UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 2009-5084

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as parens patriae on behalf of its members; OSCAR BILLINGS; BENJAMIN BRANHAM, JR.; WILLIAM F. CARPENTER, JR.; MARGARET MATTZ DICKSON; FREEDOM JACKSON; WILLIAM J. JARNAGHAN, SR.; JOSEPH LEMIEUX; CLIFFORD LYLE MARSHALL; LEONARD MASTEN, JR.; DANIELLE VIGIL-MASTEN; LILA CARPENTER; and ELTON BALDY,

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant/Third Party Plaintiff-Appellee

v.

YUROK TRIBE,

Third Party Defendant.

Appeal from the United States Court of Federal Claims in 08-CV-072, Judge Thomas C. Wheeler

---

JOINT APPENDIX

THOMAS P. SCHLOSSER, WSBA #6276
THANE D. SOMERVILLE, WSBA #31468
Morisset, Schlosser, & Jozwiak
801 Second Avenue, Suite 1115
Seattle, WA 98104
Tel: (206) 386-5200
Facsimile: (206) 386-7322
Counsel for Plaintiffs-Appellants

JOINT APPENDIX TABLE OF CONTENTS

Portions of Relevant Exhibits Cited in Briefs

In the United States Court of Federal Claims

No. 08-72L

(Filed: March 25, 2009)

HOOPA VALLEY TRIBE, et al., Plaintiffs, v. THE UNITED STATES, Defendant and Third-Party Plaintiff, v. YUROK TRIBE, Third-Party Defendant.	*	Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i et seq.; Cross-Motions to Dismiss or for Summary Judgment; Lack of Standing.

Thomas P. Schlosser, Morisset, Schlosser & Jozwiak, Seattle, Washington, for Plaintiff.

Sara E. Costello, with whom were *Ronald J. Tenpas*, Assistant Attorney General, and *Devon Lehman McCune*, Natural Resources Section, U.S. Department of Justice, Washington, D.C., *Scott Bergstrom*, Department of the Interior, of Counsel, for Defendant.

Jonathan L. Abram, with whom was *Audrey E. Moog*, Hogan & Hartson LLP, Washington, D.C., for Third-Party Defendant.

OPINION AND ORDER

WHEELER, Judge.

This case arises from the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i, et seq. (2006) ("the Act"), legislation passed by Congress in 1988 to resolve longstanding issues regarding the ownership, management, and revenue-sharing of a former joint reservation (the

"Joint Reservation") inhabited by the Hoopa Valley Tribe and the Yurok Tribe. Certain members of the Hoopa Valley Tribe, as well as the Tribe itself acting in *parens patriae*, filed this suit challenging the Department of Interior's ("DOI's") distribution to the Yurok Tribe of certain monies from a trust fund created by the Act. Defendant has filed a third-party complaint against the Yurok Tribe, seeking judgment against the Yurok if the Court determines that the United States mistakenly disbursed the funds.

The case is before the Court on motions filed by all three parties: Plaintiffs' motion for partial summary judgment under Rule 56(c) of the Court of Federal Claims ("RCFC"); Defendant's motion to dismiss for lack of jurisdiction under RCFC 12(b)(1) or, in the alternative, for summary judgment under RCFC 56(c); and Third-Party Defendant's motion to dismiss the third-party complaint under RCFC 12(b)(6) or, in the alternative, for summary judgment under RCFC 56(c). For the reasons stated below, the Court finds that Plaintiffs lack standing to assert their claim. Accordingly, Defendant's motion for summary judgment is GRANTED, Plaintiffs' motion for partial summary judgment is DENIED, and Third-Party Defendant's motion is DISMISSED as moot.

Background

In 1876, President Grant set aside a 12-mile square tract of land in Northern California on the Trinity River before it joins the Klamath River as the Hoppa Valley Indian Reservation. Short v. United States, 486 F.2d 561, 562 (Ct. Cl. 1973) (herein "Short I"). "Most but not all of the Indians of the tract, called the Square, were and have been Hoopa Indians." Id. The executive order that created this reservation did not identify any Indian tribe by name, nor did it "intimate[] which tribes were occupying or were to occupy the reservation." Id. at 563. In 1891, President Harrison committed additional lands by executive order, creating "an enlarged, single reservation incorporating without distinction its added and original tracts upon which the Indians populating the newly-added lands should reside on an equal footing with the Indians theretofore resident upon it." Id. at 567. Under this executive order, the boundaries of the Hoopa Valley Reservation were extended to include an adjoining one-mile wide strip of the Klamath River, from the confluence of the two rivers to the Pacific Ocean about 45 miles away. Id. at 562. Most of the Indians of the added tract, called the Addition, were and have been Yurok Indians, also known as Klamaths. Id. The Hoopa, the Yurok, and members of other tribes shared this single, enlarged reservation, the Joint Reservation, from 1891 to the late twentieth century.

The Joint Reservation was rich in timber resources and began to produce substantial revenues in the mid-twentieth century. Id. The United States, through the Secretary of the Interior, administered these revenues as trustee of the beneficial owners. Id. In 1950, the Hoopa Valley Indians established an organization known as the Hoopa Valley Tribe, whose membership excluded the Yurok. Id. "Beginning in 1955, the Secretary of the Interior,

pursuant to requests by the Hoopa Valley Tribe's Business Council, distributed the revenues from the timber sales annually in per capita payments to the Indians of the official roll of the Hoopa Valley Tribe, to the exclusion of the Indians of the Addition." Short v. United States, 661 F.2d 150, 152 (Ct. Cl. 1981) (citation omitted) (herein Short II). "From March 27, 1957 to June 30, 1974, $23,811,963.75 in tribal or communal monies was distributed per capita to the [Hoopa Valley] Tribe's individual members." Short v. United States, 12 Cl. Ct. 36, 41 (1987) (herein Short III).

In 1963, individual Indians who were excluded from the Secretary's distribution, comprised mostly of Yurok, brought suit against the United States, as trustee and administrator of the timber resources of the Joint Reservation, "seeking their share of the revenues the government had distributed to individual Indians of the Reservation." Short II, 661 F.2d at 152. In the first major decision in the Short case, the Court of Claims held that "the Square and the Addition together constituted a single reservation, that all the Indians of that Reservation were entitled to share in all of its revenues that were distributed to individual Indians (including the timber revenues from the Square), and the plaintiffs who were Indians of the Reservation were entitled to recover the monies the government withheld from them." Id. (citation omitted).

However, the Bureau of Indian Affairs ("BIA") continued to distribute the timber revenues only to enrolled Hoopa Valley Tribe members. See Short v. United States, 28 Fed. Cl. 590, 591 (1993) (herein Short IV). BIA did, however, limit the amount of the revenue distributions to the Hoopa Valley Tribe after Short I. "[T]he BIA began to distribute only thirty percent of the unallotted Reservation income because it estimated that Hoopa Valley Tribe members comprised thirty percent of the Indians of the Reservation." Id. The BIA retained the remaining seventy percent in an escrow fund, which came to be known as the "'Short escrow fund' or the 'seventy percent fund.'" Id. The escrow fund grew to over $60 million by the time the Court decided Short VI in 1993. See id.

Some 25 years after the Short litigation began, Congress sought a resolution to the issue of ownership of the Joint Reservation and the related timber revenues by passing the Hoopa-Yurok Settlement Act. The Act explicitly preserved the final judgments of the Short cases, see 25 U.S.C. § 1300i-2 (2006), but it also sought to resolve the decades of dispute between the Hoopa Valley Tribe and the Yurok by partitioning the Joint Reservation into the Hoopa Valley Reservation (the Square) and the Yurok Reservation (the Addition). Id. at § 1300i-1(b), (c) (2006). Although the Hoopa and Yurok peoples had shared a Joint Reservation for nearly a century, the area allocated to the Hoopa, the Square, was far richer in timber and other resources than the Addition allocated to the Yurok Indians.

The Act required the Secretary of the Interior to establish a "Settlement Fund" (the "Fund"), comprised of the Short escrow funds that had been set aside for the non-Hoopa

residents, along with other monies. See id. at § 1300i-3(a) (2006). The Act expressly delineated the Tribes' respective entitlements to the Fund. Congress gave to the Hoopa Valley and Yurok Tribes percentages of the Fund based upon their membership and the number of individuals entitled to share in the Fund. See id. at § 1300i-3(c), (d). Individuals not electing membership in either Tribe, could receive a lump sum payment of $15,000. Id. at § 1300i-5(d) (2006). The Act specified that any remainder in the Fund after these distributions to the Hoopa and certain individuals was also to be held in trust for the Yurok. Id. at § 1300i-6(a) (2006).

The Hoopa Valley Tribe sought its allocated share of the Fund. Before it could do so, the Act required that the Tribe submit a waiver of "any claim . . . against the United States arising out of the provisions of [the Act]" and consent to the addition of the Hoopa escrow to the Fund and its use as payment to the Yurok. Id. at § 1300i-1(a)(2)(A). On November 28, 1988, the Hoopa Valley Tribe passed a resolution waiving "any claim the Hoopa Valley Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act." Pls.' Am. Compl. ¶ 34; 53 Fed. Reg. 49,361-01 (Dec. 7, 1988). Subsequently, the DOI distributed to the Hoopa Valley Tribe its full allocated distribution from the Fund. The Hoopa Valley Tribe received, including certain interim payments, approximately $34 million. Pls.' Mot. for Partial Summ. J. Ex. 13, App. 152-53 (Apr. 2, 2008).

Regarding the Yurok, the Act required a similar waiver before the tribe could receive any monies from the Fund. 25 U.S.C. § 1300i-1(c)(4) ("[A]pportionment of funds to the Yurok Tribe as provided in [the Act] . . . shall not be effective unless and until the Interim 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 subchapter."). On March 10, 1992, the Yurok Interim Council brought suit in the Claims Court asserting "claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the Hoopa-Yurok Settlement Act of 1988." Pls.' Mot. Ex. 17, App. 170 (Yurok Indian Tribe v. United States, No. 92-173, Compl. ¶ 1 (Cl. Ct. Mar. 10, 1992)). Shortly thereafter, the Yurok Interim Council passed Resolution No. 93-61, stating, "[t]o the extent which the Hoopa-Yurok Settlement Act is not violative of the rights of the Yurok Tribe or its members under the Constitution of the United States or has not effected a taking without just compensation of vested Tribal or individual resources, or rights" with respect to the Square, any claim against the United States arising from the Act is waived. See Pls.' Mot. Ex. 22, App. 183-84. The Yurok's claim was ultimately consolidated with two other actions, in which the plaintiffs argued that the Act effected a Fifth Amendment taking of their property interests in the Hoopa Valley Reservation. See Karuk Tribe of Cal. v. United States, 41 Fed. Cl. 468, 469 (1998), aff'd Karuk Tribe of Cal. v. Ammon, 209 F.3d 1366 (Fed. Cir. 2000). Ultimately, this Court granted the motion and cross-motions for summary judgment of the

United States and the defendant-intervenor, and directed the clerk to dismiss the complaint. Id. at 477.

Upon conclusion of the Karuk litigation, the Secretary of the Interior submitted a report to Congress, and the BIA gave testimony before the Senate Indian Affairs Committee, describing the claim against the United States and providing recommendations on how to proceed. See 25 U.S.C. § 1300i-11(c) (2006); Pls.' Mot. Exs. 24, 25. With respect to the Hoopa, DOI concluded that it had "received its portion of the benefits under the [A]ct and is not entitled to further distributions" from the Fund. Pls.' Mot. Ex. 25, App. 251-52. DOI informed Congress that, because the Yurok litigated its takings claims rather than waiving them, the Yurok did not meet the Act's condition precedent in order to receive its share of the Settlement Fund or other benefits. Id. at App. 249. DOI explained that it did not believe the Act contemplated such a result, and recommended, among other things, that Congress consider the need for additional legislation to address any issue regarding entitlement to the Fund and to fulfill the Act's intent. Id. at App. 252.

Meanwhile, DOI, as trustee, continued to hold the Fund as late as 2007. Both tribes requested that the DOI evaluate whether it might distribute such funds administratively. Id. at Ex. 30, App. 372. After review, on March 1, 2007, Ross O. Swimmer, Special Trustee for American Indians, wrote a letter to the chairpersons of the Hoopa Valley and Yurok Tribes informing them of the DOI's conclusion that it would distribute the Fund to the Yurok, consistent with the provisions of the Act, if the Yurok were to submit a new waiver of claims. Id. at App. 374. On March 21, 2007, the Yurok Tribe Council submitted to the Special Trustee, Resolution No. 07-037, an unconditional waiver of any claims it may have against the United States arising under the Act. See id. at Ex. 32, App. 376-77. In a letter of the same day, the Special Trustee accepted the waiver and stated that DOI intended to distribute the balance of the Fund held pursuant to that Act to the Yurok. Id. at Ex. 31, App. 375. In April 2007, the United States released the Fund to the Yurok Tribe. See id. at Ex. 38, App. 400-02. Accordingly, the United States distributed approximately $80 or $90 million to the Yurok Tribe. Compare Hr'g Tr. 15 (Mar. 4, 2009) with id. at 28. The Yurok promptly began preparations to distribute the funds per capita to its members pursuant to the procedures of the Yurok Constitution.

On March 26, 2007, the Hoopa Valley Tribe filed a notice of appeal of the March 1 and 21 letters with the Interior Board of Indian Appeals ("IBIA"). Def.'s Mot. to Dismiss, or in the Alt., for Summ. J. Ex. A (July 22, 2008). On March 27, 2008, the IBIA held that it lacked jurisdiction to hear the Hoopa appeal. Id. at 1. Specifically, the IBIA held that none of the jurisdictional bases the Hoopa asserted – 43 C.F.R. § 4.2(b)(2)(ii), 25 C.F.R. § 2.4(e), and 25 C.F.R. Part 1200 – provided a basis for the IBIA's jurisdiction. Def.'s Mot. 1-3.

On February 1, 2008, Plaintiffs filed the present action challenging the distributions to the Yurok Tribe. This case was assigned to Senior Judge Lawrence S. Margolis on the same day. Plaintiffs filed an Amended Complaint on March 11, 2008. Soon afterwards, Plaintiffs filed a motion for partial summary judgment, requesting "judgment as a matter of law that the United States is liable for breach of fiduciary obligation resulting from its discriminatory distribution of the proceeds of timber sales and management of the former Joint Hoopa Valley Indian Reservation to fewer than all of the Indians of the Reservation for whom the Indian trust funds were collected." Pls.' Mot. 2. This case was reassigned to Judge Thomas C. Wheeler on April 11, 2008.

On July 22, 2008, Defendant filed a combined motion to dismiss, or in the alternative for summary judgment, and response in opposition to Plaintiffs' motion for summary judgment. About one month later, Defendant filed a third-party complaint naming the Yurok Tribe as a Third-Party Defendant, and seeking judgment against the Yurok if the Court determined that the United States mistakenly disbursed the settlement funds. Def.'s Third-Party Compl. ¶ 14 (Aug. 26, 2008). Plaintiffs filed their response to Defendant's motion and reply in support of their own motion on September 9, 2008, and Defendant replied on October 1, 2008. On October 3, 2008, Plaintiffs filed a motion requesting an in-person hearing regarding Plaintiffs' and Defendant's cross-motions. The Court granted Plaintiffs' motion for a hearing on October 27, 2008, but permitted the Yurok Tribe to respond to the cross-motions before such a hearing would be held.

The Yurok Tribe moved to dismiss Defendant's Third-Party Complaint or, in the alternative, for entry of summary judgment in favor of the Yurok on November 7, 2008 and filed its response to the cross-motions on November 21, 2008. On December 8, 2008, both Plaintiffs and Defendant responded to Yurok Tribe's motion, and the Hoopa Valley Tribe replied to the Yurok Tribe's response to the cross-motions. The Yurok Tribe replied in support of its motion on January 9, 2009. On February 27, 2009, Plaintiffs sought leave to file additional exhibits to its motion for partial summary judgment. The Court heard oral argument on Plaintiffs' motion for partial summary judgment, Defendant's cross-motion, and the Yurok Tribe's motion on March 4, 2009. During this hearing, the Court granted Plaintiffs' motion for leave to file additional exhibits.

Discussion

A. Standard of Review

Summary judgment under RCFC 56 is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. See RCFC 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Telemac Cellular Corp. v. Topp Telecom, Inc., 247 F.3d 1316, 1323 (Fed. Cir. 2001) (citation omitted). The benefit of all

presumptions and factual inferences runs in favor of the non-moving party when a court reviews a motion for summary judgment. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986) (quotation omitted); Lathan Co., Inc. v. United States, 20 Cl. Ct. 122, 125 (1990) (citation omitted). The party moving for summary judgment bears the initial burden of demonstrating the absence of genuine issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-movant must come forward with specific facts that give rise to genuine issues of material facts. RCFC 56(e); Matsushita, 475 U.S. at 587 (quotation omitted). A fact is "material" if it has the potential to affect significantly the outcome of the case. Anderson, 477 U.S. at 248. A "genuine" dispute occurs when a reasonable trier of fact could find in favor of the non-moving party based on the evidence presented. Id. If the non-moving party produces sufficient evidence to raise a genuine issue of fact material to the outcome of the case, the motion for summary judgment should be denied. See id.

B. Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment

1. Plaintiffs Lack Standing to Pursue Their Claims.

Plaintiffs, who previously have received their full entitlement of the Fund, lack standing to pursue their claims, making summary judgment under RCFC 56(c) for the Defendant appropriate. "[T]he doctrine of standing goes to the heart of the constitutional separation of powers because it defines the contours of the judicial power." Smith v. United States, 58 Fed. Cl. 374, 375 (Fed. Cl. 2003), aff'd 110 Fed. Appx. 898 (2004). "It 'serves to identify those disputes which are appropriately resolved through the judicial process.'" Id. (quoting Whitmore v. Arkansas, 495 U.S. 149, 155 (1990)). "In the absence of standing the court has no jurisdiction to decide the merits of a claim." Aldridge v. United States, 59 Fed. Cl. 387, 389 (Fed. Cl. 2004) (citing Arizonians for Official English v. Arizona, 520 U.S. 43, 67 (1997)).

The Supreme Court, in Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992), explained that "the irreducible constitutional minimum of standing contains three elements." The plaintiff must first have suffered an "'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical.'" Id. (citations and quotations omitted); see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 180-81 (2000). Second, a causal connection between the injury and the conduct about which the plaintiff complains must exist. Lujan, 504 U.S. at 560-61 (quotation omitted). Third, it must be likely that the injury will be redressed by a favorable decision. Id. at 561 (quotation omitted). The Supreme Court added that these elements are "not mere pleading requirements but rather an indispensable part of the plaintiff's case." Id. "[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but is ordinarily 'substantially

more difficult' to establish." Id. at 562 (citation omitted). Furthermore, "[t]he party invoking federal jurisdiction bears the burden of establishing standing." NCLN20, Inc. v. United States, 82 Fed. Cl. 103, 118 (2008) (citing Lujan, 504 U.S. at 561).

In the present case, "Plaintiffs allege they have suffered a concrete and actual injury by virtue of the fact that the members of the Hoopa Valley Tribe are Indians of the Reservation, and they have suffered damages as a result of the United States' unauthorized and discriminatory per capita distribution to members of the Yurok Indian Tribe from an account that was held in trust for them as well." Pls.' Resp. to Def.'s Mot. 23 (Sept. 10, 2008) (citation omitted). Plaintiffs argue that the Hoopa Valley Tribe members received "nothing" while Yurok members each received $15,652.89. Id. at 23 (citation omitted). Plaintiffs contend that, under the Short cases, if the United States made additional payments from the Joint Reservation, all "Indians of the Reservation" must be benefitted by those payments. Id. (citation omitted). Plaintiffs argue that the individual Hoopa members are Indians of the Reservation and thus beneficiaries of the timber profits held in trust by the United States. Id. at 23-24. Thus, Plaintiffs conclude that the individual members of the Hoopa Valley Tribe have standing to pursue damages for a discriminatory release of the Funds. Id. at 24 (citation omitted).

Based upon the plain meaning of the Act, however, the individual Plaintiffs do not have standing to bring claims in this matter because they have already received their full entitlement to the Fund and thus have no "injury in fact."[1] As is noted above, Congress, in the Act, specifically delineated who was entitled to receive a portion of the Fund. Congress gave to both the Hoopa Valley Tribe and the Yurok Tribe certain percentages of the Fund based upon their tribe memberships. 25 U.S.C. § 1300i-3(c), (d). Individuals not electing membership in either Tribe could receive a lump sum of $15,000. Id. at § 1300i-5(d). The Act specified that any remainder in the Fund after these distributions was also to be held in trust for the Yurok. Id. at § 1300i-6(a).[2] The Hoopa Valley Tribe ultimately received more than $34 million from the Fund, the amount determined to be Hoopa's entitlement pursuant to the Act. Pls.' Mot. Ex. 13, App. 152-53.

Thus, Plaintiffs cannot show that an "invasion of a legally protected interest" occurred in this matter to establish an "injury in fact." The Hoopa Valley Tribe already received its

---

[1] Plaintiffs concede that the Hoopa Valley Tribe has no residual entitlement to the Fund. Pls.' Mem. in Supp. of Mot. for Partial Summ. J. 3 n.3 (Apr. 2, 2008) ("[T]he Hoopa Plaintiffs . . . do not contest the Interior Department's conclusion in 2002 that the Hoopa Valley Tribe is not entitled to further distribution under the Settlement Act.") (emphasis in original).

[2] Congress estimated the equitable distribution of the Fund to be roughly one-third to the Hoopa Valley Tribe and then one-third plus the remainder (after specified individual payments) to the Yurok Tribe. Pls.' Mot. Ex. 6, App. 97, 102.

share of the Fund in 1991; only the Yurok were entitled to monies remaining in the Fund in 2007. In short, Plaintiffs already have received the amount of the Fund to which they are entitled, and could not be injured by distribution of monies to which they have no right.

Further, Plaintiffs, as individual Hoopa Valley Tribe members, had no right to an individual entitlement from the Fund. Congress, in the Act, recognized individual entitlements only for those Indians of the former Joint Reservation who chose not to become a member of either Tribe. 25 U.S.C. § 1300i-5(d). As the Plaintiffs in this case are members of the Hoopa Valley Tribe, see Am. Compl. ¶ 3, they are ineligible for a lump sum payment under the Act and could thus only benefit from the monies previously distributed to the Hoopa Valley Tribe. Simply put, the Act provides no mechanism for individual Hoopa Valley Tribe members to receive payment directly from the United States. Thus, Plaintiffs had no right to receive an individual entitlement from the United States in 2007, and could not be injured by the distribution of the Fund to the Yurok.[3]

2. Defendant's Additional Arguments

In its cross-motion, Defendant also argues that: (a) the Act expressly precludes Plaintiffs' claims; (b) Plaintiffs' failed to meet the requirements of Indian Tucker Act; (c) Plaintiffs' arguments regarding the Yurok Interim Council and the sufficiency of the Yurok Tribe's 2007 claim waiver lack merit; and (d) Plaintiffs' claims regarding the Short litigation lack merit. Def.'s Mot. 2. As the Plaintiffs have no standing to pursue their claim, Defendant's additional arguments are moot and need not be addressed.

C. Plaintiffs' Motion for Summary Judgment

Plaintiffs filed a Motion for partial summary judgment, arguing that a purely legal question exists as to whether the United States breached its trust responsibility. Pls.' Mot. 1. Given the Court's ruling that the Plaintiffs have no standing to pursue their claim, Plaintiffs' motion is without merit.

---

[3] Defendant also argues that Plaintiffs have no standing by virtue of their waiving of claims related to the Act by electing membership in the Hoopa Valley Tribe. Def.'s Mot. 13 (citing 25 U.S.C. § 1300i-5(b)(4)). However, the subsection of the Act relied upon by Defendant appears to apply only to those individuals who where on the Settlement Roll and elected to become a member of the Hoopa Valley Tribe in accordance with the Act. See 25 U.S.C. § 1300i-5(b)(1) ("Any person on the Settlement Roll . . . may elect to be, and, upon such election, shall be entitled to be, enrolled as a full member of the Hoopa Valley Tribe."); 25 U.S.C. § 1300i-5(b)(4) ("Any person making an election under this subsection shall no longer have any right or interest whatsoever in . . . the Settlement Fund."). As the Plaintiffs were already members of the Hoopa Valley Tribe before the passing of the Act, they neither were on the Settlement Roll nor elected to become Hoopa Valley Tribe members in accordance with the Act. The waiver of 25 U.S.C. § 1300i-5(b)(4) thus does not apply to the Plaintiffs.

D. Third-Party Defendant Yurok Tribe's Motion to Dismiss

Third-Party Defendant Yurok Tribe filed a motion to dismiss the United States' Third-Party Complaint contending that trust law precludes contingent recovery of the Yurok Fund from the Yurok Tribe or its members. Third-Party Def.'s Mot. to Dismiss or for Summ. J. 1 (Nov. 7, 2008). As the Plaintiffs have no standing to pursue their claim, the Yurok Tribe's motion is dismissed as moot.

Conclusion

Based upon the foregoing, Defendant's motion for summary judgment is GRANTED; Plaintiffs' motion for partial summary judgment is DENIED; and Third-Party Defendant's motion is DISMISSED as moot. The Clerk is directed to enter judgment for the Defendant.

IT IS SO ORDERED.

s/ Thomas C. Wheeler
THOMAS C. WHEELER
Judge

In the United States Court of Federal Claims

No. 08-72 L

HOOPA VALLEY TRIBE, ET AL.,
Plaintiffs,

JUDGMENT

v.

THE UNITED STATES,
Defendant and Third-Party Plaintiff,

v.

YUROK TRIBE,
Third-Party Defendant.

Pursuant to the court's Published Opinion and Order, filed March 25, 2009, granting Defendant's motion for summary judgment, denying Plaintiffs' motion for partial summary judgment, and dismissing as moot Third-Party Defendant's motion,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that judgment is in favor of defendant.

John S. Buckley
Acting Clerk of Court

March 30, 2009 By: s/Lisa L. Reyes

Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $455.00.

APPEAL, CLOSED, ECF

US Court of Federal Claims
United States Court of Federal Claims (COFC)
CIVIL DOCKET FOR CASE #: 1:08-cv-00072-TCW

HOOPA VALLEY TRIBE et al v. USA
Assigned to: Judge Thomas C. Wheeler
Demand: $80,000,000
Case in other court: 09-05084
Cause: 28:1491 Tucker Act

Date Filed: 02/01/2008
Date Terminated: 03/30/2009
Jury Demand: None
Nature of Suit: 504 Native American
Jurisdiction: U.S. Government Defendant

Plaintiff

HOOPA VALLEY TRIBE
on its own behalf, and in its capacity as parens patriae on behalf of its members;

represented by **Thomas P. Schlosser**
Morisset, Schlosser, et al.
801 2nd Avenue
Suite 1115
Seattle, WA 98104-1509
(206) 386-5200
Fax: 206 386 7322
Email: t.schlosser@msaj.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

OSCAR BILLINGS

represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

BENJAMIN BRANHAM, JR.

represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

WILLIAM F. CARPENTER, JR.

represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

MARGARET MATTZ DICKSON

represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Plaintiff
FREEDOM JACKSON
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
WILLIAM J. JARNAGHAN, SR.
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
JOSEPH LEMIEUX
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
CLIFFORD LYLE MARSHALL
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
LEONARD MASTEN, JR.
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
DANIELLE VIGIL-MASTEN
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
LILA CARPENTER
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff
ELTON BALDY
represented by **Thomas P. Schlosser**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

USA

represented by **Devon Lehman McCune**
U. S. Department of Justice
1961 Stout St.
8th Floor
Denver, CO 80294
303-844-1487
Fax: 303-844-1350
Email: devon.mccune@usdoj.gov
TERMINATED: 05/21/2008
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara E. Costello
U. S. Department of Justice
Environment and Land Division
P.O. Box 663
Washington, DC 20044-0663
(202) 305-0466
Fax: (202) 305-0267
Email: sara.costello@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Defendant

YUROK TRIBE
Yurok Tribe

represented by **Jonathan Lynwood Abram**
Hogan & Hartson L.L.P.
555 13th Street, NW
Washington, DC 20004-1109
(202) 637-5681
Fax: (202) 637-5910
Email: jlabram@hhlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/01/2008	1	COMPLAINT against USA (DOI) (Filing fee $250, Receipt number 067632), filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Answer due by 4/4/2008.** (Attachments: # 1 Civil Cover Sheet)(bre,) (Entered: 02/04/2008)
02/01/2008	2	NOTICE of Assignment to Judge Lawrence S. Margolis. (bre,) (Entered: 02/04/2008)
02/01/2008	3	NOTICE of Designation of Electronic Case. (bre,) (Entered: 02/04/2008)

02/01/2008	4	NOTICE of Directly Related Case(s) [102-63, 90-3993L, 91-1432L,92-173L], filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR. Service: 1/31/2008.(bre,) (Entered: 02/04/2008)
03/11/2008	5	AMENDED COMPLAINT, filed by all plaintiffs.. (Schlosser, Thomas) (Entered: 03/11/2008)
03/25/2008	6	NOTICE of Appearance by Devon Lehman McCune for USA. (McCune, Devon) (Entered: 03/25/2008)
03/25/2008	7	Unopposed MOTION for Extension of Time until 6/2/2008 to File Answer re 1 Complaint, 5 Amended Complaint, filed by USA.**Response due by 4/11/2008.** (Attachments: # 1 Text of Proposed Order)(McCune, Devon) (Entered: 03/25/2008)
03/27/2008	8	ORDER granting 7 Motion for Extension of Time to Answer Complaint, **Answer due by 6/2/2008.** Signed by Judge Lawrence S. Margolis. (lmc) (Entered: 03/27/2008)
04/02/2008	9	MOTION for Partial Summary Judgment, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, Elton Baldy, Leonard Masten, Jr., Danielle Vigil-Masten, Lila Carpenter, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Response due by 5/5/2008.** (Attachments: # 1 Plaintiffs' Proposed Findings of Uncontroverted Facts# 2 Affidavit Declaration of Thomas P. Schlosser Regarding Appendix# 3 HVT & Individual Hoopa Tribal Members' Memorandum In Support of Motion for Partial Summary Judgment# 4 Appendix App1_34# 5 Appendix App35_54# 6 Appendix App55_77# 7 Appendix App78_90# 8 Appendix App91_104# 9 Appendix App105_118# 10 Appendix App119_134# 11 Appendix App135_151# 12 Appendix App152_169# 13 Appendix App170_188# 14 Appendix App189_214# 15 Appendix App215_240# 16 Appendix App241_290# 17 Appendix App291_294# 18 Appendix App295_304# 19 Appendix App305_326# 20 Appendix App327_347# 21 Appendix App348_392# 22 Appendix App393_405)(Schlosser, Thomas) (Entered: 04/02/2008)
04/10/2008	10	ORDER TRANSFERRING CASE to Judge Thomas C. Wheeler. Signed by Judge Lawrence S. Margolis. (lmc) (Entered: 04/10/2008)
04/11/2008	11	NOTICE of Reassignment. Case reassigned to Judge Thomas C. Wheeler for all further proceedings. Judge Lawrence S. Margolis no longer assigned to the case. (mb2) (Entered: 04/11/2008)
04/25/2008	12	MOTION to Stay Briefing on Plaintiffs' Motion for Partial Summary Judgment, filed by USA.**Response due by 5/12/2008.** (Attachments: # 1 Text of Proposed Order)(McCune, Devon) (Entered: 04/25/2008)
05/01/2008	13	RESPONSE to 12 MOTION to Stay Briefing on Plaintiffs' Motion for Partial Summary Judgment *Opposition to Motion to Stay Briefing on Plaintiffs' Motion for Partial Summary Judgment*, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Reply due by 5/15/2008.** (Attachments: # 1 # 2 # 3 # 4) (Schlosser, Thomas) (Entered: 05/01/2008)

05/02/2008	14	ORDER denying 12 Motion to Stay. Defendant's response to Plaintiff's motion for partial summary judgment due by June 2, 2008. Signed by Judge Thomas C. Wheeler. (ck) (Entered: 05/02/2008)
05/02/2008		Set/Reset Deadlines: Defendants Response to Motion for Partial Summary Judgment due by 6/2/2008. (dw1) (Entered: 05/05/2008)
05/21/2008	15	NOTICE of Appearance by Sara Elizabeth Costello for USA. (Costello, Sara) (Entered: 05/21/2008)
05/21/2008	16	Unopposed MOTION for Extension of Time until July 8, 2008 to Response to Complaint and Motion for Partial Summary Judgment on Question of Breach of Trust Responsibility, filed by USA. (Attachments: # 1 Text of Proposed Order)(Costello, Sara) (Entered: 05/21/2008)
05/22/2008	17	ORDER granting 16 Motion for Extension of Time. Signed by Judge Thomas C. Wheeler.(ck) (Entered: 05/22/2008)
05/22/2008		Set/Reset Deadlines: Answer due by 7/8/2008. Motion for Partial Summary Judgment due by 7/8/2008. (dw1) (Entered: 05/23/2008)
06/26/2008	18	Unopposed MOTION for Extension of Time until July 22 to file Responses to Plaintiffs' Complaint and Motion for Partial Summary Judgment, filed by USA.**Response due by 7/14/2008.** (Attachments: # 1 Text of Proposed Order)(Costello, Sara) (Entered: 06/26/2008)
06/30/2008	19	ORDER granting 18 Motion for Extension of Time: **Defendant's response due by July 22, 2008.** Signed by Judge Thomas C. Wheeler. (ck) (Entered: 06/30/2008)
07/22/2008	20	CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM, JR., CLIFFORD LYLE MARSHALL, LEONARD MASTEN, JR., OSCAR BILLINGS, ELTON BALDY, HOOPA VALLEY TRIBE, filed by USA.**Response due by 8/22/2008.** (Attachments: # 1 Exhibit A, # 2 Proposed Findings of Uncontroverted Facts, # 3 Text of Proposed Order)(Costello, Sara) (Entered: 07/22/2008)
07/22/2008	21	MOTION to Summon Third Person, Yurok Tribe *Pursuant to RCFC 14(a)*, filed by USA.**Response due by 8/8/2008.** (Attachments: # 1 Exhibit A, # 2 United States Third Party Complaint, # 3 Text of Proposed Order)(Costello, Sara) (Entered: 07/22/2008)
08/08/2008	22	RESPONSE to 21 MOTION to Summon Third Person, Yurok Tribe, *Pursuant to RCFC 14 (a)* , filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Reply due by 8/22/2008.** (Attachments: # 1 Exhibit Memo of Pretrial Conf Held 05/17/74)(Schlosser, Thomas) (Entered: 08/08/2008)
08/12/2008	23	MOTION for Extension of Time until 9/12/2008 to File Response to 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM. **Response due by 8/29/2008.**(Schlosser, Thomas) Modified on 8/23/2008 to edit docket text for clarity. (dls). (Entered: 08/12/2008)

