100TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 100-938
Part 1

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

SEPTEMBER 16, 1988.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 4469 which on April 26, 1988 was referred jointly to the Committees on Interior and Insular Affairs, the Judiciary, Energy and Commerce and Merchant Marine and Fisheries]

[Including the cost estimates of the Congressional Budget Office]

The Committee on Interior and Insular Affairs to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert, in lieu thereof, the following:

SECTION 1. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the "Hoopa-Yurok Settlement Act".

(b) DEFINITIONS.—For the purposes of this Act, the term—

(1) "Escrow funds" means the moneys derived from the joint reservation which are held in trust by the Secretary in the accounts entitled—

(A) "Proceeds of Labor-Hoopa Valley Indians—California 70 percent Fund, account number J52-561-7197";

(B) "Proceeds of Labor-Hoopa Valley Indians—California 30 percent Fund, account number J52-561-7236";

(C) "Proceeds of Klamath River Reservation, California, account number J52-562-7056";

(D) "Proceeds of Labor-Yurok Indians of Lower Klamath River, California, account number J52-562-7153";

(E) "Proceeds of Labor-Yurok Indians of Upper Klamath River, California, account number J52-562-7154";

(F) "Proceeds of Labor-Hoopa Reservation for Hoopa Valley and Yurok Tribes, account number J52-575-7256"; and

(G) "Klamath River Fisheries, account number 5628000001";

(2) "Hoopa Indian blood" means that degree of ancestry derived from an Indian of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, Tish-Tang-Atan, South Fork, or Grouse Creek Bands of Indians;

(3) "Hoopa Valley Reservation" means the reservation described in section 2(b) of this Act;

(4) "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;

(5) "Indian of the Reservation" shall mean any person who meets the criteria to qualify as an Indian of the Reservation as established by the U.S. Court of Claims in its March 31, 1982, May 17, 1987, and March 1, 1988, decisions in the case of *Jesse Short et al.* v. *United States,* (Cl. Ct. No. 102-63);

(6) "Joint reservation" means the area of land defined as the Hoopa Valley Reservation in section 2(b) and the Yurok Reservation in section 2(c) of this Act;

(7) "Karuk Tribe" means the Karuk Tribe of California, organized under its constitution after a special election conducted by the United States Department of the Interior, Bureau of Indian Affairs, on April 18, 1985;

(8) "Secretary" means the Secretary of the Interior;

(9) "Settlement Fund" means the Hoopa-Yurok Settlement Fund established pursuant to section 4;

(10) "Settlement Roll" means the final roll prepared and published in the Federal Register by the Secretary pursuant to section 5;

(11) "Short cases" means the cases entitled *Jesse Short et al.* v. *United States,* (Cl. Ct. No. 102-63); *Charlene Ackley* v. *United States,* (Cl. Ct. No. 460-78); *Bret Aanstadt* v. *United States,* (Cl. Ct. No. 146-85L); and *Norman Giffen* v. *United States,* (Cl. Ct. No. 746-85L);

(12) "*Short* plaintiffs" means named plaintiffs in the *Short* cases;

(13) "trust land" means an interest in land the title to which is held in trust by the United States for an Indian or Indian tribe, or by an Indian or Indian tribe subject to a restriction by the United States against alienation;

(14) "unallotted trust land, property, resources or rights" means those lands, property, resources, or rights reserved for Indian purposes which have not been allotted to individuals under an allotment act;

(15) "Yurok Reservation" means the reservation described in section 2(c) of this Act; and

(16) "Yurok Tribe" means the Indian tribe which is recognized and authorized to be organized pursuant to section 9 of this Act.

SEC. 2. RESERVATIONS; PARTITION AND ADDITIONS.

(a) PARTITION OF THE JOINT RESERVATION.—(1) Effective with the publication in the Federal Register of the Hoopa tribal resolution as provided in paragraph (2), the joint reservation shall be partitioned as provided in subsection (b) and (c).

(2)(A) The partition of the joint reservation as provided in this subsection shall not become effective unless, within 60 days after the date of the enactment of this Act, the Hoopa Valley Tribe shall adopt, and transmit to the Secretary, a tribal resolution waiving any claim such tribe may have against the United States arising out of the provisions of this Act.

(B) The Secretary, after determining the validity of the resolution transmitted pursuant to subparagraph (A), shall cause such resolution to be printed in the Federal Register.

(b) HOOPA VALLEY RESERVATION.—Effective with the partition of the joint reservation as provided in subsection (a), 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) shall thereafter be recognized and established as the Hoopa Valley Reservation. The unallotted trust land and assets of the Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe.

(c) YUROK RESERVATION.—(1) Effective with the partition of the joint reservation as provided in subsection (a), 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) shall thereafter be recognized and established as the Yurok Reservation. The unallotted trust land and assets of the Yurok Reservation shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe.

(2) Subject to all valid existing rights and subject to the adoption of a resolution of the general council to the Yurok Tribe as provided in section 9(c)(2)(A), all right, title, and interest of the United States—

(A) to all national forest system lands within the Yurok Reservation and

(B) to that portion of the Yurok Experimental Forest described as Township 14 north, Range 1 east, Section 28, Lot 6: that portion of Lot 6 east of U.S. Highway 101 and west of the Yurok Experimental Forest, comprising 14 acres more or less and including all permanent structures thereon,

shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe and shall be part of the Yurok Reservation.

(3)(A) Pursuant to the authority of sections 5 and 7 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 465, 467), the Secretary may acquire lands or interests in land, including rights-of-way for access to trust lands, for the Yurok Tribe or its members.

(B) From amounts authorized to be appropriated by the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), the Secretary may use not to exceed $5,000,000 for the purpose of acquiring lands or interests in lands pursuant to subparagraph (A). No lands or interests in lands may be acquired outside the Yurok Reservation with such funds except for purposes of exchange for lands within the reservation.

(4) The—

(A) apportionment of funds to the Yurok Tribe as provided in sections 4 and 7;

(B) the land transfers pursuant to paragraph (2);

(C) the land acquisition authorities in paragraph (3); and

(D) the organizational authorities of section 9 shall not be effective unless and until the general council of the Yurok Tribe has adopted a resolution waiving any claim such tribe may have against the United States arising out of the provisions of this Act as required by section 9.

(d) BOUNDARY CLARIFICATIONS OR CORRECTIONS.—(1) The boundary between the Hoopa Valley Reservation and the Yurok Reservation, after the partition of the joint reservation as provided in this section, shall be the line established by the Bissel-Smith survey.

(2) Upon partition of the joint reservation as provided in this section, the Secretary shall publish a description of the boundaries of the Hoopa Valley Reservation and Yurok Reservations in the Federal Register.

(e) MANAGEMENT OF THE YUROK RESERVATION.—The Secretary shall be responsible for the management of the unallotted trust land and assets of the Yurok Reservation until such time as the Yurok Tribe has been organized pursuant to section 9. 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.

(f) CRIMINAL AND CIVIL JURISDICTION.—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)).

SEC. 3. PRESERVATION OF SHORT CASES.

Nothing in this Act shall affect, in any manner, the individual entitlements already established under existing decisions of the United States Claims in the *Short* cases or any final judgment which may be rendered in those cases.

SEC. 4. HOOPA-YUROK SETTLEMENT FUND.

(a) ESTABLISHMENT.—(1) There is hereby established the Hoopa-Yurok Settlement Fund. Upon enactment of this Act, the Secretary shall cause all the funds in the Escrow funds, together with all accrued income thereon, to be deposited into the Settlement Fund.

(2) Until the distribution is made to the Hoopa Valley Tribe pursuant to subsection (c), the Secretary may distribute to the Hoopa Valley Tribe, pursuant to the provision of title I of the Department of the Interior and Related Agencies Appropriations Act, 1985, under the heading "Bureau of Indian Affairs" and subheading "Tribal Trust Funds" at 98 Stat. 1849 (25 U.S.C. 123c), not to exceed $3,500,000 each fiscal year out of the income or principal of the Settlement Fund for tribal, non-per capita purposes.

(b) DISTRIBUTION; INVESTMENT.—The Secretary shall make distribution from the Settlement Fund as provided in this Act and, pending dissolution of the fund as provided in section 7, shall invest and administer such fund as Indian trust funds pursuant to the first section of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a).

(c) HOOPA VALLEY TRIBE PORTION.—Effective with the publication of the option election date pursuant to section 6(a)(4), the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Hoopa Valley Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of enrolled members of the Hoopa Valley Tribe as of such date, including any persons enrolled pursuant to section 6, by the sum of the number of such enrolled Hoopa Valley tribal members and the number of persons on the Settlement Roll.

(d) YUROK TRIBE PORTION.—Effective with the publication of the option election date pursuant to section 6(a)(4), the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Yurok Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of persons on the Settlement Roll electing the Yurok Tribal Membership Option pursuant to section 6(c) by the sum of the number of the enrolled Hoopa Valley tribal members established pursuant to subsection (c) and the number of persons on the Settlement Roll, less any amount paid out of the Settlement Fund pursuant to section 6(c)(3).

(e) FEDERAL SHARE.—There is hereby authorized to be appropriated the sum of $10,000,000 which shall be deposited into the Settlement Fund after the payments are made pursuant to subsection (c) and (d) and section 6(c). The Settlement Fund, including the amount deposited pursuant to this subsection and all income earned subsequent to the payments made pursuant to subsection (c) and (d) and section 6(c), shall be available to make the payments authorized by section 6(d).

SEC. 5. HOOPA-YUROK SETTLEMENT ROLL.

(a) PREPARATION; ELIGIBILITY CRITERIA.—(1) The Secretary shall prepare a roll of all persons who can meet the criteria for eligibility as an Indian of the Reservation and—

(A) who were born on or prior to, and living upon the date of enactment of this Act;

(B) who are citizens of the United States; and

(C) who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe.

