopa Valley Reservation was established by an 1876 Presidential Executive Order confirming an 1864 agreement that had been made between the Hoopa Indians and the United States. The two reservations were 25 miles away from each other and remained separate and unconnected until 1891. In that year, the Interior Department, concerned over attacks on the legality of the reservation status of the Klamath River Reservation, recommended to the President that an Executive Order be promulgated extending the boundaries of the Hoopa Valley Reservation to link up with and include the Klamath River Reservation.

The purposes and effect of the October 16, 1891 Executive Order are in sharp dispute. It is not disputed that Congress did enact legislation authorizing

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1 *Jessie Short, et al. v. United States*, 202 Ct. Cl. 870 (1973).

2 The Klamath River Indians comprised the Yuroks and a number of smaller bands of Indians.

allotment of sizeable parcels of land to individual Indians on the Klamath River Reservation shortly thereafter, in 1892. The purposes of that legislation were both to secure those Indians in their occupancy, and also to throw open the unallotted lands of that Reservation to acquisition by non-Indians. That Act of Congress did not, however, apply to the Hoopa Valley Reservation which Congress simply ignored in 1892, leaving their lands intact and unallotted. Those lands were not allotted until the mid-20th century and then only in tiny tracts. In accordance with the desire of the Hoopa Valley Tribe, however, over 95% of the lands of the Hoopa Valley Square remained unallotted -- in tribal ownership -- and the timber on those lands would provide the prize sought by the plaintiffs in the *Short* suit.

Commercial logging of the timber lands of the Hoopa Square began in the 1950's and the money from the sale of this timber was distributed by the Secretary of the Interior to the members of the Hoopa Tribe alone. The Indians of the Klamath River Reservation were not included because the Secretary believed, on the basis of long administrative practice and legal advice, that they had no legal interest in the timber of the Hoopa Square. Descendants of Indians of the Klamath River Reservation, most of whom lived off the reservation, many in distant parts of the United States, brought suit in 1963 seeking damages from the Government for wrongful exclusion from revenue distribution from the timber sales on the Square. Thus began decades of litigation in the *Short* case.

In 1973 the Court of Claims reached a decision on the liability of the United States to the plaintiffs for money damages. The court upheld plaintiffs' contention that they were wrongfully excluded from distribution of timber sale revenues from the Square and ordered determination of which persons are entitled to share in a final award and in what amount. That litigation is still going on and shows no promise of conclusion.

In reaching its conclusions as to financial liability of the federal government, the Court of Claims made a number of statements in its opinion and findings concerning rights of the individual plaintiffs. While the legal effect of these statements and findings is in dispute, it is being argued by the *Short* plaintiffs that the unallotted lands of the Hoopa Reservation cannot be held by the United States in trust for tribal government, but instead for individual Indians, including some 4000 plaintiffs who are neither members of the Hoopa Valley Tribe nor any other tribe.

Because of the extraordinary statements of the Court of Claims in 1973, serious arguments are being advanced that the Hoopa Valley Reservation, unlike any other Indian reservation in the United States, is a non-tribal reservation.[3] It is being claimed that *no tribe* may exercise governmental authority over any part of the Hoopa Valley Reservation.

While the Court of Claims has not addressed the question of the right of the Hoopa Valley Tribe to exist and to exercise governmental authority, and indeed lacks jurisdiction to deal with that question, a separate lawsuit known as *Puzz v. United States* [4] has extended the decision of the *Short* case into the political arena. The *Puzz* case was filed in federal district court in 1980 to disestablish the Hoopa Valley tribal government and to order the United States to cease having any relationship with it. This suit would, if successful, bar the existence of Hoopa Valley tribal government, or for that matter, any tribal government on the Hoopa Valley Reservation.

Both the *Puzz* and *Short* cases are still in litigation. The federal district court in San Francisco ruled on the merits of the *Puzz* case on April 8, 1988, basing its ruling on *Short*. The court ordered the Interior Department to submit a "compliance plan," under which federal officials will run the Reservation and individuals and tribal governments alike will be relegated to an advisory role. Since the Court of Claims has also made rulings on the merits of the *Short* case, the Interior Department is forced to take into account all of the rulings. The Court of Claims is a court of limited jurisdiction -- having the right to adjudicate only money claims against the United States arising out of *past* actions. But even before the sweeping order in *Puzz*, since the Interior Department was concerned about the impact of future money claims, the decisions in the *Short* case brought about an upheaval in the relations between the Hoopa Valley Tribe and the Interior Department and led to a series of extraordinary actions in an effort to determine the method by which the unallotted lands and revenues of the Hoopa Valley Reservation are to be managed. *Short* and *Puzz* have created an administrative nightmare for the Bureau of Indian Affairs which must now determine methods of dealing with the uncertain right of thousands of non-tribal persons to participate in policy-making, use the resources, and spend the income from the Hoopa Valley Reservation.

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3 However, the Claims Court judge now handling *Short* ruled on March 17, 1987, that the legislative and administrative history of the reservation did not prevent the Secretary from permitting organized tribal governments to use reservation revenues. The court also noted that the unallotted lands of the reservation are not individually owned. 12 Cl. Ct. 36, 40, 42. Nevertheless, *Short* plaintiffs are seeking reconsideration of those rulings and are preparing to press their view on appeal.

4 *Puzz v. United States and Hoopa Valley Business Council*, Civ. No. C 80-2908 TEH (N.D Cal.).

The *Short* decisions indirectly affect over 100 Indian reservations in the United States, and its rulings bind over 5000 people and reservation lands covering over 230 square miles. Most important, they jeopardize the future of any tribal government on the Hoopa Valley Reservation. The Hoopa Valley tribal government has been formally organized and functioning as a tribal government from about 1910 and has been organized under a federally-approved constitution since 1933. In addition to the Hoopa Valley tribal government, there is also a band on the enlarged Hoopa Valley Reservation known as the Coast Indian Community of the Resighini Rancheria. This group also has a federally-approved constitution and exercises the powers of a tribal government within its rancheria. In addition, there is an incipient tribal government now being organized for Klamath River Indians known as the Yurok or Pohlic-lah Tribal Community. *Short* and its progeny have created profound uncertainty over the fate of these separate tribal governments and over the lands and resources that are within their jurisdiction.

Thus, a single court case, brought for money damages, has spawned far-reaching problems which undermine the government-to-government relationships between the federal government and the tribal government of the Hoopa Valley Tribe as well as other tribal governments organized to represent Klamath River Indians.

II. HOW DID THIS COME TO PASS?

The present complex state of affairs of the Hoopa Valley Reservation cannot be understood without knowing something about how the two reservations came to be established and how they came to be joined.

A. THE ORIGINS OF THE TWO RESERVATIONS.

The first reservation to be established was the Klamath River Reservation created in 1855 by an Executive Order for the Yurok and other Indians living along the Klamath River in Northern California. The reservation consisted of a corridor of land along the river beginning at its mouth on the Pacific Ocean and running upstream 20 miles extending back one mile from the river on each side.

In 1864 Congress authorized the President to set aside four tracts of land in California for Indian reservations. (Act of April 8, 1864, 13 Stat. 39.) Within a short time, the Superintendent of Indian Affairs for California negotiated an

agreement with the Hoopas and their allied tribes in order to end the warfare between them and the whites of the area.[5] By this agreement the government agreed to set aside a tract of land around Hoopa Valley -- on the Trinity River -- in the form of a square 12 miles on a side, as a reservation for the tribes which were parties to the agreement. This tract was some 45 miles upstream from the coast and was entirely unrelated to the Klamath River Reservation. The agreement made with the Hoopas was performed by Executive Order of President Grant in 1876 which defined the precise boundaries of the Hoopa Valley Reservation and established the Hoopa Valley Square. (Executive Order of June 23, 1876.) Virtually all of the Square was Hoopa aboriginal territory.

B. WHY THE TWO RESERVATIONS WERE JOINED.

The trouble began when whites living in the coastal area challenged the validity of the Klamath River Reservation, arguing that it constituted a fifth reservation in California and was therefore in violation of the 1864 Act. In 1888 a federal district court ruled that the Klamath River Reservation was no longer an existing valid reservation because it was in violation of the Act.[6] When the Interior Department refused to regard that decision as binding, bills were introduced in Congress to abolish the reservation. This created serious consternation in the Interior Department which felt it was necessary to protect the rights of the Klamath Indians to occupancy, at least until there had been some steps taken to allot or to distribute their lands to them.

The Klamath River Reservation was 25 miles distant from the nearest boundary of the Hoopa Valley Reservation. Because there were Klamath River Indians residing along the Klamath River in the gap between the two reservations, a solution suggested itself to the Interior Department as an interim measure. The 1864 Act authorizing California Indian reservations permitted the enlargement of existing reservations. Why not extend the boundaries of the Hoopa Valley Reservation to create a 25-mile-long corridor connecting it to the Klamath River Reservation and thereby give the Klamath River Reservation protected status under the 1864 Act? Counsel for the Department of the Interior advised that this would be entirely proper so the Interior Department drew up an Executive Order for the President. On October 16, 1891, President Harrison signed an Executive Order extending the boundaries of the Hoopa Valley Reservation to link up with the former Klamath River Reservation.

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5 The agreement with the Hoopas, made on Aug. 22, 1864, was entitled "Treaty of Peace and Friendship between the United States government and the Hoopa, South Fork, Redwood and Grouse Creek Indians." While the Interior Department treated the agreement as binding, it chose not to present it to the Senate for formal ratification.

6 *United States v. Forty-Eight Pounds of Rising Star Tea*, 35 F. 403 (N.D. Cal. 1888), *aff'd*, 38 F. 400 (Cir. Ct. N.D. Cal. 1889).

C. THE HOOPAS AND THE KLAMATH RIVER INDIANS REMAINED SEPARATE TRIBES.

There is little question that the 1891 Executive Order was an interim measure taken to protect the Indians of the Klamath River Reservation in the occupancy of their lands until legislation could be enacted which would authorize allotment to individuals and sale of the surplus lands to satisfy the clamor of white settlers for access to these lands. Consolidation of those Indians and the Hoopa Valley Tribe was never intended; in fact, it was barred by federal law. The Acts of May 17, 1882 (22 Stat. 68, 88), and July 4, 1884 (23 Stat. 76, 97), presently found in the United States Code at 25 U.S.C. 63, expressly proscribe the consolidation of tribes residing on Executive Order reservations without obtaining the consent of the tribes to be affected thereby. Neither the Hoopa Indians of the Hoopa Valley Reservation nor the Indians of the Klamath River Reservation ever consented to be consolidated with each other on a single reservation. There is no evidence that the President ever contemplated such consolidation by his Executive Order.

D. CONGRESSIONAL TREATMENT OF THE KLAMATH RIVER RESERVATION AS SEPARATE FROM THE HOOPA VALLEY RESERVATION.

The Interior Department's strategy in protecting the Klamath River Reservation until an allotment act could be passed was successful. Within eight months after the Executive Order enlarging the Hoopa Valley Reservation, Congress passed an act authorizing public settlement and purchase of lands within the Klamath River Reservation following the distribution of allotments to resident Indians and the reservation of land for Indian villages. Proceeds arising from the land sales were to be used by the Secretary "for the maintenance and education of the Indians now residing on said lands and their children." Act of June 17, 1892, 27 Stat. 52. Because the Act was not intended to consolidate the Indians of the Klamath River Reservation and the Hoopa Valley Tribe, it was silent as to the original Hoopa Valley Reservation, and made no provision whatever for the Hoopas to share in proceeds from the sale of unallotted lands on the Klamath River Reservation. Just as Congress made no provision for Hoopas to share in proceeds of the lands of the Klamath River Reservation, it made no provision and gave no sign of recognition that the Klamath River Indians had any rights on the Hoopa Valley Reservation. To all intents and purposes, Congress regarded the two reservations as entirely separate. Under the 1892 Klamath River Act, allotments of valuable redwood timber tracts were made to Indians residing on the original Klamath River Reservation. In the same year, President Harrison, acting under the General Allotment Act, authorized further allotment of lands on the corridor connecting the Klamath River Reservation with the Hoopa Square. These large allotments, like the Klamath River Reservation allotments, included valuable timber lands. In the

years that followed, the allotments were logged off and many were sold. Most of the allottees moved away from the reservation and ceased to participate in tribal matters.

Since 1892 Congress has continued to treat the Klamath River Reservation as a separate reservation apart from the Hoopa Valley Reservation. For example, the Act of March 2, 1917 (39 Stat. 969), amended the original 1892 Klamath River Allotment Act to provide specifically for application of proceeds from sales of the surplus lands on the Klamath River Reservation to the improvement of Indian allotments and maintenance and education of the Indians and their children then residing on these lands. In 1942, Congress extended the trust period on lands allotted to Indians of the Klamath River Reservation. Act of December 24, 1942 (56 Stat. 1081). And as recently as 1958, Congress restored to tribal ownership approximately 160 acres of vacant land to the Klamath River Reservation. Act of May 19, 1958 (72 Stat. 121). None of these acts applied to the Hoopa Square.

E. TREATMENT OF THE HOOPAS.

The Hoopas received very different treatment. While the Indians of the Klamath River Reservation enjoyed the individual income and fruits from the sale of their timber and lands during the early part of the 20th century, it was not until 1922 that Hoopas were permitted any allotments of land. At that time about 3000 acres were approved for allotments in small parcels averaging eight acres apiece and selected for farming purposes. In fact, many Hoopas were forced to wait until the period 1933-1950 for final completion of the allotment program on the Square.

F. POLITICAL AND SOCIAL SEPARATENESS OF THE HOOPAS AND KLAMATH RIVER RESERVATION INDIANS.

The action of President Harrison joining these two reservations' boundaries had no practical effect on the separateness of the two groups of Indians. The rugged mountains and deep canyons insulated the Hoopas from the Indians of the Klamath River Reservation. Although the Trinity River, which passes through the Hoopa Valley Reservation, joins the Klamath River, the rapids are treacherous and the canyon walls steep. Even today, there is no road from the Hoopa Square through the Klamath River Reservation to the ocean and access between the two areas is highly circuitous.

For over 60 years, the Hoopas and Indians of the Klamath River Reservation dwelt in peace and amity. However, there is no question, and all respectable anthropological data confirms, that the two groups were geographically and linguistically separate and following white settlement they continued to reside in their separate aboriginal areas.

G. ORGANIZATION OF TRIBAL GOVERNMENT.

In the 20th century the Hoopas took steps to organize a formal government. A formal council was established in 1909 and in 1933 the Commissioner of Indian Affairs approved the constitution and bylaws of the Hoopa Business Council as the official representative body of the Hoopa Valley Tribe. This body exercises tribal governmental authority only over the Square.

The Indians of the Klamath River Reservation remained an unorganized tribe. Indeed, they have steadfastly refused to organize to this day, with two exceptions. In 1938 the Interior Department purchased a tract of non-Indian land within the Klamath River Reservation, known as the Resighini Rancheria, for a small number of Yuroks residing on the Lower Klamath River. This group is called the Coast Indian Community and has adopted a constitution and bylaws approved by the Department of the Interior. It is presently a functioning Indian tribal entity. Recently, another group of Indians of the Klamath River have organized as the Pohlic-lah tribal organization and are developing a constitution and bylaws. This organization is supported by over 200 Indians, but is not officially recognized by the Bureau of Indian Affairs.

H. THE ORIGINS OF THE SHORT CASE.

Before 1950, there was no little friction or conflict between the predominantly Hoopa people of the Hoopa Valley Square and the predominantly Yurok people of the Klamath River corridor. The conflict between these two groups began when timber on the Square became marketable in the 1950's. In 1955, the Secretary of the Interior began distributing part of the income from the Square pursuant to 25 U.S.C. 407 in accordance with the resolution of the Hoopa Valley Business Council. Some of the income was used by the Tribe for governmental purposes. The remainder was paid to tribal members as individual distributions. The Hoopa Valley tribal government has depended upon this resource for sustenance of its programs ever since.

The Interior Department acted in the good faith belief that restricting this distribution to Hoopa Valley tribal members was correct as a matter of law. Indeed, in 1958 a legal opinion of the Solicitor for the Department of the Interior upheld the correctness of that view. (65 Ops. Solic. Int. Dept. 59.)

But in 1963, the *Short* suit challenged the exclusion of Indians of the Klamath River Reservation and their descendants from these distributions. The suit was originally brought on behalf of over 2000 persons, none of whom were

Hoopa tribal members, and was later enlarged to almost 3800 by intervention. Subsequent numbers have sought similar relief in three separate actions.[7] All the plaintiffs in these actions claim to be descendants of the pre-1900 Indians of the Klamath River. The land allotments given to some plaintiffs or their ancestors were, with few exceptions, sold long ago. Most of the plaintiffs are members of no Indian tribe; several hundred are members of other federally recognized tribes. Fewer than 20% of the plaintiff group live on the enlarged Hoopa Valley Reservation; most plaintiffs live far from the Reservation.

In 1972, a Trial Commissioner of the Court of Claims upheld the argument of the plaintiffs that the Interior Department had acted improperly in excluding them from the distribution of timber proceeds. That decision was upheld by the Court of Claims in 1973 and the Supreme Court refused to grant review in 1974.

I. SOME CONSEQUENCES OF THE SHORT RULING.

It would be an understatement to say that the decision of the Court of Claims has thrown the Interior Department into serious confusion over how to deal with the thousands of non-tribal people who have potential rights in the income and resources of the Hoopa Valley Square. The problem is particularly acute because these individuals are split into numerous diverse factions with no authorized representative. Indeed they are represented by a number of different law firms and share only the common bond of their pursuit of money as plaintiffs in the court actions.

There is, at this time, no final legal basis for determining whether the *Short* plaintiffs have any right to a voice in the management of the affairs of the Reservation, and if so, the form in which their views can be expressed. The Interior Department has struggled with various alternatives in seeking to be fair to this undefined group. Until very recently, the Department operated under an interim administrative decision which directed the Superintendent to publish notice in local newspapers of hearings on almost every action affecting the management of trust assets on the Reservation. Hearings were held and the Department sought the views of all interested parties. However, *Puzz* rejected that process, and the district judge ordered the Department to fashion a new system for determining the needs and views of non-Hoopas. The absence of any organized Yurok tribe or other tribe of the Klamath River Reservation has thrust the Interior Department into the untenable position of being the manager and regulator of the affairs of the Square and the Extension of the Hoopa Valley Reservation. For example, because there is no organized Tribe, the Department of the Interior manages the fisheries resource of the Klamath River system by federal

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7 *Charlene Ackley v. United States*, Cl. Ct. 460-78; *Brett Aanstadt v. United States*, Cl. Ct. 146-85L; *Norman Giffin v. United States*, Cl. Ct. 746-85L.

regulation. 25 C.F.R. Part 250. In effect then, the Interior Department is acting as a surrogate tribal government.

Since 1974, the Department has taken the extraordinary step of sequestering the income from the timber of the Hoopa Valley Reservation, holding the majority of the income in an account which they will not expend for the benefit of the Reservation because of their uncertainty as to which conduct might be wrongful in light of *Short*. The Hoopa Valley Tribe strongly opposes the misappropriation of this revenue from the Square but the Interior Department continues this practice and refuses to release the funds.

J. THE PUZZ CASE.

In 1980, a handful of *Short* plaintiffs began suit in United States District Court in California in the *Puzz* case. That suit asserts that the governing body of the Hoopa Valley Tribe, the Hoopa Valley Business Council, is illegitimate, since it was elected only by members of the Hoopa Valley Tribe as defined by its constitution and not by the parties claiming rights as plaintiffs in the *Short* case. The suit demands that the Hoopa Valley Business Council be dissolved as a governing body and that the Secretary of the Interior be ordered to cease recognizing or dealing with that body. Indeed, the suit demands that the Secretary of the Interior be barred from recognizing the Hoopa Valley tribal government, or for that matter, any tribal government on the Hoopa Valley Reservation. The suit claims to be grounded on the fundamental rulings of the *Short* case.

The federal district court rejected these demands on April 8, 1988, but announced a whole new theory granting relief based upon an interpretation of *Short*, the Act of 1864, and the general texture of federal "trust responsibility" toward Indians. The *Puzz* court acknowledged its lack of authority to determine such questions as (1) the right of the United States government to recognize any particular Indian tribal government, (2) the right to determine membership in any Indian tribe, and (3) the political rights of members of an Indian tribe. Nevertheless, the court held that the Reservation as extended was intended for several tribes and that absent statutory delegation, existing tribes lack powers to manage territory there. Since plaintiffs have ancestral connections with Indian groups for whom the Reservation was created, the court concluded that the Department must run the Reservation for the benefit of all, and cannot permit powers to any tribal government that are not exercisable by non-tribal, individual plaintiffs. Accordingly, the court (1) ordered the Department to submit a "compliance plan," including a system for locating, consulting with and responding to all non-Hoopas who can trace their origins to 1860-era Indian groups, (2) rejected the Department's standards for approving tribal governments' programs and budgets, (3) threw out the operating agreement with the Tribe's corporation that assured Indian employment in Reservation logging, and (4) barred funds for the Hoopa Valley Tribe to hire attorneys to appeal or defend its powers. The

Puzz order and resulting "compliance plans" will be reviewed by the Court of Appeals.

Thus we have seen how the well-intentioned efforts of the federal government to protect the Indians of the Klamath River have led over a period of 100 years to a crisis that threatens to destroy an Indian tribe, and with it, the very concept of what constitutes an Indian tribe. The crisis has serious implications for Indian tribes everywhere.

III. WHY THE PROBLEMS OF THE HOOPA VALLEY RESERVATION MUST BE ADDRESSED BY THE CONGRESS.

A. THE LIMITED POWER OF THE JUDICIAL BRANCH.

The judicial branch has the power to make rulings affecting the powers of the United States and the rights of Indians. It can decide, as the Court of Claims did here, that the government was wrong in taking certain actions, or that it misconceived the legal effects of those actions. Unfortunately, the court cannot unravel the knot which those decisions create for future administration and policy-making. Congress has deliberately withheld from the Court of Claims the power to issue general declaratory judgments and injunctions and has left it solely with the power to make monetary awards against the United State Treasury.[8]

In the *Short* case, the court eventually will award judgment in favor of the plaintiffs upon the ground that the Executive Order of the President issued in 1891 could not have created a reservation for some purposes and not for others. The Order had the effect, ruled the court, of creating a single reservation and having done that, the government could not discriminate in distributing income among those who inhabited different areas of the reservation. That ruling was entirely unanticipated by the government and was contrary to the understanding and practice of the Interior Department during the preceding 82 years.

While the *Short* decision was an extremely narrow and limited one, applying only to distributions between 1958 and 1980, the *Puzz* court and the Interior Department have extended the effect of the ruling by treating a number of its statements and conclusions as though they were in fact declaratory judgments binding upon the Interior Department. One result has been that the Interior Department has pushed aside the Hoopa Valley Tribe government in managing the timber operations on the Square in order to fill a vacuum left by the absence of any organized tribe which can claim to represent the interests of the plaintiffs

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8 *United States v. Testan*, 424 U.S. 392, 398 (1976); *United States v. King*, 395 U.S. 1, 3 (1969).

in the *Short* case. The Interior Department is faced with the dilemma of shaping future policy respecting the Hoopa Valley Reservation so as to protect the Treasury from further claims. The Court of Claims is powerless to direct the Interior Department in this regard and the Interior Department is struggling with the question of how to fit its administration of the Reservation to the ruling of the court and still comply with other federal statutes and clearly established principles of trust responsibility to Indians and Indian tribes.

The *Puzz* case was brought in an effort to force the Interior Department to adopt the views of some of the *Short* plaintiffs (five in number) as to how the Reservation should be run. That lawsuit asked the federal court to rule that the Business Council of the Hoopa Valley Tribe has no authority over the Reservation whatever, to bar the Business Council from conducting any business as a governing body and to bar the federal government from recognizing anything but a single governing body over the Reservation. Though the *Puzz* court has declined these requests, it has also de-legitimized not only the Hoopa Valley tribal government, but also the Resighini tribal government and the proposed new Pohlic-lah tribal government, and has made the Hoopa Valley Reservation the only Indian reservation in the United States with wholly advisory tribal governments.

The plaintiffs in the *Puzz* case argue, as do the plaintiffs in the *Short* case, that the *Short* ruling holds that the Hoopa Valley Reservation is a creature unique and heretofore unknown to the federal legal system: a non-tribal Indian reservation belonging wholly to individuals whose rights derive from ancestry only. The *Puzz* order of April 8, 1988, in effect adopts that view.

These claims raise grave questions for federal policy and policy makers. Shall the United States government maintain a surrogate tribal government open to all persons claiming on the basis of racial ancestry alone? If so, this would mark a radical departure in federal Indian law which has long been recognized to be grounded upon the *political relationship* between the United States government and the Indian *tribes*. Indeed, in dealing with challenges to the power of Congress to extend benefits to Indians without running afoul of equal protection provisions barring racial preference, the Supreme Court ruled in *Morton v. Mancari*, 419 U.S. 535 (1974), that preference was not directed toward "a racial group consisting of Indians" but to members of "federally-recognized" tribes. Racial distinctions are subject to strict constitutional scrutiny whereas Congressional legislation intended to further tribal self-determination is subject only to the due process requirements of a rational connection to the fulfillment of Congress's unique obligation toward Indians.

The assertions by the *Puzz* plaintiffs may well be beyond the power of any court to adjudicate. The district court hearing the *Puzz* case has acknowledged that some of the rights and powers sought by the plaintiffs invoke the political question doctrine. That doctrine prohibits courts from questioning the status of

tribes recognized by the United States and from ruling on matters properly entrusted to the political discretion of Congress and the Executive.

Thus it can be seen that the courts cannot resolve the problems created by the *Short* decision. Without a Congressional resolution the Hoopa Valley Tribe, as well as the Klamath River Indians and the Interior Department, will be left in a political and legal quagmire from which there is no escape.

B. SPECIFIC PROBLEMS CREATED BY THE SHORT DECISION.

1. THE SCOPE OF FEDERAL TRUST RESPONSIBILITY.

The *Short* case is still in litigation on the question of just who is entitled to share in any award against the United States. A similar process is about to begin in *Puzz*. But already the courts' rulings have made it clear that they will make awards to persons meeting no minimum Indian ancestry requirement, nor any tribal connection, nor any present or past residence on any Indian reservation. This creates an extraordinary precedent. It extends federal trust responsibility beyond anything heretofore conceived and opens the door to argument by future claimants elsewhere based solely on remote Indian ancestry. *Puzz* indicates that broad standards will be used to determine who can use the Reservation and participate in management in the future.

2. THE MEANING OF THE WORD "TRIBE" IN FEDERAL STATUTES.

The foundation of federal trust management of timber on unallotted Indian lands is a federal statute found in 25 U.S.C. 407. That statute governs administration of all tribal timber throughout the United States. It authorizes the Secretary to use the proceeds from timber sales on unallotted lands "for the benefit of the Indians who are *members of the tribe or tribes concerned*" (emphasis added). In 1983, the United States Court of Appeals for the Federal Circuit ruled in the *Short* case that the Secretary of Interior should treat this statute as applicable to the plaintiffs. 719 F.2d 1133, 1136. Never before had the court suggested that this statute applied in this case. A glance at the language of the statute makes it clear why it would not appear to apply to the plaintiffs at all: they are *not* members of *any tribe*. The issue involving the meaning of section 407 arose in 1983 when the Hoopa Valley Tribe challenged the jurisdiction of the court, pointing out that *no* statute authorized any recovery by the plaintiffs. Even though the Court of Claims had previously ruled that the *Short* plaintiffs presented individual, not tribal claims, the court denied the challenge to its jurisdiction on the ground that the plaintiffs were entitled to recover under section 407 because the word "tribe" as used in the statute, "meant only the general Indian groups communally concerned with the proceeds -- not an officially organized or recognized Indian tribe."

This ruling contains an enormous potential for disruption of the well-established meaning of section 407. Henceforth the federal government may have to deal with thousands of individuals rather than federally-recognized tribal governments of each timbered Indian reservation. Never before has the word "tribes" been held to mean Indians who are "communally concerned" and who reject tribal organization and federal recognition. What is worse, "communally concerned" has been defined by the court in the *Short* case to include persons with minute amounts of Indian blood who have no connection to the Reservation except through remote ancestry. Congress should certainly review section 407 to determine whether it desires the concept of an Indian tribe to be expanded in the manner construed by the Court of Claims. The court acted upon what it regarded as a construction of Congressional intent. If that construction is wrong, then it is for the Congress to say so.

3. THE POTENTIAL IMPACT OF THE SHORT DECISION ON TRIBAL GOVERNMENT.

The *Short* and *Puzz* decisions hold the potential for terminating the Hoopa Valley Tribe, leaving nothing in its place. This is completely contrary to Congressional policy. Encouragement of tribal self-government has been the cornerstone of federal Indian policy since 1934 when Congress enacted the Indian Reorganization Act. 25 U.S.C. 461 *et seq.* This policy was given renewed affirmation by the enactment of the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. 450 *et seq.*, the Indian Financing Act of 1974, 25 U.S.C. 1451 *et seq.*, and the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 *et seq.*

The United States Supreme Court has repeatedly emphasized the primary importance of the tribe and tribal government as the vehicle of Indian rights. *See California v. Cabazon Band of Mission Indians*, ___ U.S. ___, 107 S. Ct. 1083 (1987); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980); *United States v. Wheeler*, 435 U.S. 313 (1978); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Bryan v. Itasca County*, 426 U.S. 373 (1976); *Fisher v. District Court*, 424 U.S. 382 (1976); *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649 (1976); *United States v. Mazurie*, 419 U.S. 544 (1975); *Morton v. Mancari*, 417 U.S. 535 (1974).

By contrast, the *Puzz* court cast off the rubric of tribal self-government in favor of federal rule, a colonial administration in which tribes are passive advisors. Ironically, it has done so under a notion that statutory trust duties compel this result. To be sure, Congress has established a federal trust responsibility to Indian allottees of lands on Indian reservations. 25 U.S.C. 406(a). But Congress certainly never conceived that any class of persons other than tribal members could claim rights in *unallotted* lands. The problem with the *Short* case is that, as extended in *Puzz*, persons who are not tribal members have use of and political rights in unallotted reservation lands. Carried to extremes, these cases may

destroy the communities and land base of many Indian tribes. This contains grave implications for the federal policy of promoting tribal self-determination and tribal government. Indeed it runs flatly contrary to the entire principle of government-to-government relations and Indian self-determination.

C. THE ROLE OF CONGRESS.

The *Short* case has created grave conflicts and uncertainties for the Indians of Hoopa Valley Reservation in Northern California. Thousands of persons and the future of tribal government in Northern California are affected. The decision has also cast a shadow of uncertainty over important federal statutes and regulations governing distribution of income from timber sales on all unallotted Indian lands. That is not all. It has raised fundamental questions of the limits to which federal Indian trust responsibility should be stretched. At the same time, it has created deep bitterness and divisiveness between two Indian peoples: the Hoopas and the Indians of the Klamath River Reservation. The future management of the Hoopa Valley Reservation is now a matter of grave uncertainty. The continued existence of the Hoopa Valley tribal government, as well as the Resighini tribal government and the incipient Yurok government, have all been brought into serious question by this court case. These governments will be reduced to mere "voluntary associations," having no effective governmental authority, unless Congress acts to clarify the confusion which has been engendered by the *Short* case.

The courts cannot furnish answers to these questions. The solutions are political in nature. The Court of Claims has ruled that, intentionally or not, the President of the United States in 1891 brought two reservations together and made them into one. The courts have not resolved, and cannot effectively untangle, the political consequences of that act. What the President did by Executive Order in 1891, the Congress can revise, if it deems that action wise and just.

Admittedly, the problems of the Hoopa Valley Reservation are now complex. The Secretary of Interior lacks legislative guidance and cannot run the political lives of Indians without violating fundamental principles of Indian self-determination. If the Hoopa Valley Reservation is to be a non-tribal reservation, then no tribal government can be organized. It would appear on its face that such a proposition is absurd. Nevertheless, it is being seriously advanced in the courts. No matter what the courts may ultimately rule, a legislative solution is ultimately inevitable.

The history of the Hoopa Valley Reservation is an unfortunate one: an action to protect Indians on the Klamath River has been converted into an effort to terminate the long-standing and exemplary Hoopa Valley tribal government. Since the current crisis stems from the unforeseen implications of a federal action only an Act of Congress can remedy the problem. The Congress should act promptly to fulfill its obligation to preserve self-government for Indians by ac-

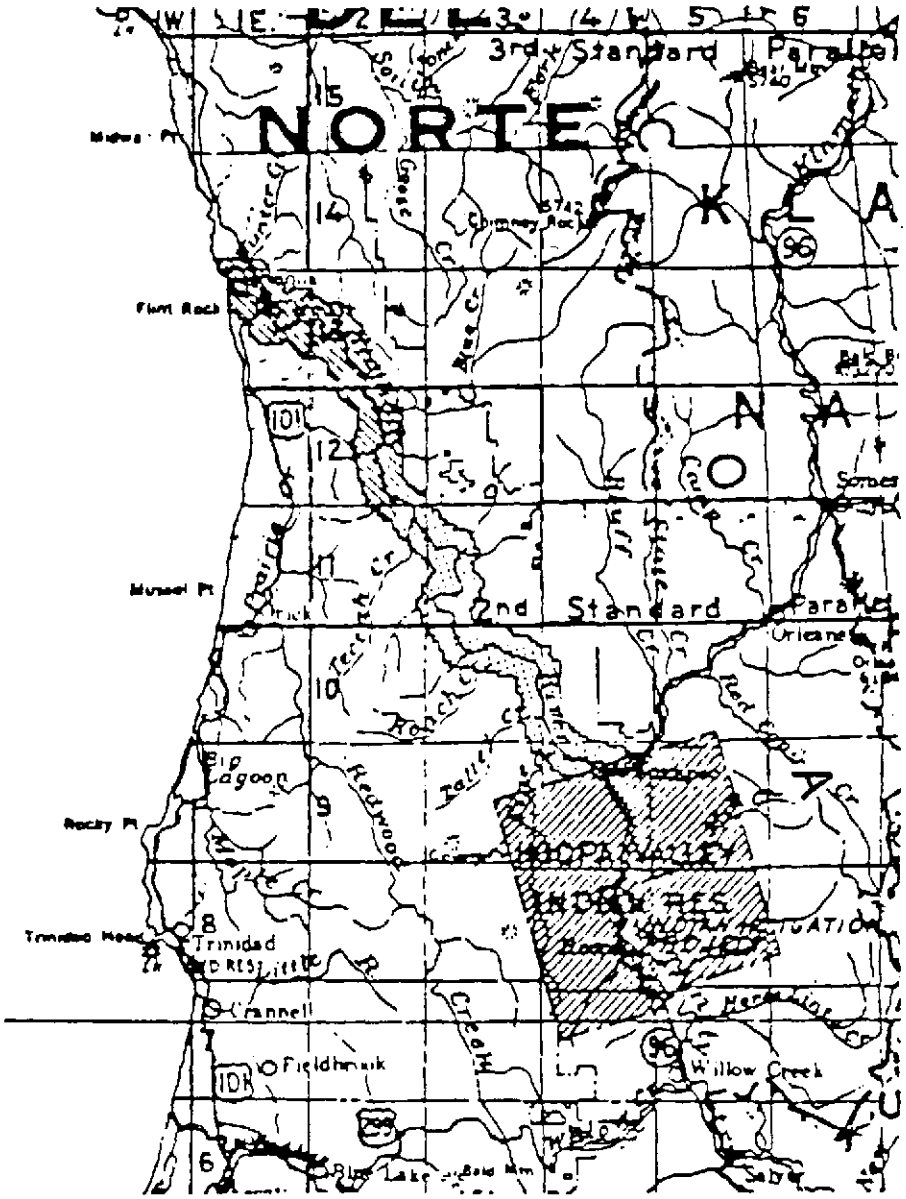
tion which restores effective tribal government to the Hoopa Valley Reservation. Such legislation should not and need not affect the rights of the parties to the *Short* litigation to pursue their claim for money damages. Beyond that, however, it is the responsibility of the United States Congress to protect the survival of tribes and tribal government on the Hoopa Valley Reservation.

Hoopa Valley Business Council
Hoopa Valley Tribe
May 16, 1988

32-380 0 - 90 - 4

MAP OF HOOPA VALLEY INDIAN RESERVATION, CALIFORNIA*

Scale: 1 inch = 12 miles



LEGEND:

- Old Klamath River Reservation.
- Connecting Strip.
- Original Hoopa Valley Reservation.

*United States Department of Interior, General Land Office 1944.

(A75:9)

Mr. LEHMAN. Thank you. I want to thank each of the panelists for their excellent testimony. I just have a couple of brief questions.

Could somebody tell me what percentage of the Hoopas who would benefit from this bill actually live on the reservation?

Mr. SCHLOSSER. Statistically, it is between 60 to 70 percent of the Hoopas who live on the Square. Let me put that another way. 60 to 70 percent of the enrolled members of the Hoopa Valley Tribe live on the Square.

Mr. LEHMAN. And is all of the property on the Square held in common as a reservation? None of that is private property? Is that a fair statement?

Mr. COLGROVE. Except for about 6 percent of the reservation, which was allotted out on the valley floor. About 94 percent of it is held in common, yes.

Mr. SCHLOSSER. We will submit statistics on the acreage for the record.

Mr. LEHMAN. Is this the only solution you see to the problem?

Mr. COLGROVE. Mr. Chairman, the Hoopa Tribe has tried to go to the negotiating table about 25 times in the last 10 years to try to come up with an amicable solution. We were even ordered by the judge to do that.

We were unable to come to any type of solution. We couldn't even get the main participants to the table, and so consequently, when we go to the meetings to negotiate, we basically end up talking to ourselves. We cannot come to an accord with them if we don't even know who to meet with. We advertise, invite, nothing, and even with the court imposed negotiating settlement, we couldn't come to any accord.

Mr. LEHMAN. And you think that this settlement is fair as far as the Yuroks are concerned?

Mr. COLGROVE. If you look at the historical perspective, most of the Yurok land down there was allotted out to them in large chunks of land, in 80-acre allotments, with most of it containing large blocks of timber. I would say that with that amount of land and the money that was sold, and I think with the resources that are available coming up, I think we have to look at the timber on the Hoopa Reservation, which is commonly referred to as being of big value.

What is left on the reservation now is basically old growth timber, which—some of it is very old and is depreciating very fast, and also we have a 14 million sustained yield, according to law, and that is all we can cut, and that was supposed to be in perpetuality.

And so in doing that, what we have then is a very limited income over the next, say, 20 or 30 or even 50 years, until our second growth timber comes back into being again.

We look at the Klamath River as the new economic venture. This last year they had commercial fishing on the river that was valued at almost $1 million. Over 90 percent of the people who participated in that were Yuroks and plaintiffs down there, and the money derived as licensing fees is being held in escrow by the Bureau of Indian Affairs.

But we look at that only as the tip of the iceberg as a potential for a gigantic fishery on the lower Klamath. At this point we have a difficulty in perpetuating the runs because of the organization on the lower Klamath. Although at Hoopa we are putting many, many salmon back into the river every year, there is very little salmon being developed on the Klamath River, on the Square because there is really no organized both to do it.

Mr. LEHMAN. Thank you very much.

Mr. Bosco, is there anything you want to bring up?

Mr. BOSCO. No, Mr. Chairman.

Mr. LEHMAN. I thank each of the witnesses for your excellent testimony, and now we will hear from the representatives of the Yurok people—Ms. Betty Jackson, Mr. Leslie Ammon, Ms. Jackie Winter, Mr. Robert Kinney, Ms. Dorothy Haberman, Mr. Sam Jones, Ms. Barbara Orcutt, and Roanne Lyall—and I understand you are all Indians of the reservation who are not members of the Hoopa Valley Tribe, and they are accompanied by their attorney, Mr. Thierolf.

I want to ask each of you, have you submitted your written statements for the committee?

Without objection, they will be printed in the record, and I would like to ask each of the witnesses to summarize your testimony and be as brief as possible. We do want to hear you out.

PANEL CONSISTING OF RICHARD THIEROLF, ATTORNEY; BETTY JACKSON; LESLIE AMMON; JACKIE WINTER; ROBERT KINNEY, DOROTHY HABERMAN, AND SAM JONES

Mr. THIEROLF. I am Richard B. Thierolf, Jr., and could I ask a favor of the committee?

Mr. LEHMAN. You can attempt.

Mr. THIEROLF. We have a number of people here who have come a long ways to testify. We were told we would have 45 minutes to testify. We will keep our presentation within that time period.

If the committee has questions, I would appreciate it if the committee would hold the questions until after everyone has testified. You may find that somebody will answer your question.

Mr. LEHMAN. The Chair will make the determination as to who can ask questions and when, and the panels will proceed.

Mr. THIEROLF. Fine. It was just a favor I was asking.

Mr. LEHMAN. Fine. We will see.

Mr. THIEROLF. I am Richard B. Thierolf, Jr., a lawyer. For 8 years I have handled the case of *Lillian Blake Puzz* v. *United States* in the U.S. District Court in San Francisco. I speak in behalf of the overwhelming majority of Indians of the reservation.

Our leaders met with Chairman Udall last Thursday. He was perplexed about our plight, and suggested that we talk with Mr. Teno Roncalio of Wyoming. Mr. Roncalio told us to explain why this is a bad bill. That is what I will do.

Most of the Indian people who live on the reservation do not belong to the Hoopa Valley Tribe.

I have been listening to what Mr. Schlosser said. He came on later than I did as far as the Puzz case is concerned. You should read the cases. If the courts have said the history of the reservation

is a certain way, there is not going to be any evidence in here after all these years that is going to make what they have said somehow false.

Slightly more than 900 Hoopa Valley Tribe members live on the reservation. More than 1,000 other Indians of the reservation live there. Over half of the Indians who do not belong to the Hoopa Valley Tribe live on the Square. Over half the Indian students at Hoopa High School on the Square, the only high school on the reservation, do not belong to the Hoopa Valley Tribe.

Why are we here? The reservation's problems stem from an election held among 106 reservation Indians on May 13, 1950. This group, by a vote of 63 to 33, adopted a constitution and approved a roll of members. Never before had such a roll existed. This group called itself the Hoopa Valley Tribe. The BIA had always used census rolls to define who had reservation rights before.

But this group I am talking about, the Hoopa Valley Tribe, included Yurok, Karuk, and Hupa Indians. Its enrollment standards had nothing to do with ethnicity. It was a self-selected group of people from the Square who wanted exclusive control of the timber on the Square and the money that timber generated.

And, as I explained to Mr. Swimmer when I met him this morning—he asked the question, was there any organization on the reservation before 1950? I said no, and his other advisers, Mr. George, Solicitor for the Interior Department, backed me up on that. And he asked if there had ever been any distributions of reservation revenues before the 1950s, and again the answer is no.

But at any rate—that was news to him this morning, I guess, but at any rate the Hoopa Valley Tribe excluded many Indians of the Square and all of the Indians of the Extension. But the BIA illegally allowed this group to claim exclusive jurisdiction over the Square's resources and income, disregarding the legal fact, based upon the 1864 act whereby the reservation was created, that the reservation is a single reservation, including the Extension and the Square, in which all of the Indians have equal rights.

This group, the Hoopa Valley Tribe, now numbers approximately 1,800. Obviously, many of its members do not live on the reservation. Over 5,000 people have reservation rights.

Beginning in 1955, the BIA issued checks from timber proceeds to the minority of them, the ones who belonged to the Hoopa Valley Tribe. No such distributions have gone to anyone before, as I explained earlier. The majority immediately protested to the BIA. They were just as much and are just as much Indians of the reservation as the ones who got the checks.

The BIA ignored this protest. The BIA distributed more and more reservation income to the Hoopa Valley Tribe, and to this day the majority have never gotten a thing in the way of distributions of communal reservation revenues.

In effect, 63 people who voted in the May 1950 election, fully and tenaciously backed by the BIA, have dictated the rights of several thousand people. The only explanation for this is bureaucratic intransigence. This is unfair.

Litigation was inevitable. In 1963, the majority of the Indians filed *Short* v. *United States* in the Court of Claims. They demanded money damages. They won in 1973. The court held that the Hoopa

Valley Tribe was not a tribe from time immemorial, but instead was an organization formed in 1950 to take unfair advantage of the timber money. It held that the Hoopa Valley Tribe does not own the Square and that the BIA breached its trust duty to treat all of the Indians equally and indistinguishably regardless of whether they belonged to an organization.

Read it. Look it up. *Hoopa Valley Tribe* v. *United States.* If you don't believe that is what the case, read what the court said the case said.

The act of April 8, 1864—it is in your packet—whereby the reservation was established, cemented this trust for all the Indians of the reservation, the Indians of northern California who originally inhabited the reservation or who were induced to move there, and that is why they were induced to move there, as part of the legislative history of the 1864 act, and their descendants.

The Short case continues to this day to determine whether any of the more than 3,800 plaintiffs are ineligible to recover damages and to determine how much each qualified plaintiff is entitled to.

But the 1864 statute and the 1973 judgment withstands all attacks. The Supreme Court upheld the court's judgment in 1974—contrary to what Mr. Risling said, upheld the Claims Court's judgment in 1973 and 1974, 1981, and 1983. The Court of Claims upheld it in *Hoopa Valley Tribe* v. *United States,* a copy of which is part of your packet, when the Hoopa Valley Tribe sued the United States to overturn it. It is the law. This is one reservation, with equal rights for all the Indians of the reservation.

The BIA ignored this law. After 1973, it continued to arm the Hoopa Valley Tribe with hundreds of—this is the attorneys' fees that everybody has been talking about—to arm the Hoopa Valley Tribe with hundreds of thousands of dollars annually for lawyers and lobbyists to help it resist the court's judgment.

Hundreds of thousands of dollars can turn up a pretty high heat on the flame of controversy on an Indian reservation, believe me.

The majority of the Indian people there, however, continue to get nothing.

My case, the Puzz case, stood on the shoulders of the judgment in Short to put a stop to this discrimination. On April 8, 1988—you have heard it earlier—the district court ordered the BIA, on pain of contempt of court, to submit a plan to administer the reservation for the equal benefit of all Indians in a nondiscriminatory manner. It ordered a stop to discrimination in the provision of funds and services and the management of resources.

It looks like H.R. 4469 is the BIA's response. So the breach of trust continues, and that is why we are here.