08/13/2008	24	ORDER granting 23 Motion for Extension of Time to File Response/Reply. Signed by Judge Thomas C. Wheeler. (ck) (Entered: 08/13/2008)
08/22/2008	25	REPLY to Response to 21 MOTION to Summon Third Person, Yurok Tribe, *Pursuant to RCFC 14(a)* , filed by USA. (Costello, Sara) (Entered: 08/22/2008)
08/25/2008	26	ORDER granting 21 Motion to Summon Third Party. Signed by Judge Thomas C. Wheeler. (ck) Modified on 8/26/2008 to correct pdf. (dls). (Entered: 08/25/2008)
08/26/2008	27	NOTICE, filed by USA *the United States' Third Party Complaint* (Costello, Sara) (Entered: 08/26/2008)
08/26/2008	28	Summons Issued to Defendant for Service on Third party pursuant to Order of August 25, 2008. (dls) (Entered: 08/26/2008)
09/10/2008	29	RESPONSE to 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,, 9 MOTION for Partial Summary Judgment *On Question of Breach of Trust Responsibility*, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Reply due by 9/22/2008.** (Attachments: # 1 Appendix Supplemental Appendix of Exhibits to Hoopa Motion for Partial SJ, # 2 Affidavit Declaration of Clifford Lyle Marshall, # 3 Affidavit Declaration of Ollie Mae Davis, # 4 Plaintiffs' Response to Defendant's Additional Proposed Findings of Uncontroverted Fact)(Schlosser, Thomas) (Entered: 09/10/2008)
09/16/2008	30	Unopposed MOTION for Extension of Time to File Response or Reply, filed by USA.**Response due by 10/3/2008.** (Attachments: # 1 Text of Proposed Order)(Costello, Sara) (Entered: 09/16/2008)
09/17/2008		ORDER granting 30 Motion for Extension of Time to File Reply in Support of Defendant's Motion to Dismiss, or in the Alternative for Summary Judgment. **Reply due by 10/1/2008.** Signed by Judge Thomas C. Wheeler. (wjg) (Entered: 09/17/2008)
10/01/2008	31	REPLY to Response to Motion re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER,

		FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,, filed by USA. (Costello, Sara) (Entered: 10/01/2008)
10/03/2008	32	MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,, 9 MOTION for Partial Summary Judgment *Hoopa Plaintiffs' Request for In-Person Hearing*, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Response due by 10/20/2008.**(Schlosser, Thomas) (Entered: 10/03/2008)
10/10/2008	33	NOTICE of Appearance *of Jonathan Abram*. (Abram, Jonathan) (Entered: 10/10/2008)
10/10/2008	34	Unopposed MOTION for Extension of Time until November 7, 2008 to Response to Third Party Complaint, filed by YUROK TRIBE.**Response due by 10/27/2008.** (Attachments: # 1 Text of Proposed Order)(Abram, Jonathan) (Entered: 10/10/2008)
10/10/2008	35	RESPONSE to 32 MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP, filed by USA.**Reply due by 10/27/2008.** (Costello, Sara) (Entered: 10/10/2008)
10/10/2008	36	REPLY to Response to Motion re 32 MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER,

		JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP MOTION for Hearing re 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEP, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR. (Schlosser, Thomas) (Entered: 10/10/2008)
10/15/2008	37	ORDER granting 34 Motion for Extension of Time to Respond to Third Party Complaint. Response due by 11/7/08. Signed by Judge Thomas C. Wheeler. (wjg) (Entered: 10/15/2008)
10/27/2008	38	ORDER granting 32 Motion for Hearing. Third Party Defendant's Response to Cross Motions due November 21, 2008. Signed by Judge Thomas C. Wheeler. (wjg) (Entered: 10/27/2008)
11/07/2008	39	MOTION to Dismiss pursuant to Rule 12(b)(6) *Third Party Complaint*, filed by YUROK TRIBE.**Response due by 12/8/2008.**(Abram, Jonathan) (Entered: 11/07/2008)
11/21/2008	40	RESPONSE to 20 CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,CROSS MOTION and RESPONSE to 9 Motion for Partial Summary Judgment,,,, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM,, 9 MOTION for Partial Summary Judgment, filed by YUROK TRIBE.**Reply due by 12/8/2008.** (Abram, Jonathan) (Entered: 11/21/2008)
12/08/2008	41	RESPONSE to 39 MOTION to Dismiss pursuant to Rule 12(b)(6) *Third Party Complaint United States' Brief in Opposition to Third Party Defendant Yurok Tribe's Motion to Dismiss or in the Alternative for Summary Judgment*, filed by USA.**Reply due by 12/26/2008.** (Attachments: # 1 Exhibit Exh 1)(Costello, Sara) (Entered: 12/08/2008)
12/08/2008	42	RESPONSE to 39 MOTION to Dismiss pursuant to Rule 12(b)(6) *Third Party Complaint Hoopa Plaintiffs' Response to Third Party Defendant Yurok Tribe's Motion to Dismiss or for Summary Judgment*, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON,

		WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Reply due by 12/22/2008.** (Schlosser, Thomas) (Entered: 12/08/2008)
12/08/2008	43	REPLY to Response to Motion re 9 MOTION for Partial Summary Judgment *Hoopa Plaintiffs' Reply to Third Party Defendant Yurok Tribe's Response to Plaintiffs' and Defendant's Cross-Motions for Summary Judgment*, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR. (Schlosser, Thomas) (Entered: 12/08/2008)
12/19/2008	44	Unopposed MOTION for Extension of Time until January 9, 2009 to To file Reply in Support of Motion to Dismiss, filed by YUROK TRIBE.**Response due by 1/5/2009.**(Abram, Jonathan) (Entered: 12/19/2008)
12/22/2008	45	ORDER granting 44 Motion for Extension of Time. Yurok Tribe's Reply is due 1/9/09. Signed by Judge Thomas C. Wheeler. (wjg) (Entered: 12/22/2008)
01/09/2009	46	REPLY to Response to Motion re 39 MOTION to Dismiss pursuant to Rule 12(b)(6) *Third Party Complaint*, filed by YUROK TRIBE. (Abram, Jonathan) (Entered: 01/09/2009)
02/06/2009	47	ORDER Setting Hearing on Motion 9 Plaintiffs' Motion for Partial Summary Judgment, 20 Defendant's Cross Motion for Summary Judgment, and 39 Third Party Defendant's Motion to Dismiss Third Party Complaint: **Motion Hearing set for 3/4/2009 10:00 AM in National Courts Building before Judge Thomas C. Wheeler.** Signed by Judge Thomas C. Wheeler. (wjg) (Entered: 02/06/2009)
02/27/2009	48	MOTION for Leave to File Hoopa Plaintiffs' Motion for Partial Summary Judgment *Motion for Leave to File Add'l Exs in Support of Hoopa Plaintiffs' Motion for Partial Summary Judgment*, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR.**Response due by 3/16/2009.**(Schlosser, Thomas) (Entered: 02/27/2009)
03/04/2009		Minute Entry for proceeding held in Washington, D.C. on 3/4/2009 before Judge Thomas C. Wheeler: Oral Argument. [Total number of days of proceeding: 1]. Official record of proceeding taken by court reporter. (Click HERE for link to Court of Federal Claims web site forms page for information on ordering: certified transcript from reporter or certified transcript of proceeding from official digital recording.) (wjg) (Entered: 03/04/2009)
03/09/2009	49	Notice Of Filing Of Official Transcript for proceedings held on March 4, 2009 in Washington, DC. (dwl) (Entered: 03/10/2009)
03/09/2009	50	TRANSCRIPT of Proceedings (pages 1-43) held on March 4, 2009 before Judge Thomas C. Wheeler. Procedures Re: Electronic Transcripts and Redactions. For copy, contact Heritage Court Reporting, (202) 628-4888. Forms to Request Transcripts. Notice of Intent to Redact due 3/16/2009. Redacted Transcript Deadline set for 4/9/2009. Release of Transcript

		Restriction set for 6/8/2009. (dw1) (Entered: 03/10/2009)
03/25/2009	51	PUBLISHED OPINION granting 20 Defendant's Cross Motion for Summary Judgment; denying 9 Plaintiffs' Motion for Partial Summary Judgment; and finding as moot 39 Defendant-Intervenor's Motion to Dismiss. The Clerk is directed to enter judgment for the Defendant. Signed by Judge Thomas C. Wheeler. (wjg) (Entered: 03/25/2009)
03/30/2009	52	JUDGMENT entered, pursuant to Rule 58, in favor of defendant. (lld) (Entered: 03/30/2009)
05/18/2009	53	NOTICE OF APPEAL, filed by MARGARET MATTZ DICKSON, FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR, JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL, HOOPA VALLEY TRIBE, LEONARD MASTEN, JR, DANIELLE VIGIL-MASTEN, LILA CARPENTER, ELTON BALDY, OSCAR BILLINGS, BENJAMIN BRANHAM, JR, WILLIAM F. CARPENTER, JR. Filing fee $ 455, receipt number 069611. Copies to judge, opposing party and CAFC. (hw1,) (Entered: 05/18/2009)
05/19/2009		CAFC Case Number 2009-5084 for 53 Notice of Appeal, filed by LILA CARPENTER, FREEDOM JACKSON, MARGARET MATTZ DICKSON, WILLIAM F. CARPENTER, JR., DANIELLE VIGIL-MASTEN, WILLIAM J. JARNAGHAN, SR., JOSEPH LEMIEUX, BENJAMIN BRANHAM, JR., CLIFFORD LYLE MARSHALL, LEONARD MASTEN, JR., OSCAR BILLINGS, ELTON BALDY, HOOPA VALLEY TRIBE. (hw1,) (Entered: 06/08/2009)

PACER Service Center			
Transaction Receipt			
06/08/2009 17:07:00			
PACER Login:	pm0053	**Client Code:**	0020-09561-63
Description:	Docket Report	**Search Criteria:**	1:08-cv-00072-TCW
Billable Pages:	7	**Cost:**	0.56

Electronically Filed on March 11, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72 L Judge Lawrence S. Margolis FIRST AMENDED COMPLAINT

NATURE OF ACTION

1. Plaintiffs, Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten; and the Hoopa Valley Tribe, in its own capacity and *as parens patriae* on behalf of its members ("Hoopa Valley Tribe" or "Tribe"), by and through undersigned counsel of record, seek money damages from Defendant United States of America for breach of trust through discriminatory distributions of the proceeds of timber sales and other Reservation income of the former Hoopa Valley Indian Reservation, the "Joint Reservation."

PARTIES

2. Plaintiff Hoopa Valley Tribe is a sovereign and federally recognized Indian tribe, possessing all legal rights and responsibilities afforded to federally recognized Indian tribes. The Tribe is organized under a Constitution and Bylaws ratified by Congress in 1988. The Tribe occupies the Hoopa Valley Indian Reservation (the "Reservation" or the "Square"), located in

northwestern California, and is the beneficial owner of land and natural resources within the Reservation, title to which is held in trust by the United States for the benefit of the Tribe. The Hoopa Valley Tribe is a named beneficiary of the Hoopa-Yurok Settlement Act ("HYSA" or "Settlement Act"), Pub. L. 100-580, *codified in part at* 25 U.S.C. § 1300i, *et seq*. The Tribe sues in its own capacity and in its capacity as *parens patriae* on behalf of its members.

3. Plaintiffs Elton Baldy, Oscar Billing, Benjamin Branham, Jr., Lila Carpenter, William F. Carpenter, Jr., Margaret Mattz Dickson, Freedom Jackson, William J. Jarnaghan, Sr., Joseph LeMieux, Clifford Lyle Marshall, Leonard Masten, Jr., and Danielle Vigil-Masten, are enrolled members of the Hoopa Valley Tribe.

4. Defendant United States, through the Secretary of the Interior, Special Trustee for the Office of Special Trustee for American Indians, and the Secretary of the Treasury, as a matter of constitutional, statutory, regulatory, and federal common law, is trustee and a fiduciary to the Tribe and is charged with carrying out trust duties and responsibilities with regard to the management and administration of the Hoopa-Yurok Settlement Fund.

JURISDICTION

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1505 (the Indian Tucker Act) and 1491 (the Tucker Act), as this action involves a claim against the United States for money damages brought by an Indian tribe arising under the Constitution, laws, treaties, or regulations of the United States, or Executive Orders of the President, including, but not limited to:

a. Hoopa-Yurok Settlement Act ("HYSA" or "Settlement Act"), Pub. L. 100-580, c*odified in part at* 25 U.S.C. § 1300i, *et seq*.; and

b. The Act of October 25, 1994 (American Indian Trust Fund Management Reform Act of 1994), Pub. L. No. 103-412, codified at 25 U.S.C. §§ 161a, 162a, and 4001–4061 (1997), which imposes various accounting, auditing, fund management, reconciliation and reporting obligations on the United States; and

c. Act of June 24, 1938, ch. 648, 52 Stat. 1037 (*codified as amended at* 25 U.S.C. § 162a (2000)).

6. The United States has waived its sovereign immunity under 28 U.S.C. §§ 1491 and 1505. *United States v. Mitchell*, 469 U.S. 206, 228 (1983).

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

7. Congress has charged the Secretary of the Interior with the duty to collect income derived from tribal trust assets and to deposit such income in the United States Treasury and other depository institutions for the benefit of the Tribe. Pursuant to the duties and authority delegated by Congress, the Secretary of Interior exercises comprehensive control over the trust funds that were or are in the Hoopa-Yurok Settlement Fund.

8. Under longstanding constitutional, statutory, and federal common law, and based upon the historic relationship between the United States and Indian tribes, the United States assumed the obligations and duties of a trustee by establishing and maintaining comprehensive regulatory control of funds derived from tribal trust lands and resources. The United States owes a trust duty to the Tribe with regard to the Hoopa-Yurok Settlement Fund. In the exercise of that trust duty, the United States is held to the most exacting fiduciary standards.

9. The United States has failed to administer the Settlement Fund consistent with federal law and has permitted and/or authorized the disbursement of the Settlement Fund in violation of statutory, regulatory, and common law trust duties owed to the Tribe.

History Leading to the Hoopa-Yurok Settlement Act

10. The Hoopa Valley Reservation, as it existed from 1891–1988,[1] consisted of three parcels, of which the "Square" was the largest. The first parcel, the Klamath River Reservation was reserved by Executive Order in 1855. In 1864, Congress passed a statute authorizing four reservations for Indians in California and later that year the Hoopa Square became one of them. An Executive Order in 1876 formally defined the boundaries of the Square. Although the Tribe did not know it at the time, the third parcel, a thirty-five mile strip between the two reservations, gained reservation status in 1891 by an Executive Order that joined the Klamath River and Hoopa parcels. Thus after 1891 the three parcels were enclosed within one continuous boundary.

11. As connected by the Executive Orders, the 1891 Reservation spanned traditional tribal areas of two tribes, the Hoopas and the Yuroks. The Yurok parcels, valuable redwood timber lands, were largely allotted to individual Indians in the 1890s. Most of the Hoopa Square was reserved from allotment.

12. By 1955, many of the Yurok allottees had sold their land and timber, and little unallotted land remained on the Extension. In 1955, at the request of the Hoopa Valley Tribe, the Bureau of Indian Affairs ("BIA") began to sell timber from the Square. The BIA distributed the proceeds as directed by the constitutionally-established Hoopa Valley Business Council. The Interior Department Solicitor approved the distributions. 65 I.D. 59, 2 Op. Sol. Int. 1814 (1958). Certain nonmembers of the Hoopa Valley Tribe sued the United States in 1963, claiming that, although they were not enrolled in any tribe, they too should receive per capita payments. *Jessie Short, et al. v. United States*, No. 102-63 (Ct. Cl.).[2]

---

[1] The Reservation consisting of the Square, the former Klamath River Reservation, and the Connecting Strip has been referred to variously as the "1891 Reservation," "former Reservation," and "Joint Reservation."

[2] *Short v. United States* includes seven reported opinions (202 Ct. Cl. 870 (1973);

13. In 1973, the *Short* court ruled that the Federal Executive Orders made the three reservation parcels a single unified reservation from 1891 onward, and the BIA had violated statutory trust duties to non-Hoopa "Indians of the Reservation" by its administration of trust funds generated by Joint Reservation resources which should have been used for the benefit of all Indians of the Reservation. The Court set about determining who those excluded Indians of the Reservation were. *Short I*, 202 Ct. Cl. 870 (1973) (per curiam), *cert. denied*, 416 U.S. 961 (1974).

14. On April 24, 1988, the Hoopa-Yurok Settlement Act was introduced as H.R. 4469. Two House and two Senate hearings were held in June and September 1988. The Senate version of the bill, S. 2723, was signed into law on October 31, 1988, as Public Law 100-580, 102 Stat. 2924.

15. Special Trustee Ross O. Swimmer, who was the Assistant Secretary of Interior Indian Affairs in 1988, provided testimony opposing certain provisions in the Senate Bill. In 1988, Mr. Swimmer advocated that the Yurok General Council, not the Yurok Interim Council, act upon the proposed waiver of claims, by the Yurok Tribe. Different language was adopted by Congress. Sections 2(c)(4) and 9(d) of the Act assigned that task to the Yurok Interim Council. 102 Stat. 2926, 2933.

The Hoopa-Yurok Settlement Act

16. Section 2 of the Settlement Act authorized splitting the 1891 Reservation into the new Hoopa Valley Reservation and the Yurok Reservation, conditioned upon the Hoopa Valley

---

661 F.2d 150 (Ct. Cl. 1981); 719 F.2d 1133 (Fed. Cir. 1983); 12 Cl. Ct. 36 (1987); 25 Cl. Ct. 722 (1992); 28 Fed. Cl. 590 (1993); and 50 F.3d 994 (Fed. Cir. 1995)) and hundreds of unreported orders. *Short*, still pending after 44 years, also spawned many related lawsuits. *Short* is a "breach of trust" case against the United States.

Tribe enacting a resolution waiving certain claims. A Yurok share of the Settlement Fund was similarly conditioned upon a claims waiver by the Yurok Interim Council.

17. Section 4 of the Settlement Act established a Hoopa-Yurok Settlement Fund pooling the Escrow funds—all Hoopa or Yurok trust funds in existence on the date of the Act. Section 4(c) authorized certain distributions from the Settlement Fund.

18. Section 5 directed the Bureau to establish the Hoopa Yurok Settlement Roll using criteria established for "Indians of the Reservation" in the *Short* case. The Settlement Roll was completed and published on March 21, 1991. 56 Fed. Reg. 12,062.

19. Section 6 established three choices that were available to persons on the Settlement Roll: Hoopa tribal membership, Yurok tribal membership, or receipt of a lump sum payment. Nearly 3000 persons, approximately eighty percent (80%) of those on the Settlement Roll, selected the Yurok tribal membership option, together with a $5000 payment ($7500 for persons over age 50). Most of the adults selecting Yurok tribal membership (about 1800 persons) were plaintiffs previously held to be Indians of the Reservation in the *Short* case. In addition to the Settlement Act payments made to those members, as *Short* plaintiffs they each ultimately received damage awards of approximately $25,000, depending upon the distributions of reservation funds from which they had been excluded.

20. Sections 8 and 9 addressed tribal governance problems. Section 8 ratified and confirmed the 1972 Constitution of the Hoopa Valley Tribe. Under Section 9, a 5-member Interim Council of the Yurok Tribe was to be elected to prepare a constitution and perform other functions, including consideration of opting to obtain funds offered in the Settlement Act by enacting an unconditional claim waiver. Yurok members completed and approved a constitution in 1993.

21. Section 14 directed the Interior Department to report the outcome of litigation to Congress, which would consider amendments to the Settlement Act.

The Hoopa-Yurok Settlement Fund

22. The Settlement Fund established by Section 4 of the HYSA, 25 U.S.C. § 1300i-3, combined seven existing trust accounts and $10 million in federal appropriations. The seven trust accounts, known as the "escrow funds," came about because federal laws required the Secretary of the Interior to deposit into U.S. Treasury trust accounts the income from certain BIA regulated activities such as logging on unallotted lands, leases of unallotted lands, and tribal commercial fishing income. In 1991, the total Settlement Fund amounted to about $85 million dollars ($75 million from the escrow accounts, plus $10 million in new federal money).

23. The escrow funds included monies from the Yurok Reservation as well as from the Hoopa Reservation, but the funds from the Yurok Reservation were comparatively small. For example, the proceeds of Klamath River Reservation account totaled about $75,000. The proceeds of labor (Lower Klamath) totaled about $17,000. The proceeds of labor (upper Klamath) totaled about $219,000. The Klamath River Fisheries account totaled approximately $459,000. The major escrow accounts were those originating from logging on the Hoopa Square, particularly the "70%" account, and the "Reservation wide" account. These accounts had been set aside by the BIA for the benefit of the "Indians of the Reservation," a group that expressly included the Hoopa Valley Tribe.

24. The BIA Office of Tribal Services prepared an analysis of the components of the Settlement Fund in their Memorandum regarding Issuance of Per Capita Checks from the Hoopa Yurok Settlement Act Funds, dated October 24, 1991. They concluded that 1.263% of the

escrow funds came from the Yurok Reservation. Over 98% of the monies in the accounts which became the Settlement Fund were derived from clear-cutting forests on the Hoopa Square.

25. The escrow accounts were the subject of the *Short v. United States* litigation. *Short* held that the Secretary of the Interior has authority over the sale and management of timber and other income of the Joint Reservation because 25 U.S.C. § 407 established a fiduciary relationship with the Hoopa and other Indians of the Reservation with respect to the timber, and can fairly be interpreted as mandating compensation for damages sustained through discriminatory distribution of the funds.

26. *Short* plaintiffs sought to have the court award to them the escrow funds in their entirety, but the court refused saying:

> Under [25 U.S.C.] § 407, Congress has stated that the income from the sale of timber on unallotted lands "shall be used for the benefit of the Indians who are members of the tribe or tribes concerned in such manner as [the Secretary] may direct." . . . While the Secretary does exercise discretion over these funds, such discretion is not unlimited. The action must be consistent with the government's overriding fiduciary obligation to Indian tribes and individual Indians in the management of their resources, property, and affairs.
>
> The violation of these duties under the statute would give rise to an action for money damages. . . .
>
> The *Short* escrow funds remain subject to the Secretary's discretion and shall be expended as the Secretary determines, for the benefit of the Indians of the Reservation as provided by statute, and in a manner otherwise consistent with this opinion and previous court decisions.

Short IV, 12 Cl. Ct. 36, 45 (1987), *aff'd*, 50 F.3d 994 (Fed. Cir. 1995) (emphasis added).

27. The monies in the Fund were only partly distributed under the HYSA. The Act offered portions of the Fund to the Yurok Tribe and its members if the Yurok Interim Council and its members waived their claims against the United States. 25 U.S.C. §§ 1300i-1(c)(4) and -

5(c)(4). The individual Yurok members waived their claims and received payments;[3] the Yurok Interim Council, acting on behalf of the tribal government, refused to waive the Tribe's claims.

28. Under the Settlement Act, the Secretary of Interior was required to "invest and administer" . . . "as Indian trust funds pursuant to . . . 25 U.S.C. § 162a" any funds that were not distributed under the Settlement Act.

Waiver and Payment Provisions of the HYSA

29. The tribal claim waiver provisions appear in Sections 2 and 9 of the HYSA. Individuals on the Settlement Roll granted waivers pursuant to Section 6 of the Act. The waiver provisions arose from concerns that a taking of property protected by the Fifth Amendment could be found by a court reviewing the Act. Ultimately, the courts found no takings.

30. The Hoopa Valley Tribe was required to enact a waiver within sixty days of the passage of the Act in order to effect the partition of the Reservation and the ratification of the Tribe's Constitution. Due to the process established in the HYSA, the Yurok Tribe had over five years from passage of the Act to consider a proposed waiver through its Interim Council. The Interim Council was granted complete authority to adopt a resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Act. Section 9(d)(2).

31. The proposed bill initially required that the Yurok waiver issue be decided at the organizational meeting, but that suggestion was scrapped in favor of delegating that decision to the 5-member Yurok Interim Council which had a statutory life span of two years. Section 9(d)(5). The Senate committee adopted an amendment assigning the claims waiver resolution responsibility to the Interim Council instead of the General Council. S. Rep. 100-564 at 26

[3] The HYSA authorized certain payments from the Settlement Fund, including over $17 million which was paid to Yurok Tribe members under 25 U.S.C. § 1300i-5(c)(3) and to the Yurok Transitional Team under 25 § U.S.C. 1300i-3(a)(3).

(1988). The Act expressly distinguished among the Yurok Transition Team, the Yurok Interim Council, and the governing body under the proposed Yurok Constitution.

32. The Senate Report explains that the authority for certain transfers of funds:

> [S]hall not be effective unless the Interim Council of the Yurok Tribe adopts a resolution waiving any claims it might have against the United States under this Act and granting consent as provided in section 9(d)(2). Section 9 of the bill provides for an Interim Council to be elected by the General Council of the tribe.

S. Rep. 100-564 at 18 (1988).

33. The Yurok Tribe's Interim Council had only two years to make a choice: enact a waiver and receive the portion of the Fund which the HYSA awarded, or refuse to grant a waiver and instead conduct takings claims litigation.

Application of the Waiver Requirement

34. On December 7, 1988, the Interior Department published a notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of Section 2(a)(2)(A) of the Act. 53 Fed. Reg. 49,361. The approved resolution noted that "the waiver required by the Act does not prevent the Hoopa Valley Tribe from enforcing rights or obligations created by this Act, S. Rep. 100-564 at 17." As a result, the 1891 Reservation was partitioned. The boundaries of the two new reservations are described in the Federal Register and comport with traditional tribal areas. 54 Fed. Reg. 19,465 (May 5, 1989); *see* S. Rep. 100-564 at 17–18.

35. In accordance with the HYSA, a roll of eligible Indians was prepared and approximately 3000 persons selected the option of membership in the Yurok Tribe. Under Section 6(c)(4), persons electing Yurok membership waived their individual claims and also granted to members of the Interim Council a proxy directing them to grant necessary tribal consent and approve a proposed resolution waiving any claim arising out of the Act that the

Yurok Tribe may have against the United States. Under Section 9(c), the Secretary of the Interior prepared a voter list for adults who elected the Yurok tribal membership option, convened a General Council meeting of the eligible voters, and conducted an election of a five-member Interim Council.

36. The HYSA carefully and specifically defined "Interim Council" in Section 9. The Interim Council replaced the Yurok Transition Team, a federal instrumentality which had been appointed by the Secretary of Interior shortly after passage of the Act. Sections 9(a)(3) and 14(a).[4] As anticipated in the HYSA, during the two-year lifespan of the Yurok Interim Council, the Tribe adopted a constitution and chose a governing body.[5] The Act also anticipated that the Interim Council would waive its takings claims and accept the settlement. The Interim Council did not do so.

37. On March 11, 1992, the Yurok Interim Council filed *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Fed. Cl.). The complaint asserted "claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the [HYSA]." This takings claim was among the claims that were to be waived by the Interim Council prior to November 25, 1993. 25 U.S.C. §§ 1300i-1(c)(4) and 1300i-11(a).

38. The Yurok Interim Council refused the offer contained in the HYSA and opted to transform a "protective" suit into a nine-year litigation campaign. The results were dismissal of

---

[4] The last sentence of Section 14(a) was added by Pub. L. 101-301 and codified at 25 U.S.C. § 1300i-11(a) to protect the Yurok Transition Team.

[5] The Yurok Interim Council successfully gained federal recognition of a 9-member Yurok Tribal Council, elected pursuant to the October 22, 1993, Constitution, and received grants and contracts to aid the exercise of future tribal governing authority over the Yurok Reservation.

the Yurok Tribe's claims. *Karuk Tribe of California, et al. v. Ammon*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366, 1372 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001) ("This litigation is the latest attempt by plaintiffs to receive a share of the revenues from timber grown on the square.").[6]

39. The Yurok Interim Council did adopt a resolution regarding the claim waiver near the end of its term, Resolution No. 93-61, but the Interior Department ruled that it did not qualify as a resolution waiving claims the Yurok Tribe had against the United States. The resolution specifically preserved the right to pursue the lawsuit that the Interim Council had filed earlier in March 1992.

Prior Consistent Positions of the Department of the Interior Rejecting New Waiver

40. In 1992, The Assistant Secretary – Indian Affairs explained the situation as follows:

> The Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-8(d)(2)(i), authorizes the Interim Council to adopt a resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Settlement Act. Section 2(c)(4) of the Settlement Act, 25 U.S.C. § 1300i-l(c)(4), spells out the consequences to the Yurok Tribe of refusing to adopt such a resolution. It provides as follows: 'The - (A) apportionment of funds to the Yurok Tribe as provided in sections 1300i-3 and 1300i-6 of this title; (B) the land transfers pursuant to paragraph (2); (C) the land acquisition authorities in paragraph (3); and (D) the organizational authorities of section 1300i-8 of this title shall not be effective unless and until the Interim 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 subchapter.' It is clear that the Interim Council's decision to file the above-referenced claim in the U.S. Claims Court means that the same consequences follow as if it fails to enact a resolution waiving claims against the United States. Therefore, unless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will neither have access to its portion of the Settlement Fund, ...

[6] The Hoopa Valley Tribe incurred substantial expense defending against the years of litigation brought by the Yurok Tribe and its members.

Letter of Eddie F. Brown, Asst. Secretary-Indian Affairs to Honorable Dale Risling, Sr., Chairman, Hoopa Valley Tribe (Apr. 13, 1992) (emphasis added).

41. The BIA Sacramento Area Director requested an opinion on several issues that arose at the organizational meeting of the Interim Council held on November 25–26, 1991. Duard R. Barnes, Assistant Solicitor, Branch of General Indian Legal Activities, responded with a thorough opinion on February 3, 1992, which concluded:

(1) The Interim Council of the Yurok Tribe automatically dissolved two years after November 25, 1991;

(2) The Settlement Act permits three separate Interim Council resolutions, if necessary, to address claim waiver, contribution of escrow monies, and receipt of grants and contracts; and

(3) Refusal to pass a resolution waiving claims against the United States and/or filing a claim would prevent the Yurok Tribe from receiving the apportionment of funds, but would not preclude the Yurok Tribe from organizing a tribal government.

42. On November 23, 1993, Assistant Secretary – Indian Affairs Ada E. Deer wrote to the Vice-Chairman of the Yurok Interim Council expressing willingness to accept the decision of the Yurok Tribe to organize outside the authority offered by the Settlement Act. The Assistant Secretary cautioned that the Yurok Interim Council would, on November 25, 1993, lose the legal powers vested in it by the Settlement Act. The Assistant Secretary said, "the authority vested in the Interim Council by section 2(c)(4) of the Act to waive claims against the United States will expire on November 25, 1993." The Assistant Secretary pointed out that "[a]ny subsequent waiver of claims by the Tribe will be legally insufficient."[7]

[7] The Yurok Tribe could have challenged the Assistant Secretary's determination that any waiver after November 25, 1993, would be legally insufficient, but failed to do so. Defendant's subsequent decision reversed this determination.

43. On April 4, 1994, Assistant Secretary – Indian Affairs Ada E. Deer wrote to the Chair of the Interim Tribal Council of the Yurok Tribe concerning its Resolution No. 93-61, approved November 24, 1993. That resolution declared that to the extent the Act "is not violative of the rights of the Yurok Tribe . . . under the Constitution . . . or has not effected a taking . . . [then] the Yurok Tribe hereby waives any claim which said Tribe may have against the United States" arising out of the provisions of the Act. The Assistant Secretary determined that the resolution did not meet the requirements of the Act. She stated:

> It is quite clear that Resolution No. 93-61 specifically preserves, rather than waives, the Yurok tribe's taking claim against the United States. Indeed, the Yurok Tribe has filed a claim in the U.S. Court of Federal Claims asserting that the Hoopa-Yurok Settlement Act effected a taking under the Fifth Amendment of the United States Constitution.

Id. at 2–3. The Assistant Secretary reaffirmed the February 3, 1992, Solicitor's Opinion conclusion that the suit in the Claims Court would produce the same results as would the Interim Council's failure to enact a resolution waiving claims under the Act. She also noted that her conclusion was consistent with the Yurok Interim Council's letter stating that "the Interim Council would not provide any such waiver during its term."[8] *Id.*

44. On or about March 14, 1995, Assistant Secretary – Indian Affairs Ada E. Deer wrote to the Yurok Tribal Council rejecting the Tribal Council's request for reconsideration of her decision of April 4, 1994. The Assistant Secretary explained that the legislative history of the Act indicates that potential taking claims against the United States were precisely the type of claims Congress was most concerned about, which explained why waivers of claims were essential elements to triggering key provisions of the Act. Because the Yurok Tribe could no

[8] The 1994 decision of the Assistant Secretary also could have been challenged, but was not.

longer make a valid waiver, the Assistant Secretary offered the possibility of a settlement before the claim was extinguished by judgment:

> In our opinion, the Tribe's decision to prosecute its claim in this litigation is inconsistent with the waiver of claims required under the Act. Were there to be a settlement of the lawsuit, it would have to be accomplished before the case has proceeded to a determination on the merits. This is necessary to both save time, energy and money on costly legal proceedings and because a settlement will not be possible if the Court has ruled on any portion of the merits.

Id. at 2.

45. The Assistant Secretary also rejected the contention that the Act's waiver requirements violate the doctrine of unconstitutional conditions, a then-undecided issue in the litigation. She explained that:

> [T]he statutorily required waiver of taking claims against the United States in exchange for valuable property benefits is rationally tied to the Act's purpose to resolve longstanding litigation between the United States and various Indian interests and to promote effective management of the Hoopa Valley and Yurok Indian Reservations by their respective tribal governments.

Id. at 1. The Assistant Secretary urged the Yurok Tribe to seek a stay of proceedings in *Yurok Tribe v. United States* in order to conduct a referendum and undertake settlement negotiations.

46. On May 17, 1996, the parties to *Yurok Tribe v. United States* (which had been consolidated with other claims under the heading of *Karuk Tribe of California, et al. v. United States, et al.*, No. 90-CV-3993), filed a joint motion to postpone proceedings and continue settlement talks. Eventually, on August 6, 1998, the court granted summary judgment to the United States and the Hoopa Valley Tribe, and dismissed the complaints. *See Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

47. In the settlement efforts, the federal defendants were concerned that, unless the Act's benefits could be made available there would be little incentive for the Yurok Tribe to settle. The Assistant Secretary's March 14, 1995, letter proposed a solution. No settlement offer was accepted. The takings litigation was concluded on the merits by the U.S. Supreme Court's Order of March 26, 2001.

Interior's 2002 Report to Congress

48. Pursuant to Section 14(c) of the HYSA, in March 2002 the Department submitted a report to Congress after the conclusion of the Yurok's case with its recommendations for amending the Act and addressing the HYSA Fund. Interior concluded that because the Yurok Tribe did not waive its claims arising from the HYSA, Yurok had no rights to the Fund under the Act, stating, "it is the position of the Department that the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act." Report at 7.

49. The Report also contained the Interior Department's positions that to withhold the funds in their entirety, or to allow any accrued funds to revert to the Treasury, would not be an effective administration of the intent of the Act, and that Congress intended the Act to provide the tribes and their reservations with the means to acquire some financial and economic benefit and independence which would allow each tribe to prosper in the years to come. *Id.* at 6–7.

50. Under the circumstances in 2002, the only authority the Secretary had was to "invest and administer such fund as Indian trust funds." 25 U.S.C. § 1300i-3(b). As a result, the Interior Department recommended in the Report to Congress as follows: (1) the Settlement Fund be retained in trust account status; (2) there be no general distribution of Settlement Fund dollars to any tribe or individual, but the Fund be "administered for the mutual benefit of both the Hoopa

Valley and Yurok tribes"; (3) Congress should fashion a mechanism for the future administration of the Settlement Fund; and (4) Congress should consider new legislation which would authorize two separate permanent funds to benefit the Hoopa and Yurok Tribes in a manner that fulfills the intent of the original Act. *Id.* at 7–8.

51. In August 2002, the Senate Committee on Indian Affairs held a hearing on Interior's Section 14(c) Report. At the hearing, the Assistant Secretary – Indian Affairs testified that "[i]t is our position that it would be inappropriate for the Department to make any general distribution from the Fund without further instruction from Congress." *Id.* at 91 (S. Hrg. 107-648 at 88 (Aug. 1, 2002)). At the hearing's conclusion, Senator Inouye directed the tribes to agree on how to divide the funds and invited the tribes to also address infrastructure and economic development needs.