(2) The Secretary's determination of eligibility under this subsection shall be final except that any *Short* plaintiff determined by the U.S. Claims Court to be an Indian of the Reservation shall be included on the Settlement Roll if they meet the other requirements of this subsection and any *Short* plaintiff determined by the U.S. Claims Court not to be an Indian of the Reservation shall not be eligible for inclusion on such roll.

(b) RIGHT TO APPLY; NOTICE.—Within thirty days after the date of enactment of this Act, the Secretary shall give such notice of the right to apply for enrollment as provided in subsection (a) as he deems reasonable except that such notice shall include, but shall not be limited to—

(1) actual notice by registered mail to every plaintiff in the *Short* cases at their last known address;

(2) notice to the attorney for such plaintiffs; and

(3) publication in newspapers of general circulation in the vicinity of the Hoopa Valley Reservation and elsewhere in the State of California.

Contemporaneous with providing the notice required by this subsection, the Secretary shall publish such notice in the Federal Register.

(c) APPLICATION DEADLINE.—The deadline for application pursuant to this section shall be established at one hundred and twenty days after the publication of the notice by the Secretary in the Federal Register as required by subsection (b).

(d) ELIGIBILITY DETERMINATION; FINAL ROLL.—The Secretary shall make determinations of eligibility of applicants under this section and publish in the Federal Register the final Settlement Roll of such persons one hundred and eighty days after the date established pursuant to subsection (c).

(2) The Secretary shall develop such procedures and times as may be necessary for the consideration of appeals from applicants not included on the roll published pursuant to paragraph (1). Successful appellants shall be added to the Settlement Roll and shall be afforded the right to elect options as provided in section 6, with any payments to be made to such successful appellants out of the remainder of the Settlement Fund after payments have been made pursuant to section 6(d) and prior to divison pursuant to section 7.

(3) Persons added to the Settlement Roll pursuant to appeals under this subsection shall not be considered in the calculations made pursuant to section 4.

(e) EFFECT OF EXCLUSION FROM ROLL.—No person whose name is not included on the Settlement Roll shall have any interest in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley

Tribe, the Hoopa Valley Reservation, the Yurko Tribe, or the Yurok Reservation or in the Settlement Fund unless such person is subsequently enrolled in the Hoopa Valley Tribe or the Yurok Tribe under the membership criteria and ordinances of such tribes.

SEC. 6. ELECTION OF SETTLEMENT OPTIONS.

(a) NOTICE OF SETTLEMENT OPTIONS.—(1) Within sixty days after the publication of the Settlement Roll as provided in section 5(d), the Secretary shall give notice by registered mail to each person eighteen years or older on such roll of their right to elect the settlement options provided in this section.

(2) The notice shall be provided in easily understood language, but shall be as comprehensive as possible and shall provide an objective assessment of the advantages and disadvantages of each of the options offered. The notice shall also advise such persons that their election shall be deemed to be the election of the minor children under their guardianship who are also on the Settlement Roll.

(3) With respect to minors on the Settlement Roll whose parent or guardian is not also on the roll, notice shall be given to, and the necessary election made by, the parent or guardian of such minor.

(4)(A) The notice shall also establish the date by which time the election of an option under this section must be made. The Secretary shall establish that date as the date which is one hundred and twenty days after the date of the publication in the Federal Register is required by section 5(d).

(B) Any person on the Settlement Roll who has not made an election by the date established pursuant to subparagraph (A) shall be deemed to have elected the option provided in subsection (d).

(b) HOOPA TRIBAL MEMBERSHIP OPTION.—(1) Any person on the Settlement Roll, eighteen years or older, who can meet any of the enrollment criteria of the Hoopa Valley Tribe set out in the decision of the U.S. Court of Claims in its March 21, 1982, decision in the *Short* case (No. 102-63) as "Schedule A", "Schedule B", or "Schedule C" nad who—

(A) maintained a residence on the Hoopa Valley Reservation on the date of enactment of this Act;

(B) had maintained a residence on the Hoopa Valley Reservation at any time within the five year period prior to the enactment of this Act; or

(C) owns an interest in real property on the Hoopa Valley Reservation on the date of enactment of this Act,

may elect to be, and, upon such election, shall be entitled to be, enrolled as a full member of the Hoopa Valley Tribe.

(2) Notwithstanding any provision of the constitution, ordinances or resolutions of the Hoopa Valley Tribe to the contrary, the Secretary shall cause any entitled person electing to be enrolled as a member of the Hoopa Valley Tribe to be so enrolled and such person shall thereafter be entitled to the same rights, benefits, and privileges as any other member of such tribe.

(3) Any person enrolled in the Hoopa Valley Tribe pursuant to this subsection shall be assigned by the Secretary that quantum of "Indian blood" or "Hoopa Indian blood", as appropriate, as may be determined pursuant to the criteria established in the March 31, 1982, decision of the U.S. Court of Claims in the case of *Jessie Short et al.* v. *United States*, (Cl. Ct. No. 102-63).

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Yurok Indian Reservation or the Yurok Tribe or in the Settlement Fund.

(c) YUROK TRIBAL MEMBERSHIP OPTION.—(1) Any person on the Settlement Roll may elect to become a member of the Yurok Tribe and shall be entitled to participate in the organization of such tribe as provided in section 9.

(2) All persons making an election under the subsection shall from the base roll of the Yurok Tribe for purposes of organization pursuant to section 9 and the Secretary shall assign each such person that quantum of "Indian blood" as may be determined pursuant to the criteria established in the March 31, 1982, decision of the U.S. Court of Claims in the case of *Jessie Short et al.* v. *United States,* (Cl. Ct. No. 102-63).

(3) The Secretary, pursuant to section 7 of the Act of August 2, 1983 (25 U.S.C. 1407), shall pay to each person making an election under this subsection, $3,000 out of the Settlement Fund.

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, Hoopa Valley Reservation or Hoopa

Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund.

(d) LUMP SUM PAYMENT OPTION.—(1) Any person on the Settlement Roll may elect to receive a lump sum payment from the Settlement Fund and the Secretary shall pay to each such person the amount of $20,000 out of the Settlement Fund.

(2) Any persons making an election to receive, and having received, a lump sum payment under this subsection shall not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe or, except authorized by paragraph (1), in the Settlement Fund.

SEC. 7. DIVISION OF SETTLEMENT FUND REMAINDER.

(a) Any funds remaining in the Settlement Fund after the payments authorized to be made therefrom by subsections (c) and (d) of section 6 and any payments made to successful appellants pursuant to section 5(d) shall be evenly divided between the Hoopa Valley Tribe and the Yurok Tribe shall be held by the Secretary in trust for such tribes.

(b) Funds divided pursuant to this section and any funds apportioned to the Hoopa Valley Tribe and the Yurok Tribe pursuant to subsections (c) and (d) of section 4 shall not be distributed per capita to any individual before the date which is 10 years after the date on which the division is made under this section.

SEC. 8. HOOPA VALLEY TRIBE; CONFIRMATION OF STATUS.

The existing governing documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed.

SEC. 9. RECOGNITION AND ORGANIZATION OF THE YUROK TRIBE.

(a) YUROK TRIBE.—(1) Those persons on the Settlement Roll who made a valid election pursuant to subsection (c) of section 6 shall constitute the base membership roll for the Yurok Tribe whose status as an Indian Tribe, subject to the adoption of the general council resolution as required by subsection (c)(2), is hereby ratified and confirmed.

(2) The Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended, is hereby made applicable to the Yurok Tribe and the tribe may organize under such Act as provided in this section.

(b) INTERIM COUNCIL; ESTABLISHMENT.—There shall be established an Interim Council of the Yurok Tribe to be composed of five members. The Interim Council shall represent the Yurok Tribe in the implementation of provisions of this Act, including the organizational provisions of this section, and shall be the governing body of the tribe until such time as a tribal council is elected under the constitution adopted pursuant to subsection (e).

(c) GENERAL COUNCIL; ELECTION OF INTERIM COUNCIL.—(1) Within 30 days after the date established pursuant to section 6(a)(4), the Secretary shall prepare a list of all persons eighteen years of age or older who have elected the Yurok Tribal Membership Option pursuant to section 6(c), which persons shall constitute the eligible voters of the Yurok Tribe for the purposes of this section, and shall provide written notice to such persons of the date, time, purpose, and order of procedure for the general council meeting to be scheduled pursuant to paragraph (2) for the consideration of the adoption of the resolution provided for in paragraph (2)(A) and the nomination of candidates for election to the Interim Council.

(2) Not earlier than 30 days before, nor later than 45 days after, the notice provided pursuant to paragraph (1), the Secretary shall convene a general council meeting of the eligible voters of the Yurok Tribe on or near the Yurok Reservation, to be conducted under such order of procedures as the Secretary determines appropriate, for—

(A) the adoption of a resolution, by a vote of not less than two-thirds of the voters present and voting, waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act; and

(B) the nomination of candidates for election of the members of the Interim Council.

No person shall be eligible for nomination who is not on the list prepared pursuant to this section.

(3) Within 45 days after the general council meeting held pursuant to paragraph (2), the Secretary shall hold an election by secret ballot, with absentee balloting and write-in voting to be permitted, to elect the five members of the Interim Council from among the nominations submitted to him from such general council meeting.

The Secretary shall assure that notice of the time and place of such election shall be provided to eligible voters at least fifteen days before such election.

(4) The Secretary shall certify the results of such election and, as soon as possible, convene an organizational meeting of the newly-elected members of the Interim Council and shall provide such advice and assistance as may be necessary for such organization.

(5) Vacancies on the Interim Council shall be filled by a vote of the remaining members.