But for H.R. 4469, we would be trying to help the BIA to plan for reservation administration on a nondiscriminatory basis. The Puzz court ruled that all Indians of the reservation have an equal right to their self-government. The illegal 1950 election cannot abrogate this right. We want a reservation wide referendum on forming a council to administer the communal resources and revenues of the entire reservation, just as other reservations have such councils.

We have a petition. It has signatures on it now numbering twice as many people as voted in the Hoopa Valley Tribe's last election for the Hoopa Valley business council. Ms. Haberman, who will tes-

tify later, is going to say more about that, but I want to say for the purposes of my testimony self-determination is the law.

H.R. 4469 mocks this. The reservation community as a whole has never asked Congress to interfere in their political process. The community opposes the bill. This opposition is not limited to Indian people. The reservation is partly in Del Norte County and partly—Del Norte County up here, Crescent City, Eureka, Trinidad, Rancheria down here—and partly in Humboldt County, California. The Del Norte board of supervisors officially opposes a split reservation, and so does the Del Norte chamber of commerce.

The 1864 act established the reservation in trust for all of the Indians of northern California, who originally lived there or whom the Government induced to move there, and their descendants. This trust is more sacred than the deed to any private property. It is a mockery of this trust to take this land from the majority of its beneficiaries without their consent.

The Square has 89,000 unallotted trust acres. It has 1,106,960,000 board feet of coniferous timber, according to the Bureau of Indian Affairs, appraised at $125 per thousand board feet. It has copper and gold deposits. It has the Trinity River and other resources.

The Extension has 3,669.37 communal acres, according to the Bureau of Indian Affairs. The bill will add Forest Service land to this. I called the supervisor of the National Forest involved here. He told me that the Forest Service has 600 acres to contribute. That is down here. It does not have any timber on it, except for one stand of redwood trees, old growth redwood trees, a small stand at Highway 101 where it crosses the Klamath River, and the Forest Service is glad to get rid of it because environmental groups have been bugging it for years not to cut those trees. So it is no loss to the Forest Service. The other part of the 600 acres is as bald as some people's heads.

The bill provides $2 million to purchase additional land. That is not enough money to pound sand in a rat hole.

Section 2(e)(1) of the bill allows the Interior Department to trade all of this acreage on the Extension, the trust acreage, for BLM or other land off the reservation. Now, this is my clients' ancestral land. I think their ancestors must be spinning in their graves at the thought of that provision. I doubt the BLM likes it either unless they have got some other environmentally sensitive timberland that they want to get off their hands.

The bible of Federal Indian law is Felix Cohen's Handbook of Federal Indian Law. I think Mr. House would agree with that. I think Mr. Ducheneaux would agree with that. Mr. Schlosser is here, Mr. Passarelli was here earlier. There is no argument about that.

Professor Robert Clinton, of the University of Iowa, wrote the chapter of that book which concerns Indian property rights.

In a memorandum to this committee, which is probably in the committee's office right now if it hasn't already been distributed to the members, submitted for the record—and we want to make sure it gets in the record—he explains that this is a statutory reservation in which all the Indians have vested rights. He says that to strip the majority of the Indians of the Square's land and resources is a Fifth Amendment taking. The Government will have to pay us

for the Square if this bill passes. Obviously, the amount will be hundreds of millions of dollars.

Just figure the timber resources' value based on the stumpage per thousand board foot, and you have got $125 million, and you can add the value of the land, the value of the other rights, and you have got hundreds of millions of dollars.

This bill is also tantamount—what we want is for the BIA to produce a cost estimate from OMB if it wants congressional interference in this reservation. The BIA has not produced a cost estimate, and I would suggest that this committee and the Congress should not do anything until they get something from OMB on this. Make the BIA produce it.

This bill is also tantamount to taking public property for a private purpose, the purpose of the Hoopa Valley Tribe. This is unconstitutional in itself. Professor Clinton and I doubt that the bill can withstand the challenge we will bring against it if it passes.

The bill would have the Hoopa Valley Tribe reimburse the Government for what the Government will owe us. The only feasible source for this reimbursement is timber revenues. The Hoopa Valley Tribe will need generations to pay this reimbursement. That is unfair. It will destroy the Square. And as far as the law is concerned, it is unprecedented. It is probably a taking in itself.

You don't have to take my word for it. Read Professor Clinton's memorandum. He is not interested in this, and he is an academic, not an advocate, and I think he knows what he is talking about.

Assuming that the bill flies, what about the reservation's fishery? It is a trust resource for all the Indians, the same as the timber and minerals. This year the Indians will harvest over 51,000 anadromous fish for subsistence, ceremonial, and commercial purposes. Last year commercial fishing, the only fishing that produces revenues for the communal council, enriched the communal account by $184,000.

Now, historically, in the late 1970's and early 1980's, the timber proceeds from timber sales on the Square enriched the communal accounts by $4 million or $5 million a year. There is no way that you are going to beef up a fishery that produces $184,000 a year to anywhere match the power of the timber revenues, of the resources on the Square to produce revenue. I mean, just use a pencil and add it up.

Will the bill allow the Hoopa Valley Tribe members to continue their practice of fishing at the mouth of the Klamath River on the Extension? They do this. The bill is silent about that.

Will the Indians of the new Extension reservation block Hoopa Valley Tribe members from fishing on the new reservation? Perhaps.

Will the Hoopa Valley Tribe sue them and the Government if they do; in other words, sue the owners of the Yurok Reservation if they keep the Hoopa Valley Tribe members from continuing to go down there and fish? Of course. Is that what you want?

I won't even go much into hunting and gathering rights, nor will I go into the reserved water rights. The bill's silence about these issues means more work for the courts if the bill passes. Is that what this committee wants?

Putting silences and ambiguities aside, the bill provides specifically for more litigation. Section 3 of the bill says that each eligible Short plaintiff will get a payment equal to what each Hoopa Valley Tribe member got after 1975. This amounts to $1500 for each of my clients, but they won't get it until the Short case determines who else is qualified and what the interest rate on their damages will be.

The bill is silent about how the rest of the damages to which the Short plaintiffs are entitled, including damages on account of discriminatory income distributions made before 1975, will be paid. Read section 3 of the bill carefully. The bill does not settle the Short case, and it does not end the litigation.

Over one-third of the members of the Hoopa Valley Tribe have immediate relatives who are Short plaintiffs. I am sure that all Hoopa Valley Tribe members have collateral relatives among the Short plaintiffs, these people sitting here with me now. They must speak because they will tell you more about it.

This is not a tribal dispute. It is a family feud, son against mother, mother against daughter, husband against wife. Our Puzz decision takes away the minority's money for lobbyists and attorney fees. This is fair, nothing more, nothing less.

Congress should not stir this pot. If, as some thing, the courts alone cannot solve all of the reservation's problems, then who else can? We say that the Indian people can. The reservation does not need congressional intervention.

The Hoopa Valley Tribe does not speak for all Hupa Indians. There are exclusively Hupa Indians who do not belong to the Hoopa Valley Tribe. Hoopa Valley is a place. The Hoopa Valley Tribe is an organization created in 1950, and ethnicity did not have to do with its membership criteria. It was allotment status on the Square. That is in the court cases.

They cannot reinvent the wheel here now. They are not going to be able to do it because the evidence is not there to support it.

Les Ammon lives on the Square. He will testify in a few moments that he is one of these people. This bill will steal his birthright. The so-called "Yurok" reservation which this bill purports to create from the single reservation Congress established in 1864 is not for him or for the others in his position. Put yourselves in his position. This bill is unfair.

As I said, many Indian people who do not belong to the Hoopa Valley Tribe live on the Square and they are Indians of the reservation. They own property there. If this bill passes, the Hoopa Valley Tribe will tax these people, zone their land, and govern them. If they are Yurok, they will have to move to the so-called "Yurok" reservation to enjoy representative government.

That is wrong. The upper Extension lacks phones, electric utilities, water adequate to meet public health standards, and all other adequate services. There is no road from here to here, and if you want to make—I don't mean you. I mean Mr. Bosco—you want to have this a single reservation, you cannot even get from here to here without going to Eureka and back up here through the Square (demonstrating).

Families live here, however. Indian children are growing up here, trying to relate to the conveniences the rest of us take for

granted. They struggle for what little they have. The upper Extension lacks these conveniences because the BIA has distributed reservation money exclusively to the Hoopa Valley Tribe and only for the Square. Our Puzz decision forces the BIA to change this unfair practice.

The Extension lacks resources to help fund roads, utilities, and schools. $184,000 in fish revenues will not get it. H.R. 4469 would cut the Extension off from the only source of reservation funds to provide these things; that is, the timber on the Square.

Those who come here in support of H.R. 4469 want Congress to give 89,000 acres to 1,800 people and approximately 4,000 acres to over 3,000 people. They want to arbitrarily divide families and communities. Their reasoning does not add up.

This is one reservation. By the 1864 act all Indians of the reservation have equal rights. Leave it that way for the sake of the many people who have gotten the least portion for so many hard years. They deserve fairness, and this bill is not fair.

[Prepared statement of Mr. Thierolf, with attachments, follow:]

Testimony of Richard B. Thierolf, Jr.,
Attorney for Puzz Plaintiffs
In Opposition to a Bill to Divide the Reservation

I am Richard B. Thierolf, Jr. I am a lawyer. For eight years I have handled the case of Lillian Blake Puzz v. United States, in the United States District Court in San Francisco. I speak in behalf of the overwhelming majority of the Indians of the reservation.

Our leaders met with Chairman Udall last Thursday. He was perplexed about our plight, and suggested that we talk with Mr. Teno Roncalio of Wyoming. Mr. Roncalio told us to explain why this is a bad bill. That is what I will do.

Most of the Indian people who live on the reservation do not belong to the Hoopa Valley Tribe. Slightly more than 900 Hoopa Valley Tribe members live on the reservation. More than 1,000 other Indians of the reservation live there. Over half of the Indians who do not belong to the Hoopa Valley Tribe live on the square. Over half the Indian students at Hoopa High School on the square (the only high school on the reservation) do not belong to the Hoopa Valley Tribe.

Why are we here? The reservations problems stem from an election held among 106 reservation Indians on May 13, 1950. This group, by a vote of 63-33, adopted a constitution and approved a role of members. It called itself the Hoopa Valley Tribe. Never before had such a roll existed. The BIA had always used census rolls to define who had reservation rights.

The group included Yurok, Karuk, and Hupa Indians. Its enrollment standards had nothing to do with ethnicity. Instead it was a self-selected group of people from the square who wanted exclusive control of the timber on the square, and the money that timber generated. It excluded many Indians of the square, and all the Indians of the extension.

The BIA illegally allowed this group to claim exclusive jurisdiction over the square's resources and income, disregarding the legal fact that the reservation is a single reservation including the extension and the square, in which all Indians have equal rights. This group, the Hoopa Valley Tribe, now numbers approximately 1800. Obviously, many of its members do not live on the reservation.

Over 5000 people have reservation rights. Beginning in 1955, the BIA issued checks from the timber proceeds to the minority of them, the ones who belonged to the Hoopa Valley tribe. No such distributions had gone to anyone before. The majority immediately protested to the BIA. They were just as much, and are just as much, Indians of the reservation as the ones who got the checks.

The BIA ignored this protest. The BIA distributed more and more reservation income to the Hoopa Valley Tribe. To this day, the majority has never gotten a thing. In effect, 63 people who voted in the May, 1950 election, fully and tenaciously backed by the BIA, have dictated the rights of several thousand people. The only explanation for this is bureaucratic intransigence. This is unfair.

Litigation was inevitable. In 1963, the majority of the Indians filed Short v. United States in the Court of Claims. They demanded money damages. They won in 1973. The court held that the Hoopa Valley Tribe was not a tribe from

time immemorial, but instead was an organization formed in 1950 to take unfair advantage of the timber money. It held that the Hoopa Valley Tribe does not own the square, and that the BIA breached its trust duty to treat all the Indians equally and indistinguishably regardless of whether they belonged to an organization.

The Act of April 8, 1864, whereby the reservation was established, cemented this trust, for all the Indians of the reservation -- the Indians of northern California who originally inhabited the reservation or who were induced to move there and their descendants. The Short case continues to this day, to determine whether any of the more than 3800 plaintiffs are ineligible to recover damages, and to determine how much each qualified plaintifff is entitled to. But the 1864 statute and the 1973 judgment withstand all attacks. The Supreme Court upheld the courts judgment in 1974, 1981 and 1983. The Court of Claims upheld it in 1979 when the Hoopa Valley Tribe sued the United States to overturn it. It is the law: One reservation, with equal rights for all the Indians.

The BIA ignored this law. After 1973, it continued to arm the Hoopa Valley Tribe with hundreds of thousands of dollars annually for lawyers and lobbyists to help it resist the court's judgment. The majority of the Indians continued to get nothing.

My case, the Puzz case, stood on the shoulders of the judgment in Short to put a stop to this discrimination. On April 8, 1988, the district court ordered the BIA, on pain of contempt, to submit a plan to administer the reservation for the equal benefit of all Indians in a non-discriminatory manner. It ordered a stop to discrimination in the provision of funds and services, and the management of resources. HR 4469 is the BIA's response. The breach of trust continues. That is why we are here.

But for HR 4469, we would be helping the BIA to plan for reservation administration on a non-discriminatory basis. The Puzz court ruled that all Indians of the reservation have an equal right to self government. The illegal 1950 election cannot abrogate this right. We want a reservation-wide referendum on forming a council to administer the communal resources and revenues of the entire reservation, just as other reservations have such councils.

Self-determination is the law. HR 4465 mocks this. The reservation community as a whole has never asked Congress to interfere in their political process. The community opposes the bill. This opposition is not limited to Indian people. The reservation is partly in Del Norte County and partly in Humboldt County. The Del Norte Board of Supervisors officially opposes a split reservation. So does the Del Norte Chamber of Commerce.

The 1864 Act established the reservation in trust for all the Indians of northern California who originally lived there or whom the government induced to move there, and their descendants. This trust is more sacred than the deed to any private property. It is a mockery of this trust to take this land from the majority of its beneficiaries without their consent.

The square has 89000 unallotted trust acres. It has 1,106,960,000 board feet of coniferous timber, according to the BIA, appraised at $125 per thousand board feet. It has copper and gold deposits, the Trinity River, and other resources.

The extension has 3669.37 communal acres. The bill will add Forest Service land to this. The Forest Service has 600 acres to contribute. The bill provides $2,000,000 to

purchase additional land. This is not enough to pound sand in a rathole.

Section 2(e)(1) of the bill allows Interior to trade all of this acreage for BLM on other land off the reservation. This is my clients' ancestral land. Their ancestors must be spinning in their graves at the thought of this provision. I doubt the BLM likes it either.

The Bible of federal Indian law in Felix Cohen's Handbook of Federal Indian Law. Professor Robert Clinton of the University of Iowa wrote the chapter of that book which concerns Indian property rights. In a memorandum to this committee, submitted for the record, he explains that this is a statutory reservation in which all the Indians have vested rights. He says that to strip the majority of the Indians of the squares land and resources is a fifth amendment taking. The government will have to ay us for the square if this bill passes. Obviously, the amount will be hundreds of millions of dollars. The BIA should produce a cost estimate from OMB if it wants congressional interference in this reservation.

This bill is tantamount to taking public property for a private purpose -- the purpose of the Hoopa Valley Tribe. This is unconstitutional in itself. Professor Clinton and I doubt that the bill can withstand the challenge we will bring against it if it passes.

The bill would have the Hoopa Valley Tribe reimburse the government for what the government will owe us. The only feasible source for this reimbursement is timber revenues. The Hoopa Valley Tribe will need generations to pay this reimbursement. That is unfair. It will destroy the square.

Assuming that the bill flies, what about the reservation's fishery? It is a trust resource for all the Indians, the same as the timber and minerals. This year, the Indians will harvest over 51000 anadromous fish for subsistence, ceremonial, and commercial purposes. Last year, commercial fishing enriched the communal account by $184,000. Hoopa Valley Tribe members fish at the mouth of the Klemeth River, on the extension. Will the bill allow this practice to continue? It is silent. Will the Indians of the new extension reservation block the Hoopa Valley Tribe members from fishing on the new reservation? Perhaps. Will the Hoopa Valley Tribe sue them and the government if they do? Of course. Is this what you want?

I won't even go much into hunting and gathering rights. Nor will I go into reserved water rights. The bill's silence about these issues means more work for the courts if the bill passes. Is that what you want?

Putting silences and ambiguities aside, the bill provides specifically for more litigation. Section 3 of the bill says that each eligible Short plaintiff will get a payment equal to what each Hoopa Valley Tribe member got after 1975. (Incredibly, even after the 1973 Short judgment, the BIA distributed individual payments of timber revenues to Hoopa Valley Tribe members, while the rest of the people continued to get nothing). This amounts to $1500 for each of my clients, but not until the Short case determines who else is qualified and what the interest rate on their damages will be. The bill is silent about how the rest of the damages to which the Short plaintiffs are entitled (including damages on account of discriminatory income distributions made before 1975) will be paid. Read section 3 of the bill carefully. The bill does not settle the Short case.

Over one-third of the members of the Hoopa Valley Tribe have immediate relatives who are Short plaintiffs. (I am sure that all Hoopa Valley Tribe members have collateral relatives among the Short plaintiffs). This is not a tribal dispute. It is a family feud -- son against mother, mother against daughter, husband against wife. Our Puzz decision takes away the minority's money for lobbyists and attorney fees. This is fair, nothing more , nothing less. Congress should not stir this pot. If, as some think, the courts alone cannot solve all the reservation's problems, then who else can? We say that the Indian people can. They reservation does not need congressional intervention.

The Hoopa Valley Tribe does not speak for Hupa Indians. There are exclusively Hupa Indians who do not belong to the Hoopa Valley Tribe. Les Ammon lives on the square. He is one of these. He will testify in a moment. This bill will steal his birthright. The so-called the "Yurok" reservation which this bill purports to create from the ashes of the single reservation Congress established in 1864 is not for him, or for the others in his position. Put yourselves in his position. This bill is unfair.

As I said, many Indian people who do not belong to the Hoopa Valley Tribe live on the square, and they are Indians of the reservation. They own property there. If this bill passes, the Hoopa Valley Tribe will tax these people, zone their land, and govern them. If they are Yurok, they will have to move to the so-called "Yurok" reservation to enjoy representative government. That is wrong.

The upper extension lacks phones, electric utilities, water adequate to meet public health standards, and all other adequate services. Families live there. Indian

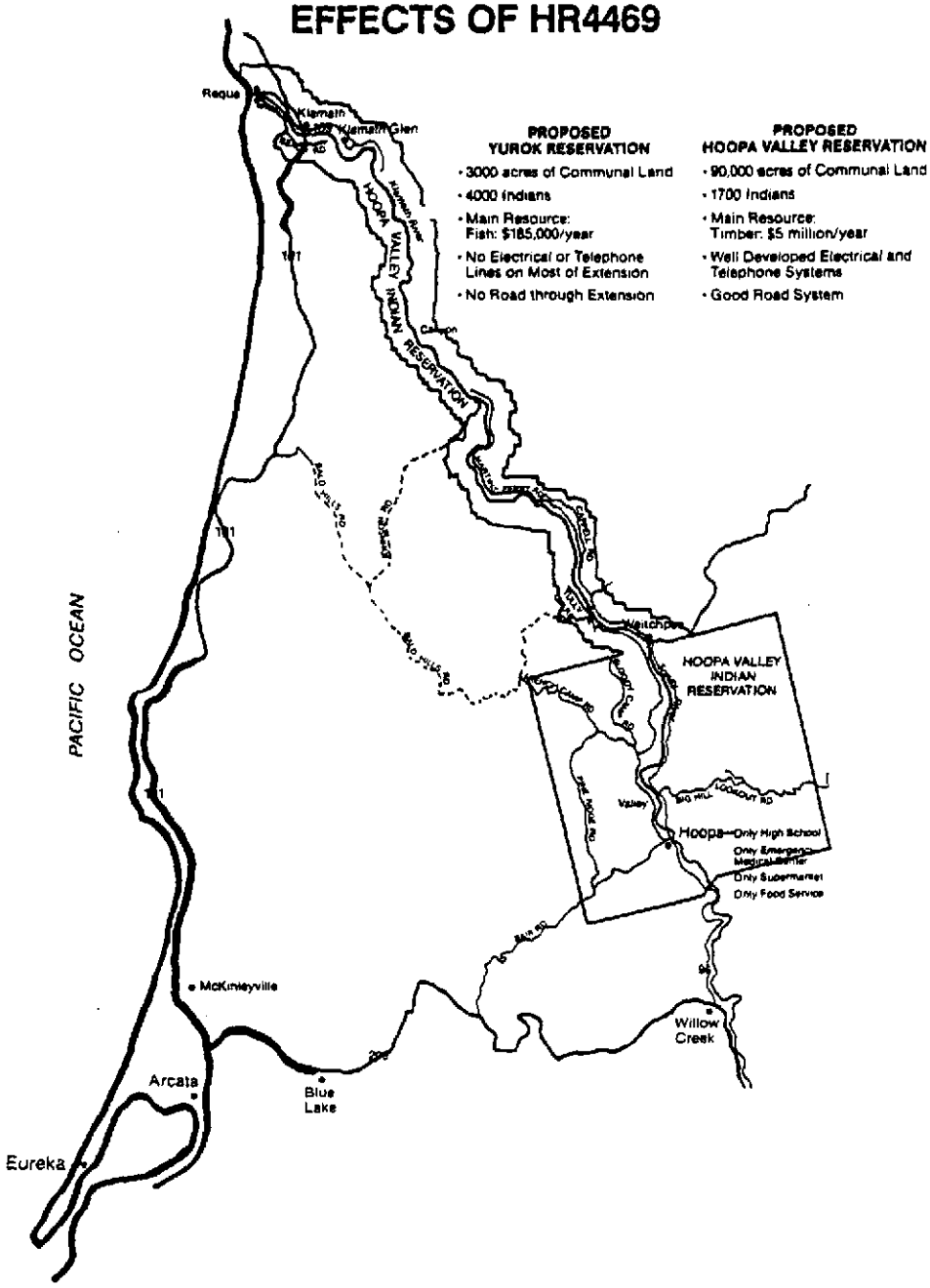
children are growing up there, trying to relate to the conveniences the rest of us take for granted. They struggle for what little they have. The upper extension lacks these conveniences, because the BIA has distributed reservation money to the Hoopa Valley Tribe, and only for the square. Our Puzz decision forces the BIA to change this.

The extension lacks resources to help fund roads, utilities, and schools. But HR 4469 would cut the extension off from the only source of reservation funds to provide these things -- the timber on the square.

Those who come here in support of HR4469 want Congress to give 89,000 acres to 1800 people, and approximately 4000 acres to over three thousand people. They want to arbitrarily divide families, and communities. Their reasoning doesn't add up.

This is one reservation. By the 1864 Act all Indians of the reservation have equal rights. Leave it that way, for the sake of the many people who have gotten the least portion for so many hard years. They deserve fairness, and this bill isn't fair.

EFFECTS OF HR4469



EFFECTS OF HR4469

- WOULD COST U.S. GOVERNMENT HUNDREDS OF MILLIONS.
- VIOLATES POLICY OF INDIAN SELF-DETERMINATION.
- WHAT ABOUT THE MANY NON-HOOPA VALLEY TRIBE MEMBERS WHO ARE NOT YUROK?
- WOULD DIVIDE MOST OF THE INDIAN FAMILIES BECAUSE GROUPS ARE SO INTERMARRIED.
- WOULD DEPRIVE 4000 INDIANS (MAJORITY) OF ADEQUATE LAND BASE.
- REVERSE 25 YEARS OF UNANIMOUS DECISIONS BY 13 FEDERAL JUDGES.
- SPECIFICALLY REQUIRES CURRENT *SHORT* LITIGATION TO CONTINUE.
- SPECIFICALLY CONTEMPLATES ADDITIONAL LITIGATION AGAINST GOVERNMENT.
  - — 5th Amendment Taking of 90,000 Lucrative Acres
  - — Suit Over Allocation of Water Rights
  - — Suit Over Allocation of Fish Resource
  - — Suit Over Allocation of Hunting Rights
  - — Suit Over $30 Million From Escrow Fund
- WHY WOULD ANYONE SUPPORT THIS BILL?

FACT SHEET ON HR4469

HOUSE INTERIOR COMMITTEE HEARINGS - JUNE 21, 1988

Facts About The Hoopa Valley Reservation

1. The Hoopa Valley Reservation consists of the "Square" (with 90,000 acres of lucrative communal timber land) and the "Extension" (with 3,000 acres of relatively useless communal land). In the ten year period from 1972 to 1981, for which we have data, the Square produced an average of $5,000,000 per year in timber revenues alone. In sharp contrast, the most valuable resource on the Extension, fish, produced only $184,000 in communal revenues last year. The Reservation was created as a single Reservation under the Act of 1864 for the benefit of all the Indians of Northern California.

2. There are two groups of Indians who have rights in the Reservation. They are intermarried and ethnically intermingled. They are not only Hupas and Yuroks, but include Chetcos, Tolowas, Klamaths, Karoks, etc. The Hoopa Valley Tribe, a minority group of approximately 1700 Indians of Hupa, Yurok and other ethnic backgrounds, organized in 1950 with the BIA's help in order to exclude most of the Indians from sharing in the timber revenues of the Square. The Excluded Indians of the Reservation, who number approximately 4000, and are also of Hupa, Yurok and other ethnic backgrounds, were not allowed to join the Hoopa Valley Tribe, and have not been allowed to share in the revenues of the Square.

3. Over the past twenty-five years, the Claims Court has ruled repeatedly in the Jessie Short case that the Excluded Indians have exactly the same rights in the Square as does the Hoopa Valley Tribe and its members, that neither the Hoopa Valley Tribe nor its members have ever owned the Square, nor is there any historical basis for their claim of ownership. The Supreme Court has denied certiorari three times, and the Short case is very close to completion.

4. On April 8, 1988, the District Court for the Northern District of California ruled in the Puzz case that the Excluded Indians have equal rights in the Square. The Court issued an injunction requiring the BIA to cease its discrimination against the Excluded Indians in the use of resources and in governing the Reservation. The Indians are on the verge of resolving their longstanding, internal political problems.

Facts About HR4469

1. Eighteen days after the District Court issued its injunction, Congressman Bosco introduced HR4469. The bill represents a complete reversal of his earlier position. In 1985 Congressman Bosco opposed the introduction of legislation splitting the Hoopa Valley Reservation, stating that he did not believe it was in the best interests of the Indians.

2. HR4469 IS STRENUOUSLY OPPOSED BY THE VAST MAJORITY OF AFFECTED INDIANS, INCLUDING SOME MEMBERS OF THE HOOPA VALLEY TRIBE, AND BY THE LOCAL NON-INDIAN GOVERNING BODIES OF THE AREA.

3. HR4469 WOULD REVERSE 25 YEARS OF FEDERAL COURT RULINGS by making the minority group the sole owner of the Square, leaving the majority group the relatively worthless Extension.

4. HR4469 WILL COST THE GOVERNMENT MORE THAN $500 MILLION DOLLARS. Giving the Square to the Hoopa Valley Tribe would constitute a Fifth Amendment taking of plaintiffs' property, subjecting the Government to a damage award in excess of $500 million in subsequent litigation. Moreover, by giving approximately $35 million of plaintiffs' money (from the escrow fund) to the Hoopa Valley Tribe, the bill would increase by that amount the Government's liability in Short for wrongful distributions.

5. HR4469 WOULD RESULT IN CLEAR-CUTTING OF ALL THE TIMBER FOR THE BENEFIT OF THE TIMBER INDUSTRY AT THE EXPENSE OF THE INDIANS. In order for the Hoopa Valley Tribe to repay the Government from timber revenues when plaintiffs' succeed in their Fifth Amendment claim, as the bill provides, it would be necessary for the Secretary to cut as many trees as possible. Even if all the trees were cut in one year, it would hardly begin to repay the $500 million the Government will owe the Excluded Indians.

6. HR4469 CANNOT AND DOES NOT ATTEMPT TO END THE LITIGATION SURROUNDING THE RESERVATION. IT DOES, HOWEVER, CONTEMPLATE ADDITIONAL LITIGATION BETWEEN THE INDIANS AND AGAINST THE GOVERNMENT. The bill specifically provides that the Short case must continue to decide who is qualified and what interest rate is appropriate. The bill also leaves the Short case to adjudicate the lion's share of plaintiffs' damages, which accrued before December 31, 1974. A Fifth Amendment taking suit will be filed should the bill become law.

7. THE BILL WILL CREATE NEW LITIGATION OVER FISHING RIGHTS. The Hoopa Valley Tribe wants Congress to give it all of the timber revenues, and then it expects to continue to receive 50% of the commercial fish. By splitting the Reservation and having part of the fishing resource in each new Reservation, Congress will create management problems and spur new litigation.

8. **HR4469 WILL NOT SPEED UP PAYMENTS TO SHORT PLAINTIFFS** because payments cannot be made until the Court finishes determining who should get them, and the appropriate interest rate.

9. **PAYMENTS TO INDIVIDUALS UNDER THE BILL ARE ONLY APPROXIMATELY $1500,** plus interest, and in return for these meager partial payments of damages, which the Court already said plaintiffs are entitled to, the majority of Indians would lose all their rights in a $500 million piece of the Reservation.

10. **THE BILL VIOLATES THE POLICY OF INDIAN SELF-DETERMINATION.** The majority of the Indians want Congress to leave them alone and let them work out their political problems by themselves. At a recent meeting of Yurok Indians, the majority voted down a proposal to organize into the "Yurok tribe" which is specified in the bill as the owner of the Extension. Instead, they wish to organize a governing council for the entire Reservation which represents all of the Indians of the Reservation: Hupa, Yurok, Chetco, Tolowa, Klamath, Karok, etc.

11. **HR4469 WILL DESTROY ANY CHANCE OF A COMMUNITY OR ORGANIZATION FOR THE MAJORITY OF EXCLUDED INDIANS.** If the Hoopa Valley Tribe needs all the revenues from the 90,000 acre Square to exist, as it claims, then it is surely impossible for more than twice that number of Indians to fund an organization on one thirtieth the land and a small fraction of the revenues.

12. **HR4469 WOULD STRIP MANY INDIANS OF THE RESERVATION OF RIGHTS IN EITHER PART OF THE RESERVATION.** If this bill passes, only members of the Hoopa Valley Tribe and the "Yurok tribe", if one forms under that name, will have any rights in either Reservation. The large number of Indians who were excluded from the Hoopa Valley Tribe but who are not Yurok would have no Reservation at all despite the 1864 Act's provision that the Reservation was to be for the benefit of all the tribes of Northern California. There are many Hupa Indians who were excluded from the Hoopa Valley Tribe, and who live on and have rights in the Square, who could never get into a Yurok tribe and would therefore be left out in the cold. The same is true of Indians from the other tribes of the Reservation.

13. It makes no sense for the Government to subject itself to $500 million worth of liability judgments just to give a minority group rights which 25 years of Court decisions say they are not entitled to. With 25 years of litigation coming to a close, now is not the time for Congress to get involved on behalf of the losing party. We ask that you help oppose this extremely unfair and ill considered bill.

Mr. LEHMAN. Thank you very much.

We have a little over 20 minutes left for the presentation. We will hear from the Indian representatives at this time.

Why don't you just state your name and what title you have and proceed?

Ms. JACKSON. My name is Betty Jackson. I am an Indian of the Hoopa Valley Reservation. I live in the community of Hoopa on the Square. My heritage is ¼ Hupa, ⅛ Tolowa, ⅜ Yurok. I am married to a Hoopa Valley Tribe member, Paul Jackson, who at one time served on the Hoopa Valley business council. My husband and I own a trucking company based in Hoopa. My sister-in-law is Maude McCovey, a current member of the Hoopa Valley business council.

I am here to testify against H.R. 4469. As a Short plaintiff, I believe it is harmful to my people. As a wife, mother, and grandmother of Hoopa Valley Tribe members, it is equally wrong for them because section F, part 1, page 5 gives "reimbursement from the other (Hoopa Valley) tribe's future income for damages if the United States is found liable." This bill would destroy the Square.

It is said that we want to become Hupa Indians and leave our Yurok culture. This is not true. I am Hupa, Yurok, and Tolowa. I am a part of all of my people. As a child, I grew up in the Pecwan area on the Extension. As an adult, I live on the Square. My ties are to the mountains and the Klamath and Trinity Rivers. For the past 25 years, the beauty is often forgotten because of the political climate.

The languages are different, but the culture is similar. None of the northwestern California Indians traditionally organized along tribal lines. Instead, we followed family and individual lines. I want a reservation wide governing body for our single, unified reservation. This is in keeping with our traditions.

My family applied for membership in the Hoopa Valley Tribe, and they were denied because they were not descendants of allottees on the Square. But there were others who were enrolled who were not descendants of allottees either. It was all very arbitrary.

In 1850, my grandmother Betty, who was a full-blood Hupa Indian, was taken to Redwood Creek after her mother and brother were killed by soldiers in the Hoopa Valley. She was allotted on the Extension. My ties extend from the Hoopa Valley to Crescent City, back up the Klamath River to Pecwan on the upper end of the Extension, and then back to Hoopa, California, where I now live along with my mother and other family members.

Please look to the future. Careful planning for the needs of all of the Indians of the reservations was not a part of the government's program when it organized the Hoopa Valley Tribe. H.R. 4469 is even worse.

This bill directly affects our children's and our grandchildren's lives. Please send a committee to the Hoopa Valley Reservation to see the people's needs before you destroy the reservation. You will see that our needs are similar to yours—income for property taxes, utilities, home improvement or rent, life insurance, education, health services, and transportation.

My husband, as I said, belongs to the Hoopa Valley Tribe. He helped me come here because whatever else he thinks, he bitterly opposes the Bosco bill.

In no way do I want my testimony here to interfere with my family's welfare, but the Bosco bill is causing so much friction and discomfort among the people that it is hard to imagine that there won't be trouble over this.

The saddest thing is that this is all very unnecessary. We did not ask Congress for this bill.

[Prepared statement of Ms. Jackson follows:]

Testimony of Betty Jackson
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

My name is Betty Jackson. I am an Indian of the Hoopa Valley Reservation. I live in the community of Hoopa, on the Square. My heritage is 1/4 Hupa, 1/8 Tolowa, 3/8 Yurok.

I am married to a Hoopa Valley Tribe member, Paul Jackson, who at one time served on the Hoopa Valley Business Council. My husband and I own a trucking company based in Hoopa. My sister-in-law is Maude McCovey, a current member of the Hoopa Valley Business Council.

I am here to testify against H.R. 4469. As a Short plaintiff, I believe it is harmful to my people. As a wife, mother, and grandmother of Hoopa Valley Tribe members, it is equally wrong for them because Section F, Part 2, p. 5 gives "reimbursement from the other (Hoopa Valley) tribe's future income for damages if the United States is found liable." This bill would destroy the Square.

It is said that we want to become Hupa Indians and leave our Yurok culture. This is not true. I am Hupa, Yurok and Tolowa. I am a part of all of my people. As a child, I grew up in the Pecwan area on the Extension. As an adult, I live on the Square. My ties are to the mountains and the Klamath and Trinity Rivers. For the past 25 years, the beauty is often forgotten because of the political climate.

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The saddest thing is that this is all very unnecessary. We did not ask Congress for this bill.

Mr. LEHMAN. Thank you very much.

The next witness.

Mr. AMMON. I am Leslie Ammon. I traveled here from the Hoopa Valley Reservation at great expense because H.R. 4469 would strip me and my family of all of our rights in our reservation and take away my Indian heritage.

I am ¼ Hupa. I live on the Square part of the reservation, the very same part which this bill would steal from me. The Square is my home and the home of my ancestors.

My grandmother was born in Hoopa in 1872 and lived there for many years. My great grandfather and my great grandmother were also born in Hoopa and raised their children there. My great grandfather was the spiritual leader of the northern division of the Hupa Indians and was in charge of various dances.

As you can see, the Hoopa Valley Tribe does not represent all Hupa Indians, nor does it represent even the majority of the Indians who live on the reservation.

The court has said this time and time again and has said quite clearly that the Hoopa Valley Tribe has no greater claim to the Square than the other Indians of the reservation. Please do not reverse all of those court decisions.

According to the act of 1864, the Hoopa Valley Reservation was created for all the Indians of northern California. It was obviously not created for the Hoopa Valley Tribe, as that group did not even exist for another 86 years.

There are many Hupa and other Indians, including Yuroks, who are not allowed to join the Hoopa Valley Tribe, yet who live and have their heritage on the Square.

If this bill passes, what about me and the other large number of Hupa and who people who are not in the Hoopa Valley Tribe, yet could never join a Yurok Tribe. I am not a Yurok. The bill strips us of our rights in the Square and excludes us from even sharing in the meager land of the Extension.

Only last year, the Claims Court considered my heritage and ruled that I am a Hupa Indian with exactly the same rights in the Square as the members of the Hoopa Valley Tribe. I have fought so hard since the BIA began discriminating against all non-Hoopa Valley Tribe members.

Let it never be forgotten that we, the majority of the Indians of the reservation, won the Short and Puzz cases and proved that the BIA was wrong. Yet the BIA still actively tries to steal our reservation and has stalled the case year after year in the hopes that you, the Congress, will do what the court refused to do, steal my home.

H.R. 4469 will undermine and overthrow everything that has been accomplished so far and leave the government free of much or all of its responsibility to the majority of the Indians.

Mr. Reagan goes to Moscow preaching civil rights while Congress sits back here considering a bill that would take away my family's rights. Please help me maintain my heritage and reservation by opposing H.R. 4469 or any bill which splits my home in two.

[Prepared statement of Mr. Ammon follows:]

Testimony of Leslie Ammon, a Hupa Indian
of The Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

My name is Leslie Ammon. I traveled here from the Hoopa Valley Reservation at great expense because H.R. 4469 would strip me and my family of all our rights in our Reservation and take away my Indian heritage.

I am 1/4 Hupa. I live on the Square part of the Reservation, the very same part which this bill would steal from me. The Square is my home and the home of my ancestors. My grandmother was born in Hoopa in 1872 and lived there for many years. My great grandfather and my great grandmother were also born in Hoopa, and raised their children there. My great grandfather was the spiritual leader of the Northern Division of the Hupa Indians, and was in charge of various dances. As you can see, the Hoopa Valley Tribe does not represent all Hupa Indians, nor does it represent even the majority of Indians who live on the Reservation. The Court has said this time and time again, and has said quite clearly that the Hoopa Valley Tribe has no greater claim to the Square than the other Indians of the Reservation. Please do not reverse all those court decisions.

According to the Act of 1864, the Hoopa Valley Reservation was created for all the Indians of Northern California. It was obviously not created for the Hoopa Valley Tribe as that group did not even exist for another 86 years. There are many Hupa and other Indians, including Yuroks, who are not allowed to join the Hoopa Valley Tribe, yet who live and have their heritage on the Square.

If this bill passes, what about me and the other large number of Hupa and other people who are not in the Hoopa Valley Tribe, yet could never join a Yurok Tribe. I am not a Yurok. The bill strips us of our rights in the Square, and excludes us from even sharing in the meager land of the Extension.

Only last year, the Claims Court considered my heritage and ruled that I am a Hupa Indian with exactly the same rights in the Square as the members of the Hoopa Valley Tribe. I have fought so hard since the BIA began discriminating against all non-Hoopa Valley Tribe members. Let it never be forgotten that we, the majority of the Indians of the Reservation, won the Short and Puzz cases and proved that the BIA was wrong. Yet, the BIA still actively tries to steal our Reservation, and has stalled the case year after year in the hopes that you, the Congress, will do what the court refused to do, steal my home.

H.R. 4469 will undermine and overthrow everything that has been accomplished so far and leave the Government free of much or all of its responsibility to the majority of the Indians. Mr. Reagan goes to Moscow preaching civil rights, while Congress sits back here considering a bill that would take away my family's rights. Please help me maintain my heritage and Reservation by opposing H.R. 4469 or any bill which splits my home in two.

Mr. LEHMAN. Thank you very much.

Ms. Winter.

Ms. WINTER. I am Jackie Winter. I am ⅜ Yurok and ⅛ Tolowa, and I was born on the Hoopa Valley Reservation. For the past 14 years, I have lived and taught on the Square at the only high school on the entire reservation.

This is the Square which H.R. 4469 would steal from me. I oppose any bill which divides the reservation and its families.

The Hoopa Valley is approximately 1½ miles wide by 7 miles long. 59 percent of the students at Hoopa High School are Indian. Of those, over 50 percent are not members Hoopa Valley Tribe members.

The reservation Indians are intermingled and intermarried. My son, a Short plaintiff, is married to a Hoopa Valley Tribe member. Her father, sister, and brother are all Hoopa Valley Tribe members. However, her mother, who is ½ Hupa, is not. My grandsons, are ¼ Hupa and ¼ Yurok, were rejected by the Hoopa Valley Tribe.

Yet the Hoopa Valley Tribe has many members with less than ¼ Indian blood and little or no Hupa blood. Only 2 of the 8 members of the Hoopa Valley business council are predominantly of Hupa blood. Their blood is as mixed as ours. They have no more right to the Square than we do.

My granddaughter, Brittany Vigil, is ¼ Indian. Her father is a Hoopa Valley Tribe member, and her mother is a Jessie Short plaintiff. Brittany's great-uncle, Rodney Vigil, is on the Hoopa Valley business council.

If H.R. 4469 passes, Brittany belongs nowhere. She belongs to no tribe, and she has no reservation, and there are countless other Indian children just like her.

The reservation is composed of Indians from many ethnic backgrounds. However, as Indians of the Hoopa Valley Reservation, we participate together in our dances while retaining our individual traditions. If we can worship together, attend school together, have children together, I say that we can in the same spirit work together to create a unified, self-governing, self-directing reservation which will benefit all of our children and all our children's children.

Perhaps the most difficult part of surviving in "one nation, under God, indivisible" is constantly realizing that freedom is fragile and justice is not only blind, but sometimes bigoted.

The BIA created the Hoopa Valley business council and said it owned the Square. Thirteen Federal judges declared that the Hoopa Valley Tribe has no legal or historical claim to ownership of the Square. Please do not negate this fundamental principle.

Based on the Puzz decision, we finally have an equal chance for self-determination. We already have over 700 signatures, more than the number of Hoopa Valley Tribe members who voted in their last election, requesting that the BIA conduct a referendum for a reservation wide government. We are asking for one person/one vote, with majority rule. Please do not interfere in our internal political process just as it is beginning to work.

I cherish this land which holds the dust and spirits of my forebears and the footprints and future of my grandchildren—I want to

repeat it because it is true—which holds the dust and spirits of my forebears and the footprints and future of my grandchildren.

Now, H.R. 4469, Mr. Bosco, will steal over 89,000 communal acres that belong to me, and section E(1) and (2) of the bill even lets the Secretary take what little reservation lands are left from me and move them somewhere else.

Please, we have worked so hard and won so often. Do not take our rights away. Do not reverse the courts. Gentlemen, you hold justice in your hands. Do not violate her.

[Prepared statement of Ms. Winter follows:]

Testimony of Jacque Winter
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

My name is Jacque Winter. I am 3/8 Yurok and 1/8 Tolowa, and was born on the Hoopa Valley Reservation. For the past fourteen years, I have lived and taught on the "Square" at the only high school on the entire Reservation. This is the "Square" which H.R. 4469 would steal from me. I oppose any bill which divides the Reservation and its families.

The Hoopa Valley is approximately 1 1/2 miles wide by 6 or 7 miles long. Fifty-nine per cent of the students I teach at Hoopa Valley High School are Indian. Of those, over 50% are not members of the Hoopa Valley Tribe.

The Reservation Indians are intermingled and intermarried. My son, a Short plaintiff, is married to a Hoopa Valley Tribe member. Her father, sister and brother are all Hoopa Valley Tribe members; however, her mother, who is 1/2 Hupa, is not. My grandsons, who are 1/4 Hupa and 1/4 Yurok were rejected by the Hoopa Valley Tribe! Yet the Hoopa Valley Tribe has many members with less than 1/4 Indian blood and little or no Hupa blood. Only two of the eight members of the Hoopa Valley Business Council are predominantly of Hupa blood. Their blood is as mixed as ours. They have no more right to the Square than we do.

My granddaughter, Brittany Vigil, is 1/4 Indian. Her father is a Hoopa Valley Tribe member and her mother is a Jessie Short plaintiff. Brittany's great-uncle, Rodney Vigil, is on the Hoopa Valley Business Council. If H.R. 4469 passes, Brittany belongs nowhere. She belongs to no tribe and she has no Reservation. There are countless other Indian children just like her.

The Reservation is composed of Indians from many ethnic backgrounds; however, as Indians of the Hoopa Valley Reservation, we participate together in our dances, while retaining our individual traditions. If we can worship together, attend school together, have children together, I say that we can in the same spirit, work together to create a unified, self-governing, self-directing Reservation which will benefit all of our children and our children's children.

Perhaps the most difficult part of surviving in "one nation, under God, indivisible" is constantly realizing that freedom is fragile and justice is not only blind, but sometimes bigoted. The BIA created the Hoopa Valley Business Council, and said it owned the Square. Thirteen federal judges declared that the Hoopa Valley Tribe has no legal or historical claim to ownership of the Square. PLEASE do not negate this fundamental principle.

Based on the Puzz decision, we finally have an equal chance for self-determination. We already have over 700 signatures, more than the number of Hoopa Valley Tribe members who voted in their last election, requesting that the BIA conduct a referendum for a Reservation-wide government. We are asking for one person---one vote, with majority rule. Please do not interfere in our internal political process, just as it is beginning to work.

I cherish this land which holds the dust and spirits of my forebears and the footprints and future of my grandchildren. Now, H.R. 4469 will steal over 89,000 communal acres from me, and Section E (1) and (2) (p.4) of the bill even lets the Secretary take what little Reservation lands are left for me and move them "somewhere" else.

Please, we have worked so hard and won so often. Do not take our rights away. Do not reverse the courts. Gentlemen, you hold justice in your hands. Do not violate her.

Mr. LEHMAN. Thank you very much.

Mr. Kinney.

There is 12 minutes remaining for the panel. If you want everyone on, then I suggest that everyone summarize to the highest degree possible.

Mr. KINNEY. My name is Robert Kinney. I am an Indian of the Hoopa Valley Reservation.

I am here today to help you understand the devastating effects that H.R. 4469 will have on Indian people.