52. The tribes engaged in mediation and the resulting agreement was introduced as federal legislation, S. 2878 in September 2004. That bill failed. The agreement included no detailed agreement on how to divide and distribute the Hoopa-Yurok Settlement Fund, but stated that the Secretary of the Interior should prepare a report concerning the Settlement Fund and that "no expenditure from the Settlement Fund shall be made prior to submission of the report, and Congressional action upon such report, except as may be agreed upon by the Hoopa Valley and Yurok Tribes pursuant to their constitutional requirements."[9]

Swimmer's Decisions of March 1 and March 21, 2007, Reversing Previous Policy

53. On March 1, 2007, the Special Trustee Ross O. Swimmer, issued a decision reversing prior Department opinions concerning the Settlement Fund remainder. Defendant

[9] That agreement was also embodied in S. 2878, § 2(5)(D)(ii): "No expenditures for any purpose shall be made from the Settlement Fund before the date on which, after receiving the report under clause (i), Congress enacts a law authorizing such expenditures, except as the Hoopa Valley Tribe and the Yurok Tribes may agree pursuant to their respective constitutional requirements."

Swimmer's decision concluded that the Department "can distribute [the Hoopa-Yurok Settlement] funds to the Yurok Tribe administratively, consistent with the provisions of the Act, if the Yurok Tribe were to submit a new waiver of claims as required by the Act."

54. Swimmer's decision indicates that the "share set aside in 1991 for the benefit of the Yurok Tribe (roughly $37 million), with interest accrued over the past fifteen years (now totaling roughly $90 million), as well as funds authorized by the Act specifically for the Yurok Tribe (roughly $3.1 million)" would be distributed "after the Department has received an unconditional waiver from the Yurok Tribe consistent with the Act."

55. The March 1, 2007, decision of Special Trustee Swimmer does not cite or quote the HYSA and does not acknowledge the prior consistent position of the United States that the Yurok Tribe did not timely, and now cannot, meet the waiver conditions of the Act and is, therefore, not entitled to monies from the Settlement Fund. The decision merely states that "[t]he Yurok Tribe proposes now to provide the Department with a new, unconditional waiver of claims, a concept not proposed at the time of the 2002 hearing."

56. Swimmer's dramatic reversal of the Department's prior positions is based on a flawed reading of the HYSA which enabled him to make the following conclusions: (1) "the Act does not specify a time limitation . . . on the ability to provide a waiver"; (2) "nothing in the Act states that the Yurok Tribe's choosing to litigate its takings claim would cause the Tribe to forfeit the benefits under the Act"; and (3) even though "[t]he Act authorized the Yurok Interim Council, an entity that ceased to exist in 1993, to provide the requisite waiver under the Act . . . the current governing body of the Yurok Tribe can submit the waiver required by the Act."

57. On March 21, 2007, Special Trustee Swimmer issued a supplemental decision accepting a new waiver from the Yurok Tribe. The March 21, 2007, letter states that Swimmer received a new waiver from the "Yurok Tribal Council" on March 21, 2007.

58. Swimmer described the waiver as an "unconditional waiver of claims" and, without analysis, found that "the resolution meets the requirements of the Act." *Id.* Accordingly, Swimmer announced that the Department would distribute the funds to the Yurok Tribe on April 20, 2007.

59. Special Trustee Swimmer's letters ignored both the Act and the fact that the Yurok Tribe's Constitution, Art. IV Section 5(a) prohibits the 9-member Yurok Tribal Council from enacting a new waiver, requiring a referendum vote of members instead. The supplemental decision states that the "Yurok Tribal Council" enacted the waiver resolution. It would appear that the new waiver violates tribal law, as no referendum vote was held in the days between the two decisions.

Interior Board of Indian Appeals

60. On March 22, 2007, the Hoopa Valley Tribe filed an appeal of the March 1 and March 21, 2007, Swimmer decisions with the Interior Board of Indian Appeals ("IBIA").

61. In the IBIA, the Tribe alleged that Mr. Swimmer's decisions are invalid and that the Secretary cannot, as a matter of law, receive and accept a new waiver at this later date from this Yurok body consistent with the HYSA. The Tribe sought to enjoin the release of the Settlement Fund.

62. On March 27, 2007, the IBIA docketed and dismissed the Tribe's Notice of Appeal and Statement of Reasons without reaching the merits, stating that the IBIA lacked jurisdiction.

63. On April 17, 2007, the Tribe sought reconsideration of the IBIA's March 27, 2007, decision. The Tribe warned the Special Trustee that the funds were to be distributed in per capita payments to Yurok Tribe members. On April 20, 2007, the IBIA denied reconsideration. The IBIA noted: "In characterizing the Special Trustee's action as one to administer the Settlement Act by allocating the balance of the Settlement Fund, we express no opinion on the merits of whether or not the action was authorized by the Settlement Act." 44 IBIA 247, 250, n.4. The Tribe's efforts to have the Secretary "refer" the matter to the IBIA (which would have authorized IBIA to reach the merits) were rejected by the Solicitor's Office that same day.

Swimmer's Letter of April 20, 2007, Transferring Ownership of the Settlement Fund

64. Also on April 20, 2007, Special Trustee Swimmer sent a letter stating that "nothing precludes me from taking action consistent with the decision in this matter. As of 10:00 a.m. Eastern Daylight Time today, I have advised the custodian of the account holding the remaining balance of the Hoopa-Yurok Settlement Fund that its ownership has been transferred solely to the Yurok Tribe." Swimmer also transferred the funds to a private Yurok account held by Morgan Stanley & Co., Incorporated.

Yurok's Per Capita Designs for the Settlement Fund

65. In January 2008, the Secretary acquiesced as the Yurok Tribe began distributing through per capita payments to only its members over $80 million from the tribal trust funds that were held as part of the Settlement Fund. Each of approximately 5,200 members received $15,652.89.

66. This Court has remedied discriminatory distribution via per capita payments from the Hoopa escrow funds before and has held that where Defendant "handled the monies in the fund contrary to law, then plaintiffs could be entitled to damages." *Short VI*, 28 Fed. Cl. at 591.

67. The Hoopa Valley Tribe has and will continue to suffer harm and loss from Defendant's administration of the Settlement Fund in violation of federal law and Defendant's fiduciary obligations to the Tribe by unlawfully distributing the Fund to only the Yurok Tribe for use as a per capita that benefits only Yurok members.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Breach of Trust and Fiduciary Duties:
Accepting the Yurok Tribe's Waiver in Contravention of the HYSA

68. Plaintiffs incorporate by reference all proceeding paragraphs.

69. Congress in the HYSA gave only to the 5-member Yurok "Interim Council" the right to agree to or reject a waiver of the Yurok taking claims by 1993. The Interim Council did not enact such a waiver and instead filed a lawsuit, and litigated its takings claims, thereby rebuking Congress's offer.

70. The Interim Council exhausted its takings claims through litigation that ended in a decision on the merits against the Yurok Tribe.

71. For more than thirteen years, until the issuance of the decision on March 1, 2007, Defendant consistently took the position that the Yurok Tribe did not meet the waiver conditions of the Act and had lost the opportunity to obtain the benefits enumerated within the Act prior to amendment of the HYSA.

72. Defendant's March 1 and March 21, 2007, decisions represent a 180-degree change of course that is not supported by the record or the plain statutory language of the HYSA.

73. The Yurok Tribe's takings claim is extinguished and can no longer be "waived."

74. The Yurok Tribe did not meet the waiver requirements under the Act and is, therefore, not entitled to receive part of the Settlement Fund under the Act.

75. Defendant has violated the requirements of the HYSA by: (1) allowing the Yurok Tribe to issue a new unconditional waiver under the HYSA even though this 9-member Council does not have authority to issue such a waiver and the Yurok Tribe already elected not to waive its claims litigating them to a final decision on the merits instead; and (2) accepting the Yurok Tribe's new unconditional waiver that was issued in violation of tribal law.

76. Defendant's maladministration of the Settlement Fund breaches fiduciary trust duties that arise out of statutes, regulations, executive orders, and federal common law described above.

SECOND CLAIM FOR RELIEF

Breach of Trust and Fiduciary Duties: Exceeding Statutory Authority

77. Plaintiffs incorporate by reference all proceeding paragraphs.

78. Federal law requires Defendant to manage the Hoopa-Yurok Settlement Fund created by the HYSA as a tribal trust fund. The BIA testified to Congress that the monies must be retained in trust account status rather than generally distributed while Congress fashions further legislation. S. Hrg. 107-648 at 88 (Aug. 1, 2002). The Bureau of Indian Affairs testified that the funds should be used for the benefit of both tribes.

79. Section 4(a)(1) of the HYSA states: "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." The HYSA (and the Hoopa waiver) only permitted the Secretary to make distributions from the Settlement Fund "as provided in this Act"; otherwise, Congress required the Secretary to "invest and administer such Fund as Indian trust funds pursuant to . . . [25 U.S.C. §] 162(a)." Section 4(b), 25 U.S.C. § 1300i-3(b).

80. The HYSA did not end the trust relationship between the United States and members of the Hoopa Valley Indian Tribe with respect to the proceeds of timber sales and other

Reservation income arising from the Joint Reservation. Congress's specifications of the Secretary's authority to make distributions under the HYSA was necessary because of the holding that, if the Secretary chose generally to make payments from resources of the Joint Reservation, all "Indians of the Reservation" must be benefited by those payments. *Short IV*, 12 Cl. Ct. at 41–42.

81. Special Trustee Swimmer lacks statutory or properly delegated authority to authorize discriminatory per capita distributions from the Settlement Fund. As a creature of the American Indian Trust Reform Act, the authority and responsibilities of the Special Trustee are defined effective April 21, 2003, by Pt. 109, Chapter 11 of the Departmental Manual. "The Special Trustee exercises Secretarial direction and supervision, pursuant to the 1994 Reform Act, over of the Office of Special Trustee for American Indians."

82. Unlike the Secretary, or certain other Departmental officials, the Special Trustee only has authority to release Indian trust funds pursuant to Section 202 of the Reform Act and the related regulations at 25 C.F.R. pts. 115 and 1200.

83. No Secretarial Order or special delegation of authority to the Special Trustee applies here. Secretarial Order No. 3259, Amendment No. 2 (Mar. 31, 2006) temporarily redelegated all functions of the Assistant Secretary – Indian Affairs to the Associate Deputy Secretary during the time that the Assistant Secretary – Indian Affairs position remained vacant. The Special Trustee's decision dated March 1, 2007, occurred just before Mr. Carl Artman was confirmed as Assistant Secretary – Indian Affairs on March 5, 2007. The second decision, dated March 21, 2007, came after the Assistant Secretary position was filled.

84. The Special Trustee's duties, which are spelled out in Subchapter III of the American Indian Trust Fund Management Reform Act, are set forth as mandatory duties to

"oversee," "monitor," "ensure," and "provide guidance" to the Department, reporting directly to the Secretary. 25 U.S.C. §§ 4041–4043. Nowhere in the Trust Reform Act is the Special Trustee authorized to make decisions, or held accountable for decision-making, regarding the Secretary's substantive duties related to trust funds. *See Cobell v. Babbitt*, 91 F. Supp. 2d 1, 13 (D.D.C. 1999); *Cobell v. Norton*, 240 F.3d 1081, 1091 (D.C. Cir. 2001).

85. The Special Trustee lacked authority to unilaterally release the Indian trust funds in the Settlement Fund to the Yurok Tribe or anyone else.

86. The Hoopa-Yurok Settlement Act reserved exclusively to Congress the authority to further distribute resources such as these. 25 U.S.C. § 1300i-11(c).

87. The Special Trustee exceeded his statutory authority by purporting to issue a final decision that discharges the Settlement Fund based on his own unilateral interpretation of the HYSA.

88. Defendant's mismanagement of the Settlement Fund breaches fiduciary trust duties that arise out of statutes, regulations, executive orders, and federal common law described above.

THIRD CLAIM FOR RELIEF

Breach of Trust and Fiduciary Duties:
Unlawful Authorization of Release of Funds

89. Plaintiffs incorporate by reference all proceeding paragraphs.

90. Federal law requires Defendant to manage the Hoopa-Yurok Settlement Fund created by the HYSA. Absent the claim waivers required by the Act, the only authority the Secretary of the Interior has is to "invest and administer such fund as Indian trust funds." 25 U.S.C. § 1300i 3(b).

91. The Bureau of Indian Affairs testified to Congress that the monies must be retained in trust account status while Congress fashions further legislation. Senate Hearing 107-648 at 88 (Aug. 1, 2002).

92. The Settlement Fund never belonged to the Yurok Tribe. It was offered to the Yurok Tribe, but the Tribe refused the offer. The Yurok Tribe left the funds on the settlement table and opted to litigate the claim to judgment.

93. The final decision allowing a release of funds based upon permitting the Yurok Tribe to cure the Interim Council's failure to waive, thirteen years after the fact, is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law.

94. Defendant's actions in interpreting the HYSA in a manner that stigmatizes Plaintiffs and treats one beneficiary of the HYSA differently from the other beneficiary are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law.

95. Defendant has violated its trust duty to Plaintiff with regard to its management of the tribal trust funds by applying trust funds and transferring title thereto exclusively to the Yurok Tribe in a manner not authorized by law.

FOURTH CLAIM FOR RELIEF

Breach of Trust and Fiduciary Duties:
Unlawful Use of Joint Reservation Trust Funds as Per Capita Only for Yurok Members

96. Plaintiffs incorporate by reference all proceeding paragraphs.

97. The rulings of *Short v. United States*, particularly *Short III*, 719 F.2d 1133, 1135 (Fed. Cir. 1983) and *Short VI*, 28 Fed. Cl. 590, 595 (1993), *aff'd*, 50 F.3d 994 (Fed. Cir. 1995), provide the standards that must be met for management of Joint Reservation income held in the Settlement Fund to avoid the United States being found liable in damages for breach of trust.

98. In *Short VI*, plaintiffs pointed to a 1991 distribution to members of the Hoopa Valley Tribe in which other Indians of the Reservation did not share. The Court noted that the plain language of Section 7 of the Act, 25 U.S.C. § 1300i-6, permitted that distribution. The Court concluded that a reasonable construction of the Settlement Act is that it changed the nature of the government's discretion to make per capita distributions.

> Under the law of this case, it is within the Secretary of Interior's discretion to make per capita distributions. *Short IV*, 12 Cl. Ct. at 44. The Secretary's discretion is constrained by statutes including 25 U.S.C. §§ 117a and 407, and by the fiduciary relationship between the Secretary and the Indians. *Short III*, 719 F.2d at 1135-37. The Settlement Act is simply another statute that constrains the Secretary's discretion in new ways.

Short VI, 28 Fed. Cl. at 595.

99. The Settlement Act did not supersede the rulings in *Short v. United States*. *See* 25 U.S.C. § 1300i-2. Those rulings require that all Indians of the Reservation, including the Hoopa Valley Tribe, be benefited by expenditures from these funds unless Congress otherwise provides.

100. The *Short* holdings require that the Secretary use the Settlement Fund for the benefit of all "Indians of the Reservation," unless another provision of the Act expressly allows another use. No provision of the Settlement Act allows this use and the distribution violates the plain language of 25 U.S.C. §§ 1300i-1(c)(4) and 1300i-8(d).

101. The administration's transfer of federal trust monies committed to the benefit of all "Indians of the Reservation" to only Yurok members violates the HYSA and the Defendant's fiduciary relationship to the Hoopa Valley Tribe and its members.

102. Defendant's mismanagement of the Settlement Fund breaches fiduciary trust duties that arise out of statutes, regulations, executive orders, and federal common law described above.

103. Defendant has violated and continues to violate its trust duty to Plaintiffs with regard to its management of the tribal trust funds by using and expending the trust funds for purposes not for the exclusive benefit of all "Indians of the Reservation."

104. Defendant has and continues to violate its trust duty to Plaintiffs with regard to its management of the Tribe's trust funds by otherwise failing to invest and manage the Tribe's trust funds as a prudent trustee.

105. Plaintiffs have been damaged and seek compensatory damages against Defendant, interest, costs, attorneys' fees, and all other and further relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter judgment in favor of the Plaintiffs Hoopa Valley Tribe and its members and against the Defendant United States of America for compensatory damages in an amount to be determined at trial;

B. Grant Plaintiffs prejudgment interest, costs, and attorneys' fees in this litigation as may be provided by law; and

C. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Electronically Filed on March 11, 2008

DATED this 11th day of March, 2008.

Respectfully submitted,

MORISSET, SCHLOSSER, JOZWIAK &McGAW

/s/
Thomas P. Schlosser, WSBA# 06276
Attorneys for the Plaintiff Hoopa Valley Tribe, et al.

T:\WPDOCS\0020\09561\Pleadings\1stAmdComp030608_02.doc
nmc 3/11/08

Electronically Filed April 2, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten, Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72 L Judge Lawrence S. Margolis **HOOPA VALLEY TRIBE AND INDIVIDUAL HOOPA TRIBAL MEMBERS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON QUESTION OF BREACH OF TRUST RESPONSIBILITY**

Pursuant to Rule 56(c) of the Rules of the United States Court of Federal Claims, the Hoopa Valley Tribe, et al. ("Hoopa Plaintiffs") hereby move for partial summary judgment to determine, as a matter of law, that the United States of America breached its fiduciary trust obligations to the Hoopa Plaintiffs when officials of the United States Department of the Interior made a discriminatory disbursement of an Indian trust fund account held for all "Indians of the Reservation" as a per capita payment to only members of the Yurok Indian Tribe in violation of the Act of April 8, 1864, 13 Stat. 39, 25 U.S.C. § 407, and the Hoopa Yurok Settlement Act, Pub. L. 100-580, *codified in part as amended at* 25 U.S.C. §§ 1300i, *et seq.* ("Settlement Act").

The Hoopa Plaintiffs are entitled to judgment as a matter of law that the United States is liable for breach of fiduciary obligation resulting from its discriminatory distribution of the proceeds of timber sales and management of the former Joint Hoopa Valley Indian Reservation to fewer than all of the Indians of the Reservation for whom the Indian trust funds were collected. There are no genuine issues of material fact that would preclude entry of judgment in favor of the Hoopa Plaintiffs on the question of liability for breach of trust.

This Motion is supported by the Memorandum of Points and Authorities, the Proposed Findings of Uncontroverted Fact, and the evidence and exhibits filed herewith.

Respectfully submitted this 2nd day of April, 2008.

s/ *Thomas P. Schlosser*
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

Of Counsel:

Rob Roy Smith
ATER WYNNE, LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
Tel: (206) 623-4711
Fax: (206) 467-8406
rrs@aterwynne.com
Attorneys for the Plaintiff Hoopa Valley Tribe, et al.

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2008, a copy of the Hoopa Valley Tribe and Individual Hoopa Tribal Members' Motion for Partial Summary Judgment on Question of Breach of Trust Responsibility was electronically sent via the CM/ECF system by the United States Court of Federal Claims on the following party:

Devon Lehman McCune
Email: devon.mccune@usdoj.gov

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\MotPtSJ_01.DOC
nmc 4/1/08

Electronically Filed April 2, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72 L Judge Lawrence S. Margolis **PLAINTIFFS' PROPOSED FINDINGS OF UNCONTROVERTED FACT**

In accordance with Rule 56(h)(1) of the Rules of the United States Court of Federal Claims, Plaintiffs the Hoopa Valley Tribe et al. ("Hoopa Plaintiffs") respectfully submit the following Proposed Findings of Uncontroverted Fact in support of their motion for partial summary judgment.

1. "Under the Act of April 8, 1864, authorizing the President to set apart and locate not more than four reservations in California . . . for the accommodation of the Indians of California, without specification of the tribes to be so accommodated, the President had discretion to authorize any Indian tribes of California to reside upon such reservations as he set apart." *Short v. United States*, 202 Ct. Cl. 870, 974 (1973) (*Short I*).

2. "No Indian tribe resident upon a reservation created under the act [of April 8, 1864] could obtain vested rights to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation." *Id.*

3. "In 1876 a 12-mile square tract of land in Northern California, on the last reach of the Trinity River before it joins the Klamath River, was set aside by order of President Grant as the Hoopa Valley Indian Reservation." *Id.* at 873.

4. The Reservation was initially "established in 1864 pursuant to the Act of April 8, 1864, 12 Stat. 39 . . . ." *Id.* at 874.

5. "Most but not all of the Indians of the tract, called the Square, were and have been Hoopa Indians." *Id.* at 873.

6. "In 1891 President Harrison made an order extending the boundaries of the reservation to include an adjoining 1-mile wide strip of land on each side of the Klamath River, from the confluence of the two rivers to the ocean about 45 miles away . . . ." *Id.*

7. "Most of the Indians of the added tract, called the Addition, were and have been Yurok Indians, also known as Klamaths." *Id.*

8. "[T]he plain and natural consequence of the [1891] order was the creation of an enlarged, single reservation incorporating without distinction its added and original tracts upon which the Indians populating the newly-added lands should reside on an equal footing with the Indians theretofore resident upon it." *Id.* at 882.

9. The Hoopa Valley Tribe was organized "and its membership includes most of the ethnological Indian tribes and groups who traditionally occupied the 'Square.'" *Short v. United States*, 12 Ct. Cl. 36, 38 (1987) (*Short IV*).

10. The Hoopa Square is heavily timbered and, since the 1940s, timber on its unalloted trust status lands has produced substantial revenues. Those revenues are administered by the United States as trustee for the Indian beneficiaries. *Short I*, 202 Ct. Cl. at 873-74.

11. "Until 1955, any revenues from both parts of the Hoopa Valley Reservation—the Square and the Addition—were deposited in a single United States Treasury Account . . . entitled 'Proceeds of Labor, Hoopa Valley Indians." *Short I*, 202 Ct. Cl. at 970.

12. Beginning in 1955 and continuing after the *Short I* trial, the Secretary of the Interior, upon requests made by the Hoopa Valley Tribe, had each year disbursed from the "Proceeds of Labor, Hoopa Valley Indians" account and its interest account, "per capita payments to the Indians on the official roll of the Hoopa Valley Tribe organized pursuant to the constitution and bylaws adopted at the election of May 13, 1950 . . . ." *Id.* at 971.

13. Before *Short I* the Secretary of the Interior had refused to "distribute any income derived from the Square portion of the Hoopa Valley Reservation to any Indians of the Hoopa Valley Reservation other than those who are members of the Hoopa Valley Tribe according to its official roll." *Id.* at 973.

14. On March 27, 1963, certain nonmembers of the Hoopa Valley Tribe sued the United States in the Court of Claims for money damages; the case was captioned *Jessie Short, et al. v. United States*, No. 102-63. The Plaintiffs were "3,323 Indians, in the main Yuroks of the Addition and their descendants, who [were] ineligible for membership in the Hoopa Valley Tribe and [had] thus been denied a share in the revenues from the Square." *Id.* at 874; *accord Short IV*, 12 Ct. Cl. at 38. Other plaintiffs intervened after *Short I* or filed separate complaints making similar claims.

15. In 1973, the Court of Claims issued the first major decision in the *Short* case and held that "the effect of the executive order of 1891 was that all the Indians of the reservation as thereby extended—Addition and Square—got equal rights in the enlarged reservation and thus that the rights of Indians of the Addition are equal to those of the Indians of the Square, the

Hoopa Valley Tribe or any other Indians of the reservation." *Short I*, 202 Ct. Cl. at 980. *See* App. 1-8.

16. In *Short I* "the Court of Claims decided that the Hoopa Valley Reservation was one reservation all of whose Indian peoples . . . were 'Indians of the Reservation' entitled to equal rights in the division of timber profits (and other income) from the unallotted trust land of the reservation . . . ." *Short v. United States*, 719 F.2d 1133, 1133 (Fed. Cir. 1983) (*Short III*).

17. In *Short III*, the Federal Circuit held that "the Government was under fiduciary obligations with respect to the comparable Indian forest lands involved here, and is liable for breach of fiduciary obligation in failing to distribute the sale proceeds (and other income) to persons entitled to share in those proceeds . . . . [I]f the Secretary decides (as he has) to distribute proceeds under § 407, he must act non-discriminatorily and cannot exclude any of those Indians properly entitled to share in the proceeds." 719 F.2d 1133, 1135, 1137 (Fed. Cir. 1983).

18. "[D]iscriminatory distributions of the proceeds of the timber sales (and other Reservation income) constituted a breach of the government's fiduciary duties with respect to the qualified [*Short*] plaintiffs." *Short IV*, 12 Ct. Cl. at 38.

19. The law of the *Short* case requires "that if the Secretary decides to make per capita distributions of unallotted Reservation income, all persons who fall into the category of an Indian of the Hoopa Valley Reservation, alive at the time of a given distribution, be included." *Id.* at 44.

20. In an effort to resolve difficulties highlighted by the *Short* case and related litigation, a bill was proposed in Congress "to partition the reservation into two reservations, one consisting of the Hoopa Valley Square to be set aside for the use and benefit of the Hoopa Valley

Tribe, and the other consisting of the Hoopa and Klamath Extension, to be set aside for the use and benefit of the Yurok Tribe." S. Rep. 100-564 at 1–2, App. 78-79.

21. The substitute House bill was introduced in the Senate as S. 2723 and, as amended, became the Hoopa-Yurok Settlement Act ("Settlement Act" or "HYSA"); it was signed into law on October 31, 1988. Pub. L. No. 100-580, 102 Stat. 2924 (codified in part as amended at 25 U.S.C. §§ 1300-i to 1300i-11 (2008), App. 119-32.

22. Section 4 of the Settlement Act established the Hoopa-Yurok Settlement Fund ("Settlement Fund") by combining "all the funds in the escrow funds, together with all accrued income thereon . . . ." HYSA § 4(a), App. 122; 25 U.S.C. § 1300i-3(a).

23. The "escrow funds" mentioned in Section 4 of the Settlement Act are defined and identified in Section 1 of the Act as "the moneys derived from the joint reservation which are held in trust by the Secretary" in seven listed accounts. HYSA § 1(b)(1), App. 119; 25 U.S.C. § 1300i(b)(1). *See* App. 1-8.

24. The Senate Select Committee on Indian Affairs indicated in its report, S. Rep. 100-564, that the bill's definition of "escrow funds" was intended to include "the accounts maintained by the Secretary of the Interior into which income from reservation economic activity . . . are deposited." S. Rep. 100-564 at 16, 19, App. 93, 96.

25. In a memorandum dated October 24, 1991, regarding issuance of payments from the Hoopa-Yurok Settlement Act funds, the Bureau of Indian Affairs' Office of Tribal Services analyzed the components of the escrow funds and the Hoopa-Yurok Settlement Fund. This analysis indicated that the funds from the Yurok Reservation areas amounted to 1.26303% of the total amount included in the Settlement Fund and that the remainder came from Hoopa

Reservation area funds, accounts J52-561-7197, J52-561-7236 and a portion of J52-575-7256 (before deposit of the federal appropriations). App. 157, 325.

26. Individual Indians of the Reservation and both the Hoopa Valley Tribe and the Yurok Tribe were offered payments from the Settlement Fund, but certain conditions had to be met to become entitled to a distribution. Each tribe and individual Indian on the Settlement Roll was required to waive any claim they may have had against the United States arising out of the Act. Members of the Hoopa Valley Tribe, however, were not required to waive any claims unless they elected a Settlement Roll option. As a result, Indians of the Reservation whose names were placed on the Settlement Roll signed claim waivers but Hoopa tribal members did not. HYSA §§ 2, 4, 6, 7, App. 120-128.

27. Before passage of the Act, the House Committee on the Interior and Insular Affairs asked the Congressional Research Service of the Library of Congress for its opinion on the House version of the proposed Settlement Act. The Committee asked about the legal nature of the interest of Indians of the Reservation in tribal or communal resources of the Reservation and whether Congress had the power to deal with the tribal or communal property as proposed in the house bill. App. 35, 37. On September 13, 1988, the Congressional Research Service concluded that in light of the unique California Indian situation, courts might find that the Indians of the reservation have "a compensable interest" or that "Indians of the reservation have a vested interest in reservation property." App. 67.

28. The final version of the Act expanded the claim waiver requirements of sections 2(a), 2(c)(4), and 9(d)(2) of the bill. These changes were suggested by the Department of Justice, which was concerned that parties might claim that the Act effected a taking of property in

violation of the Fifth Amendment. The Department recommended "a provision requiring express tribal consent." S. Rep. 100-564 at 40, App. 117.

29. Section 2 of the Settlement Act provides in part that the "apportionment of funds to the Yurok Tribe as provided in sections 4 and 7 [of the Act] . . . shall not be effective unless and until the Interim 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." HYSA § 2(c)(4), App. 121.

30. The substitute House bill, H.R. 4469, and the initial version of S. 2723, which later became the Settlement Act, required that the Yurok Tribe's claim waiver be made by a 2/3 vote of the General Council of the Yurok Tribe at the organizational meeting conducted by the Secretary of Interior. App. 28. The Senate Select Committee on Indian Affairs changed the bill language so that the Yurok Tribe's waiver had to be made specifically by the Interim Council of the Yurok Tribe. S. Rep. 100-564 at 26, App. 103; *see also id.* at 36, 40, App. 113, 117.

31. On December 7, 1988, the Department of Interior published a notice that the Hoopa Valley Tribe had adopted a valid waiver resolution that met the requirements of section 2(a)(2)(A) of the Act. 53 Fed. Reg. 49361, App. 133-34.

32. The Hoopa Valley Tribe's resolution waiving the claims it had in 1988 against the United States, specified that "the waiver required by the Act does not prevent the Hoopa Valley Tribe 'from enforcing rights or obligations created by this Act' S. Rep. 100-564 at 17." 53 Fed. Reg. 49361, App. 133. As so conditioned, the waiver was approved by the Assistant Secretary—Indian Affairs. *Id.*

33. The Senate Select Committee on Indian Affairs indicated in its report, S. Rep. 100-564, that it did "not intend that the waivers of the tribes, if given, shall present [sic] the tribes from enforcing rights or obligations created by this Act." S. Rep. 100-564 at 17, App. 94.

34. The Department of the Interior prepared and published the Hoopa Yurok Settlement Roll and notified persons whose names were on the Roll of their settlement options and the rights they would be waiving by accepting various options. App. 135-48. The Bureau of Indian Affairs thereafter published notice that the statute of limitation for any person or entity (other than the Hoopa Valley Tribe or the Yurok Tribe) to file suit questioning the constitutionality of the Settlement Act was September 16, 1991. App. 149.

35. On August 14, 1991, the Bureau of Indian Affairs, Northern California Agency, notified adult Yurok tribal members of a meeting of the General Council of the Yurok Tribe to nominate the Yurok Interim Tribal Council. App. 150-51.

36. In a memorandum dated February 3, 1992, Assistant Solicitor Duard R. Barnes informed the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs that "it is clear that the Interim Council's lifespan is two years from the date of its installation on November 25, 1991, unless a tribal governing body is elected before the expiration of the two year period, whereupon the Interim Council would be dissolved following such election." App. 160.

37. In a memorandum dated February 3, 1992, Assistant Solicitor Duard R. Barnes informed the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs that "[i]t is clear that should the Interim Council file a claim in the U.S. Claims Court on behalf of the Yurok Tribe pursuant to 25 U.S.C. § 1300i-11(a), the same consequences would follow as if it fails to enact a resolution waiving claims under 25 U.S.C. § 1300i-1(c)(4)." App. 162.

38. In a memorandum dated February 3, 1992, Assistant Solicitor Duard R. Barnes informed the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs that the Department does not "believe that the Settlement Act precludes the Yurok Tribe from having a government if it refuses to waive claims against the United States. The Yurok Tribe's failure to waive claims only affects its authority to organize under the Indian Reorganization Act." App. 162.

39. In a memorandum dated February 3, 1992, Assistant Solicitor Duard R. Barnes informed the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs that the Settlement Act "simply does not authorize the Interim Council to dispense with the [waiver] resolution requirement in order to be afforded the benefits conferred under specified sections of the Settlement Act for any reason . . . ." App. 163.

40. Section 14(b)(3) of the Settlement Act barred the Yurok Tribe from filing a takings claim more than 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(d)(2)." HYSA § 14(b)(3), App. 131.

41. On March 5, 1992, Richard Haberman, Chairman, Interim Council of the Yurok Tribe, submitted testimony to the House of Representatives Committee on Appropriations Hearing on the Department of Interior and Related Agencies fiscal year 1993 appropriations bill. Chairman Haberman requested an amendment of the Settlement Act to provide more time before the statute of limitations expired for claims of the Yurok Tribe. He stated: "We either have to waive our rights to any damages claim against the United States or file suit." App. 166. He continued: "The Yurok Tribe is now faced with either providing technical consent to P.L. 100-580 in order to receive the residual balance of the Settlement Fund . . . or suing the United

States in the Court of Claims for damages arising out of the partition. . . . [A] better alternative is for the United States to make a clear commitment to providing an appropriate land and economic base for the Yurok Tribe, and we will execute appropriate consent (called waivers in the Act) and end the litigation." App. 167. He concluded as follows: "We therefore will file a protective law suit in the U.S. Claims Court, a law suit which we will withdraw when a new statute of limitations period is provided." App. 169.

42. To forestall the statute of limitations provided in Section 14(a)(3), on March 11, 1992, the Yurok Interim Council brought a suit in the U.S. Claims Court against the United States. The complaint asserted "claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the Hoopa-Yurok Settlement Act of 1988." Complaint in *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Ct. Cl.) ¶ 1, App. 170.

43. In a letter dated April 13, 1992, Assistant Secretary – Indian Affairs Eddie F. Brown informed the Chairman of the Hoopa Valley Tribe that "[i]t is clear that the Interim Council's decision to file [*Yurok Indian Tribe v. United States*] . . . means that the same consequences follow as if it fails to enact a resolution waiving claims against the United States. Therefore, unless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will [not] have access to its portion of the Settlement Fund . . . ." App. 176.

44. In a letter dated April 15, 1992, Acting Assistant Secretary—Indian Affairs William D. Bettenberg acknowledged receipt of several Yurok Interim Council documents, including Chairman Haberman's testimony before the Appropriations Committee and the complaint in *Yurok Tribe v. United States*, and informed the Chairman of the Yurok Interim

Council that "[u]nless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will [not] have access to its portion of the Settlement Fund." App. 178.

45. In a letter dated August 20, 1993, Susie L. Long, Vice-Chair, Interim Tribal Council informed Assistant Secretary — Indian Affairs Ada Deer that the Yurok Tribe "have filed a fifth amendment claim in the United States Claims Court, as provided for in the Act, to press our views." She also withdrew a proposed constitution submitted to BIA explaining that "The Settlement Act's IRA provisions are not activated unless and until the Tribe provides "waivers" under the Act. We have not provided such waivers, we will not provide such waivers during our term, and our draft constitution requires a referendum of the Yurok people in order to provide such waivers." App. 180-81.

46. In a letter dated November 23, 1993, Assistant Secretary – Indian Affairs Ada E. Deer informed the Vice-Chair of the Yurok Interim Council that "[u]nder section 9(d) of the Act, the Interim Council created under the authority of the Act will be dissolved on November 25, 1993. In that respect, the authority vested in the Interim Council by section 2(c)(4) of the Act to waive claims against the United States will expire on November 25, 1993." App. 182.

47. In a letter dated November 23, 1993, Assistant Secretary—Indian Affairs Ada E. Deer informed the Vice Chair of the Yurok Interim Council that after the Interim Council is dissolved, "[a]ny subsequent [after November 25, 1993] waiver of claims by the Tribe will be legally insufficient to effectuate the apportionment of funds to the Tribe as provided in sections 4 and 7 of the Act . . . ." App. 182.