(d) INTERIM COUNCIL; AUTHORITIES AND DISSOLUTION.—(1) The Interim Council shall have no powers other than those given to it by this Act.

(2) The Interim Council shall have full authority to receive grants from, and enter into contracts for, Federal programs, including those administered by the Secretary and the Secretary of Health and Human Services, with respect to Federal services and benefits for the tribe and its members.

(3) The Interim Council shall have such other powers, authorities, functions, and responsibilities as the Secretary may recognize, except that it may not legally or contractually bind the Yurok Tribe for a period in excess of two years from the date of the certification of the election by the Secretary.

(4) The Interim Council shall appoint, as soon as practical, a drafting committee which shall be responsible, in consultation with the Interim Council, the Secretary and members of the tribe, for the preparation of a draft constitution for submission to the Secretary pursuant to subsection (e.)

(5) The Interim Council shall be dissolved effective with the election and installation of the initial tribal governing body elected pursuant to the constitution adopted under subsection (e) or at the end of two years after such installation, whichever occurs first.

(e) ORGANIZATION OF YUROK TRIBE.—Upon written request of the Interim Council or the drafting committee and the submission of a draft constitution as provided in paragraph (4) of subsection (d), the Secretary shall conduct an election, pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.) and rules and regulations promulgated thereunder, for the adoption of such constitution and, working with the Interim Council, the election of the initial tribal governing body upon the adoption of such constitution.

SEC. 10. SPECIAL CONSIDERATIONS.

(a) LIFE ESTATE FOR SMOKERS FAMILY.—The 20 care 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 in effect and may pass by descent or devise to any blood relative or relatives of one-fourth or more Indian blood of those family members domiciled on the assignment upon the date of enactment of this Act.

(b) RANCHERIA MERGE WITH YUROK TRIBE.—If two-thirds of the adult members of the Resighini, Trinidad, Big Lagoon, Blue Lake, Smith River, Elk Valley, or Tolowa Rancherias vote in an election conducted by the Secretary to merge with the Yurok Tribe and if the Yurok Tribe consents to such merger, the tribes and reservations of those rancerias so voting shall be extinguished and the lands of such reservations shall be part of the Yurok Reservation wtih 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. 11. 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 insering in lieu thereof "14"; and

(B) by inseritng at the end thereof the following new paragraphs:

"(11) A representative of the Karuk Tribe, who shall be appointed by the governing body of the Tribe.

"(12) 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) and (12) 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. 12. TRIBAL TIMBER SALES PROCEEDS USE.

Section 7 of the Act of June 25, 1910, as amended by the Act of April 30, 1964, (36 Stat. 857; 25 U.S.C. 407) is amended to read as follows:

"SEC. 7. 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. After deduction, if any, 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 government bodies of the tribes 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.".

SEC. 13. LIMITATIONS OF ACTIONS; WAIVER OF CLAIMS.

(a) Any claim challenging the partition of joint reservation pursuant to section 2 or any other provision of this Act as having effected a taking under the Fifth Amendment of the United States Constitution or as 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.

(b)(1) Any such claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 2 or 120 days after the publication in the Federal Register of the option election date as required by section 6(a)(4).

(2) Any such claim by the Hoopa Valley Tribe shall be barred 180 days after the date of enactment of this Act or such earlier date as may be established by the adoption of a resolution waiving such claims pursuant to section 2(a)(2).

(3) Any such claim by the Yurok Tribe shall be barred 180 days after the general council meeting of the Yurok Tribe as provided in section 9 or such earlier date as may be established by the adoption of a resolution waiving such claims as provided in section 9(c)(2)(A).

(c)(1) The Secretary shall prepare and submit to the Congress a report describing the final decision in any claim brought pursuant to subsection (b) against the United States or its officers, agencies, or instrumentalities.

(2) Such report shall be submitted no later than 180 days after the entry of final judgment in such litigation. The report shall include any recommendations of the Secretary for action by Congress, including, but not limited to, any supplemental funding proposals necessary to implement the terms of this Act and any modifications to the resource and management authorities estblished by this Act.

PURPOSE

The purpose of H.R. 4469, by Mr. Bosco, is to partition the lands of the Hoopa Valley Reservation in Humboldt County, California, between the Hoopa Valley Tribe and the Yurok Tribe in settlement of a dispute as to the ownership and management responsibilities for such lands.

HISTORY

Aboriginal Tribes and Lands of Northern California

The lands of what is now northern California, like most of the Pacific coastal area, were aboriginally inhabited by many small tribes or bands of Indians of numerous linguistic stocks or derivations. Representative tribes in the general area of dispute included the Hoopa (Hupa), Chilula, Whilkut, and Nongatl of Athapascan derivation; the Yurok and Wiyot of Algonkian derivation; the Karok (Karuk), Shasta, and Chimariko of Hokan stock; and the Wintun of the Penutian language.

The original location of these tribes centered upon the drainages of the Klamath and Trinity Rivers and adjacent streams in extreme northwestern California. The Klamath River flows southwesterly out of southern Oregon to its junction with the Trinity River (which flows north and is essentially a branch of the Klamath) and, then, veering sharply to the northwest continues to the ocean. As noted by the Court of Claims in the *Jessie Short* case, the two rivers form a "Y" whose arms are the Klamath and whose trunk is the Trinity.

The aboriginal lands of the Yurok or Klamath Indians were generally centered on the drainage of the valley of the Klamath River from the Pacific Ocean to its fork with the Trinity River. These lands lay northward from that fork and westward to the Pacific. The lands of the Wiyot, a tribe related to the Yurok, were south of the Yurok lands in a narrow strip along the ocean.

The aboriginal lands of the Hupa or Hoopa Indians were centered on the drainage of the Hoopa Valley of the Trinity River southward from its fork with the Klamath. The lands of the related tribes of the Chilula, Whilkut, and Nongatl lay to the west and south of the Hoopa lands and eastward of the Yurok and Wiyot lands.

The aboriginal lands of the Karok, and the related Shasta and Chimariko tribes, lay to the east of the Hoopa and Yurok lands on the upper drainages of both the Klamath and Trinity Rivers. The Wintum lands were southeast of the Hoopa lands along the upper drainage of the south fork of the Trinity River.

However, as the U.S. Court of Claims noted in the case of *Jessie Short et al.* v. *The United States* (202 Ct. Cl. 870, 886):

> The Indian tribes of Northern California were not organized or large entities; Indians resident on a particular river or fork were a "tribe." Tribal names were often applied inexactly and usually meant only a place of residence. To call an Indian a "Hoopa" or a Trinity Indian meant he was an Indian resident in the valley of the Trinity called Hoopa. The names "Yurok" and "Karok" * * * also meant a place of residence.

Impact of White Settlement

These small Indian tribes or bands had only minimal contact with non-Indians, primarily Spanish settlers to the south or occasional fur-trading or exploration parties, until the discovery of gold in 1849. With that discovery came the well-known influx of gold seekers and other white settlers and immigrants. As the white population grew and white settlements expanded, the conflicts with local Indian tribes and bands increased in number and intensity. White settlers sought to push the Indians off their lands and demanded that local and Federal governments take steps to remove the Indians to other areas. Backed to the Pacific Ocean, the tribes had no place else to go and the inevitable hostilities and warfare between Indians and whites began to occur.

The huge influx of whites into the area and the resulting wars had a devastating impact on the Indian tribes. In 1850, only two years after the United States had acquired the territory from

Mexico, Federal officials recognized that something had to be done quickly for the tribes. Indian Sub-agent Adam Johnston wrote that the white men had taken Indian lands and resources, introduced strange diseases, and provoked violent confrontations.

In other areas, the government had tried to relocate the Indians before the advance of white settlers; but there were already more than 100,000 whites in California, which became a state on September 9, 1850. It was decided that the best policy was to set aside small tracts of land in the new state for the tribes to protect them from the worst effects of settlement by separating them from the whites. At the same time, vast tracts of Indian lands would be opened to eager white settlers and miners.

To effectuate this policy, Congress provided for the appointment of treaty commissioners in September of 1850 to secure the cession by the Indians of their lands and to estblish reservations for them. By the end of 1851, numerous treaties with many Indian tribes or bands including those of northern California, had been signed. On June 28, 1852, President Fillmore presented eighteen California treaties to the Senate for ratification. Because of strong white opposition to providing any lands for the Indians, the Senate, in secret session, rejected the treaties on June 28, 1852. With the rejection of these treaties, the conflicts and hostilities between white settlers and Indian tribes resumed.

In northern California, much of the warfare and bloodshed was centered in the valleys of the Klamath and Trinity Rivers which were the traditional homelands of the Yurok and Hoopa Indians and related tribes.

Establishment of Klamath River Reservation

In an early attempt to carry out the policy adopted with respect to California Indian tribes, President Pierce, by Executive Order of November 16, 1855, established the Klamath River Reservation for the benefit of Indian tribes in that general area. The President acted pursuant to the Act of March 3, 1853 (10 Stat. 226, 238), as amended in 1855, authorizing the creation of seven military reservations in California or in the Territories of Utah and New Mexico.

As finally established, the Klamath River Reservation was "a strip of territory commencing at the Pacific Ocean and extending one mile in width on each side of the Klamath River" for a distance of approximately 20 miles, containing 25,000 acres. The reservation was within the aboriginal territory of the Yurok and, at the time of its creation, was occupied by about 2,000 Indians of the Yurok tribe, also known as the Klamaths. However, the Hoopa and other inland tribes refused to move onto this reservation and armed conflict in those areas continued.

Establishment of the Hoopa Valley Reservation

In 1864, in a further effort to bring about peace in California, Congress enacted legislation (Act of April 8, 1864, 13 Stat. 39) reorganizing the Indian Department in California by providing for the appointment of one superintendent of Indian Affairs and authorizing the President to establish four reservations in the State. On May 26, 1864, the President appointed Austin Wiley as Superintendent.