I have direct ancestral ties to the reservation through my close relatives, who live on the Square and Extension portions of the reservation. I have participated in traditional ceremonies, fishing and hunting practices on all parts of the reservation. After 4 years in the Air Force and 7 years in college, I returned to work on the reservation as a public school teacher.

The reservation community consists of people who have interacted and intermarried for hundreds of years. Indians and non-Indians alike have always depended on each other. In fact, the individual Indians of the reservation did not interact as separate tribal and cultural groups, but H.R. 4469 dictates that they do so in the future. This would destroy the social and cultural fabric of the Indian people of the reservation.

This bill will leave the majority of the Indians with no land base on which to sustain a community or economy. The Square is abundant with timber, grazing land, housing and businesses and law enforcement. The Extension part of the reservation is composed mostly of steep bluffs and canyons. The people who live on the upper Extension must travel to the Square for their every need—education, recreation, groceries, medical needs, postal services, and law enforcement.

This is because there is no road through the Extension to the Coast. Hoopa, California is considered downtown to the residents of the Extension. It is vital to their welfare. These people need the Square.

I strongly urge that no congressional action be taken which would split the largest Indian reservation in California. All the Indians of the reservation will suffer irreparable damage for generations to come.

Only Congress and the President of the United States have sweeping powers to affect Indian people and their way of life. They assumed this power as a guardian to protect, help and educate the Indians, not to steal their land and destroy their community.

Please do not request waivers of any hearings by the other three committees that have jurisdiction over this bill. The citizens of the reservation and the surrounding communities must have more opportunities to be heard than this brief hearing affords.

Thank you very much, sir.

[Prepared statement of Mr. Kinney follows:]

Testimony of Robert Kinney
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

Mr. Chairman and Honorable Committee Members, my name is Robert Kinney and I am an Indian of the Hoopa Valley Reservation. I am here today to help you understand the devastating effects that H.R. 4469 would have on the Indian people. I have direct ancestral ties to the Reservation through my close relatives who live on the Square and Extension portions of the Reservation. I have participated in traditional ceremonies, fishing and hunting practices on all parts of the Reservation. After four years in the Air Force and seven years in college. I returned to work on the Reservation as a public school teacher.

The Reservation community consists of people who have interacted and intermarried for hundreds of years. Indians and non-Indians alike have always depended on each other. In fact, the individual Indians of the Reservation did not interact as separate tribal and cultural groups, but H.R. 4469 dictates that they must do so in the future. This would destroy the social and cultural fabric of the Indian people of the Reservation.

This bill will leave the majority of the Indians with no landbase on which to sustain a community or economy. The Square is abundant with timber, grazing land, housing and businesses. The Extension part of the Reservation is composed mostly of steeps bluffs and canyons. The people who live on the Upper Extension must travel to the Square for their every-day needs: education, recreation, groceries, medical

needs, postal services and law enforcement. Hoopa, California is considered "downtown" to the residents of the extension. It is vital to their welfare. These people need the Square.

I strongly urge that no Congressional action be taken which would split the largest Indian Reservation in California. All the Indians of the Reservation will suffer irreparable damage for generations to come. Only Congress and the President of the United States have sweeping powers to affect Indian people and their way of life. They assumed this power, as a guardian, to protect, help and educate the Indians, not to steal their land and destroy their community.

Please do not request waivers of any hearings by the other three committees that have jurisdiction over this bill. The citizens of the Reservation and the surrounding communities must have more opportunities to be heard than this brief hearing affords.

Mr. LEHMAN. Thank you.

The Chair would note that we have a vote on. Mr. Bosco and I have to leave in about 10 minutes for that vote. It is my intention to wrap things up by then. So if you could please summarize, we will put your entire statement in the record where it will appear for everyone.

The next witness would be Ms. Haberman.

Ms. HABERMAN. My name is Dorothy Williams Haberman. I am a Klamath River/Yurok Indian and a qualified Indian of the Hoopa Valley Reservation. I am an acknowledged leader of over 3,000 Indians of the reservation. I am here to oppose H.R. 4469, a bill which would destroy my reservation.

All Indians of the reservation, whether they live on the Square or the Extension, come to fish at our place, including great numbers of the Hoopa Valley Tribe. Many of their people are my relatives. They are as Yurok as I am, even though they belong to the Hoopa Valley Tribe. The wife of Danny Jordan, a former member of the Hoopa Valley business council, is my cousin. This is a single reservation, Square and Extension. The benefits must be shared by all.

In 1950, the BIA created the Hoopa Valley Tribe, along geographic rather than ethnic lines, and stripped the other two-thirds of the Indians of their rights in the major portion of the timber and other resources.

In the early 1950's, non-Indian timber interests wanted the reservation timber. The Hoopa Valley business council was formed to rubber stamp the sale of timber. The majority of the Indians had no knowledge of it until the first per capita checks were paid out in 1955 to the members of the Hoopa Valley Tribe.

When we asked Leonard Hill, then Area Director for BIA, why did the majority not share, he replied, "We have limited our scope of jurisdiction back to the 12-mile Square and you no longer have any rights there. You are in the same category as a lost band of Indians."

He said they would continue what they were doing until it was overturned in a court of law. So we hired the Faulkner law firm in San Francisco.

Many people were active in that movement. I would especially like to mention my late brother, H.D. Williams, who worked so hard but died before he could see the fruits of his labor. We filed the Short case in 1963. We won it in 1973. Based on a long and careful review of the law and history, it was determined that the reservation was indeed a single integrated reservation where all Indians had equal rights.

All these long years, the Government has refused to implement our victory. They found ways of stalling, saying we had won only a monetary judgment.

In our frustration, it finally became necessary to file a civil rights case in 1980, the Puzz case, asking for a voice and vote on how the reservation resources are to be used. We won the Puzz case on April 8, 1988.

18 days later, Congressman Bosco introduced H.R. 4469, an anti-Indian racist bill that strips us of our property and political rights. H.R. 4469 would subvert both the Jessie Short and the Puzz cases.

Why did Bosco rush so hurriedly to introduce his anti-Indian bill? Apparently, he does not believe in basic civil rights for American Indians, nor he believe 13 Federal judges could be right. He believes that we the majority do not deserve to have a voice or a vote in the management of our resources.

The Puzz case gave us our civil rights back for the first time in over 38 years. I can't begin to tell you how pleased the majority of us were at this great news, particularly when I recall the words of Leonard Hill back in 1955.

We are vehemently opposed to the Bosco bill. It is the most devastating racist bill introduced in this century. In California, we have already given up 65 million acres of land. We will not give up anymore, Mr. Bosco.

The reservation is partly in Del Norte County, and the Del Norte County supervisors and the chamber of commerce have passed resolutions in opposition to this bill.

The BIA has been very busy enticing some of our Indians to sell out their Indian brethren, promising them jobs, commercial fishing, and money, providing in one instance a $50,000 grant in the hope of bringing about a separate Yurok council, a council which would be as discriminatory as is the Hoopa Valley Tribe.

Only 3 weeks ago, such an organization was overwhelmingly rejected.

Thank you.

Let me add one more thing.

Please let us continue our internal political process without congressional interference. Please do not split our reservation and its families. Please do not take our land.

[Prepared statement of Ms. Haberman follows:]

Testimony of Dorothy Williams Haberman
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

My name is Dorothy Williams Haberman. I am a Klamath River/Yurok Indian and a qualified Indian of the Hoopa Valley Reservation. I am an acknowledged leader of over 3000 Indians of the Reservation. I am here to oppose H.R. 4469, a bill which would destroy my Reservation.

My family conducts a fishing resort (Dad's Camp) on the extension that our grandfather started. This land was already in our family's possession when California became a state. I am living there now.

All Indians of the Reservation, whether they live on the Square or the Extension, come to fish at our place, including great numbers of the Hoopa Valley Tribe. Many of their people are my relatives. They are as Yurok as I am, even though they belong to the Hoopa Valley Tribe. The wife of Danny Jordan, a former member of the Hoopa Valley Business Council, is my cousin. This is a single Reservation, Square and Extension. The benefits must be shared by all.

My first job as a young lady was with Mr. O.M. Boggess, Superintendent of the Hoopa Valley Reservation. The BIA treated everyone equally and fairly at that time. All our names were listed on the Hoopa Valley Reservation census rolls in alphabetical order. Everyone had equal rights.

In 1950, the BIA created the Hoopa Valley Tribe, along geographic rather than ethnic lines, and stripped the

other 2/3 of the Indians of their rights in the major portion of the timber and other resources.

In the early 1950s, non-Indian timber interests wanted the Reservation timber. The Hoopa Valley Business Council was formed to rubber stamp the sale of timber. The majority of the Indians had no knowledge of it until the first per capita checks were paid out in 1955 to the members of the Hoopa Valley Tribe. When we asked Leonard Hill, then Area Director for BIA, why did the majority not share, he replied: "We have limited our scope of jurisdiction back to the 12-mile Square and you no longer have any rights there. You are in the same category as a lost band of Indians." He said they would continue what they were doing until it was overturned in a court of law. So we hired the Faulkner law firm in San Francisco.

Many were active in that movement. I would especially like to mention my late brother, H.D. Timm Williams, who worked so hard but died in March before he could see the fruits of his labor. WE FILED THE JESSIE SHORT CASE IN 1963. WE WON IT IN 1973. Based on a long and careful review of the law and history, it was determined that the Reservation was indeed a single integrated Reservation where all Indians had equal rights.

All these long years, the Government has refused to implement our victory -- they found ways of stalling, saying we had won only a monetary judgment which did not give us a VOICE or VOTE for our 2/3 ownership of the Reservation. The BIA continues to give Reservation revenues only to the Hoopa Valley Tribe; we have received nothing. After the 1973 court decision, the BIA began to set aside our 70% share of the timber proceeds in an escrow account to protect itself. As 500

of our number died waiting, their money still sits in that account.

In our frustration, it finally became necessary to file a civil rights case in 1980 (The PUZZ case) asking for a voice and vote on how the Reservation resources are to be used. WE WON THE PUZZ CASE on April 8, 1988.

Only 18 days later, Congressman Bosco introduced H.R. 4469, an anti-Indian RACIST bill that strips us of our property and political rights. H.R. 4469 would subvert both the Jessie Short and the PUZZ cases. Why did Bosco rush so hurriedly to introduce his anti-Indian bill? Apparently, he does not believe in basic civil rights for American Indians nor does he believe 13 federal judges could be right. He believes that we the majority do not deserve to have a voice or a vote in the management of our resources.

The PUZZ case gave us our civil rights back for the first time in over 38 years. I can't begin to tell you how pleased the majority of us were at this great news, particularly when I recall the words of Leonard Hill back in 1955. We are vehemently opposed to the Bosco bill. It is the most devastating racist bill introduced in this century. In California, we have already given up 65 million acres of land -- we will not give up anymore!

The Reservation is partly in Del Norte County. Crescent City is the county seat. The Del Norte County Board of Supervisors and the Crescent City Chamber of Commerce have passed resolutions in opposition to this Bill.

The BIA has been very busy enticing some of our Indians to sell out their Indian brethren, promising them jobs, commercial fishing, and money, providing, in one

instance, a $50,000 grant in the hope of bringing about a separate Yurok Council, a Council which would be as discriminatory as is the Hoopa Valley Tribe.

Only three weeks ago, a Yurok organization was voted down. The great majority have been holding out for what they feel is the correct organization -- a Reservation-wide administrative body to manage the Reservation's natural resources and income. We are circulating petitions for that purpose and in this short time already have over 800 signatures asking the BIA for a referendum of the entire Hoopa Valley Reservation.

Please let us continue our internal political process without Congressional interference. Please do not split our Reservation and its families. Please do not take our land.

Mr. LEHMAN. Thank you very much.

The Chair understands this is a very emotional bill and that there are serious disagreements.

For the record, the Chair would state that he has known Mr. Bosco for many years and knows that he is neither racist nor anti-Indian. I am sure there are serious emotional disagreements here. But the Chair would like to make that observation.

We will hear from one more witness. The rest of the statements will be submitted and printed in the record as if they were given in the committee, and we have about 4 minutes for Mr. Jones.

Mr. JONES. I am Sam Jones, a full-blooded Indian of the Hoopa Valley Reservation. I have lived on the reservation all of my life, sometimes on the Square, sometimes on the Extension.

For 70 years I have been involved in Indian ceremonies, games, and teaching. The Indians from all parts of the reservation participate together in the same ceremonies and games.

Although I was not approved by the Hoopa Valley business council for membership, all of my children and my grandchildren are Hoopa Valley Tribe members. Willie Colgrove, who spoke today in favor of the bill, is my cousin. This bill divides my family.

I oppose Mr. Bosco's bill to divide the Hoopa Valley Reservation. This is what the BIA unlawfully did 38 years ago. It allowed one-third of the Indians to organize the Hoopa Valley Tribe and gave all the revenues from the Square to them. The other two-thirds of the Indians had to file a lawsuit against the Government.

In 1973, the court ruled that all the Indians of the reservation have equal rights on the entire reservation. Since that time the Government has let the Hoopa Valley Business Council spend millions of dollars of the reservation's money trying, unsuccessfully, to reverse the courts. Now they ask you to do what the Supreme Court refused to do three times. The Indians should be allowed to govern themselves and have true self-determination. Please keep Congress out of our affairs.

In 1985, Mr. Bosco wrote a letter to Senator Wilson to convince him that it would be wrong to split the reservation. Mr. Bosco told a plaintiff that he would not support any bill which was not favored by the majority. When he changed his mind this year, he did not consult the majority of the Indians. We demanded he meet with us. Finally, we had to drive 300 miles and he spoke with us for 30 minutes.

The Government did not hold any meetings to see how many people of the reservation want it split or how many don't want it split.

The Federal courts have ruled over and over that all Indians of the reservation have the same rights in the Square portion of the reservation as the members of the Hoopa Valley Tribe. Are Bosco and the Bureau of Indian Affairs above the law?

He is interfering in Indian affairs and our internal political process by charging full speed ahead. He claims he is helping the Indians. He is not. Bosco's bill will steal our rights.

H.R. 4469 rewards the BIA and the Hoopa Valley business council for breaking the law. Split our reservation, and we will sue the Government again.

Please do not pass this unfair bill.

I thank you.

[Prepared statement of Mr. Jones follows:]

Testimony of Sam Jones
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide The Reservation

My name is Sam Jones, a full-blood Indian of the Hoopa Valley Reservation. I have lived on the Reservation all of my life, sometimes on the Square, sometimes on the Extension. Seventy years I have been involved in Indian ceremonies, games, and teaching. Indians from all parts of the Reservation participate together in the same ceremonies and games.

Although I was not approved by the Hoopa Valley Business Council for membership, all my children and my grandchildren are Hoopa Valley Tribe members. Willie Colegrove, who spoke today in favor of the bill is my cousin. This bill divides my family.

I oppose Mr. Bosco's bill to divide the Hoopa Valley Reservation. This is what the BIA unlawfully did 38 years ago. It allowed 1/3 of the Indians to organize as the Hoopa Valley Tribe and gave all the revenues from the "Square" to them. The other 2/3ds of the Indians had to file a lawsuit against the Government. In 1973, the Court ruled that all the Indians of the Reservation have equal rights on the entire Reservation. Since that time, the Government has let the Hoopa Valley Business Council spend millions of dollars of the

Reservation's money, trying unsuccessfully to reverse the courts. Now they ask you to do what the Supreme Court refused to do three times. The Indians should be allowed to govern themselves and have true self-determination. Please keep Congress out of our affairs.

In 1985, Mr. Bosco wrote a letter to Senator Wilson to convince him that it would be wrong to split the Reservation (attachment A). Mr. Bosco told a plaintiff that he will not support <u>any</u> bill which was not favored by the majority. When he changed his mind this year, he did not consult the majority of the Indians. We demanded he meet with us. Finally, we had to drive 300 miles and he spoke with us for 30 minutes. The Government did not hold any meetings to see how many people of the Reservation want it split or how many don't want it split.

The Federal Courts have ruled over and over that all Indians of the Reservation have the same rights in the "Square" portion of the Reservation as the members of the Hoopa Valley Tribe. Are Bosco and the Bureau of Indian Affairs above the law? He is interfering in Indian Affairs and our internal political process by charging full speed ahead. He claims he is helping the Indians. He is not. Bosco's bill will steal our rights. H.R. 4469 rewards the BIA and the Hoopa Valley Business Council for breaking the law.

Split our Reservation and we will sue the Government again.

Please do not pass this unfair bill.

Mr. LEHMAN. I thank you. I thank all of the witnesses.

Ms. Orcutt, Ms. Lyall, Ms. Bacon, your statements will be included for the record, as will those of Ms. Sundberg and Ms. Bowers from the Yurok Indian Tribe.

We will have those statements.

[Prepared statements of Ms. Orcutt, Ms. Ms. Lyall, Ms. Bacon, with attachments, Ms. Sundberg and Ms. Bowers, with attachment, follow:]

Testimony of Barbara Orcutt
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

My name is Barbara Orcutt. I am 1/4 Hupa, 1/8 Tolowa, and 3/8 Yurok. I am an Indian of the Hoopa Valley Reservation. I am a Jessie Short plaintiff who lives on the Square at Hoopa, California. For 15 years I have been driving the school bus on the Square. I have lived all my life on the Reservation. I know all the people in the community. Many of the children I drive to school have parents I drove to school years ago.

My husband, Lawrence Orcutt, a Jessie Short plaintiff, is a cousin of Dale Risling the Hoopa Valley Business Councilman who testified here today, and also a cousin of another Councilman, Lyle Marshall.

In 1962, my family moved from the Extension to the Square where we purchased three acres of property so my children could participate in extra-curricular activities and have the conveniences of electricity, telephone and a hospital. These conveniences do not exist on most of the Extension today.

The elementary school at the end of the road is the only source of employment on the upper end of the Extension. It employs 3 teachers, 3 aides, 1 cook and 1 bus driver (the bus driver is the only 12-month employee).

Drinking water must be transported from the Square to the Extension by bus in 5-gallon cans to the 2 river grade schools because the existing water at the schools does

not meet the Public Health Code. No Reservation funds have ever gone to solve these problems.

We own four acres of Trust property on the Square. We also own four acres of non-trust property, where we operate a trailer park.

H.R. 4469 would leave our property on the Square under the control of the Hoopa Valley Business Council for zoning and other purposes. This is unfair. We would be subject to the dictates of a minority government, in which we have no voice, just like in South Africa. We want a unified Council that would give all Indians equal voice in administering the resources and revenue of the Reservation.

H.R. 4469 does not solve any problems. It will only complicate issues.

Testimony of Roanne Lyall
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

My name is Roanne Lyall. I am an Indian of the Hoopa Valley Reservation. I oppose HR4469 and any bill which reverses the 25 years of court decisions about the Hoopa Valley Reservation.

The Courts have not misconstrued or misinterpreted the 1864 Act which created the Hoopa Valley Reservation. The simple fact is the 1864 Act did not nor did it intend to grant any territorial rights to any specific tribe. The 1864 Act surely did not intend to give the Hoopa Valley Tribe exclusive rights, since that group was not formed until 86 years later. Likewise, none of the later legislative enactments concerning the Reservation conferred any rights on any specific tribe. Because Congress limited the number of California Reservations to four, it knew the Reservation would include more than one tribe.

Our Reservation is tribal in the sense that its land and resources are communally, not individually owned. The unallotted Reservation land and resources are supposed to be held in trust by the United States for the common benefit of all Indians of the Reservation - we are those Indians of the Reservation.

As you have heard, we; as well as the members of the Hoopa Valley Tribe, are made up of assorted tribes, bands and groups which have intermarried, merged and divided extensively over the history of the Reservation -- groups which have always, simply, in fact, existed, irrespective of federal recognition or formal organization.

Our status as "Indians of the Reservation" necessarily entails ties to one or another of the historic Indian groups for which the Reservation was created -- These ties create our right to share in the benefits of all of our Reservation. Our rights do not come from membership in some artifical tribal entity as mandated by the BIA.

From 1864 to 1950, the Government ran the Reservation. From 1950 to April 8, 1988 the BIA unlawfully allowed the Hoopa Valley Tribe to run the Reservation. We don't want the BIA running the Reservation again. We want a voice in our future -- The PUZZ decision gives us that. Don't take it away.

The Court says the Government has a duty to allow all Indians of a Reservation to participate in self-government, on a non-discriminatory basis.

We are acting on that statement, and we do not want Congress to invalidate that decision by enacting HR4469.

Testimony of Elsie McCovey Bacon
An Indian of Hoopa Valley Reservation
In Opposition to a Bill to Divide the Reservation

I am Elsie McCovey Bacon. I am an Indian from the Hoopa Valley Indian Reservation. Many of my relatives live on the Square part of the Reservation. My sister and many other relatives live on the Extension portion without electricity, running water and telephone service. We have fought for 25 years in the courts without a dime from anyone to help us, and we have won, over and over.

I am opposed to this bill that will split our Reservation. Mr. Bosco did not consult the majority of the Indians of the Reservation and, therefore, they did not have any input. When we heard that Mr. Bosco was proposing legislation, we asked if we could meet with him. He met with us very briefly. He promised when a draft was completed, he would give us full opportunity to discuss it with him. He did not keep this promise.

The bill will disrupt everything that we stand for, divide most of the Indian families, and reverse 25 years of unanimous decisions by 13 federal judges.

If the bill goes through, then I will have wasted 38 years of my life for nothing. I was 22 years old when we started and I am now 60 years old. Please let us get on with the rest of our lives for whatever time that may be. I would like a Reservation-wide Council to manage the entire Reservation.

Thank you.

BOARD OF SUPERVISORS
COUNTY OF DEL NORTE
STATE OF CALIFORNIA

RESOLUTION NO. 88-02

A RESOLUTION REQUESTING
CONGRESSMAN DOUGLAS BOSCO
NOT TO INTRODUCE LEGISLATION TO DIVIDE
THE HOOPA VALLEY INDIAN RESERVATION

WHEREAS, Congressman Douglas Bosco is proposing to introduce legislation that would divide the Hoopa Valley Indian Reservation (H.V.I.R.); and

WHEREAS, the H.V.I.R. in its entirety was created as a single Indian Reservation, co-inhabited by eight (8) bands of different groups of Indians, two (2) of which are known as Yuroks and Hoopas; and

WHEREAS, the Indian peoples of the H.V.I.R. have lived together for over one hundred (100) years and have intermarried to a large degree, leaving it difficult to identify any pure tribal blood; and

WHEREAS, the long embattled Jessie Short Case has been completed and determined, and has been ruled in favor of the Plaintiffs in a unanimous decision of eight (8) judges that the H.V.I.R. is a single Reservation and all Indians of said Reservation are to share equally; and

WHEREAS, such proposed legislation to divide the H.V.I.R. would not only negate the unanimous decision of the Federal Court of Lands Claims in the Jessie Short Case, but would also subvert the Puzz Case to be argued January 27, 1988, which case would restore the voting rights of the Plaintiffs who have been denied that privilege for the past thirty-five (35) years plus; and

WHEREAS, such proposed legislation to divide the H.V.I.R. would not resolve the problem that now exists, but would create everlasting disruption to married families, cause further suffering and hardships to those who have been denied, and finally could result in violence.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors, County of Del Norte, State of California, urgently requests Congressman Douglas Bosco to NOT introduce legislation that would divide the Hoopa Valley Indian Reservation and splinter families

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and further negate a Federal Court Ruling and circumvent the Puzz Case now pending in the Federal District Court.

PASSED AND ADOPTED this 11th day of January, 1988, by the following polled vote:

AYES: Supervisors Burns, Smedley, Mellett and Crockett

NOES: NONE

ABSENT: Supervisor Bennett

JOYCE CROCKETT, Chairman
Board of Supervisors

ATTEST:

JOHN D. ALEXANDER, County Clerk-Recorder and ex-officio Clerk of the Board of Supervisors, County of Del Norte, State of California

By: _____ Deputy

I hereby certify the foregoing to be a true and correct copy of the original on file in this office.

Dated: JAN 12 1988

ATTEST:

JOHN D. ALEXANDER

County Clerk and ex-officio Clerk of the Board of Supervisors, County of Del Norte, State of California.

By _____ Deputy

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Crescent City - Del Norte County
CHAMBER OF COMMERCE

P.O. BOX 246 1001 FRONT STREET CRESCENT CITY, CALIFORNIA 95531 707/464-3174

January 11, 1988

Congressman Doug Bosco
518 7th St.
Eureka, CA 95501

Honorable Congressman Bosco:

The Crescent City - Del Norte County Chamber of Commerce opposes any legislation that at this time would divide the Hoopa Valley Indian Reservation. The Hoopa Valley reservation was created as a single reservation co-inhabited by eight bands of different groups of Indians, two of which are presently known as the Hoopa and Yuroks. For over 100 hundred years these groups have intermarried leaving it difficult to identify any pure tribal blood. Small group of Indians within the tribe for which a split of the tribe would benefit but not the tribe as a whole support the split of the tribe.

Until the Jessie Short Case has been completely determined and settled, it would not be in the best interest of the Native Americans of Del Norte County to divide the Hoopa Indian Reservation.

On behalf of the Chamber of Commerce's Board of Directors we urgently request that Congressman Bosco NOT introduce legislation that would divide the Hoopa Valley Reservation at this time and further delay the U S Federal Court ruling in the Jesse Short Case.

Sincerely,

Bill Preston KC

Bill Preston
President

KC/kic

Karuk G — DIDIAN

DOUGLAS H. BOSCO
1ST DISTRICT, CALIFORNIA

COMMITTEES
PUBLIC WORKS AND TRANSPORTATION
MERCHANT MARINE AND FISHERIES
POST OFFICE AND CIVIL SERVICE

Congress of the United States
House of Representatives
Washington, D.C. 20515
February 29, 1984

1330 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
(202-225-3311)

SUITE 328
FEDERAL BUILDING
777 SONOMA AVENUE
SANTA ROSA, CALIFORNIA 95404
(707-525-4238)

THE EUREKA INN
SUITE 219
7TH & F STREETS
EUREKA, CALIFORNIA 95501
(707-445-3058)

Mrs. Janice Greene
7013 N.E. 58th Street
Vancouver, Washington 98661

Dear Mrs. Greene:

Thank you for contacting me regarding the Hoopa Valley Business Council's proposed legislation. I appreciate knowing your views.

I have told members of the Council that I would be happy to introduce legislation if they could demonstrate that the proposal had the support of the vast majority of the Indians who would be affected. Judging by the response I've received so far, no such consensus exists. Nonetheless, I think it is important that discussions continue and alternatives be explored. I believe it is in the best interests of both sides to try to negotiate an agreement that would assist in the settlement of the Short case and resolve questions about future management of the reservation. While no proposed solution will receive everyone's support, I will act only if I am convinced that both sides are in general agreement and both would be treated fairly.

Again, thank you for contacting me. I appreciate your concerns.

Cordially,

DOUGLAS H. BOSCO
Member of Congress

sion that resentencing would be a "meaningless gesture." *McKnabb v. United States*, 551 F.2d 101 (6th Cir. 1977); *Coleman v. United States*, 532 F.2d 1062 (6th Cir.), *cert. denied*, 429 U.S. 847, 97 S.Ct. 132, 50 L.Ed.2d 120 (1976); *United States v. Coefield*, 155 U.S.App.D.C. 205, 476 F.2d 1152 (1973). These rulings are not relevant to this case, however, where the sentencing proceeding postdated *Dorszynski*. We accordingly remand so the defendant may be resentenced after the trial court gives explicit consideration to the FYCA.

We have considered the other grounds presented in appellant's motion to vacate sentence and agree with the district court's conclusions that none of them merit relief. The judgment is affirmed as to those claims.

Affirmed in part, reversed in part, and remanded for resentencing.

The HOOPA VALLEY TRIBE

v.

The UNITED STATES.

No. 568-77.

United States Court of Claims.

March 21, 1979.

Indian tribe brought action initially in the district court, naming Secretary of Interior and Commissioner of Bureau of Indian Affairs as defendants, and seeking equitable and declaratory relief but the district court ruled that action was one for money judgment against the United States and transferred to the Court of Claims. Indian tribe moved to retransfer case to district court and defendants moved to dismiss petition. The Court of Claims, adopting and adding to opinion of Schwartz, Trial Judge, held that: (1) Court of Claims had jurisdiction over action with objective to force payment by Government to plaintiff of all monies derived from timber of square of Hoopa Valley Reservation instead of lesser share due to plaintiff under previously decided case; (2) with one possible exception, all of issues not raised by plaintiff were decided adversely to it in *Short* litigation and could not now be pursued according to doctrines of collateral estoppel and res judicata, and (3) United States would not be liable to Indian tribe under breach of trust theory because over a number of years Government told the tribe that the tribe alone owned the timber of the square and Court of Claims later determined otherwise when other Indians brought suit in the *Short* litigation.

Petition dismissed.

1. Federal Courts ⇐1139

Where prime effort of complaining party is to obtain money from federal Government, Court of Claims' exclusive jurisdiction over nontortious claims, above $10,000, cannot be evaded or avoided by framing a district court complaint to appear to seek only injunctive, mandatory, or declaratory relief against government officials or the federal Government. 28 U.S.C.A. §§ 1346(a)(2), 1491.

2. Federal Courts ⇐1139

Where objective of suit was to force payment by the Government to plaintiff and its members of all monies derived from timber of the square of Indian reservation, instead of lesser share due to plaintiff and its members under federal case, Court of Claims had jurisdiction over suit and district court did not have jurisdiction over action, despite fact that action was framed purely in equitable or declaratory terms. 28 U.S.C.A. §§ 1346(a)(2), 1491.

3. Federal Courts ⇐1071

Court of Claims has jurisdiction over monetary claims even if they are equitable in nature. 28 U.S.C.A. §§ 1346(a)(2), 1491.

4. Indians ⇐7

Where United States fought extremely hard against the *Short* plaintiffs and attempted as long as it reasonably could to vindicate its position that timber belonged only to Hoopa Valley Tribe and where Government's position was not frivolous, insubstantial or unreasonable, United States would not be liable to Hoopa Valley Tribe under breach of trust theory because Government had told the tribe that the tribe alone owned the timber of the square and the Court of Claims later determined otherwise when other Indians brought suit in the *Short* litigation.

5. Judgment ⇐634

With one possible exception, all of issues now raised by plaintiff were decided adversely to it in *Short* litigation and could not now be pursued according to doctrines of collateral estoppel and res judicata.

Jack Tomlinson, San Francisco, Cal., for plaintiff; Neil R. Bardack, Tomlinson & Bardack, Michael Kip Maly and Murphy, Weir & Butler, San Francisco, Cal., of counsel.

James E. Brookshire, Springfield, Va., with whom was Asst. Atty. Gen. James W. Moorman, Washington, D.C., for defendant; C. David Redmon, of counsel.

Before DAVIS and KUNZIG, Judges.

ON PLAINTIFF'S MOTION TO RETRANSFER AND DEFENDANT'S MOTION TO DISMISS

PER CURIAM:

This case comes before the court on plaintiff's request for review by the court of the recommended decision of Trial Judge David Schwartz, filed July 13, 1978, on plaintiff's motion to retransfer the case to the United States District Court for the Northern District of California and on defendant's motion to dismiss the petition (complaint). Oral argument has been had and the court has also considered the written briefs of the parties. Since the court agrees with the recommended decision of the trial judge, as hereafter set forth, it affirms and adopts that decision, together with the following supplemental paragraphs, as the basis for its judgment in this case.

[1-3] 1. On the question of the jurisdiction of the District Court and of this court, we add the following to the trial judge's discussion (which, as stated above, we adopt): As the trial judge points out, it is by now firmly established that, where the prime effort of the complaining party is to obtain money from the Federal Government, this court's exclusive jurisdiction over non-tortious claims (above $10,000) cannot be evaded or avoided by framing a District Court complaint to appear to seek only injunctive, mandatory, or declaratory relief against Government officials or the Federal Government. *See American Science & Engineering, Inc. v. Califano*, 571 F.2d 58 (1st Cir. 1978), and cases cited; *Sherar v. Harless*, 561 F.2d 791, 793–94 (9th Cir. 1977); *Alabama Rural Fires Ins. Co. v. Naylor*, 530 F.2d 1221, 1226–30 (5th Cir. 1976); *International Engineering Co., Div. of A-T-O, Inc. v. Richardson*, 167 U.S.App.D.C. 396, 512 F.2d 573 (1975), *cert. denied*, 423 U.S. 1048, 96 S.Ct. 774, 46 L.Ed.2d 636 (1976); *Warner v. Cox*, 487 F.2d 1301 (5th Cir. 1974); *Mathis v. Laird*, 483 F.2d 943 (9th Cir. 1973). Here, the objective of the suit is obviously to force payment by the Government to plaintiff (and its members) of all the monies derived from the timber of the Square of the Hoopa Valley Reservation, instead of the lesser share due plaintiff (and its members) under *Short v. United States*, 486 F.2d 561, 202 Ct.Cl. 870 (1973), *cert. denied* 416 U.S. 961, 94 S.Ct. 1981, 40 L.Ed.2d 313 (1974). The jurisdiction of this court over this kind of suit is as clear as it was in *Short*, *supra*, and the multitude of other cases seeking payment from the Treasury of monies to one or another Indian tribe or Indian individuals.[1] Conversely, under the

1. The trial judge rightly points out that the United States holds legal title to Indian funds held in the Treasury. Plaintiff says that, even so, this court has no jurisdiction where the only

authorities cited *supra*, the District Court lacks jurisdiction of this action (even though framed purely in equitable or declaratory terms) which attempts, in direct impact, to obtain these monies from the Treasury.[2]

[4] 2. On the merits, we agree with the trial judge (for the reasons he gives) that, with one possible exception, all of the issues now raised by plaintiff[3] were decided adversely to it in the *Short* litigation, and cannot now be pursued because of the doctrines of collateral estoppel and res judicata. Counts I and II of the complaint basically raise issues litigated and determined against plaintiff in *Short*—as Trial Judge Schwartz demonstrates.[4] Plaintiff had a full and fair opportunity to litigate each of those issues before this court made its determination, and application of collateral estoppel is in no way unfair. *See Parklane Hosiery Co. v. Shore*, — U.S. —, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979). The precise issue presented in Count III did not arise before this court's first determination in *Short* but issues underlying and determining that particular question were litigated and decided in *Short*; moreover, plaintiff has been (on its own intervention) a party to all proceedings in the Trial Division since the court's liability decision in *Short*, 486 F.2d 561, 202 Ct.Cl. 870 (1973), *cert. denied*, 416 U.S. 961, 94 S.Ct. 1981, 40 L.Ed.2d 313 (1974), and could and should have presented, in that litigation, the apportionment problem it now seeks to raise in Court III. *Cf.* Restatement (Second) of Judgments § 56.1(2) ("Effect of Failure to Interpose Counterclaim") (Tent. Draft No. 1, 1973).

The one issue now presented by plaintiff which may not have been directly litigated and decided in *Short* is whether the United States is liable to the Hoopa Valley Tribe because, over a period of years, the Government told the Tribe that the latter alone owned the timber of the Square and this court later determined otherwise when other Indians brought suit in the *Short* litigation. But that unusual contention need not detain us long. The first thing to note is that the Government fought extremely hard against the *Short* plaintiffs (to the extent of seeking review in the Supreme Court) and attempted as long as it reasonably could to vindicate its position that the Square timber belonged only to the Hoopa Valley Tribe (and its members). Also, it is impossible to say that the Government's position was frivolous, insubstantial or unreasonable; indeed, plaintiff Hoopa Valley Tribe should be the last to take such a position[5] since it, too, fought mightily

issue is which set of Indians will obtain the money, and accordingly there will be no net detriment to the Treasury. The error in that proposition is shown, not only by the numerous cases (before the Indian Claims Commission and before this court) in which Indian tribes contend over which one shall be paid for the taking or loss of certain property, but also by this court's third-party practice (41 U.S.C. § 114(b)(1976); Ct.Cl.R. 41) which contemplates that the court will consider conflicting claims to money held by the United States. *See Richfield Oil Corp. v. United States*, 151 F.Supp. 333, 335, 138 Ct.Cl. 520, 522–23 (1957); *Christy Corp. v. United States*, 387 F.2d 395, 396, 397, 181 Ct.Cl. 768, 771, 772 (1967); *Bowser, Inc. v. United States*, 420 F.2d 1057, 1062, 190 Ct.Cl. 441, 448–49 (1970). Plainly, the plaintiff relied on that principle when it sought to intervene, before the court rendered its decision, in the *Short* litigation.

2. Insofar as plaintiff's argument is that this court has no jurisdiction over a monetary claim which is equitable in nature, that contention is incorrect. *Pauley Petroleum Inc. v. United States*, 591 F.2d 1308, at 1315–1317 (Ct.Cl. 1979); *Mitchell v. United States*, 591 F.2d 1300 (Ct.Cl.1979).

3. To discover the issues now raised, we have taken account of the complaint filed in the District Court as interpreted and explained by plaintiff's briefs on the current motions.

4. It must not be forgotten that, not only did the Hoopa Valley Tribe participate actively as *amicus* in the proceedings in the Trial Division, but that at the court level it requested and was granted full intervention as a party.

5. In the District Court, before transfer, counsel for the Tribe in this case curiously argued that the Federal Government should have known that other Indians could properly claim the Square timber. That same argument is incorporated in its briefs to us in this case.

(through different counsel) in *Short* for the other result and the Tribe still considers our conclusion to be wrong (as shown by other parts of plaintiff's argument in this very case). The United States, having at all times acted reasonably, cannot be convicted of breach of trust to the Hoopas because this court subsequently held that it was wrong in its belief as to sole Hoopa ownership and our ruling forced a change in distribution of the timber revenues. *See United States v. Mason*, 412 U.S. 391, 397–400, 93 S.Ct. 2202, 37 L.Ed.2d 22 (1973). Plaintiff's breach-of-trust claim simply has no valid foundation.

Accordingly, on the basis of the trial judge's opinion as supplemented above, plaintiff's motion to retransfer to the District Court is denied, the defendant's motion to dismiss the complaint (which we treat as a petition in this court) is granted, and the petition is dismissed.

OPINION OF TRIAL JUDGE

SCHWARTZ, *Trial Judge*: The plaintiff, Hoopa Valley Tribe, has moved under 28 U.S.C. § 1506 (1976) to retransfer this case to the District Court for the Northern District of California, as a case within the exclusive jurisdiction of that court. On motion of the United States the district court had previously transferred the case to this court under 28 U.S.C. § 1406(c) (1976), as a case within this court's exclusive jurisdiction. The motion has been heard, and this recommended opinion and decision is filed, pursuant to an order of reference of March 21, 1978.

In the Tribe's complaint, as filed in the District Court, the named defendants were the Secretary of the Interior and the Commissioner of the Bureau of Indian Affairs. The prayer was for equitable and declaratory relief. The district court, nevertheless, ruled that "this action is essentially one for a money judgment against the United States, and the Court of Claims has exclusive jurisdiction over this action [see *Mathis v. Laird*, 483 F.2d 943, 944 (9th Cir. 1973)]." *Hoopa Valley Tribe v. Andrus*, No. C–76–1405 RHS (N.D.Cal. Oct. 20, 1977). The district court thereupon substituted the United States for the named defendants and transferred the case to this court.

In moving to retransfer, plaintiff contends, as it did in the district court, that the action seeks only equitable and declaratory relief against Government officers, and is thus within the exclusive jurisdiction of the district court under 28 U.S.C. § 1331(a) *as amended by* Act of Oct. 21, 1976, Sec. 2, Pub.L. 94–574, 90 Stat. 2721, and 28 U.S.C. §§ 1361–1362 (1976) and 5 U.S.C. §§ 701–706 (1976), especially § 702 *as amended by* Act of Oct. 21, 1976, Sec. 1, Pub.L. 94–574, 90 Stat. 2721.

A second motion, by the Government, seeks the dismissal of the complaint on the ground of res judicata or collateral estoppel. This motion originated in the hearing on the motion to retransfer, where much of the Government's argument was to the effect that the Tribe was seeking to relitigate issues decided against it in *Short v. United States*, 486 F.2d 561, 202 Ct.Cl. 870 (1973), *cert. denied*, 416 U.S. 961, 94 S.Ct. 1981, 40 L.Ed.2d 313 (1974), to which the Tribe responded that jurisdiction, and not res judicata, was the only issue before the court on the motion to retransfer. The trial judge thereupon invited the Government to move to dismiss the complaint on the ground of res judicata, so that all the contentions could be considered at one time. The motion was made, referred to the Trial Division by order of May 26, 1978, and both motions have now been briefed.

Both parties urge that issues decided by the district judge should not be reconsidered. The Tribe argues against disturbance of the district court's denial of the Government's motion for summary judgment on the ground of res judicata. The Government argues against disturbance of the district court's denial of its own jurisdiction. Neither argument is persuasive. A transcript of proceedings before the district judge shows sufficiently that he would be willing to reconsider the matter of jurisdiction, if the Court of Claims sent the case back. As for the district judge's decision on res judicata, if that ruling is the law of the

case, it is nevertheless not conclusive. Since the district judge could reconsider the matter upon a retransfer, it may here be reconsidered. Besides, the district judge could not have been as familiar as this court with the issues litigated and decided in *Short*. The record in *Short* was unavailable to him and the text of the decision, as cited to him in the *Federal Reporter*, does not include the findings, which as will be seen are highly relevant on the res judicata-relitigation aspect of the case.* The merits of the contentions with respect to all issues will therefore be addressed.

The origins of the controversy in both *Short* and the instant case go back to the early 1950's and the growing value of the timber in the portion known as the Square of the Hoopa Valley Reservation in Northern California. The Square is an area 12 miles square which constituted the entire original reservation when it was established in 1864. 486 F.2d 561, 202 Ct.Cl. at 888–99, findings 10–21. Hoopas and other Indians lived on the Square at that time and thereafter, although as time went on and members of Indian bands intermarried, apparently most or all of the Indians of the Square thought of themselves as Hoopas. 486 F.2d 561, 202 Ct.Cl. 899–900, 901–02, findings 22–28, 30–32. An area contiguous to the Square, inhabited primarily by Yurok Indians and known as the Addition, was added to the Reservation in 1891. 486 F.2d 561, 202 Ct.Cl. at 902–03, findings 33–34. A portion of the Addition known as the Connecting Strip needs no mention here.

At least in modern times, there has been no particular timber on the Addition. The Square, a deep valley on the Trinity River, is heavily wooded. On May 13, 1950, the Indians of the Square organized themselves as the Hoopa Valley Tribe (486 F.2d 561, 202 Ct.Cl. at 962, finding 145); none of the tribes inhabiting the Reservation in aboriginal times were organized as such (486 F.2d 561, 202 Ct.Cl. at 950–51, findings 109, 111–112). In the late 1950's the Secretary of the Interior, on the basis of an opinion by the Solicitor, 65 Dec.Dept.Int. 59 (1958), began to distribute the revenues from the unallotted trust timberlands of the Square, annually, to the members of the Tribe per capita, to the exclusion of the Indians of the Addition. 486 F.2d 561, 202 Ct.Cl. at 970–73, findings 166–174.

In 1963 the excluded Indians brought suit for what they claimed was their share of the timber revenues. Some 3,800 persons joined as plaintiffs, alleging themselves Yuroks of the Addition. In *Short* the court ruled that every Indian of the Reservation is equally entitled to a share of the profits from trust timberlands wherever located on the Reservation. 486 F.2d 561, 202 Ct.Cl. 870. The Hoopa Valley Tribe, essentially the real party defendant on behalf of its members, participated in the trial as an *amicus curiae*. Through its counsel, the Tribe cross-examined plaintiffs' witnesses, examined witnesses for the defense, introduced exhibits, stipulated facts and briefed the legal issues. In the course of the review by the court of the trial proceedings, the Tribe was permitted to intervene as a party defendant. 486 F.2d 561, 202 Ct.Cl. 870, 873.

Following the denial of certiorari on petition of both the Tribe and the United States, 416 U.S. 961, 94 S.Ct. 1981, 40 L.Ed.2d 313 (1974), the case proceeded to the laborious task of determining which of the 3,800 plaintiffs (additional plaintiffs were now permitted to intervene) are bona fide Indians of the Reservation equally entitled with all other such Indians to a per capita share of the annual timber revenues. The making of these determinations has raised difficult and novel issues of qualification and disqualification by place of birth, degree of Indian blood, residence and other considerations.

As a starting point to determining which Indians were qualified, each plaintiff filled out a life-history questionnaire developed and agreed upon by both sides. The answers to the questionnaires now have been scrutinized, checked and objected to by the defendants, the United States and the Hoo-

* It is not clear from the record before us whether the District Court had our findings before it.

pa Valley Tribe. Presently, consideration of cross-motions for summary judgment for and against some 3,200 plaintiffs has been suspended at the joint request of the parties, so that they may explore the possibility of a mediated final resolution to the controversy.

Upon the denial of certiorari to this court's decision that all the Indians of the Reservation were equally entitled to the timber revenues, the Secretary of the Interior ceased to distribute the revenues exclusively to the members of the Hoopa Valley Tribe. On the theory that all 3,800 plaintiffs could eventually be held entitled to 70 percent of the revenues and the 1,500 members of the Hoopa Valley Tribe entitled to 30 percent, the Secretary put 70 percent of the annual timber revenues in escrow pending final decision on the number of the plaintiffs in *Short* qualifying as Indians of the Reservation entitled to per capita distributions of timber revenues. According to the complaint in the present case, the escrow fund now amounts to over $10 million.

The Hoopa Valley Tribe objected, unsuccessfully, to the administrative action escrowing part of the revenues. After exhausting its administrative remedies, the Tribe brought suit in the Northern District of California against the Secretary of the Interior and the Commissioner of the Bureau of Indian Affairs challenging the sequestration of funds. As already noted, the district court transferred the case to this court in the belief that this court has exclusive jurisdiction. Plaintiff seeks a retransfer, asserting the case to be within the exclusive jurisdiction of the district court as a claim for equitable and declaratory relief beyond the jurisdiction of the Court of Claims and different from the relief available in the Court of Claims in the *Short* case. The Government to the contrary contends the suit to be one for money, within the exclusive jurisdiction of the Court of Claims and dismissible as a transparent effort to relitigate issues already decided in *Short*.

The complaint in the present suit has three counts. The parties' contentions regarding jurisdiction and res judicata or its closely related doctrine, collateral estoppel, will be discussed with respect to each count. There is no need in this case to distinguish between res judicata and collateral estoppel, two doctrines which embody the principle of the finality of adjudicated matters.[1] "Res judicata" is often used broadly to refer to all binding effects of former adjudications and will be so used here.