48. In a letter dated April 4, 1994, Assistant Secretary – Indian Affairs Ada E. Deer informed the Chair of the Yurok Interim Council that Resolution No. 93-61, which the Interim

Council approved regarding the waiver of claims against the United States, did not meet the requirements of the Act, stating that "[i]t is quite clear that Resolution No. 93-61 specifically preserves, rather than waives, the Yurok tribe's takings claim against the United States." App. 185.

49. In a letter dated April 4, 1994, Assistant Secretary — Indian Affairs Ada E. Deer informed the Chair of the Yurok Interim Council that the Department's "determination that Resolution No. 93-61 fails to meet the requirements of 25 U.S.C. § 1300-1(c)(4) [sic] means that the Yurok Tribe will be unable to enjoy the benefits conferred under Section 2 and 9 of the . . . Settlement Act upon the passage of a legally sufficient waiver of claims, including the Yurok Tribe's share of the Settlement Fund under Sections 4 and 7 of the Act . . . ." App. 185.

50. In a letter dated March 14, 1995, Assistant Secretary – Indian Affairs Ada E. Deer informed the Chair of the Yurok Tribal Council that in the opinion of the Department "the Tribe's decision to prosecute its claim in [*Yurok Indian Tribe v. United States*] is inconsistent with the waiver of claims required under the Act. Were there to be a settlement of the lawsuit, it would have to be accomplished before the case has proceeded to a determination on the merits. This is necessary to both save time, energy and money on costly legal proceedings and because a settlement will not be possible if the court has ruled on any portion of the merits." App. 188.

51. In the consolidated case involving takings claims related to the Settlement Act, including *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Ct. Cl.), the Court of Federal Claims denied plaintiffs' motions for summary judgment, granted the cross-motions of defendants, and directed the clerk to dismiss the complaints. *Karuk Tribe of California v. United States*, 41 Fed. Cl. 468, 477 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

52. On March 15, 2002, the Secretary of Interior made a post-litigation summary report to Congress in accordance with Section 14(c) of the Settlement Act ("Section 14(c) Report"). App. 189-240.

53. In its Section 14(c) Report, the Secretary of Interior stated that "the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act." App. 194.

54. In its Section 14(c) Report, the Secretary of Interior recommended that: (1) the "Settlement Fund would not revert to the general fund of the Treasury, but would be retained in trust account status by the Department pending future development;" (2) "there would be no general 'distribution' of the HYSA Settlement Fund dollars to any particular tribe, tribal entity, or individual. But rather the Fund dollars would be administered for the mutual benefit of both the Hoopa Valley and Yurok tribes;" (3) "that Congress in coordination with the Department, and following consultation with the Hoopa and Yurok Tribes, fashion a mechanism for the future administration of the HYSA Settlement Fund;" and (4) that Congress "give serious consideration to the establishment of one or more new Act(s) that provide the Secretary with all necessary authority to establish two separate permanent Fund(s) with the balance of the current HYSA Fund, for the benefit of the Hoopa and Yurok Tribes in such a manner as to fulfill the intent of the original Act in full measure." App. 194-95.

55. On August 1, 2002, the Senate Committee on Indian Affairs held an oversight hearing on the Department of Interior's Section 14(c) Report. The Assistant Secretary—Indian Affairs testified: "It is our position that it would be inappropriate for the Department to make any general distribution from the Fund without further instruction from Congress." S. Hrg. 107-648 at 88, App. 332.

56. In the August 1, 2002 hearing, Joseph Jarnaghan, Hoopa Tribal Council member testified that: "When the BIA clearcut our forests, which ultimately generated the settlement fund, the BIA was more interested in the volume of timber going to the mill to create the settlement fund account than it was in the environmental state of our reservation." App. 258-59. Mr. Jarnaghan testified that the road construction standards used by the BIA were "deplorable and created ongoing problems that we continue to deal with today." App. 259. Mr. Jarnaghan showed slides depicting damage from clear cutting, and he explained the problem of sediment from road erosion hurting fisheries, water quality and riparian organisms. *Id.*; App. 274, 290-97.

57. Mediation supported by the Interior Department between the Hoopa Valley and Yurok tribes in 2002-03 produced a mediation agreement consisting of proposed amendments to the Hoopa-Yurok Settlement Act, dated December 3, 2003. App. 348-52.

58. The Hoopa-Yurok Mediation Agreement was redrafted into bill form and introduced as S. 2878 in the 108th Cong., 2d Sess. App. 353-52. Like the Mediation Agreement itself, S. 2878 provided that "no expenditures for any purpose shall be made from the Settlement Fund before the date on which, after receiving the report under clause (i), Congress enacts a law authorizing such expenditures, except as the Hoopa Valley Tribe and the Yurok tribes may agree pursuant to their respective constitutional requirements." App. 358.

59. In a letter dated March 21, 2006, three members of Congress wrote to the Acting Solicitor of the Department of the Interior asking: "Is it the Solicitor's opinion that Congressional action is required to establish a distribution process for the Hoopa-Yurok Settlement Fund? Or, under the terms of the Act, does the Secretary continue to have the authority to make a determination on the status of the Fund?" Also: "Is it the Solicitor's opinion

that the waiver provided for in the Hoopa-Yurok Settlement Act of 1988 remains an exercisable option for the Yurok tribe? If so, what is the legal basis for this conclusion?" App. 368-69.

60. In a letter dated July 19, 2006, Associate Deputy Secretary of the Interior James E. Cason wrote to the Chairman of the Hoopa Valley Tribe responding to the Tribe's concern that members of Congress would not address the Hoopa-Yurok Settlement Fund while the Interior Department was analyzing the situation. Mr. Cason stated that "the Department does not intend to submit to Congress a new report or a replacement to the report submitted in March 2002 pursuant to Section 14(c) of the Hoopa-Yurok Settlement Act." App. 370.

61. Except during settlement communications in the consolidated case of *Karuk Tribe of California, et al. v. United States, et al.*, prior to the merits adjudication of that case, the Department of the Interior consistently took the position that portions of the Hoopa-Yurok Settlement Fund could be distributed to the Yurok Tribe only if the Yurok Interim Council adopted a resolution waiving any claim, including takings claims, such tribe may have had arising out of the provisions of the Settlement Act, until 2007. App. 159-95; 247-56; 326-32; 368-69.

62. In a letter dated March 1, 2007, Ross Swimmer, Special Trustee for American Indians, informed the chairmen of the Hoopa Valley and Yurok tribes that "the Department concludes that the Yurok Tribe can tender a new, unconditional waiver and that the Act provides authority to the Department to act administratively to distribute the remaining funds to the Yurok Tribe upon receipt of such a waiver if it otherwise comports with the waiver requirements under the Act." The Special Trustee further stated that "the Act does not specify a time limitation . . . on the ability to provide a waiver." App. 373.

63. In a letter dated March 21, 2007, Ross Swimmer, Special Trustee for American Indians, informed the chairmen of the Hoopa Valley and Yurok tribes: "I today received a copy of Yurok Tribal Council Resolution 07-037. This resolution provides an unconditional waiver of claims that the Yurok Tribe may have against the United States arising out of the provisions of the 1988 Hoopa-Yurok Settlement Act. Upon review, I find that the resolution meets the requirements of the Act." App. 375. *See* App. 376-77.

64. In proceedings before the Interior Board of Indian Appeals, the Hoopa Valley Tribe noted that the funds from the Hoopa-Yurok Settlement Fund were proposed to be distributed in per capita payments by the Yurok Tribe to Yurok Tribe members. App. 385, 391.

65. In a letter dated April 20, 2007, Ross Swimmer, Special Trustee for American Indians informed the chairmen of the Hoopa Valley and Yurok tribes that "today, I have advised the custodian of the account holding the remaining balance of the Hoopa-Yurok Settlement Fund that its ownership has been transferred solely to the Yurok Tribe." App. 399. On that same day, staff of the Office of the Special Trustee for American Indians authorized SEI Private Trust Company to "free deliver" the assets of the Hoopa/Yurok Settlement-7193 Account to Morgan Stanley, custodian for the Yurok Tribe. App. 400-02.

66. The proposed resolution of the Yurok Tribal Council, ultimately enacted as No. 07-41, regarding distribution of assets, was presented to Ms. Donna Erwin, Department of Interior Office of Trust Funds Management, on or about April 20, 2007, and as amended, was enacted by the Yurok Tribal Council with the date of April 19, 2007. App. 393-94, 396-98.

67. In a letter dated April 20, 2007, Department of the Interior Deputy Solicitor Lawrence Jensen informed the Chairman of the Hoopa Valley Tribe that because the Special

Trustee can render final decision for the Department, "[r]eferral to the IBIA would not be appropriate." App. 395.

68. In a letter dated June 29, 2007, Carl J. Artman, Assistant Secretary — Indian Affairs wrote to the Hoopa Valley Tribe Chairman expressing the view that because "Congress provided in the Act for the equitable division of the Fund between the two Tribes, the Hoopa Valley Tribe consented to the use of escrow funds to be included for this purpose." Mr. Artman further stated that: "The Department provided ample opportunity for the Tribe to challenge these decisions in Federal court, where aggrieved parties usually challenge final agency actions. The Tribe itself chose not to take this approach, based on an interpretation of a Ninth Circuit decision with which the Department does not necessarily agree." He also noted that "The Department already distributed the Fund to the Yurok Tribe in accordance with the expressed intent of the March decisions as well as the April 20, 2007 letter from the Special Trustee." App. 403-04.

69. By checks from Morgan Stanley & Company, Inc., each of approximately 5200 members of the Yurok Tribe received $15,652.89, a total of approximately $80 million. App. 405.

Respectfully submitted this 2nd day of April, 2008.

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

Of Counsel:

Rob Roy Smith, Attorney
ATER WYNNE, LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
Tel: (206) 623-4711
Fax: (206) 467-8406
rrs@aterwynne.com

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2008, a copy of the Plaintiffs' Proposed Findings of Uncontroverted Fact was electronically sent via the CM/ECF system by the United States Court of Federal Claims on the following party:

Devon Lehman McCune
Email: devon.mccune@usdoj.gov

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\HVTPFUF030708_05.doc
nmc 4/1/08

Electronically Filed April 2, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72 L Judge Lawrence S. Margolis **DECLARATION OF THOMAS P. SCHLOSSER REGARDING APPENDIX**

Thomas P. Schlosser being first duly sworn upon oath deposes and states as follows:

1. I am the attorney of record for Plaintiffs in this action. I have personal knowledge of the matters set forth below and, if called as a witness, could testify competently to them.

2. I was responsible for compiling the Appendix to the Hoopa Valley Tribe and individual Hoopa tribal members' motion for partial summary judgment, which is filed concurrently herewith. Included as exhibits in the Appendix to the Hoopa motion and memorandum are a collection of public documents including Exhibits 1, 2, 3, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38 and 39. These documents are true and complete copies of letters, memoranda, opinions, papers and resolutions which I received from the United States Department of the Interior. However, the original date of Exhibit 23 is illegible. Exhibit 26 was jointly prepared by the Hoopa Valley Tribe and the Yurok Tribe councils. Exhibit 33 is a copy of a petition I submitted to the Interior Board of Indian Appeals. The remaining exhibits in the Appendix are copies of published government records, reports, notices or filings.

3. Attached as Exhibit 40 to the Appendix to the Hoopa motion and memorandum is a copy of a check in the amount of $15,652.89, the original of which was made out to a member of the Yurok Tribe and dated January 15, 2008. On the basis of my inquiries and review of published reports in the local press, it is my belief that each member of the Yurok Tribe enrolled as of December 5, 2007, was issued a check or equivalent payment in the same amount. In 2007, the Yurok Tribe voted to distribute 90% of the Settlement Fund proceeds in per capita payments. The exact number of Yurok tribal enrollees as of the qualification date is unknown to plaintiffs but was reported by the press to be 5200. If each of 5200 Yurok tribal members received the amount shown on Exhibit 40, the total per capita distribution would be $81,395,028, which is approximately 90% of the amount noted in Mr. Swimmer's letter of March 1, 2007. App. 372. The total number of Hoopa Valley Tribe members enrolled as of December 5, 2007 was 2213.

I testify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 2nd day of April, 2008, in Seattle, Washington.

s/ Thomas P. Schlosser
Thomas P. Schlosser

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2008, a copy of, Declaration of Thomas P. Schlosser Regarding Appendix, was electronically sent via the CM/ECF system by the United States Court of Federal Claims on the following party:

Devon Lehman McCune
Email: devon.mccune@usdoj.gov

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\TPSDecl031208_03.doc
nmc:4/1/08

Electronically Filed April 2, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72 L Judge Lawrence S. Margolis

APPENDIX OF EXHIBITS TO HOOPA MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

CONTENTS

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 08-72 L
	)	Judge Thomas C. Wheeler
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S COMBINED MOTION TO DISMISS, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT, AND RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to RCFC 12(b)(1), Defendant, the United States of America ("Defendant"), moves to dismiss the Complaint filed by Plaintiffs Hoopa Valley Tribe, et al., ("Plaintiffs"). Alternatively, Defendant moves for summary judgment in regard to Plaintiffs' claims. Plaintiffs lack standing to pursue their claims. In addition, the Hoopa-Yurok Settlement Act (the "Act" or the "1988 Act") expressly precludes Plaintiffs' claims. Plaintiffs also fail to meet the requirements of the Indian Tucker Act. Furthermore, Plaintiffs' arguments regarding the Yurok Interim Council and the sufficiency of the Yurok's Tribe's 2007 waiver lack merit. Finally, Plaintiffs' claims regarding the *Short* litigation also lack merit. Consequently, Defendant's Motion to Dismiss should be granted. Alternatively, Defendant's Motion for Summary Judgment should be granted and Plaintiffs' Motion for Partial Summary Judgment should be denied.

Respectfully submitted on July 22, 2008,

RONALD J. TENPAS
Assistant Attorney General

/s/ Sara E. Costello
Sara E. Costello, Trial Attorney
Devon Lehman McCune, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
(202) 305-0466 (tel.)
(202) 305-0267 (fax)
sara.costello@usdoj.gov

Of Counsel:
Scott Bergstrom
Department of the Interior
Office of the Solicitor

Attorneys for Defendant.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, et al.,	)	Case No. 08-72TCW
Plaintiffs,	)	Judge Thomas C. Wheeler
v.	)	
UNITED STATES OF AMERICA,	)	
Defendant.	)	
	)	

DEFENDANT'S COMBINED RESPONSE TO PLAINTIFFS' PROPOSED FINDINGS OF UNCONTROVERTED FACT AND DEFENDANT'S ADDITIONAL PROPOSED FINDINGS OF UNCONTROVERTED FACT

In accordance with RCFC 56(h)(1), Defendant, the United States of America ("Defendant"), sets forth the following response to Plaintiff Hoopa Valley Tribe, et al. ("Plaintiffs") Proposed Findings of Uncontroverted Fact.

1. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

2. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

3. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

4. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its

contents.

5. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

6. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

7. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

8. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

9. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 12 Ct. Cl. 36 (1987) (*Short IV*), which speaks for itself and is the best evidence of its contents.

10. Disputed, in part. Defendant avers that the term "substantial" is ambiguous; Defendant does not dispute the assertions set forth in the remainder of this paragraph.

11. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its

contents.

12. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

13. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

14. Defendant does not dispute that the first and third sentence of this paragraph summarize the *Short v. United States* litigation, which speaks for itself and is the best evidence of its contents. Defendant does not dispute that the second sentence of this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

15. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 202 Ct. Cl. 870 (1973), which speaks for itself and is the best evidence of its contents.

16. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 719 F.2d 1133 (Fed. Cir. 1983) (*Short III*), which speaks for itself and is the best evidence of its contents. Defendant, however, avers that none of the facts or legal conclusions alleged in the paragraph are material to the instant dispute, because Congress specifically established a new funding distribution scheme in the Hoopa-Yurok Settlement Act (the "1988 Act"), Pub. L. 100-580.

17. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 719 F.2d 1133 (Fed. Cir. 1983) (*Short III*), which speaks for itself and is the best evidence of its contents. Defendant, however, avers that none of the facts or legal conclusions alleged in the paragraph are material to the instant dispute, because Congress specifically established a new funding distribution scheme in the 1988 Act.

18. Defendant does not dispute that this paragraph quotes a portion of *Short v. United States*, 12 Ct. Cl. 36 (1987) (*Short IV*), which speaks for itself and is the best evidence of its contents. Defendant, however, avers that none of the facts or legal conclusions alleged in the paragraph are material to the instant dispute, because Congress specifically established a new funding distribution scheme in the 1988 Act.

19. Disputed. Defendant avers that none of the facts or legal conclusions alleged in the paragraph are material to the instant dispute, because Congress specifically established a new funding distribution scheme in the 1988 Act.

20. Defendant does not dispute that this paragraph quotes a portion of Senate Report, S. Rep. 100-564 (Sept. 30, 1988), which speaks for itself and is the best evidence of its contents.

21. Defendant does not dispute that this paragraph references the 1988 Act, which speaks for itself and is the best evidence of its contents.

22. Defendant does not dispute that this paragraph quotes a portion of the 1988 Act, which speaks for itself and is the best evidence of its contents.

23. Defendant does not dispute that this paragraph quotes a portion of the 1988 Act,

which speaks for itself and is the best evidence of its contents.

24. Defendant does not dispute that this paragraph quotes a portion of Senate Report, S. Rep. 100-564 (Sept. 30, 1988), which speaks for itself and is the best evidence of its contents.

25. Defendant does not dispute that this paragraph references a memorandum from the Acting Director, Office of Tribal Services to the Superintendent of the Northern California Agency of the Bureau of Indian Affairs, which speaks for itself and is the best evidence of its contents. Defendant, however, avers that none of the facts or legal conclusions alleged in the paragraph are material to the instant dispute.

26. Defendant does not dispute that this paragraph references a portion of the 1988 Act, which speaks for itself and is the best evidence of its contents. Defendant further avers that the statute of limitations to bring individual claims expired on September 16, 1991. Pls.' Mot., Ex. 11 [Notice of Settlement Option Deadline, 56 Fed. Reg. 22998 (May 17, 1991)].

27. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

28. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

29. Defendant does not dispute that this paragraph quotes a portion of the 1988 Act, which speaks for itself and is the best evidence of its contents.

30. Disputed, in part. Defendant avers that none of the facts alleged in the first sentence of the paragraph are material to the instant dispute. Defendant disputes the assertion that the Yurok Tribe's waiver had to be made specifically by the Interim Council of the Yurok Tribe. The Committee changed a reference from Yurok General Council to the Interim Council in one provision, 25 U.S.C. 1300i-8(a)(1). This provision relates to the membership roll of the Yurok, not the waiver provision, although the section then cross-references the waiver provision. The Committee, however, did not explain the change. The change can just as easily be interpreted as empowering the congressionally established Interim Council with an additional, limited power and not divesting the Yurok General Council of its ability to waive claims as a sovereign entity.

31. Defendant does not dispute that this paragraph references 53 Fed. Reg. 49361, which speaks for itself and is the best evidence of its contents.

32. Defendant does not dispute that this paragraph references and quotes a portion of 53 Fed. Reg. 49361, which speaks for itself and is the best evidence of its contents. Defendant further avers that the 1988 Act expressly required the waiver of any claim challenging the Act as effecting a taking or otherwise providing inadequate compensation including those of the Hoopa as a tribe or as individuals. 25 U.S.C. §§ 1300i-11(a), (b)(1)-(2).

33. Defendant does not dispute that this paragraph quotes a portion of Senate Report, S. Rep. 100-564 (Sept. 30, 1988), which speaks for itself and is the best evidence of its contents.

34. Disputed, in part. Defendant does not dispute the first sentence of paragraph 24. Defendant disputes the assertion that the statute of limitations referenced in Notice of Statute of Limitation for Certain Claims, 56 Fed. Reg. 22998 (May 17, 1991) pertained only to filing suit questioning the constitutionality of the Settlement Act. The notice stated that:

> Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2 of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

56 Fed. Reg. 22998.

35. Defendant does not dispute that this paragraph references correspondence from the Superintendent of the Northern California Agency of the Bureau of Indian Affairs, which speaks for itself and is the best evidence of its contents.

36. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

37. Defendant does not dispute that this paragraph references a memorandum from the Assistant Solicitor, Branch of General Indian Legal Activities to the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs, which speaks for itself and is the best evidence of its contents.

38. Defendant does not dispute that this paragraph references a memorandum from the Assistant Solicitor, Branch of General Indian Legal Activities to the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs, which speaks for itself and is the

best evidence of its contents.

39. Defendant does not dispute that this paragraph references a memorandum from the Assistant Solicitor, Branch of General Indian Legal Activities to the Area Director of the Sacramento Area Office of the Bureau of Indian Affairs, which speaks for itself and is the best evidence of its contents.

40. Defendant does not dispute that this paragraph references the 1988 Act, which speaks for itself and is the best evidence of its contents.

41. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

42. Disputed, in part. Defendant disputes that the cited document provides information regarding the allegations made in the first sentence of this paragraph. Defendant does not dispute that the second sentence of this paragraph quotes a portion of the complaint filed in *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Ct. Cl.), which speaks for itself and is the best evidence of its contents.

43. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents. Defendant further avers that in this correspondence, the Assistant Secretary – Indian Affairs states "[w]e have not made a final determination concerning the legal status of these funds in the absence of a Yurok tribal resolution waiving claims against the United States . . . ." Pls.' Mot., Ex. 18 [Letter of Assistant Secretary – Indian Affairs to Honorable Dale Risling, Sr. (April 13, 1992)], App. 177.

44. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Acting Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents. Defendant further avers that in this correspondence, the Assistant Secretary – Indian Affairs states "[w]e have not made any final determination concerning the legal status of the funds that remain in the Hoopa-Yurok Settlement Fund, and what will happen to them in the absence of a Yurok tribal resolution waiving claims against the United States." Pls.' Mot., Ex. 19 [Letter of Assistant Secretary – Indian Affairs to Honorable Richard Haberman (April 15, 1992)], App. 179.

45. Defendant does not dispute that this paragraph quotes a portion of correspondence from Susie L. Long, Vice-Chair, Interim Tribal Council, which speak for itself and is the best evidence of its contents.

46. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents. Defendant further avers that on March 14, 1995, after considering correspondence from the Yurok Tribal Council, the Department acknowledged the authority of this entity to make the requisite waiver pursuant to the 1988 Act. Pls.' Mot., Ex. 23 [Letter of Assistant Secretary – Indian Affairs to Susie L. Long (Mar. 14, 1995)], App. 188.

47. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents. Defendant further avers that on March 14, 1995, after considering correspondence from the Yurok Tribal Council, the Department

acknowledged the authority of this entity to make the requisite waiver pursuant to the 1988 Act. Pls.' Mot., Ex. 23, App. 188.

48. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents.

49. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents.

50. Defendant does not dispute that this paragraph quotes a portion of correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents.

51. Defendant does not dispute that this paragraph references *Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), which speaks for itself and is the best evidence of its contents.

52. Defendant does not dispute that this paragraph references the Department's Section 14(c) Report (March 15, 2002), which speaks for itself and is the best evidence of its contents.

53. Defendant does not dispute that this paragraph references the Department's Section 14(c) Report (March 15, 2002), which speaks for itself and is the best evidence of its contents. Defendant, however, avers that this statement referred to the status of the 1993 waiver provided by the Yurok Interim Council. Pls.' Mot., Ex. 30 [Letter of Special

Trustee for American Indians to Clifford Lyle Marshall (Mar. 21, 2007)], App. 373.

54. Defendant does not dispute that this paragraph quotes a portion of the Department's Section 14(c) Report (March 15, 2002), which speaks for itself and is the best evidence of its contents. Defendant, however, avers that the possibility of the Yurok Tribal Council providing a new, unconditional waiver was not discussed, at this time. Pls.' Mot., Ex. 30, App. 373. Defendant further avers that this paragraph does not set forth the entirety of the Department's recommendations regarding the Settlement Fund. *See* Pls.' Mot., Ex. 24 [Letter of Assistant Secretary-Indian Affairs to Hon. J. Dennis Hastert Regarding Department's Section 14 (c) Report (March 15, 2002)], App. 194-95.

55. Defendant does not dispute that this paragraph references testimony given by the Assistant Secretary – Indian Affairs, which speaks for itself and is the best evidence of its contents. Defendant avers that the Assistant Secretary – Indian Affairs further stated in its congressional testimony, "the Hoopa . . . already received its portion of the benefits under the Act and is not entitled to further distributions from the [] Fund [.]" Pls.' Mot., Ex. 25 [Committee on Indian Affairs, United States Senate, Oversight Hearing on the Hoopa-Yurok Settlement Act, S. Hrg. 107-648 (Aug. 1, 2002)], App. 337. Defendant, however, avers that the possibility of the Yurok Tribal Council providing a new, unconditional waiver was not discussed, at this time. Pls.' Mot., Ex. 30, App. 373.

56. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

57. Defendant avers that none of the facts alleged in the paragraph are material to the

instant dispute.

58. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

59. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

60. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute.

61. Disputed. Defendant avers that Plaintiffs have provided insufficient evidence to support the assertion contained in this paragraph.

62. Defendant does not dispute that this paragraph references and quotes a portion of correspondence from the Special Trustee for American Indians, which speak for itself and is the best evidence of its contents.

63. Defendant does not dispute that this paragraph references and quotes a portion of correspondence from the Special Trustee for American Indians, which speak for itself and is the best evidence of its contents.

64. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute. Defendant further avers that the 1988 Act allowed the Yurok Tribe to make per capita distributions to their members after ten years had lapsed from the division of the funds make pursuant to the Act. 25 U.S.C. § 1300i-6(b).

65. Defendant does not dispute that this paragraph references correspondence from the

Special Trustee for American Indians and the Office of Special Trustee, which speak for themselves and are the best evidence of their contents.

66. Defendant does not dispute that this paragraph references Resolution of Yurok Tribal Council No. 07-41 and a facsimile sent to the Office of Trust Funds Management, which speak for themselves and are the best evidence of their contents.

67. Defendant avers that none of the facts alleged in the paragraph are material to the instant dispute. Defendant further avers that the referenced statement was made after the "IBIA ha[d] already dismissed the Tribe's appeal of this matter, concluding that it did not have jurisdiction." Pls.' Mot., Ex. 35 [Letter of Deputy Solicitor to Clifford Lyle Marshall (Apr. 20, 2007)], App. 395.

68. Defendant does not dispute that this paragraph references correspondence from the Assistant Secretary – Indian Affairs, which speak for itself and is the best evidence of its contents.

69. Disputed. Defendant disputes that the document cited in support of this assertion establishes that each of approximately 5200 members of the Yurok Tribe received $15,652.89, a total of approximately $80 million. Defendant also avers that none of the facts alleged in the paragraph are material to the instant dispute. Defendant further avers that the 1988 Act allowed the Yurok Tribe to make per capita distributions to their members after ten years had lapsed from the division of the funds make pursuant to the Act. 25 U.S.C. § 1300i-6(b).

DEFENDANT'S ADDITIONAL PROPOSED FINDINGS OF UNCONTROVERTED FACT

In accordance with RCFC 56(h)(1), Defendant sets forth the following Additional Proposed Findings of Uncontroverted Fact.

70. The 1988 Act had three general objectives: (1) to provide for formal Yurok organization; (2) to partition the joint reservation between the Hoopa and Yurok; and (3) to distribute equitably between the two Tribes the trust funds derived from the joint reservation's resources. 25 U.S.C. §§ 1300i-1, 1300i-3; Pls.' Mot., Ex. 6 [Senate Report, S. Rep. 100-564 (Sept. 13, 1988)], App. 97, 102.

71. In enacting the 1988 Act, Congress specifically intended to preclude the "individualization of tribal communal assets...that conflict with the general federal policies and laws favoring recognition and protection of tribal property rights[.]" Pls.' Mot., Ex. 6, App. 79.

72. In enacting the 1988 Act, Congress did "not believe that th[e] legislation, as a prospective settlement of this dispute, is in any way in conflict with the law of the case in the *Short* cases." Pls.' Mot., Ex. 6, App. 96. Congress, however, stated that "to the extent there is such a conflict, it is intended that this legislation will govern." *Id.*

73. To effectuate the partition of the joint reservation, the 1988 Act required the Hoopa Valley Tribe to pass a resolution that consented "to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe and to individual Yuroks" under the Act. 25 U.S.C. § 1300i-1 (a)(2)(A).

74. The 1988 Act also required the Hoopa Valley Tribe to "waive [ ] any claim such

tribe may have against the United States arising out of the provisions of the subchapter...." 25 U.S.C. § 1300i-1 (a). As directed by its members, and set forth in a tribal resolution, the Hoopa Valley Tribe did waive any claims against the United States arising from the 1988 Act and consented to the use of Hoopa monies as part of the Settlement Fund. Pls.' Mot., Ex. 8 [Notice Regarding Hoopa Valley Tribe Claim Waiver, 53 Fed. Reg. 49361 (Dec. 7, 1988)], App. 333.

75. An individual entitlement was recognized in the 1988 Act for those Indians of the former joint reservation who chose not to become a member of either the Hoopa Valley Tribe or the Yurok Tribe. An opt-out provision included in the Act entitled such individuals to a one time lump sum payment of $15,000. 25 U.S.C § 1300i-5(d).

76. The 1988 Act specified that those Indians of the former joint reservation electing membership in the Hoopa Valley Tribe "shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights of the Yurok Indian Reservation or the Yurok Tribe or in the Settlement Fund." 25 U.S.C § 1300i-5 (b)(4).

77. The 1988 Act specified that:

> 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 1300i-1 of this title or 120 days after the publication in the Federal Register of the option election date as required by section 1300i-5(a)(4) of this title.

25 U.S.C. § 1300i-11(b)(1).

78. The Notice of Statute of Limitation for Certain Claims, 56 Fed. Reg. 22998 (May 17,

1991) stated that:

> Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2 of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

Pls.' Mot., Ex. 11.

79. The BIA published the option election date on May 17, 1991. Pls.' Mot., Ex. 10 [Notice of Settlement Option Deadline, 56 Fed. Reg. 22998 (May 17, 1991)]. Consequently, the statute of limitations to bring individual claims expired on September 16, 1991. Pls.' Mot., Ex. 11.

80. In the 1988 Act, Congress defined the Hoopa Valley Tribe's share of the Settlement Fund based on the percentage of Hoopa members divided by the total number of persons on the Settlement Roll. 25 U.S.C. § 1300i-3(c); *see also id.* at §§ 1300i-4, 1300i-5(b).

81. In the 1988 Act, Congress specified that "the Secretary shall pay out the Settlement Fund into a trust account for the benefit of the Yurok Tribe ..." a percentage of the Settlement Fund. 25 U.S.C. § 1300i-3(d). The statute directed this task to be completed "[e]ffective with the publication of the option election date pursuant to section 1300i-5(a)(4)." *Id.*; *see also* Pls.' Mot., Ex. 10.

82. In the 1988 Act, Congress provided that "[a]ny funds remaining" after specified payments to certain individuals "shall be paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe." 25 U.S.C. § 1300i-6(a).

83. The 1988 Act allowed the Yurok Tribe to make *per capita* distributions to their members after ten years had lapsed from the division of the funds made pursuant to the Act. 25 U.S.C. § 1300i-6 (b). The division of the funds occurred between 1988 and 1991. Pls.' Mot., Ex. 13 [Memorandum to Area Director Regarding Distribution of Funds (Aug., 22, 1991)].

84. In the 1988 Act, Congress amended 25 U.S.C. § 407 and established that proceeds from timber are to be used only by the tribe rather than by individual members of the tribe. Pub. L. No. 100-580, § 13.

85. Congress estimated the equitable distribution of the Settlement Fund to be roughly one-third to the Hoopa Valley Tribe and then one-third plus the remainder (after specified individual payments) to the Yurok Tribe. Pls.' Mot., Ex. 6, App. 96-97, 102.

86. Including certain interim payments and the final distribution in 1991, the Hoopa Valley Tribe received $34,006,551.87, the amount determined to be its share of the Fund pursuant to the 1988 Act. Pls.' Mot., Ex. 13, App. 152-53.

87. The Department of the Interior stated in its congressional testimony before the Senate Indian Affairs committee that "the Hoopa ... already received its portion of the benefits under the Act and is not entitled to further distributions from the [] Fund [.]" Pls.' Mot., Ex. 25, App. 337.

88. The Yurok Tribe requested that the Department of the Interior evaluate whether it might distribute the remainder of the Settlement Fund administratively. Pls.' Mot., Ex. 30 [Letter of Special Trustee for American Indians to Clifford Lyle Marshall (Mar. 1,

2007)], App. 372.

89. "The Yurok Tribe proposed[ed]...to provide the Department with a new, unconditional waiver of claims, a concept not proposed at the time of the 2002 [congressional] hearing." Pls.' Mot., Ex. 30, App. 373.

90. The Department of the Interior did not make *per capit*a distributions to Yurok tribal members. Pls.' Mot., Ex. 31; Pls. Mot., Ex. 34 [Resolution of Yurok Tribal Council No. 07-41 Regarding Distribution of Assets Held in Trust (April 19, 2007)], App. 394; Pls. Mot., Ex. 38 [Letter of Deputy Special Trustee – Trust Services to SEI Private Trust Company Regarding Free Delivery of Hoopa-Yurok Settlement Account (April 20, 2007)).

Respectfully submitted this day of July 22, 2008,

RONALD J. TENPAS
Assistant Attorney General

_____/s/ Sara E. Costello_____
Sara E. Costello, Trial Attorney
Devon Lehman McCune, Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663

Electronically Filed September 10, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72-TCW Judge Thomas C. Wheeler **DECLARATION OF CLIFFORD LYLE MARSHALL IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Clifford Lyle Marshall, depose and state as follows:

1. I am a member of the Hoopa Valley Tribe and one of the individual plaintiffs in this proceeding. I have served as a member of the Hoopa Valley Tribal Council for many years. In addition, I have been elected the Hoopa Valley Tribe's Chairman since 2001. I have personal knowledge of the matters stated here and can testify to them.

2. Following the Senate Committee on Indian Affairs' 2002 hearing concerning the Interior Department's report made pursuant to Section 14(c) of the Hoopa-Yurok Settlement Act, there have been many attempts to resolve distribution of the Hoopa-Yurok Settlement Fund through mediation or legislation.

3. In 2002-03, the Hoopa Valley Tribe and the Yurok Tribe participated in mediation on matters concerning the Hoopa-Yurok Settlement Act. The Tribes reached a mediation agreement in December 2003. On September 30, 2004, S. 2878, the Hoopa-Yurok Settlement Amendment Act of 2004, was introduced by Senator Campbell to carry out the Tribes' mediation agreement. No hearings were held on the bill before the end of the 108th Congress.

4. In 2005, we conducted further discussions concerning introduction of a new bill in the Congress. Our counsel met with the Yurok Tribe's new law firm, Hogan & Hartson, to develop a joint position on proposed legislative options. We also met repeatedly with representatives of the Interior Department, including Mr. James Cason, concerning options for legislation, either along the lines of S. 2878 or simpler bills which would merely create a process for division of the Hoopa-Yurok Settlement Fund remainder. However, in 2005-06, we found the Interior Department unwilling to express support for any legislative proposal.

5. In February 2006, we learned from our Congressman that the Department of the Interior was conducting another analysis of the Hoopa-Yurok Settlement Fund issue. We confirmed this during a meeting with Associate Deputy Secretary James Cason. In July 2006, Mr. Cason sent me a letter explaining that the Department was considering whether the Interior Department has the authority to release the Fund administratively, notwithstanding that the Department told Congress Interior could not do so a mere four years earlier.