On August 12, 1864, at Fort Gaston, Wiley negotiated an agreement with the Hoopa Indians along the Trinity River entitled "Treaty of peace and friendship between the United States government and the Hoopa, South Fork, Redwood, and Grouse Creek Indians.". Section 1 of the agreement provided that—

> The United States * * * by these presents doth agree and obligate itself to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes.

Section 2 provided that the reservation "shall include a sufficient area of mountain on each side of the Trinity River as shall be necessary for hunting grounds, gathering berries, seeds, etc." This agreement or "treaty" was never submitted for ratification.

On August 21, 1864, at Fort Gaston, California, Superintendent Wiley issued a proclamation, under the authority of the 1864 Act and instructions from the Interior Department, establishing the Hoopa Valley Reservation on the Trinity River in Klamath County, California. Wiley's proclamation provided that the metes and bounds of the reservations would be established later by order of the Interior Department, subject to the approval of the President.

The Trinity River in the Hoopa Valley flows north through the valley to the junction of the Trinity and Klamath Rivers. Since the reservation was described as extending six miles on each side of the river to the junction of the two rivers, the reservation formed a 12-mile square bisected by the last 12 miles of the Trinity River, and has come to be called the "Square" or the "12-mile Square". As of February 18, 1865, when Wiley defined the boundaries of the Hoopa Valley Reservation, there have been identified, among the various tribes resident there, a substantial number of Indians of the Hoopa Tribe living in several villages in the Hoopa Valley proper, a smaller group of Lower Klamath or Yurok Indians living in a few villages in the northern and northwestern part of the reservation, and a number of Indians of the Redwood or Chilula tribe.

On June 23, 1876, President Grant issued an executive order formally establishing the boundaries of the Hoopa Valley Reservation and provided that the land embraced therein "be, and hereby is, withdrawn from public sale, and set apart in California by act of Congress approved April 8, 1864." As bounded, the reservation was a square, twelve miles on a side, encompassing approximately 88,665.52 acres.

The Court of Claims in the *Jessie Short* case found that, at about the time of the 1876 Executive Order, there had been identified as living within the boundaries of the reservation established the following tribes:

	1875	1876
Tribe:		
Hoopas	571	511
Klamaths (Yuroks)	43	44
Redwoods	46	12
Saias	56	13

Creation of the "Addition"

In the late 1880's and early 1890's, the legal validity of the 1855 Klamath River Reservation came under attack. There was growing pressure from surrounding white settlers to open these lands to homesteading. In addition, the Department of the Interior sought to control the activity of non-Indians on the reservation. In 1888, the United States brought suit against a non-Indian trader on the reservation for unauthorized activity. The district court, in an 1888 decision later upheld by the circuit court in 1889, held that the Klamath River Reservation did not have legal status as an Indian reservation. *United States* v. *Forty Eight Pounds of Rising Star Tea etc.*, 35 Fed. 403. The court held that the President's power to establish Indian reservations in California was controlled by the 1864 Act which provided for only four such reservations and that the President had exhausted his power thereunder by establishing four reservations, including the Hoopa Valley Reservation.

In order to protect the Klamath or Yurok Indians residing on the Klamath River Reservation, the Department sought to find a way to preserve reservation status. Since the 1864 Act limited the number of Indian reservations in California to four and since there were already four reservations established pursuant to that Act, the 1855 reservation could not be validated by a further executive order establishing it as a reservation. In order to get around the limitations of the 1864 Act, the Interior Department used the provisions of the 1864 Act itself.

On October 16, 1891, President Harrison issued an executive order which enlarged the Hoopa Valley Reservation "to include a tract of country 1 mile in width on each side of the Klamath River, and extending * * * to the Pacific Ocean.". In effect, the order incorporated the questionable 1855 Klamath River Reservation into the Hoopa Valley Reservation by connecting the two reservations with a strip of land one mile on either side of the Klamath River extending 25 miles from the southern boundary of the Klamath River Reservation to the northern boundary of the Hoopa Valley Reservation.

After the addition of lands by the 1891 order, the combined reservation contained 147,740 acres, 25,000 in the original Klamath River Reservation, 33,168 acres in the "Connecting Strip", and 89,572 acres in the original Hoopa Valley Reservation or "Square."

Even though the 1891 order combined the two reservations, they continued to be treated by the Department and the Indian Service, in some respects, as two reservations, the "Addition" for the Klamath River or Yurok Indians and the "Square" for the Hoopa Indians. In 1892, Congress, by the Act of June 17, 1892 (27 Stat. 52), provided for the allotment of lands on the "Klamath River Indian Reservation" to "any Indians now located upon said reservation" and the sale of the remainder for homestead purposes. In addition, from that date forward until the present, the Department of the Interior continued to administer the combined reservations as if they were still two reservations for certain purposes.

Under this method of administration, the Hupa or Hoopa Tribe was generally recognized as being located on, and owning, the "Square" portion of the reservations. The Indians on the "Square" later organized a tribe and tribal government as the Hoopa Valley Tribe. The Department generally recognized the land of the original Klamath River Reservation and the 1891 "extension" as the reservation of the Yurok tribe. That tribe has never organized.

1891 to 1955

From 1891 to 1955, the official position of the Department of the Interior and the Bureau of Indian Affairs (Indian Service) regarding the rights of tribes in the Hoopa Valley Reservation varied with the official involved and the issue under consideration.

As noted earlier, for many purposes, the "Square" and the "Addition" were treated as two separate reservations and the Yurok or Klamath Indians and the Hoopa Indians were treated as two separate tribes. Indeed, the allotment of the lands of the reservation to individual Indians and the opening of the remainder to white homesteading under various Acts of Congress dealt with the reservation as three separate tracts: the original Klamath River reservation; the "Connecting Strip"; and the "Square". Yet, official correspondence relating to the allotment process of the three tracts evidences an understanding that there was only one reservation and that the right of individual Indians to allotments were to be determined from that perspective.

The attitude of Federal officials during this time relating to the existence of tribal status and the early attempts of the Hoopa and Yurok Indians to organize was equally vacillating and confusing. In some respects, these officials encouraged and approved of efforts to organize separate entities and councils representing the two tribes. Yet, conflicting correspondence exists indicating an understanding that these separate organizations could only represent local interests and could not act with respect to the reservation as a whole.

By 1952, however, when the Commissioner of Indian Affairs approved the constitution and bylaws of the Hoopa Valley Tribe, the position of the Department, at least on a *de facto* basis, was that the "Square" was a reservation for the Hoopa Valley Tribe and subject to the management of the Hoopa Valley Business Council elected pursuant to that constitution. Under the constitution, the Department recognized the membership of the Hoopa Valley Tribe which did not include most of the Yurok or Klamath Indians.

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This administrative position continued basically unchallenged until 1955, when substantial tribal revenues from the sale of commercial timber from the "Square" began to be realized. Beginning in 1955, the Secretary of the Interior began to credit revenue derived from the "Square" to a trust account separate from revenue earned from other portions of the Hoopa Valley Reservation.

From January of 1955 until February of 1969, the Secretary, upon the request of the Hoopa Valley Business Council, each year disbursed from the Hoopa Valley trust fund per capita payments to

the Indians on the official roll of the Hoopa Valley Tribe. The total amount of such funds disbursed per capita was $12,657,666.50. (Subsequently, on 21 separate occasions commencing on April 10, 1969, and ending on March 7, 1980, additional per capita payments amounting to some $16,660,492 were made to individual Hoopa Indians on the official roll of the Hoopa Valley Tribe.)

In 1963, certain Indians (generally identified as "Yurok" Indians) claiming descent from Indians allotted on the reservation, but not enrolled as members of the Hoopa Valley Tribe, brought a suit against the United States in the United States Court of Claims in the case of *Jessie Short et al.* v. *U.S.* (Ct. Cl. 102–63) alleging that the government had wrongfully excluded them from sharing in the per capita payments from revenues of the communal lands of the Square made by the Secretary from 1955 onward. In 1972, a Trial Commissioner of the Court of Claims sustained the plaintiffs' position. His decision was later upheld on October 17, 1973, by the Court of Claims (202 Ct. Cl. 870) and the Supreme Court refused to review the decision in 1974.

In construing the various relevant laws and executive orders noted above, the court held that——

(1) the Hoopa Valley Reservation, as established by the Executive Order of June 23, 1876, pursuant to the 1864 Act, and as augmented by the addition of land under the Executive Order of October 16, 1891, was a single Indian reservation;

(2) no Indian tribe as a tribe had, or has, a vested right to the ownership of, or management authority in, the reservation or its resources;

(3) the reservation had been duly set apart for Indian purposes in 1876 to accommodate the Indian tribes of northern California;

(4) the Secretary had wrongfully paid per capita payments only to members of the Hoopa Valley Tribe to the exclusion of the plaintiffs; and

(5) that any Indian who had certain connections to the reservation and who could meet the court's standards for qualification as an "Indian of the Reservation" was entitled to share in the distribution of revenues from the "Square" and, therefore, was entitled to damages against the United States.

The court in the *Short* case is now engaged in determining which of the plaintiffs meet that criteria. Once this process has been completed, the court will enter judgment against the United States on behalf of each individual plaintiff found to meet that criteria.

Puzz v. *United States*

The decision of the Court of Claims in the *Short* case involved a money damage claim against the United States by individual Indians with respect to their right to share in the revenue derived from the resources of the "Square" upon individualization by the Secretary. The case did not deal with the issue of where the authority to make management decisions relating to the lands and resources of the "Square" or, for that matter, the reservation as a whole was vested.