The Defense of Res Judicata to Counts I and II

Count I. Count I alleges that plaintiff, a tribe "since time immemorial" has from the founding of the Reservation "treated the entire 12–mile Square as its exclusive homeland"; that the timberlands of the Square have at least since 1955 been the exclusive property of the plaintiff by conveyance from the United States authorized by Congress; that the plaintiff's ownership was recognized, from 1955 to 1974, by annual per capita payments of timber revenues and otherwise; that in 1974, 70 percent of the timber revenues were sequestered and "permanently taken" to be used for purposes, other than distribution to plaintiff, deemed by the defendants to be "appropriate for the best interests of the United States of America." No mention is made of the decision in *Short* or of that decision as the reason for the challenged sequestration by the Secretary and the Commissioner.

1. The term "res judicata" has often been used to denote the preclusion of relitigation of a claim by a judgment, when the same parties or those in privity with them and the same cause of action are involved in a second suit (regardless of whether all grounds for recovery or defenses were determined). "Collateral estoppel" refers to the operation of res judicata in a subsequent suit on a different cause of action raising issues determined in the former action. *See Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 326, 75 S.Ct. 865, 99 L.Ed. 1122 (1955); 1B Moore's Federal Practice ¶ 0.405(1) (2d ed. 1974); Developments in the Law—Res Judicata, 65 Harv.L.Rev. 818, 820 n. 1 (1952). Another set of more modern terms is "merger", "bar" and "claim preclusion" or "extinguishment", on the one hand, and "issue preclusion" on the other. *See* Restatement (Second) of Judgments (Tent. Draft No. 1, 1973) (Introductory Note to Ch. 3, 1; Introductory Note to Ch. 3, Topic 2, Title E, 143).

It is further alleged that the "sequestration" by the Secretary and the Commissioner is "a taking of plaintiff's private property for public use without just compensation by defendants * * * and is violative of the Fifth Amendment of the United States Constitution"; and that plaintiff has "been deprived of monies which it owns" in excess of $10 million plus interest.

The plaintiff Tribe requests a declaratory judgment that it is "the lawful and exclusive owner of the timber and the proceeds therefrom" and that "the sequestered proceeds be distributed to plaintiff forthwith and that all such future proceeds be distributed solely to plaintiff and its members." Plaintiff seeks also a temporary injunction, until the claim for declaratory relief is finally adjudicated, against any distribution of the proceeds to persons other than plaintiff.

A bolder attempt than Count I to relitigate issues and claims decided in *Short*, in the guise of a declaratory judgment action, can hardly be imagined. In *Short*, in which conflicting claims were made to ownership of the timberlands on the Square and the proceeds therefrom, the court decided that plaintiff was not a tribe from time immemorial but was created in 1950, not long before the first distribution of timber revenues (486 F.2d 561, 202 Ct.Cl. at 959–67, findings 136–156); that neither plaintiff Tribe nor its members exclusively owned the unallotted trust lands of the Square and that plaintiff's members were not entitled to more than shares in the proceeds equal to those of all the Indians of the Reservation (486 F.2d 561, 202 Ct.Cl. at 884–85, 976–79, 980–81 and findings 184, 185, 188, 189).

The claim that the Hoopa Tribe was the exclusive owner of the timberlands was squarely rejected, in favor of a determination that all the Indians of the Reservation owned equal shares. Now in Count I the plaintiff alleges the opposite and seeks declarations which by adjudging the Tribe to be the "exclusive owner of the timber and the proceeds therefrom" would squarely reverse the decision in *Short*. The count is patently defective under the doctrine of res judicata. Comment on the issue of jurisdiction is for the moment postponed.

Count II. This count adds the following to the allegations in Count I of exclusive ownership of the Square's timberlands by the plaintiff Tribe: that in the program for the allotment of lands of the Reservation, in 1892–1933, the residents of the Addition received allotments averaging 44 acres each and the residents of the Square received allotments averaging 5 acres; that the unequal allotments created "a duty owed by defendants and their predecessors" to hold the timberlands of the Square in trust "solely for the benefit of plaintiff and its members"; that since 1974 the defendants have diverted 70 percent of the revenue from the timberlands to a new trust for Indians of the Addition. The alleged resultant "taking" is said to be a breach of defendants' fiduciary obligation to plaintiff and a denial of equal protection of the law. Defendants, it is said, "must restore the assets of plaintiff's trust which have been wrongfully taken."

The prayer is for a judgment against defendants, the Secretary of the Interior and the Commissioner, "in their capacity as trustees for plaintiff," declaring their breach of trust for having distributed Reservation lands to be "in denial of due process and equal protection of the law" and asking for a "judgment mandating defendants to restore the assets of plaintiff's trust which have been taken." The allegations as to fiduciary duty, breach of trust and diversion of trust property, due process and equal protection add only additional legal theory to the allegations in Count I of a nonrecognition of the plaintiff Tribe's exclusive title to the timberland and its revenues. The only matter new in Count II over Count I is the allegation that plaintiff's exclusive ownership arose from unequal allotments of land on the Addition and the Square. This contention or one very like it—that the unequal allotments were recognition that the Square was a separate reservation, owned, with its timberlands, exclusively by the Hoopas—was made, considered and rejected in the course

of the litigation in *Short*, see 486 F.2d 561, 202 Ct.Cl. 870, 925–50, 979–80, findings 78–108, 186.

The argument is frivolous. The number of applicants for allotment of land near their homes and the amount of land available for allotment was such that the Indians of the Square received on an average much smaller allotments than the Indians of the Addition. The timberlands on the Addition, deemed not suitable for individual husbandry, were not allotted and kept by the Government as trust lands. The allotment program and its relation to the case were fully explored in findings 78–108, 186 of the decision in *Short* and the arguments of the Tribe based on the program were rejected. Only the desire to believe can find in the facts of the allotments evidence in support of the claim—squarely contrary to the claim determined in *Short*—that the Hoopas, as the Tribe constituted on the Square have title to the trust timberlands located on the Square. For a description of the allotment program generally see M. Price, Law and the American Indian—Readings, Notes & Cases 531–72 (1973); D. Getches, D. Rosenfelt & C. Wilkinson, 2 Federal Indian Law 844–71 (1977).

In any event, the decision in *Short* was against the Hoopa's claim of exclusive ownership, and Count II of the present complaint renews the same claim. The introduction of Government officers as the alleged takers and wrongdoing trustees adds nothing to the earlier case, in which the United States was correctly recognized by all as the authority in charge of the Reservation, its timberlands and the distribution of the revenues therefrom. And the present argument based on the allotment program is merely an additional legal argument in a second suit between the same parties on the same claim.

It is suggested that in this suit against the United States, the Hoopa Valley Tribe is not bound by the adjudication in *Short* because the two were not adversaries in that case; that the doctrine of res judicata or at least that part of it referring to the preclusion of relitigation of claims is limited to adversaries in the former suit. The contention ignores the force of the relationships among the parties to *Short*. Plaintiff Yuroks there were suing a trustee, the United States, for an adjudication that they were co-beneficiaries with the Hoopas. The Hoopa Tribe came into the case as an *amicus* aligned with the Hoopa's trustee, the defendant United States. The Tribe, as an *amicus*, examined and presented witnesses and briefed the issues, intervened as a co-defendant, and suffered a final judgment rejecting the Tribe's claim to exclusive Hoopa ownership and adjudicating that the Yuroks were co-beneficiaries with the Hoopas, on a per capita, equal basis, of the trust administered by the United States. Now the Hoopa Tribe purports to relitigate with the United States, its trustee (or the trustee's officers, which comes to the same thing), the claim of the Hoopas to sole-beneficiary status, and if the Hoopas are not to be sole beneficiaries, the relative shares of the Hoopas and Yuroks. These are the very issues determined, against the contentions of both the Hoopas and their trustee, United States, in *Short*.

[5] It would be destructive of the policy against relitigation of matters determined by judgments to allow such a relitigation on the ground that the Hoopa Tribe and the United States were not adversaries in the earlier case. And it is not the law that the Hoopa Tribe may relitigate this claim with its former co-defendant, its trustee. A short answer to the Tribe's contention that it was not an adversary of the United States might be based on the relationships of the three parties to *Short*. But it is enough to say that the Tribe would be bound by the former judgment, even if the United States had not been a party to the former suit. "A party [the Tribe] precluded from relitigating an issue with an opposing party [the Yurok plaintiffs in *Short*] * * is also precluded from doing so with another person [the United States] unless he [the Tribe] lacked full and fair opportunity to litigate the issue in the first action or unless other circumstances justify affording him an opportunity to relitigate the issue.

* * *". Restatement (Second) of Judgments (Tent. Draft No. 2, 1975), § 88. This is the rule of *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971), and of other cases collected in the Reporters Note to the cited section 88 of the Restatement (Second) of Judgments. There being no circumstances justifying affording the Tribe an opportunity to relitigate the issue, and the Tribe having had a full and fair opportunity to do so in *Short*, it is now bound by the former judgment.

Count II is for the same reasons as Count I barred by the doctrine of res judicata as seeking to relitigate a claim formerly determined.

Jurisdiction—in District Court or Court of Claims—of Counts I and II

Both counts I and II are demands for the payment of money. In count I the Tribe "requests the court to declare" that the sequestered proceeds be "distributed to plaintiff forthwith" and that future proceeds be "distributed solely" to plaintiff. Count II asks for a "judgment mandating defendants to restore the assets of plaintiff's trust which have been taken." The complained-of takings and diversions were done by officers of the United States, acting as such, in their official capacities, with respect to money held in the Treasury of the United States. A claim that such defendants pay out such money from the Treasury is obviously not a claim against the officers personally but a claim against the United States for the sums involved. Exclusive jurisdiction of such claims in excess of $10,000 is lodged in the Court of Claims, under sections 1491 and 1346(a)(2) of Title 28 U.S.C.

It is true, as plaintiff Tribe often repeats, that the Court of Claims has no jurisdiction of suits for injunctions or declaratory judgments *United States v. Jones*, 131 U.S. 1, 9 S.Ct. 669, 33 L.Ed. 90 (1889); *United States v. King*, 395 U.S. 1, 89 S.Ct. 1501, 23 L.Ed.2d 52 (1969). But a suit for money of the United States, over which the Court of Claims has exclusive jurisdiction, cannot be converted into a suit for injunctive relief, over which the Court of Claims has no jurisdiction, merely by naming a Government officer as defendant and praying for an injunction that the money of the United States, in its Treasury, be paid by the named defendant. A Congressional grant of exclusive jurisdiction cannot be so easily circumvented.

The complaint in plaintiff's case is surely one against the United States, for money, by the test laid down in *Land v. Dollar*, 330 U.S. 731, 67 S.Ct. 1009, 91 L.Ed. 1209 (1947): that the suit is against the sovereign (and not its officers) if "the judgment sought would expend itself on the public treasury or domain * * *". 330 U.S. at 738, 67 S.Ct. at 1012, *quoted with approval in Dugan v. Rank*, 372 U.S. 609, 620, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963). Since the Treasury would be the source of the money which would pass, were plaintiff to have the injunctive relief it seeks, the action is thus one for money against the United States.

Plaintiff would have it that the money here involved is not Government money but Indian money, held by the United States for Indians. In fact, legal title to the funds rests with the United States, which holds the money for the beneficial owners, determined to be such in the decision in *Short*, the "Indians of the Hoopa Valley Reservation."

The legal posture of Indian trust funds held in the federal Treasury was discussed by the Court of Claims in *Confederated Salish and Kootenai Tribes v. United States*, 175 Ct.Cl. 451, *cert. denied*, 385 U.S. 921, 87 S.Ct. 228, 17 L.Ed.2d 145 (1966). There the plaintiff Indian tribes had argued that the Government's use of their trust funds necessarily amounted to a Fifth Amendment taking of their property. The Court rejected this contention in the following passage (175 Ct.Cl. at 455):

> Even on the technical level, the flaw in this argument is that legal title to the funds on deposit in the Treasury lay in the United States. * * * The Indians' interest was, at most, that of a beneficiary, and a trustee's failure to live up to

the standards imposed upon him is not a taking of title from the cestui but a breach of obligation.

The jurisdiction of this court over actions for money encompasses actions for money held by the Government for Indians, whether the relationship is called a trust, as in *Confederated Salish and Kootenai Tribes, supra*, or a holding pursuant to an implied contract, as in *Fields v. United States*, 423 F.2d 380, 191 Ct.Cl. 191 (1970). *Short* was such a case and jurisdiction was assumed. *See also Coast Indian Community v. United States*, 550 F.2d 639, 213 Ct.Cl. 129 (1977); *Cheyenne-Arapaho Tribes v. United States*, 512 F.2d 1390, 206 Ct.Cl. 340 (1975). Accordingly, the suit is against the United States for money in its Treasury, in the amount of $10 million and more. The United States is suable for such amounts of money only in the Court of Claims, and not in the district court in the form of a suit against the Secretary of the Treasury and the Director of the Bureau of Indian Affairs, as officers subject to suit in district court.

The *Land v. Dollar* test appears in the context of a decision on sovereign immunity, but the principle is directly applicable here, because a recent limited congressional waiver of sovereign immunity for suits against officers has explicitly preserved sovereign immunity to suits against officers for money damages, and thus underscored the limitations of Tucker Act jurisdiction, by which suits for sums in excess of $10,000 are committed exclusively to the Court of Claims. 28 U.S.C. §§ 1491, 1346(a)(2) (1976). The reference is to a 1976 amendment to the Administrative Procedure Act, Act of October 21, 1976, Pub.L. 94–574, § 1, 90 Stat. 2721, which added to section 10 of that Act, 5 U.S.C. § 702 (1976), this sentence:

> An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. * * *

This enactment, coupled with the simultaneous removal of any requirement of jurisdictional amount for district court jurisdiction of federal question suits against Government officers, 28 U.S.C. § 1331(a) *as amended by* Pub.L. 94–574, § 2, 90 Stat. 2721, reinforces the division of jurisdiction between district court and Court of Claims in which the latter is given exclusive jurisdiction over money claims against the United States in excess of $10,000.

The effect of Pub.L. 94–574, for present purposes, is twofold. Sovereign immunity is waived, consent to sue is given, and jurisdiction is granted, for suits in the district courts against Government officers and agencies raising federal questions, excepting suits for money damages. *Cf. Califano v. Sanders*, 430 U.S. 99, 105–07, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977) (opinion by Brennan, J.); *Fitzgerald v. United States Civil Service Commission*, 180 U.S.App.D.C. 327, 554 F.2d 1186 (1977). *See also* Jacoby, *Roads to the Demise of the Doctrine of Sovereign Immunity*, 29 Ad.Law Rev. 265 (1977). Suits against officers for money damages in the district court are not consented to; for such suits sovereign immunity still prevails. Only in the Court of Claims, in an action against the United States under the Tucker Act, is there consent to suits seeking trust monies or money held pursuant to contract, in excess of $10,000. 28 U.S.C. §§ 1491, 1346(a)(2) (1976).

The net of Pub.L. 94–574 and the Tucker Act establishes a dichotomy not unlike that in the courts of equity and law in olden days. Suits against Government officers for specific relief may now be brought in the district court, and suits for money are to be brought in the Court of Claims. This is not to say that the newly authorized suit will be successful. The amendment by Pub.L. 94–574 to section 10 of the Administrative Procedure Act concludes with the proviso that:

> Nothing herein (1) affects other limitations on judicial review or the power or

duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought. Pub.L. 94–574, § 1, 90 Stat. 2721.

The inhibitions on the review of Government agency action are well-known—ripeness, exhaustion of administrative remedies and the like—and the framers of Pub.L. 94–574 disclaimed all intention except to lift the bar of sovereign immunity to suits in district court against Government officers for other than money damages. H.R. Rep. No. 94–1656, 94th Cong., 2d Sess. 2–5, 11–15; *reprinted in* [1976] U.S.Code Cong. & Admin.News, pp. 6121, 6122–26, 6131–36; Davis, *Sovereign Immunity Must Go*, 22 Ad.L.Rev. 383, 403–05 (1970); Jacoby, *Roads to the Demise of the Doctrine of Sovereign Immunity*, 29 Ad.Law Rev. 265, 270–71 (1977). But what is important in the present case is that for injunctions and declaratory relief, the claimant against the Government must go to the district court and there sue officers; for money damages (always referring to damages in excess of $10,000), the plaintiff must go to the Court of Claims. Congress has thus reaffirmed that there is no consent to suits in district court for money damages in excess of $10,000.[2]

The division of jurisdiction between the two courts requires that the courts be careful to reject Tucker Act claims masquerading as suits for injunctive or declaratory relief: *Warner v. Cox*, 487 F.2d 1301 (5th Cir. 1974) was such a suit. There a contractor brought suit against the Secretary of the Navy seeking a reversal of an administrative determination requiring the plaintiff to repay the Navy some $55 million paid by the Navy under a contract. The district court found for the plaintiff and entered an injunction restraining the Secretary from recouping the $55 million by refusing to make further payments on the contract. The Court of Appeals reversed, finding the claim to be a suit against the United States within the exclusive jurisdiction of the Court of Claims under 28 U.S.C. § 1491.

Applying the test of *Land v. Dollar*, the court held that the judgment against the Secretary would expend "itself (with sensible impact) on the public treasury and [would compel] the government to pay money in advance of the time specified in its contract, money which it conceivably might never otherwise have to pay at all." 487 F.2d at 1303. In concluding that the then text of the Administrative Procedure Act, 5 U.S.C. §§ 701–706 (1970) could not be invoked as a grant of jurisdiction for such a suit (a forecast of the decision in *Califano v. Sanders*, *supra*), the Court pointed out the necessity of guarding against allowing claims for money redressable in the Court of Claims to be rephrased as suits for equitable relief against Government officers (487 F.2d at 1306):

> Congress established the Court of Claims to determine claims of this type and magnitude but deliberately withheld equitable powers from it. Since the United States by reason of its nature acts only through agents, it is hard to conceive of a claim falling no matter how squarely within the Tucker Act which could not be urged to involve as well agency error subject to review under the APA. Little imagination is needed to foresee the consequences of a holding that such claims as this may be reviewed either in a court having power to grant equitable relief against the United States or in one having none. We refuse to believe that Congress intended, in enacting the APA, so to destroy the Court of Claims by implication.

In other cases, too, courts have emphasized that claims against the United States for money cannot be transformed into non-Tucker-Act claims for equitable relief merely by naming officers of the United States as defendants in place of the United States and praying for declaratory or other equita-

2. For the sake of simplicity, no mention is made of the Federal Tort Claims Act, 28 U.S.C. § 1346(b) (1976), or other waivers of sovereign immunity in areas such as admiralty.

ble relief.[3] In *Mathis v. Laird*, 483 F.2d 943 (9th Cir. 1973), relied on by the district court in sending the present case here, the Ninth Circuit readily found that a suit for back pay by a claimant who had been separated from the Air Force was within the exclusive jurisdiction of the Court of Claims, though the complaint was cast in terms of an action for mandamus and a declaratory judgment and the Secretary of Defense was the named defendant. See also *Carter v. Seamans*, 411 F.2d 767 (5th Cir. 1969), *cert. denied*, 397 U.S. 941, 90 S.Ct. 953, 25 L.Ed.2d 121 (1970).

Similarly, in *Myers v. United States*, 323 F.2d 580 (9th Cir. 1963), the court determined that a suit in the nature of inverse condemnation, within the exclusive jurisdiction of the Court of Claims, could not be converted into a suit for trespass, within the jurisdiction of a district court as a tort, simply by the plaintiffs' saying so. As the Court stated, "The repeated characterization by the appellants of the taking by the United States as one of trespass and the commission of waste upon the lands in question does not convert the claims to cases sounding in tort and thereby confer jurisdiction on the District Court under the Federal Tort Claims Act." 323 F.2d at 583.

The present suit by the Hoopa Valley Tribe is as much a suit against the United States for money as any of these cases. It is apparent from the face of the complaint that plaintiff seeks the payment of money. In the text of the count, plaintiff asks that "the sequestered proceeds be distributed to plaintiff forthwith" and that "the assets of plaintiff's trust which have been wrongfully taken" be restored; the prayer, less forthrightly, asks for a declaration that the defendants have no right to take said timber and proceeds therefrom from plaintiff at any time and for any reason. Count II asks for a judgment "mandating" the restoration of plaintiff's assets.

The relief sought would fall well within the test of *Land v. Dollar, supra*, as expending itself on the public treasury. The Secretary of the Interior sequestered 70 percent of the timber revenues in an attempt to comply with the decision of the Court in *Short*. Any judgment for the plaintiff on Counts I and II of the instant case would both "expend itself on the public treasury" and prevent the Secretary from obeying the final judgment of the Court of Claims as to who is entitled to money in the Treasury. The naming of Government officers as defendants and the prayers in Counts I and II for declaratory and injunctive relief are nothing but camouflage for a claim against the United States for money. That claim lies within the exclusive jurisdiction of the Court of Claims.

Count III—Res Judicata and Jurisdiction

Count III seeks relief alternative to Count I. Plaintiff argues that if it be declared that the Secretary's sequestration of part of the timber revenues is proper, then a different amount than 70 percent should have been sequestered. The correct percentage, it is said, should be based on the ratio, as of 1891, of the number of ancestors of the Hoopas who are members of the plaintiff Tribe to the number of ancestors of the total number of Indians who resided on the reservation "for whom defendants have now sequestered 70% of plaintiff's income." The complaint does not specify the ratio in 1891 but it is alleged to be more favorable to plaintiff Tribe than the 70–30 ratio, which "rewards procreation and denies equal protection of law."

Finally, plaintiff is content to have received 100 percent of the revenues until 1974—not the 1891 portion which it alleges is correct. The prayer is for a declaration that the 70–30 ratio be nullified and that the named defendants reallocate the formu-

3. Comparably the administrative jurisdiction to decide claims under contracts subject only to limited judicial review for error of law or lack of substantial evidence (41 U.S.C. §§ 321–22 (1976); *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966)) cannot be avoided by couching an administratively redressable claim as a claim for breach of contract. *Morrison-Knudsen Co. v. United States*, 345 F.2d 833, 70 Ct.Cl. 757 (1965); *L. W. Foster Sportswear Co. v. United States*, 405 F.2d 1285, 86 Ct.Cl. 499 (1969).

is for sequestration of timber income according to the 1891 ratio, "and that said allocation be made retroactive to June 25, 1974," when payment of 100 percent to the Hoopas ceased.

Jurisdiction. Count III seeks the distribution to the Tribe or its members of an unstated amount greater than the annual timber revenues now being distributed. If, as alleged in the complaint, a sequestration of 70 percent of revenues since 1974 has resulted in an accumulation of $10 million, then the remaining 30 percent, distributed to the Hoopas, amounted to $4,300,000 and the total or 100 percent of the revenues available was $14,300,000. Thus any increase in plaintiffs' share over the present 30 percent by even 1 percent to 31 percent would mean an additional payment to plaintiff of 1 percent of $14,300,000 or $143,000. The claim in Count III is thus seen to be one for payment to plaintiff, by Government officers, from the Treasury of the United States of a sum surely greater than $10,000, alleged to be owing to the plaintiff or its members. Such a claim is of course within the exclusive jurisdiction of the Court of Claims, for the reasons stated with respect to Counts I and II.

It is relevant here to note that, as a consequence of the court's jurisdiction of the suit heard in *Short*, the court had continuing jurisdiction over the amounts to be sequestered pending the final judgment, yet to come, as to which of the 3,800 plaintiffs are entitled to participate in the annual distribution of timber revenues. The administrative decision to suspend payments to the Hoopas of the entire revenues and to sequester 70 percent of the revenues for the possibly successful plaintiffs in *Short* was action taken to comply with this court's decision on title generally, pending final decision on how much is owing to the plaintiff Yuroks. That administrative decision, if erroneous, could be challenged in the proceedings in *Short* by any of the parties to the case, under the jurisdiction granted to the court in 1972 to remand matters to executive departments or officers with proper directions: "In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative body or official with such direction as it may deem proper and just." 28 U.S.C. § 1491 (1973), *as amended by* Pub.L. 92–415, § 1, 86 Stat. 652.

The objective of the remand power is to provide a complete remedy. The deliberate Congressional purpose in enacting the remand statute was to make it unnecessary for the parties to go to another court, after the Court of Claims made its decision, to obtain the rights which follow from the decision. *See* S.Rep. No. 92–1066, 92d Cong. 2d Sess. (1972) 2, *reprinted in* [1972] U.S.Code Cong. & Admin.News, p. 3116; H.R.Rep. No. 92–1023, 92d Cong. 2d Sess. (1972) 3–4. So here, the remand power was available in this court and made it unnecessary for a party to *Short* to sue in a district court to challenge the decision to sequester 70 percent of the timber funds pending final decision. The Hoopa Valley Tribe, already a party to the *Short* case, could in this court have invoked the remand power to challenge the 70–30 percent ruling which it has challenged in the District Court in California. This further identity of the jurisdiction of this court with that which the Tribe sought to invoke by its suit in district court is additional confirmation of the exclusive jurisdiction of this court over Count III.

Res Judicata. Plaintiff is precluded by the doctrine of res judicata from seeking to raise the issues of the ratio of division of revenues between Hoopas and Yuroks, sought to be raised in Count III. In *Short* this court held that the rights in the timber revenues were the individual rights of the Indians of the Reservation; that all the revenues were to be divided by the number of Indians of the Reservation and that the resulting shares were to be those of the individual Indians, respectively. The court concluded that 22 named Indians were Indians of the Reservation. Since then, in orders dated December 3, 1976 and April 27, 1978, the court has granted summary judgment on behalf of 110 additional plaintiffs, adjudging them to be Indians of the Reservation entitled to per capita payments.

Each of these plaintiffs is entitled to one share of the total shares to be determined. And as already noted, proceedings are pending on motions for summary judgment that some 3,200 plaintiffs are qualified as Indians of the Reservation, and each entitled to a share.

The Hoopa Valley Tribe has been heard at length on these matters in the proceedings in *Short*. It could have urged that if it failed in its contention that the Hoopas were entitled to 100 percent of the timber revenues, then the division as between *Short* plaintiffs and the Hoopas should be, not by the number of individual Indians of the Reservation, including Yurok plaintiffs and Hoopas, but by some ratio of the two groups as of some date in the past. It chose not to so argue. Now, several years later, any effort so to reargue the issue—the division of shares between Yurok and Hoopas, per capita or in gross, as of the present or the past—contravenes the doctrine of res judicata. The claim, and the issue, have been determined, and relitigation is precluded.

The contention of an appropriate ratio as between Indians of the Square and Indians of areas added in 1891, also, renews the argument of the Tribe, rejected in *Short*, that the Addition and the Square are separate entities to be treated separately. *Short* decided that the reservation was a single, integrated reservation, all of whose inhabitants were to be treated equally and indistinguishably. While the idea of a ratio between the two groups as of 1891 was not mentioned in the briefing in *Short*, the issue of the division between Yuroks and Hoopas as occupants of separate areas was raised and rejected. It is now too late to relitigate the claim.

Count III, too, is to be dismissed, together with Counts I and II, as barred by the doctrine of res judicata.

BROMLEY CONTRACTING CO., INC.

v.

The UNITED STATES.

No. 5-76.

United States Court of Claims.

March 21, 1979.

On contractor's exception to recommended decision of Joseph V. Colaianni, Trial Judge, upholding claim for reformation of contract to correct mistaken bid, the Court of Claims held that: (1) where contractor did not utilize disputes clause or any of its accompanying administrative procedures, disputes clause providing for interest on claim arising under contract was not applicable; (2) no express provision for award of interest applied to cases of equitable reformation of contract to correct mistaken bid; (3) contracting officer overreached contractor by accepting bid and not allowing either correction or withdrawal, even though officer should have known it was mistaken; (4) reformation of contract was appropriate remedy where rescission was no longer possible, and (5) evidence was sufficient to establish that contractor intended to apply a 19 plus 10% markup to its invitation for bid for contract.

Judgment entered for contractor.

1. United States ⇐70(33)

Where contractor did not utilize disputes clause of contract or any of its accompanying administrative procedures, contract clause governing payment of interest on claim arising under contract was not applicable to contractor's claim for interest on sum awarded following reformation of contract for building reconstruction to correct mistaken bid.

2. United States ⇐110

Allowance of interest on claim by contractor for reformation of contract due to mistake in bid would require explicit waiver

JOY SUNDBERG
Trinidad Rancheria
Trinidad, CA 95570
(707)677-3738

TAB A

GENTLEMEN:

My name is Joy Sundberg; I am a Yurok Indian. I was born on the Extension portion of the Hoopa Valley Indian Reservation on my Grandmother's allotment. I am also a "Short" plaintiff. But, I am NOT a Hupa and I do not wish to become a Hoopa Tribal member, nor do I wish to be classified as an "Indian of the Reservation" nor as a "Non-Hoopa."

There are many Yurok people who share my view, who have not been consulted nor represented in the arena of the "Short" case and attendant battles. Yurok people who are dismayed to see attorneys-at-law and attorneys-in-fact denigrate the Yurok name, Tribal rights, Tribal sovereignty and Tribal self-determination while they strive to win monetary compensation for their clients and themselves.

I am speaking here today because the voice of many Yurok people, people who want their heritage and tradition to continue, has not been heard.

The Yurok people need a government and a reservation. Our land and our tribal rights have eroded to the point of non-existence during this prolonged battle for INDIVIDUAL monetary compensation.

We Yuroks need to govern and manage our fishing rights and natural resources, obtain education for our people and provide for their health and social needs. We need to be able to con-

JOY SUNDBERG continued

structively, as a Tribe, 638 contracts to improve our livelihoods and our Reservation, not just sit back in some city far removed from the Reservation, and collect our per capita checks. Most importantly, we need to develop our own economic base to meet the goals of self-determination to assure the future of our people.

This Bill, H.R. 4469, may be the way to address the needs of the Yurok Tribe and its future. But, having been involved in Indian politics for 25 years, I am somewhat leery about it.

What if, for instance, the Reservation is split but continued pressure from "Short" and "Puzz" plaintiffs prevent the organization of the Yurok Tribe? What if their fancy lawyers then decide, that since the Reservation is split and their clients cannot expect any more future per capita payments from the Hupa resources and no income is to be made from the depleted resource of the Extension? The next QUOTE: logical step UNQUOTE, would be to sell the Indian rights to the Extension, as a final payment .

The Yurok Tribe would then be effectively terminated, and the proposed Yurok Reservation extinguished. The attorneys would be paid and all the "Short" plaintiffs would be rich... for about a month.

So, rather than sit back and watch certain people continue to snipe at tribal sovereignty through their attorneys, I am willing to take a chance on this Bill, THOUGH NOT AS IT IS PRESENTLY DRAFTED. To accept the Bill as written would expose the Yurok people to abitrary controls, no better than the arbi-

JOY SUNDBERG continued

tary and destructive controls placed on them by "Short" and "Puzz."

The Yurok people need a voice in their future. As a start in making that voice heard, I am submitting to you a list of comments and recommendations pertaining to the Bill for your consideration. I urge they be incorporated in the final Act.

The recommendations, in summary, are:

1. Place all federal land within the proposed Reservation in trust. Further, to incorporate the Yurok Experimental Forest and the Redwood Ranger Station as a part of the Reservation.

2. Restore all timber lands within the Reservation boundary to Tribal ownership.

3. Appropriate $10,000,000 for land acquisition (other than timberland) within the Reservation for return to Tribal ownership.

4. Staff and fund the Bureau of Indian Affairs to permit them to adequately discharge the responsibilities required of them by this Bill.

5. Restore hunting and gathering rights on public land and private timber lands within a portion of the aboriginal territories of the Yurok Tribe.

6. Further technical recommendations to perfect the application of the Bill's intent.

Thank you, Members of the Committee, for the opportunity to address you. Please contact me if you any questions concerning my comments.

LAVINA MATTZ BOWERS
P.O. Box 473
Klamath, CA 95570
(707) 482-2065

TAB B

Members of the Committee:

My name is Lavina Mattz Bowers; I'm of a traditional Yurok family, from the village of Red-woi, the House of Lye-eck on the original Klamath Reservation. We have lived since aboriginal times as a fishing family group at this site. Currently, our family lists 126 living members.

We are not a Midwest Tribe; we do not have oil resources to sell and pay out in huge per capital payments. But we do have a beautiful reservation that could be self-sustaining, providing jobs and funds for tribal operations and services.

We have our fishery which could be developed to include an on-Reservation cannery and smoking facility. The fish roe could be marketed to Japanese consumers who relish it. The lower River needs much habitat restoration work which could be done by the Tribe, restoration work which would enhance the salmon resource for future harvest not only for our Indian fishers, but also for the large number of sports fishers who come to the Klamath River. Tribally regulated fishing guide services, tribally owned and operated RV camps and tourist facilities are viable sources for future tribal employment and revenue.

The timber resources on our Reservation have been decimated. However reforestation work could be accomplished by

TAB B continued

the Tribe if those lands were returned to us, so that a future tribally managed forest industry could provide meaningful and productive employment for our children and grandchildren.

Our children need health care and education in basic survival skills for today's world; our elders need medical care. Facilities to meet those needs could be developed in our Reservation and staffed by tribal members. They could be staffed by qualified Yurok people who currently live away from the Reservation because there is no employment for them on the Reservation.

With the Reservation restored, both legally and environmentally, we will be sitting on a gold mine. Not a gold mine of per capita payments, but rather one of meaningful employment opportunities, services for our people and tribal pride in managing what we believe is one of the most beautiful reservations in the country. What makes it even more precious to us is that it is our own aboriginal territory; our forebears have lived here since time began. If there has ever been an opportunity for the federal government of the United States of America to fulfill its stated goal of Indian self-determination this is IT!

The "Short" case does not provide for inheritable communal tribal rights. Future generations and even Yurok children of the current genration lack services and protection provided by tribal identity.

I am very aware that there are some "Short" plaintiffs who are not of Yurok descent and that these people

TAB B continued

who may have past ties to the Reservation through other extinguished or extant tribes, feel that if the Yuroks form a government they will not be allowed to benefit from the resources of the Reservation. I empathize with these people for having lost their tribal identity. But, I do not want to be forced to give up my tribal identify and live as QUOTE: AN INDIAN OF THE RESERVATION UNQUOTE under the perpetual domination of the Bureau of Indian Affairs. The Yurok Tribe must organize and be allowed to work with tribal unity toward self-sufficiency for future generations of their members. Both tribes, the Hoopa and the Yurok, must be freed from the dependent, advisory only, position in which they have been placed by the "Puzz" decision.

If there are other so-called QUOTE: INDIANS OF THE RESERVATION UNQUOTE, who are non-Yurok or non-Hoopa, perhaps they can form an organization under that title with which the Department of Interior will deal. Perhaps even the Yurok Tribe could consider concessions and allow non-Yurok representation on their Council. I don't know...that would be a tribal matter to be carefully considered.

But there has to be a way the problems can be worked out. There has to be a way that the major tribal entity for which the Extension Reservation was created, the Yuroks, can utilize the Reservation in the way it was intended! The needs of so many should not be abrogated for the wishes of so few, those few who appear to be concerned primarily with their personal fortunes and disregarding - in many cases - their fellow Indians and even their children.

TAB B continued

There has to be a way to end this merry-go-round of lawsuits which are threatening tribal rights nationwide!

We applaud Mr. Bosco's efforts in challenging a seemingly impossible problem by crafting this Bill. This proposed Act could be the vehicle to get us on the road to sanity. But, as it is now written, it will not fulfill the needs of Indian self-determination. We have submitted a lit of comments and recommendations, included as TAB C in the written submission, with regard to certain provisions of the Bill.

You will find that, in essence, we are asking for our land base to be returned to us to the extent possible. I'm sure the Department of Interior has found from past experience, that a tribe without land or resources is a burden they cannot afford to bear.

We also ask that a portion of our hunting and gathering rights in Yurok aboriginal territy be restored on public lands and private timberlands. And, that in the interim while the Bureau of Indian Affairs is charged with management of the Reservation and its resources, they be allowed sufficient staff and funds to meet the need.

Thank you for your courtesy in listening to us. We will appreciate your considering our comments and support your effort to redress the current unhappy situation. Please contact me for any questions you may have concerning my testimony.

TAB C

COMMENTS AND RECOMMENDATIONS
Specific To
H. R. 4469

Note: Following comments and recommendations are referenced to the similarly numbered paragraphs in H. R. 4469

SECTION 2. RESERVATIONS: DIVISION AND ADDITIONS.

(b) YUROK RESERVATION

(2) (Page 3, Lines 5-10) Comments. This item transfers all National Forest Service land within the boundaries of the Reservation from the Department of Agriculture to the Department of Interior to be placed in trust for the benefit of the Yurok Tribe.

Recommendations: That all federal land, in addition to Forest Service land, within the boundaries of the Reservation be declared excess federal property and transferred to the Secretary of Interior without compensation and placed in trust for the Yurok Tribe. This land shall include all National Park Service land at the estuary of the Klamath River, with special reference to: a) that plot of land which was traditionally used as a Yurok dance area and, (b) the facilities and structures of the currently inoperative U.S. Radar Station. (40 USC 483).

Further, that the U.S. Forest Service land, just outside the Reservation boundary, north of the Klamath River estuary, known as the "Yurok Redwood Experimental Forest", with its attendant structures and facilities (to include, but not be limited to, that facility known as the Redwood Ranger Station,) be transferred to the Secretary of Interior and be placed in trust for the Yurok Tribe, without compensation. (25 USC 465)

(3) (Page 3, Lines 11-14) Comments. This item authorizes appropriation of $2,000,000 for the purchase of land to be added to the Reservation. It is estimated that approximately 6% of the land contained within the boundaries of the proposed Yurok Reservation currently has trust status. The majority of land within the Reservation boundaries is owned by large private timber corporations and/or companies. The major part of timber on that land has been harvested by clear cutting methods by these owners and/or antecedent timber com-

COMMENTS AND RECOMMENDATIONS SPECIFIC TO H.R. 4469 continued

panies. Within the environs of the Klamath River estuary, the bulk of prime river front land has been developed by non-Indian owners for recreation vehicle and sports fishing facilities, to the extent that access for Indian fishers to the River must be negotiated and paid for by the Bureau of Indian Affairs each year.

The $2,000,000 offered by the present form of the Bill in this item, plus the meager acreage offered in Item (2) above, will not provide the land base necessary to facilitate tribal self-determination, economic development, and Indian housing.

Recommendations: a) That all privately owned timberland within the boundaries of the proposed Yurok Reservation be exchanged by the private owners for U.S. Forest Service timberland outside the boundaries of the Reservation, and that all such timberland within the boundaries be transferred to the Secre t ary of Interior without compensation and placed in trust for the Yurok Tribe.

Alternative recommendation to a) above. Should negotiations for land exchanges not be possible, we urgently request that a full Congressional investigation be ordered concerning alleged fraudulent transactions which may have occurred relative to the transfer of allotted land within the boundaries of the Reservation to private non-Indian ownership. Pending the results of the investigation, funds will be appropriated to repurchase all lands found to have been transferred by such allegedly questionable means and, further, said lands to be condemned and bought at fair market value with newly appropriated and specifically designated funds (not a part of the $10,000,000 appropriated funds mentioned in paragraph b) immediately below nor the escrow funds referred to in Section, Recommendations in the last paragraph, Page 4 of this submission.

b) That the $2,000,000 appropriate for land purchases be increased to: $2,000,000 per year for a period of five years with year one being the year of enactment of this Act, with the stipulation that funds need not be expended in the year appropriated but may be held in a trust account specific for land purchase, with any interest garnered to be incremented

COMMENTS AND RECOMMENDATIONS SPECIFIC TO H.R. 4469 continued

to the trust account. A time limit of 20 years should be established to purchase the lands, after which any unused funds shall revert to the federal government.

(d) MANAGEMENT AND GOVERNMENT OF THE YUROK RESERVATION.

(1) (Page 3, Lines 23 & 24; Page 4, Lines 1 - 8) Comments. This item clarifies that management of the Yurok Reservation shall be by the Bureau of Indian Affairs until the Yurok Tribe is organized. The Bureau of Indian Affairs Northern California Agency and, specifically, the Klamath Field Office is understaffed and under-budgeted to effectively or efficiently manage and govern the proposed Yurok Reservation. Currently the Field Office is administratively staffed with one full time secretary and a vacant Field Representative position.

Recommendations: a) Upon consultation with the Bureau of Indian Affairs, the Northern California Agency be assigned sufficient additional F.T.E.s (full-time equivalent position allocations) to manage the Reservation's affairs effectively, with particular attention to the positions of: Biologist, Realty Specialist, Forester, Tribal Operations Specialist, Housing Specialist and Vocational Development Specialist, and

b) Sufficient funds be appropriated to allow efficient management and government operations. Level of funding required to be allocated by the Bureau of Indian Affairs, Northern California Agency from funds authorized by the Congress. Such funding are to be separate and no part of the appportionment of the escrow fund.

(e) LAND EXCHANGES AND RIGHTS-of-WAY.

(2) (Page 4, Lines 18-21) Comment. This item specifies that the Department of Interior may acquire right-of-way for access to trust land within the Reservation. Indian fishers, hunters and gatherers are currently effectively blocked from access, or have limited access, to all lands for hunting and gathering, to the River for fishing, and to land-locked allotments.

Recommendation. a) This item should be modified to read "The Secretary will acquire an interest in land for a right-of-way...." through all privately-owned timber lands for tribal members. This provision is to be effective until such time as a majority of Reservation land has been restored to trust

COMMENTS AND RECOMMENDATIONS SPECIFIC TO H.R. 4469 continued

status. and b) Add a new Item as follows:

(3) Hunting and gathering rights will be restored to the Yurok Tribe within a portion of their aboriginal territory. Specifically, within all Forest Service and privately-owned timberland contained in the area roughly formed by a line drawn from: Sister Rocks in the Pacific Ocean due East to Buck Mountain, thence East-Southeast Elk Valley, thence Southeast to Rock Creek Butte, thence South to the North Fork of the Klamath River at its confluence with Slate Creek, thence Southwest along the North Fork of the Klamath River to Weitchpec, thence Northeast along the East Bank of the Lower Klamath River to the Estuary, thence North along the Coast to Sister Rocks.

(f) LIMITATION OF ACTIONS.

(1) (Page 4, Lines 22-25 and Page 5, Lines 1 - 15)

Comment. This item limits court actions for damages relating to this Act with a period of 2 years following enactment. The Yurok Tribe, currently without a formal government, without funds, and lacking legal counsel or technical assistance would not be adequately apprised of the ramifications of this Act in a period of only 24 months.

Recommendation. The "sunset clause" for legal action in response to this Act be fixed at 5 years rather than 2 years.

SECTION 3. SETTLEMENT OF PENDING LITIGATION.

(b) DISTRIBUTION OF ESCROW FUNDS.

(2) APPORTIONMENT OF REMAINDER.

(A) (Page 6, Lines 13-19) Comments. This item apportions remaining escrow funds to the Hoopa and Yurok Tribes on a 50/50 basis.

Recommendation. These funds, though not per capita, should be apportioned in a proportional manner based on numbers of enrolled tribal members. Under this method, obviously, final apportionment cannot be made until the Yurok Tribal Government is in place, enrollment criteria established and enrollment accomplished. Disbursement of funds to tribes prior to finalizational of Yurok rolls should be negotiated by the tribal governments and the Department of Interior.

COMMENTS AND RECOMMENDATIONS SPECIFIC TO H.R. 4469 continued

SECTION 4. YUROK TRIBAL ORGANIZATION (Page 7, Lines 21-23)

Comment. This Section restricts the method of organization to that prescribed by the Indian Reorganization Act.

Recommendation. This Section should be amended to include "or any other legal means by which the Yurok people wish to organize."

SECTION 5. SPECIAL CONSIDERATIONS.

(a) LIFE ESTATES. (Page 8, Lines 2-7) Comment. This item gives special consideration to a non-Hoopa family land assignment on the proposed Hoopa Valley Reservation. Other families may have similar assignments or allotments.

Recommendation. That Congressional staff take extraordinary measures to advertise this proposed item to residents of the "Square" and the "down-river portion" of the two proposed reservations to determine the existence of other exceptional land holdings which may need similar special consideration.

(b) RESIGHINI RANCHERIA MERGER WITH YUROK RESERVATION. (Page 8, Lines 8 - 17) Comment. This item allows the Resighini Rancheria a choice on whether to merge with the Yurok Tribe or not. It is alleged that rancherias in the Pit River area were extinguished without choice upon formal organization of the Pit River Tribe. Rancherias in the environs of the proposed Yurok Reservation are concerned that they have no option.

Recommendation. That langugage be included in the Bill to permit other rancherias in the area, which have a high percentage of members who are Yurok or Yurok descendant, the option of merger, e.g. Big Lagoon, Trinidad and Elk Valley rancherias.

Final Note: We fully acknowledge our lack of access to legal advice in preparing these comments and recommendations. Please consider their implied intent rather than "letter of the law."

Mr. LEHMAN. I appreciate everybody's cooperation today. This obviously is very important legislation.

The committee is adjourned.

[Whereupon, at 12:11 p.m., the committee adjourned.]

APPENDIX

TUESDAY, JUNE 21, 1988

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

STATEMENT OF
DANA L. TRIER
TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
SUBMITTED TO THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
JULY 21, 1988

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to present the views of the Treasury Department on the Federal tax aspects of section 7 of H.R. 4469 (the "Bill"), a bill to partition certain reservation lands in California between the Hoopa Valley Tribe and the Yurok Indians, and to resolve a dispute regarding timber income derived from those lands that has given rise to litigation. Section 7 of the Bill would, in part, provide an exemption from Federal taxation for amounts recovered by plaintiffs in this litigation.