6. On January 26, 2007, Tribal Council Member Jackson and I had scheduled a meeting with Mr. Cason. Our attorney received a call that morning from Mr. Cason's assistant stating that Mr. Cason needed to recuse himself from the Hoopa-Yurok Settlement Fund matter, but that the meeting could be held without him. At the meeting, I was told that the recusal was because the law firm personally representing Mr. Cason, Hogan & Hartson, also had an interest in the Hoopa Yurok Settlement Fund issue. The Interior Department representatives explained that Special Trustee Ross O. Swimmer was to be the point person on the Interior Department's policy decision. Mr. Swimmer was the person who, on behalf of the Interior Department, testified in opposition to the Hoopa-Yurok Settlement Act in 1988 and threatened an Administration veto of the bill.

7. Following the meeting, I learned that Mr. Cason has been represented by Hogan & Hartson in litigation for some time, including in *Cobell v. Norton*, No. 1:96cv1285 (D. D.C.). I am appalled that the conflict of interest concerning Hogan & Hartson's representation of both the Yurok Tribe and Mr. Cason was not addressed for more than one year and that Mr. Cason continued to be involved in the matter until one month before Mr. Swimmer's decision letter was issued.

8. I believe that the March 1, 2007 letter from Ross Swimmer, Special Trustee for American Indians was not the result of "careful consideration" nor a "better reading of the Act," as he asserted.

9. Exhibit 45 is a true and correct copy of a memorandum from Hogan & Hartson to Sue Ellen Wooldridge dated October 21, 2005. We received this document from the Interior Department pursuant to a Freedom of Information Act request in 2008. Also, Exhibit 46 is a letter of Ms. Faye Iudicello to me dated April 3, 2007 regarding Mr. Cason's recusal from reconsideration of the Hoopa Valley Tribe's administrative appeal concerning Mr. Swimmer's decision.

I testify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 10th day of September, 2008, in Hoopa, California.

Clifford Lyle Marshall

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2008, a copy of, DECLARATION OF CLIFFORD LYLE MARSHALL IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, was electronically sent via the CM/ECF system by the United States Court of Federal Claims on the following party:

Devon Lehman McCune
Email: devon.mccune@usdoj.gov

Sara E. Costello
Email: Sara.costello@usdoj.gov

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\MarsDecl_Compl082908_05.doc
nmc 9/10/08

Electronically Filed September 10, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72-TCW Judge Thomas C. Wheeler **DECLARATION OF OLLIE MAE DAVIS REGARDING HOOPA MEMBERSHIP OPTION UNDER PUB. L. 100-580**

I, Ollie Mae Davis, declare and state as follows:

1. I am an enrollment and research specialist for the Hoopa Valley Tribe. I am also an enrolled member of the Hoopa Valley Tribe.

2. Beginning in the mid-1970s, I provided litigation support services to counsel for the Hoopa Valley Tribe in the matter of *Jessie Short, et al. v. United States* and related cases and legislation. In the *Short* case, over 3,000 individual plaintiffs completed detailed declaration questionnaires concerning their life history and ancestry. I reviewed these questionnaires and conducted research and writing concerning plaintiffs' family history. I maintained the Hoopa Valley Tribe's records concerning individual plaintiffs and the litigation activity in *Short v. United States* and the related cases.

3. In 1987, I worked as an expert witness on behalf of the Hoopa Valley Tribe relating to the trial conducted by Judge Lawrence Margolis concerning development of standards for inclusion as an Indian of the Reservation under the Manifest Injustice Exception to the Court's A-E standards.

4. After Congress passed the Hoopa-Yurok Settlement, Pub. L. 100-580, I worked on family history and genealogy issues involved in preparation of the Hoopa Yurok Settlement Roll. Over 8,000 applications for inclusion in that Roll were received by the Bureau of Indian Affairs and each had to be analyzed.

5. In 1990, Congress amended the Hoopa-Yurok Settlement Act to provide express authority for the Hoopa Valley Business Council to review applications, make recommendations which the Secretary had to accept unless conflicting or erroneous, and to appeal erroneous decisions of the Secretary. *See* Pub. L. 101-301. As a result of this work, I became very familiar with eligibility criteria for the Hoopa-Yurok Settlement Roll.

6. Section 5 of the Hoopa-Yurok Settlement Act provides in part:

> 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.

Because of Subsection (C), quoted above, members of the Hoopa Valley Tribe enrolled as of 1988 were not eligible for inclusion on the Hoopa Yurok Settlement Roll although they met the Settlement Act's criteria for eligibility as Indians of the Reservation.

7. I have reviewed the Hoopa Valley Tribe's enrollment records for each of the individual plaintiffs in this suit and have verified that they are enrolled members of the Hoopa Valley Tribe. I also have determined that each of them were enrolled members of the Hoopa Valley Tribe on and prior to August 8, 1988, as follows:

HOOPA PLAINTIFF NAME	YEAR OF ENROLLMENT
Elton Baldy	1954
Oscar Billings	1960
Benjamin Branham, Jr.	1969
Lila Carpenter	1980
William F. Carpenter, Jr.	1950
Margaret Mattz Dickson	1950
Freedom Jackson	1982
William J. Jarnaghan, Sr.	1950
Joseph LeMieux	1950
Clifford Lyle Marshall	1958
Leonard Masten, Jr.	1955
Danielle Vigil-Masten	1975

8. Because the individual Hoopa Plaintiffs in this suit were enrolled members of the Hoopa Valley Tribe on August 8, 1988, none of them was placed on the Hoopa-Yurok Settlement Roll and none of them had the right to elect a settlement option under Section 6 of Pub. L. 100-580. The Hoopa Plaintiffs in this case are enrolled members of the Hoopa Valley Tribe because of enrollment decisions made by the Tribe and not because they selected the Hoopa tribal membership option under 25 U.S.C. § 1300i-5(b).

9. In the course of preparing the Hoopa-Yurok Settlement Roll and analyzing the election of settlement options by persons who qualified for inclusion on the Hoopa-Yurok Settlement Roll, I determined that only four persons attempted to elect the Hoopa tribal membership option under 25 U.S.C. § 1300i-5(b):

SETTLEMENT APPLICANT NAME	CONTROL NUMBER
Laura Lee George	3740
Zane Eldon Grant, Jr.	3737
Jack Norton, Jr.	3775
Bessie Latham	9728

10. On April 16, 1992, the Bureau of Indian Affairs, Northern California Agency, determined that the individuals listed above met the criteria for membership on the Hoopa Valley Tribe pursuant to Section 6(b)(3) of Pub. L. 100-580. The Hoopa Valley Tribe filed an appeal

and statement of reasons for appeal regarding that determination. On September 17, 1992, the Bureau of Indian Affairs, Sacramento Area Office determined: "After review of the above-named individuals' files, we find that they do not qualify for Option 1 as determined by the Acting Superintendent, Northern California Agency." The Sacramento Area Director went on to state that the applicants would "be advised of their right to appeal" but should they choose not to appeal, they would be given an opportunity "to select another [settlement] option." *See* Exhibit 47.

11. In October 1992, the Sacramento Area Director forwarded to the Deputy Commissioner-Indian Affairs, Attention: Director, Tribal Government Services, the appeals of Laura Lee George and Janice Yerton (on behalf of Bessie Latham) from two of the decisions of the Sacramento Area Director issued September 17, 1992. On November 23, 1992, the Hoopa Valley Tribe submitted to the Deputy Commissioner-- Indian Affairs the Tribe's recommendations and response to appeal documents. To the best of my knowledge, the Deputy Commissioner--Indian Affairs has not acted on the two appellants' appeals. However, I am aware that Bessie Latham has passed away. As a result, she could not be included on the membership roll of the Hoopa Valley Tribe members even if her appeal were to be successful.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 28th of August, 2008, in Hoopa, California.

Ollie Mae Davis

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2008, a copy of, Declaration of Ollie Mae Davis Regarding Hoopa Membership Option Under Pub. L. 100-580, was electronically sent via the CM/ECF system by the United States Court of Federal Claims on the following party:

Devon Lehman McCune
Email: devon.mccune@usdoj.gov

Sara Costello
Email: sara.costello@usdoj.gov

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\OMDavisSDecl081508_02.doc
nmc 8/28/08

Electronically Filed September 10, 2008

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as *parens patriae* on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 08-72-TCW Judge Thomas C. Wheeler **PLAINTIFFS' RESPONSE TO DEFENDANT'S ADDITIONAL PROPOSED FINDINGS OF UNCONTROVERTED FACT**

In accordance with RCFC 56(h)(2) Plaintiffs set forth the following responses to Defendant's Additional Proposed Findings of Uncontroverted Fact (filed July 22, 2008). Pursuant to the RCFC and for the Court's convenience, Defendant's proposed finding is recited followed by Plaintiffs' response. While these responses often indicate the existence of a dispute, this does not suggest the existence of genuine issues of material fact where, for example, witness credibility is not involved.

70. The 1988 Act had three general objectives: (1) to provide for formal Yurok organization; (2) to partition the joint reservation between the Hoopa and Yurok; and (3) to distribute equitably between the two Tribes the trust funds derived from the joint reservation's resources. 25 U.S.C. §§ 1300i-1, 1300i-3; Pls.' Mot., Ex. 6 [Senate Report, S. Rep. 100-564 (Sept. 13, 1988)], App. 97, 102.

Plaintiffs' Response: Disputed, in part. Plaintiffs do not dispute that this paragraph cites sections of the Settlement Act (or "Act"), a document which speaks for itself and is the best evidence of its contents. The 1988 Act included objectives of providing for formal Yurok tribal organization, App. 103, and partitioning the Joint Reservation between the Hoopa Valley and

Yurok Indian Tribes, App. 93-96, and was also intended to "deal fairly with all the interests in the reservation." App. 91. However, neither the Act nor the legislative history cited by Defendant, support the narrow proposed finding of "general objectives." The Act's objectives were far broader than the finding suggests. For example, the purpose statement concerning the Settlement Act is described at App. 78-79. (*E.g.*, "to partition certain reservation lands between two tribes . . . and to resolve long standing litigation between the United States, the Hoopa Valley Tribe and a large number of individual Indians, most, but not all of whom are of Yurok descent.") Also, the trust funds derived from the Joint Reservation were not divided between two tribes but were substantially applied to individual claimants who met the standards of *Short v. United States* and a portion was reserved for disposition by Congress pursuant to Section 14(c) under certain circumstances. The Act was also intended to assist three small tribes ("rancherias") at Resighini, Trinidad and Big Lagoon, 25 U.S.C. § 1300i-10(b) and to clarify the Karuk Tribe of California's recognition. 25 U.S.C. § 1300i(b)(7). The Act also expanded the Yurok Reservation, and directed submission of an economic self-sufficiency plan for the Yurok Indian Tribe. *See* 25 U.S.C. § 1300i-1(c); 1300i-9. The Act also amended the General Tribal Timber Sales statute, 25 U.S.C. § 407, to prevent the application of certain *Short* case rulings to other Indian tribes.

71. In enacting the 1988 Act, Congress specifically intended to preclude the "individualization of tribal communal assets... that conflict with the general federal policies and laws favoring recognition and protection of tribal property rights[.]" Pls.' Mot., Ex. 6, App. 79.

Plaintiffs' Response: Disputed, in part. Plaintiffs do not dispute that this paragraph quotes phrases from S. Rep. 100-564 at 2, App. at 79, a document which speaks for itself and is the best evidence of its contents. A fair reading of the cited section shows that the Committee

did not intend to preclude enforcement of the "judicial decisions that are unique to the Hoopa Valley Indian Reservation and that have established certain individual interests[.]" *See id.* and 25 U.S.C. § 1300i-2.

72. In enacting the 1988 Act, Congress did "not believe that th[e] legislation, as a prospective settlement of this dispute, is in any way in conflict with the law of the case in the Short cases." Pls.' Mot., Ex. 6, App. 96. Congress, however, stated that "to the extent there is such a conflict, it is intended that this legislation will govern." *Id.*

Plaintiffs' Response: Plaintiffs do not dispute that this paragraph quotes a portion of the report of the Select Committee on Indian Affairs, S. Rep. 100-564, which speaks for itself and is the best evidence of its contents.

73. To effectuate the partition of the joint reservation, the 1988 Act required the Hoopa Valley Tribe to pass a resolution that consented "to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe and to individual Yuroks" under the Act. 25 U.S.C. § 1300i-1 (a)(2)(A).

Plaintiffs' Response: Disputed, in part. Plaintiffs do not dispute that this paragraph quotes a portion of 25 U.S.C. § 1300i-1(a)(2)(A), which speaks for itself and is the best evidence of its contents. However, Defendant subtly misquotes the Act by omitting Congress's actual language "as provided in this Act," and substituting it with an unquoted "under the Act."

74. The 1988 Act also required the Hoopa Valley Tribe to "waive [ ] any claim such tribe may have against the United States arising out of the provisions of the subchapter. "25 U.S.C. § 1300i-1 (a). As directed by its members, and set forth in a tribal resolution, the Hoopa Valley Tribe did waive any claims against the United States arising from the 1988 Act and consented to the use of Hoopa monies as part of the Settlement Fund. Pls.' Mot., Ex. 8 [Notice

Regarding Hoopa Valley Tribe Claim Waiver, 53 Fed. Reg. 49361 (Dec. 7, 1988)], App. 333.

Plaintiffs' Response: Disputed, in part. Plaintiffs do not dispute that this paragraph quotes a portion of Section 2(a)(2)(A), which, as codified, substitutes the word "subchapter" for the words of the Public Law "of this Act," and, which speaks for itself and is the best evidence of its contents. However, the second sentence misquotes the referenced tribal resolution, App. 133, which includes as one recital that the Hoopa Valley Business Council "has been reassured and directed by the membership to comply with the Act," and goes on to waive "any claim the Hoopa Valley Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act; and . . . the Hoopa Valley Tribe affirms tribal consent to the contribution of Hoopa Escrow monies to the settlement fund and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Hoopa-Yurok Settlement Act."

75. An individual entitlement was recognized in the 1988 Act for those Indians of the former joint reservation who chose not to become a member of either the Hoopa Valley Tribe or the Yurok Tribe. An opt-out provision included in the Act entitled such individuals to a one time lump sum payment of $15,000. 25 U.S.C § 1300i-5(d).

Plaintiffs' Response: Disputed, in part. 25 U.S.C. § 1300i-5(d) gave to certain persons on the Hoopa-Yurok Settlement Roll a lump sum payment option. This provision of the Act speaks for itself and is the best evidence of its contents. However, the provision did not sweep as broadly as alleged. Minors could not elect that option, except by complying with the special requirements of 25 U.S.C. § 1300i-5(a)(3). Also, no individual could be entitled to payment without compliance with the counseling opportunity affidavit prescribed by 25 U.S.C. § 1300i-5(d).

76. The 1988 Act specified that those Indians of the former joint reservation electing membership in the Hoopa Valley Tribe "shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights of the Yurok Indian Reservation or the Yurok Tribe or in the Settlement Fund." 25 U.S.C § 1300i-5 (b)(4).

Plaintiffs' Response: Disputed. Section 6(b)(4) is misquoted in this proposed finding. Furthermore, that subsection of the Act did not apply to "those Indians of the former Joint Reservation electing membership in the Hoopa Valley Tribe," as proposed, but instead applied to certain persons on the Hoopa Yurok Settlement Roll. The eligibility criteria for the Settlement Roll, set forth in Section 5(a) of the Act, require not only that a person meet the criteria for eligibility as an Indian of the Reservation, defined in Section 1 of the Act, but also require that such persons be living upon the date of enactment, be United States citizens, and not be, on August 8, 1988, enrolled members of the Hoopa Valley Tribe. Eligible persons were also required to apply in the manner and time established pursuant to Section 5 and to comply with the notice of settlement options, prescribed by Section 6.

77. The 1988 Act specified that:

> 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 1300i-1 of this title or 120 days after the publication in the Federal Register of the option election date as required by section 1300i-5(a)(4) of this title.

25 U.S.C. § 1300i-11(b)(1).

Plaintiffs' Response: Undisputed.

78. The Notice of Statute of Limitation for Certain Claims, 56 Fed. Reg. 22998 (May 17, 1991) stated that:

> Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2

> of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

Pls.' Mot., Ex. 11.

Plaintiffs' Response: Undisputed.

79. The BIA published the option election date on May 17, 1991. Pls.' Mot., Ex. 10 [Notice of Settlement Option Deadline, 56 Fed. Reg. 22998 (May 17, 1991)]. Consequently, the statute of limitations to bring individual claims expired on September 16, 1991. Pls.' Mot., Ex. 11.

Plaintiffs' Response: Disputed, in part. The published notice of the deadline for electing a settlement option actually appears at 56 Fed. Reg. 22996. It does not state a limitations period. However, the separate notice published at 56 Fed. Reg. 22998 does specify a limitations period for certain claims (not all individual claims) which expired on September 16, 1991.

80. In the 1988 Act, Congress defined the Hoopa Valley Tribe's share of the Settlement Fund based on the percentage of Hoopa members divided by the total number of persons on the Settlement Roll. 25 U.S.C. § 1300i-3(c); *see also id.* at §§ 1300i-4, 1300i-5(b).

Plaintiffs' Response: Disputed. The cited sections of the Settlement Act do not support Defendant's proposed finding. Neither Sections 4(c) of the Act, nor Sections 5, nor 6, indicate that Congress was intending to "define[ ] the Hoopa Valley Tribe's share of the Settlement Fund." Section 4(c) did require the Secretary, upon the occurrence of certain events, to pay an amount out of the Settlement Fund into a trust account for the benefit of the Hoopa Valley Tribe. However, the percentage of the Settlement Fund, which was the basis of the payment of Section 4(c), was determined by dividing the number of enrolled members of the Hoopa Valley Tribe as of the date of the promulgation of the Settlement Roll by the sum of such enrolled Hoopa Valley

tribal members and the number of persons on the Settlement Roll. Defendant's proposed finding uses the wrong denominator.

81. In the 1988 Act, Congress specified that "the Secretary shall pay out the Settlement Fund into a trust account for the benefit of the Yurok Tribe..." a percentage of the Settlement Fund. 25 U.S.C. § 1300i-3(d). The statute directed this task to be completed "[e]ffective with the publication of the option election date pursuant to section 1300i5(a)(4)." *Id.*; *see also* Pls.' Mot., Ex. 10.

Plaintiffs' Response: Disputed, in part. Plaintiffs do not dispute that the first sentence of Defendant's proposed finding substantially quotes a phrase from Section 4(d) of the Act which speaks for itself and is the best evidence of its contents. However, that phrase is taken out of context is misleading without reference to other sections of the Act that condition the Secretary's duty based upon other events. The second sentence of the proposed finding extracts another phrase from the same subsection but incorrectly concludes that "the statute directed this task to be completed" at that time. Defendant overlooks the conditions stated by Section 2(c)(4) which makes the "apportionment of funds to the Yurok Tribe as provided in section[ ] 4 . . . not . . . effective unless and until the Interim Council of the Yurok Tribe has adopted a resolution waiving any claims such tribe may have against the United States arising out of the provisions of this Act."

82. In the 1988 Act, Congress provided that "[a]ny funds remaining" after specified payments to certain individuals "shall be paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe." 25 U.S.C. § 1300i-6(a).

Plaintiffs' Response: Disputed, in part. Defendant's proposed finding quotes phrases from Section 7(a) of the Act which speaks for itself and is the best evidence of its contents.

However, Defendant omits and ignores the condition precedent established in Section 2(c)(4) of the Act.

83. The 1988 Act allowed the Yurok Tribe to make per capita distributions to their members after ten years had lapsed from the division of the funds made pursuant to the Act. 25 U.S.C. § 1300i-6 (b). The division of the funds occurred between 1988 and 1991. Pls.' Mot., Ex. 13 [Memorandum to Area Director Regarding Distribution of Funds (Aug., 22, 1991)].

Plaintiffs' Response: Disputed. Section 7(b) of the Act uses the terms "funds apportioned to . . . the Yurok Tribe," the same term used in the condition precedent language of Section 2(c)(4). Section (2)(4) expressly limits the operation of Section 7 of the Act. Defendant's proposed finding incorrectly refers to funds having been divided between "1988 and 1991." This appears to be a reference to trust funds authorized to be used by the Yurok Transition Team and by the Hoopa Valley Tribal Council pursuant to Section 4(a). However, the language of Section 7 does not encompass funds authorized to be paid from the Settlement Fund by Section 4(a) of the Act, but instead refers to subsections (c) and (d) of Section 4. Therefore, the cited section does not support the proposed finding.

84. In the 1988 Act, Congress amended 25 U.S.C. § 407 and established that proceeds from timber are to be used only by the tribe rather than by individual members of the tribe. Pub. L. No. 100-580, § 13.

Plaintiffs' Response: Disputed. The proposed finding grossly distorts Section 13 of the Act. Section 13 of the Act provides the best evidence of its contents. Among other things, the amendment to the timber proceeds statute says that the proceeds of sale shall be used "as determined by the governing bodies of the tribes concerned" (emphasis added). Contrary to

Defendant's assertion, Section 13 says nothing to prohibit use of timber proceeds by individual members of a tribe.

85. Congress estimated the equitable distribution of the Settlement Fund to be roughly one-third to the Hoopa Valley Tribe and then one-third plus the remainder (after specified individual payments) to the Yurok Tribe. Pls.' Mot., Ex. 6, App. 96-97, 102.

Plaintiffs' Response: Disputed. The proposed finding misstates language from the Senate Report, S. Rep. 100-564, which speaks for itself and provides the best evidence of its contents. The referenced language appears on Report page 20, App. 97, which indicates that roughly one-third of the entire Settlement Fund would be $23 to 23.5 million. The Report describes estimates prepared by the pro-organization Yurok Group of the proportion of Settlement Roll applicants who would accept tribal membership. It does not purport to be a "congressional estimate." The Senate Committee had no way of knowing in 1988 that "over 8,000 applications for the Settlement Roll," would ultimately be received. S. Rep. 101-226 at 15 (Nov. 21, 1989).

86. Including certain interim payments and the final distribution in 1991, the Hoopa Valley Tribe received $34,006,551.87, the amount determined to be its share of the Fund pursuant to the 1988 Act. Pls.' Mot., Ex. 13, App. 152-53.

Plaintiffs' Response: Disputed. The proposed finding purports to describe the letter of the Office of Trust Funds Management, dated August 22, 1991, App. 152-55, which speaks for itself and provides the best evidence of its contents. While the figure of approximately $34 million appears once in the letter, it is plain from the letter that the Hoopa Valley Tribe did not receive this sum. Instead, the letter shows a balance due to the Hoopa Tribe of $14.1 million from which an amount of $1.186 million was subtracted and transferred to an escrow account to

compensate appeal cases. The Hoopa-Yurok Settlement Act funding history is charted in S. Hrg. 107-648 at 89 (2002), App. 333.

87. The Department of the Interior stated in its congressional testimony before the Senate Indian Affairs committee that "the Hoopa ... already received its portion of the benefits under the Act and is not entitled to further distributions from the [] Fund [.]" Pls.' Mot., Ex. 25, App. 337.

Plaintiffs' Response: Disputed, in part. The cited page, App. 337, does not support the proposed finding. Elsewhere in Exhibit 25, the Department's testimony contains some of the quoted words. *E.g.*, App. 251-52. That same page of the Senate Hearing Report, however, states the view of the Department of the Interior that the remaining monies in the Settlement Fund should be "retained in a trust account" and "should be administered for the mutual benefit of both [the Hoopa Valley and Yurok] tribes." App. 252. The Senate Hearing Report provides the best evidence of its contents.

88. The Yurok Tribe requested that the Department of the Interior evaluate whether it might distribute the remainder of the Settlement Fund administratively. Pls.' Mot., Ex. 30 [Letter of Special Trustee for American Indians to Clifford Lyle Marshall (Mar. 1, 2007)], App. 372.

Plaintiffs' Response: Undisputed.

89. "The Yurok Tribe proposed[ed].. .to provide the Department with a new, unconditional waiver of claims, a concept not proposed at the time of the 2002 [congressional] hearing." Pls.' Mot., Ex. 30, App. 373.

Plaintiffs' Response: This finding characterizes language from the March 1, 2007 letter of Special Trustee Ross O. Swimmer, App. 372-74, a document that speaks for itself and is the best evidence of its contents.

90. The Department of the Interior did not make *per capita* distributions to Yurok tribal members. Pls.' Mot., Ex. 31; PIs. Mot., Ex. 34 [Resolution of Yurok Tribal Council No.07-41 Regarding Distribution of Assets Held in Trust (April 19, 2007)], App. 394; PIs. Mot., Ex. 38 [Letter of Deputy Special Trustee - Trust Services to SEI Private Trust Company Regarding Free Delivery of Hoopa-Yurok Settlement Account (April 20, 2007)).

Plaintiffs' Response: Disputed, in part. The proposed finding is not a statement of fact, but appears to be an unjustified conclusion of law. *See Short IV*, 12 Cl. Ct. at 41. The proposed finding references three documents, Plaintiffs' exhibits 31, 34 and 38, which speak for themselves and are the best evidence of their contents. None of the documents states that the Interior Department did not approve the Yurok per capita distribution nor does any of these documents state the degree to which the Department of the Interior authorized or participated in the per capita distribution. Exhibit 34, the Yurok Tribal Council's Resolution No. 07-41 "directs the Department of the Interior to Free Deliver" Hoopa-Yurok Settlement Account assets to a custodian listed, Citibank of New York, for the benefit of Morgan Stanley & Co. Exhibit 38 (an Interior Department letter) also names Morgan Stanley as a custodian of assets from the account "Hoopa/Yurok Settlement - 7193." Exhibit 40 shows that Morgan Stanley issued per capita payment checks to the Yurok member beneficiaries.

Respectfully submitted this 10th day of September, 2008.

s/ Thomas P. Schlosser
Thomas P. Schlosser, *Attorney of Record*
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

Of Counsel:
Rob Roy Smith, Attorney
ATER WYNNE, LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
Tel: (206) 623-4711
Fax: (206) 467-8406
rrs@aterwynne.com
Attorneys for the Plaintiff Hoopa Valley Tribe, et al.

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2008, a copy of, PLAINTIFFS' RESPONSE TO DEFENDANT'S ADDITIONAL PROPOSED FINDINGS OF UNCONTROVERTED FACT, was electronically sent via the CM/ECF system by the United States Court of Federal Claims on the following parties:

Devon Lehman McCune
Email: devon.mccune@usdoj.gov

Sara E. Costello
Email: Sara.costello@usdoj.gov

s/ Thomas P. Schlosser
Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER, JOZWIAK & McGAW
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\PtfsResp_Findings090308_07.DOC
nmc:9/10/08

#069611

ORIGINAL

FILED
MAY 18 2009
U.S. COURT OF FEDERAL CLAIMS

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, on its own behalf, and in its capacity as parens patriae on behalf of its members; Elton Baldy; Oscar Billings; Benjamin Branham, Jr.; Lila Carpenter; William F. Carpenter, Jr.; Margaret Mattz Dickson; Freedom Jackson; William J. Jarnaghan, Sr.; Joseph LeMieux; Clifford Lyle Marshall; Leonard Masten, Jr.; Danielle Vigil-Masten Plaintiffs, v. UNITED STATES OF AMERICA, Defendant	Case No. 08-72-TCW Judge Thomas C. Wheeler

NOTICE OF APPEAL

The Hoopa Valley Tribe and individual Hoopa Plaintiffs named above (herein "Plaintiffs") provide notice of their appeal to the United States Court of Appeals for the Federal Circuit from the March 25, 2009 Opinion and Order granting the Defendant's motion for summary judgment and denying Plaintiffs' motion for partial summary judgment (Docket No. 51), and the March 30, 2009 Judgment entered in favor of Defendant (Docket No. 52). A copy of the Opinion and Order, and Judgment, are attached hereto.

Respectfully submitted this 15th day of May, 2009.

MORISSET, SCHLOSSER & JOZWIAK

Thomas P. Schlosser, Attorney of Record
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 286-7322
t.schlosser@msaj.com
Attorneys for the Plaintiff Hoopa Valley Tribe, et al.

ORIGINAL

CERTIFICATE OF FILING AND SERVICE

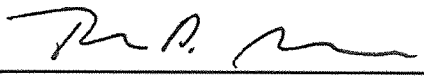
I hereby certify that on May 15, 2009, I filed the original and four copies of the Hoopa Valley Tribe, et al., Notice of Appeal, via Federal Express Next Day Delivery, to:

U.S. Court of Federal Claims
COURT CLERK
717 Madison Place, NW
Washington, D.C. 20005

I further certify that on May 15, 2009, I electronically mailed the foregoing to:

Jonathan Lynwood Abram: jlabram@hhlaw.com, kswillen@hhlaw.com, pbnoell@hhlaw.com; **Sara E. Costello:** sara.costello@usdoj.gov, crystle.chrispen@usdoj.gov; **John Corbett**, Yurok Tribe: johnc@yuroktribe.nsn.us.

DATED this 15th day of May, 2009.



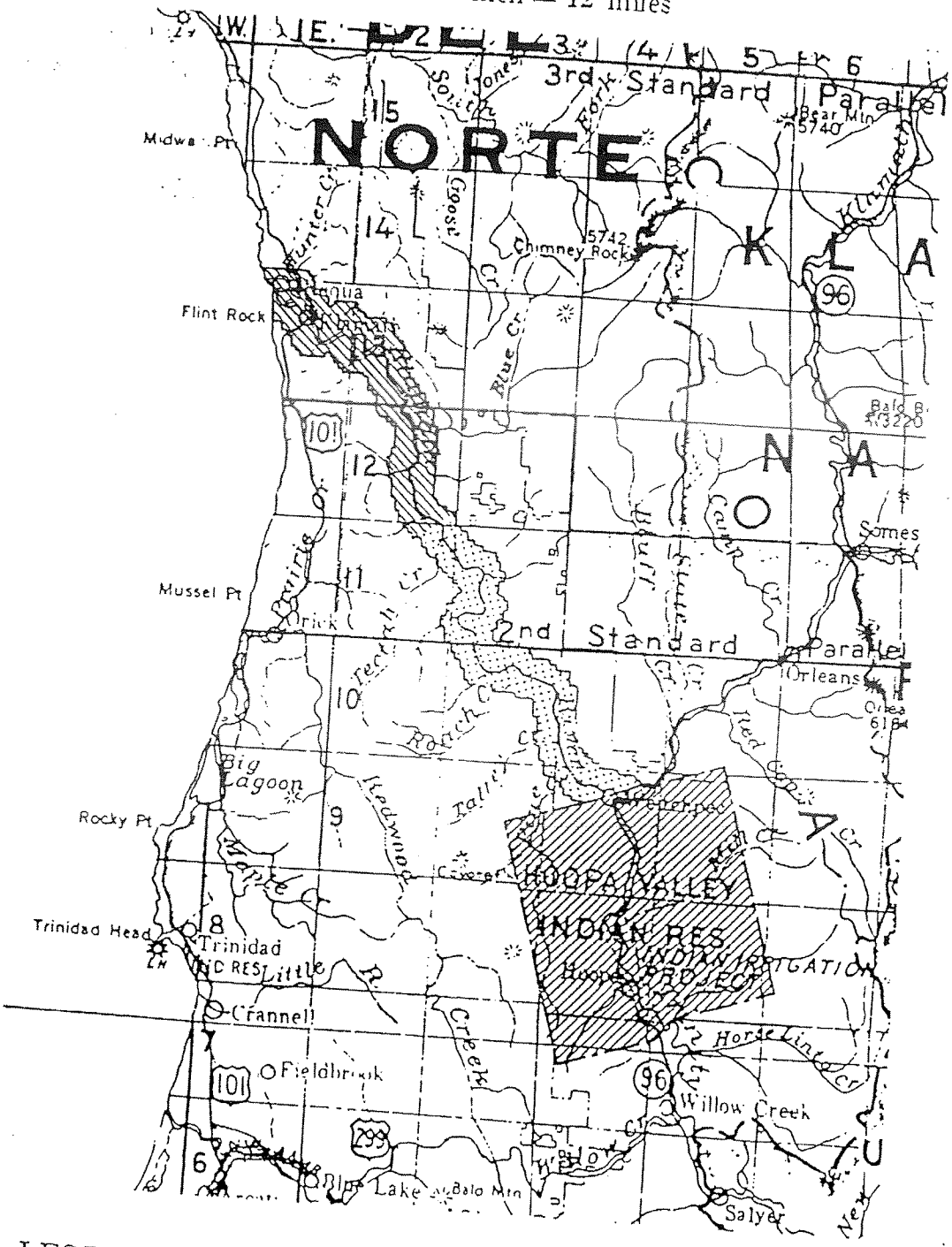
Thomas P. Schlosser, Attorney of Record
Morisset, Schlosser & Jozwiak
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 286-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\Pleadings\Notice of Appeal.doc
tds:5/15/09

APPENDIX TO OPINION OF THE COURT

MAP OF HOOPA VALLEY INDIAN RESERVATION, CALIFORNIA*

Scale: 1 inch = 12 miles



LEGEND:

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

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

503-857 O - 75 (Face p. 506)

IN REPLY REFER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825

JUN 25 1974

Memorandum

To: Superintendent, Hoopa Agency

From: Area Director

Subject: Short v. the United States

The decision of the U. S. Supreme Court to deny the petition for a writ of certiorari in the case of Jessie Short et al., v. the United States makes it necessary for this office to institute interim measures for dealing with Hoopa Valley Reservation tribal trust funds and tribal trust income until it hears further from the Trial Judge to whom the Court of Claims remanded the case for further proceedings. Accordingly, this office is proceeding on the following assumptions:

(1) Hoopa Valley Reservation: A single reservation, as extended by Executive Order on October 16, 1891 by President Benjamin Harrison to include the Square, the Addition, and the Klamath River Reservation.

(2) Tribal Land: All Indian trust land within the Hoopa Valley Reservation not allotted to Indians.

(3) Tribal Trust Funds: Tribal money held by the United States Government in the following accounts:

Account 7236 - Proceeds of Labor, Hoopa Valley Indians, California

Account 7736 - Interest and Interest on Accruals, Proceeds of Labor, Hoopa Valley Indians, California

Account 7056 - Proceeds of Klamath River Reservation, California

Account 7556 - Interest and Interest on Accruals, Proceeds of Klamath River Reservation, California

Account 7153 - Proceeds of Labor, Yurok Indians of Lower Klamath River, California

Account 7653 - Interest and Interest on Accruals, Proceeds of Labor, Yurok Indians of Lower Klamath River, California

Account 7154 - Proceeds of Labor, Yurok Indians of Upper Klamath River, California

Account 7654 - Interest and Interest on Accruals, Proceeds of Labor, Yurok Indians of Upper Klamath River, California

(4) Tribal Trust Income: Money paid to the United States Government for the sale of Hoopa Valley Reservation tribal resources or use of tribal land from all sources such as: leases, rights-of-way, permits, easements, rentals, fees, licenses, and sale of timber and deposited to one of the accounts in (3) above.

(5) Hoopa Valley Tribe: Those persons on the Hoopa Valley Tri_ Roll and eligible to be on the roll on June 30, 1974, and numbering 1405. (Note: This office does recognize that the number may increase or decrease as Hoopa Valley Tribe tribal membership applications are processed by the Hoopa Valley Tribe).