In 1980, some of the plaintiffs in the *Short* case filed suit against the United States in the United States District Court for the

Northern District of California in the case of *Puzz* v. *U.S.* (No. C 80 2908 TEH). In this case, the plaintiffs challenged the right of the United States to recognize the governing body of the Hoopa Valley Tribe as the sole governing authority of the reservation entitled to manage the reservation resources. On April 8, 1988, the court held that the reservation, as extended, was intended for the communal benefit of northern California Indians and that, absent statutory delegation, existing tribes lacked power to manage the resources. The court ordered the Bureau of Indian Affairs to assume the management of the reservation and its resources and to consult fairly with all persons having an interest in the reservation on its decisions.

BACKGROUND

Nature of U.S.-Indian Relationship

From the earliest contact with the Indians of this continent, the European powers and the United States have dealt with the Indians on a government-to-government or tribal basis. The historical development of the relationship between the United States and the Indian tribes, whether it is denominated as a trust, guardianship, or government-to-government relationship, has resulted in a political relationship focusing on the Indian tribes, not on individual Indians.

The great mass of treaties, statutes, and executive orders implementing Federal Indian policy are premised upon this tribal, political relationship. To the extent such laws confer special benefits on individual Indians or impose special burdens or limitations on such Indians or their property, these laws are nevertheless founded upon the status of such Indians as members of Indian tribes enjoying a political relationship with the United States.

The Supreme Court, in upholding the constitutionality of the law extending a preference to Indians for Federal employment in the Bureau of Indian Affairs, held that the law, and the many other Federal laws for the benefit of Indians, were not invidiously discriminatory because the laws were not based upon the racial background of the individual but upon their status as members of an Indian tribe. *Morton* v. *Mancari,* 417 U.S. 535 (1974). In those limited cases where the Congress has legislated specially with respect to individual Indians outside their relationship as a member of an Indian tribe, other rational grounds are, or will be, found.

Creation of Indian Reservations

Where the United States has not recognized the title of an Indian tribe to its aboriginal lands, usually through creation of a permanent reservation for such tribe from those aboriginal lands, the tribe does not have a compensable title in such lands and the Congress may take the lands without incurring a liability to the tribe. *Tee-Hit-Ton Indians* v. *United States,* 348 U.S. 272 (1955).

As a consequence of the nature of the relationship between Indian tribes and the United States, Indian reservations were recognized or set aside by treaty, statute, or executive order for Indian tribes, not individual Indians. In most cases, the enabling law spe-

cifically denominated the Indian tribes or tribes for whose benefit the reservation was established.

In certain cases, particularly with respect to reservations established by executive order, the source authority does not designate a particular tribe as the beneficiary of the reservations. In those cases, discretion is left in the responsible executive official to later designate the tribe or tribes to be settled on such reservation. Until such official has acted under that discretion, no tribe is deemed settled on the reservation. In the December 16, 1882, Executive Order establishing a reservation for the Hopi Tribe, the language set the lands apart for the "Moqui (Hopi) and such other Indians as the Secretary of the Interior may see fit to settle thereon." The Federal court found that the Secretary did not settle the Navajo Tribe on that reservation until long after 1882.

Whether the establishing instrument designates a tribe or tribes as beneficiaries of the reservation or leaves to the discretion of an executive official the authority to later designate beneficiary tribes, in every case, the reservation is set aside for tribal or communal purposes. Individuals have an interest in resources of the reservation only insofar as they are members of the tribal entity for whose benefit the reservation is set aside.

Where the law creating an Indian reservation designates the tribe(s) for whose benefit the reservation is created and where it is clear that the reservation is intended for the permanent benefit of such tribe, the beneficial interest in the reservation becomes vested in that tribe and the power of Congress to deal with the property is limited. Congress, in the exercise of its plenary power over Indian affairs, may modify or take the tribe's property interest in such reservation, *Lone Wolf* v. *Hitchcock*, 187 U.S. 553 (1903), but, in doing so, will be held to one of two standards.

Congress may act as trustee for the benefit of the Indians and, if it makes a good faith effort to replace the property taken with property of equal or nearly equal value, it will not be held to the 5th Amendment standard. If it takes the tribe's property for the United States or for others without making such good faith effort, such action will constitute a 5th Amendment taking. *Shoshone Tribe* v. *U.S.*, 299 U.S. 476 (1937); *Three Tribes of Fort Berthold Reservation* v. *U.S.*, 182 Ct. Cl. 543 (1968); *United States* v. *Sioux Nation of Indians*, 448 U.S. 371 (1980).

In other cases, particularly with respect to executive order reservations, the law creating an Indian reservation may not designate the tribe for whose benefit it is intended or, where discretion is left to an executive official to so designate a tribe, that discretionary authority may not have been exercised or exhausted. In some cases, the law may not be clear that the reservation is intended for the permanent benefit of Indians. In those cases, no right, as against the exercise of the plenary power of Congress, has vested in any tribe and Congress may deal with that property as it sees fit without subjecting the United States to a liability for an unconstitutional taking. *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86 (1949); *Healing* v. *Jones*, 210 Fed. Supp. 125 (1962), aff'd. 373 U.S. 758.

Recognition of Indian Tribes; Tribal Membership

As noted above, the relationship between the United States and Indian tribes is a political one. While the validity of congressional or administrative actions may depend upon the existence of tribes, the courts have made clear that it is up to Congress or the Executive to extend recognition of that status. *Handbook on Federal Indian Law,* 1982, p. 3-5; *U.S.* v. *Rickert,* 188 U.S. 432 (1903). While the power of Congress, in the exercise of it plenary power over Indian affairs under the Commerce clause, to extend political recognition to an Indian tribe is very broad, it cannot be used arbitrarily. In *U.S.* v. *Sandoval,* 231 U.S. 28, 46 (1913), the Supreme Court held:

> Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as independent tribes requiring the guardianship and protection of the United States are to be determined by the Congress, and not by the courts.

As the power of Congress to extend such recognition is very broad, so also is the power to terminate that recognition. *Menominee Tribe* v. *U.S.,* 391 U.S. 404 (1968).

In general, an Indian tribe has the power to establish its own membership and membership requirements and this right has been consistently recognized by the Congress and the courts. Tribal membership and membership requirements are normally determined by the tribal governing authorities, typically under a tribal constitution or other recognized governing documents.

Nevertheless, Congress retains broad power to determine or modify, for various purposes, a tribe's membership. The United States may assume full control over Indian tribes and determine membership in the tribe for the purpose of adjusting rights in tribal property. *Stephens* v. *Cherokee Nation,* 174 U.S. 445 (1899). Congress may disregard existing tribal membership rolls. In the case of *Sizemore* v. *Brady,* 235 U.S. 441, 447 (1914), the Supreme Court said:

> Like other tribal Indians, the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe, to distribute the lands and funds among them, and to terminate the tribal government.

And it is clear that tribal membership does not confer upon the individual a vested right in tribal or communal property. As stated in *Handbook on Federal Indian Law,* 1982, p. 605-606:

> It is well established that title to the communal land or personal property of a tribe resides in the tribe itself and is not held by tribal members individually. An individual member cannot convey title to any particular tract of

> tribal land and has no right against the tribe to any specific part of tribal property, absent a federal law or treaty granting vested rights to individual members. * * * A member's right to tribal property is no more than prospective and inchoate unless federal law or tribal law recognizes a more definite right. Citations omitted.

Status of Hoopa Valley Reservation

The decisions of the United States Court of Claims in the case of *Jessie Short et al.* v. *United States* (Ct. Cl. No. 102–63) and related cases, with respect to the interest of individual Indians in the revenues from the Hoopa Valley Reservation, and the decision of the Federal district court in the case of *Puzz* v. *United States,* with respect to the obligation to manage the resources of that reservation, while perhaps correct on the peculiar facts and law, have had a very unhappy result.

It is clear from the 1864 Act authorizing the establishment of Indian reservations in California and the 1876 and 1891 Executive Orders creating the Hoopa Valley Reservation pursuant to such Act that the reservation was created for tribal or communal Indian purposes. This is consistent with the foregoing discussion and with the law of the case in the *Short* case.

Yet, the Court of Claims in the *Short* case very clearly has held that neither the organized Hoopa Valley Tribe, the unorganized Yurok Tribe, nor any other Indian tribe has any vested right to the benefits or management of the Hoopa Valley Reservation. This, too, is consistent with the foregoing discussion. The 1876 Executive Order, creating the Hoopa Valley Reservation, merely provides that it is "set apart for Indian purposes". Since, as noted, reservations are set aside for Indian tribes, since no tribes were designated in the order, and since the court did not find that the Secretary had used his discretion to settle any Indian tribe on the reservation, it is clear that no tribal vested rights, as against the plenary power of Congress to deal with the property, has arisen.

The Conclusions of Law by the Federal district court in the *Healing* v. *Jones* case might be instructive. The 1882 Executive Order creating the reservation *did* designate the Hopi Tribe as a beneficiary, but retained with the Secretary the right "to settle other Indians thereon". In Conclusion of Law #2, the court stated:

> By force and effect of the Executive Order of December 16, 1882, * * * the Hopi Indian tribe, on December 16, 1882, for the common use and benefit of the Hopi Indians, acquired the *non-vested* (emphasis added) right to use and occupy the entire reservation * * * subject to the paramount title of the United States, and subject to such diminution in the rights * * * so acquired as might thereafter lawfully result from the exercise of the authority reserved in the Secretary to settle other Indians in the reservation.

It is the Committee's conclusion that, as found by the *Short* case, no constitutionally protected rights have vested in any Indian tribe in and to the communal lands and other resources of the Hoopa Valley Reservation. In carrying out the trust responsibility of the United States under Congress' plenary power, the Committee finds

that H.R. 4469, as reported, is a reasonable and equitable method of resolving the confusion and uncertainty now existing on the Hoopa Valley Reservation.