Background

The dispute addressed by the Bill concerns the right to revenues from timber on unallotted trust status lands on a portion of the Hoopa Valley reservation of northern California. Based on our review of several opinions of the United States Court of Claims and the United States Claims Court,1/ we understand the background of this dispute to be as follows. In 1955 the Department of the Interior, as trustee for Indians of the reservation, began to distribute these timber revenues exclusively among persons on the official role of the Hoopa Valley Tribe. In 1963, a number of individual Yurok Indians resident on a different portion of the reservation brought suit against the United States as their trustee for a money judgment for their alleged share of this timber income. In 1973, the Court of Claims determined that this income could not be distributed only to members of the Hoopa Valley Tribe. Following this decision, the Bureau of Indian Affairs restricted distributions made to members of the Hoopa Valley Tribe to 30 percent of the timber income from the

1/ Ackley v. United States, 12 Cl. Ct. 306 (1987); Short v. United States, 12 Cl. Ct. 36 (1987); Short v. United States, No. 102-63, slip op. (Ct. Cl. March 31, 1982), aff'd, 719 F.2d 1133 (Fed. Cir. 1983), cert. denied, 467 U.S. 1256 (1984); Short v. United States, 661 F.2d 150 (Ct. Cl. 1981), cert. denied, 455 U.S. 1034 (1982); Short v. United States, No. 102-63, slip op. (Ct. Cl. July 25, 1980); Hoopa Valley Tribe v. United States, 596 F.2d 435 (Cl. Ct. 1979); Short v. United States, 209 Ct. Cl. 777 (1976); Short v. United States, 486 F.2d 561 (Ct. Cl. 1973), cert. denied, 416 U.S. 961 (1974).

unallotted lands on the reservation. The remaining 70 percent has been accumulating with interest in an escrow fund in the United States Treasury pending final resolution of the litigation. As of early 1987, over $60 million was in this escrow fund.

H.R. 4469

H.R. 4469 would resolve the dispute between the Hoopa Valley Tribe and the Yurok Indians by partitioning the Hoopa Valley reservation between them. In addition, section 3 of the Bill would require the Secretary of the Interior to distribute to qualified plaintiffs in the litigation amounts from the escrow fund equal to the per capita share of income distributed to individual members of the Hoopa Valley Tribe after December 31, 1974. Section 7 of the Bill provides, in part, that any monetary recovery by a plaintiff in this litigation is exempt from any form of Federal taxation.

Discussion

The Treasury Department opposes granting an exemption from Federal taxation by statute for recoveries by plaintiffs in this litigation. Instead, we believe that such recoveries should be treated the same way for Federal income tax purposes as the timber income for which they are a substitute. Thus, to the extent that timber income from the unallotted lands on the reservation was taxable to the members of the Hoopa Valley Tribe when paid to them, and would have been taxable to Yurok Indians if it had been paid to them, amounts received as a result of litigation to recover such proceeds also should be taxable.

The intent of section 3 of the Bill appears to be to put the plaintiffs in the same position that they would have been in if they had received the same payments of timber income as the Hoopas. To the extent that the timber income would have been taxable, section 7 would defeat this purpose. Therefore, we suggest that the Bill provide that recoveries out of the escrow fund pursuant to section 3 of the Bill are treated for Federal income tax purposes in the same way that per capita payments of timber income from unallotted lands on the reservation are treated.2/

Whether the timber income is subject to Federal income tax depends on whether it is exempted by any treaty, statute, or other Act of Congress. Although it is not necessary to resolve this issue at this time, we are not aware of any such Act of Congress that would

2/ We assume that these amounts have not been taxed to the escrow fund.

exempt the timber income involved here. A decision of the United States Supreme Court has interpreted the General Allotment Act of 1887 as providing an exemption from tax for income derived from land allotted pursuant to the Act. 3/ However, the timber income in this case is derived from unallotted land, and so would not be exempt from tax under the authority of this decision.4/

Finally, we have considered whether recoveries in this case should be exempted from Federal income tax under 25 U.S.C. sec. 1407. This provision, in part, allows an income tax exemption for certain amounts described in 25 U.S.C. 1401 appropriated in satisfaction of judgments of the United States Claims Court in favor of Indian tribes. We believe that, to the extent recoveries in this case are paid not from appropriated funds, but rather from an escrow account funded by potentially taxable timber income, the tax exemption provided by 25 U.S.C. sec. 1407 should not apply.

3/ Squire v. Capoeman, 351 U.S. 1 (1956).

4/ See Holt v. Commissioner, 44 T.C. 686 (1965), aff'd, 364 F. 2d 38 (8th Cir. 1966), cert. denied, 386 U.S. 931 (1967); Earl v. Commissioner, 78 T.C. 1014 (1982); Rev. Rul. 67-284, 1967-2 C.B. 55, 68, modified by Rev. Rul. 74-13, 1974-1 C.B. 14.

JUN 20 1988

Karuk Tribe of California

P. O. BOX 1098
HAPPY CAMP, CA 96039

CENTRAL OFFICE 916-493-5305
COMMUNITY DEVELOPMENT DEPT. 916-493-5351

June 17, 1988

Honorable Mr. Morris K. Udall
Chairman, Interior and Insular Affairs,
Room 1324 LHOB
U.S. House of Representatives
Washington D.C. 20515

RE: H.R. 4469, HOUSE COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HEARING DATED JUNE 21, 1988,
TESTIMONY OF THE KARUK TRIBE
OF CALIFORNIA

Dear Mr. Chairman,

The enclosed written testimony in lieu of appearance and testimony before the Committee is submitted on behalf of the Karuk Tribe of California. At this time our financial resources renders it impractical for the Tribe to send a representative to Washington D.C.. Therefore, I respectfully request that our written testimony be made a part of the hearing record.

The concerns we express about H.R. 4469 reflect the consensus of our Tribal Council. The legislation will have a major impact on the Karuk people, and we want to ensure that our concerns are made known to you and to the Committee.

I urge you to consider our concerns, and request that H.R. 4469 be amended accordingly to ensure that all Indian people of the Hoopa Valley Reservation are treated equally.

Very truly yours,

Alvis Johnson, Chairman
Karuk Tribe of California

AJ:ran

WRITTEN TESTIMONY OF
THE KARUK TRIBE OF CALIFORNIA
IN LIEU OF APPEARANCE
BEFORE THE
HOUSE COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS
ON H.R. 4469, A BILL TO
PARTITION CERTAIN RESERVATION LANDS
BETWEEN THE HOOPA VALLEY TRIBE AND
THE YUROK INDIANS, TO CLARIFY THE USE
OF TRIBAL TIMBER PROCEEDS , AND FOR
OTHER PURPOSES.

MEMBERS OF THE COMMITTEE:

INTRODUCTION

The Karuk Tribe of California has a membership in excess of 1600 persons. Our homeland, where the majority of our people are located, is in the Salmon River and Klamath River Basin's of Northern California, and runs along the Klamath River from the Seiad Valley of Siskiyou County to the Bluff Creek area in Humboldt County, a distance of about seventy miles.

The federal government has always recognized the Karuk Tribe as a separate and distinct people. In good faith we negotiated a treaty with the federal government (1851) which the United States Senate refused to ratify. Our homelands were taken from us, and we were told to move to the Hoopa Valley Reservation.

H.R. 4469 is of great interest and concern to our people because (1) we are Indians of the Hoopa Valley Reservation in that our people were made to locate there when dispossessed of title to our homelands, and (2) Many Jessie Short case plaintiffs are members of the Karuk Tribe. Further, H.R. 4469, as proposed, takes two tribes

of the Hoopa Valley Reservation and gives them preferrential treatment over other tribes of the reservation.

BACKGROUND FOR TRIBAL CONCERNS

The Hoopa Valley Reservation (the square) was established under Section 2 of the Act of April 8, 1864 (13 Stat. 39 et seq.), and the Yurok Reservation Extenstion was added to the square by Executive Order of October 16, 1891. The Executive Order #1480 of February 17,1912 established the reservation for various recognized tribes of California of which the Karuk Tribe was one. The reservation was established for the benefit of all Tribes induced to relocate to the reservation. Short v. United States, 661F2d (ct. CL. 1981),

The recent case of Puzz v. United States, 9th Circuit, 4-8-83, cited Short in holding that no one Tribe has territorial jurisdiction over the reservation; that all Tribes of the reservation have equal interests in the resources of the reservation, and found further that the federal government, vis-a-vis the Bureau of Indian Affairs, had breached it's trust responsibilities to the other Tribes of the reservation by permitting the Hoopa Valley Business Council (HVBC) to exercise jurisdiction over the lands and resources of the square portion of the reservation.

The Karuk people became Indians of the Hoopa Valley Reservation by federal action after July 8, 1852, when the United States rejected the Karuk Treaty, and refused to establish a reservation for the Karuk Tribe.

The Karuk people living at that time did not understand why they should leave their homelands to live in the Hoopa Valley which

was the homeland of the Hoopa people. Most of our people left the reservation and returned to our homeland where they participated with the miners and settlers to develop the river communities. We became a landless people, however, we never surrendered our ties to our lands. Instead, we successfully struggled to maintain our traditions and customs while living in a society dominated by the white race.

Those Karuk people who remained on the reservation adjusted to a reservation life-style.

The Karuk people did not have an organized tribal government until 1985. The Jessie Short case was not joined by the Karuk people as a tribal entity, but many Karuk's had become plaintiff's in the case as individuals.

The Karuk people, as individuals and as a tribal government, have never relinquished any right or claims we may have in the Hoopa Valley Reservation.

AREAS OF SPECIFIC CONCERN

The Karuk Tribe recognizes the desire to bring long standing litigation to an end. We support the effort to do so. We also support the concept of tribal government as decided upon by tribal members, i.e., either organized or unorganized. Our specific concerns are as follows:

1. The legislation does not make provisions for non-Hoopa, non-Yurok Indians of the reservation. The legislation gives preferrential treatment to the Hoopa and Yurok people which appears to us to be a further breach of

the federal government's trust responsibility to all Indians of the reservation.

2. The legislation, by excluding other Indians of the reservation, invites litigation.
3. The Jessie Short plaintiffs who are not members of the Yurok Tribe, many of whom are Karuk people, will not be permitted to enjoy the benefits of the remainder of the escrow fund monies unless they become members of the Yurok Tribe.
4. The square portion of the Hoopa Valley Reservation is not in total in fact the homeland of the Hoopa people. Portions of the square are in fact portions of the Yurok and Karuk homelands. No provision is made to compensate other Indians for this taking and giving to the Hoopa people.

CONCLUSION

It is our opinion that H.R. 4469 could become meaningful legislation which would end litigation between the tribes and the federal government. Further, we believe legislation of this type would go a long way toward achieving economic independence for our people under the concept of self determination.

However, in order to accomplish those goals, the legislation must make provisions for the Karuk Tribe and other non-Yurok, non-Hoopa Indians of the reservation. We believe the following provisions should be made:

1. Provide for a reservation for the Karuk Tribe of California,

and provide revenues sufficient to pruchase private lands within said reservation

2. Assure that non-Hoopa and non-Yurok Indians living on the reservations receive benefits equal to those Indians having tribal membership.
3. Provide that members of the Karuk Tribe of California who are qualified Jessie Short plaintiffs be paid their full shares of the escrow funds held by the Secretary, ensuring their shares will not be apportioned to the Yurok Tribe and the Hoopa Tribe.
4. Provide for representation of the Karuk Tribe on the Klamath River Basin Fisheries Task Force, and on the Klamath Fishery Management Council.

The Karuk Tribe of California urges the strengthening of the legislation to treat equally all Indian Tribes of the Hoopa Valley Reservation. While we support the goals and objectives of the legislation, we cannot support it as presently drafted. However, we would support the legislation if it included the provisions heretofore addressed.

32-380 0 - 90 - 7

Testimony of Gary Edward Young
Yurok Indian
Before the
House Interior and Insular Affairs Committee
on H.R. 4469
June 21, 1988

My name is Gary Edward Young, I am a Yurok Indian and possess 19/32 degree Indian blood. I am nineteen years old and a sophomore at Mt. San Jacinto College in Hemet, California. Prior to transferring to MSJC in January 1988, I was enrolled at Brigham Young University in Provo, Utah. As the attached letters will show, I was denied education assistance by the Bureau of Indian Affairs because I am not a member of the "Jessie Short" Tribe. The letters will also show that although I do possess a small amount of both Hupa and Karok blood, I indisputably identify as a Yurok Indian.

Although I am in other areas attending school and playing baseball nearly 90% of the time and will be for years to come when I attain my goal to play baseball in the major leagues, I will always consider this to be my homeland and my attachment to this place cannot be broken by time of absence. Each year I return, spending whatever free time I have on the Klamath River. I am a descendent of eleven original Yurok allottees. Though nearly all of those allotments are no longer in Indian ownership, my immediate family on my paternal side has continuously occupied Wauksay Parray for thousands of years and my interest will someday pass to my children.

My insight into the Hupa/Yurok dispute is complete as I am the child of a Yurok father and Hupa mother. I would classify my father as a traditional Yurok, who is proud of his heritage and expects the same of me.

On my maternal side, I was raised from infancy in the home of my Hupa great-grandparents Edward & Matilda Marshall, who also raised my mother. My great grandfather Edward Marshall was the first Hupa Tribal Chairman when this body received government recognition in 1933. My great grandmothers grandmother, Mary Jim, was one of the few women who was allowed to accompany the men in the Hupa war party during the last long resistance of a full year and one half in the mountains preceding Austin Wileys covenant with the Hupas in which he promised them "sole possession of Hupa Valley" in regard for their guns and an end to the war. Matilda Marshalls great grandfather, Big Jim, led those warriors in the fight for the Hupa homeland as well did my ancestors from Tsewenaldin who were the ancestors of the Marshall family.

PAGE TWO
TESTIMONY BEFORE THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE ON H.R. 4469
JUNE 21, 1988

As you can see, although I identify as Yurok in keeping with tradition, I am much more aware of my Hupa ancestry and even the history behind the presence of the Hupa Tribe in this valley. I believe this is because the Hupas have such a strong attachment to Hupa Valley and identify all aspects of their life with it. From my understandings from my maternal family during my short lifetime, I know the feeling of the Hupas that they cannot think of life without possession of their homeland, for them, this is the way it has always been and no matter what the government does or the Courts say, this feeling cannot be excised from the Hupa and they would never peacefully give up what their people died to keep.

The Yurok, on the other hand, were not disposed to protect with their very lives their homeland and as was their prerogative, they disposed of it in exchange for money. I do not disrespect the Yurok people for doing this, although I wish they had not...and I believe that all Yuroks living today should be grateful for the chance that the Bosco legislation may return to them, that which they had already owned and disposed of.

I truly believe that this House Committee should recommend the passage of H.R. 4469 by Congress and by the United States Senate.

I am truly saddened by the disruption this has caused in our own home and look forward to the day when it will be resolved by legislation. Knowing the history of the Hupa and why they are here today, I am not naive enough to think, as Senator Inoyue wishes, that this problem can be settled between the Indians. What you are asking for is another Indian war. The President of the United States created this problem in 1891 with the Executive Order that broke the governments treaty with the Hupas, without their knowledge.

Congress can and should correct the problem once and for all to allow these people to govern, make progress and prosper within their separate reservations within their respective homelands.

As for myself, I am Yurok Indian and I absolutely refuse to sue the Hupa Tribe or the United States government and become a member of the "Jessie Short" Tribe to be so recognized. I have great respect and take pride in the courage of my Hupa ancestors who gave their lives to keep thier homeland...I hope that you will acknowledge their ownership through passage of H.R. 4469.

12/03 16:05 P01 *BIA-SACRAMENTO AREA OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION
SACRAMENTO AREA OFFICE
2800 COTTAGE WAY
SACRAMENTO, CALIFORNIA 95825

December 3, 1987

Mr. Gary Edward Young
P. O. Box 305
Hoopa, California 95546

Dear Mr. Young:

In reviewing your Statement of Degree of Indian Blood, it indicates that you are 17/32 (3/8 Yurok-1/32 Karok-1/8 Hupa).

Based on a memorandum from the Assistant Secretary - Indian Affairs, this office makes a determination that you are not eligible for Higher Education assistance.

Any applicant within (5) days of receiving notice of the determination of his/her application may appeal from that determination. The appeal shall be in writing setting forth the reason(s) why the applicant believes the determination should be changed.

Sincerely,

Dalton J. Henry

Dalton J. Henry
Area Education Programs Administrator

December 4, 1987

Ross O. Swimmer, Assistant Secretary, Indian Affairs
United States Department of the Interior
Bureau of Indian Affairs
Washington, D.C. 20240

Dear Sir:

I respectfully request your favorable consideration to this, my formal appeal, to the attached ruling by your Sacramento Area Education Office which was based on the memorandum from you (also attached) dated November 26, 1986 regarding the definition of "eligible Indian" for Bureau of Indian Affairs Higher Education assistance.

My name is Gary Edward Young. I am nineteen years old and a sophomore at Brigham Young University in Provo, Utah. I am 17/32 degree of the Hupa/Yurok/Karok Tribes, certification attached. In response to a telephonic inquiry regarding the attached denial of services, Sacramento Area Office has advised that the only Yurok Indians they are recognizing for benefits are those who are listed as "Short plaintiffs" I do not qualify for enrollment in the Hupa or Karok Tribes. The Yurok Tribe, of which I am most definitely an individual member, has on numerous occasions, refused to formally organize a Yurok tribal government. The Yurok Tribe is however listed in the Federal Register/Vol. 51 No.132/ July 10, 1986 as an "Indian Tribal Entity Recognized and Elibile to Receive Services From the United States Bureau of Indian Affairs", copy attached, and therefore meets the criteria of your 11/26/86 memo.

I am not a "Jessie Short" plaintiff, the "Short" case was filed on March 27, 1963, I was born five years, seven months and five days later on November 5, 1968.

In addition to being over half-blood Indian, I share ownership in fifty five acres of allotted lands, (copy of my I&H card attached) held in trust by the United States Government on the Hoopa Valley Extension, having received same as a lineal descendent of eleven original Yurok allottees on my paternal side. On my maternal side I am the descendent of two original Hupa allottees. I have been issued a fishing card for the Hoopa Reservation Extension based alone on my status as a descendent of allottees. I was entitled to and did participate as Indian commercial fisherman on the Klamath River this past year. To protect and ensure my fishing rights on the Klamath River I did enroll in the Polic-lah (Yurok) Tribal Organization. This organization was initiated with assistance of the Bureau of Indian Affairs several years ago. I received Bureau of Indian Affairs Higher Education Assistance last year, copy attached. Unfortunately, I was unable to utilize the funds due to an National Collegiate Athletic Association (NCAA) regulation which forced me to return the funds or cause BYU to forfeit conference "wins". Because I returned the funds, SAO has determined that I cannot receive continued funding under the "grandfather clause".

I believe that it is an unfair, arbitrary, capricious and abusive use of administrative discretion that I be cut off from my rights as a Yurok Indian because I am not a Jessie Short plaintiff. During the eighteen months I have been enrolled in college, I have encountered other students attending college under Bureau of Indian Affairs higher education funds who possess a minimal degree of Indian blood but who are receiving full funding due to their status as "Short" plaintiffs. I trust you are aware that the lowest blood degree of a "Short" plaintiff held to be entitled by the Court thus far is 1/32 degree and the lowest blood degree found among the group remaining under consideration for entitlement is 1/64 degree Indian blood. Furthermore, if the "Short" list of plaintiffs was to be deemed the official Yurok Tribal Roll by the Bureau of Indian Affairs for rights, benefits and services, what notice was given? Surely I would have qualified given the eligibility criteria set for the "Short" list; it seems the only eligibility criteria I lack is that I am not suing the United States Government or the Hoopa Valley Tribe.

It is of the utmost urgency and importance to me that you grant me a waiver or variance of your November 26, 1987 interpretation to allow me to receive Bureau of Indian Affairs higher education assistance, without it, I will be unable to continue college after December 19, 1987 and I will simply have to take the most cost efficient measure which will be to move back to Hoopa during semester break.

Please allow me to emphasize that the "Short" case is of no concern to me only insofar as it has been used to usurp me of my rights as a Yurok Indian. I am not asking for a major decision of any consequence to the Bureau of Indian Affairs. I ask only for a variance or waiver of your interpretation of November 26, 1986 allowing me to receive higher education assistance as a Yurok Indian who meets all criteria to qualify as such.

A response by December 19, 1987 is essential to my future as a college student...lack of action, response or a "no decision" by your office as of December 19, 1987 to my appeal will have the same effect as a denial and will necessitate my departure.

Thank you for your time and consideration in this matter.

Sincerely,

Gary E. Young

Gary Edward Young
P.O. Box 305
Hoopa, Ca. 95546

School Address: Raintree Apartments #152
1849 N. 200 West
Provo, Utah 84604

Testimony of Deirdre R. Young
Hupa Tribal member
Before the
House Interior and Insular Affairs Committee
on H.R. 4469
June 21, 1988

My name is Deirdre R. Young, I am an enrolled member of the Hupa Valley Tribe in California and have lived most of the forty six years of my life in Hupa Valley.

In keeping with Hupa tradition, I was raised in large part by my maternal grandmother Matilda H. Marshall. Throughout my childhood and until the day of her death our daily discussions always, always, revolved around the history of my grandmothers people and the meaning of this valley in the lives of the Hupa.

In keeping with Hupa tradition, my grandmothers grandmother, Mary Jim, raised her. Mary Jim accompanied her father who was known as Big Jim, on the last Hupa war party prior to the agreement with the government known as the 1964 treaty in which it was promised that the government would never again attempt to remove the Hupas and promised them sole possession of their valley "forever". Mary Jim was born in 1844; Matilda Marshall in 1893 and myself in 1942. I am greatful that I was taught according to tradition and that through my grandmother, I had a direct "pipeline" so to speak to the past.

In talking to those who returned from the hearings, I was outraged to hear of the statements of people who purport to be Yurok Indians that the testimony of the Hupa people were "lies".

Were it not for the necessity to defend the homeland of our people in the Courts, we would likely never give a thought to the Yurok people or what they did with the two reservations they once owned; it is of no consequence to us.

We do however, have the right and an obligation to our ancestors to defend our homeland, and to have our testimony branded as "lies" by people who would bastardize their heritage for money is incomprehensible. This is an act to deny their ancestry to make a better claim for what belongs to others...in this case the claim is for something that the Hupas will never relinquish no matter what the Courts or Congress will say.

One thing that Yuroks can never deny, is that Hupa Valley is the aboroginal homeland of the Hupa Indians and that the Yurok claim is only through the 1891 Executive Order...an act of a President that broke a treaty written in Hupa blood...

All Hupas want the H.R. 4469 to pass to end once and for all the fight for their homeland. Many, many Yuroks also want to bill to pass so that once again they can control their homeland. Only the members of the "Jessie Short Tribe" aided by their many attorney firms (seven now of record) would destroy another Indian Tribe to obtain money. Due to the age of the Short case these attorney firms now have an overwhelming financial interest in Short...they are no longer without an personal interest. . The attorneys of the Heller-Ehrman firm of San Francisco are so afraid that the Hupa/Yurok issue may be settled by legislation (which equals loss of income to them) that they are frantically lobbying major media against passage of H.R. 4469 such as the New York Post (San Francisco correspondent) and Jack Anderson (through Dawn Larsen).

Members of the "Jessie Short Tribe" repeat over and over that two tribes no longer exist because of inter-marriage. I am married to a Yurok Indian of 5/8 degree but I am Hupa. Our son is 19/32 degree Hupa/Yurok, but he is Yurok. My husband is not Hupa because he married a Hupa. Throughout the world different races of people intermarry but that does not extinguish one race or the other...human beings identify who they are by custom and tradition, American Indian Tribes identify by custom and tradition. Many tribes in this nation rule today by custom and tradition. This is not an Indian vs. Indian problem...it is a problem created by the U.S. Government which made possible claims from individual mercenaries who long ago became non-Indian irregardless of the color of their skin, who now use the name of "Yurok" to destroy the Hupa people for a lump sum of money.

I will fight for our homeland within the system as long as possible for my grandmother, and for her grandmother. If the system does not work for the Hupa people who knows what trouble will happen here? I hope that H.R. 4469 does pass so that no one will have to find out.

Deirdre R. Young
P.O. Box 305
Hoopa, Ca. 95546
916 625-4655 home
4211 work

December 9, 1987

The Honorable Alan Cranston
United States Senate
Senate Office Bldg. Room 452
Washington, D.C. 20510

Re: BIA Higher Education Funding-Gary Edward Young

Dear Senator Cranston:

I would like to request your assistance and intervention in resolution of an issue of great importance to my son who has been denied higher education assistance by the Bureau of Indian Affairs.

In requesting clarification from the Sacramento Area office of the BIA, I was informed that because the Yurok Tribe is not organized, the BIA has determined that the "members of the Tribe" shall be those individuals appearing on the Jessie Short plaintiff list. Aside from the fact that we disagree in principle with the the Short case and my son wants nothing to do with it, he was born nearly six years after it was filed. As evidenced by the qualifications which he does possess, he is a bonified Yurok Indian, whether or not he is on the Short list and we take strong exception to the BIA determination that in order to be recognized as such he must participate as a Short plaintiff in suit against the Government and Hupa Tribe.

I wish to clarify that it is not our wish that this matter become another strand in the tangled web of the Short/Yurok/Hupa issue, with no resolution in sight. We feel that this particular matter could easily be decided by the granting of a waiver or varience or by an administrative decision to allow Gary continued funding under the "grandfather clause" due to his prior approval for funding irregardless of the fact that he did not use the funding due to an NCAA rule.

In view of their historically professed concern at the drop-out rate and substandard education levels found among American Indian youth based upon which they have requested and been appropriated funding for Indian Education by Congress, I find it absolutely incredible that the Bureau of Indian Affairs has decided that my son is not an Indian entitled to education services because he is not on the list of Jessie Short plaintiffs.

As indicated, we have no desire to become a part of any precedent setting lengthy deliberations, nor do we want become a pawn in the Short/Hupa/Yurok battle. All that my son wants is to be able to continue school in the Winter semester of 1988. Absent approval for assistance at the end of this semester, he must withdraw and move home, that is the reality of the situation. I am hoping that the "system" will work for us and that his problem will receive timely attention and favorable consideration from your offices so that it is not necessary for him to leave school.

Sincerely,

Deirdre R. Young

The two reservations were merged technically in 1891 to avoid complications for the government. Whereas this was great for the government the indians didn't receive the same benefit. The word technical is very key for even though the Hupa and the Yurok tribes where neighboring they were a different people. I was apalled when I was informed that the Yurok tribe felt they were entitled to revenues from timber sales from the Hoopa reservation. I laughed for it was totally ludicrous for them to even suggest such a proposal. I can't imagine what reasons they could use to ratify their justification. The Yuroks sold timber on the extension, divided it amongst themselves, and the Hupa tribe was neither invited to share in the revenues nor were they informed that should the Hupa tribe wish to sell timber on their reservation that the Yurok tribe would wish an equal share in the total income. We were joined on paper but we weren't joined as a people. The Yuroks never adopted our customs or ceremonies and they were very aware of the boundaries seperating the two.

Even though the Yuroks live twelve miles away their lifestyle is totally differnt and they have a seperate but similiar religion. With this in mind how can you rightfully express that they may be entitled to our timber revenues and resources especially when they have their own. If you rule with the Yuroks only God knows what they'll ask for next but if you rule in favor of the Hupa tribe I can asure you that our privilages will be properly and beneficially utilized. I feel that the Yuroks could solve all of their bitterness and greed and whatever else possess them to speak if they form their own democratic tribal government.

I don't expect you to understand the attitude or the atmosphere on the reservation on this reservation for our closest neighbors twelve miles away in Willow Creek don't even understand us themselves. If you were to compare the rate of unemployment in Willow Creek and the rate of unemployment in Hoopa you would definately see a difference. I feel that the foot of unemployment on the square is largely due to the fact that when the Hoopa tribal council proposes a beneficial program there is so much red tape that they then have to weigh the pros and cons and the fact of whether it is really worth all the time, trouble, expense, and fighting. The red tape I am referring to is the Bureau of Indian Affairs or the B. I. A. The Bureau was set up to help my people but the real fact is that it turned out to be our worst advisory.

I am only seventeen but I was made rudely aware of all the limitations the B. I. A. has over my life and that of my people. I was thoroughly disgusted when I had a license or fishing card to fish on my own land in my own backyard. That was just the icing on the cake. I'm further frustrated when I turn around and there are commercial fishermen who can troll and take as many salmon when they want then turn around and try to get more. It is my feeling that we deserve more respect, lenience, etc. for if it were not for the river running through my valley there would be no spawning therefor no more salmon. My people respect the salmon and we know when the season to reproduce is and we give them plenty of time to biologically recreate we do not fish until

the last one is caught then move on to another resource. It is the B. I. A. that makes us so susceptible to rules and regulations and guidelines. The Native Americans have been singled out and instead of the government providing for its people it has turned out to be our enemy. The government thinks that they have done us a great favor and made all their wrongs right by confining us to this 12 by 12 square. My people occupied lands father on all four sides and by denying us access to these lands you have not only taken away hunting and food gathering but also ceremonial grounds thus depriving us from religious ceremonies. You have forcefully limited our heritage.

When the white man came to my valley be brought with him a lot of technically advanced skills that were very useful to my people. The white people also brought a lot of other qualities that my people were better off without. The white man brought greed, singularity, and alcohol to name a few. All the qualities were exchanged amongst the two and in the end we live on a 12 by 12 square, fighting between ourselves, and slowly losing our pride and heritage.

In order to preserve our heritage and what dignity we have left I strongly urge you to split the reservation as it was before and pass H.R. 4469 proposed by congresman Bosco. This isn't going to solve our problems but it gives us somewhere to begin. My people are weak and tired of fighting . You are the sole power to end this battle.

The passing of H.R. 4469 will give the Hoopa tribal business council the revenues, resources, and the power to run an efficient and successful tribe. We no longer have a tribal leader and many of my people look to the council and its members to show us the way, give us guidance, and to care for the people of the valley. We feel that it is the responsibility of the tribe to do all that it can to preserve the land and the heritage that exist in this valley.

Furthermore the ruling in the Puzz case may turn out to be the biggest mistake and worst ruling by the government yet towards this tribe. I cannot logically see how you can make such a ruling when you have no knowledge of my tribe, the people of the valley, and of my customs. You cannot gain that knowledge through a paper, that I can guarantee. I strongly advise you to gain more background information before you make your ruling. You live miles and miles away in a different homeland running your seperate life with your social norms and customs and I cannot see how you can make a justifiable ruling concerning the very life of this valley of which you know little. If and when the this H.R. 4469 is passed and the Yuroks still refuse to form their own government that should tell you that they are after a free ride and aren't sincerely interested in the prosperity and survival of their people.

Submitted By
Kimberly E. Colegrove

Kimberly E. Colegrove

My full name is Dawn Yvette Yerton. I was born to Philip and Janice Yerton on December 29th 1958 at the Trinity Hospital in Arcata. I had one older sister, Kim Yvonne Yerton, born May 1, 1954. My father is not originally from this area. My mother's father, Wesley Latham, was a member of the Hupa tribe. Her mother, Bessie Moon Latham, was half Chilula Indian and half Chinese.

I lost my sight at 18 months of age due to RetinaBlastoma. (This is a cancerous tumor of the retina.) I completed 13 years of education in the Hoopa Valley public school system. After graduation from High School in 1977, I enrolled in the Indian Training Educational Personnel Project, (ITEPP), at Humboldt State University. In 1983, I received a Bachelor's degree in Psychology, with an emphasis in American Indian Studies. I then, started working toward a master's degree. When I am ready to obtain a permanent job, I hope to find one in Hoopa.

My sister, Kim, graduated from Hoopa High School in 1972. She received an Elementary teaching credential through the ITEPP program in 1975, She received a master's degree in Sociology from Humboldt State University in 1979. She was always very interested in American Indian cultures, and did extensive research in this area. She especially researched the background of both the Hupa and Chilula tribes. Kim was the Director of the Indian Action Library in Eureka for several years. Kim died in an automobile accident in April of 1979. At the time of her death, she was

planning to obtain a Library Science degree from the University of California at San Jose. Kim was hoping to return to Hoopa and establish an Indian library.

My sister and I became members of the Hupa tribe through our grandfather Wesley. We were raised here in the Hoopa Valley, and participated in the Hupa ceremonial activities.

My grandmother, Bessie, came to Hoopa at an early age, when she married my grandfather. Although she has spent the majority of her life in Hoopa, she still regards Redwood Creek as home. Redwood Creek is the home land of the Chilula tribe and where my grandmother was raised. She learned very much about the Hupa culture from the elders in my grandfather's family. This knowledge she now passes on to her grandchildren.

I am strongly opposed to having one reservation for mixed tribes under BIA rule. The Yurok and Hupa Indians are two different tribes and should have two separate tribal governments. The two tribes do not even share the same language stock; the Hupa being Athabascan and the Yurok being Algonkian. This may seem insignificant as both languages are not widely used at this time. However, I feel this fact points to other underlying differences. Although the Hupa and Chilula tribes share the same language, my grandmother always stressed that they were separate tribes; holding slightly different beliefs and customs. We, children, were to learn which beliefs came from which tribe and to keep them

separate. If two tribes sharing a language can be so different, how much greater the gulf between two tribes with different languages.

I don't believe pointing out the differences between the tribes is racist. I believe all individuals are equal. No group of people are better than another. However, because we are all equal does not mean that we are all alike. Different nationalities when keeping to their traditional cultures are very different. We should be proud of our differences. These difference are what make us who we are, as a tribe, or as an individual.

I have no feeling toward the money settlement in this case. It is just money. However, it is hard to put into words the feeling I have for the land. My ancestors lived here for hundreds of years. They are buried here. I have lived here all my life. It is my home.

Sure Hupa and Yurok individuals sometimes intermarry. However, this does not mean that we want to become one tribe. My grandmother did not give up her identity as a Chilula when she married my grandfather. She learned all she could about his culture in order to teach it to her children. She felt her children and grandchildren should follow the Hupa culture as they were members of the Hupa tribe and would be raised here.

In closing, I'd like to point out that there is a big difference in inviting someone to share your home, and having a

stranger come in and tell you, "I have a right to your home. Make room for me." Also, who cares for a home the best, the owner, or the renter? The Hupa Tribe owned the Hoopa Valley for many many years. We would like our home returned to us. We love the Valley along with its memories and sacred areas it holds.

Dawn Yvette Yerton

P.O. Box 365
Hoopa, CA 95546

July 20, 1988

The Honorable Morris K. Udall
House Interior and Insular Affairs Committee
1324 Longworth House Office Building
Washington, D.C. 20515-0302

Dear Chairman and Committee Members,

Please accept the enclosed testimonies from various Hoopa Valley Tribal members regarding their support for Congressman Doug Bosco's Bill H.R. 4469.

We thank you and the committee members for your time and consideration to this important issue.

Respectfully,

Marian Mooney

Testimony of
Herman Sherman, Sr.
Hoopa Tribal Member
to the
House of Interior and Insular Affairs Committee
H.R. 4469
July 20, 1988

My name is Herman Sherman, Sr. I lived here all my life. I was born in 1909 and am 79 years old.

Dances have been here ever since I can remember that Hupa's have put on, and that I have participated in.

Our dances are prayer for us for health, wealth and goodness--like welfare. We put on these dances. They come as quests.

This is our home!

No way they have ever been around here.

Our language is different--a lot different! All the old people down on the Klamath know that!

Testimony of
Minnie McWilliams
Hoopa Tribal Member
to the
House of Interior and Insular Affairs Committee
H.R. 4469
July 20, 1988

My name is Minnie McWilliams. I lived here all my life. I was born on January 1, 1916, and was raised in Hoopa. I am 72 years old.

The only way the Yuroks got here was that they brought here or the Yurok women were 'bought' years ago by few of our Hoopa Men.

Our Hoopa's are of one group. We speak different Languages.

And besides, we are an organized tribe.

And, we are under the jurisdiction of the Federal Government. They are not.

In the first place, they sold out their fishing rights.

Up here, we were not allowed to fish, and now, we have to go through their regulations.

When I fish down there, (Klamath), I buy my license, and on the Reservation, I don't have to.

We are also the only California Indians that uphold our religious dances ever two years.

Testimony of,
HAROLD H. CAMPBELL SR.
(A Hoopa Tribal Member)
to the
House Interior of Insular Affairs Committee
on H.R. 4469
July 20, 1988

My name is Harold Campbell Sr. and I was born and raised on the square. I am fifty-three years old, and my parents were Harry Campbell and Violet Socktish, both full-blooded Hoopa Indians.

My Dad and Mom both spoke Hoopa Language and I could understand. I cannot understand the Yurok Language. When I grew up my dad told us we were two different tribes, through our traditions and Indian Language.

My dad was one of the Traditional Dance Leaders from the Takimilthdin Rancheria. We have different names and places where we worship on the square, through our traditional dances. It was only on special invitation that we asked the Yuroks to participate in our dance.

The Yuroks sold a majority of their timber and land on the strip. We did not receive timber land like the Yuroks did, only agricultural land which we still have today.

I am in favor of Congressman Doug Bosco's Bill, H.R. 4469, as amemded, to divide the reservation in two so that we keep our homeland.

Testimony of,
JOYCE (LITTLE) CROY
(A Hoopa Tribal Member)
to the
House Interior of Insular Affairs Committee
on H.R. 4469
July 20, 1988

I Joyce (Little) Croy am a Hupa Indian from Medildin Rancheria. I am a mother of five and a grandmother of eight. I was raised by my grandparents Billy Little (A full-blooded Hupa) and Susie (Wauteckson) Little (A full-blooded Yurok). My grandfather went and bought his wife from Yurok Land, and brought her to the Medildin Rancheria. He was a Ceremonial Dance Leader from Medildin.

I remember the "Early On" Yuroks coming to my grandmother and asking her for money to help with the Jessis Short Case. She always replied "No" as it would jeopardize her grandchildren.

After my grandfathers death, she still hosted his camp during the ceremonial dances out of deep respect, even though she had no traditional rights. She willed all his land to my brothers (cousins) as she believed Yuroks didn't have a right to Hoopa Land or have traditional rights. My grandmother received a twenty acre allotment down Yurok Land, and it is still there today, as she did not sell it.

I support Congressman Doug Bosco's Bill, H.R. 4469, as amemded, to divide the Reservation in two, as it was in the beginning of time. Even though there are different kinds of Indians living here in Hoopa as a community, people have to remember and respect that the Hupa People are the authority in their homeland, and maintain a goverenment as people of America.

Testimony of,
Joseph Russell Orozco
A Hoopa Valley Tribal Member
to the
House Interior and Insular Affairs Committee
on H.R. 4469
July 18, 1988

As a Hoopa Valley Tribal member, I submit my testimony in favor of the passage of H.R. 4469, as amended by the Hoopa Valley Business Council on behalf of the Hoopa Valley Tribe. This land has been in our care for a long as our songs and stories. Such rememberances span thousands of years.

When one listens to our old people today tell the stories and sing the songs, told and sung to them when they were young, by the older people of that time; then put together the occurrances in the themes with modern day knowledge, a bigger picture emerges. Greater understandings of long held myths begin to make greater sense in terms of knowing what really happened and about what time era it occurred.

Modern day archaeologists calulate by carbon dating techniques that our people inhabited the Hoopa Valley for ten thousand years. Some archaeologists go as far as saying one hundred thousand years. Within these educated estimates our people lived here and made up songs and stories to explain their life and times.

Dr. Immanuel Velikovsky, in his book Worlds in Collision, explains the many times our planet has undergone upheavals and the shifting of land masses and bodies of water. One episode happened, by his estimate, two thousand-six hundred years ago. All along the Pacific northwest, from western Canada, sweeping southwest down through Idaho, Oregon, Nevada and Northern California to the San Francisco Bay, volcanoes erupted, the Earth opened up in great chasms and the Earth's crust rippled causing whole mountains to move over other mountains. Rivers changed courses as the terrain changed.

In our songs and stories is told of a time when the Trinity River flowed due west to the Pacific Ocean. It did not join the Klamath River at Weitchpec. Where Beaver Creek is now at the base of Bald Hill is where the Trinity River flowed west. Bald Hill was not there at this time. Geological surveys confirm that at one time the Trinity River flowed west at Beaver Creek.

In our sacred dance, the Deerskin Dance, we dance and camp at several sites along the Trinity River. In our language the name of this dance literally translates to, the Summer dance along the river. On the last day of this dance we now dance and camp on Bald Hill. This is the most sacred place of the dance, as well as in the valley.

From where we dance today on Bald Hill the river is no where near, but at one time when the Trinity River went due west it was the last place along the river we danced. In the main men's camp today one can hear the sound of the river, but the river is too far away. Only the spirit remains the same, that's why we keep dancing.

Professor Joseph Campbell explains in his series of books subtitled, The masks of God, all religions are based upon myths. All cultures developed myths and stories as an attempt to explain the physical realities of their life, times and space. Religions are built upon these myths and legends. Sometimes this is good as it bonds the common group together. But myths are myths and should not be taken literally. They at best abstractly explain physical realities which are obviously beyond human control and capabilities.

Thus, in our myths is told the story of how Bald Hill was put where it is today. Bald Hill is like no other mountain surrounding our valley. It is more like the type of mountains found in Karok territory our neighbors to the northeast. The legend says that our gods, being gods, knew of lands and things that were not in our valley. Among the things thet like that were beyond our valley was the Karok God's Bald Hill. So one day our gods visited the Karok gods to play a gambling game. The prize was Bald Hill. Our gods won so they moved Bald Hill to where it is today. It became the god's mountain, where they could look over the valley they fixed up for our people.

The physical act of a mountian butted into the present terrain of that time closed off the Trinity River's flow to the west. A channel opened up going north-northwest from where Beaver Creek is, around the base of Bald Hill. The Trinity River followed the new landscape to meet the Klamath River at Weitchpec. Actually the name Weitchpec means the place where the rivers meet.

Since we always danced along the river, with the most sacred dance site being in the north end of the valley, we continued to dance in the same physical plain we always did. We moved the dance grounds of the last day up the mountain to remain with the spirits, the gods. Eventhough it is away from the river, it still remains to be the spiritual honing point.

As Velikovsky points out this was 2,600 years ago. As other geologists point out this could have been 10,000 years ago. As our songs and legends point out this all occurred inour lifetime and remains in our memory. These facts lend credence to our claims. These facts, these myths, legends and stories are not the ones told by Yurok people speaking of their claim to our valley.

In fact the only claim the Jessie Short plaintiffs have to our land is based upon the actions of a foriegn governmental president, not a god. And this claim is less tahn 100 years old, at best.

To explain further, our Hupa leaders at the time when our valley was made into a reservation, did so to save the lives of our people and the lives of our allies. They understood the gravity of the situation. New people have come to our lands in numbers and with violent powers far exceeding our own.

Page three, testimony of, Joseph Russell Orozco, Re: H.R. 4469

So they agreed to stop fighting. They agreed to call in all our allies to stop fighting. But they also agreed to do so with the understanding that our valley, our home, would remain ours. So to comprimise and to accommendate the wishes of the U.S. Government, and the needs of our allying tribes' people, the Hupas, (known then as Na:-ti-ni-xwe, the people who live in Hoopa Valley. Actually, Natinook, the place where the trails return), agreed to form a new identity - The Hoopa Valley Indian Tribe.

Hupa people and other tribes' people were invited to join and share the valley. These people were identified as members. Some people, some Hupas, chose not to be members, or not to live under the soldiers rule, so they lived elsewhere, or they remained down river along the Klamath.

Later another President extended the reservation boundaries to add a strip of land along the Klamath River. But this action did not include the expansion of the Hoopa Valley Tribal membership. Likewise, the Hupa Tribe made no claims of ownership of the new boundary expansion brought about by the president's action.

Our songs, legends and stories have always told us what was our land and our duties to these lands. They do not include down river territory. That land bleongs to the Yurok people. That is why I support H.R. 4469, to divide the Hoopa Valley Reservation. It will give our people, the Hupas, sole careship to the Hoopa Valley once again.

If the results of this Bill causes a large amount of American dollars to change hands to gain sole careship of our valley, then so be it. The American dollar, or for that matter, the American obsession to individually own property, is far less important to the idea of acknowledging what was fixed up for us by our gods in the beginning.

There is no other way to exit this world as a people, other than going out the way the people came into this world. That's what life is really about. The separation of the reservation is only one step toward a greater end. As a people our tribe has further to go.

Joseph Russell Orozco
July 18, 1988

TESTIMONY OF
LORNA (JENKINS) OROZCO
A HOOPA VALLEY TRIBAL MEMBER
TO THE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
ON H.R. 4469
JULY 19, 1988

My name is Lorna (Jenkins) Orozco. I am a Hoopa Valley Tribal member. I was born at my Aunt Jenny's house in Miscet Field, approximately five hundred feet from where I live now. My family is from Tis Cet Village on the south bank of Mill Creek. I moved away from Hoopa when I was a young girl, but I returned home ten years ago. I am in favor of Bill before the House, H.R. 4469, as amended by the Hoopa Valley Business Council.

I believe this Bill will restore our valley and square to a peaceful existance. Ever since money became an issue, the Yuroks wanted our land. My mother told me of how the Yuroks, years ago, sold their Redwood trees and land to outsiders. We, the Hupas, asked for a share of the money they got, but they said no, we are not related to them, we are seperate from them. We said alright.

Not too long ago, maybe ½ years ago, I read in the newspaper that a Yurok family sold some timber from their land along the Klamath River. They did not have to share that money with us either. Even though, the Jessie Short Plaintiffs say the square and extension are one reservation.

I think the Yuroks only want our land to sell us out, the way they sold out their own homeland. If H.R. 4469 will save our land from the control of the Jessie Short and Puzz case plaintiffs, then I recommend that it be approved the way it is amended by the Hoopa Valley Business Council. It is the right thing to do!

Testimony of,
PAULINE (MESKIT) MATTZ
(A Hoopa Valley Tribal Member)
to the
House Interior and Insular Affairs Committee
on H.R. 4469
July 19, 1988

I am a bona fide Hoopa Indian. I am seventy-six years old and my parents were Anderson Meskit and Marion Hostler, both full-blooded Hoopas.

I grew up knowing that there were two tribes and two different languages.

The Yuroks had millions of timber to sell as far back as 1909. The Yuroks also had fish canneries located on the Klamath River (their Country).

The Hoopas were farmers, raising all animals, hay, and vegetable gardens.

There was no timber to be sold for the Hoopas until the 1950's. The Hoopas equally shared the timber revenues with all Tribal Members. The Yuroks did not share--not even with their own.

I vividly remember being at the Jump Dance and seeing this big fancy car drive up and women who got out wearing big fancy hats, and when I asked who they were, I was told "Those are those Yuroks who sold their timber!"

I support Congressman Doug Bosco's Bill, H.R. 4469, because it will benefit both Tribes, and the Hoopas will keep their homeland.