(6) Plaintiffs: Those persons who are plaintiffs in the case and numbering 3323. (Note: The plaintiff number is considered, at this time, this office's best guide as to those persons who may be found entitled to recover as an Indian of the reservation by the Court of Claims. We recognize that the number may be more by intervention in the case by others who are not plaintiffs, or less, as eligibility standards are set by the court and applied to the plaintiff list. A count was made of the persons who stated their identity as Yuroks on their applications for the California Judgment fund and the number was within two of the above; 3321. Here again, there are persons on the roll who are not listed as plaintiffs but the possibility remains that they may wish to establish their entitlement by intervention in the case and may be successful in so doing. This office recognizes, as stated above, that the number of plaintiffs entitled to recover as an Indian of the Reservation may be more or less than the number of plaintiffs listed in the complaint; however, it is this office's view that the number of plaintiffs listed in complaint is the best number available for use at this time).

The purpose of establishing the number for the Hoopa Valley Tribe and the number for plaintiffs is for the division of Hoopa Valley Reservation Tribal Trust Funds and Tribal Trust Income. This division is made on a percentage basis as follows:

Hoopa Valley Tribal Members	-	1405
Plaintiffs	-	3323
TOTAL	-	4728
Percent of Hoopa Valley Tribal Members to Total	-	30%
Percent of Plaintiffs to Total	-	70%

Commencing with the date of this memorandum, Hoopa Valley Reservation Tribal Trust Funds and Tribal Trust Income shall be handled by this office in the following manner:

30% of the total of Hoopa Valley Reservation Tribal Trust Funds is available for the Hoopa Valley Tribe, as well as 30% of subsequent Hoopa Valley Reservation Tribal Trust Income for its use in accordance with approved Hoopa Valley Tribe tribal budgets. 70% of the total of Hoopa Valley Reservation Tribal Trust Funds and 70% of subsequent Hoopa Valley Reservation Tribal Trust Income is set aside in a separately held tribal account for the Indians of the Hoopa Valley Reservation pending determination by the court of eligibility of plaintiffs to recover as an Indian of the Hoopa Valley Reservation.

Unaffected by the issuance of this memorandum, are the continued political and economic activities of the Hoopa Valley Business Council, the Hoopa Valley General Council, and the Hoopa Valley Tribe.

William E. Finale
Area Director

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825

MAR 19 1975

Peter H. Masten, Jr., Chairman
Hoopa Valley Business Council
Hoopa Valley Tribe
P. O. Box 817
Hoopa, California 95546

Dear Mr. Masten:

In response to your letter of March 10, 1975, you are correct in assuming that the 70% of the Hoopa Valley Reservation tribal trust funds and trust income which the Bureau of Indian Affairs has set aside for the Indians of the Hoopa Valley Reservation is not being held in trust solely for the benefit of the plaintiffs in Jessie Short, et al. v. United States, No. 102-63, United States Court of Claims. The 70% of the tribal trust funds and trust income which is presently set aside is being held in trust for all Indians of the Hoopa Valley Reservation. Indians of the Hoopa Valley Reservation, by definition, include the Indians of the Hoopa Valley Tribe.

The reason for the Bureau's withholding of the 70% is twofold - to protect the United States from an enlarged judgment in the Short case and to enable the United States to carry out its trust responsibilities owed to all Indians of the Hoopa Valley Reservation. Judge David Schwartz, the trial judge in the Short case, in his memorandum of pretrial conference of May 17, 1974, cautioned that any overpayments to the Hoopa Valley Tribe could lead to double or individual liability once judgment is rendered.

The decision to withhold 70% of the trust funds and trust income from distribution was based upon various sources available to the Bureau of Indian Affairs. Among those sources were the data from various California Judgment Rolls, the Bureau's allotment records from the Hoopa Valley Reservation, the Bureau's tribal and membership rolls from the Hoopa Valley Reservation, and the number of plaintiffs enumerated in the Short case.

It was determined that by withholding 70% of the trust funds and trust income the United States should be able to protect itself from further liability for the mismanagement of trust funds from the Reservation and that the Bureau would be able to carry out its trust responsibilities to all of the Indians of the Reservation by making proper investment of the funds so withheld.

Sincerely yours,

William E. Finale
Area Director

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 2 0 1978

A MESSAGE

To: The Hoopa & Yurok People of the Hoopa Valley Indian Reservation

From: Assistant Secretary - Indian Affairs

The purpose of this message is to indicate to you, the Hoopa and Yurok people, a course of action which I propose to take in order to resolve the dispute over the use and benefit of the Hoopa Valley Reservation and remove the impediments to self-determination by Indian people in its management.

In view of the Department of the Interior's responsibilities regarding the people and resources of the Reservation, I recently directed my staff to take a fresh look at the entire history of the matter, including the past practices and policies of the Department. On the basis of this study, certain conclusions have been reached which point to a definite course of action. I know that you share my hope that this will result in a just resolution of the longstanding conflict and in the fair and proper use of the resources of the Reservation.

As you know, the Hoopa Valley Indian Reservation was established for Indian purposes by Executive Orders authorized by an Act of Congress. The Executive Order of 1891 established its present boundaries. In 1958, the Solicitor's Office of the Interior Department advised the Bureau of Indian Affairs that the Square was separate from the Extension and that the Hoopa Valley Tribe was entitled to exclusive use of and benefits from Reservation resources from the Square. However, in 1973, the Court of Claims in Jessie Short, et al v. United States decided that the Square and Extension were one Indian Reservation. In 1974, the Supreme Court declined to review the Court of Claims decision.

The fresh assessment of the overall controversy has focused attention on the obligations of the Department of the Interior in this matter, given the fact that the Reservation is subject to the administration

of the Secretary of the Interior for Indian purposes. One of these obligations is for the Secretary to remove all doubt about who is entitled to use and benefit from the Reservation and to formally designate the Indian beneficiaries. It is my intention to designate the Hoopa Valley Tribe and the Yurok Tribe as the Indians of the Reservation who are entitled to use and benefit from the Reservation and its resources.

The membership of the Hoopa Tribe is known. The membership of the Yurok Tribe is yet to be established, and membership standards and criteria have yet to be developed and announced. To the extent possible the membership of the Yurok Tribe will be constructed along lines similar to those used during the construction of the membership of the Hoopa Tribe, with the result that members of both Tribes will include some Indian people who are not necessarily of Hoopa or Yurok blood.

In the future, the Department of the Interior will deal and work with each Tribe and its governing body as separate entities on matters of exclusive concern to each. In the case of the Hoopa Tribe this means that certain of their current constitutional powers relating to management of Reservation assets will be limited and their constitution should be amended accordingly.

However, since both Tribes are entitled to share in the Reservation assets, a mutually agreeable arrangement will necessarily be developed for managing these assets and otherwise dealing with the range of matters affecting the Reservation as a whole. Until such time as a Reservation-wide management and coordination body or similar organization can be established, it is necessary for the Department of the Interior through my office to assume complete management of the Reservation assets on behalf of both Tribes. In so doing, a temporary moratorium is placed on all per capita payments as of February 1, 1979.

The first step in establishing a Reservation-wide management and coordination body is the organization of the Yurok Tribe. So that this may occur, I have directed that work begin immediately on a Yurok voters list and that the Yurok voters shall be accorded the opportunity to nominate and select an interim Yurok Committee. The Department will deal and work with this Committee under a temporary grant of authority so that as soon as possible they might avail themselves of those benefits afforded to Indian tribes. However, we foresee that the Committee's primary responsibility will be to draft a proposed Yurok Tribal constitution. This document would then be placed before the

Yurok people for their adoption or rejection in an election called for that purpose by the Secretary of the Interior. Once the Yurok Tribe is formally organized and functioning in accordance with its governing document, its membership roll may be certified. After certification of the roll, I will make trust funds available for the use of the Yurok Tribe which have been set aside since 1974. Subject to the usual Secretarial approval, these funds may be used for per capita payments or other purposes, as the Yurok Tribe may determine.

The present 70%/30% split of Reservation trust income will continue until February 1, 1979, when a single Reservation account will be established. When the Reservation-wide body is formally established, it will determine, under this general trust authority of the Secretary, the use of funds flowing into this account. Until this Reservation-wide body is established, only the amount necessary for essential organizational and administrative purposes of the Tribes will be made available in amounts approved by the Secretary. No per capita payments will be made from this account until the Reservation-wide body is established.

This course of action is consistent with my commitment to the people of the Hoopa Valley Indian Reservation to do all within my power to assist you in your attainment of self-determination goals and responsibilities. It embodies the indispensable first steps toward the realization of self-determination on the Hoopa Valley Reservation.

Forrest J. Gerard

Assistant Secretary - Indian Affairs

II

100TH CONGRESS
2D SESSION

S. 2723

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

IN THE SENATE OF THE UNITED STATES

AUGUST 10, 1988

Mr. CRANSTON introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

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

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

SECTION 1. 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—

shall thereafter he 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 puposes 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.

(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 Court 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 section (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 purpose.

(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).

(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)(3), 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 Reser-

Calendar No. 1025

100TH CONGRESS
2d Session

SENATE

REPORT
100-564

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 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2723]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2723) 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, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

S. 2723, introduced by Senator Cranston on August 10, 1988, is a bill to partition certain reservation lands between two tribes in the northern part of the State of California: the Hoopa Valley Indian Tribe and the Yurok Tribe, and to resolve long standing litigation between the United States, the Hoopa Valley Tribe and a large number of individual Indians, most, but not all of whom are of Yurok descent, who have asserted an individual interest in the communal reservation property. The claims were originally asserted in 1963 in the yet to be finalized case of *Short* v. *United States* filed in the United States Court of Claims, and has led to a number of companion or collateral cases which have made it impossible for the Hoopa Valley Tribe to perform normal tribal governmental functions, including the management of a significant portion of the reservation property.

The legislation will partition the reservation into two reservations, one consisting of the Hoopa Valley Square to be set aside for the use and benefit of the Hoopa Valley Tribe, and the other consisting of the Hoopa or Klamath Extension, to be set aside for the

19-010

use and benefit of the Yurok Tribe. The authority of the Hoopa Valley Tribe to govern the Hoopa Valley Square and its interests in the assets of the Square will be confirmed. The Yurok plaintiffs are authorized to organize and adopt a constitution and the property and governmental rights of the Yurok Tribe in the Extension will be confirmed. A communal escrow account which now exceeds $65 million will be allocated between the Hoopa Tribe and the Yurok or "Short" plaintiffs. Limited per capita payments from the accrued escrow account are authorized for each of the tribes. A third portion is used to provide additional payments to persons who do not wish to become members of the newly organized Yurok Tribe. The remaining dollars are then allocated to the Yurok Tribe for governmental or development purposes.

This legislation will remove the legal impediments to the Hoopa Valley Indian Tribe to governance of the Hoopa Square and establish and confirm its property interest in the Square. The legislation will also establish and confirm the property interests of the Yurok Tribe in the Extension, including its interest in the fishery, and enable the tribe to organize and assume governing authority in the Extension.

This legislation should not be considered in any fashion as a precedent for individualization of tribal communal assets. The solutions fashioned in this legislation spring from a series of judicial decisions that are unique to the Hoopa Valley Indian Reservation that have established certain individual interests that conflict with the general federal policies and laws favoring recognition and protection of tribal property rights and tribal governance of Indian reservations. The intent of this legislation is to bring the Hoopa Valley Tribe and the Yurok Tribe within the mainstream of federal Indian law.

The Yurok Tribe is a federally recognized tribe, but it is not organized and there is no established roll of members. This legislation enables the tribe to organize and to establish its base roll. Persons who are not members of the Hoopa Tribe but who meet certain criteria under the *Short* case are authorized to elect whether or not they wish to become an enrolled member of the Yurok Tribe, with all of the rights and benefits that that entails, including provision of federal services springing from membership in a federally recognized tribe. All minor children meeting the criteria will be deemed to be members of the Yurok Tribe unless they are already enrolled in another federally recognized tribe whose membership criteria forbids dual enrollment in another tribe.

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. Representatives tribes in the general area of dispute included the Hoopa (Hupa), Chilula, Wilkut, and Nongati 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 from a "Y" whose arms are the Klamath and whose trunk is the Trinity.

The aboriginal lands of the Yurok of 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 Wintun lands were southeast of the Hoopa lands along the upper drainage of the south fork of the Trinity River. Although some scholars disagree, 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 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 upon 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 upon 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 settement 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 establish 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 1 mile of 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. However, with corrections, it was approved by the Interior Department.

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, now recognized as 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:

Tribe	1875	1876
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 about 147,000 acres, 25,000 in the original Klamath River Reservation, 33,168 acres in the "Connecting Strip", and 88,666 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 formally 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 in certain years 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.

JESSIE SHORT V. UNITED STATES

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 de-

rived 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 offical roll of the Hoopa Valley Tribe.)

In 1963, certain Indians 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 Tribal Commissioner of the Court of Claims sustained the plaintiff's 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, 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 Indian tribes and groups and that, absent statutory delegations, 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 National 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 specifically 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 settle 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 take 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 reservatrions, 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. Or such 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, 174 F. Supp. 211;* 210 F. Supp. 125 (1962), aff'd. 373 U.S. 758; *Crow Nation* v. *United States*, 81 Ct. Cl. 238, 279-80 (1935).

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 its 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 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 definitely used or exhausted 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, have arisen. This applies not only of Hoopa and Yurok tribal entitlements but also of Karuk claims and claims of groups such as the Tolowa, Wintun and Shasta who are currently seeking federal recognition of tribal status pursuant to 25 C.F.R. Part 83.

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 No. 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, ac-

> quired 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 have 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 cites 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 unlawfully 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 about tribal membership with respect 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.

The Committee is also aware that although Congress later authorized the establishment of additional reservations in California, the Act of April 8, 1864 authorized the estasblishment of four reservations, including Hoopa Valley, Round Valley, Tule River and Mission. As noted above, in the *Puzz* case, a federal district court construed the Act as requiring that the Bureau of Indian Affairs run the Hoopa Valley Reservation for the benefit of all individuals (including non-tribal members) who had ancestral connections with the Reservation, and also construed the Act as prohibiting the exercise of reserved tribal sovereign powers by Indian tribal governments, with respect to the Hoopa Valley Reservation. The Committee believes that the *Puzz* case is confined to the peculiar facts and law applicable to the Hoopa Valley Reservation, and it is the purpose of S. 2723 to reject the application of this view of the 1864 Act to any California reservation. S. 2723 should therefore help ease the concerns of other tribal councils whose reservation lands are affected in whole or in part by the 1864 Act or similar legislation. It is not true, as a general rule, that federally recognized tribal governing bodies on reservations set apart for more than one historical tribal group need federal authority conferred upon them in order to exercise territorial management powers. Application of such a rule would seriously interfere with tribal sovereignty and modern federal Indian policy.

SETTLEMENT PROVISIONS

S. 2723, 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 Committee need not overly concern itself with precise comparable values in such partition. The Committee intends to deal fairly with all the interests in the reservation, and believes it has done so. The nature of the interests involved here, however, is such that Congress need not precisely determine, or provide, the full value that a fee simple interest in these lands and resources might have.

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" recently has totalled only 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. The Committee also notes that because of the cooperative efforts of the Hoopa Valley Tribe and other management agencies to improve the Klamath River system, and because of the Fisheries Harvest Allocation Agreement apportioning an increased share of the allowable harvest to the

Indian fishery, the tribal revenue potential from the "Addition" is substantial. While in recent years tribal income from the "Square" has exceeded tribal income from the "Addition," it is the judgment of the Committee that a functioning tribal government fulfilling the Congress' and the Executive's policy of self-determination merits a certain financial deference over a group of Indians which has previously elected not to have a functioning tribal government. See Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203, codified at 25 U.S.C. §§450, et seq.; President's statement on Indian Policy, 19 Weekly Comp. Pres. Doc. 98, 99 (Jan. 24, 1983); S. Con. Res. 76, ordered reported, Senate Indian Committee, 100th Cong., 2nd Sess. (1988). Furthermore, the Committee is acting out of concern that the Hoopas have tended to live on the reservation and that their government be accorded sufficient resources to provide the services necessary to sustain their habitation. Indeed the majority of the Indians living on the combined reservation live on the "Square." The record shows that the Hoopa Valley Business Council is the only full-service local governmental organization on the combined reservation, and has been the major government service provider in the extremely isolated eastern half of Humboldt County. The Hoopa Valley Tribe was recognized by the Congress as warranting federal assistance and support for its self-governance efforts. Conf. Rep. No. 498, 100th Cong., 1st Sess. 889.

As noted elsewhere in this report, the proposed partition is also consistent with the aboriginal territory of the two named tribes involved, particularly since the Hoopa Valley Tribe formally organized in a way encompassing all Indian allotted land on the Square.

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 buy-out option. The settlement 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.

Legislative History

On April 26, 1988, Congressman Bosco introduced H.R. 4469 to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber lands, and for other purposes. The bill is co-sponsored by Representatives Coelho and Miller of California. The intent of the legislation is to resolve a long-standing controversy between the Hoopa Valley Tribe which is organized under constitutional provisions approved by the Secretary of the Interior and persons who are primarily, but not exclusively, of Yurok Indian descent.

On August 10, 1988, the House Committee on Interior and Insular Affairs adopted an amendment in the nature of a substitute and ordered H.R. 4469 reported. The bill is scheduled for a further hearing before the House Judiciary Committee on Friday, September 30, 1988.

On June 30, 1988, Chairman Inouye held an oversight hearing in Sacramento, California, to receive testimony on the general background of the problems and issues on the Hoopa Valley Reservation. This hearing was not directed to specific legislation, but was only for purpose of collecting background information.

On August 10, 1988, Senator Cranston introduced S. 2723, which is identical to H.R. 4469 as ordered reported. The Select Committee held hearings on this bill on September 14, 1988. On September 29, 1988, the Select Committee in open business session, adopted an amendment in the nature of a substitute, and ordered the bill reported with a recommendation that the bill, as amended, be passed.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 29, 1988, by unanimous vote of a quorum present, adopted an amendment in the nature of a substitute and ordered the bill reported with a recommendation that S. 2723, as amended, be passed by the Senate.

SECTION-BY-SECTION ANALYSIS

There follows a section-by-section analysis of S. 2723 a reported and, where appropriate or necessary, a further explanation of the provisions 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.

Among the more important definitions is the definition of "Escrow funds", which lists the accounts maintained by the Secretary of the Interior into which income from reservation economic activity (as opposed to individual trust monies) are deposited; "Indian of the Reservation", which is a term of art developed in the *Short* case to define those persons entitled under *Short* and companion cases as eligible plaintiffs in the claims against the United States arising from the distribution of income from reservation wide economic activities; and definition of "Short cases" to include all companion cases filed thus far.

SECTION 2—RESERVATIONS; PARTITION AND ADDITIONS

Subsection (a), paragraph (1), provides that, when the Hoopa Valley Tribe adopts a resolution waiving certain claims and granting consent as provided in paragraph (2), the Hoopa Valley Reservation as now constituted and as defined by the Federal Court in the *Short* case, shall be partitioned as provided in subsection (b) and (c). A technical amendment is added to make clear that the

partition is linked to recognition and confirmation of the governing documents of the Hoopa Valley Tribe, as provided in Section 8.

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.

An amendment is added to make clear the consent of the Hoopa Valley Tribe to the contribution of the escrow funds to the Settlement Fund. This amendment was requested by the Justice Department. 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(d)(2) shall constitute a congressional 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, 103 (1949), the Supreme Court held that an executive order reservation "conveys no right of use or 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 decision of the Court of Claims in the *Short* case and the District 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 assets and resources of the Hoopa Valley Reservation as now constituted.

The Committee also does not intend that the waivers of the tribes, if given, shall present the tribes from enforcing rights or obligations created by this Act.

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. This partition also conforms generally with the geography of the reservation which, as currently constituted, comprises two river drainages.

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. Karuk tribal aboriginal lands generally lay upstream of Yurok lands along the Klamath River, outside of the Yurok and Hoopa Valley Reservations.

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. These lands contain buildings which will be immediately utilized by the Yurok Tribe. The Committee, therefore, expects the Secretary of the Interior to work with the Yurok Interim Council to ensure that these facilities are cleaned and renovated as soon as possible. This clean-up and renovation should be accomplished under the BIA's existing facilities maintenance and repair budget. In addition, the Secretary shall within six months report to Congress concerning the advantages, disadvantages, and procedural aspects of conveying to the Yurok Tribe all National Park System lands within the Yurok Reservation. If the Secretary does not recommend immediate conveyance of such lands, his recommendation shall include a proposed inter-governmental agreement which, pending any conveyance, will assure Yurok tribal hunting, fishing, and gathering rights, and reasonable ceremonial and religious access and use on such lands within the reservation.

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 and is directed to be used for land acquisition for the Yurok Tribe with the limitation that such funds can be used to acquire land outside the reservation only for purposes of exchange for lands inside. An amendment is added to permit acquisition of lands adjacent to and contiguous with the Yurok reservation. The Committee expects that the Secretary will make use of this and other authority to, among other things, insure that Indian lands within the reservation are not, or do not become, landlocked. The Committee is aware that the acquisition of new lands will increase the costs of land and resource management. The Committee, therefore, directs the Secretary to consider these additional costs when preparing the future budgets of the Yurok Tribe.

Paragraph (4) provides that (1) the transfer of funds to the Yurok Tribe under section 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 Interim Council of the Yurok Tribe adopts a resolution waiving any claims it might have against the United States under this Act and granting consent as provided in section 9(d)(2). Section 9 of the bill provides for an Interim Council to be elected by the General Council of the tribe.

Subsection (d) provides that the 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. Use of the Bissel-Smith survey for purposes of defining the Hoopa Valley Indian Reservation results in the addition of lands to the Yurok Reservation in the upper reaches of the extension near the junction of the Kalamath River with the Trinity River. The transition village known as "Peekta" Point, claimed by the Yurok Tribe, now apparently becomes part of the Yurok Reservation.

Subsection (e) provides for the management of the tribal lands of the Yurok Reservation by the 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 jurisdiction on the two reservations under Public Law 83-280 with authority 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 all Escrow funds, together with accured income, derived from revenue of the reservation. The definition of the Excrow funds is intended to be a comprehsnsive list of the funds and accounts, in federal hands, derived from the lands or resources of the joint 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. These payments will be deducted from what would otherwise be the Hoopa Valley Tribe's share as apportioned by subsection (c).

Paragraph (3) as added by the Committee authorizes the Secretary to provide appropriated funds to the Yurok Transition Team, and also authorizes the Secretary to make payments to the Yurok Transition Team, out of the interest or principal of the Settlement Fund, for the purposes for which the Yurok Transition Team is established under section 9, in an amount not to exceed $500,000 per fiscal year. These payments will be deducted from what would otherwise be the Yurok Tribe's share as apportioned by subsection (d).

Subsection (b) provides that the Secretary shall make payments from the Settlement Fund as provided in this Act and, pending dis-

solution 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 by the sum of the number of such members and the number of persons on the final roll prepared pursuant to section 5. After the elections pursuant to section 6 have been made, the payment to the Hoopa Valley Tribe shall be increased or decreased based on the persons who are enrolled in the Tribe pursuant to section 6. Under this formula, it is estimated that approximately $23 million will be paid to the Hoopa Tribe. This is roughly one-third of the entire Settlement Fund.

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 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. The amount allocated to the Yurok Tribe will be based on how many individuals meeting the *Short* case standards elect to become members of the Yurok Tribe. If only 25% of the adults eligible accept the Yurok membership option, approximately $6.7 million remaining in the Settlement account, for a total tribe share of $18.1 million. According to the pro-organization Yurok group the 25% membership estimate is extremely low. They estimate that the percentage accepting tribal membership will exceed 50%. If this is true the Yurok Tribe will receive in excess of $23.5 million. This is roughly one-third of the entire Settlement Fund.

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 member 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 his 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 and permit implementation of the federal policy of government-to-government relations with the Hoopa Valley and Yurok Tribes.

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 courts 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" shall be 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. Persons who are not plaintiffs in the Short cases may also be included on the roll if they timely apply and meet the criteria established. The Committee expects the Secretary to place on the roll the names of all living Indians of the Reservation held qualified in the *Short* cases whether or not an application is timely received from such persons, since address changes or other unforeseen event may prevent persons from receiving actual notice, and the qualifications of such persons are readily verified.

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 a result of the election of options, are to be paid from any funds remaining in the Settlement Fund before payment to the Yurok tribe as provided in section 7. The subsequent inclusion of such persons on the roll, and any election of option they may make, are not to affect any calculations made for the payments to the Hoopa and Yurok Tribe under section 4. However, deletion of persons found erroneously to have been included on the roll may lead to adjustment of the calculations and payments made 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. Nor are these provisions intended to imply that the federal Indian status of any person would be lost by omission from the final Settlement Roll. These are not termination provisions, as explained under section 6(d).

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 consti-

tuted are tribal or communal property, neither the Hoopa or 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 except those created by sections 5 and 6.

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 an option 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. S. 2723, as introduced, would provide that the election of an eligible adult would bind minor children under their guardianship who are also on the roll. The Committee deleted this provision and amended paragraphs (2) and (3) provide that minor children will be deemed to have elected membership in the Yurok Tribe, with certain exceptions. In addition, the Committee added language specifying that the notice discuss counseling services that the Yurok Transition Team and the Secretary shall provide, and the affidavit requirement of section 6(d).

Paragraph (3) as amended by the Committee, automatically makes minors on the roll members of the Yurok Tribe unless the parent or guardian comes forward with proof, satisfactory to the Secretary, that the minor is enrolled in another tribe that prohibits members from enrolling elsewhere. Thus, in the case of a child who is already an enrolled member of another federally recognized tribe, such parent or guardian may elect the tribe in which such child will be enrolled. Therefore, 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. The paragraph further directs that the minor's funds be invested and administered as Indian trust funds, like the Settlement Fund itself, until the age of majority is reached.

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 the date established under this paragraph are deemed to have made an election under subsection (c). The Committee believes it is important that no person on the Hoopa-Yurok Settlement Roll lose benefits and privileges flowing from Yurok tribal membership and connection with the Yurok Reservation by virtue of inadvertence, failure to receive actual notice, accident or other unforeseeable events. Accordingly, persons failing to act timely will be deemed to have elected Yurok tribal membership if they accept and cash the check representing the payment authorized by subsection (c).

The Committee believes that acceptance of the payment also establishes the consensual release of rights that accompanies this election. On the other hand, one who fails or refuses to make an election, and refuses to accept the payment authorized by subsection (c) may not be deemed to have granted a release or to have granted a proxy to the Yurok Interim Tribal Council. Thus, refusing to accept the payment is one method by which persons who do not wish to join the Yurok Tribe may avoid becoming members. Persons already enrolled in another Indian tribe that prohibits dual enrollment may, for example, wish to decline Yurok tribal membership. In addition, a person who becomes a member of any Indian tribe is at liberty to terminate the tribal relationship whenever he or she so chooses. E.g., F. Cohen, Handbook of Federal Indian Law 22 (1982 Ed.).

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; (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, to pay to each person under age 50 and making an election under this subsection $5,000 out of the Settlement Fund; $7,500 for those age 50 or older. These sums were established on the basis of the Committee's amendment. The distribution of such funds shall be subject to the provisions of Section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. § 1407).

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. As amended by the Committee, additional language in included to provide that the exercise of the option shall authorize the Yurok Interim Council to waive claims of the Yurok Tribe against the United States.

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 and directs the Secretary to pay to each such person the amount of $15,000 out of the Settlement Fund. This sum was decreased from the $20,000 provided in S. 2723 as originally introduced. Election of this option, however, has been conditioned by the Committee upon completion of an affidavit concerning counseling regarding the effects of such an election. This subsection does not suggest, and the Committee does not intend that this Act change the federal Indian status of any person, regardless of the option elected, nor does this Act end federal trust restrictions that may exist as to any allotted or unallotted trust land, property resources or rights. The option provided by section 6(d) is not a termination provision; it merely offers a lump-sum payment to persons on the settlement roll who wish to have no future interests or rights in the tribal, communal, or unallotted land, property, resources, or rights in the tribal, communal, or unallotted land, property, resources, or rights of the Hoopa Valley Reservation or the Yurok Reservation or the Hoopa or Yurok tribes. By contract, the language of the Western Indians Termination Statute declared that the purpose of the Statute was, among other things, "for a termination of Federal services furnished such Indians because of their status as Indians." 25 U.S.C. 691. That termination Act provided that:

> Thereafter individual members of the Tribe shall not be entitled to any services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians * * * shall no longer be applicable to the members of the Tribe, and the laws of the several States

shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction. 25 U.S.C. 703(a)(1982)

Neither section 6(d) nor any other provision of this Act is so intended. This Act does not represent a return to a national policy of termination or of encouraging tribal members to withdraw from their tribes. However, the circumstances concerning this reservation and the complex litigation which has prevented tribal self-determination justify the congressional role in restoration of tribal self-governance represented by this Act.

Paragraph (2) 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.

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 shall be held in trust by the Secretary for the Yurok Tribe.

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. Other tribal funds, or income of the apportioned funds, are not intended to be restricted by this subsection. As amended by the Committee this would allow the Hoopa Tribe to make one or more per capital payments to its members from such funds, totalling not more than $5,000, a sum similar to that provided for those electing to become members of the Yurok Tribe. There is no provision for a bonus payment to those 50 years or older since no election is involved and the Hoopa members have been receiving the full range of federal services over the years. Under the Act of August 1, 1983, the Committee understands that payments on behalf of minor tribal members shall be held in trust accounts and invested for the minors.

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 reinstates full 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 significance 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 mixed Indian and non-Indian blood. The Hoopa Valley Tribe clearly has and continues to function as an Indian tribe in the political sense.

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 Interim Council resolution required by subsection (c), is ratified and confirmed. The Committee substituted the term "Interim Council" for the term "General Council."

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

Paragraph (3) directs the Secretary promptly to consult with the Select Committee on Indian Affairs, the House Insular and Interior Affairs Committee and any other appropriate committee and, within 30 days of enactment, appoint five individuals to compromise the Yurok Transition Team. Since the Interim Council will not be nominated or elected until after preparation of the Settlement Roll and election of options, a process that will take over one year, a Transition Team to aid the Yurok Tribe's organizational process is essential.

A key function of the Yurok Transition Team is to provide counseling to persons who are or may be eligible for inclusion in the Hoopa-Yurok Settlement Roll with respect to inclusion in the Settlement Roll, the advantages and disadvantages of each of the settlement options available under section 6, and related issues. In particular, the Yurok Transition Team must counsel people concerning the current or potential benefits which will or may be derived by membership in the Yurok Tribe or the Hoopa Valley Tribe, and from connections with the Yurok or Hoopa Valley reservation. This must include discussion of any possible effect on the future tribal membership of children of individuals who may elect the option of sections 6(c) and 6(d). However, this paragraph does not suggest, and the Committee does not intend that any part of this Act change the federal Indian status of any person, for purposes of programs and benefits in which membership in a federally recognized Indian tribe is not a prerequisite, regardless of the option elected. Nor does this Act end federal restrictions that may exist as to any allotted or unallotted trust land or resources. As noted elsewhere, the option provided by section 6(d) is not a termination provision; and it should not be portrayed as such; the subsection merely offers a lump-sum payment to persons on the Settlement Roll who wish to have no future interest or right in the tribal, communal, or unallotted land, property, resources, or rights of the Hoopa Valley Reservation or the Yurok Reservation or the Hoopa or Yurok tribe.

Subsection (b) provides for the creation of an Interim Council for thed 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 a constitution 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 nominate candidates for election to the Interim Council. Only persons on the list prepared under paragraph (1) are eligible for nomination. As amended by the Committee the resolution waiving claims against the United States may be executed by the Interim Council based upon the proxies received from persons electing tribal membership.

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 the 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 and shall have authority to execute the necessary waiver of claims against the United States, and consent to allocation of the escrow funds to the Settlement Fund.

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 their election. The Committee's amendment revised this language to provide that any contract of more than two years duration will be subject to disapproval by the Secretary of the Interior under limited circumstances.

Paragraph (4) provides that the Interim Council shall appoint a drafting committee which shall be responsible for the development of a 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 con-

stitution 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. The Committee recognizes that the Yurok Tribe has a sovereign right to select tribal membership provisions for its constitution. The Tribe may prohibit the dual enrollment of Yurok tribal members in other Indian tribes, for example, as many other tribes do. Both because it is the Yurok Tribe's right to determine its membership criteria and because the Tribe will have to live with the consequences of its decision, the Committee is reluctant to require inclusion of specific membership provisions. Nevertheless, the Committee hopes and presumes that children born after the date of enactment of this Act (who of course are not included in the Hoopa-Yurok Settlement Roll) and who meet the applicable Indian blood requirement, if any, established by the Yurok Tribe, but whose parents may have elected the option of section 6(d) will nevertheless be favorably considered for enrollment in the Yurok Tribe although their parents may not be members of the Yurok Tribe. The Committee is concerned that an injustice will occur if the Yurok Tribe prohibits the enrollment of children born after the date of enactment of this Act who possess the necessary blood quantum required by the Yurok Tribe's constitution, but whose parents elected the lump-sum option instead of enrollment in the Yurok Tribe.

It is not intended by this section that the Indian Reorganization Act shall provide the only means by which the Yurok Tribe may be organized. Nor does the Committee intend that the Constitution prepared by the drafting committee pursuant to subsection (e) is the only one upon which the Secretary may conduct an election in the future.

SECTION 10—ECONOMIC DEVELOPMENT

The amendment added a new Section 10 directing that a plan for economic self-sufficiency for the Yurok Tribe be developed and submitted to Congress by the Secretary of the Interior, in conjunction with the Interim Council of the Yurok Tribe and the Yurok Transition Team, to determine the long-term needs of the Tribe. The Secretary is expected to seek the assistance and cooperation of the secretaries of Health and Human Services and other federal agencies. The Committee is aware that the Yurok Tribe has not received the majority of services provided to other federally recognized tribes. As a result, it lacks adequate housing and many of the facilities, utilities, roads and other infrastructure necessary for a developing community. In addition, the Committee is aware that many of the road, realty and fisheries management services on the "Addition' have been provided in the past by the Hoopa Valley Tribe. The Committee is, therefore, concerned about how the Bureau of Indian Affairs plans to address these needs, and directs the Secretary to work with the Yurok Tribe to develop proposed solutions to these

and other related problems. The Committee is specifically interested in the feasibility and cost of constructing a road from U.S. Highway 101 to California Highway 96. It is also concerned that the Department of the Interior does not currently have adequate land records and surveys of the "Addition". The Committee, therefore, expects that the Department will conduct all necessary surveys to ascertain the legal status of such lands. It also expects the plan to address such things as the number of additional federal employees required to service the Yurok Tribe and placement of the Tribe's facilities construction needs on the BIA, IHS, and other federal agency construction priority lists. The Committee wishes to clarify, however, that the development of this plan should in no way delay the provision of services to the Yurok Tribe and/or the construction of federal and tribal facilities.

SECTION 11—SPECIAL CONSIDERATIONS

This section was designated Section 10 in S. 2723, as introduced.

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 within 90 days after enactment, the Secretary shall conduct elections for the Resighini, Trinidad, and Big Lagoon, Rancherias concerning merger with the Yurok Tribe. If a majority of those voting approves, the Rancherias should fully merge their lands, assets and membership with the Yurok Tribe. The Secretary is to publish in the Federal Register notice of the effective date of any such merger. The Committee deleted reference to Blue Lake, Smith River, Elk Valley, and Tolowa Rancherias on the grounds that these rancherias are not historically of Yurok origin. A new subsection (c) was added to provide protection for existing property rights.