While the court in the *Short* case has found that no tribe has a vested right in the reservation, it was equally clear on the point that none of the plaintiffs nor any other individual has a vested right in the property. Again, this holding of the court is consistent with the discussion above on the rights of tribal members in tribal property. Two cities from the Federal courts' several decisions in this case may be helpful. In a 1983 decision of the Circuit Court in this case, the court said:

> At the close of our opinion we again stress—what the Court of Claims several times emphasized and we have interlaced supra—that *all* we are deciding are the standards to be applied in determining those plaintiffs who should share as individuals in the monies from the * * * Reservation unlawfuly withheld by the United States. * * * This is solely a suit against the United States for monies, and everything we decide is in that connection alone; neither the Claims Court nor this court is issuing a general declaratory judgment. We are *not* deciding standards for membership in *any* tribe, band, or Indian group, *nor* are we ruling that Hoopa membership standards should or must control membership in a Yurok tribe or any other entity that may be organized on the Reservation.

In its March 17, 1987, decision, the court said:

> * * * an individual Indian's rights in tribal or unallotted property arise only upon individualization; individual Indians do not hold vested severable interests in unallotted tribal lands and monies as tenants in common.

Again, the Committee agrees with the court in the *Short* case that neither the plaintiffs nor any other individuals have a vested right in the Hoopa Valley Reservation as against the right of Congress to make further disposition of that property. As noted above, Congress has power to make determinations above tribal membership with resepct to the adjustment of participation in tribal property. The power is even more clear in this case, where except for the Hoopa Valley Tribe, there is no organized tribe which has a definable membership.

Settlement Provisions

H.R. 4469, as reported by the Committee, is a fair and equitable settlement of the dispute relating to the ownership and management of the Hoopa Valley Reservation. The Section-by-Section Analysis and Explanation which follows sets out in detail the provisions of the bill.

The bill provides for the partition of the joint reservation between the Hoopa Valley Tribe and the Yurok Tribe. As noted, the Committee has concluded that there are no tribal or individual vested rights in the reservation and that Congress has full power to dispose of the reservation as proposed. As a consequence, the Com-

mittee need not overly concern itself with precise comparable values in such partition.

It is alleged that the "Square", to be partitioned to the Hoopa Valley Tribe, is much more valuable than the "Addition" which is to go to the Yurok Tribe. Tribal revenue from the "Square" is in excess of $1,000,000 annually. Tribal revenue derived from the "Addition" only totals about $175,000 annually. However, the record shows that individual Indian earnings derived from the tribal commercial fishing right appurtenant to the "Addition" is also in excess of $1,000,000 a year.

As noted elsewhere in this report, the proposed partition is also consistent with the aboriginal territory of the two named tribes involved.

The bill also provides for certain settlement options to be made available to individual Indians who can meet the requirement of the court for qualification as an "Indian of the Reservation". With the exception of a limited option to become a member of the existing Hoopa Valley Tribe, the settlement options are either to become a member of the Yurok Tribe or to elect a buyout option. The settlemant terms are to be supported primarily through the use of funds earned from the reservation and maintained by the Secretary in escrow accounts.

The Committee wishes to make very clear that this offer of options by way of settlement of this problem in no way is to be construed as any recognition of individual rights in and to the reservation or the funds in escrow.

Section-by-Section Analysis and Explanation

There follows a section-by-section analysis of H.R. 4469 as reported and, where appropriate or necessary, a further explanation of the provision of the bill.

SECTION 1—SHORT TITLE AND DEFINITIONS

Subsection (a) provides that the Act may be cited as the "Hoopa-Yurok Settlement Act".

Subsection (b) contains definitions of various terms used in the bill.

SECTION 2—RESERVATIONS; PARTITION AND ADDITIONS

Subsection (a), paragraph (1), provides that, when the Hoopa Valley Tribe adopts a resolution waiving certain claims as provided in paragraph (2), the Hoopa Valley Reservation as now constituted and as defined in the Federal Court in the *Short* case, shall be partitioned as provided in subsection (b) and (c).

Paragraph (2) provides that the partition of the reservation as provided in paragraph (1) shall not be effective unless the Hoopa Valley Tribe adopts a tribal resolution within 60 days of enactment waiving any claim they may have against the United States arising out of the provisions of the Act. The Secretary is required to publish the resolution in the Federal Register.

The Committee does not intend that the requirement for a Hoopa tribal waiver under this section or the Yurok tribal waiver requirement under section 9(c)(2)(A) shall constitute a congression-

al recognition that such tribes or any other Indian tribe may have vested rights in the lands and resources of the joint reservation. In *Hynes* v. *Grimes Packing Co.,* 337 U.S. 86 (1949), the Supreme Court held that an executive order reservation "conveys no right of use of occupancy to the beneficiaries beyond the pleasure of Congress or the President." Subsequent cases establish that the compensable right of a tribe in an executive order reservation depends upon its status as a confirmed or unconfirmed reservation. The exact legal status of the reservation is unclear from the various Federal court decisions relating to it. However, the decisions of the Court of Claims in the *Short* case and the Direct Court in the *Puzz* case make clear that no existing Indian tribe as a tribe, including the Hoopa and Yurok tribes, have a vested right in the asset and resources of the Hoopa Valley Reservation as now constituted.

Subsection (b) provides that, effective with the partition as provided in subsection (a), that portion of the reservation known as the "Square" shall be recognized as the Hoopa Valley Reservation and shall be a reservation for the Hoopa Valley Tribe. The Committee notes that, while the record before the Committee and the findings of the court in the *Short* cases show that the "Square" included aboriginal lands of the Yurok or Klamath Indians, most of the lands of the "Square" were within the aboriginal territory of the Hoopa and related bands and villages.

Subsection (c), paragraph (1), provides that, effective with the partition as provided in subsection (a), that portion of the reservation known as the "extension", excluding the lands of the Resighini Rancheria, shall be recognized as the Yurok Reservation and shall be a reservation for the Yurok Tribe. The Committee again notes that the lands comprising the new Yurok reservation were within the aboriginal lands of the Yurok or Klamath bands or villages.

Paragraph (2) provides that, subject to all valid existing rights, all national forest lands in the Yurok Reservation and about 14 acres of the Yurok Experimental Forest shall be transferred to the Yurok Tribe in trust.

Paragraph (3) provides that the existing authority of the Secretary to acquire lands for Indians and Indian tribes under the Indian Reorganization Act of 1934 shall be applicable to the Yurok Tribe; $5,000,000 is authorized to be appropriated for land acquisition for the Yurok Tribe with the limitation that such funds can be used to acquire lands outside the reservation only for purposes of exchange for lands inside. The Committee expects that the Secretary would make use of this and other authority to insure that Indian lands within the reservation are not, or do not become, landlocked.

Paragraph (4) provides that (1) the transfer of funds to the Yurok Tribe under sections 4 and 7; (2) the land transfer under subsection 2(c)(2); (3) the land acquisition authority of section 2(c)(3); and (4) the organizational authorities for the Yurok Tribe under section 9 shall not be effective unless the general council of the Yurok Tribe adopts a resolution waiving any claims it might have against the United States under this Act as provided in section 9(c)(2)(A).

Subsection (d) provides that that boundary line between the Hoopa Valley and Yurok reservations, as partitioned in this section, shall be the line established by the Bissel-Smith survey and

that the Secretary shall publish the boundary descriptions in the Federal Register.

Subsection (e) provides for the management of the tribal lands of the Yurok Reservaton by Secretary until the organization of the tribe under section 9 and, thereafter, by the Yurok Tribe.

Subsection (f) provides that the State of California shall continue to have criminal and civil jursidiction on the two reservations under Public Law 83-280 with authority in the State to retrocede such jurisdiction to the United States.

SECTION 3—PRESERVATION OF "SHORT" CASES

Section 3 provides that nothing in this Act shall affect, in any way whatsoever, the individual entitlements already established in the various decisions of the Federal courts in the so-called *Short* cases nor any eventual entry of final judgment in those cases.

When final judgment is entered in the *Short* cases, the court will have determined which of the 3,800 intervening individual plaintiffs have met the standards of the court for qualification as an "Indian of the Reservation" and will have determined the amount of monetary damages to which each such individual plaintiff is entitled from the United States. Nothing in this legislation is intended to affect the right of such individuals to that final award under the law of the case. While the Committee does not believe that this legislation, as a prospective settlement of this dispute, is in any way in conflict with the law of the case in the *Short* cases, to the extent there is such a conflict, it is intended that this legislation will govern.

SECTION 4—HOOPA-YUROK SETTLEMENT FUND

Subsection (a), paragraph (1), establishes a Hoopa-Yurok Settlement Fund into which the Secretary is directed to deposit, upon the date of enactment, all Escrow funds, together with accrued income, derived from revenue of the reservation. It is estimated that this amount now totals approximately $65,000,000.

Paragraph (2) permits the Secretary to continue to make payments to the Hoopa Valley Tribe, out of the interest or principal of the Settlement Fund, for tribal governmental and management purposes, excluding per capita payments, in an amount not to exceed $3,500,000 per fiscal year.

Subsection (b) provides that the Secretary shall make payments from the Settlement Fund as provided in this Act and, pending dissolution of the Fund, shall administer and invest such funds as Indian trust funds are administered.

Subsection (c) directs the Secretary, upon publication of the option election date pursuant to section 6(a)(4), to pay out of the Fund and to hold in trust for the Hoopa Valley Tribe an amount which shall be based upon the percentage arrived at by dividing the number of members of the Hoopa Tribe as of such date, including any persons who are enrolled pursuant to section 6, by the sum of the number of such members and the number of persons on the final roll prepared pursuant to section 5.