Testimony of,
RUTH (BROWN) BECK
(A Hoopa Tribal Member)
to the
House Interior and Insular Affairs Committee
On H.R. 4469
July 19, 1988

My name is Ruth (Brown) Beck. I am a Hoopa Valley Tribal member. I've lived in Hoopa all my life. My grandparents were Oscar and Maggie Brown. I was the first baby born in the old Hoopa Hospital. I am in favor of Congressman Doug Bosco's Bill, H.R. 4469, as amended by the Hoopa Valley Business Council on behalf of the Hoopa Valley Tribe.

As Hoopa people, we want our land undisturbed. The land, our home, is our main concern. The Yurok Plaintiffs, on the other hand, see only the money involved. I am afraid that if the Yuroks got legal control over our homeland, they would sell the timber and the land the way they did their own land along the Klamath River.

I remember how the Yuroks would make fund of us, years ago, when it was against the policies of certain businesses in Eureka to serve Indians. The Yuroks teased us, calling us Indians, Tribal Members, Reservation people, because we chose to live in Hoopa, on the square. They believed that they were free to carry on with outside non-Indian people whenever they wanted. We were considered trash, but if you could prove you were a Yurok, businesses in Eureka would serve you.

I recommend that H.R. 4469 be approved as amended, because, I feel that since the Hoopas and Yuroks could not get along before, we wouldn't be able to get along together on one reservation made up of the Hoopa Square and the Klamath extension.

Testimony of
MARY ANGELA SAIS
Hoopa Tribal Member
to the
House Interior and Insular Affairs Committee
for
H.R. 4469
July 19, 1988

As an enrolled member of the Hoopa Valley Tribe, I strongly support H.R. 4469, as amended by the Hoopa Valley Business Council, because;

On June 30, 1988, I attended the demonstration on behalf of my Tribe, in Sacramento, and I knew only one Yurok when I entered the hearing room. For the lies that the Yuroks are telling, that they belong here, I knew only one Yurok in attendance that day! What's their point?

The truth is, that wethe Hupas, and them, the Yuroks, do not all live on the reservation,

The truth is, that we do marry into other tribes, and to nonIndians,

The truth is, that it is the only connection to our homeland the Yuroks have and the point is mute,

Because Hoopas abide by law both Whiteman and Indian traditional,

Because we choose to identify primarily as Hupathrough bloodline and heritage of our ancestors;

Because we have organizedsetting up a democratic ruling, that we have survived to this day!

And we will never give up our land!

We will never give up our rights!

We will never settle for 'PEANUTS'!

We will always attain our atonomy as a Tribe!

WE WILL, AND HAVE ALWAYS SURVIVED.

Testimony of,
Pearl (Gardener) Randell
A Hoopa Valley Tribal Member
to the
House Interior and Insular Affairs Committee
on
H.R. 4469
July 19, 1988

My name is Pearl Randell. I am a Hoopa Valley Tribal member. I've lived in Hoopa all my life. I know some things most people don't Know. I am in favor of H.R.4469, the way the Hoopa Valley Business Council changed it for the Hoopa Valley Tribe.

Before the reservation was bigger, it included the Trinity Summits. Now that belongs to someone else, we have to get permission to use it.

We had names for all our places. We had names for Willow Creek and Burnt Ranch. Those people down the Klamath, the Yuroks and the Karoks up the Klamath River, they had names for their places there.

I always said, why didn't we get money when those Indians in Oregon got money for the land. We didn't belong there, that's why.

These Jessie Short people, Williams and Haberman don't belong here. They never been here. They don't know the half.

I went down river with some lady years ago, she said she would show me where the Hoopa boundary is. She showed me where there is a sign by the bridge with the bears sitting on it. (highway 101 at the mouth of the Klamath) I said I should have brought an axe with me to chop down that sign and throw it in the water. I never knew our boundary to be by the ocean.

The government thinks that if they give the Yuroks top money, they will make this all one reservation. But the Yuorks will only make fools of themselves.

We've been separate way for years. They can have what we have here, on their own land. They didn't want Hoopa before, because they thought it was no good. Too isolated. You can't do anything here. But now they want everything. We don't want what is theirs, we only want our land for our children and grandchildren.

Some of our young people don't have land here and now they talk about putting more people from the outside here, giving them land. That's not right.

I think you should approve H.R. 4469, with the corrections by the Hoopa Valley Business Council, because it will put things back the way they used to be.

TESTIMONY OF CHRISTINA L. PHILLIPS
HOOPA TRIBAL MEMBER
TO THE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
H.R. 4469
JULY 19, 1988

My name is Christina L. Phillips and I am an enrolled member of the Hoopa Valley Tribe and a lifelong resident of Hoopa, California. As an enrolled member of the Hoopa Tribe, I support the Bill H.R. 4469, as amended, by the Hoopa Valley Business Council.

While growing up here on in the Hoopa Valley during the 50's and early 60's there were no Yurok Indians living here in Hoopa at that time. My parents owned and operated a clothing store in Hoopa and what I vividly remember is the Yurok Indians (down the rivers) coming into our store and buying alot of clothing, they seemed to all have large families, because our store was the nearest store between the extension and Eureka. At that time the logging industry in the area was booming because timber was valuable and alot the the down the rivers were selling their timber.

I graduated from High School in 1963 and at that time the Yuroks were bussed to Hoopa from the extension to attend school. Also our family bought fish from Yurok Indians because we didn't fish and the only way we got our winter supply of fish was to buy from the Yuroks.

The Yuroks Indians didn't move to Hoopa until most of their land and timber was sold and then most of the extension people moved to the Coast area. The influx of Yuroks on the square today are mostly offspring of those people that bypassed Hoopa and moved to the coast at the time they had money.

Our history tells us that the Hupa Indians have lived in this valley for thousands of years. In recent years when the soldiers came in and tried to move the Hupa's off their land they hid in the mountains, my great grandfather was in a basket at the time, they stayed in the mountains for a whole year hiding from the soldiers and when my great grandfathers people came out of the mountains he climbed out of his basked and started walking. This is the history of my family.

I despise the non-Hupas who lay claim to our square. How can they claim something that they were never a part of in the beginning. Something that they never fought so bitterly for.
We know our family and tribal history, we know our ancestors fought and won this valley for us and we also know that the Yuroks do not belong here.

TESTIMONY OF MARGARET MATTZ DICKSON
HOOPA VALLEY TRIBE
TO THE
HOUSE INTERIOR AND INSULAR AFFAIRS
COMMITTEE
ON H.R. 4469
JULY 18, 1988

As an enrolled member of the Hoopa Valley Tribe, the Bill

ensures the ¼ blood degree required of Hoopa Indians;

continuance of establishment of a Tribal Constitution and by-laws;

keeps the Yuroks from taking our land base of which they gave their land base away years ago;

and what about the hundreds of millions of dollars the Yuroks sold years ago?

Hoopas reserve the right to come back

to our designated Sacred Grounds;
to our designated Ceremonial sites;
to our designated fires;
to our designated fishing places;
to our designated Sacred mountains
and to our designated gatherings!

Hoopas have always known where we are all from:
Hostler Rancheria;
Matilton Rancheria;
Meskit Field;
Campbell Field ,
Norton Field, and
Socktish Field.

Hoopa will always 'fight' to keep together:

to learn our language;
to learn our dances;
to learn our songs;
to learn our stories; and
to learn our card games!

Testimony of,
MANUAL MATTZ
(A Tolowa Indian)
to the
House Interior and Insular Affairs Committee
on H.R. 4469
July 19, 1988

I am asking for help on behalf of the Hoopa Tribe. Congressman Doug Bosco of California First District has introduced Bill H.R. 4469. This bill proposes to partition certain Indians, to clarify the use of Tribal Timber proceeds, and other purposes.

The Hoopa Tribe has endorsed this bill. I will make an effort why I think the two Tribes should be separated. First, I should tell you about myself. I am a Tolowa Indian married to a Hoopa girl, seventy-six years old. I retired from the B.I.A., served my community on the school board for thirty-six years, and I have worked fifty-three years with the Hoopas and Yurok Tribes. Bringing the Hoopas and Yuroks together as one will only hold them back. They will never get along. They are as different as night and day.

The Yuroks have never been organized, and at present they still refuse to organize. No spiritual leader has carried on their ceremonial dances, and their language is algonkian verses Athapascan of the Hoopas.

The Yuroks were allotted forty and sixty acre timber allotments of Redwood, White Cedar, Fir, and some Tanbark. They not only sold their timber, but also most of the land. In the early days, some farming was done on the strip (the Lewis family noted for cattle and sheep ranching).

Only a small percentage of Yuroks now live on the strip, but the ones who chose to stay, need help. Better roads, electricity, telephones, etc., as the Klamath River attracts thousands of tourists.

When the Short Case was started, the cry was the "Poor Yuroks". This is not true. The Yuroks had it good, but did not take care of it due to lack of leadership. In the 1900's to early 1930's, commercial fishing was booming. Every family fished, and sold their fish to canneries at the mouth of the Klamath River. In the early 1930's, the Yuroks started to sell Redwood and Cedar timber; during World War II, Fir timber was on the boom. There were four saw mills on the strip. Commercial fishing was restored in 1987, and the Yurok families did very well financially.

The Hoopa Tribe has always been well organized, and have always had a spiritual leader. In 1933, the Tribal Council was formed and before that the Tribal Leaders prevailed. Tribal Leaders met Austin Wiley for Indian Affairs in California and signed a treaty leading to the square and a reservation for the Hoopas, South Fork Hoopa, Grouse and Redwood Creek Indians. The Hoopa along with its Tribal Council still have their Tribal Spiritual Leader. The Hoopas are good farmers and they still carry on with their ceremonial dances.

In the early days the Hoopas had it rough. Farming, cutting wood and selling it to the government school and employees, making shakes for houses and barns, pickets and posts for fences. Then in the 1930's, it was President Roosevelt's C.C.C. and W.P.A. (Civilian Conservation Core and Works Progress Administration) programs that every family had someone working.

In the early 1930's while the Yuroks began selling their timber, the Hoopas were just being alloted four acres on the valley floor and twenty acres side hill with no timber. There again Tribal leaders could see value in their timber. I cannot understand Judge Henderson's ruling on the Puzz Case. This ruling will set the Hoopas back fifty years.

In my fifty-three years here in Hoopa, I have given you the History of the Hoopas and Yuroks as I know it.

I ask you to please back Congressman Bosco's Bill H.R. 4469 and keep the two tribes separate.

TESTIMONY OF GERALD R. BALDY
HOOPA TRIBAL MEMBER

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
H.R. 4469
JULY 19, 1988

As a member of the Hoopa Valley Tribe, I am urging your support to approve Bill H.R. 4469, as amended by the Hoopa Valley Business Council, Hoopa, California; because

it keeps intact the sovereign reign of the Hoopa Valley Tribal Constitution and by-laws established since 1933;

protects the policies of the Indian Self-Determination Act;

maintains the Hoopa Valley Tribe land base;

guards our rights to intervene on behalf of our children in Juvenile Court;

entitlement to education, natural resources, social services, health, law and order, courts, fisheries, water rights and hunting rights offered only to and/or through federally recognized tribes;

fairness and a rightfulness to govern ourselves;

and ensures a fair democratic process.

TESTIMONY OF MARIAN F. MOONEY
HOOPA TRIBAL MEMBER

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
H.R. 4469
JULY 19, 1988

As an enrolled member of the Hoopa Valley, I strongly support Bill H.R. 4469,

Because the U.S. Government caused the legal loopholes which put both the Hupas and the Yuroks in great turmoil for the past 25 years. I feel the U.S. Government should solve the problems they created by passing H.R. 4469 as amended by the Hoopa Valley Business Council on behalf of the Hoopa Valley Tribe.

I feel that the U.S. Government was wrong not to ratify the treaty between the Hoopas, their allies and the United States in 1864. That treaty clearly indentified who was to be a Hoopa Valley Indian. The Hupas, known then as Na:-ti-ni-xwe, understood at the time they agreed to this treaty, that the Hoopa Valley would remain ours forever. By not ratifying this treaty, an interpretation of the original intent of the Hoopa Valley Indian Reservation was open to an opinion that created a legal loophole allowing the Jessie Short and Puzz plaintiffs a hearing in U.S. Courts.

By preventing these envolved loopholes is a resolving vote in the right direction.

RESOLUTION

In Support of H. R. 4469

We the undersigned, commend and support Congressman Doug Bosco for introducing H.R. 4469, which would, among other things, partition reservation lands between the Hoopa Valley Tribe and the Yurok Indians and clarify the use of Tribal timber proceeds.

Name/Tribe	Address	Date
Robert D. Hostler	P.O. Box 93, Hoopa, CA 95546	06/13/88
Phyllis M. Mullen	P.O. Box 942 Hoopa, CA 95546	06/20/88
Helene Colby	P.O. Box 1075 Hoopa Calif	06-20-88
Drew R Rhody	265 Cambridge Dr. Watsonville, Ca.	6-20-88
Laura Latham	P.O. Box 1323 Hoopa, Calif 95546	6-20-88
Wesley Latham Sr.	P.O. Box 1323 Hoopa, Calif 95546	6-20-88
Liz Latham	Orleans, Calif.	6-20-88
Keith B Baldy	Box 64 Hoopa Ca	
Alberta Susie Sanchez	P.O. Box 275 Hoopa, CA 95546	6-21-88
Loren Nyunkia Jr	Box 1331 Hoopa, Ca	
LeRoy Colbert	Box 1342 Hoopa Ca 95546	
Jill Ulrich	Box 924 Hoopa Ca	
Ervin Pratt	Box 205 Hoopa Ca 95	
Tommy Don Davis	P.O. Box 1045 Hoopa, Ca 95546	
Sharon Marsh - Hupa	P.O. Box 24 Hoopa	6-[illegible]-88
[illegible]	Box 243 Hoopa, Ca 955	
Richard Ferris	P.O. Box 463 Hoopa Ca 95546	
Rodney A. Donahue Sr.	P.O. Box 313 Hoopa Ca 95546	
Tommy Marks	Box 454 Hoopa	7-4-88
William Gray	Box 743 Hoopa, CA. 95546	

RESOLUTION

In Support of H. R. 4469

We the undersigned, commend and support Congressman Doug Bosco for introducing H.R. 4469, which would, among other things, partition reservation lands between the Hoopa Valley Tribe and the Yurok Indians and clarify the use of Tribal timber proceeds.

Name/Tribe	Address	Date
Barry G. Marshall-Hoopa	P.O. Box 1246 Hoopa, Ca. 95546	7/6/88
Emogene Carpenter Hoopa	PO Box 203 95546	7-15-88
William F Carpenter Hoopa	po Box 203 95546	7-15-88
Lyle E. Baldy Sr. Hoopa	P.O. Box 1141	7-14-88
Hoseph F. Orcutt - Hupa	P.O. Box 982, Hoopa CA	7-15-88
Virginia Phillips - Hupa	P.O. Box 966 Hoopa, Ca.	
Marian F. Mooney - Hupa	PO Box 306 Hoopa CA	7-20-88

BARBARA E. RISLING
7848 Windsor Lane
Citrus Heights, CA. 95610
(916) 965-7318

July 19, 1988

Hon. Morris K. Udall, Chairman
Committee on Interior & Insular Affairs
1324 Longworth House Office Building
Washington, D.C. 20515

RE: H.R. 4469

Dear Mr. Chairman and Members

Enclosed please find a copy of a statement which I prepared as testimony on H.R. 4469.

The Hoopa Valley is the lifeblood of the Hoopa Tribe. The majority of my family resides in the Hoopa Valley, as they have since the beginning of time.

Our Hoopa Valley was stolen from us by the U.S. Government in 1864. Our tribal leaders were lied to and betrayed by the government in their effort to seize the Hoopa Valley for the establishment of a common reservation for all Indians.

This action was taken without compensation or the consent of the Hoopa Tribe.

And now, our tribal government is faced with the loss of funding, programs and services, everything vital to the survival of a race.

Passage of H.R. 4469 will right the wrong done to the Hoopa Tribe in 1864.

I urge your support.

Sincerely,

Barbara E. Risling

BARBARA E. RISLING

Enc.

"THE DISPUTE BETWEEN THE HOOPAS AND THE YUROKS ARE HURTING ALL THE TRIBES".

This is the comment I heard recently and I began to wonder how common this feeling is among individuals who are aware of this 25-year dispute between two tribes in Northern California.

As a member of the Hoopa Valley Tribe, I feel I have an obligation to clarify the issues involved in the dispute and to inform tribal leaders of an impending danger to their tribal sovereignty as a result of the recent court decisions Short vs. United States and Puzz vs United States.

But first, lets go back to the beginning, at least as far back as our oral history can take us.

HOOPA TRIBE

The Hoopa Valley Tribe has lived in the Hoopa Valley since the beginning of time. Family groups lived in small villages along the Trinity River. These families fished at specific sites along the river. Descendants of those families have inherited those fishing rights and continue to fish there today.

The Great Spirit gave the Hoopa people certain areas in the Hoopa Valley that were to be regarded as sacred sites. These sites were to be used only by the Hoopa people during their sacred religious ceremonies. The Hoopa people still use these sites today.

The language of the Hoopa is from the Athabascan family.

In the 1800's, the U.S. Government began moving California tribes onto reservations. The Hoopa people resisted and fought fiercely to hold onto the Hoopa Valley.

As a result, in 1864, a treaty was entered into by the Hoopa Tribe and the U.S. establishing a reservation "for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes".

YUROK TRIBE

The Yurok Tribe lived along the Klamath River also since the beginning of time. Yurok villages were located along the Klamath River, to the Pacific Ocean, and then far to the south along the coast. Fishing rights were determined by the Yurok Tribe and exist today.

The Yurok people were also given sacred religious sites. The famed "Chimney and Doctor Rocks" being the most important. They were to practice their religion at these sites.

The language of the Yurok is from the Algonkin family.

The Klamath River Reservation was established on the lower portion of the Klamath, as a military reservation in 1855, "for Indian purposes".

In 1891, in an effort to protect the Yurok and their homeland, President Harrison extended the Hoopa Valley Reservation to include the Klamath River Reservation and the land along each side of the Klamath River which connects

HOOPA TRIBE

Thus, the establishment of the Hoopa Valley Reservation, named for the people, and later to be known as the "square" portion of the reservation.

Tribal leadership was provided by the leaders from each village. It was their responsibility to enforce the rules of conduct and to protect tribal members.

This form of government continued until 1910, when the Hoopa people formalized their government by adopting a constitution and electing a Tribal Council. This action was approved by the U.S. Government.

During this time the Council determined the land within the Hoopa Valley would remain in communal trust for the benefit of the members of the Hoopa Tribe.

Based on the 1864 Treaty, which was confirmed by the U.S. Government, the Council assumed jurisdiction over the resources on the reservation "square".

Therefore, in 1950, the Tribal Council began sustained yield timber sales according to federal guidelines.

The Hoopa Tribe was becoming a self-sufficient tribal government. After administrative costs were deducted from the sales, the remaining portion was distributed to Hoopa tribal members.

In 1963, individuals from the Yurok tribe filed a law suit against the U.S. Government for money damages for the distribution of the assets to the Hoopa Tribe, from the resources generated by the Hoopa Tribe on the Hoopa Valley Reservation "square".

In 1973, the Hoopa people learned that the 1864 Treaty was ruled invalid by the U.S. Court of Claims in Short vs. United States.

YUROK TRIBE

the two reservations. This section of land became known as the "extension" part of the Hoopa Valley Reservation.

The Yuroks continued to live on the "extension" even though they were now a part of the Hoopa Valley Reservation. The "extension" was their homeland.

In 1892, President Harrison allowed allotments of land to individual Yuroks (allottees) from the 58,168 acres of land located on the "extension".

The Yurok allottees sold all but 3,400 acres of land to large timber companies for the harvest of thousands of acres of virgin redwood timber.

By 1925 Yuroks had sold virtually 90% of the extension and today hold fee patents on the remainder.

They never shared the profits with each other, nor did they share with the Hoopas.

The Yuroks remain an unorganized tribe with no governing body. In 1988, they voted to remain unorganized.

In 1963, individual descendants of Yurok allottees filed a suit against the U.S. Government, for money damages for the distribution of the assets to the Hoopa Tribe, from the resources generated by the Hoopa Tribe on the Hoopa Valley Reservation "square".

The individuals were descendants of the Yuroks given allotments on the "extension", and who had previously sold 90% of the "extension".

Only 440 Yurok plaintiffs out of the 3861 live on the Hoopa

HOOPA TRIBE

The 3861 individuals claiming to be descendants to Yuroks who had received allotments on the reservation "extension" or the Klamath River Reservation,had won the right to share in the profits generated from reservation "square" resources.

The Hoopa people were betrayed. In good faith, they had entered into a treaty creating the reservation to protect the Hoopa Tribe and their homeland from the settlers, the gold seekers and the U.S. Government. They did not suspect that it would be their neighboring tribe, the Yuroks, who would eventually attempt to take their precious homeland.

Still unsatisfied with their favorable court decision, Yuroks filed another suit, Puzz vs. United States. This time they asked the court to rule the Hoopa Tribal Council as illegal. They asked that our tribal government be dissolved.

In 1988, the U.S. Ninth District Court ruled again in the Yuroks favor. The Bureau of Indian Affairs was ordered to administer the Hoopa Reservation.

The Hoopa Tribe is on the verge of a state of emergency. The BIA has cut off administrative and programmatic funding; stopped economic development projects; has violated a court order to transfer property to the Hoopa tribe, and has disregarded a Congressional mandate which identifies the Hoopa Tribe as a demonstration project. Direct funding would have gone to the Tribe, rather than passing through the BIA process.

Vital survival services and programs will be lost if the Hoopa Tribe is prohibited from exercising their tribal sovereignty.

YUROK TRIBE

Valley Reservation (includes both the "square" and the "extension"). Plaintiffs live as far away as Guam, spread thoughout the United States and California.

Many of the plaintiffs are members of other federally-recognized tribes. Some with so little qualifying blood quantum, they are not eligible for federal programs and services established for eligible Indians.

The majority of these plaintiffs are represented by three attorneys-in-fact. These individuals have refused all mediation efforts attempted by the Hoopa Tribe or the courts.

The decisions made in Short/Puzz ignore a tribe's right to self-government, to determine membership and to exercise their tribal sovereignty.

According to the courts, the law/treaty/executive orders never **specifically** gave governmental or property rights on the reservation to the Hoopa Valley Tribe, neither they nor other tribes can govern the reservation or limit political partipation in resource issues.

Instead,the reservation must be run by the BIA, and the Hoopas and all individuals with an ancestor who once lived on the reservation (square, extension, or Klamath River Reservation) are to play an equally limited "advisory role."

The courts did not take into account the fact that the Hoopa Valley ("square') is the aboriginal homeland of the Hoopa Tribe.

SOLUTIONS PROPOSED

HOOPA TRIBE

All mediation efforts of the Hoopa Tribe and the courts have been opposed by the Yurok Tribe.

Congressman Doug Bosco has introduced H.R. 4469, which would separate the Hoopa "square" and the Yurok "extension" and return the homelands to each tribe. The bill would provide a money compensation to the individual Yurok people. It would also provide for tribal organization, additional land and many other benefits for the Yurok Tribe.

The Hoopa Tribe is asking The Congress to right the wrong done to the Hoopa Tribe back in 1864, when it took our homeland and established a reservation common to all Indians.

The members of the Hoopa Tribe supports H.R. 4469

YUROK TRIBE

Mediation is opposed by the Yurok Tribe.

H.R. 4469 is opposed by the Yurok Tribe.

The majority of the Yuroks do not live on the Hoopa Valley Reservation, nor have they ever lived on the Hoopa Reservation. The have never participated in either the Hoopa nor the Yurok tribal issues.

During a 1986, mediation effort an attorney for Yurok plaintiffs stated:

> "THE THREE ATTORNEYS-IN-FACT HAVE TOLD US THEY DON'T WANT TO DISCUSS ORGANIZATION; THEY DON'T WANT TO DISCUSS MANAGEMENT OF THE RESOUCES; AND THEY DON'T WANT TO DISCUSS THE DIVISION OF THE RESERVATION. THE ONLY THING THEY ARE REALLY INTERESTED IN BEFORE THIS COURT IS A MONEY ISSUE."

AFFECT OF PUZZ/SHORT ON ALL TRIBES

Depending on the language contained in the documents establishing reservations, a tribe may be in danger of losing their right to govern their resources, they may lose their right to determine their tribal membership, they may lose their land base and their tribal sovereignty.

Unless executive orders, treaties or law specifically gives a tribe the right to govern a reservation and/or the resources, tribes may have to share their governing powers with individuals who can prove an ancestral tie to the reservation land. Tribes will then have to share an advisory role with those individuals to the BIA, who will be responsible for administering the reservations and its resources.

The courts have virtually "changed the law" in its definition of tribes and tribal authority. An individual "Indian" must now be given an equal voice in reservation issues. Even if that individual is not a part of a federally-recognized tribe or a resident of that reservation.

HELLER, EHRMAN, WHITE & McAULIFFE
ATTORNEYS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
TELECOPIER (415) 324-0638
TELEPHONE (415) 326-7600

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW · TELEX 184-995 · TELECOPIER (415) 772-6268
TELEPHONE (415) 772-6000

999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4011
TELECOPIER (206) 447-0849
TELEPHONE (206) 447-0800

1300 S.W. FIFTH AVENUE
PORTLAND, OREGON 97201-5696
TELECOPIER (503) 241-0850
TELEPHONE (503) 227-7400

July 6, 1988

98109-0003

Frank Ducheneaux, Esq.
House Interior and Insular
Affairs Committee
522 House Office Building, Annex I
Washington, D.C. 20515

Re: HR 4469

Dear Mr. Ducheneaux:

At the request of William C. Wunsch, I am forwarding the STATEMENT OF MICHAEL GREENBERG, ATTORNEY, ON BEHALF OF JESSIE SHORT PLAINTIFFS, IN OPPOSITION TO A BILL TO DIVIDE THE HOOPA VALLEY RESERVATION, HR 4469 Bill, to be entered into the Hearing record.

Sincerely yours,

Lee Staley

Lee Staley
Legal Assistant

Enclosure

HR 4469

STATEMENT OF MICHAEL GREENBERG, ATTORNEY, ON BEHALF OF JESSIE SHORT PLAINTIFFS, IN OPPOSITION TO A BILL TO DIVIDE THE HOOPA VALLEY RESERVATION

On behalf of the majority of the Indians of the Hoopa Valley Reservation, I urge Congress not to pass this bill or any bill which would split the Hoopa Valley Reservation. Jessie Short v. United States has been in court for 25 years. The Bureau of Indian Affairs is the defendant. It has already been determined that the Government owes at least 2500 of my clients somewhere between 25-95 million dollars. Five hundred plaintiffs have died, many of them impoverished, while their money sits in a Government escrow account.

This proposed legislation would not speed up any payments of plaintiffs' damages, nor would it end the Short litigation. However, it would reverse all the court decisions, steal my clients' Reservation, divide families, create new litigation, and cost the Government hundreds of millions of dollars.

While I will go into significant detail concerning the history and current problems of the Hoopa Valley Reservation, the following five points demonstrate why division of the Reservation makes no sense:

1. The Hoopa Valley Reservation was created by President Grant pursuant to the Act of 1864. The Reservation was set aside for all the Indians of Northern California who chose to settle there, not for any one particular group of Indians. While the Reservation consists of two parts, the Square and the Extension, the Court of Claims has ruled in Jessie Short v. United States that the two parts constitute one single Reservation.

2. In Jessie Short v. United States, the Court of Claims also held, based on the Act of 1864, that our clients (approximately 70% of the Indians) have just as much right to the resources and revenues of the Square part of the Reservation as do the members of the Hoopa Valley Tribe. The Court held that the Bureau of Indian Affairs breached its fiduciary duty to my clients by treating the Hoopa Valley Tribe and its members as the exclusive owners of the Square. Defendants have sought to reverse this ruling three times in the United States Supreme Court but all three petitions for certiorari were denied. Based on that Jessie Short

decision, the Bureau established an escrow fund which set aside 70% of the revenues for my clients. The fund now holds more than $70 million.

3. The Hoopa Valley Tribe is not a tribe immemorial and neither has nor ever had any rights in the Square greater than the rights of any other Indians. Rather, the Hoopa Valley Tribe was formed in 1950 with the assistance of the Bureau, and constitutes a minority of the Indians of the Hoopa Valley Reservation. The Hoopa Valley Tribe's members have Hupa, Yurok, and other Indian blood. Similarly, my clients have Yurok, Hupa and other Indian blood. Most families from the Reservation are comprised of both Hoopa Valley Tribe members and Jessie Short plaintiffs.

4. In the face of these facts, Congressional action to divide the Reservation and give the Square to the Hoopa Valley Tribe would constitute a Fifth Amendment taking of plaintiffs' property. The land in issue has a value which could be in excess of $1 billion. The Square has approximately thirty times as much communal Indian land than does the Extension. There is no more reason to give the Square to the Hoopa Valley Tribe than to the other Indians of the Reservation. Giving all the valuable land to the Hoopa Valley Tribe and all of the relatively worthless land to the majority of Indians of the Reservation would destroy the Reservation community for most of the Indians.

5. Congressional action will not terminate the Jessie Short case or hasten its conclusion because it could only act prospectively. The Jessie Short case would still have to reach its conclusion in order to determine plaintiffs' past damages and to resolve the question of which plaintiffs are eligible to share in those past damages. Indeed, the legislation explicitly states that Jessie Short will have to continue because it only provides payments for post-1974 damages (damages began in 1957) and provides that the post-1974 damages are to be paid to those people who are determined to be eligible in Short. Instead, congressional action would lead to additional litigation between the Indians and against the Government based upon a Fifth Amendment taking and over rights in resources (like fish and water) which are not exclusively within one part of the Reservation or the other. The bill specifically contemplates such litigation.

The plaintiffs in Jessie Short v. United States have fought long and hard -- 25 years already -- to protect their rights in all of the Hoopa Valley Reservation, and they have repeatedly won in Court. The Court's are finally concluding the litigation. For Congress to step into the fray now would only exacerbate the problems of the Reservation.

This is not the first time such legislative proposals have been put forth. In the past, no Senator or Congressman ever agreed to introduce such legislation. In fact, Congressman Bosco

opposed such legislation in 1984-1985. I do not know why he recently changed his mind. The only changes since 1985 are that more courts have held that the Reservation must be treated as a single Reservation, and the management issues are very close to resolution in the courts. I urge you to adopt the well-reasoned position taken by Senator Alan Cranston and Mr. Bosco when asked in 1984-1985 to support legislation which would have split the Reservation: opposition to any legislation which is not endorsed by both sides of the Short case. We are informed that neither Senator Cranston nor Senator Wilson will support the bill.

The Hoopa Valley Reservation is shaped very much like a frying pan; it consists of a 12-mile square (the "Square") and a panhandle which runs along the Klamath River to the ocean (the "Extension"). The Square part of the Reservation contains most of the usable resources from which the Indians' communal revenues derive. The Square is rich with harvestable timber and other resources. Nearly all of the Indians' communal revenues derive from the Square. In contrast, the Extension has nothing which could support a viable Reservation community. Most of the land in the Extension area of the Reservation was allotted to individuals many years ago. A significant portion has left Indian ownership. Most of the Extension does not even have electrical power or telephone service. A lot of the land is steep canyons where it is impractical to build modern structures. The road system is especially weak and the area is prone to disastrous flooding.

In 1950, some of the Indians who resided on the Square, as well as some who did not live on the Reservation at all, formed a tribe with the Bureau of Indian Affairs' assistance. That organization consists of Indians with Hupa, Yurok and other types of Indian blood. Not all Hupa Indians are members, and some members, including most of the Business Council, are predominantly Yurok. The Bureau then arbitrarily recognized this tribe as having exclusive rights to the resources and revenues from the Square. The Bureau began paying all of the revenues from that part of the Reservation exclusively to the minority of Indians who were members of that newly formed tribe. The Bureau also allowed the Hoopa Valley Tribe to run the Reservation.

In 1963, the excluded majority group of Indians filed Jessie Short v. United States seeking monetary redress for the Bureau of Indian Affairs' breach of fiduciary duty in recognizing only the Indians in the newly formed tribe as having rights in the Square. Despite its duty as a trustee for both groups of Indians, the Bureau has consistently sided with the Hoopa Valley Tribe in the litigation and has dragged this lawsuit out for so many years that approximately 500 plaintiffs have died, never having seen a nickel of the money the Court has ruled is theirs.

In 1973, the Court of Claims issued a lengthy decision, with 216 findings of fact, which upheld plaintiffs' rights in the

Square. The essential holding of the Jessie Short case was that the Extension and the Square constitute one single Reservation and that all of the Indians of the Reservation, regardless of which part of the Reservation they live on, and regardless of whether they are members of the Hoopa Valley Tribe, have had equal rights in all of the revenues and resources from all parts the Reservation. The ruling which best demonstrates why it is illogical and unfair to give the Square to the Hoopa Valley Tribe was that neither the Hoopa Valley Tribe nor its members have ever had any greater rights in or claim to the Square than do the other Indians of the Reservation. The Supreme Court refused to reverse the decision three times.

The Court determined that the Bureau of Indian Affairs acted arbitrarily in recognizing only the members of the Hoopa Valley Tribe as having rights in the Square. Unfortunately, justice has been slow in coming. The Bureau of Indian Affairs and the Hoopa Valley Tribe have managed to drag out the remaining aspects of the case -- determining both the amount of damages and which plaintiffs are "Indians of the Reservation" -- for the past 15 years. The Court recently held a trial on eligibility issues, and it finally looks as if the end of the case is in sight.

Forcing a legislative solution on the Indians of the Hoopa Valley Reservation is simply not the answer here. Before introduction of this proposed bill, no attempt was made to learn the needs and wishes of the Reservation community. The majority of the Indians of the Reservation oppose the legislation. I know that even some members of the Hoopa Valley Tribe -- who would benefit, at least in the short run, from the legislation -- oppose it.

Were it right to split the Reservation at all, it would make more sense to give plaintiffs the valuable Square and give the Hoopa Valley Tribe the Extension. After all, the majority group needs a greater income base to sustain an independent, self-sufficient community.

While the Bureau has let the Hoopa Valley Tribe run the Square for all these years, this history of wrongful conduct cannot serve as a basis for giving the Square to the Hoopa Valley Tribe. In fact, the District Court for the Northern District of California just ruled that it was wrong for the BIA to allow the Hoopa Valley Tribe to govern the Reservation, and issued an injunction preventing this from happening in the future. Puzz v. United States. This legislation would be an end-run around the District Court's injunction.

If the Hoopa Valley Tribe has never had any greater rights in the Square than did the other Indians of the Reservation, for what reason would Congress now overrule three different courts to give them such rights? That would only reward the Bureau's

perfidious conduct in recognizing only the Hoopa Valley Tribe as having rights in the Square for all these years.

The ostensible purpose of the legislation, to resolve the Jessie Short case and the management issues on the Hoopa Valley Reservation, would not be accomplished by legislation splitting the Reservation. The proposed legislation could operate prospectively only. Therefore, while its effect would be to dispossess plaintiffs in the future from all of the rights they have won in the Jessie Short case, passage of the legislation would not terminate or expedite the Jessie Short case. More than 2,500 of the plaintiffs in Jessie Short have already been adjudged qualified; that is, the Court has stated that they are Indians of the Reservation with as much right to share in the resources of the Square as the members of the Hoopa Valley Tribe. There remain approximately 540 plaintiffs whose eligibility is, for the most part, already before the Court by motion, awaiting rulings. Whether the legislation is passed or not, the Court will still have to rule on the remaining plaintiffs' eligibility for purposes of past damages, and to determine who receives payments under the bill. The accounting aspects of the case would also need to be completed. Finally, legislation or not, there is little doubt that the defendants will pursue this litigation as far as the Supreme Court once again. The proposed legislation, therefore, will do nothing to speed up the resolution of the Jessie Short case.

It would, on the other hand, create new litigation based upon a Fifth Amendment taking. The Act of 1864 established the Hoopa Valley Reservation for all the Indians of Northern California who chose to settle there. It did not establish the Reservation for the Hoopa Valley Tribe, which did not even exist for another 86 years. The Claims Court and the Court of Appeals for the Federal Circuit have time and again confirmed plaintiffs' rights in the entire Hoopa Valley Reservation, including the Square. The Court has stated that the Hoopa Valley Tribe has no greater rights in the Square than do the plaintiffs. Should Congress pass legislation which strips plaintiffs of their rights in the Square portion of the Hoopa Valley Reservation without compensation in the range of one billion dollars, this would constitute a Fifth Amendment taking. (See Professor Clinton's prepared statement which unequivocally supports this analysis.) There is no doubt that one or more new lawsuits would be filed.

The Fifth Amendment was recently cited by plaintiffs as a basis for awarding plaintiffs interest on their damages. Defendants contended that there could not be a Fifth Amendment taking. The likelihood of finding a Fifth Amendment taking just from the Bureau's refusal to pay plaintiffs any share of the Square's revenues was so substantial that the Court refused to reject plaintiffs' argument. Instead, the Court sidestepped the issue by finding another, statutory basis for awarding interest. Should legislation pass which takes away not only plaintiffs' share

of revenues, but the land itself, the Fifth Amendment argument will be even stronger, and the next Court will not be able to sidestep it.

In fact, the Fifth Amendment issue is so strong that the proposed bill specifically contemplates and addresses future litigation. For example, it provides for a short statute of limitations for the filing of Fifth Amendment lawsuits. This shortened statute of limitations would itself violate equal protection. It would probably run before the Court even finished determining who had rights on the Reservation so that they could file a taking claim. It makes no sense for Congress to embroil itself in the Jessie Short and Puzz litigation only to create additional litigation.

The management issues on the Reservation are currently before the United States District Court in Puzz v. United States, and an important ruling was just issued in plaintiffs' favor. The court ruled that the Hoopa Valley Tribe did not have any superior rights in the Square part of the Reservation. The court enjoined the BIA from giving the Hoopa Valley Tribe any preference in revenues or in governing the Reservation, and gave the BIA 60 days to develop a management plan fair to all Indians. Congress should not even consider passing legislation which will directly overrule the judicial resolution of the management issues. Moreover, the proposed legislation would not end the management problems. There are some important resources of the Hoopa Valley Reservation which are not exclusively within one area of the Reservation, like fish and water. The Klamath/Trinity River System runs through both the Extension and the Square. These resources would still be subject to dispute, leading to even more lawsuits.

Having explained that the proposed legislation would not resolve the Jessie Short case or the management issues on the Reservation, I turn now to the extraordinarily adverse effect it would have on the community of Indians who do not belong to the Hoopa Valley Tribe. As a practical matter, division of the Reservation will leave the Indians of the Reservation who do not belong to the Hoopa Valley Tribe -- the majority -- without any economically viable land base. The Indians of the Reservation who are not members of the Hoopa Valley Tribe need the Square as much as than does the Hoopa Valley Tribe as a foundation for economic development. Division of the Reservation would be tantamount to "termination" of all Indians of the Reservation other than those in the Hoopa Valley Tribe. Here, though, it would be done without any compensation to the terminated Indians. The Bureau's termination policy proved to be a disaster, and should not be reinstated here.

The so-called "Yurok Tribe as recognized by the Secretary" to which the proposed bill refers, and which would receive the Extension, is not a functioning tribe and has no membership rolls. It is simply a name created by the Bureau in

1979 when it tried to force the plaintiffs in Jessie Short to organize a particular kind of tribe against their wishes. The Court stopped the Bureau's efforts. The legislation therefore would give a portion of the Reservation to a tribe which does not even exist.

If the Reservation were divided into a portion owned by the Hoopa Valley Tribe and a portion owned by the so-called "Yurok Tribe", what of the other Indians of the Reservation? Two thousand five hundred (2,500) Indians have already been ruled eligible in this case. When and if a "Yurok Tribe" organizes, there is no reason to believe that all of the Indians who were held to have Reservation rights in Short would become members of that tribe. After all, some of them have absolutely no Yurok blood.

There are many Indians who have rights in the Hoopa Valley Reservation who are neither Yurok nor Hupa. They have Chetco, Klamath, Tolowa and many other types of Indian blood. These are all tribes for whom the Reservation was created. Some of the plaintiffs in Jessie Short have more Hupa Indian blood than other types, and some Hoopa Valley Tribe members are predominantly Yurok. For example, at the recent eligibility trial, an Indian named Gordon Bussell was ruled by the Court to have rights equal to any Hoopa Valley Tribe member in the Square part of the Reservation. He possesses 3/16 Hupa, 2/16 Mattole, and 1/16 Wintun Indian blood. Mr. Bussell is not a member of the Hoopa Valley Tribe. If the Reservation is divided, where does Mr. Bussell stand? Could or should this Indian without any Yurok blood join a "Yurok tribe?" The short answer is that the legislation would strip Mr. Bussell of his birthright, his right in the Hoopa Valley Reservation, a right just confirmed by the Court. He would have no rights in either part of the Reservation, a Reservation created for all Indians of Northern California.

Leslie Ammon is another excellent example to prove the point that the Hoopa Valley Tribe is not one composed of, or which represents, either all of the Hupa Indians of the Reservation or all of the Indians who have strong ties to the Square. Mr. Ammon, another plaintiff who was qualified at the recent Short trial, has only Hupa Indian blood, one-quarter. He lives on the Square, as he has done for the past ten years. Yet he is not a member of the Hoopa Valley Tribe, nor could he be. Just as not all Hupa Indians are members of the Hoopa Valley Tribe, many of its members have more Yurok or other Indian blood than Hupa blood. The Hoopa Valley Tribe is simply a collection of individuals who joined together as a political unit in order to steal the Square, with the Bureau's help, from the majority of the Indians.

Division of the Reservation would have a devastating social effect on the Reservation community. Many families consist of both Jessie Short plaintiffs and Hoopa Valley Tribe members. A husband might be a member of the Hoopa Valley Tribe, while his wife

and children are Jessie Short plaintiffs. Between a third and a half of Hoopa Valley Tribe members have immediate family ties with Jessie Short plaintiffs. Division of the Reservation would only intensify the strife which the Bureau's discriminatory actions have already caused within families.

The Hoopa Valley Tribe has tried to convince Congress that most of the Jessie Short plaintiffs have only tenuous ties to the Hoopa Valley Reservation. This is an extremely misleading impression. In fact, the Short plaintiffs' ties to the Reservation are as strong or stronger than those of the Hoopa Valley Tribe members. Both Short plaintiffs and Hoopa Valley Tribe members reside on both parts of the Hoopa Valley Reservation. Many Jessie Short plaintiffs, like Leslie Ammon discussed above, have lived on the Square for substantial periods of time. While it is true that many of the Short plaintiffs reside off the Reservation, the same is true of many Hoopa Valley Tribe members. Some members of the Hoopa Valley Tribe have never lived on the Reservation, and some receive Reservation revenues from the Square despite living hundreds of miles away.

The history of this Reservation, as outlined above and in the 1973 findings of fact, demonstrate that this situation is not at all like the Hopi-Navajo dispute, where two mutually exclusive and discrete tribes are involved. Dividing the Hoopa Valley Reservation makes no sense.

The Reservation was created as a single reservation with all Indians of the Reservation having equal rights. Twenty-five years of litigation were necessary for plaintiffs to establish those rights. Now that plaintiffs are getting close to the time when they might enjoy their equal rights in the Square, it would be abhorrent to accomplish a Fifth Amendment taking of those rights. Plaintiffs urge you to oppose, and to convince other congressmen to oppose, any legislation which is not supported by a majority of the Indians of the Hoopa Valley Reservation.

The Hoopa Valley Tribe has been lobbying hard for many years on behalf of legislation to split the Reservation. The Bureau approves budgets which provide the Hoopa Valley Tribe up to $500,000/year of Reservation revenues to pay attorneys to fight to steal the majority's rights. The Hoopa Valley Tribe and its members are the only ones who receive any of the millions of dollars in Reservation revenues, millions of dollars which give them political clout not possessed by the plaintiffs. However, plaintiffs are sure that you would not want to support any legislation which benefits the minority by stealing the rights of the majority.

The plaintiffs want the Hoopa Valley Reservation to work as an independent Indian community for the benefit of all Indians of the Reservation, not just for the minority. Plaintiffs are

making strong efforts to convene a Reservation-wide governing council which would represent all the Indians. That is the answer to the Reservation's problems. Legislation which reverses 25 years of court decisions is not.

ROBERT N. CLINTON
University of Iowa Law School
Boyd Law Building
Iowa City, IA 52242

JUN 21 1988

Telephone Nos:
(319) 335-9032 (Office)
(319) 351-3750 (Home)

Member:
Illinois Bar (since 1971)
Iowa Bar (since 1973)

June 20, 1988

The Honorable Morris Udall, Member of the House of Representatives
House Committee on Interior and Insular Affairs
United States Congress
1324 Longworth Building
Washington, DC 20515

RE: Hearings on H.R. 4469, Scheduled for June 21, 1988

Dear Representative Udall:

I understand that hearings of the House Committee on Interior and Insular Affairs relative to the plan to partition the Hoopa Valley Reservation in California are scheduled for Washington, DC on June 21, 1988. Since I am unable to attend those hearings and desire to be heard in opposition to the proposed partition plan, I am enclosing herewith a single copy of a my Statement which I request be made part of the official record of your hearings reflecting in detail the reasons for my opposition to the partition plan. I understand that Richard B. Thierolf, Jr., counsel for the some of the excluded Indians of the Hoopa Valley Reservation, will be making 50 copies of this Statement available to the Committee as required.

Should you or any member of the committee or its staff have any questions regarding this Statement or wish to pursue my comments further, I can be reached at the above address until June 23, 1988. Thereafter, for the remainder of June, July, and the first week of August, I shall be teaching Native American studies at the following address:

Deep Springs College
Deep Springs, CA
via Dyer, NV 89010

Sincerely,

Robert N. Clinton
Professor of Law

RNC/ibm
cc. Richard B. Thierolf, Jr.

STATEMENT OF

ROBERT N. CLINTON

IN OPPOSITION H.R. 4469

PROPOSING THE NONCONSENSUAL PARTITION OF THE HOOPA VALLEY RESERVATION

BETWEEN THE "HOOPA VALLEY" & "YUROK" TRIBES

Hearing Before the House Committee on Interior and Insular Affairs

Washinton, D.C.