SECTION 12—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 representatives 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 13—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 14—LIMITATIONS OF ACTIONS; WAIVER OF CLAIMS

A statute of limitations is very necessary to avoid uncertainty about the possible applicability of 28 U.S.C. §§ 2501 (six years), 2409a (12 years) and *County of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226 (1985) (no statute of limitation). The Committee finds that the periods provided in this section are reasonable under the circumstances. Further, the limitations here are rationally related to fulfillment of Congress' unique obligation to Indian tribes and individuals. E.g., *Littlewolf* v. *Hodel*, 681 F. Supp. 929 (D.D.C. 1988).

Subsection (a) provides that any claim challenging the constitutionally 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, entity, or tribe other than the Hoopa Valley or Yurok Tribes, 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.

Paragraph (3) provides that any such claim by the Yurok Tribe must be brought within 180 days of the date of the general council meeting under section 9(c)(2)(A) 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. New language was added by the Committee to provide for a stay of payment of any judgment that might be rendered against the United States, in order to provide time for the Department to provide Congress with a report.

SECTION 15—HEALTH ISSUES

A new Section 15 was added to provide for clean up of dump sites on the newly established Yurok Reservation. The Secretary of Health and Human Services and the Secretary of the Interior are directed to enter intc a memorandum of understanding with Humboldt County for the clean up and maintenance of these sites. Costs are estimated at approximately $40,000 for the clean up and $8,000 per year for maintenance.

COST AND BUDGETARY CONSIDERATIONS

The authorization levels and purposes for which funds may be expended set forth in S. 2723 are identical to the companion bill, H.R. 4469, reported out of the House Committee on Interior and Insular Affairs on August 10, 1988. The cost estimate for H.R. 4469, and thus S. 2723, are 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 Hoopa 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 Hoopa 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).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2723, as amended, will have a minimal impact on regulatory or paperwork requirements.

Executive Communications

The Committee received the following statements from the Department of the Interior and the Department of Justice at its hearing on September 14, 1988:

Statement of Ross O. Swimmer, Assistant Secretary for Indian Affairs, Department of the Interior

Good morning Mr. Chairman and members of the Committee. I am pleased to be here today to discuss S. 2723, a bill "To partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes."

We object to enactment of S. 2723 unless it is amended to meet our concerns, especially with regard to the deletion of an unjustified Federal contribution of $15 million, we would recommend that the President veto the bill.

Since the 1950's there has been a dispute among the Indians of the Hoopa Valley Reservation in Northern California as to who is

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

At the time the litigation was begun, the Square was treated as a separate reservation from the Extension. In 1973, the Court of Claims held that there was but a single reservation. Subsequently, the Court ruled that all the "Indians of the Reservation" are entitled to participate in per capita distributions of the income from the timber on the unallotted (tribal) lands of the Square. From 1974-1978 efforts were made to determine the identity of the "Indians of the Reservation" and to mediate a settlement.

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

In 1980 another suit was filed (*Lillian Blake Puzz, et al.* v. *United States et al.*, No. C-80-2908 TEH, U.S.D.C., N.D. California) by six individuals claiming to be Indians of the Hoopa Valley Indian Reservation whose rights to participate in reservation administration and to benefit from the reservation's resources were allegedly denied by the Federal Government in violation of their constitutional rights to equal protection.

Plaintiffs' claims were initially premised on individual Indian ownership of the unallotted reservation resources, although they later also asserted that all "Indians of the Reservation" constituted one tribe, and that all individual Indians should have a vote in that tribe's government. The Government's position was that the reservation was created for Indian tribes, not individual Indians, and that the recognition of Indian tribes is a political question for determination by the Congress and the Executive Branch and such determinations are not reviewable by the courts.

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

The court also found that the individual plaintiffs have standing to litigate reservation management issues and that the 1864 statute authorizing the creation of the reservation imposed a trust responsibility on the U.S. Government extending to all the Indians of the Reservation.

Having addressed these issues the court ordered three specific actions:

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

2. Federal defendants shall not dispense funds for any project or services that do not benefit all Indians of the reservation in a nondiscriminatory manner. Federal defendants shall exercise supervisory power over reservation administration, resource management, and spending of reservation funds, to ensure that all Indians receive the use and benefits of the reservation on an equal basis. Specifically, Federal defendants shall not permit any reservation funds to be used for litigation among Indians or tribes of the reservation.

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

On June 7, 1988, we submitted to the court a plan of operation for the management of the Hoopa Valley Reservation resources, as required by the court's April 8, 1988 order. On September 2, 1988 the court denied plaintiffs' motion to strike the plan, although it emphasized that the issues raised in that motion would have to be addressed if this legislation is not enacted and the court is left with the task of approving a final long-term plan for the management of the reservation.

Obviously, the District Court's orders are changing the management of the reservation and its resources. However, we do not believe that they provide the appropriate vehicle for a satisfactory permanent resolution to all the problems on the Hoopa Valley Indian Reservation. We believe that partitioning the communal reservation and encouraging the Yuroks to organize as a tribe would lead to more satisfactory results.

Now I would like to address our major concerns regarding S. 2723. I have attached our technical concerns to my written statement.

S. 2723 partitions the Hoopa Valley Reservation only if the Hoopa Valley tribe passes a resolution waiving any claims they may have against the United States arising out of the provisions of the Act. The resolution must be presented to the Secretary within 60 days of enactment of the Act. The Secretary then publishes the resolution in the Federal Register and the existing communal reservation becomes two reservations. The "square" would become the Hoopa Valley Reservation and the "extension" would become the Yurok Reservation. Additional forest service land would be added to the Yurok Reservation and an authorization of $5 million would be provided for the purchase of additional land for the Yurok Reservation.

We do not believe that expanding the reservation is necessary at this time and strongly oppose the addition of Federal money for this purpose. Currently, there are approximately 400 Yuroks living on the "Extension" which includes 5,373.9 acres (including tribal land and allotments). We recommend that this provision be deleted.

Upon enactment of the act, the existing $50 million communal escrow account is to become the basis of a settlement fund. An additional $10 million is authorized to be appropriated to add to the fund. We do not believe the settlement fund should be established until the communal reservation is partitioned. Further, we believe that the bill should not become effective (except for section 12) until the Hoopa Valley Tribe adopts and sends to the Secretary, the resolution called for in section 2(a).

We strongly oppose the addition of Federal money to this fund and believe that the distribution of the fund should be used for making the payments under section 6 and giving any remaining funds to the Yurok Tribe. The partition of the communal reservation and the commual escrow account should not require the addition of Federal funds. If the amount in the escrow fund is not sufficient, we believe the per capita amounts available to individuals under the bill should be changed so that the escrow funds cover those payments. We believe the bill should be amended to specify that if adequate funds are not available in the Settlement fund to make the payments, such payments shall be pro-rated accordingly. Any funds remaining in the Settlement Fund after all payments have been made or provided for, should be held in trust for the Yurok Tribe.

The Secretary is to prepare a settlement 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". The Secretary is to provide each eligible person the opportunity to choose one of the following options: 1) become a member of the Hoopa Valley Tribe (if appropriate criteria are met); 2) become a member of the Yurok Tribe and receive a $3000 payment; or 3) elect to receive a payment of $20,000 and give up all rights to the reservation and all rights to membership in the Yurok Tribe.

Parents and guardians of children on the Settlement Roll under the age of 18 would choose an option for their child.

Although we do not object to the provision allowing parents or guardians making the choice for minor children, we believe that the children's payments should be held in trust until they reach age 18. The Settlement Fund could remain in effect and draw interest until each minor reaches age 18 and receives their payments.

We further recommend that the Settlement Roll be established as of the date of the partition of the communal reservation rather than as of the date of enactment of the Act. This could assure that the roll would include all persons having an appropriate interest at the time of the partition. Anyone born after the partition would of course, not have an interest in the previous single communal reservation.

Section 9 provides for the organization of the Yurok Tribe under the Indian Reorganization Act. Within 45 days of the official notice

the Secretary shall convene a general council meeting of the eligible voters of the Yurok Tribe. The General Council would vote on the adoption of a resolution waiving any claim the Tribe may have against the United States arising out of the provisions of this Act and to nominate candidates for an interim council. The general council would elect an Interim Council to represent the tribe until a constitution and tribal council are in place, or for 2 years, which ever is the shorter period. The Interim Council would appoint a drafting committee to draft a tribal constitution and request the Secretary to authorize an election to vote on the constitution.

The time required for the Secretary to provide notice, call general council meetings, and hold elections is unreasonable. The Bureau would not be able to meet such requirements. Amended requirements are included in our technical amendments attached to my written statement.

We would also commend that the tribe be required to have a constitution and an elected tribal council before they enter into contracts or receive grants from the Federal Government. Under the bill the Interim Council could enter into a contract and then after two years the council would be dissolved. We do not believe this is either good management or fair to the tribal members who my receive services under the contract.

Section 13 provides for statute of limitations for any claim brought against the United States challenging the partition of the communal reservation under this act. We defer to the Department of Justice on these provision.

Mr. Chairman, we urge the Committee to amend the bill to meet our concerns, particularly with respect to the appropriation authorization of $15 million. I have attached a number of technical concerns to my written statement.

This concludes my prepared statement. I will be pleased to answer any questions the Committee may have.

RECOMMENDED AMENDMENTS TO S. 2723

Section 1(b)(7) defines Karuk Tribe as organized after a special election conducted by the United States Department of the Interior, Bureau of Indian Affairs. The Bureau of Indian Affairs did not hold a special election. We recommend the following amendment:

Section 1(b)(7) line 16 (page 3) after "constitution" delete "after a special election conducted by the United States Department of the Interior, Bureau of Indian Affairs" and change "April 18" to "Aprill 6".

Section 2(c)(3)(A) provides authority for the Secretary to take additional land into trust status for the Yurok Tribe. We recommend that the provision clarify that the land would be part of the Yurok Reservation. We recommend the following amendment:

Section 2(c)(3)(A) line 8 (page 7) add at the end "and that such lands may be declared to be part of the Yurok Reservation".

Section 4(a) establishes a Settlement Fund upon enactment of this act. We believe the fund should be established upon the partition of the reservation. We recommend the following amendment.

Section 4(a) line 8 (page 9) delete "enactment of this Act" and insert "the partition of the Hoopa Valley Reservation under section 2 of this act".

Section 4(a)(2) permits the Hoopa Valley Tribe to use up to $3.5 million annually out of the income or principal of the Settlement Fund for tribal, non-per capita purposes. We believe the Yurok Tribe should also be able to draw this account. We recommend that Sec. 4(a)(2) line 12 (page 9) be amended as follows:

> "(2) Until the distribution is made to the Hoopa Valley and Yurok Tribes under subsection (c), the Secretary may distribute to both tribes an amount not to exceed income and interest earned less 10 per cent for the current operating year out of the Settlement Fund. These funds may be used for tribal purposes and may not be distributed as per capita payments."

Section 4(b) on page 9, line 23 should be amended by striking out "pending" and inserting in lieu thereof "pending payments under section 6 and".

Section 4(c) line 3 (page 10) and 4(d) line 13 refer to the wrong paragraph. Section 6(a)(3) should be changed to "6(a)(4)".

Subsections (c), (d), and (e) of section 4 on page 10, line 1 through page 11, line 6 should be deleted.

Section 5 provides for the Secretary to establish a Settlement Roll of eligible persons living on the date of enactment of this Act. We recommend that the roll be established as of the date of the partition of the reservation to avoid any possible problems regarding the status of a person born between the time of enactment of the Act and the partitioning of the reservation. We also recommend that the Secretary be given more time to complete the necessary procedures for establishing the roll. The following amendments are recommended:

Section 5(a)(A) line 20 (page 11) change "of enactment of this Act" to "of the partition under section 6(a)".

Section 5(b) line 24 (page 11) change "thirty" to "one hundred and twenty".

Section 5(d) line 22 (page 11) change "one hundred and eighty days" to "two hundred and forty days".

Section 6 requires the Secretary to notify all eligible persons of the options available to them under the act. We believe it should be clear that each individual must choose one option. We also recommend that notice be given by certified mail rather than by registered mail. We recommend the following amendments:

Section 6(a) line 23 (page 13) change "registered" to "certified".

Section 6(a) line 1 (page 14) after "elect" insert "one of".

Section 6(a)(3) (page 14) should be amended to designate paragraph "(3)" as "(3)(A)" and add a new subparagraph "(B)" as follows:

> "(B) The funds entitled to such minors shall be held in trust by the Secretary until the minor reaches age 18. The Secretary shall notify and provide payment to such persons including all interest accrued."

Section 6(b) line 3 (page 15) "March 21" should be "March 31".

Section 6(b)(3) requires the Secretary to assign a blood quantum to persons electing to become enrolled members of the Hoopa Valley Tribe. We recommend the following clarifying amendment:

Section 6(b)(3) line 23 (page 15) should be amended to read: "The Secretary shall determine the quantum of "Indian blood" or "Hoopa Indian blood", if any, of each person enrolled in the Hoopa Valley Tribe under this subsection 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)".

Section 6(c)(2) line 17 (page 16) should be amended for clarity and consistency with subsection (b)(3). After "shall" delete "assign each person that quantum of "Indian blood" as may be determined" and insert "determine the quantum of "Indian blood", if any,".

Section 6(c)(3) lines 22 and 23 (page 16) should be amended to read as follows:

"(c) The Secretary shall pay (subject to section 7 of the Act of October 19, 1973, as amended (25 U.S.C. 1407)) to each person".

Section 9 provides for a procedure for the organization of the Yurok Tribe. We believe an interim council should be elected for the primary purpose of drafting a constitution. The Secretary should provide services until the tribe has a constitution and an officially elected tribal council. We recommend the following amendments:

Section 9(c) line 10 (page 19) change "30" to "60".

Section 9(c)(3) line 12 (page 20) change "45" to "60".

Section 9(d)(2) line 6 (page 21) should be amended as follows:

"(2) The Interim Council shall represent the tribe to assist the Secretary in determining the needs and appropriate programs for the tribe. The Council shall be responsible for determining appropriate use of the funds available to the tribe under section 4(a) of this act."

Delete paragraph "(3)" and renumber "(4)" as "(3)".

Renumber pararaph "(5)" as "(4)" and on line 1 (page 22) delete the words "or at the end of two years after such installation, whichever occurs first".

Section 10 allows the merger of existing Rancherias with the Yurok Tribe. There is no Tolowa Rancheria so that reference should be deleted. We also recommend that since the names listed in this section are names of Rancherias and not names of Tribes that the section be amended to reflect that difference.

Section 10(b) line 23 (page 22) should be amended to add "any of the following Rancherias at" after "members of". Delete "the" after the word "of".

Section 10(b) line 24 (page 23) after "Elk Valley" delete "or Tolowa Rancherias".

Section 11 provides for the addition of a member of the Karok and Yurok Tribes to the Klamath River Basin Fisheries Task Force.

The Secretary is to appoint the member for the Yurok Tribe until the Tribe is recognized. Since the tribe is already Federally recognized we recommend this provision be changed to refer to the tribe's organization.

Section 11(b) line 23 (page 23) delete "established and federally recognized" and insert "organized".

Section 11(b) line 2 (page 24) change "recognized" to "organized".

Add a new section 14 at the end of the bill as follows:

"Sec. 14. This Act (except sections 2(a) and 12) shall be effective upon partitioning of the reservation as provided in section 2(a). Sections 2(a) and 12 shall be effective upon enactment."

STATEMENT OF RODNEY R. PARKER, ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee, on behalf of the Department of Justice, I am pleased to have this opportunity to present our views on S. 2723, legislation to partition reservation lands between the Hoopa Valley Tribe and the Yurok Indians, as introduced by Senator Cranston. This bill, which is identical to the amended version of H.R. 4469 introduced by Congressman Bosco, satisfies our litigation concerns. However, because of budgetary and other policy concerns, we defer to the Department of the Interior for the Administration's position on the bill.

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

Beginning in the 1950's, the Hoopa Valley Tribe, a federally recognized and organized tribe, began receiving proceeds from the harvesting of timber from the Square. Some of the proceeds from the timber harvests were distributed on a per capita basis to individual members of the Hoopa Valley Tribe. This prompted suits by other Indians who were not members of the tribe and thus did not receive per capita payments. *Short* v. *United States,* No. 102-63, Cl.Ct.; *Ackley* v. *United States,* No. 460-78, Cl.Ct.; *Aanstadt* v. *United States,* No. 146-85L, Cl.Ct.; *Giffen* v. *United States,* No. 746-85L, Cl.Ct.

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

S. 2723 would provide for the partition of the Hoopa Valley reservation into two separate reservations, to be held in trust by the United States for the Hoopa Valley Tribe and the Yurok Tribe, respectively. The bill also provides for the establishment and distribution of a Settlement Fund for eligible individuals.

The Department of Justice has worked with Congressman Bosco's staff to draft legislation that satisfied our litigation concerns. S. 2723, which is identical to the amended version of H.R. 4469, would, in general, satisfy our litigation concerns.

We have, however, two remaining concerns with the bill. Our first concern is clarification that no Fifth Amendment taking is in-

tended by the sections providing for the contribution of tribal monies to the Settlement Fund. The bill already provides for a waiver of claims by the Hoopa Tribe and, under certain circumstances, the Yurok Tribe. While we understand the waiver language as already evidencing tribal consent, we think a provision requiring express tribal consent could provide a clearer acknowledgment by the tribal government that no taking has occurred. We therefore suggest that section 2(a)(2)(A) be changed to read as follows:

> (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:
>
> (i) waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and
>
> *(ii) affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this Act.*

We likewise suggest that section 9(c)(2)(A) be changed to read as follows:

> (A) the adoption of a resolution, by a vote of not less than two-thirds of the voters present and voting:
>
> (i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this Act, and
>
> *(B) (ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this Act.*

Our second concern involves section 13(c)(2) of the bill, which provides that, in the event of a judgment against the United States based on a Fifth Amendment taking, the Secretary of the Interior shall submit a report to Congress recommending possible Congressional modifications to the bill. Pursuant to this section, Congress could change the nature of the act that constituted a taking, and thus make payment for a permanent taking by the United States unnecessary. In order to ensure that payment is not made in the event that Congress takes action to make the payment unnecessary, we suggest that the following provisions be added to section 13(c)(2) of the Act:

> Notwithstanding the provisions of 28 U.S.C. 2517, any judgment entered against the United States shall not be paid for 180 days after the entry of judgment; and, if the Secretary of the Interior submits a report to Congress pursuant to this section, then payment shall be made no earlier than 120 days after submission of the report.

The bill's remaining provisions largely involve budget and policy matters and we defer to the Department of the Interior on them. I would be pleased to answer any questions you might have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that 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, and existing law in which no change is proposed is shown in roman):

ACT OF JUNE 25, 1910, AS AMENDED

* * * * * * *

[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 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 governing bodies of the tribes concerned and approved by the Secretary or

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

* * * * * * *

ACT OF OCTOBER 27, 1986

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

* * * * * * *

SEC. 4. KLAMATH RIVER BASIN FISHERIES TASK FORCE

* * * * * * *

(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. History Aboriginal Tribers and Lands of Northern California

Public Law 100-580
100th Congress

An Act

Oct. 31, 1988
[S. 2723]

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

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

Hoopa-Yurok Settlement Act.
25 USC 1300i.

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 constitution 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 United States 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 on April 6, 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. 25 USC 1300i-1.

(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 subsections (b) and (c).

(2)(A) The partition of the joint reservation as provided in this subsection, and the ratification and confirmation as provided by section 8, 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:

(i) waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and

(ii) affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in 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. Federal Register, publication.

(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.

National Forest System.

(2) Subject to all valid existing rights and subject to the adoption of a resolution of the Interim Council of the Yurok Tribe as provided in section 9(d)(2), 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 N., Range 1 E., 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 from willing sellers lands or interests in land, including rights-of-way for access to trust lands, for the Yurok Tribe or its members, and such lands may be declared to be part of the Yurok Reservation.

(B) From amounts authorized to be appropriated by the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), the Secretary shall use not less than $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 lands adjacent to and contiguous with the Yurok Reservation or 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 Interim 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.

(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 the 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 Reservation in the Federal Register. Federal Register, publication.

(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 Yurok 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 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. 25 USC 1300i-2.

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

SEC. 4. HOOPA-YUROK SETTLEMENT FUND. 25 USC 1300i-3.

(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 section (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: *Provided, however,* That the Settlement Fund apportioned under subsections (c) and (d) shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Hoopa Valley Tribe pursuant to subsection (c).

(3) Until the distribution is made to the Yurok Tribe pursuant to section (d), the Secretary may, in addition to providing Federal funding, distribute to the Yurok Transition Team, pursuant to 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 $500,000 each fiscal year out of the income and principal of the Settlement Fund for tribal, non per capita purposes: *Provided, however,* That the Settlement Fund apportioned under subsections (c) and (d) shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Yurok Tribe pursuant to subsection (d).

(b) DISTRIBUTION; INVESTMENT.—The Secretary shall make distribution from the Settlement Fund as provided in this Act and, pending payments under section 6 and 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 immediately 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 the date of the promulgation of the Settlement Roll, 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).

Appropriation authorization.

(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 subsections (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 subsections (c) and (d) and section 6(c), shall be available to make the payments authorized by section 6(d).

25 USC 1300i-4.

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 United States 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 United States 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 attorneys 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. Federal Register, publication.

(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.—(1) 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). Federal Register, publication.

(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 division 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 Yurok 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. 25 USC 1300i-5.

(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 certified mail to each person eighteen years or older on such roll of their right to elect one of the settlement options provided in this section. Mail.

(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 provide information about the counseling services which will be made available to inform individuals about the respective rights and benefits associated with each option presented under this section. It shall also clarify that on election the Lump Sum Payment option requires the completion of a sworn affidavit certifying that the individual has been provided with complete information about the effects of such an election.

(3) With respect to minors on the Settlement Roll the notice shall state that minors shall be deemed to have elected the option of section 6(c), except that if the parent or guardian furnishes proof satisfactory to the Secretary that a minor is an enrolled member of Children and youth.

a tribe that prohibits members from enrolling in other tribes, the parent or guardian shall make the election for such minor. A minor subject to the provisions of section 6(c) shall, notwithstanding any other law, be deemed to be a child of a member of an Indian tribe regardless of the option elected pursuant to this Act by the minor's parent. With respect to minors on the Settlement Roll whose parent or guardian is not also on the roll, notice shall be given to the parent or guardian of such minor. The funds to which such minors are entitled shall be held in trust by the Secretary until the minor reaches age 18. The Secretary shall notify and provide payment to such person including all interest accrued.

(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 as 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 (c).

(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 United States Court of Claims in its March 31, 1982, decision in the Short case (No. 102-63) as "Schedule A", "Schedule B", or "Schedule C" and 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.

Claims.
Jesse Short.

(3) The Secretary shall determine the quantum of "Indian blood" or "Hoopa Indian blood", if any, of each person enrolled in the Hoopa Valley Tribe under this subsection pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse 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.

Claims.
Jesse Short.

(2) All persons making an election under this subsection shall form the base roll of the Yurok Tribe for purposes of organization

pursuant to section 9 and the Secretary shall determine the quantum of "Indian blood" if any pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63).

(3) The Secretary, subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. 1407), shall pay to each person making an election under this subsection, $5,000 out of the Settlement Fund for those persons who are, on the date established pursuant to section 6(a)(4), below the age of 50 years, and $7,500 out of the Settlement Fund for those persons who are, on that date, age 50 or older.

(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 Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund. Any such person shall also be deemed to have granted to members of the Interim Council established under section 9 an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act, and granting tribal consent as provided in section 9(d)(2).

(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 $15,000 out of the Settlement Fund: *Provided,* That such individual completes a sworn affidavit certifying that he or she has been afforded the opportunity to participate in counseling which the Secretary, in consultation with the Hoopa Tribal Council or Yurok Transition Team, shall provide. Such counseling shall provide a comprehensive explanation of the effects of such election on the individual making such election, and on the tribal enrollment rights of that persons children and descendants who would otherwise be eligible for membership in either the Hoopa or Yurok Tribe.

(2) The option to elect a lump sum payment under this section is provided solely as a mechanism to resolve the complex litigation and other special circumstances of the Hoopa Valley Reservation and the tribes of the reservation, and shall not be construed or treated as a precedent for any future legislation.

(3) Any person 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, the 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. 25 USC 1300i-6.

(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 paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe.

(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: *Provided, however,* That if the Hoopa Valley Business Council shall decide to do so it may distribute from the funds apportioned to it a per capita payment of $5,000 per member, pursuant to the Act of August 2, 1983 (25 U.S.C. 117a et seq.).

25 USC 1300i-7.

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

The existing govening 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.

25 USC 1300i-8.

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 Interim Council resolution as required by subsection (d)(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.

(3) Within thirty days (30) after the enactment of this Act the Secretary, after consultation with the appropriate committees of Congress, shall appoint five (5) individuals who shall comprise the Yurok Transition Team which, pursuant to a budget approved by the Secretary, shall provide counseling, promote communication with potential members of the Yurok Tribe concerning the provisions of this Act, and shall study and investigate programs, resources, and facilities for consideration by the Interim Council. Any property acquired for or on behalf of the Yurok Transition Team shall be held in the name of the Yurok Tribe.

(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 subject to subsection (d) shall be the governing body of the tribe until such time as a tribal council is elected under a 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 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 the nomination of candidates for election of 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 adopt a resolution—

(i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this Act, and

(ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this Act, and

(iii) 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 any contract or legal obligation that would bind the Yurok Tribe for a period in excess of two years from the date of the certification of the election by the Secretary shall be subject to disapproval and cancellation by the Secretary if the Secretary determines that such a contract or legal obligation is unnecessary to improve housing conditions of members of the Yurok Tribe, or to obtain other rights, privileges or benefits that are in the long-term interest of the Yurok Tribe.

(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 tribe 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.

25 USC 1300i-9.

SEC. 10. ECONOMIC DEVELOPMENT.

(a) PLAN FOR ECONOMIC SELF-SUFFICIENCY.—The Secretary shall—

(1) enter into negotiations with the Yurok Transition Team and the Interim Council of the Yurok Tribe with respect to establishing a plan for economic development for the tribe; and

(2) in accordance with this section and not later than two years after the date of enactment of this Act, develop such a plan.

(3) upon the approval of such plan by the Interim Council or tribal governing body (and after consultation with the State and local officials pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Congress.

(b) CONSULTATION WITH STATE AND LOCAL OFFICIALS REQUIRED.—To assure that legitimate State and local interests are not prejudiced by the proposed economic self-sufficiency plan, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State. The Secretary shall provide complete information on the proposed plan to such officials, including the restrictions on such proposed plan imposed by subsection (c) of this section. During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess, and shall request comments and additional information on the extent of any State or local service to the tribe.

(c) RESTRICTIONS TO BE CONTAINED IN PLAN.—Any plan developed by the Secretary under subsection (a) of this section shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken and held in the name of the United States for the benefit of the tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax;

(B) foreclosure or sale in accordance with the laws of the State pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) APPENDIX TO PLAN SUBMITTED TO THE CONGRESS.—The Secretary shall append to the plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) naming each individual and official consulted in accordance with subsection (b) of this section;

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any party named in paragraph (1).

SEC. 11. SPECIAL CONSIDERATIONS.

25 USC 1300i-10.

(a) ESTATE FOR SMOKERS FAMILY.—The 20 acre land assignment on the Hoopa Valley Reservation made by the Hoopa Area Field Office of the Bureau of Indian Affairs on August 25, 1947, to the Smokers family shall continue 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 on the date of enactment of this Act.

(b) RANCHERIA MERGER WITH YUROK TRIBE.—If a majority of the adult members of any of the following Rancherias at Resighini, Trinidad, or Big Lagoon, vote to merge with the Yurok Tribe in an election which shall be conducted by the Secretary within ninety days after the date of enactment of this Act, the tribes and reservations of those rancherias so voting shall be extinguished and the lands and members of such reservations shall be part of the Yurok Reservation with the unallotted trust land therein held in trust by the United States for the Yurok Tribe: *Provided, however,* That the existing governing documents and the elected governing bodies of any rancherias voting to merge shall continue in effect until the election of the Interim Council pursuant to section 9. The Secretary shall publish in the Federal Register a notice of the effective date of the merger.

Federal Register, publication.

(c) PRESERVATION OF LEASEHOLD AND ASSIGNMENT RIGHTS OF RANCHERIA RESIDENTS.—Real property on any rancheria that merges with the Yurok Reservation pursuant to subsection (b) that is, on the date of enactment of this Act, held by any individual under a lease shall continue to be governed by the terms of the lease, and any land assignment existing on the date of the enactment of this Act shall continue in effect and may pass by descent or devise to any blood relative or relatives of Indian blood of the assignee.

SEC. 12. KLAMATH RIVER BASIN FISHERIES TASK FORCE.

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

(A) in the matter preceding paragraph (1), by striking out "12" and inserting in lieu thereof "14"; and

(B) by inserting 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 organized upon which time the Yurok Tribe shall appoint such representative beginning with the first appointment ordinarily occurring after the Yurok Tribe is organized".

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

16 USC 460ss-3 note.

SEC. 13. TRIBAL TIMBER SALES PROCEEDS USE.

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

"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 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.".

25 USC 1300i-11.

SEC. 14. LIMITATIONS OF ACTIONS; WAIVER OF CLAIMS.

(a) Any claim challenging the partition of the 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(d)(2).

Reports.

(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 established by this Act. Notwithstanding the provisions of 28 U.S.C. 2517, any judgment

entered against the United States shall not be paid for 180 days after the entry of judgment; and, if the Secretary of the Interior submits a report to Congress pursuant to this section, then payment shall be made no earlier than 120 days after submission of the report.

Approved October 31, 1988.

LEGISLATIVE HISTORY—S. 2723 (H.R. 4469):

HOUSE REPORTS: No. 100-938, Pt. 1, accompanying H.R. 4469 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 100-564 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 30, considered and passed Senate.
Oct. 3, 4, considered and passed House.

does not apply to information required for purposes of carrying out the Program.

Dated: December 2, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-28134 Filed 12-6-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Resolution of the Hoopa Valley Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation, Hoopa, California, is required under the Hoopa-Yurok Settlement Act of October 31, 1988 (102 Stat. 2924) to adopt and transmit to the Secretary of the Interior a tribal resolution waiving any claim such tribe may have against the United States arising out of the provisions of the Act, and affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Act. In accordance with the Settlement Act, the resolution is to be published in the Federal Register. Effective with such publication the joint reservation shall be partitioned as provided in the Act.

DATE: The Settlement Act requires that the tribal resolution be published in the Federal Register within 60 days after the date of enactment of the Settlement Act.

FOR FURTHER INFORMATION CONTACT: Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California, 96049-4879, telephone number: (916) 246-5141.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Pursuant to the Hoopa-Yurok Settlement Act of October 31, 1988 (102 Stat. 2924), Section 2(a)2(B), this is official notification that the Hoopa Valley Tribe has adopted a valid resolution which meets the requirements of section 2(a)(2)(A) of the Act, and said resolution reads as follows:

RESOLUTION OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA VALLEY, CALIFORNIA

RESOLUTION NO: 88-115
DATE APPROVED: November 28, 1988
SUBJECT: WAIVER OF CERTAIN CLAIMS AND CONSENT TO USES OF TRIBAL FUNDS PURSUANT TO THE HOOPA-YUROK SETTLEMENT ACT

WHEREAS: The Hoopa Valley Business Council is the governing body of the Hoopa Valley Tribe under a Constitution and Bylaws approved by the Commissioner of Indian Affairs on August 18, 1972; and

WHEREAS: The *Jessie Short* case stated that the Hoopa Valley Reservation as extended is a single reservation in which tribes lack vested rights, and accordingly the court imposed liability on the United States for past per capita distributions of revenue from the Hoopa Square which went to Hoopa Valley tribal members only; and

WHEREAS: The *Puzz* case has interpreted *Short* and applicable law in a manner which prohibits the Hoopa Valley Tribe from exercising territorial management powers over the Hoopa Square and has crippled the power of the Hoopa Valley Business Council to exercise the authorities granted under the Tribe's Constitution to administer tribal property, to expend tribal funds, to protect tribal resources, to govern non-members and generally to safeguard and promote the peace, safety and general welfare of the Hoopa Valley Tribe; and

WHEREAS: The Hoopa people have petitioned the United States Congress to enact a law confirming the Hoopa Square as the property of the Hoopa Valley Tribe and reinforcing the governmental power of the Hoopa Valley Business Council pursuant to its Constitution; and

WHEREAS: On April 26, 1988, Representative Doug Bosco introduced H.R. 4469 which, after hearings, negotiations and introduction of substitute bills, was enacted as the Hoopa-Yurok Settlement Act on October 31, 1988; and

WHEREAS: Section 2(a)(2)(A) of the Act provides:

(A) The partition of the joint reservation as provided in this subparagraph, and the ratification and confirmation as provided by section 8, 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:

(i) Waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and

(ii) Affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this Act.

WHEREAS: The Senate Report accompanying the Act states that the waiver required by the Act does not prevent the Hoopa Valley Tribe "from enforcing rights or obligations created by this Act", S. Rep. 100-564 at 17; and

WHEREAS: The Hoopa Valley Business Council has fully considered the claims to be waived and the consent to be granted and has balanced them against the benefits offered to the Hoopa Valley Tribe under the Act including, under Section 2, the "partition of the joint reservation" so that "the unallotted trust lands and assets of the [new] Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe" and, under Section 8, a declaration that "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," and has concluded that the Tribe would best be served by complying with Section 2(a) of the Act; and

WHEREAS: The Hoopa Valley Business Council has consulted with the members of the Hoopa Valley Tribe in a duly-noticed General Meeting held on November 12, 1988, and in previous General Meetings, and has been reassured and directed by the membership to comply with the Act; and

WHEREAS: The Hoopa Valley Business Council has carefully considered the Tribe's Constitution and other tribal law and custom concerning the method by which the resolution called for by the Act should be enacted;

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council has the power under the Constitution and Bylaws of the Hoopa Valley Tribe to approve and enact the resolution required by Section 2(a) of the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That this resolution is not intended, and shall not be construed, so as to prevent the Hoopa Valley Tribe from enforcing rights and obligations created by the Hoopa-Yurok Settlement Act, *see* S. Rep. 100-564 at 17; and

BE IT FURTHER RESOLVED: That the Hoopa Valley Tribe hereby waives any claim the Hoopa Valley Tribe may have against the United States arising out of

the provisions of the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That the Hoopa Valley Tribe affirms tribal consent to the contribution of Hoopa Escrow moneys to the settlement fund and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Hoopa-Yurok Settlement Act; and

BE IT FURTHER RESOLVED: That the Chairman and Secretary of the Hoopa Valley Business Council are hereby authorized, directed and empowered to sign the resolution for and on behalf of the Hoopa Valley Tribe as its act and deed.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members, of which 6 were present, constituting a quorum, at a special meeting thereof, duly and specially called, noticed, convened, and held this 28th day of November, 1988, and that this resolution was adopted by a vote of 5 FOR with 0 AGAINST; and that said resolution has not been rescinded or amended in any way.

DATED THIS 28TH DAY OF NOVEMBER, 1988.

/S/ JASPER A. HOSTLER, FOR WILFRED K. COLEGROVE, CHAIRMAN HOOPA VALLEY BUSINESS COUNCIL ATTEST: DEIRDRE R. YOUNG, TRIBAL SECRETARY, HOOPA VALLEY BUSINESS COUNCIL

35-TLT1.8/WAIVER.RS4
klb/112888"

Donald F. Asbra,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-28294 Filed 12-6-88; 9:24 am]

BILLING CODE 4310-02-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Managemnet and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 1203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Facilities on the Outer Continental Shelf (OCS) Adjacent to California (30 CFR 250.47).