Subsection (d) directs the Secretary to make a similar payment for the Yurok Tribe with the amount being determined by dividing

the number of persons on the Settlement Roll electing to be members of the Yurok Tribe pursuant to section 6(c) by the sum of the number of members of the Hoopa Tribe, as determined under subsection (c), and the number of persons on such roll prepared under section 5.

Subsection (e) authorizes the appropriation of $10,000,000 for deposit in the Settlement Fund as the Federal share after Hoopa and Yurok tribal payments pursuant to section 4 and the payments to the Yurok members pursuant to section 6(c) are made. The Fund, with the Federal share and with any earned income, is to be available to make the payments authorized by section 6(d).

As noted elsewhere in this report, it is in large part due to the unjust, historical treatment of California Indians by the United States, to the enactment and promulgation of confusing and ambiguous laws, and to the vacillating and uncertain policies of U.S. officials that this unfortunate situation now exists. The Committee feels that $10,000,000 of Federal funds, added to the funds of the Indians, is a small price to pay to rectify this situation.

SECTION 5—HOOPA-YUROK SETTLEMENT ROLL

Subsection (a) directs the Secretary to prepare a roll of all persons who can meet the criteria established by the Federal court in the *Short* case for qualification as an "Indian of the Reservation" and who also (1) were born on or prior to, and living on, the date of enactment; (2) are citizens of the United States; and (3) were not members of the Hoopa Valley Tribe as of August 8, 1988. The Secretary's determination is final except that plaintiffs in the *Short* cases who have been found by the Federal court to meet the qualification as an "Indian of the Reservation" will be, upon application, included on the roll if they meet the other requirements and those who are found by the court not to meet such qualifications may not be included on the roll.

Subsection (b) requires the Secretary, within 30 days of enactment, to give notice of the right to apply for enrollment under this section. It requires actual notice by registered mail to *Short* plaintiffs, notice to their attorneys, and notice in local newspapers. Such notice is also to be published in the Federal Register.

Subsection (c) establishes the deadline for applications as 120 days after the Federal Register publication in subsection (b).

Subsection (d), paragraph (1), provides that the Secretary shall make his determinations of eligibility and publish a final roll in the Federal Register 180 days after the date established in subsection (c).

Paragraph (2) requires the Secretary to establish procedures for the consideration of appeals from applicants not included on the final roll. These appeals will not prevent the roll from being made final. Successful appellants are to be later added to the roll and any payments they become entitled to, as result of the election of options, are to be paid from any funds remaining in the Settlement Fund before division between the Hoopa Valley and Yurok tribes as provided in section 7. The subsequent inclusion of such persons on the roll, and any election of options they may make, are not to

affect any calculations made for the payments to the Hoopa and Yurok Tribe under section 4.

Subsection (e) provides that anyone not included on the final Settlement Roll shall not have any interest in the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe or in the Settlement Fund unless they may be subsequently admitted to tribal membership by either of those tribes. The provisions of this subsection are not intended to imply an congressional determination that such persons do now have any such interest.

SECTION 6—ELECTION OF SETTLEMENT OPTIONS

As noted elsewhere, the court has determined that, while the lands and resources of the Hoopa Valley Reservation as now constituted are tribal or communal property, neither the Hoopa nor Yurok Tribe, nor any other tribe, has a vested right in such property. Where the tribal property right is vested, if at all, is problematical and probably remains with the United States subject to disposition pursuant to the rationale of the *Hynes* v. *Grimes Packing Co.* case.

In any case, under the general theories of Federal-Indian law and under the law of the case of the *Short* cases, it is the Committee's conclusion that no individual, including persons meeting the qualifications of the court as an "Indian of the Reservation" or members of the Hoopa Valley Tribe, separately or collectively, have any legally enforceable right in the lands and resources of the reservation.

Therefore, the settlement provisions of this section are not to be construed as a congressional recognition, directly or impliedly, that such individuals have any such right or that the payments or benefits conferred by this section are in payment for the taking of any such rights. The Committee is seeking to further the responsibility of the Congress and the United States as the trustee and guardian of Indian tribes and property to resolve the chaos and uncertainty now affecting these Indians, these tribes, and this property. The benefits made available to individuals under this section are a recognition that they may have an inchoate or expectancy interest in such property and that, as a matter of fairness, they should be given reasonable options for settlement.

It is also the Committee's intent that the election of an option under this section, together with all the valuable benefits which flow therefrom, shall constitute a waiver by the individual so electing of any claim such person may have against the United States arising out of this Act.

Subsection (a), paragraph (1), provides that, 60 days after publication of the Settlement Roll, the Secretary shall give notice by registered mail to all adult persons on the roll of their right to elect options under the Act.

Paragraph (2) provides that the notice must be comprehensive with an objective analysis of advantages and disadvantages of each option, but couched in easily understood language. In addition, it must advise such persons that their election will bind minor children under their guardianship who are also on the roll.

Paragraph (3) provides that, with respect to minors on the roll who do not also have a parent or guardian on the roll, notice is to be given to the parent or guardian of such minor and the minor's election is to be made by such parent or guardian.

Paragraph (4) provides that the Secretary shall establish the deadline for making a choice as the date which is 120 days after the date of promulgation of the Settlement Roll as provided in section 5(d). Persons not making an election by that date are to be deemed to have made an election under subsection (d).

Subsection (b), paragraph (1), provides that any person on the roll, 18 years or older, who can meet certain membership criteria of the Hoopa Valley Tribe as established by the U.S. Claims Court and who (1) maintains a residence on the reservation on the date of enactment; (2) had, within five years prior to enactment, maintained such residence; or (3) owns an interest in real property on the reservation can elect to become a member of the Hoopa Valley Tribe.

Paragraph (2) provides that the Secretary shall cause such person to be so enrolled notwithstanding any laws of the Hoopa Valley Tribe to the contrary and, after being so enrolled, such person will be a full member of the tribe for all purposes.

Paragraph (3) provides that the Secretary will assign to such person the degree of Indian blood or Hoopa Indian blood, as appropriate, based upon the criteria established by the Federal court in the *Short* case.

Paragraph (4) provides that any person making such an election shall no longer have any interest in the Yurok Reservation, the Yurok Tribe, or the Settlement Fund. This paragraph and paragraphs (c)(4) and (d)(2) do not contemplate that such persons now have any particular interest, but that, to the extent they do, it will be automatically relinquished upon an election of one of the options.

Subsection (c), paragraph (1), provides that any person on the final roll may elect to become a member of the Yurok Tribe and participate in the organization of the tribe pursuant to section 9.

Paragraph (2) provides that persons making such election shall form the base membership roll of the Yurok Tribe and the Secretary shall assign to a person making such an election the degree of Indian blood determined using the criteria of the Federal court.

Paragraph (3) directs the Secretary, pursuant to the Act of August 2, 1983 (25 U.S.C. 117a et seq.), to pay to each person making an election under this subsection $3,000 out of the Settlement Fund.

Paragraph (4) provides that persons making an election under this subsection shall no longer have any interest in the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except as provided in paragraph (3), in the Settlement Fund.

Subsection (d), paragraph (1), provides that any person on the final roll can make an election to receive a lump sum payment from the Settlement Fund.

Paragraph (2) directs the Secretary to pay to each such person the amount of $20,000 out of the Settlement Fund.

Paragraph (3) provides that any person making an election under this subsection shall no longer have any interest in the Hoopa

Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, and the Yurok Tribe and, except as provided in paragraph (2), in the Settlement Fund.

While the bill does not establish a deadline by which the Secretary must pay out the settlement options to individual Indians, it is the Committee's intention that, after an individual Indian makes his or her selection, the Secretary should make the settlement payments in an expeditious manner, and certainly within a time frame no longer than the one established for the development of the Hoopa-Yurok settlement roll.

SECTION 7—DIVISION OF SETTLEMENT FUND REMAINDER

Subsection (a) provides that any funds remaining in the Settlement Fund after payments made pursuant to section 6 and to successful appellants pursuant to section 5(d)(2) shall be evenly divided between the Hoopa Valley and Yurok Tribes and shall be held in trust by the Secretary.

Subsection (b) provides that funds apportioned to the two tribes by section 4 and 6 shall not be available for per capita distribution for a period of ten years after the date of division made under this section.

SECTION 8—HOOPA VALLEY TRIBE; CONFIRMATION OF STATUS

Section 8 preserves, ratifies, and confirms the existing status of the Hoopa Valley Tribe as a federally recognized tribe and continuous recognition of its governing documents and governing body as heretofore recognized by the Secretary.

In the record before the Committee and in the findings of the court in the *Short* cases, some significance is attached to the fact that some members of the Hoopa Valley Tribe had admixtures of the blood of the Yurok or other tribes or, in some cases, that such admixture was greater than their Hoopa blood. The Committee does not attach any signficance to this fact by itself nor does it find that this admixture of tribal blood detracts from the integrity of the Hoopa Valley Tribe as a tribe of Indians. Most, if not all, federally recognized Indian tribes have members who are not of the full degree of blood of the ancestral tribe. Through inter-tribal marriages, most Indian tribes have a membership of mixed Indian blood. Indeed, most have a membership with Indian and non-Indian blood.

SECTION 9—RECOGNITION AND ORGANIZATION OF THE YUROK TRIBE

This section provides for the development of a membership for a Yurok Tribe and for its organization. The Committee realizes that there may be some people on the Settlement Roll who will have little or no Yurok Indian blood who may wish to select this option. The discussion under section 8 above is relevant here.

Subsection (a), paragraph (1), provides that those persons electing the Yurok Membership option under section 6 shall form the base roll of the Yurok Tribe whose status as a federally recognized tribe, subject to the adoption of the general council resolution required by subsection (c), is ratified and confirmed.