June 21, 1988

My name is Robert N. Clinton. I am a professor of law at the University of Iowa College of Law. I regularly teach and write in the fields of Native American law. I am a member of the board of editors of F. Cohen, *Handbook of Federal Indian Law* (1982 ed.), co-author of M. Price & R. Clinton, *Law and the American Indian: Readings, Notes, and Cases* (2d. ed. 1983), and have written various law review and related articles on the Indian affairs, usually with particular focus on the constitutional and structural dimensions of such questions. I also teach and write in the fields of constitutional law and federal courts. I am submitting this Statement at the request of the Indians of counsel for some of the so-called excluded Indians of Hoopa Valley Reservation Extension. The views I shall express are my own and should not be attributed to my regular employer, the University of Iowa College of Law.

I oppose the nonconsensual partition of the Hoopa Valley Indian Reservation of California in the fashion contemplated by H.R. 4469. Basically, this proposal calls for the partition of the Hoopa Valley Reservation by giving the most productive and best endowed resources of the Reservation, the so-called Square area created by the executive order of June 23, 1876, to the Hoopa Valley Tribe, a group of Indians comprising approximately thirty percent (30%) of the total population of the Hoopa Valley Reservation, and by leaving the relatively unproductive land of the so-called Extension area in a nonarable and nontimbered canyon along the Klamath River to the remaining seventy percent (70%) of the reservation population. For reference I have attached to this Statement a copy of the map of the Hoopa Valley Reservation taken from the Supreme Court's decision in *Mattz v. Arnett*, 412 U.S. 481 (1973). For clarity, in this statement, I generally shall refer to the Hoopa Valley Reservation as comprising the entire legal area of the Reservation unless the historical context of my statement indicates otherwise. The area designated on the map as the "Original Hoopa Valley Reservation" is the so-called Square created by the executive order of June 23, 1876 and the so-called Extension is the combination of the two areas labeled on the map as the "Old Klamath River Reservation" and the "Connecting Strip," both of which were added to the Hoopa Valley Reservation for the benefit of all members of the Reservation by the executive order of October 16, 1891.

The basic nature of my opposition to H.R. 4469 is threefold. First, the legislation never has been presented to or voted on by *all* persons holding beneficial interests in the Hoopa Valley Reservation. Second, it proposes to legislatively subvert, if not completely thwart, the effect of over twenty-five years of litigation[1/] and to overturn the letter and spirit of the judgments and orders secured in those cases. Finally, the partititon plan described in H.R. 4469 constitutes a taking of Indian property without just compensation in violation of the fifth amendment to the Constitution that may create unanticipated substantial monetary liabilities for the United States and its taxpayers notwithstanding a contingent indemnification provision designed to ameliorate such consequences. In explaining the reasons for my opposition to the nonconsensual partition of the Hoopa Valley Reservation, I shall address in this Statement: (1) the history, background, demography, and economics of the Reservation, (2) the results of the litigation that this legislation seeks to overcome, and (3) the constitutional problems with the plan for partition of the Hoopa Valley Reservation proposed in H.R. 4469.

HISTORY & BACKGROUND OF THE HOOPA VALLEY RESERVATION

Like most of the Indians of the Pacific Northwest, the indigenous occupants of Northern California, including the Indians of the communities along the Klamath and Trinity Rivers, were not organized in large tribal units at or prior to contact with Euro-American settlers. Rather, they were organized in small family oriented fishing and subsistence village units, usually in close

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1. *Puzz v. U.S. Department of the Interior*, No. C80-2908 TEH, slip op. (N.D.Cal. April 8, 1988); Short *v. United States*, 12 Cl. Ct. 36 (1987); (*Short IV*); *Short v. United States*, 719 F.2d 1133 (Fed.Cir.1983), cert. denied, 467 U.S. 1256 (1984) (*Short III*); *Short v. United States*, 228 Ct.Cl. 535, 550-51, 661 F.2d 150, 158-59 (1981), cert. denied, 455 U.S. 1034 (1982) (*Short II*); *Hoopa Valley Tribe v. United States*, 596 F.2d 435 (Ct. Cl. 1979); *Short v. United States*, 202 Ct. C. 870 (1973) (*Short I*). *See also, Mattz v. Arnett*, 412 U.S. 481 (1973); *Donnelly v. United States*, 228 U.S. 243 (1913) (sustaining federal power to add the extension by executive order to the Hoopa Valley Reservation).

proximity to the rich fisheries of the area.[2] Creation of reservations in Northern California and elsewhere, therefore, involved a process by which the United States recognized, organized, or created larger tribal units or nontribal reservations that had no aboriginal parallel in the community groupings that existed at the time of contact. Misguided proposals for partition of the Hoopa Valley Reservation, of the type reflected in H.R. 4460, derive either from lack of historical understanding of this process or from dissatisfaction with the enforceable property rights that this process engendered. Thus, recounting in some detail the history leading to creation of the Hoopa Valley Reservation is critical to understanding the nature of the property rights involved and the respective interests of all Indians of the reservation who would be affected by the proposed legislation.[3]

After the United States acquired California in 1848 under the Treaty of Guadalupe Hidalgo, establishing some mechanism for the management of Indian affairs in California posed a new and

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2. 8 *Handbook of North American Indians: California* 144-45. 168-71 (1978); A. Kroeber, *Handbook of the Indians of California*, chs. 1-4 (published as Bulletin 78, Bureau of American Ethnology 1-97 (1925); S. Powers, *Tribes of California* chs. 4-5, published as 3 *Contributions to North American Ethnology* 44-64 (1877). The most recent scholarship on such social organizations is reflected in the description of the pre-history of Hoopa areas contained in the 1978 Smithsonian *Handbook of North American Indians*:

> Along the lower course of the Trinity River in northwestern California lived the Hupa . . ., a small ethnic group numbering about 1,000 when first reached by White Americans in 1850. They *shared a distinctive way of life with the adjoining and more populous Yurok and Karok of the Klamath River with whom they had frequent contacts and close relations.*

Id at 164 (emphasis supplied).

3. The history of the Hoopa Valley Reservation has been well canvassed over the last twenty-five years of litigation. The history set forth here is derived primarily for the findings and descriptions contained in *Mattz v. Arnett*, 412, U.S. 481 (1973), *Donnelly v. United States*, 223 U.S. 243 (1913); *Short v. United States*, 202 Ct. Cl. 885-988 (1973) (findings of fact); and *Crichton v. Shelton*, 33 I.D. 205 (1904).

unique problem for federal Indian policy.[4] The Indian policies adopted after the acquisition of California represented the crucible in which nation's ultimate reservation policies developed. The Act of March 3, 1853, 10 Stat. 238, therefore explicitly authorized the President "to make five military reservations from the public domain in the State of California or the Territories of Utah and New Mexico bordering on said State, for Indian purposes." The Act of March 3, 1855, 10 Stat. 699, further appropriated funds for "collecting, removing, and subsisting the Indians of California . . . on two additional military reservations, to be selected as heretofore . . . Provided, That the President may enlarge the quantity of reservations heretofore selected, equal to those hereby provided for." From the beginning, therefore, the reservation process in California involved collection and concentration of Indians from divergent tribal cultural communities into concentrated, larger Indian communities.

Pursuant to this legislation, President Pierce issued an order of November 16, 1855, establishing the Klamath River Reservation along the Klamath River. 1 Kappler, *Indian Affairs: Laws and Treaties* 817 (1904) (hereinafter cited as Kappler). The occupants of the villages and communities in this area thereby became known as Klamaths or Yuroks, meaning "down the river" in the Karok language.[5] The Yuroks and other related tribes had lived in the area and at thetime the site was well suited to their needs. When created, it contained some arable land, although limited and subsequently devastated by flooding, and was "peculiarly adapted to the growth of vegetables." 1856 Report of the Commissioner 238. The Klamath River that ran

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4. Between 1830 and the acquisition of California, federal policy generally contemplated the removal of indigenous populations westward beyond some mythical frontier line of settlement and outside of the boundaries of any state. While this policy simultaneously was being partially breached by the admission to the Union of Wisconsin in 1848, followed by Kansas in 1861, with unremoved resident Indian populations (which it was then contemplated ultimately would be removed), the acquisition of California posed a new problem because the Pacific Ocean prevented any further westward removal of indigenous populations and transportation, geographic, and other problems precluded removal to the east.

5. As the Supreme Court recognized in *Mattz v. Arnett*, the names of the tribes in the area did not refer to highly organized, distinct ethnological groupings, but, rather, to the people living in the villages and communities of various geographic regions -- Yurok ("down the river"), Karok ("up the river"), and Modok ("head of the river").

through a canyon for the entire length of the reservation contained abundant salmon and other fisheries resources. 1858 Report 286.

Initially, it was thought that the reservation population of around 2500 could be supported by the Reservation. One agent stated, "No place can be found so well adapted to these Indians, and to which they themselves are so well adapted, as this very spot. No possessions of the Government can be better spared to them. No territory offers more to these Indians and very little territory offers less to the white man. The issue of their removal seems to disappear." 1885 Report of the Commissioner 266. In 1861, flooding washed away nearly all the arable lands on the Klamath River Reservation, setting in motion a series of events culminating in an 1891 executive order that added the Klamath River Reservation and other adjacent land occupied by Yuroks to the Hoopa River Reservation. The flooding devastated whatever hopes for subsistence existed on Klamath River. While many Yuroks remained in the reservation area, the population declined to later years, as Yuroks moved elsewhere, presumably including the so-called Square of the Hoopa Valley Reservation, in search of economic subsistence. Subsequent events, culminating in the Executive Order of 1891 that created the present structure of the Hoopa Valley Reservation, can best be understood as a search by the federal government for a set of arrangements for the Yuroks and associated tribes that would provide resources necessary for their subsistence.

Initially, proposals were floated to remove the Yuroks to the Smith River Reservation, established for that purpose in 1862. Only a small number of Yuroks removed to Smith River and nearly all those who did move returned shortly thereafter, Crichton v. Shelton, 33 I.D. 205, 208 (1904), leading ultimately to the termination of the Smith River Reservation. Act of July 27, 1868, 15 Stat. 198, 221.

As the experiments with reservation policy developed in California, the Act of April 8, 1864, 13 Stat. 39, sought to establish a framework in which they could progress in a controlled and limited fashion. The Act designated California as one Indian superintendency. Section 2 of the 1864 Act further provided in relevant part:

> [T]here shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained

> by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of *the Indians of said state*, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for they are intended. Provided, That at least one of said tracts shall be located in what was heretofore been known as the northern district: * * * And provided, further, That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said state, and that in case any such reservation is so included, the same may be enlarged to such extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended. (emphasis supplied)

The 1864 Act further stated that "the several Indian reservations in California which shall not be retained . . . under . . . this act, shall . . . be surveyed into lots or parcels . . . and . . . be offered for sale at public outcry, and thence afterward shall be held subject to sale at private entry." Id., at 40. The Hoopa Valley Reservation was created under authority of this legislation and therefore owes its origin to a process of reservation building that contemplated the collection of various "Indians of such state" onto sizable reservations remote from white settlements, often outside the aboriginal homelands of some of the affected Indians. Many of these reservations, including Hoopa Valley, were nontribal in the sense that they were not intended as homelands for Indians of a particular or limited designated set of tribes, but, rather, for all California Indians whom the President chose to place on the Reservation.

At the time of the passage of the 1864 Act, apparently, three reservations existed in California -- Klamath River, Mendocino, and Smith River. The President took no immediate action after passage of the Act to recognize any of the three existing reservations in California. In default of Presidential action, Congress acted in 1868, discontinuing the Smith River Reservation, 15 Stat. 221, and restoring Mendocino to the public domain. Id., at 223. No similar action was taken with respect to the Klamath River Reservation. Crichton v. Shelton, 33 I.D., at 209. In 1869, Congress made appropriations for two new reservations, the Round Valley Reservation, 15 Stat. 221, and the Hoopa Valley Reservation in 1869, 16 Stat. 37, although neither theretofore had been created by formal Executive Order as contemplated by the 1864 Act. Pursuant to the 1864, Austin Wiley, the Superintendent of Indian Affairs for the State of California, located the Hoopa

Valley Reservation on August 21, 1864, notifying non-Indian settlers in the area to make no further improvements to their lands. The Hoopa Valley Reservation, however, was not formally set apart for Indian purposes by order of a President, as authorized by the 1864 Act, until an Executive Order issued by President Grant dated June 23, 1876. 1 Kappler 815. This Executive Order covers the area generally described as the Square of the Hoopa Valley Reservation. Even at the time of the creation of Square, the Hoopa Valley Reservation obviously was established for an amalgamation of different Indian groups. In his annual report for 1872, the Commissioner of Indian Affairs indicated that the Indians supervised by the agency at Hoopa Valley were the Humboldts (Wiyots and others), Hoonsoltons, Miscolts, Saiaz and several other bands, with a total population of 725. This reservation, was then described by the Commissioner as "set apart per act of April 8, 1864, for these and such other Indians in the northern part of the State as might be induced to settle there." Between the executive orders of 1876 and 1891, the Commissioner's annual reports contained a table giving the names of the tribes "occupying or belonging" to the various California reservations. On the Hoopa Valley Reservation, the tribal names given included Hunsatang,[6/] Hoopa, Klamath River, Redwood, Saiaz, Sermalton, Miskut and Tishtanatan. Thus, it was well understood from the beginning that the reservation was nontribal, containing Indians from several tribes. The Reservation from the outset therefore was intended for whatever tribes might be settled there under the direction of the President pursuant to authority delegated to him under the 1864 Act.

The Klamath River Reservation, although not reestablished by Executive Order or specific congressional action, continued to exist until 1891. Yuroks and others remained on the reservation land which the Department of Indian Affairs regarded as "in a state of reservation" throughout the period from 1864 to 1891. Letter dated Apr. 4, 1888, from the Commissioner of Indian Affairs to the Secretary of the Interior, quoted in *Crichton v. Shelton*, 33 I.D., at 211. No steps were taken to sell the reservation, or parts thereof, under the 1864 Act. In 1879, trespas-

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6. While I profess no expertise in Native American languages, I am informed that in the Hoopa language Hunsatang means or refers to the Yuroks who then lived on or near the Square.

sers were removed from the Klamath Reservation area by the military. In 1883 the Secretary of the Interior directed that allotments of land be made to the Indians on the Reservation. The allotment process was postponed, however, "on account of the discovery of gross errors in the public surveys." Id.; 1885 Report XLVIII. By Senate resolution, Secretary of the Interior was directed in 1889 "to inform the Senate what proceedings, if any, have been had in his Department relative to the survey and sale of the Klamath Indian reservation . . . in pursuance of the provisions of the act approved April 8, 1864." 20 Cong.Rec. 1818. The Commissioner of Indian Affairs, by letter dated February 18, 1889, to the Secretary disclosed that no proceedings to this effect had been undertaken:

> In response to said resolution, I have to state that I am unable to discover from the records or correspondence of this office that any proceedings were ever had or contemplated by this Department for the survey and sale of said reservation under the provisions of the act aforesaid; on the contrary, it appears to have been the declared purpose and intention of the superintendent of Indian affairs for California, who was charged with the selection of the four reservations to be retained under said act, either to extend the Hoopa Valley Reservation (one of the reservations selected under the act), so as to include the Klamath River Reservation, or else keep it as a separate independent reservation, with a station or subagency there, to be under control of the agent at the Hoopa Valley Reservation, and the lands have been held in a state of reservation from that day to this.

Ex.Doc. 140, pp. 1, 2, quoted in *Crichton v. Shelton*, 33 I.D., at 212. An assistant Attorney General for the Department of the Interior expressed a similar view in an opinion dated January 20, 1891:

> Pushing aside all technicalities of construction, can any one doubt that for all practical purposes the tract in question constitutes an Indian reservation? Surely, it has all the essential characteristics of such a reservation; was regularly established by the proper authority; has been for years and is so occupied by Indians now, and is regarded and treated as such reservation by the executive branch of the government, to which has been committed the management of Indian affairs and the administration of the public land system . . . . It is said, however, that the Klamath River reservation was abolished by section three of the act of 1864. Is this so?
>
> In the present instance, the Indians have lived upon the described tract and made it their home from time immemorial; and it was regularly set apart as such by the constituted authorities, and dedicated to that purpose with all the solemnities known to the law, thus adding official sanction to a right of occupation already in existence. It seems to me something more than a mere implication, arising from a rigid and technical construction of an act of Congress, is required to show that it was the intention of that body to

> deprive these Indians of their right of occupancy of said lands, without consultation with them or their assent. And an implication to that effect is all, I think that can be made out of that portion of the third section of the act of 1864 which is supposed to be applicable.

Quoted in *Crichton v. Shelton*, 33 I.D., at 212--213. Notwithstanding these positions, some contrary views about the continued existence of Klamath River reservation were voiced prior to 1891.[7]

Pursuant to the authority of the 1864 Act, the reservation's legal existence was clarified and altered by an Executive Order dated October 16, 1891, issued by President Benjamin [8] Under that order, the Hoopa Valley Reservation, which was located in 1864 and formally set apart in 1876, and which was situated about 50 miles upstream from the Klamath River's mouth, was extended so as to include all land, one mile in width on each side of the river, from "the present limits" of the Hoopa Valley Reservation to the Pacific Ocean. The former Klamath River Reservation and a connecting strip located between the original Square of the Hoopa Valley Reservation thereby were made part of the Hoopa Valley Reservation, as extended. Under the 1891 Executive Order, these lands were "set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April 8, 1864." Thus,

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7. The United States District Court for the Northern District of California concluded in 1888 that the area within the Klamath River Reservation was not Indian country, within the meaning of Rev.Stat. sec. 2133 (prescribing the penalty for unlicensed trading in Indian country). Concluding that the land comprising the reservation was not retained or recognized as reservation land pursuant to the 1864 Act, the court found, probably inaccurately, that it no longer constituted an Indian reservation. *United States v. Forty-eight Pounds of Rising Star Tea*, 35 F. 403 (N.D.Cal. 1888), aff'd 30 F. 400 (CCND Cal.1889). The Assistant Attorney General, in the 1891 opinion questioned the reasoning of the case, while recognizing the existence of the judgment. He suggested that the court's statements about the terminated reservation status of Klamath River "were dicta and not essential to the decision of the case before the court." *Crichton v. Shelton*, 33 I.D., at 215.

8. "It is hereby ordered that the limits of the Hoopa Valley Reservation in the state of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April (8), 1864, (13 Stats., 39), be and the same are hereby extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended." I Kappler 815.

President Harrison specifically regarded the 1891 Executive Order as part of the process authorized and commenced in 1864 to group various tribal communities together onto no more than four remote reservations.

The reason for incorporating the Klamath River Reservation in the Hoopa Valley Reservation can be found in the then existing structure of Indian communities in the state and the commands of the 1864 legislation. The 1864 Act authorized the President to create no more than four tracts for Indian reservations in California. By 1891, four reservations already had been created -- the Round Valley, Mission, Hoopa Valley, and Tule River. 1 Kappler 830-831. Recognition of a fifth reservation along the Klamath River was precluded under the 1864 Act. The President therefore utilized his authority under the 1864 Act to expand an existing, recognized reservation. President Harrison enlarged the Hoopa Valley Reservation to include what had been the Klamath River Reservation as well as an intervening riparian strip connecting the two tracts.[9/] The President's continuing authority to enlarge reservations and, specifically, the legality of the 1891 Executive Order, was affirmed by the Supreme Court in *Donnelly v. United States*, 228 U.S. 243, 255-259 (1913). The Act of June 17, 1892, 27 Stat. 52 entitled "An act to provide for the disposition and sale of lands known as the Klamath River Indian Reservation" initiated a process of allotment and opening of the lands of the former Klamath River Indian Reservation. In *Mattz v. Arnett*, 412 U.S. 481 (1973), the Supreme Court ruled that the opening of the former Klamath River Reservation and other parts of the Extension to allotment and homesteading under the 1892 Act had not altered or diminished its status as part of the Hoopa Valley Indian Reservation.

From this description, the geographic and ownership structure of the Hoopa Valley Reservation, including both the Square and the Extension, constitute the logical culmination of a federal policy, traceable to at least 1864, of collecting, grouping, and reorganizing the various Indian tribal and cultural communities onto no more than four separate reservations. Ever since the

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9. See Appendix map. The strip of land between the Hoopa Valley Reservation and the Klamath River Reservation is referred to there as the 'Connecting Strip.' Under the 1891 Executive Order the Hoopa Valley Reservation was extended to encompass all three areas indicated on the map. The connecting strip and the old Klamath River Reservation frequently are referred to as the Hoopa Valley Extension.

1864 Act, this policy contemplated that at least one such reservation would be located in northern California for the benefit of all Indians, presumably from northern California, that the President chose to group on this reservation. As many courts have noted, the legislation and executive orders in California, unlike those applicable to many other Indian areas, "neither . . . mentioned any Indian tribe by name, nor intimated which tribes were occupying or were to occupy the reservation." Rather, the reservations were nontribal -- created for the benefit of a group of California Indians (in the language of 1864 Act "for the accommodation of the Indians of said state") for whom the President was expressly authorized by statute to create four reservations as permanent homes.

Where such amalgamation of Indians from various tribal cultures and traditions has occurred on other reservations, the net effect generally has been the creation of a single new confederated tribe under federal supervision. In language seemingly equally applicable to the developments that created the Hoopa Valley Reservation, F. Cohen, *Handbook of Federal Indian Law* 5-6 (1982 ed.) describes the process as follows:

> Congress and the Executive have often departed from ethnological principles in order to determine tribes with which the United States would carry on political relations. Congress has created "consolidated" or "confederated" tribes consisting of several ethnological tribes, sometimes speaking different languages. Examples are the Wind River Tribes (Shoshone and Arapaho), the Cheyenne-Arapaho Tribes of Oklahoma, the Cherokee Nation of Oklahoma (in which the Cherokees, Delawares, Shawnees, and others were included) and the Confederated Salish and Kootenai Tribes of the Flathead Reservation. These and many other consolidated or confederated groups have been treated politically *as single tribes*. Where no formal Indian political organization existed, scattered communities sometimes united into tribes and chiefs were appointed by United States agents for the purpose of negotiating treaties. Once recognized in this manner, the tribal existence of these groups has continued. (emphasis supplied).

Based on the history of California reservation system, the language of the 1864 Act and the 1876 and 1891 Executive Orders setting aside the Square and Extension respectively as part of the Hoopa Valley Reservation, and the general course of federal Indian policy elsewhere, a reasonable construction of the course of dealings that created the Hoopa Valley Reservation would be that

the federal government had set aside a vested, recognized statutory reservation,[10/] comprising *both* the Square and the Extension (including the Connecting Strip), for a single tribe comprised of all eligible Indian residents of *both* areas. As discussed in the next section, the federal courts ultimately have construed the property relations created by this history in an analogous fashion. Nevertheless, an *unauthorized and illegal* course of dealings since 1950 between the United States Department of the Interior and a entity known as the Hoopa Valley Tribe, comprising small minority of eligible Indian population of the Hoopa Valley Reservation, has created legally insupportable expectations and demands among members of the Hoopa Valley Tribe for ownership of and rights to the resources of the Square. These legally illegitimate demands have produced the current partition proposal.

Even before the course of federal administrative dealings affirmatively fueled such expectations on the part of residents of the Square, confusion was engendered by the considerable time lag between the allotment of Extension in 1894 and the allotment of the Square in 1922. This confusion was exacerbated in the 1930s when Indian Office Superintendent O.M. Boggess, who in official correspondence openly doubted the advisability of creating any tribal councils and who was under directions from Washington to assure that any councils created represent all Indians of the Reservation and undertake only an advisory role, responded by supporting indigenous Hoopa and Yurok efforts to create separate tribal business councils. Without any discussion of the legality of such efforts or of the impact of such actions in misallocating reservation resources, Boggess supported the proposal because "the Indians down the Klamath river but seldom come to Hoopa, and their interests in many cases are different it is understood that [the Hoopas] prefer a legally organized body of the Hoopas only; permitting the Klamaths to form a similar organization

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10. For reasons explained more fully in the third section of this Statement, the Hoopa Valley Reservation constitutes a *recognized* statutorily authorized reservation, rather than a nonrecognized executive order reservation. While both the Square and Extension formally were set aside for Indians through an Executive Orders in 1876 and 1891, these orders are unlike other executive orders creating Indian reservations because both orders were expressly issued pursuant to statutorily delegated authority contained in the Act of April 8, 1864. The executive orders involving Hoopa Valley therefore merely constituted formal mechanisms for designating Indian lands and their beneficiaries that Congress expressly authorized to be held as permanent homelands for the affected Indians.

for their people if they should care to do so." He further explained in a letter to the Commissioner:

> Owing to the exceedingly rough nature of this section and the lack of roads it would be exceedingly difficult to require the Indian people along the entire river to meet together for a regular election of councilmen, and as the number of matters requiring their attention is but limited I do not think that they would be justified in going to this expense.

So long as any such council operated only as an advisory committee, as required by the then prevailing directions from the Indian Office, its mere organization based on such considerations of geographic and administrative convenience violated only majoritarian political principles, but few existing property rights of the Indians of the reservation.[11/] To the extent, however, that any such council representing less than the entire population of reservation managed or directed reservation resources to which *all* eligible residents of the Reservation were equally entitled, such an organization then and now poses serious legal and constitutional problems. Furthermore, given Boggess' stated opposition to tribal councils and his predecessor's expressed opposition to tribal councils because they were "the biggest source of agitation of anything in the Indian service," one is left to wonder whether Boggess and superintendents the succeeded him at Hoopa Valley might not have supported the idea of *separate* councils as part of a design to divide the Reservation against itself -- a divide and conqueror strategy. Such a strategy, of course, would maximize the power and control of the Indian Service over the Hoopa Valley Reservation resources and minimize the possibility of true indigenous self-government. If this history contributed to current attitudes of the Hoopas of the Square, it would be sadly ironic that, during the current federal policy of supporting government-to-government relations between the federal government and Indian tribes, such historical designs would be vindicated by partitioning the Reservation.

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11. Within a year, however, the organization of such a reservation comprising less than the full population of all those entitled to share in reservation resources probably was made illegal under sections 16-18 of the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984, codified as amended at 25 U.S.C. sec. 476-78.

Ultimately, in a letter dated April 20, 1933, the Indian Commissioner rejected the proposal for *separate* tribal councils for the Hoopa Valley Reservation, indicating that the prior agreement to the organization of a tribal council was intended to authorize only a council that would represent all of "the various tribes of Indians within the Hoopa Valley jurisdiction." He further indicated that the Klamath River (Yurok) Indians could organize separately only for the management of "local matters not involving the whole Hoopa Valley jurisdiction." While the Klamath River efforts at separate organization garnered limited support and died out, Boggess seemed to misread his instructions as authorizing, probably contrary to Commissioner Rhoads' intent, creation of a separate advisory business committee to handle local matters of Hoopas. He thereafter proceeded to develop several such plans, leading to formation of 1933 Hoopa Valley Business Council.

The Constitution and By-Laws of the Hoopa Business Council, ultimately approved by Commissioner Collier on November 20, 1933, were not limited to Indians resident on the Square. Article 3 indicated that the business council "shall be composed of seven enrolled members of the Hoopa tribe; bona fied [sic] residents of Humboldt County, California . . ." and article 18 provided that the constitution would govern "the Hoopa tribe and business council." While possibly not intended by Boggess, Commissioner Collier, in light of earlier correspondence reflecting Boggess' instructions, reasonably could and should have believed that he was approving a constitution that governed *all* Indians of the Hoopa Valley Reservation, rather than only the Indians of the Square. *Short v. United States*, 202 Ct. Cl. at 950-57 (Findings 109-25). Nevertheless, in response to a questionnaire apparently distributed as part of a process leading to Indian Reorganization Act reorganization of United States Indian tribes, Boggess responded, notwithstanding his prior contrary instructions, that Hoopa had a tribal council that represented "only the 12 mile square Hoopa proper [sic]" and further indicating that the Klamath River Extension was "not represented on this council."

While focused on Indians of the Square, the 1933 Hoopa Business Council also was composed of Indians of Yurok and Karok ancestry living on the Square, including David Masten (aka David

Maston) who held allotments on the Extension, who previously had served on earlier councils at Klamath River, and who served as the Hoopa Valley tribal court judge. *Id.* at 957-58 (Findings 128, 131). Thus, some of the strong feelings of separateness asserted by members of the so-called Hoopa Valley Tribe have no basis in the legal documents creating the reservation, but, rather, were engendered, or at least fueled, by the *unauthorized* actions of O.M. Boggess *contrary* to the instructions he received from the Indian Office in Washington. Vindicating these unjustified expectations with the partition of the Hoopa Valley Reservation to the detriment of the majority of the eligible Indians of the Reservation certainly would constitute an ultimate irony!

A critical, and probably unauthorized and illegal, action of the Secretary of the Interior contributed to the current problems. That decision was sparked when in 1950 the Hoopa Valley Business Committee organized and conducted an "election" to establish membership requirements to share in "Hoopa Tribal benefits and moneys." This action crystallized twenty-five years of litigation over entitlements to per capita payments from and control of Hoopa Valley Reservation resources. While the notice of election for the vote on the 1950 Business Council was addressed to "The Electors Of The Hoopa Valley Indian Tribe," the actual voting rolls prepared by the Hoopa Valley Business Committee included only living allottees and their descendants who lived on the Square and certain other designated Indians resident on but not holding allotments on the Square. The overwhelming majority of the Indian population of the Reservation, the Indians of the Extension constituting approximately 70% of the eligible Indian population of the Reservation, while probably constituents and theoretically served by 1933 Hoopa Valley Business Committee, arbitrarily were excluded from participating in the May 13, 1950 election and from participation in the Hoopa Valley Business Committee it approved. Only 106 persons voted in this rump election. They approved the proposed Constitution by a vote of 63 to 33. Under section 1 of the Constitution, the membership of the Hoopa Valley Tribe was limited to persons on the 1949 "official" roll and their descendants, subject to corrections within five years by the Business Council with the approval of the Secretary of the Interior. Article III of the 1950 constitution also limited the territorial jurisdiction of the Hoopa Valley Business Committee to the Square.

The Director of the Sacramento Area Office of the Bureau of Indian Affairs and the Superintendent of the Hoopa Valley Reservation objected to some of these events, indicating that the Extension and the Square were one reservation and funds derived from any part of the Reservation should be "accredited to the Indians of the Hoopa Valley Reservation." Clearly, consistent with earlier directions from the Indian Office and with the 1933 constitution, the Director regarded the Klamath or Yuroks of the Extension as "members of the Hoopa Valley Reservation" and further stated that "the Indians in the so-called Klamath Strip should have representation on the Hoopa Business Council." Nevertheless, on March 25, 1952, the Commissioner of Indian Affairs approved the 1950 constitution of the Hoopa Valley Business Committee. Id. at 859-965 (Findings 136-54). As a result of the principle of substantive majoritarian principle adopted for reservation governance in the Indian Reorganization Act after organization of the 1933 Hoopa Valley Business Council but before the approval in 1952 of the 1950 Constitution and Bylaws of the Hoopa Valley Business Council, the Secretary's 1952 approval was arguably illegal and today repre[illegible] of a continuing violation of law.[12/] Nevertheless, the federal government has

12. While the Court of Claims in *Short* made no findings of fact on this question, it appears that organization of the Hoopa Valley Business Committee in 1950 was not done pursuant to sections 16-18 of the Indian Reorganization of Act of 1934 (IRA), codified as amended at 25 U.S.C. secs. 476-78. Possibly that was because the 1933 Hoopa Valley Business Committee was organized and a constitution adopted *before* enactment of the IRA or possibly because votes during the 1930s had rejected IRA organization at Hoopa, although no findings on this question were made in the *Short* case. Nevertheless, organization under the IRA is not critical since the Secretary of the Interior always has had authority to recognize Indian tribes, including their constitutions. *Kerr-McGee Corporation v. Navajo Tribe*, 471 U.S. 195 (1985). For whatever reason Hoopa was not organized under the IRA, however, it is arguable that *after* 1934 the IRA established minimum threshold standards that limited the power and discretion of the Secretary to recognize tribes with constitutions that did not conform to such standards. In particular, it appears that the IRA contemplates the organization of a *single* tribal entity for any reservation by majority vote of *all* Indians of the reservation. Section 16, 25 U.S.C. sec. 476, indicates that "[a]ny Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt *an* appropriate constitution and bylaws . . . ." Similarly, section 18, 25 U.S.C. sec. 478, limits the right to organize granted by the IRA by providing that it "shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. Furthermore, section 19 of the IRA, 25 U.S.C. sec. 479, defines Indians for these purposes to include "*all* persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation . . . ." Since the Hoopa Valley Reservation, including *both* the Square and the Extension, constitutes a single reservation, IRA

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continued to recongize the Hoopa Valley Tribe even though it represents only approximately 30% of the eligible Indians of the Reservation. Threafter, the Hoopa constitution and bylaws were amended in ways not relevant to discussion.

After creation of 1950 Hoopa Valley Business Committee, the Bureau of Indian Affairs illegally undertook to pay per capita and other payments derived from reservation resources to

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organization of the tribe after 1934 clearly would have required approval at an election in which the members of the Extension were eligible to participate and also would have required that any tribal entity thereby created serve *all* Indians of the Reservation, rather than only a small minority of them. The important legal question is whether the Secretary of the Interior has discretion to circumvent these majoritarian requirements of the IRA by choosing to deal with a rump minority of eligible Indians and approving a Constitution for them outside of these minimal threshold requirements of the IRA. While I am unaware of any cases directly addressing this question, I believe that any construction of the IRA that would permit the complete circumvention of its *substantive majoritarian* standards ought to be rejected for that reason and because of the basic anti-democratic, dictatorial nature of such efforts. Thus, in my view, the majoritarian standard of the IRA limits *both* organization under the IRA and the discretion of the Secretary of the Interior to recognize Indian tribal constitutions outside of the authority expressly conferred by the IRA. So construed, sections 16-18 of the IRA removed any discretion from the Secretary or the Commissioner of Indian Affairs to approve a constitution for an alleged Indian tribe representing less than the entire population of the reservation. Thereafter, approval of such a constitution constituted not a political act of executive discretion in recognizing an Indian tribe, but, rather, an *ultra vires* illegal action violative of the majoritarian substantive standards of the IRA. While certain procedural defects in the Commissioner's 1952 approval of the 1950 constitution are under litigation in pending case of *Lillian Blake Puzz v. United States*, No. 80-2908 TEH (N. D. Cal.), no case has contested the legality of the Commissioner's 1952 action or any like approval based on the construction of sections 16-18 advanced here.

Other more limited exceptional cases can be found of dividing the assets or government of a single reservation, such as the partition of the trust fund assets (but not the real property interests) of the Shoshone and Arapaho tribes of the Wind River Reservation in Wyoming authorized by the Act of May 19, 1947, c. 80, 61 Stat. 102, codified at 25 U.S.C. sec. 611 et seq. This situation clearly is distinguishable from the Commissioner's 1952 approval of the Hoopa Valley constitution and from the partition plan advanced in H.R. 4469 on two separate grounds. First, consistent with the limited discretion of the Secretary after enactment of the IRA, the partition was accomplished by statute, rather than mere *ultra vires* executive fiat. Second, the division of assets at Wind River took account of the actual joint tribal ownership by providing an equitable fifty-fifty split of the assets between the two tribes, rather than giving less than 30% of the eligible Indians of the Hoopa Valley Reservation the predominate value of the resources of the reservation, as proposed in H.R. 4469.

It should be noted that the approval of the 1933 Hoopa Business Council's constitution and bylaws was not subject to any such IRA limitation on executive discretion since it was approved *prior* to the enactment of the IRA. Nevertheless, since the instructions to the local agent requested creation of a unified council for the entire reservation and nothing contained in the 1933 constitution, unlike the 1950 constitution, suggested any contrary intent, the 1933 constitution that created the Hoopa Valley Business Committee probably did not violate the IRA directives.

that unit, notwithstanding the fact that it represented only approximately 30% of the eligible Indians of the Reservation. This pattern of administrative mismanagement led to twenty-five years of litigation caused by the Bureau's initial ineptitude in this area and the unreasonable and illegal expectations it created among the Indians of the Square who had improperly organized as the Hoopa Valley Business Committee. As discussed more fully in the next section, federal courts repeated have ruled over the last 25 years that all the Hoopa Valley Reservation, including both the Square and the Extension, was one single reservation and that the eligible Indian residents of both the Square and in the Extension should share equally in all revenues derived from the resources of the reservations, wherever located. The proposed partition legislation emerged to vindicate the legally insupportable demands and expectations of the Hoopas fueled by the Bureau of Indian Affairs, beginning with the actions taken in 1933 by Superintendent O. M. Boggess in contravention of his instructions to assure that any proposed represent "the various tribes of Indians within the Hoopa Valley jurisdiction." From this history, it is evident that any claim of the Hoopa Valley Business Council, as currently composed, to exclusive rights in the Square has no validity in ethnology, history, or law. Partitioning the reservation *without the consent of all eligible Indians of the Reservation* because a small, albeit powerful, group desires greater ownership and control of the significant natural resources of the Square would represent a flagrant disregard of the legitimate rights of the 70% of the reservation Indian population eligible to share in the resources of the Reservation but excluded from membership in the Hoopa Valley Tribe by its 1950 constitution as amended. A far better solution to the problems created by this history would be legislation that supports, rather than subverts and thwarts, the outcome of 25 years of litigation by requiring Secretary of the Interior as a precondition of continued federal recognition of the Hoopa Valley Business Committee to established a federally supervised plan to abrogate the illegitimate and anti-democratic 1950 constitution and to restructure and amend the Hoopa Vally constitutional government so that it serves *all* Indians eligible to share in the resources of the Hoopa Valley Reservation and thereby conforms to the substantive majoritarian principles of the Indian Reorganization Act of 1934 and the 1933 directions from the Commis-

sioner of Indian Affairs. In short, rather than partition, one-person, one-vote should govern the 1891 Reservation as whole, thereby restoring the 70% of the eligible but excluded Indians of the Hoopa Valley Reservation to their rightful political and property rights on the Reservation.

LITIGATION INVOLVING OWNERSHIP AND ENTITLEMENT TO RESOURCES OF THE HOOPA VALLEY RESERVATION

Since there is little arable land or mineral resources on the Hoopa Valley Reservation, the primary source of tribal revenues outside of the fisheries comes from timber resources, most of which are located on timbered areas of the Square. In 1950, when the current Hoopa Valley Business Council was organized, commercial timber operations had not commenced at Hoopa Valley. Until 1955 revenues from any part of the Hoopa Valley Reservation were paid into a single fund that benefitted all parts of the Reservation. *Short v. United States*, 202 Ct. Cl. at 970 (Finding 167). Commencing in 1955 and continuing until at least 1974, two separate deposit accounts were created, without any statutory authorization, and revenues attributable to the Square were deposited in a separate account for the Hoopa Valley Indians represented by the Hoopa Valley Business Council. After the Bureau of Indian Affairs initiated commercial timber operations on lands located on the Square during the 1950s, the Bureau began paying *all* the profits from of such operations to the separate account for the Hoopa Valley Business Committee, the only organized, recognized tribal government at Hoopa Valley, notwithstanding the fact that under its constitution it represented less than on-third of the Indians of the Reservation eligible to share in the resources of the Reservation. Per capita distributions from this account were made only to Hoopa Valley members under the membership rules of the 1950 Constitution, thereby diverting the primary revenues from resources beneficially owned by all Indians of the Reservation to a much smaller group comprising only 30% of the reservation population.

To remedy this situation several lawsuits were filed. In 1963, a suit was filed by certain named plaintiffs individually on behalf of a class of persons now numbering approximately

3800 persons who were Indians of the Extension and their descendants who had been excluded from per capita distributions by the membership requirements of the 1950 Hoopa Valley Business Council and the pattern of resource mismanagement by the Bureau of Indian Affairs described above. This litigation, commended as *Jessie Short v. United States*, No, 102-63, in the former United States Court of Claims, has been pending for over 25 years with several reported opinions and preclusive findings. Subsequently other separately filed claims cases were consolidated with the *Short* case. During the 25 years in which these cases have pending over 400 members of the plaintiff class have died while awaiting final vindication of their legally valid rights to co-equal representation and participation in the Hoopa Valley Reservation. In the most recent reported decision, *Short v. United States*, 12 Cl.Ct. 36 (1987), the highlights of this protracted litigation were summarized as follows:

> Presently at issue is the nature and extent of the damage award. The liability of the defendant United States is established. Jessie Short, et al., v. United States, 202 Ct.Cl. 870, 884, 486 F.2d 561, 568 (1973), cert. denied, 416 U.S. 961, 94 S.Ct. 1981, 40 L.Ed.2d 313 (1974) (Short I). In 1981, the court directed the trial judge to develop standards to determine which plaintiffs were "Indians of the Reservation" entitled to recover. Jessie Short, et al. v. United States, 228 Ct.Cl. 535, 550-51, 661 F.2d 150, 158-59 (1981), cert. denied, 455 U.S. 1034, 102 S.Ct. 1738, 72 L.Ed.2d 153 (1982) (Short II). In 1983, those standards were affirmed, Jessie Short, et al. v. United States, 719 F.2d 1133, 1143 (Fed.Cir.1983), cert. denied, 467 U.S. 1256, 104 S.Ct. 3545, 82 L.Ed.2d 849 (1984) (Short III), and the case-by-case qualification of the 3,800 individual plaintiffs, under those standards, is currently underway.
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> In 1973, the Court of Claims determined that the Hoopa Valley Reservation (Reservation) in northern California was a single unit and that income derived from the unallotted lands on one portion of the Reservation known as the "Square" could not be distributed only to Indians on the official roll of the Hoopa Valley Tribe (Tribe). Fndgs. 188-89, Short I, 202 Ct.Cl. at 980-81, 486 F.2d 561. The Hoopa Valley Tribe was organized as an entity in 1950 and its membership includes most of the ethnological Indian tribes and groups who traditionally occupied the "Square." In Short I, the court held that the plaintiffs, mostly Yurok Indians living on another portion of the Reservation known as the "Extension" or "Addition," should have participated in per capita distributions made by the Secretary of the Interior (Secretary). All "Indians of the Reservation" were held entitled to receive payments, and the discriminatory distributions of the proceeds of the timber sales (and other Reservation income) constituted a breach of the government's fiduciary duties with respect to the qualified plaintiffs. Short III, 719 F.2d at 1135. Although this opinion deals primarily with the timber revenues, the principles enunciated herein generally apply to the other Reservation income as well.

The Secretary first began to distribute proceeds derived from the unallotted trust lands of the Square exclusively to Hoopa Valley Tribe members in 1955. Monies, consisting of revenues and earned interest, were paid per capita to individual Indians on the Tribe's official roll, and were also paid to the Hoopa Valley Tribe (as a government) for the purpose of developing or maintaining services for the Reservation. The plaintiffs did not receive any per capita distributions, nor were any payments made to a Yurok tribal government, as the Yuroks were not formally organized. To date, efforts to organize a Yurok tribal government have been unsuccessful, largely because of this case. See Short II, 228 Ct.Cl. at 540, 661 F.2d at 153.

Following the liability decision in Short I, the Bureau of Indian Affairs restricted the distributions made to the Hoopa Valley Tribe to only thirty percent (30%) of the unallotted Reservation income. The thirty percent figure was selected because the number of Hoopa tribal members, when compared with the number of Short plaintiffs in 1974, represented about 30% of the total number of potential "Indians of the Reservation." Hoopa Valley Tribe v. United States, 219 Ct.Cl. 492, 502-03, 596 F.2d 435, 440 (1979). However, additional per capita payments were made to the plaintiffs' exclusion after 1974 when the Secretary released these funds to the Hoopa Valley Tribe.

On six separate occasions commencing on August 6, 1974 and ending on March 7, 1980, per capita payments amounting to some $5,293,975 were made to individual Hoopa Indians on the official roll of the Hoopa Valley Tribe, with the knowledge, acquiescence or cooperation of the Secretary. The remaining seventy percent (70%) of the funds has been held in trust by the Secretary in "Indian Monies, Proceeds of Labor" accounts (IMPL accounts), pending resolution of this case. These accumulated monies, sometimes referred to as the Short escrow fund, now total over $60,000,000 and remain in the United States Treasury, accumulating interest pursuant to statute.

The plaintiffs seek a share of what the Hoopas received directly through per capita payments and indirectly through monies paid to the Hoopa Valley Tribe as a government. Under the plaintiffs' theory, the monies paid to the Tribe would be prorated among the Tribe's membership, and each plaintiff would receive an amount equal to one prorated share. Monies spent by the Tribe to preserve the timber lands and other governmental services that benefited the entire Reservation would be offset against the plaintiffs' award. The plaintiffs also seek interest on the award and the balance of the escrow fund, arguing that these accumulated monies represent their exclusive share of the Reservation resources collected after 1974.

In the 1987 order, Judge Margolis of the United States Claims Court determined that:

Recovery of damages for those plaintiffs who qualify as Indians of the Reservation will be calculated based upon their wrongful exclusion from prior per capita distributions, which includes their shares as calculated above, plus interest as provided by statute. The Short escrow funds remain subject to the Secretary's discretion, and shall be expended as the Secretary determines, for the benefit of the Indians of the Reservation as provided by statute, and in a manner otherwise consistent with this opinion and previous court decisions.

The *Short*, which case involved a breach of trust claim brought against the federal government, of course only measured damages only for *past* mismanagement of tribal trust assets. It was initiated by individually named complainants suing in their individual capacity. Indeed, in *Short II* the Court of Claims rejected government efforts to substitute a nonorganized entity known as the Yurok Tribe for the individual plaintiffs in the case, indicating that since the individuals had sued in their personal capacities, the communal interests asserted by any such tribe would be of a different nature and involve overturning prior decisions. Thus, the *Short* litigation involves only some of the potential claims that could be made relative to federal mismanagement since 1952 of Hoopa Valley resources to the detriment of the excluded Indians of the Extension. In the 1987 order in *Short IV*, for example, Judge Margolis excluded from the damage calculation nonindividualized assets and payments, because the plaintiffs had only sued as individuals. Under 28 U.S.C. sec. 1491, the court found that the plaintiffs could not enforce on behalf of the eligible Yurok and other Indians of the Extension any *communal* rights they might have in the nonindividualized assets of the reservation. The 1987 order, however, seemed to acknowledge, as had the 1973 decision in *Short I*, the existence and enforceability, presumably under 28 U.S.C. sec. 1505, of such communal rights of the Indians of the Extension to share equally in the resources and proceeds of the entire Hoopa Valley Reservation.

In response to the 1973 order in *Short I*, the Bureau of Indian Affairs began placing 70% of the revenues of the reservation in escrow for the nonorganized Indians of the Extension, dispersing only 30% to the Hoopa Valley Business Council. Thereafter, the Hoopa Valley Business Council disingenuously filed suit in the United States District Court for the Northern District of California (No. C-76-1405 RHS) against the Secretary of the Interior, without ever mentioning the *Short* decision, to contest the allegedly illegal sequestration of "70% of the plaintiff's income." The case was transferred to the Court of Claims, which ultimately dismissed the suit, ruling that Hoopa Valley claims had been decided adversely to the Hoopa Valley Tribe in the *Short I* decision and that the earlier decision, in which the Hoopa Valley Business Council had participated as

both amicus curiae and intervenor, was *res judicata* and precluded relitigation of the same claims. *Hoopa Valley Tribe v. United States*, 219 Ct. Cl. 492, 596 F.2d 435 (1979).

Since the *Short* case only sought damages for past mismanagement of Hoopa Valley assets, a separate suit was filed to restructure the future relations of the Bureau of Indian Affairs and the Indians of the Hoopa Valley Reservation. *Lillian Blake Puzz v. U.S. Department of the Interior*, No. C80-2908 TEH (N.D.Cal.). Among other things, the *Puzz* complaint sought to prospectively impose on the Bureau of Indian Affairs an obligation to deal fairly and equally with all Indians of the Reservation in the distribution of benefits and resource revenues and in the management of assets of the Reservation. *Puzz* further challenged the 1952 recognition of the Hoopa Valley Tribal Council based on certain procedural noncompliance with the Administrative Procedure Act. On April 8, 1988, two weeks before introduction of H.R. 4469, the court partially granted plaintiff's motion for summary judgment, ordering:

> 2. Plaintiff's motion is granted in part, in that the federal defendants shall not dispense funds for any projects or services that do not benefit all Indians of the reservation in a nondiscriminatory manner. Federal defendants shall exercise supervisory power over reservation administration, resource management, and spending of reservation funds, to ensure that all Indians receive the use and benefit of the reservation on an equal basis. Specifically, federal defendants shall not permit any reservation funds to be used for litigation among any Indians or tribes of the reservation.
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> 3. To fulfill the requirements of this Order, federal defendants must develop and implement a process to receive and respond to the needs and views of the non-Hoopas as to the proper use of reservation resources and funds.

Lillian Blake Puzz v. U.S. Department of the Interior, No. C80-2908 TEH, sl. op. 23-24 (N.D.Cal., April 8, 1988).

Other significant litigation during this century over the legal status of the Hoopa Valley Reservation includes *Mattz v. Arnett*, 412 U.S. 481 (1973) (opening of Extension to allotment under 1892 legislation did not terminate or diminish the boundaries of the Hoopa Valley Reservation, under the 1891 executive order included and continues to include the Extension) and *Donnelly v. United States*, 228 U.S. 243 (1913) (sustaining federal power to add the extension by executive order to the Hoopa Valley Reservation).

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The *Puzz* order represented the successful culmination of a twenty-five year effort to rectify an unauthorized and illegal action taken by the Commissioner of Indian Affairs in 1952 in recognizing the Hoopa Valley Business Council and thereafter in mismanaging the commercial resources of the reservation, most of which are located on the Square, so that they benefited less than 30% of the eligible Indians of the Reservation. Since that order precluded any further reservation funds from being "used for litigation among any Indians or tribes of the reservation," the Hoopa Valley Business Council shifted its strategy for thwarting vindication of legal rights of excluded Indians of the Reservation from the federal courts to the halls of Congress. Within two weeks, with the support of three members of the House of Representatives, H.R. 4469 was introduced to partition the Reservation and to overturn 25 years of litigation by legislative fiat. The partition plan proposed in H.R. 4469, therefore, proposes to legislatively impose the unequal, arbitrary, and illegal division of tribal assets that every court since *Short I* has rejected. Even the Department of the Interior rejected such arrangements in 1933, only to precipitate the current long-running dispute by reversing its position when the Commissioner of Indian Affairs approved the 1950 constitution. Vindication of illegal and unrealistic expectations of the Hoopa Valley Tribe through a nonconsensual partition of the Reservation imposed by act of Congress would constitute a rejection of the work and careful findings of the many capable federal judges that have reviewed this question over the past 25 years of litigation. It also would disrupt and abrogate the vested enforceable legal rights of the excluded Indians of the Extension that were vindicated in these cases and would frustrate the legal rights of over 70% of the population of the Reservation. A less appealing solution to the problems at Hoopa Valley is hard to imagine!

What is even more remarkable is that H.R. 4469 proposes overturning the hard won legal rights of the excluded Indians of the Hoopa Valley Reservation without providing any requirement for a referendum vote of *all* eligible Indians of Hoopa Valley Reservation. While Congress may have theoretical power to partition a reservation, subject to paying just compensation for the taking of vested rights, why it should act in this instance when not requested to do so by a majority of the owners of the beneficial interests in the Reservation is utterly mystifying. I

submit that, as with the requirements of section 18 of the Indian Reorganization Act, an absolute prerequisite of any bill providing for participation of a reservation should be a requirement for approval by a majority vote of all adult Indians eligible to participate in the resources of and revenues from the Reservation. The essence of protecting tribal self-government is to allow the affected Indians to chart their own destiny, rather than having Congress, sitting as the paternalistic Great Father, dictate their future without full consultation and plebescite. A sufficient reason for opposing the partition plan contained in H.R. 4469 therefore is the paternalistic, dictatorial, and anti-democratic nature of the proposal.

Thus, quite apart from the unconstitutional aspects of the partition plan proposed in H.R. 4469 (addressed in more detail in the next section), I oppose the nonconsensual partition proposal as bad policy. It is an arrogant, paternalistic, anti-democratic effort to subvert the legal processes by which Indian rights are enforced through courts. Passage of such high-handed legislation would place the stability of all Indian rights, indeed, perhaps all property rights, in jeopardy. The involuntary, nonconsensual partition plan proposed in H.R. 4469 certainly represents a threat to concept of the rule of law in the field of Indian affairs and possibly to the legal processes by which all property is protected.

NONCONSENUAL PARTITION OF THE HOOPA VALLEY RESERVATION UNDER THE PROPOSED PLAN CONSTITUTES A TAKING OF INDIAN PROPERTY WITHOUT JUST COMPENSATION

Except for the fisheries resources of the Reservation, which are not addressed at all in the partition plan set forth in H.R. 4469, the most valuable unallotted, tribally held natural resources of the Hoopa Valley Reservation are the timber resources predominately located on the Square. The Square contains approximately 89,000 acres of land held in unallotted trust status, much of it timbered. By contrast, the Extension contains only 3,000 unallotted acres with little timber or unallotted resources. The nonconsenual partition plan of H.R. 4469 proposes to separate the

Extension from the Square giving the Hoopa Vally Tribe, representing 30% of the eligible Indians of the Reservation, the valuable resources of the Square, while leaving the remaining considerably less valuable resources of the Extension for the remaining 70% of the eligible Indians of the Reservation who are not permitted to be members of the Hoopa Valley Tribe under the 1950 Constitution as amended. This group of excluded eligible Indians of the Hoopa Valley Reservation is designated in the partition legislation and authorized to organize as the Yurok Tribe, even though they are not all Yurok in ancestry and, indeed, include some persons of Hoopa ancestry excluded from Hoopa Valley Tribe by reason of residence. Furthermore, section 3 of the proposed legislation calls for a settlement of the pending litigation by following the March 17, 1987 order of the United States Claims Court as to amounts distributed to individual members on or before December 31, 1974 (a 70-30 formula) and splitting any other amounts in the escrow fund on a equal basis (a 50-50 formula) between the Hoopa Valley Tribe (representing less than 30% of the Reservation Indians) and the Yuroks (representing approximately 70% of the eligible Indians of the Reservation).

While the partition bill contains no provisions whatsoever for compensating for rights lost by this amazing legislative redistribution of property rights, the plan apparently recognizes the possibility that such a gross misallocation of natural resources and tribal assets constitutes a taking. It therefore contains two separate provisions that might be deemed relevant to the compensation question. First, section 2(f) of the proposed legislation contains provisions establishing a special two year statute of limitation for any such taking claim and, more significantly, a contingent indemnification provision contained in section 2(f)(2) providing that "[i]f the United States is found liable to the Hoopa Valley Tribe or Yurok Tribe, or to the Indians of either tribe, for damages based on inadequate compensation or a taking resulting from the division of land between the tribes . . . the United States shall be entitled to a judgment for reimbursement from the other tribe's future income." Thus, the legislation explicitly and correctly contemplates that the contemplated partition is a taking in violation of fifth amendment to the United States Constitution and further seeks to assure that United States will not bear the financial burden

imposed by its own actions through a system of contingent indemnification. Second, and seemingly not intentionally related to the question of just compensation, section 2(b)(3) of the legislation proposes to appropriate up to $2,000,0000 to purchase land to be added to the reservation of the Yurok Tribe that would be established under the legislation.

Notwithstanding these provisions, I believe that the partition plan proposed in the legislation constitutes an unconstitutional taking of recognized Indian property interests without just compensation and that the contingent indemnification provisions of section 2(f)(2) will not insulate the United States from liability for such unconstitutional conduct. First, the partition plan of H.R. 4469 constitutes a taking of *both* the individual and communal rights of the eligible Indians of the Hoopa Valley Reservation. The identifiable group of Indians adversely affected, who, under the partition bill are designated the so-called Yurok Tribe,[13/] therefore would have a cause of action against the United States for full compensation for rights and resources lost through the partition. Second, I further believe that the enlargement of the Yurok Reservation contemplated in section 2(b)(3) of H.R. 4469 neither is contemplated as nor constitutes additional or just compensation for this taking. Third, I submit that the contingent indemnification provisions of section 2(f)(2) make it plain that the exercise of eminent domain power contemplated by the partition plan are not for a "public purpose," as required by the fifth amendment, but rather for the private benefit and gain of the Hoopa Valley Business Council and the Hoopa Valley Tribe. This observation poses the potential that the entire partition legislation

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13. For purposes of this Statement, I assume that composition of the so-called Yurok Tribe authorized to organize under the partition legislation would be co-extensive with the ethnologically mixed group of eligible but excluded Indians of the Hoopa Valley Reservation who comprise the plaintiff group in *Short*. It should be noted, however, that if the membership in this so-called Yurok Tribe does not include all eligible *Short* plaintiffs and their descendants, the communal and individual rights of any excluded but otherwise eligible Indians would be entirely taken by the partition plan which only divides the resources and assets of the Reservation only between the Hoopa Valley Tribe and the Yurok Tribe. Yet, the \proposed legislation contains no provisions assuring that all eligible *Short* plaintiffs can secure membership in either the Hoopa Valley or so-called Yurok Tribe, thereby posing a further potential for United States monetary liability under the fifth amendment takings clause. It also should be noted that the contingent indemnification clause as currently drafted would not cover any liability for a taking by an eligible Indian of the Reservation who could not become a member of either the Hoopa Valley or Yurok Tribes recognized under the bill.

could and should be constitutionally invalidated. Finally, the legislation plainly fails to provide just compensation since it utterly fails to make any good faith effort to appraise the current value of all resources of the Reservation being partitioned and to divide them in the only equitable manner available for a nontribal reservation like Hoopa Valley, i.e. on the basis of equal population entitlement (the 70-30 formula of the *Short* litigation). Indeed, while not contituting proper treatment for a nontribal reservation like Hoopa Valley, the bill does not even contemplate allocating the resources as co-equally owned by the two tribes recognized under the plans, a treatment that at least would require an equal division of assets between the two tribes (a 50-50 formula of the type employed in 25 U.S.C. sec. 611 et seq. in partitioning the trust funds, but not land or other resources, of the two tribes of the Wind River Reservation of Wyoming -- a tribal reservation).

Several important points must be made to explain these conclusions. These include the following: (1) the land and natural resources of the Hoopa Valley Indian Reservation constitute recognized, property rights in a statutory, rather than merely an executive order, reservation that are *communally* vested in the all eligible Indians of the Reservation; (2) the partition bill would abrogate or curtail both individualized and communally held rights and the takings claim created by the partition plan might be enforced either by eligible Indians of the Reservation who were adversely affected suing in both their individual capacities and as members of an identifiable group of Indians or, insofar as communal rights are concerned, by the Yurok Tribe organized and recognized under authority of the partition bill as the successor in interest to these rights; (3) the partition bill provides no compensation whatsoever for lost rights and thereby blatantly constitutes an unconstitutional taking under the standards established in *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980); (4) the contingent indemnification provisions of section 2(f)(2) of the proposed legislation potentially invalidate the entire legislation by manifestly indicating that the exercise of eminent domain power contemplated by the bill is for a private, rather than public, purpose, and (5) the contingent indemnification provisions of the proposed partition plan, if invoked, would constitute a taking of property from the tribe forced to pay

such indemnification and, therefore, may not have the intended effect of holding the United States harmless from liability for the massive redistribution of tribal property contemplated by the partition plan.

A. Introduction

While the courts have suggested that Congress has plenary authority to deal with Indian affairs, that power is subject to the fifth amendment requirements of paying just compensation for the taking of property for public purposes. *E.g., United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980); *Hodel v. Irving*, ___ U.S. ___, 107 S.Ct. 2076 (1987). Furthermore, as the Supreme Court recently suggested, the mere fact that legislation addresses a serious public problem or otherwise furthers important public policy interests does not prevent the act from constituting an unconstitutional taking in violation of the fifth amendment. Thus, in *Irving* the Court recognized that fractionation of Indian allotted lands constituted a serious problem addressed directly by the escheat provision of the Indian Land Consolidation Act. Nevertheless, the Court held the escheat provision unconstitutional because it completely abolished the expectations of descent and devise that reasonably were created when the Indian land was allotted in severalty and placed in individual Indian trust title. The basic dividing line between the legitimate exercise of supervisory Congressional power over Indian affairs and a taking was set forht in the *Sioux Nation* case. This test requires a determination of whether Congress has made a good faith effort to give the Indians the full value of their lands. Specifically, the Supreme Court in *Sioux Nation* approved the following formulation first advanced in *Three Tribes of Fort Berthold Reservation v. United States*, 182 Ct. Cl. 543, 390 F.2d 686 (1968):

> It is obvious that Congress cannot simultaneously (1) act as trustee for the benefit of the Indians, exercising its plenary powers over the Indians and their property, as it things is in their best interests, and (2) exercise its sovereign power of eminent domain, taking the Indians' property within the meaning of the Fifth Amendment to the Constitution. In any given situation in which Congress has acted with regard to Indian people, it must have acted either in one capacity or the other. Congress can own two hats, but it cannot wear them both at the same time.

> Some guidelines must be established so that a court can identify in which capacity Congress is acting. The following guideline would best give recognition to the basic distinction between the two types of congressional action: Where Congress makes a good faith effort to give the Indians the full value of the land and thus merely transmutes the property from land to money, there is no taking. This is a mere substitution of assets or change of form and is a traditional function of a trustee.

Thus, where Congress in good faith seeks to provide full compensation for the extinguishment of vested, recognized property rights, no taking generally will be found. Where, however, recognized property rights are extinguished, as proposed by the Hoopa Valley partition plan set forth in H.R. 4469, without providing any compensation whatsoever for the extinguished rights and without providing for any appraisal or equitable distribution formula based on the preclusive *Short* 70-30 equal participation formula, a taking has definitely occurred under the language of the *Sioux Nation* test.

B. The Hoopa Valley Reservation Constitutes a Recognized, Statutory Indian Reservation Fully Protected by the Takings Clause of the Fifth Amendment

For purposes of the fifth amendment taking clause, a distinction sometimes is drawn between Indian reservations with rights authorized and recognized by Congress through treaty, statute, or otherwise and those with otherwise legally enforceable rights derived from legal sources not recognized by Congress. Where Indian property rights have been authorized and recognized by Congress, a vested property right is granted that is fully protected by the fifth amendment requirement for the payment of just compensation for any taking. *See e.g., United States v. Sioux Nation*, 448 U.S. 371 (1980); *United States v. Shoshone Tribe*, 304 U.S. 111 (1938); *United States v. Klamath & Moadoc Tribes*, 304 U.S. 119 (1938). On the other hand, where Indians possess rights not otherwise confirmed by Congress, such as rights held through aboriginal possession, the courts have ruled that such nonrecognized title does not constitute a vested property right protected by the fifth amendment. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). In *Sioux Tribe v. United States*, 316 U.S. 317 (1942), the Court approved the

executive practice of setting land aside from the public domain for Indian reservations, but suggested that executive order reservations of short duration that have not been approved by Congress created no compensable property protected by the fifth amendment. *See also, Hynes v. Grimes Packing Co.*, 337 U.S. 86 (1949); *Confederated Bands of Ute Indians v. United States*, 330 U.S. 169 (1947). The *Sioux Tribe* analysis must be invoked with care, however, since the sole basis for finding that the executive order reservation involved in that case, a temporary executive withdrawal designed to create a liquor buffer zone between white settlement and Indian country, created no recognized, vested property right protected by the fifth amendment was the fact that the reservation had been created by executive order without any prior Congressional authorization or subsequent Congressional ratification. Thus, the Court, while recognizing the power of the President to make temporary withdrawals from the public domain, believed that such withdrawals could not create compensable property interests. Otherwise, the President could improperly deprive Congress of its power under article IV, section 3, paragraph 2 "to dispose of . . . the Territory or other Property belonging to the United States." The theory of *Sioux Tribe* regarding the noncompensability of executive order reservation rights therefore applies only to executive order reservations that neither were previously authorized nor subsequently ratified by Congress. Indeed, in the original 1942 edition of F. Cohen, *Handbook of Federal Indian Law* 302 (1942), Felix Cohen anticipated precisely this point when he wrote:

> Occasionally a treaty leaves a good deal of discretion to administrative authorities in establishing a reservation, and the courts must look to administrative correspondence, maps, and other records to determine the date, extent, and character of the reservation. Here we are on the borderline between treaty and Executive order reservations. In fact, the connection between treaty and Executive order is characteristic of many, if not most, of the early Executive orders and *provides a legal basis of unquestioned validity for such Executive orders.*

Even with this limiting gloss, the theory of *Sioux Tribe* has been subject to considerable scholarly criticism. F. Cohen, *Handbook of Federal Indian Law* 494-97 (1942); Note, Tribal Property Interests in Executive-Order Reservations: A Compensable Indian Right, 69 *Yale L. J.* 627 (1960); Clinton, Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self Government, 33 *Stan. L. Rev.* 979, 1037-38 n.305 (1981).

With respect to the Hoopa Valley Reservation, both the 1876 Executive Order setting aside the Square and the 1891 Executive Order adding the Extension to the Hoopa Valley Reservation plainly were authorized by Congress in authority delegated by the 1864 Act. Both Executive Orders expressly purport to be issued pursuant to such delegated authority. These Executive Orders therefore are unlike those at issue in *Sioux Tribe*, *Hynes*, or *Confederated Utes* and, like any statutorily authorized reservation set apart as a permanent homeland for Indians, created a vested property right fully protected by the fifth amendment from the date they were entered. F. Cohen, *Handbook of Federal Indian Law* 477 (1982) describes this process in its section on recognized, statutory Indian title as follows:

> In some statutes the designation of the Indian beneficiaries of the reservation is delegated to administrative discretion. Such statutes typically provide that given lands shall be reserved for the use and occupancy of certain bands or tribes "and such other Indians as the Secretary of the Interior may see fit to locate thereon."

See also, Id at 986 (nonrecognized executive order reservations include only those for which "Congress has not acted in a manner sufficient to recognize the property right"). These sources and the reasoning of *Sioux Tribe* therefore all suggest that since both the 1876 and 1891 Executive Orders were expressly authorized by act of Congress and since the President clearly issued each order pursuant to such delegated legislative authority, the property rights created by such orders have been recognized, vested property rights protected by the fifth amendment since the date of those orders.

Even if it is assumed that the Hoopa Valley Reservation constitutes an Executive Order, rather than statutorily, created Indian reservation, the communal ownership of *all* Indians of the Reservation still constitutes a vested property right fully protected by the fifth amendment. Speaking directly to the question of nonrecognized executive order title, F. Cohen, *Handbook of Federal Indian Law 495* (1982 ed.) states, "[i]f an executive order reservation has been in existence for several decades, there is an increased inference of congressional ratification of the reservation's permanent existence by appropriation of funds and other actions supporting continuous use of the lands for Indians purposes." Thus, even if it is assumed, contrary to the

actual facts, that the Hoopa Valley Reservation constitutes reservation created solely by Executive Order, the long course of dealings between Congress and the people of the Reservation no doubt would enable any recognized group or tribe of Indians adversely affected by the partition plan to enforce a fifth amendment taking claim for the diminution of their interest in the Reservation in action against the United States.

C. The Proposed Nonconsensual Partition Plan Would Abrogate and Abridge Both Individual And Communal Rights of the Excluded Indians of Hoopa Valley Reservation in the Resources of the Square

Outside of fisheries resources (the partition of which H.R. 4469 entirely ignores), by far, the most valuable unallotted natural resources of the Hoopa Valley Reservation are the timber resources located on the Square. The *Short* litigation established that the Hoopa Valley Reservation constitutes a single reservation and that all Indians of the Reservation have an enforceable legal right to share equally in the revenues derived from these resources. Thus, the residents of the Square have no greater claim to or right in the valuable resources of the Square than the residents of the Extension. The partition bill would overturn these established property relationships by (1) altering individual entitlements to share in the revenues of the Square by giving such rights only to the 30% of the Reservation who are members of the Hoopa Valley Tribe, while leaving far less valuable resources to remaining 70% of the reservation and by (2) curtailing the co-equal ownership of the Square as between the Hoopa Valley and the Yurok Tribes without compensating the excluded Indians of the Extension in any way for loss of their co-equal communal ownership rights in the resources of the Square. Each of these changes represents a taking of a recognized, vested Indian property right without any compensation.

At the present time, the timber resources of the Square are the major source of revenue from which are distributed the per capita payments over which the Short litigants have been fighting for 25 years. The ability of the *Short* plaintiffs to recover judgments against the federal

government for past mismanagement of those resources indicates that the individual members of the Hoopa Valley Reservation have an *individual* right to share in the income of the reservation on an equal basis once that income has been individualized and parceled out per capita. Such eligibility to income resources resembles a future interest since the right does not become possessory until the individualized per capita payments have been authorized. The fact that the right resembles a future interest, however, does not prevent its abrogation from constituting a taking requiring the payment of just compensation. Generally the extinguishment of a future interest is treated as a taking so long as the event that would make the future interest possessory when viewed from the time of the extinguishment of the right was "probable or imminent." S. Kurtz & H. Hovenkamp, *Cases and Materials on American Property Law* 817-18 (1987); Browder, The Condemnation of Future Interests, 48 *Va. L. Rev.* 461 (1962). Given the pattern and practice of individualizing revenues from the Square through per capita payments, the expectations of the excluded Indian residents of the Extension to share in revenues derived from the Square vindicated in the *Short* litigation certainly is probable, if not also imminent. Indeed, in many ways, the right to share on an equal basis in the individualized resources and revenues of the Reservation resembles the future expectancy of the ability to pass property by devise or descent that the United States Supreme Court found in *Hodel v. Irving* had been taken by the escheat provisions of the Indian Land Consolidation Act. Thus, insofar as the partition proposal curtails such individual expectations of revenue from the resources of the Square, in my judgment, it takes a compensable property interest protected by the fifth amendment takings clause and subjects the United States to substantial potential liabilities through an inverse condemnation suit. Such a suit could be brought individually by disaffected Indians in the United States Claims Court under 25 U.S.C. sec. 1491. In *Short IV*, the Claims Court was confronted with precisely the same argument. It was argued that interest was due on the *Short* judgment fund since the mismanagement of the individual entitlements constituted a taking. The court found it unnecessary to resolve the question since interest also was provided by statute. Nevertheless, the court did not reject the suggestion that abrogation of such individual expectancies to share in the

revenues from the Square distributed per capita to eligible Indians of the Reservation might constitute a fifth amendment taking.

More significantly, the proposed nonconsensual partition plan terminates the existing co-equal *communal* ownership of the resources of the Square among the Indians from the various tribes of the Hoopa Valley Reservation. It leaves the eligible but excluded Indians of the Extension, who under the partition plan would be recognized and authorized to organize as the Yurok Tribe,[14/] with no ownership interest in the most valuable unallotted resources of the reservation. This feature of the bill surely constitutes a taking of the vested communal property rights of the excluded but eligible Indians of the Hoopa Valley Reservation in the resources of the Square. The extinguishment of recognized Indian title to valuable timber and other natural resources has long been recognized as imposing on the federal government a constitutional obligation under the fifth amendment to pay just compensation, i.e. full market value for the property rights in the resources extinguished plus interest from the date of the taking. *E.g. United States v. Shoshone Tribe*, 302 U.S. 111 (1938) and *United States v. Klamath & Moadoc Tribes*, 304 U.S. 119 (1938). Since the Yurok Tribe under the proposed partition plan would

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14. The partition plan of H.R. 4469 refers to the Yurok Tribe and the federal government already has recognized the a nonorganized but identifiable group of Indians known as the Yurok Tribe of the Hoopa Valley Reservation. Since, as found in *Short*, there are persons of Yurok descent who are members of the Hoopa Valley Tribe under the 1950 Constitution, the designation Yurok Tribe, as used in this Statement and, apparently, as contemplated in the partition bill does not refer to an ethnological unit with historical antecedents, but, rather, more aptly refers to the eligible but excluded Indians of the Hoopa Valley Extension, i.e. the *Short* plaintiffs and their descendants, many, but not all, of whom are of Yurok ancestry. Among the *Short* plaintiff group are persons with other ancestry, including persons of Karuk, Tolowa, and Chetco ancestry. While the federal government seemingly has vacillated on the composition of the identifiable group that it recognizes as the Yurok Tribe and has otherwise harassed the *Short* plaintiffs and their descendants by requiring extraordinary forms of proof and denying entitlements, benefits, and services, presumably any effort to limit this group of persons to any subgroup that is less than the *Short* plaintiffs and their descendants would pose more serious takings problems for reasons addressed in the preceding footnote.

Likewise, the lack of coextensiveness between ethnological groupings and the tribal division proposed in the partition plan is also evident from the name chosen for tribe seeking to acquire greater rights to the Square -- the Hoopa *Valley* Tribe. Even today, the Hoopa Valley Business Council serves a group of members who are not merely of Hoopa ethnicity. Rather, while predominately Hoopa in ancestry, their primary connection is that most, but not all, of the membership lives or had ancestors who lived on the Square.

succeed to the assets of the excluded Indians of the Reservation and since the Yurok Tribe already is an identifiable group of Indians recognized by the United States government, 50 Fed. Reg. 6055 (1985), should the proposed partition legislation pass, a valid claim seeking full compensation for the abrogation of the co-equal tribal rights in the resources of the Square could be maintained by the Yurok Tribe recognized and organized under the partition legislation[15/] against the United States under the provisions of 25 U.S.C. sec. 1505.

While the Yurok Tribe organized as contemplated in the partition legislation could sue as the successor in interest under 28 U.S.C. sec. 1505 to vindicate the fifth rights of the excluded but eligible Indians of the Hoopa Valley Reservation to co-equal communal title in all Hoopa Valley Reservation resources, that section also provides that any "identifiable group of American Indians residing within the territorial limits of the United States" can sue thereunder for claims against the United States arising under the Constitution, including fifth amendment taking claims. Thus, the excluded but eligible Indians of the Hoopa Valley Reservation, the *Short* plaintiffs and their descendants, could sue collectively for the taking of their communal ownership rights in the resources of the Square, just as either the Hoopa Valley Tribe or its members as a class could sue for the extinguishment of their communal ownership in the far less valuable lands of the Extension.

The Claims Court decision in *Short IV* is not to the contrary. In that case, the court noted that the plaintiffs had only filed suit under 28 U.S.C. sec. 1491 to enforce their *individual* claims to per capita payments paid out of the revenues derived from resources of the Square. No claim

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15. It should also be noted that very short two year statute of limitation and provisions authorizing Yurok Tribe organization under the provisions of the Indian Reorganization Act seem to be in conflict and pose a further potential takings or due process fifth amendment problem. Since organization of a Yurok Tribal government pursuant to the provisions of the proposed partition legislation presumably may take some time, possibly as long as two years, as a result of delays that in some situations could be attributed to the federal government, there may be no realistic possibility, for an organized Yurok Tribal government created under the provisions of the partition legislation to initiate inverse condemnation proceedings to vindicate the fifth amendment rights of the excluded but eligible Indians of the Hoopa Valley Reservation. In such a case, the statute of limitations may itself violate due process of law or constitute a taking. *Cf.*, *Tulsa Professional Investment Services, Inc. v. Pope*, ___ U.S. ___, 108 S.Ct. 1340 (1988) (due process violated by reliance on short statute of limitiation in probate proceedings rather than individualized notification to extinguish valid claims).

had been actively pursued under section 1505 to secure payment for impairment of communal rights. Thus, since the plaintiffs were not pressing collective communal claims, but, rather, were pursuing their claims individually, the court held that they had no right to have the mismanagement of communal assets not individualized by a per capita distribution calculated as part of their individual damage claim. That ruling did not mean, however, an "identifiable group of Indians" might not press a suit under 28 U.S.C. sec. 1505 to enforce against the United States its tribal and communal ownership rights or that it would not have a compensable claim. Such claims regularly are entertained under section 1505. The point of the 1987 ruling in *Short IV* merely was that no such cognizable claim to communal assets had been pressed on the court and that such a claim could not be filed by the plaintiffs under 28 U.S.C. sec. 1491. This observation also explains why the Court of Claims in *Short III* rejected the government's motion to substitute the Yurok Tribe for the individual plaintiffs in *Short*. While ultimately involving ownership rights to the Hoopa Valley Reservation, the *Short* litigation directly laid claim primarily to individual entitlements to per capita payments and challenged under section 1491 the federal mismanagement that deprived the plaintiffs of such payments. The court's ruling that the Yurok Tribe could not substitute for the individual plaintiffs was plainly correct insofar as the Yurok Tribe has no enforceable legal right to *individual* per capita payments due to tribal members. That ruling did not imply, however, that the Yurok Tribe or the excluded members of the Extension as a group might not have enforceable tribal and communal rights to the resources of the Square that, when taken or mismanaged by the federal government, could be enforced through an action against the United States under section 1505. These rulings only indicated that no such action had been actively pursued.

Neither *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649 (1976) nor *United States v. Jim*, 409 U.S. 80 (1972), indicate a contrary conclusion. While the Court found that the congressional actions in these cases did not constitute a taking of Indian property, these two cases are distinguishable from the problem posed by the proposed partition legislation for two reasons. First, in both cases, Congress merely was enlarging the class of persons that were entitled to

share in Indian resources, just as the 1891 Executive Order enlarged the class of persons entitled to share in the resources of the Hoopa Valley Reservation. In neither of these cases were Indians excluded from tribal or individual rights in Indian resources, while the proposed partition plan clearly excludes the Indians of the Extension, the so-called Yurok Tribe, from vested rights they currently enjoy to share tribally and individually in the highly valuable resources of the Square. Conversely, the partititon plan also excludes the Hoopa Valley Tribe and its members from their vested ownership rights in the far less valuable resources of the Extension. In *Jim*, the Court pointed out that "Congress has not deprived the Navajo Tribe of the benefits of mineral deposits on their tribal lands." Id. at 83. By contrast, the proposed partition legislation does deprive the eligible Indians of the Extension, or the Yurok Tribe, of their valuable rights to share on an equal basis in the timber and other resources of the Square. It therefore constitutes a taking. Second, in neither *Hollowbreast* nor *Jim* did the Congressional legislation affect a recognized, vested property interest. In *Hollowbreast* the interest was not a present possessory right, but rather a future interest. Furthermore, according to the Court, the reversionary interest in that case did not, unlike the rights of the *Short* plaintiffs and their descendents, involve a future interest the vesting of which was either imminent or probable. In *Jim* the Court even held that a statute suggesting that certain royalties for mineral resources owned by the Navajo Tribe as a whole be held for the Indians of a small subpart of the Navajo Reservation created no vested property right that prevented the enlargement of the legislative class to include other members of the Navajo tribe. While neither *Hollowbreast* nor *Jim* involved vested rights of the plaintiffs, the involuntary partition of the Hoopa Valley Reservation in the fashion proposed in H.R. 4469 takes two different vested rights, one of which is a present possessory right. First, the co-equal tribal or communal ownership of the Indians of the Extension, or the Yurok Tribe, in the Square and, conversely, the rights of the Hoopas to share co-equally in the ownership and resources of the Extension were created, vested, and recognized by the 1891 Executive Order and have been a vested, possessory property right from the date of that Order. Thus, the partition plan, unlike the legislation at issue in these other two cases, clearly abroga-

tes existing, vested, possessory property rights. Second, the *Short*-based individual rights of the eligible Indians of the Reservation to share on an equal basis in the individualized resources of the Reservation, such as the per capita payments, also is far more probable and imminent the reversionary interests involved in *Hollowbreast*. Thus, these rights also represent vested, albeit not possessory, property rights taken by the partition plan.

In short, the partition plan abrogates important recognized and vested property rights both of the Yurok Tribe as a community and of eligible Indians of the Extension, as individuals. The fifth amendment therefore requires the payment of full just compensation for the extinguishment of these interests. Yet, the proposed partition legislation provides no compensation whatsoever for the extinguishment of these valuable rights. The partition plan therefore is constitutionally fatally flawed and should be opposed on that basis alone.

D. The Nonconsensual Partition Plan Provides No Compensation Whatsoever for Lost Rights and Thereby Blatantly Contemplates an Unconstitutional Taking Under the Standards Established In *United States v. Sioux Nation of Indians*

As previously noted, in *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980), the Supreme Court held that where Congress abrogates or abridges vested Indian property rights, whether tribally or communally held rights as in *Sioux Nation* or individually held rights as in the *Irving* case, a taking will be found unless it can be shown that Congress was exercising its authority as trustee of Indian land and resources by making a good faith effort to secure the full value of the resources for affected Indians. In the proposed partition plan absolutely no compensation whatsoever has been provided. The only payment to the excluded Indians of the Extension that might even be thought to provide compensation is the provision in section 2(b)(3) of H.R. 4469 authorizing the Secretary of the Interior to spend up to $2,000,000 to acquire additional land along the Klamath River to be added to the reservation arbitrarily assigned to the so-called Yurok Tribe under the partition plan.

The provision authorizing purchase of land for enlargement of the Yurok Reservation created under the partition plan should not be considered compensation at all, let alone *just* compensation, for several reasons. First, the provision does not mandate the acquisition of additional land for Reservation, it only authorizes the expenditure of such funds and mandates the Secretary to use his best efforts "to purchase land" along the Klamath River for these purposes. If Congress was using "good faith efforts" to compensate for the large and valuable property rights of the Indians adversely affected by the partition plan, as required by law, the Secretary would be mandated to spend the funds in question and given eminent domain powers to condemn lands for these purposes so that the affected Indians necessarily would receive such compensation irrespective of the willingness of current owners of the land to sell. Second, the figure of $2,000,000 in land apparently constitutes an arbitrarily selected figure dictated by the size of the federal budget, rather than the value of the rights lost through the partition plan to the excluded but eligible Indians of the Hoopa Valley Reservation. If Congress were seriously intending to add lands to the Reservation, "good faith efforts" would require appraisal of the full value of both the communal and individual rights abrogated by the partition plan and an effort should be made to assure that all property rights abrogated by the partition plan are fully compensated, presumably based on a calculation utilizing the 70-30 equal entitlement formula of *Short*. Anything less does not constitute Congressional good faith efforts to provide full and fair compensation and therefore under the *Sioux Nation* test constitutes a compensable taking. The partition plan, of course, calls for no such complete appraisal of the communal and individual property rights in the Hoopa Valley Reservation and makes no effort to divide these resources along the 70-30 equal entitlement principle of *Short*. It therefore plainly includes no good faith efforts to secure full and fair market value for the excluded but eligible Indians of the Hoopa Valley Reservation. Third, neither the context nor language of section 2(b)(3) nor the arbitrarily selected figure of $2,000,000 suggests that this provision in the legislation is intended as compensation. In *Sioux Nation*, the Supreme Court confronted a similar question in connection with the question of whether Congress meant to provide compensation through provisions in the 1877

legislation taking title to the Black Hills from the Sioux Nation that extended the boundary of Sioux lands northward to include 900,000 acres of grazing land not previously included therein. As I believe also would be found in the case of the provisions of section 2(b)(3) of H.R. 4469, the Court in *Sioux Nation* rejected the suggestion that such additions to the reservation constituted any form of compensation that should be considered in the applying its good faith efforts test. The Court said:

> The Government has placed some reliance in this Court on the fact that the 1877 Act extended the northern boundaries of the reservation by adding some 900,000 acres of grazing land. . . . Congress obviously did not intend the extension of the reservation's northern border to constitute consideration for the property rights surrendered by the Sioux. The extension was effected in that article of the Act redefining the reservation's borders; it was not mentioned in the article of the Act redefining the reservation's borders; it was not mentioned in the article which stated the consideration given for the Sioux' "cession of territory and rights." . . . Moreover, our characterizing the 900,000 acres as assets given to the Sioux in consideration for the property rights they ceded would not lead us to conclude that the terms of the exchange were "so patently adequate and fair" that a compensable taking should not have been found.

448 U.S. at 418 n.31. Likewise, the mere authorization of section 2(b)(3) of H.R. 4469 to the Secretary of the Interior to purchase up to $2,000,000 in additional land to be added to the Yurok Reservation created by the partition plan is so arbitrarily selected and is not "'so patently adequate and fair' that a compensable taking should not have been found."

Other than the completely inadequate provisions of section 2(b)(3) of H.R. 4469, there is not one shred of effort to provide just compensation for the recognized, vested property rights abrogated by the partition plan.[16/] Indeed, there is no argument that the proposed partition plan makes any effort, let alone any good faith effort, to provide just compensation. It makes no effort to appraise the resource value of the reservation, it makes no effort to divide those assets along the 70-30 equal entitlement principle of *Short*, and it provides no compensation whatsoever for the vested property rights abrogated or curtailed under the proposal. Thus, there is little

16. The provisions of section 3(b) of H.R. 4469 obviously do not constitute compensation since they involve distribution of funds already co-equally owned by the eligible Indians of the Hoopa Valley Reservation, including both the members of the Hoopa Valley Tribe and the excluded but eligible Indians of the Extension.

question that under the *Sioux Tribe* case, the partition plan would be treated as taking, rather than a good faith effort by Congress to exercise its trusteeship authority over Indian affairs.

D. The Contingent Indemnification Provision Constitutionally Invalidates the Partition Plan as a Taking of Private Property for Other Than Public Purposes

The fifth amendment taking clause permits private property to be taken only "for public use," provided just compensation is paid. The contingent indemnification provision of section 2(f)(2) of H.R. 4469 reveals the partition plan for precisely what it is -- an unconstitutional property redistribution scheme that extinguishes the recognized, vested, and enforceable individual and communal rights in the Square of the excluded but eligible Indians of the Hoopa Valley Reservation for the benefit of the Hoopa Valley Tribe and its members. The contingent indemnification provision attempts to provide, albeit unsuccessfully as discussed in the next section, that any liabilities incurred under the partition scheme will be borne by its true beneficiarie, the Hoopa Valley Tribe and its members, rather than the public. The Supreme Court long has held that "one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid." *Thompson v. Consolidated Gas Corp.*, 300 U.S. 55, 80 (1937) (gas proration order invalidated as an uncompensated taking of private property for private benefit). The Court's most recent pronouncement on the "public use" requirement of the fifth amendment is *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984). In *Midkiff*, the Court sustained a plan of the Hawaii legislature to redistribute land ownership in Hawaii *with compensation* and to thereby remedy the oligarchical control of land in Hawaii caused by the vestiges of the early monarchical land holdings. The Court relied on the fact that the taking in question was fully compensated and further found that there was a reasonable public purpose in light of the effort to more broadly distribute land and remedy the societally dysfunctional aspects of the land oligopoly on the public land market in Hawaii. Specifically, the Court said:

> The land oligopoly has, according to the Hawaii Legislature, created artificial deterrents to the normal functioning of the State's residential land market, and forced thousands of individual homeowners to lease, rather than buy, the land underneath their homes. Regulating oligopoly and the evils associated with it is a classic exercise of a States police powers.

The partition plan proposed in H.R. 4469 can be distinguished from the Hawaii land redistribution scheme on at least two grounds. First, it constitutes an *uncompensated* taking. Second, unlike the situation in *Midkiff* in which governmental action enlarged the class of persons eligible to share in property in order to combat for public purposes the evil effects of oligopoly of ownership, the partition plan of H.R. 4469 concentrates ownership in the Hoopa Valley Tribe oligopoly by extinguishing the valid co-equal ownership rights of the 70% of the reservation population constituting the excluded but eligible Indians of the Reservation. Thus, the partition plan proposed in H.R. 4469 has precisely the opposite effect of the Hawaii land redistribution plan -- it concentrates land ownership to public detriment and in violation of the legitimate property rights of the majority of the present owners of the Reservation. Thus, *Midkiff* supports the idea that the partition plan proposed in H.R. 4469 constitutes a constitutionally invalid effort through an uncompensated taking to appropriate private property for *private* use.

Furthermore, the contingent indemnification provision of section 2(e)(2) plainly manifests on the fact of the partition legislation the intent to appropriate property to private purposes. In *Midkiff*, the Court indicated that "deference to the legislature's 'public use' determination is required 'until it is shown to involve an impossibility.'" The bizarre contingent indemnification provisions of section 2(e)(2) and the obvious concomitant unwillingness of Congress to shoulder the costs of providing full compensation for the extinguishment of rights engendered by the proposed partition plan, plainly make it impossible to defer to the presumption of public use. The entire partition scheme proposed in H.R. 4469 therefore, as in the *Thompson* case, constitutes a constitutionally invalid uncompensated taking of property for private purposes.

E. The Contingent Indemnification Provision Will Not Insulate the United States from Monetary Liability for Takings Effectuated by the Partition Plan

The contingent indemnification provision of section 2(e)(2) is designed to assure that the United States will not incur any monetary liability for the obvious taking of vested Indian property rights contemplated by the partition plan. This provision constitutionally cannot successfully accomplish that result. Basically, the provision requests that the tribe benefitting from the gross reallocation of property rights contemplated in the partition plan pay for the benefits that it receives. The constitutional infirmity of this provision is evident from the legal dilemma that it creates. If, as is obviously correct, the reason for this provision is that the Hoopa Valley Tribe and its members, rather than the public, would benefit by the plan, the plan constitutes, as discussed above, an uncompensated taking of property for *private* purposes. On the other hand, if the partition plan is thought to be for public benefit, the only theory that would sustain such an involuntary partition, then under the fifth amendment the federal government is constitutionally obligated by the fifth amendment to pay full compensation for the taking. The contingent indemnification provision of the Act seeks to cast this obligation on the tribe benefited by the partition and then limit the indemnification recovery only to taken from the benefited tribe's "future income." This effort to involuntarily force the benefited tribe to pay for an exercise of eminent domain powers undertaken ostensibly "for public use" might constitute a taking of Indian property for public use itself. Thus, were the partition plan to take effect and were the contingent indemnification provision triggered, the benefited tribe, The Hoopa Valley Tribe, probably would have a valid cause of action against the United States under the fifth amendment takings clause that it could enforce in the United States Claims Court under 28 U.S.C. sec. 1505 claiming that confiscation of its property to pay for the takings liabilities incurred by the United States as a result of the partition plan constituted an involuntary taking of its property for public use, i.e. to pay obligations of the United States. Even though the Hoopa Valley Business Council may currently support the plan, they are both legally and pract-

ically capable of disingenuously turning around and attacking the contingent indemnification provisions as a taking should they ever be successfully invoked against them. Indeed, the Hoopa Valley Business Council demonstrated just such behavior when it disingenuously and, ultimately unsuccessfully, filed suit in the United States District Court for the Northern District of California (No. C-76-1405 RHS) against the Secretary of the Interior, without ever mentioning the *Short* decision, to contest the allegedly illegal sequestration of "70% of the plaintiff's income."

The nonconsensual partition plan contained in H.R. 4469 certainly constitutes an uncompensated taking. Either it constitutes an uncompensated taking for *private* use, in which case it is entirely unconstitutional, as discussed above, or it constitutes a taking for public use, in which the United States must assume the obligation to pay full compensation or a *voluntary* compensation structure must be established by the Act. The contingent indemnification provision therefore cannot conceivably insulate the United States from liability. Either the provision constitutionally invalidates the entire partition scheme or its takes for public use the property of the tribe required to pay such compensation. Under the fifth amendment, there simply is not and constitutionally should not be any way to escape alternative conclusions.

CONCLUSION

The nonconsensual partition plan for the Hoopa Valley Reservation constitutes a cynical, arrogant, and unconstitutional effort to overturn the judicial vindication of the vested and recognized property rights of the excluded but eligible Indians of the Hoopa Valley Reservation. It would overturn judgments and orders secured after 25 years of litigation and it would reward the Hoopa Valley Business Council, the small minority of the Reservation who currently compose the Hoopa Valley Tribe, and the Bureau of Indian Affairs for actions that numerous courts have found to be illegal. Furthermore, the partition plan is completely anti-democratic and therefore violates the substantive majoritarian principle of the Indian Reorganization Act of 1934 that has been the cornerstone of twentieth century federal policies of furthering Indian tribal self-

government. Finally, the partition plan is blatantly unconstitutional since it takes vested, recognized Indian property rights, both individual and communal rights, for private purposes and otherwise constitutes a completely uncompensated taking. Thus, involuntary partition of the Hoopa Valley Reservation in the fashion contemplated in H.R. 4469 is both bad policy and unconstitutional.

If Congress believes that federal legislative intervention is appropriate into the almost 40 year dispute involving the political and economic structure of the Hoopa Valley Reservation, a far better and more constitutional policy would be to require restructuring of a single tribe for the entire Hoopa Valley Reservation, both the Square and the Extension, which would comply with the substantive majoritarian principle of the Indian Reorganization Act of 1934, which would include, serve and allow equal participation for all eligible Indians of the whole Reservation. Such legislation would vindicate, rather than thwart, the hard won rights of the plaintiffs in *Short* and *Puzz*. Such legislation merely would rectify past administrative errors and illegal actions that created the current exclusion of 70% of the eligible Indians of the Reservation from ful participation in the Hoopa Valley Reservation government and from full enjoyment of equal benefits from the economic resources of the Reservation.

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