Paragraph (2) provides that the Indian Reorganization Act of 1934 shall apply to the Yurok Tribe.

Subsection (b) provides for the creation of an Interim Council for the Yurok Tribe of five members to represent the Yurok Tribe in the implementation of the Act and to act as the tribal governing body until a tribal council is elected under the constitution to be adopted pursuant to this section.

Subsection (c), paragraph (1), provides that the Secretary, within 30 days of the deadline for election of options, shall prepare a list of all adults on the Settlement Roll who elected the Yurok Membership option who will constitute the eligible voters of the tribe for organizational purposes. The Secretary must send them notice of date, time, purpose, and order of procedure of the general council meeting to be scheduled pursuant to paragraph (2).

Paragraph (2) provides that, within a set time after such notice, the Secretary shall convene a general council meeting of the Yurok Tribe on or near the Yurok Reservation. The business of such meeting is to (1) adopt a resolution waiving any claims the tribe may have against the United States arising out of this Act and (2) to nominate candidates for election to the Interim Council. Only persons on the list prepared under paragraph (1) are eligible for nomination.

Paragraph (3) provides that, within 45 days after the general council meeting, the Secretary shall conduct an election for the Interim Council from among the persons nominated. Absentee balloting and write-in voting is to be permitted. The Secretary must give eligible voters adequate notice of the election.

Paragraph (4) requires the Secretary to certify the results of the election and to convene an organizational meeting of the newly elected Interim Council.

Paragraph (5) provides that vacancies on the Council shall be filled by a vote of the other members.

Subsection (d), paragraph (1), provides that the Interim Council shall have no powers except those conferred by this Act.

Paragraph (2) provides that the Council shall have full authority to secure the benefits of Federal programs for the tribe and its members, including those administered by the Secretary of the Interior and the Secretary of Health and Human Services.

Paragraph (3) provides that the Council shall have such other powers as the Secretary normally recognizes in an Indian tribal governing body, except that it may not legally or contractually bind the tribe for a period in excess of two years from the date of election.

Paragraph (4) provides that the Interim Council shall appoint a drafting committee which shall be responsible for the development of draft constitution for submission to the Secretary.

Paragraph (5) provides that the Interim Council shall be dissolved upon election of the initial governing body under such constitution when adopted or at the end of two years after their installation, whichever occurs first.

Subsection (e) provides that the Secretary, upon the request of the Interim Council and the submission of the draft constitution, shall take all steps necessary under the provisions of the Indian Reorganization Act for the adoption of a tribal constitution and the

election of the initial tribal council under such constitution when adopted.

SECTION 10—SPECIAL CONSIDERATIONS

Subsection (a) provides that the 20-acre land assignment on the Hoopa Valley Reservation made by the BIA in 1947 to the Smokers family shall continue in effect and may pass by descent or devise to relatives of one-fourth or more Indian blood of members domiciled on the assignment as of the date of enactment.

Subsection (b) provides that, with the consent of the Yurok Tribe, the Resighini, Trinidad, Big Lagoon, Blue Lake, Smith River, Elk Valley and Tolowa Rancherias may fully merge their lands, assets and membership with the Yurok Tribe upon a vote of two-thirds of the adult members of such rancherias. The Secretary is to publish in the Federal Register notice of the effective date of any such merger.

SECTION 11—KLAMATH RIVER BASIN FISHERIES TASK FORCE

Subsection (a) amends the Act of October 27, 1986, establishing the Klamath River Basin Fisheries Task Force, by providing for a representative of the Yurok and of the Karuk Tribes on such task force. The Secretary is to appoint the first Yurok representative who will serve until the Yurok Tribe is organized and appoints its own representative.

Subsection (b) provides that the term of the initial Yurok and Karuk members appointed shall be for that time remaining on the terms of existing task force members and, thereafter, as provided by the provisions of the 1986 Act.

SECTION 12—TRIBAL TIMBER SALES PROCEEDS USE

Section 11 amends section 7 of the Act of June 25, 1910 (25 U.S.C. 407) by making clear that timber sales proceeds from Indian reservations shall be used only for the benefit of the tribe or tribes located on such reservations and their members.

In the *Short* case, the Circuit Court interpreted section 407, as applicable to the facts and circumstances of that case, in a manner which could cause mischief if applied to other Indian tribes and other facts and circumstances. The amendment simply makes clear that revenue from tribal timber resources are to be used solely for the tribes located on such reservation and, through such tribes, their members.

SECTION 13—LIMITATIONS OF ACTIONS; WAIVER OF CLAIMS

Subsection (a) provides that any claim challenging the constitutionality of this Act as a taking under the 5th Amendment of the Constitution shall be brought in the United States Claims Court under sections 1491 and 1505 of title 28, United States Code.

Subsection (b), paragraph (1), provides that any such suit by an individual shall be barred unless brought within 210 days of the date of partition of the joint reservation or 120 days after the date for the election of options as established by section 6(a)(3), whichever is later.

Paragraph (2) provides that any such claim by the Hoopa Valley Tribe must be brought within 180 days of enactment or be barred.

Again, the Committee reiterates its conclusion that no individual or tribe has a vested, constitutionally protected right in the lands and resources of the joint reservation. The statute of limitations in this subsection are simply included to bring about some certainty and out of an abundance of caution.

Subsection (c) provides that the Secretary shall make a report to the Congress on any final judgment in any litigation brought pursuant to this section together with any recommendations deemed necessary.

COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute. The explanation of the amendment is contained in the section-by-section analysis.

COST AND BUDGET ACT COMPLIANCE

The bill authorizes the appropriation of $15,000,000. The cost analysis prepared by the Congressional Budget Office is set forth below:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 9, 1988.

1. Bill number: H.R. 4469.
2. Bill title: Hoopa-Yurok Settlement Act.
3. Bill status: As amended and ordered reported by the House Committee on Interior and Insular Affairs, August 10, 1988.
4. Bill purpose: This bill would, if certain conditions are met, partition specified joint Indian reservation lands in northern California into the Hoppa Valley Reservation and the Yurok Reservation. It would also establish the Hoopa-Yurok Settlement Fund, and require the Secretary of the Interior to deposit into it escrow funds and interest earnings from designated trust accounts. The bill would require the Secretary to make distributions from the fund into trust accounts for the Hoppa Valley and Yurok tribes, and to make payments to eligible individuals electing certain tribal membership options. The bill authorizes the appropriation of $10 million to be deposited into the Settlement Fund for the purpose of making lump-sum payments to such individuals.

The bill would also require the Secretary of the Interior to administer the partitioning of the lands and the two tribes. This responsibility would include specifying the reservation lands and boundaries, preparing an eligibility roll and final Settlement Roll, providing for the election of a settlement option by those on the Settlement Roll and establishing them as tribal members, organizing a general council meeting of the Yurok Tribe, and providing for the election of an Interim Council for that tribe. The bill permits the Secretary to use up to $5 million of Bureau of Indian Affairs (BIA) funds to acquire lands or interest in lands for the Yurok Tribe or its members.

5. Estimated Cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Estimated authorization level	10	(1)			
Estimated outlays	(1)	10			

[1] Less than $500,000.

The costs of this bill fall within budget function 450.

Basis of Estimate

The estimated costs of this bill reflect the authorization and distribution of $10 million for lump-sum payments of $20,000 each to eligible individuals choosing not to become members of either the Hoopa Valley or Yurok Tribes. Based on information provided by the BIA, the number of individuals expected to choose this option is at least 500, the number that would exhaust $10 million authorization.

Additional lump-sum and other payments required under this bill would come out of the Settlement Fund, which would have a balance of more than $50 million. The Settlement Fund money is currently being held in escrow and, in the absence of legislation, would be available for distribution upon resolution of a pending court claims. The estimate assumes that the bill would not significantly affect the timing or amount of spending of the amounts currently held in escrow relative to current law.

The administrative task associated with partitioning the reservation and the tribes are estimated to result in additional costs of approximately $500,000 in the first two fiscal years after enactment. We estimate no additional costs for land acquisition, based on information provided by the BIA that the agency would not exercise the authority provided in the bill for such activity. Other provisions of the bill are not expected to result in significant additional cost.

6. Estimated cost to State and local governments: None.

7. Estimated comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Carol Cohen.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Inflationary Impact Statement

Enactment of H.R. 4469, as amended, will have no inflationary impact.

Oversight Statement

No Specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, Clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, approved the bill, as amended, and recommends its enactment by the House.

DEPARTMENTAL REPORT

The Committee has not received a report from the Department of the Interior on the legislation. The Department did submit testimony before the Committee recommending enactment of the bill if amended.

CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of rule XIII of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 25, 1910, AS AMENDED

(36 Stat. 857; 25 U.S.C. 407)

* * * * * * *

[SEC. 7. The timber on unallotted lands of any Indian reservation may be sold in accordance with the principles of sustained yield, or in order to convert the land to a more desirable use, under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales, after deductions for administrative expenses pursuant to the Act of February 14, 1920, as amended (25 U.S.C. 413), shall be used for the benefit of Indians who are members of the tribe or tribes concerned in such manner as he may direct.]

SEC. 7. 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 or sustained-yield management or to convert the land to a more desirable use. After deduction, if any, 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 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.

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ACT OF OCTOBER 27, 1986

(100 STAT. 3086; 16 U.S.C. 460ss)

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SEC. 4. Klamath River Basin Fisheries Task Force

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(c) MEMBERSHIP AND APPOINTMENT.—The Task Force is composed of [12] *14* members as follows:

* * * * * * *

(11) a representative of the Karuk Tribe, who shall be appointed by the governing body of the tribe.

(12) 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.

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