OMB Approval Number: None.

Abstract: Respondents are required to provide the Minerals Management Service (MMS) with information on emissions data and related data from existing and new facilities or modifications to existing and new facilities located on the Federal OCS adjacent to California. The MMS will use this information to identify any potential or existing pollutant emissions and evaluate the potential impact of those operations on the adjacent coastal areas of the State of California.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees.

Estimated Completion Time: 29.6 hours.

Annual Responses: 123.

Annual Burden Hours: 3,640.

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: November 22, 1988.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88-28092 Filed 12-6-88; 8:45am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Gulfstar Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5415, Block 117, Vermilion Area, offshore Louisiana. Proposed Plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 29, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention: OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: November 30, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-28084 Filed 12-6-88; 8:45 am]

BILLING CODE 4310-MX-M

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

NORTHERN CALIFORNIA AGENCY

P. O. BOX 494879

REDDING, CALIFORNIA 96049-4879

April 12, 1991

You are hereby noticed that your name or the name of your minor child has been included on the Hoopa/Yurok Settlement Roll pursuant to Section 5(d)(1) HOOPA-YUROK SETTLEMENT ROLL.

The Hoopa-Yurok Settlement Act requires that the Bureau of Indian Affairs must notify you of your right to select one of three options pursuant to Section 6(a)(1) of the Settlement Act. Furthermore, Section 6(a)(2) requires that the Bureau of Indian Affairs shall provide information about the counseling services to explain the advantages and disadvantages of each of the options. The consultation sessions are scheduled as follows:

Hoopa, CA	Neighborhood Facility	May 6, 1991
Eureka,CA	Jacobs Education Center	May 7, 1991
Crescent City,CA	Cultural/Community Center, 475 5th St.	May 8, 1991
Grants Pass, OR	Riverside Inn Blue Heron Room	May 9, 1991

The sites were selected based on zip code listings showing the largest concentration of eligible applicants on the Settlement Roll. The sessions at all locations will be as follows:

6:00-7:00 PM explanation of options
7:00-8:00 PM questions and answers
8:00-9:00 PM Individual counseling sessions

An 800 telephone number, 1-800-BIA-HYSA, will be in operation by April 29, 1991 for those who may be unable to attend the scheduled meetings, or if there are other questions you may have you concerning the Hoopa/Yurok Settlement Act.

Sincerely,

Karole D. Overberg
Superintendent

Enclosures: Option Election Form
Option Election Notice

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

NORTHERN CALIFORNIA AGENCY

P. O. BOX 494879

REDDING, CALIFORNIA 96049-4879

SETTLEMENT OPTION NOTICE

To: All Persons included on the Settlement Roll
Prepared Under the Hoopa-Yurok Settlement Act

Re: Election of Settlement Options

SECTION I. INTRODUCTION.

On October 31, 1988, Congress enacted the Hoopa-Yurok Settlement Act. This notice will refer to that legislation simply as "the Act".

Section 5 of the Act requires the Secretary of the Interior to prepare a roll of all eligible persons (a) who show their eligibility as an Indian of the Reservation; (b) who were living on October 31, 1988; (c) who are citizens of the United States; and (d) who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe. The Settlement Roll was published in the Federal Register on March 21, 1991. Your name, or the name of the child you sponsored, is included on the Settlement Roll.

The Act provides that each person 18 years or older whose name appears on the Settlement Roll must be notified by certified mail of the right to choose one of the settlement options provided for in Section 6 of the Act. This is your notice of your right to choose one of the settlement options.

Section II of this letter states a deadline which is the date by which you must choose a Settlement Act option. Section III summarizes the options. Section IV explains how you may get more information and advice on the options. Section V explains special rules for persons under 18 years of age, and Section VI explains other rules for plaintiffs in the Short cases. Section VII explains each option in detail and finally Section VIII summarizes the notice.

SECTION II. LAST DATE FOR MAKING YOUR ELECTION.

The last date for you to notify the Bureau of Indian Affairs of the option you have chosen is **July 19, 1991.** Your option election form must be postmarked no later than midnight, July 19, 1991.

If you fail to return a written statement of your selection by that date to the Bureau of Indian Affairs, Northern California Agency, P.O. Box 494879, Redding, CA 96049-4879, you will be deemed to have chosen Option 2, Yurok membership. A form is enclosed for your convenience in making your selection. Please be sure to sign and date this form before returning it to the Bureau of Indian Affairs on or before the option election date noted above.

SECTION III. SUMMARY OF OPTIONS UNDER THE ACT.

Option 1 (Act Sec. 6(b):	Hoopa Tribal membership
Option 2 (Act Sec. 6(c):	Yurok Tribal membership
Option 3 (Act Sec. 6(d):	Lump Sum Payment - no Hoopa or Yurok tribal membership.

These three options and the pros and cons of selecting each option are explained in more detail in section VII of this letter. The Act requires that you must select only one of the three options. Any choice you make will be final and cannot be changed after July 19, 1991 which is the final date established by the Secretary for each person on the Settlement Roll to choose an option. Your failure to choose an option within this time limit will lead the Bureau of Indian Affairs to assume that you have chosen Option 2, membership in the Yurok Tribe.

Should you refuse to accept the payment and return it to the Bureau of Indian Affairs, you will not be deemed to have given up any claims you may have to the Hoopa Valley Tribe or Yurok Indian reservations, and you will have preserved your legal right to challenge any of the provisions of the Act. In addition, you will not be deemed to have given permission to the Interim Council to either give up legal claims of the Yurok Tribe arising under the Act or to consent to the payment of escrow monies into the Settlement Fund under the Act. However, in that event, the Act requires that you must file suite on any such claim no later than 120 days after the publication in the Federal Register of the option election date. Failure to file such a lawsuit within the required deadline will result in forfeiture of your legal claims.

SECTION IV. COUNSELING SERVICE AVAILABLE.

The Act provides that the Bureau of Indian Affairs must provide special counseling to you to inform you about the advantages and disadvantages associated with each option. If you wish counseling, please contact Dorson Zunie or Silas Ortley, Northern California Agency, at (916) 246-5141, or 1-800-BIA-HYSA. (this number will be available on April 19,1991) In addition, you may contact the Hoopa Valley Tribal Council or the Yurok transition Team at the addresses listed below:

Yurok Transition Team
517 Third Street, Suite 21
Eureka, CA 95501
(707) 444-0433 or 1-(800)-848-8765

Yurok Transition Team
P.O. Box 218
Klamath, CA 95548
(707) 482-2921 or 1-(800)-334-6689

Hoopa Valley Tribal Council
P.O. Box 1348
Hoopa, CA 95546
(916) 625-4211

If you elect Option 3 - Lump Sum Payment, you must complete and sign a sworn statement that you have been provided with complete information about the effects of choosing Option 3.

SECTION V. SPECIAL PROVISION FOR MINORS WHO WILL NOT BE 18 YEARS OF AGE BY THE DEADLINE DATE TO ELECT OPTIONS.

The Act provides special rules for minors (those persons under 18 years of age) on the Settlement Roll who will not receive this notice and who will not be able to make their own election unless their eighteenth (18th) birthday occurs on or before **July 19, 1991.** If you are a parent or guardian of a minor whose name is on the Settlement Roll and your name is <u>not</u> included on the Roll, this notice is sent to you on behalf of your minor child.

The Act provides that minors on the Settlement Roll will be deemed to have chosen Option 2, membership in the Yurok Tribe, unless (1) you do not wish the child enrolled in the Yurok Tribe, and (2) you furnish proof that is satisfactory to the Bureau of Indian Affairs, that your minor child is already a member of a Federally recognized Indian tribe, <u>and</u> that tribe prohibits its members from enrolling in another tribe. If those special conditions are met, you may choose Options 2 or 3 for the child. If you do not make a choice on behalf of your minor child before **July 19, 1991**, then the child will have been deemed to elect Option 2 - Yurok Tribal membership. In making an election for your minor child, you are entitled to the counseling services provided by the Bureau of Indian Affairs.

If the minor child becomes a member of the Yurok Tribe under the options provided in the Act, the child will be deemed to be a child of a member of the (Yurok) Indian Tribe even though you yourself elect Option 3, Option - Lump Sum Payment. The money to which your child is entitled under the Act will be held in trust by the Bureau of Indian Affairs until the child reaches the age of 18. At that time the Secretary must notify and provide payment directly to your child including all interest earned.

SECTION VI. EFFECT ON SHORT PLAINTIFFS OF MAKING AN ELECTION.

Any payment for damages or other entitlements that a plaintiff may be due under a decision of the United States Claims Court in the Short Cases, meaning the Short, Ackley, Aanstadt, or Giffen litigation is not affected at all by the provisions of the Act or by your choice of any option described in the Act and this notice. Selection of any of the options will not in any way reduce your eligibility, entitlement or right to receive monies that may be due to you as a qualified plaintiff in the Short cases.

SECTION VII. EXPLANATION OF EACH OPTION.

A. Option 1 (Section 6(b)) - Hoopa membership option.

1. General Statement Regarding Option 1.

If you choose this option, it means that you wish to become an enrolled member of the Hoopa Valley Tribe. In order to choose this option your name must be listed on the Settlement Roll and you must meet the enrollment requirements of the Hoopa Valley Tribe set out as Schedule A, Schedule B, or Schedule C in the Short Case. (No one born after October 1, 1949 meets those enrollment requirements) In addition you must have either (1) maintained a residence on the Hoopa Valley reservation at any time between October 31, 1983 and October 31, 1988; or (2) owned an interest in real property on the Hoopa Valley Reservation on October 31, 1988. If you provide satisfactory proof that you meet these requirements, you will be entitled to become an enrolled member of the Hoopa Valley Tribe and the Secretary shall cause you to be so enrolled. The requirements for enrollment with the Hoopa Valley Tribe discussed above will be explained to you in detail at your request before you are required to make a decision.

2. **ADVANTAGES TO CHOOSING OPTION 1 - HOOPA MEMBERSHIP**

a. As a member of the Hoopa Valley Tribe, you will be able to share in tribal rights and interest of the Hoopa Valley Tribe, including any tribal rights in unallotted lands and water of the Hoopa Valley Reservation (as defined in the Act) and other property, resources, or rights within, or appertaining to, the Hoopa Valley Indian Reservation or the Hoopa Valley Tribe. Your rights of membership in the Hoopa Valley Tribe will be exactly the same as the rights of other members of the Hoopa Valley Tribe, and you will be entitled to the same protections. In the past the tribe has made Per Capita payments and if they do, you may be eligible to share as a tribal member. As a member of the Hoopa Valley Tribe you may be entitled to participate in the land assignment/lease program as defined under the Hoopa Valley Tribal Land Assignment/Lease Ordinance.

b. If you choose to become a member of the Hoopa Valley Tribe under Option 1, you will be recognized as an enrolled

member of a Federally recognized tribe and entitled to all of the benefits and services available to such members under federal and state programs, benefits, preferences, and services.

c. If you become a member of the Hoopa Valley Tribe under this Option 1, the Secretary will determine your quantum of "Indian Blood" or "Hoopa Indian Blood", if any, under the requirements established in the March 31,1982 court decision in Short.

3. DISADVANTAGES TO CHOOSING OPTION 1 - HOOPA MEMBERSHIP

a. By choosing the Hoopa membership option, you will not be eligible for or entitled to any payment from the Settlement Fund. Such payment can only be made under the Act to persons who choose either Option 2 or Option 3.

b. If you choose the Hoopa membership option, you will not have any rights or interests whatsoever in the tribal, communal, or unallotted lands, property, resources or rights within, or appertaining to, the Yurok Indian reservation or the Yurok Tribe. For example, you would be unable to fish, hunt or gather on the Yurok Reservation unless that tribe permitted you to do so. You also will not have any rights or interests in the Settlement Fund except to the extent the Hoopa Valley Tribe uses its portion of the Settlement Fund for your benefit.

c. The Hoopa Valley Tribal Council has enacted a resolution waiving any claim of the Hoopa Valley Tribe against the United States arising under the provisions of the Act. Further, the Hoopa Valley Tribal Council has enacted a resolution affirming the Tribe's consent to the contribution of the Hoopa Escrow monies to the Settlement fund and for payment from the fund to the Yurok Tribe and individual Yuroks as provided for in the Act. Since that resolution has already been enacted, choosing this option means that you will no longer have any voice in deciding whether the Hoopa Valley Tribe should challenge the Act or consent to the distribution of Hoopa Escrow monies and the use of the Settlement Fund.

d. If you choose Option 1, your choice becomes final and irrevocable on July 19, 1991. After that date you cannot change your mind and choose another option.

B. OPTION 2 (SECTION 6(c)) - YUROK MEMBERSHIP

1. General Statement regarding Option 2.

Choosing this option means that you wish to become a member of the Yurok Tribe. Under the Act, the Yurok Tribe may adopt a tribal constitution that will establish, among other things, future membership requirements for the Yurok Tribe. If you choose this option you are automatically listed as a base member enrollee of the Yurok Tribe.

As a result, if you are 18 years of age or older you will be eligible to vote in tribal elections or hold office on the tribal council. Any person on the Settlement Roll, regardless of age, may choose Option 2, membership in the Yurok Tribe. As discussed above, persons who fail to make an election by the deadline date for selecting an option will be deemed to have elected the Yurok membership option. Also, as discussed above, persons under 18 years of age whose names are on the Settlement Roll will be deemed to have chosen the Yurok Option unless the minor's parent or guardian can establish to the satisfaction of the Secretary that the minor is already enrolled in another Indian tribe that prohibits dual enrollment. In that case, the parent or guardian may choose option 2 or 3 on behalf of the minor child. Dual enrollment is when a person is enrolled in more than one tribe at a time. Many Indian tribes prohibit dual enrollment and require that you give up your enrollment with the other tribe before you can become a member of the tribe in which you seek membership. Whether or not the Yurok Tribe will prohibit dual enrollment may be decided when the constitution is drafted and accepted by the membership.

2. ADVANTAGES TO CHOOSING OPTION 2 - YUROK MEMBERSHIP

a. As a member of the Yurok Tribe, you will share in the rights and interests of the Yurok Tribe, including any tribal rights in the unallotted lands and waters of the Yurok Reservation and other property, resources or rights within, or appertaining to, the Yurok Indian Reservation or the Yurok Tribe. Your rights of membership in the Yurok Tribe will be exactly the same as the rights of other members of the Yurok Tribe and you will be entitled to the same protections.

b. If you choose to become a member of the Yurok Tribe under Option 2, the Act provides that you will be paid $5,000 if you are under the age of 50 years on **July 19, 1991**, the last day established under this notice to elect an option. If you are 50 years or older on **July 19, 1991**, you will be paid $7,500. These payments will be exempt from all federal and state income taxation. Also these payments cannot be used to affect your eligibility for federal social security Act programs such as SSI, AFDC, etc. However, amounts over $2,000 may be considered by **other** Federal or Federally assisted state programs in determining eligibility or level of benefits. State and private programs can consider the entire amount in determining eligibility for services or benefits.

c. By choosing Yurok membership, you will be included on the base membership roll of the Yurok Tribe and be eligible to vote for the Interim Council, seek office on the Yurok Interim Tribal Council, assist in preparing a new constitution, election ordinance and membership ordinance for the Yurok Tribe, and vote for or against the new Yurok Tribal Constitution. Any individual listed on the base roll of the Yurok Tribe cannot be removed from it. The Act provides, however, that only persons 18 years of age or older who have elected Yurok Tribal membership under this option 2 will be

eligible to participate in the formation of the new tribal government.

d. If you choose to become a member of the Yurok Tribe under Option 2, you will be recognized as an enrolled member of a Federally recognized tribe and entitled to all of the benefits and services available to such members under Federal and State programs, benefits, preferences, and services. Some of these entitlements through the Bureau of Indian Affairs may include educational grants, adult vocational training, direct employment assistance, home improvements, and hiring preferences. Health care and hiring preference are also available through Indian Health Service. If you become a member of the Yurok Tribe, the Secretary will determine your quantum of "Indian blood" under the requirements established in a March 31, 1982 decision in Short. This method of determining your quantum of blood was used in determining your blood for the Settlement Roll.

3. DISADVANTAGES TO CHOOSING OPTION 2 - YUROK MEMBERSHIP

a. If you choose the Yurok Tribe membership option, you will no longer have any rights or interests whatsoever in the tribal, communal or unallotted lands, property, resources, or rights within, or appertaining to, the Hoopa Valley Indian Reservation as defined by the Act (commonly called the Hoopa Square) , or the Hoopa Valley Tribe, or except for the payment described above in Section 2 (d), the Settlement Fund. By choosing Option 2, you give up any such rights and interests.

b. By choosing Option 2, Yurok Membership, you will not be eligible for or entitled to Option 3 Lump Sum Payment. Such payment can only be made to those who choose Option 3. In addition, by choosing Option 2 - Yurok Membership and becoming an enrolled member of the Yurok Tribe, you will not be eligible to receive any per capita payment from the Hoopa Valley Tribe.

c. If you are now a member of an Indian tribe that prohibits membership in another tribe, choosing Option 2, Yurok Membership may require that you give up your membership in the other tribe under that tribe's membership rules or sharing as a member in the assets of another tribe.

d. Under the Act, the selection of Option 2, membership in the Yurok Tribe, also gives the Yurok Interim Council the right to approve a resolution (1) waiving any claim the Yurok Tribe may have against the United States arising out of the Act and (2) granting Yurok tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund and for use of some of these monies as payment to the Hoopa Tribe and to individual Hoopa members as provided for in the Act.(Section 9 (d) (2) (i). This means that the Interim Council of the Yurok Tribe could vote to accept or reject certain monies and legal powers offered by the Act, to give up legal claims or to keep them, and to consent to the use of the Yurok Escrow monies or to refuse to consent to use of the Yurok Escrow

monies, without any further permission or authority from you as a member of the Yurok Tribe. If you choose this option, you will not only grant your proxy or authority to the Interim Council, but also you cannot take back or change this grant of authority to the Interim Council. Of course, how the Interim Council will vote on these matters is unknown at this time.

e. If you choose this option, your choice becomes final and irrevocable on July 19, 1991. That is, once you make your election, you cannot change your mind or choose another option after that date.

f. If you elect Option 1, 2 or 3, you will have given up any claim you may have against the United States arising out of the Act.

C. **OPTION 3 (SECTION 6(D) - LUMP SUM PAYMENT OPTION.**

1. **General Statement Regarding Option 3.**

As a person whose name is included on the Settlement Roll, you may elect to receive a Lump Sum Payment Option from the Settlement Fund of $15,000. The Act requires that if you choose this option, you must complete under oath, a written statement that you have been given the opportunity to receive counseling provided by the Bureau of Indian Affairs. The Bureau of Indian Affairs is required to consult with the Hoopa Valley Tribal Council and the Yurok Transition Team in providing you with this counseling. Counseling will provide you with a complete explanation of the effects of Option 3 on your tribal enrollment rights and the enrollment rights of your children and descendents who may otherwise be eligible for membership in either the Hoopa Valley Tribe or the Yurok Tribe.

If you choose Option 3, Lump Sum Payment you will be giving up all of the rights and interest you may have in the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe and the Yurok Reservation.

This Option 3 is not a termination provision. It has no effect on any ties you may have to Indian tribes other than Hoopa and Yurok. It does not change the Indian status of any person on the Settlement Roll. If you choose this option, it does not end the Federal trust status or restrictions that may exist as to any allotted or restricted lands or resources to which you may hold a beneficial interest.

2. **ADVANTAGES TO CHOOSING OPTION 3 - LUMP SUM PAYMENT**

a. If you choose this option, you will receive a $15,000 cash settlement from the Settlement Fund in exchange for giving up any rights or interests you may have in the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe or the Yurok Reservation. This is a one-time-only payment.

3. **DISADVANTAGES TO CHOOSING OPTION 3 - LUMP SUM PAYMENT.**

a. If you choose this option and accept the $15,000 Lump sum Payment, you will have given up any rights or interests whatsoever in the tribal, communal, or unallotted lands, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe. Also, except for the $15,000 payment, you will have given up any rights or interests you may have in the Settlement Fund.

b. By accepting the $15,000 Lump Sum Payment, you will not be eligible under the Act for enrollment as a matter of right in either the Hoopa Valley Tribe or the Yurok Tribe. Future eligibility for enrollment in either tribe will depend upon each tribe's enrollment requirements as they may exist at the time you may wish to seek enrollment in the future.

c. If you are not eligible for membership in any other Federally recognized Indian tribe and if you elect this option, you may not be able to become an enrolled member of a Federally recognized Indian tribe. Of course, even if you are not now eligible, you may become eligible in the future if a tribe decides to amend its eligibility standards. As a result of choosing Option 3, you may be giving up all of the benefits that could come from such status. This includes benefits that come from the Hoopa and Yurok Tribes, and could also eliminate your eligibility for Federal and State programs, services, preferences and other advantages for which membership or eligibility for membership in a recognized tribe is required. As an additional result, your children and their descendants may also not be eligible for membership in an Indian tribe unless they are also on the Settlement Roll and choose a different option. By way of example, at this time Indian Health Service in California does not require tribal enrollment as proof to receive services. However, there has been talk of imposing that requirement in the future, and Congress could establish that requirement. Also, the Indian Child Welfare Act of 1978 defines "Indian child" by referring to tribal membership and eligibility for membership. Benefits provided by these programs could be affected by choosing Option 3.

d. If you elect this option, your choice becomes final and irrevocable on **July 19, 1991**; that is, once you make your election, you cannot change your mind or choose another option after that date.

e. If you elect Option 1, 2 or 3, you will have given up any claim you may have against the United States arising out of the Act.

f. If you elect the lump sum payment option, the $15,000 is taxable and will be treated as income or financial resource by many Federal, state, or service oriented programs.

SECTION VIII. SUMMARY.

Your name is included on the Settlement Roll prepared by the Secretary of the Interior pursuant to the Hoopa-Yurok Settlement Act. Thus, you are entitled to select one of the options described above no later than July 19, 1991. If you wish to choose Option 1, 2 or 3, you must make your selection to the BIA no later than July 19, 1991. If you choose not to select any of those options you will be considered to have elected Option 2, Yurok Membership. Should you refuse to accept the payment and return it to the Bureau of Indian Affairs, you will not be deemed to have granted a release or to have granted a proxy to the Yurok Interim Council. The Act provides that you are entitled to counseling conducted by the Bureau of Indian Affairs on the advantages and disadvantages of the options described above. In addition, if you choose Option 3, Lump Sum Payment, you will be required to sign a sworn statement that such counseling was made available to you.

As you can see, each of the options have certain advantages and disadvantages to you. The purpose of this notice is to provide you with an unbiased explanation of the options available to you under the Act. If you have any further questions or wish to receive counseling regarding this matter, you may contact the persons at the addresses and telephone numbers indicated in Section IV of this letter.

SETTLEMENT OPTION ELECTION FORM

I am 18 years or older. I hereby select the following option offered pursuant to the Hoopa/Yurok Settlement Act.

CHECK ONE ONLY

[ ] OPTION 1: I choose membership in the Hoopa Valley Tribe.
(must meet requirements in Section VII of the Settlement Option Notice entitled Hoopa Membership)

[ ] OPTION 2: I choose membership in the Yurok Tribe.

[ ] OPTION 3: I choose to receive the lump sum payment (requires completion of sworn affidavit).

Your selection of an option becomes final on July 19, 1991.

I understand that in the event that I do not elect an option, and do not accept any payment under any of the three options I may file a claim pursuant to Section 14, LIMITATION OF ACTIONS: WAIVER OF CLAIMS, within the 120 days from date of the publication of the **Option Election Notice** in the Federal Register.

The Bureau of Indian Affairs has provided me with a Notice of Settlement Options informing me of the rights and benefits of each option presented, the advantages and disadvantages of each option and information on counseling. I understand that this option is irrevocable after July 19, 1991.

_____
SIGNATURE

Please Print: NAME: _____

ADDRESS: _____

_____

PHONE: ( ) _____

If you are signing on behalf of a person under 18 years old, please indicate:

Minor's Name: _____

Address: _____

_____

Please check: [ ] Parent [ ] Guardian

THIS NOTICE MUST BE RECEIVED BY THE BUREAU OF INDIAN AFFAIRS, POSTMARKED NO LATER THAN MIDNIGHT, JULY 19, 1991.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Hoopa-Yurok Settlement Roll

May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is giving notice of the deadline for electing a settlement option under the provisions of section 6 of the Hoopa-Yurok Settlement Act (Settlement Act) of October 31, 1988, Public Law 100-580, as amended. Under section 6 of the Settlement Act, individuals 18 years of age or older who are determined finally eligible to be on the Hoopa-Yurok Settlement Roll prepared under section 5 will be given the opportunity to elect a settlement option from among three options. The three options are: (1) Membership in the Hoopa Valley Tribe if they meet the membership requirements specified in the Settlement Act; (2) membership in the Yurok Tribe; or (3) a lump sum payment in lieu of membership in either tribe. Minors finally determined eligible to be on the Settlement Roll will be deemed to have elected the Yurok membership option unless the parent or guardian of such a minor furnishes proof that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or legal guardian of the minor may elect another settlement option.

DATES: July 19, 1991, is the deadline for electing a settlement option under section 6 of the Hoopa-Yurok Settlement Act.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049-4879; telephone: (916) 246-5141 (FTS 450-5141) or 1-800-BIAHYSA (1-800-242-4972).

Yurok Transition Team, 517 Third Street, suite 21, Eureka, California 95501; telephone: (707) 444-0433 or 1-800-848-8765.

Yurok Transition Team, P.O. Box 218, Klamath, California 95548; telephone: (707) 482-2921 or 1-800-334-6689.

Hoopa Valley Tribal Council, P.O. Box 1348, Hoopa, California 95546; telephone: (916) 625-4211.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Department Manual at 209 DM 8.

Section 5 of the Settlement Act directed the Secretary of the Interior to prepare a Settlement Roll to identify Yurok and other Indians of the Reservation eligible to participate in the settlement. The deadline for filing applications for inclusion on the Settlement Roll was April 10, 1989.

Under section 5(d) of the Settlement Act, once initial determinations of eligibility were made on all applicants, the Secretary was to publish the Settlement Roll in the Federal Register. All initial determinations of eligibility were made and on Thursday, March 21, 1991, the BIA published the names of persons included on the Hoopa-Yurok Settlement Roll in the Federal Register (56 FR 12082)

The Settlement Act further directed the Secretary to develop such procedures and times as may be necessary for the consideration of appeals from applicants who were initially determined ineligible for the Settlement Roll and, as a result of the amendment of the Settlement Act, of appeals by the Hoopa Valley Business Council or the Yurok Transition Team from the initial omission or inclusion of names on the Settlement Roll.

The names of applicants not initially on the Settlement Roll who are finally determined eligible on appeal will be added to the Settlement Roll and those individuals will be given the opportunity to elect a settlement option. Applicants who were initially determined eligible, but who are finally determined ineligible on appeal will not be eligible to participate in the settlement and their names will be removed from the Settlement Roll.

Section 6 of the Settlement Act directs the Secretary to give notice within sixty days of the publication in the Federal Register of the Settlement Roll by certified mail to each person 18 years or older named on the Settlement Roll of their right to elect a settlement option and the deadline for making that election. With respect to minors on the Settlement Roll the notice is to state that minors shall be deemed to have elected the Yurok membership option unless the parent or guardian furnishes satisfactory proof to the Secretary that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or guardian may elect another settlement option on behalf of the minor. The required notices were mailed to individuals by the Superintendent, Northern California Agency, BIA, on April 12, 1991.

Under section 6 of the Settlement Act, the Secretary is directed to establish a date by which time the election of an option must be made. Section 6 further directs that the date be 120 days from date of publication of the Settlement Roll in the Federal Register.

The Settlement Roll was published in the Federal Register on March 21, 1991. Consequently, the deadline for electing a settlement option is July 19, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11750 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Hoopa-Yurok Settlement Act
May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing notice of the statute of limitation for filing certain claims under section 14 of the Hoopa-Yurok Settlement Act of October 31, 1988, Public Law 100–580, as amended. Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2 of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

DATES: Claims challenging the constitutionality of the Hoopa-Yurok Settlement Act by any person or entity, other than the Hoopa Valley tribe or the Yurok Tribe, must be brought by September 16, 1991.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049–4679; telephone: (916) 246–5141 (FTS 450–5141).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Section 14 of the Settlement Act provides that any claim challenging the partition of the joint reservation under section 2 or any other provision 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. Section 14 further states that any 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 under section 6.

On Wednesday, December 7, 1988, a document was published in the Federal Register at 53 FR 49361 providing official notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of section 2 of the Settlement Act. In accordance with section 2, partitioning of the joint reservation was effective with the publication of that notice in the Federal Register. More than 210 days have since passed.

A notice of the deadline for electing a settlement option under section 6 is being published as a separate document in the Federal Register today, May 17, 1991. A date 120 days from today is later than 210 days from the effective date of the partitioning of the joint reservation under section 2. Consequently, any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, questioning the constitutionality of the Hoopa-Yurok Settlement Act must be brought by September 16, 1991, or be forever barred.

Eddie F. Brown,
Assistant Secretary—Indian Affairs.

[FR Doc. 91–11749 Filed 5–16–91; 8:45 am]
BILLING CODE 4310–02–M

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
505 MARQUETTE N.W. SUITE 700
ALBUQUERQUE, NEW MEXICO 87102

IN REPLY REFER TO:

AUG 2 2 1991

Memorandum

To: Area Director, Sacramento Area Office

From: Director, Office of Trust Funds Management

Subject: Distribution of funds awarded the Hoopas and Yuroks under the Hoopa-Yurok Settlement Act

Effective April 12, 1991, the distribution of the subject funds was made in accordance with Public Law 101-277 and in accordance with your request dated April 4, 1991.

The total value of the fund on April 12, 1991 was $85,979,348.37 derived in the following manner:

Fair Market Value of Investment Securities (Refer to Attachment I and II.)	$74,339,997.14
Cash-Unallotted Balance	139,351.23
Add Back: Hoopa Drawdowns	10,000,000.00
Yurok Drawdowns	1,500,000.00
Total:	$85,979,348.37

Hoopa's share of the fund was calculated using 39.55% as provided in you letter dated April 4, 1991.

Total Value of Fund	$85,979,348.37
	X .39552
Hoopa's Share	$34,006,551.87
Less Hoopa's Drawdowns	10,000,000.00
Less April 15, 1991 Drawdown	9,880,000.00
Balance Due Hoopa Tribe:	$14,126,551.87

The balance due was distributed using a percentage of 21.8679479 derived as follows:

Total Value of Fund	$85,979,348.37
Less Hoopa's Drawdowns	19,880,000.00
Less Yurok's Drawdowns	1,500,000.00
Balance of Fund to be Distributed:	$64,599,348.37

Hoopa's Share of Fund $14,126,551.87 = 0.218679479
Value of Undistributed Fund 64,599,348.37

The 21.867947% was applied to each outstanding investment and recorded to Hoopa's appropriation account 7194.

The balance of the fund is Yurok's share which remained in appropriation account 7193.

Subsequent to the above distributions, an internal transfer was done effective August 1, 1991, to transfer $3,000,000.00 into an escrow account to compensate any potential appeal cases. The amounts contributed are $1,186,560.00 and $1,813,440.00 for the Hoopas and the Yuroks respectively. It is our understanding that both tribes agreed to this arrangement. A separate appropriation (J50 A64 7197) was established for this escrow account.

Trust Funds records in the BIA's Finance System are maintained on a cash basis, therefore, income earned but not yet collected by the BIA is not recorded. Only the actual cash transfers and the cost bases of respective investments are shown in the Summary of Trust Funds reports for the Hoopa Tribe.

If you have any questions, please contact Sarah Yepa at FTS 474-3875 or Commercial (505) 766-3875. If you have questions on the valuation of the securities, please contact Fred Kellerup at FTS 474-2975 or Commercial (505) 766-2975.

Jim R. Parris

Attachments

INVESTED FUNDS IN TIMED CERTIFICATES OF DEPOSIT

HOOPA-YUROK SETTLEMENT
J50 501
AS OF APRIL 12, 1991

DATE	7193 MATURING PRINCIPAL	7193 ACCRUED INTEREST
04/18/91	645,000.00	47,896.45
06/13/91	1,176,000.00	5,985.00
07/11/91	576,500.00	10,874.55
07/22/91	386,306.32	6,010.00
07/23/91	96,548.08	1,495.83
07/29/91	289,729.74	4,108.11
08/05/91	580,494.65	7,102.71
08/08/91	698,719.14	8,476.55
08/12/91	96,802.21	1,054.22
08/15/91	1,494,000.00	15,617.68
08/26/91	96,703.15	819.66
09/05/91	96,500.00	641.73
09/18/91	96,836.24	369.11
09/19/91	828,000.00	38,899.35
10/17/91	1,752,209.61	72,007.74
11/07/91	2,952,553.75	108,522.92
11/14/91	739,096.84	25,139.28
11/15/91	92,378.75	3,090.26
11/19/91	92,378.75	3,006.74
11/21/91	277,143.27	8,949.20
12/12/91	830,500.00	22,640.68
12/31/91	92,753.19	2,025.14
01/14/92	93,076.94	1,669.12
01/16/92	741,500.00	13,947.68
02/13/92	698,719.14	8,924.50
02/19/92	93,621.56	908.71
02/27/92	1,868,000.00	17,224.96
03/03/92	93,294.03	716.53
03/12/92	279,500.00	1,871.67
TOTAL:	17,854,865.36	439,996.08

VALUATION OF GOVERNMENT SECURITIES
AS OF APRIL 12, 1991

G.S.	7193 MARKET VALUE	7193 ACCRUED INTEREST
02/15/92	5,013,812.50	51,243.09
07/25/91	5,489,848.71	87,710.00
08/26/91	1,459,409.71	20,334.96
04/01/91	5,118,125.00	15,812.50
08/15/96	5,104,687.50	66,895.83
08/15/96	5,104,687.50	66,895.83
09/26/91	2,007,429.16	36,216.67
12/20/91	1,976,828.13	35,414.38
06/01/91	1,340,040.97	13,590.68
09/06/91	2,205,383.01	0.00
12/27/91	1,298,528.90	0.00
01/15/92	2,143,234.58	0.00
01/15/92	2,374,293.75	0.00
07/15/92	3,096,890.21	0.00
08/15/97	5,126,585.51	0.00
11/15/91	2,057,570.53	0.00
11/15/91	1,930,533.34	0.00
05/15/91	2,803,132.75	0.00
TOTAL:	55,651,021.76	394,113.94

SUMMARY:

	PRINCIPAL	ACCRUED INTEREST	TOTAL
SUB-TOTAL CD'S	$17,854,865.36	$439,996.08	$18,294,861.44
SUB-TOTAL GOVT. SEC.	55,651,021.76	394,113.94	56,045,135.70
TOTAL FUND:	$73,505,887.12	$834,110.02	$74,339,997.14

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

OCT 24 1991

Memorandum

To: Superintendent, Northern California Agency

Through: Sacramento Area Director

From: Acting Director, Office of Tribal Services

Subject: Issuance of Per Capita Checks from the Hoopa-Yurok Settlement Act Funds

Judge Royce C. Lamberth, in the case of Heller, Ehrman, White & McAuliffe, *et al.* v. Hon. Manuel Lujan, Jr., Civil Action No. 91-2012 signed an order on October 2, 1991, staying his order of payment of attorneys' fees pending consideration for appeal and pending appeal. This order permits the Secretary to withhold the contested amounts from per capita payments to be made under the Hoopa - Yurok Settlement Act. The amount withheld will be maintained in the Settlement Fund as ordered by the Court on October 2, 1991. The withheld funds will continue to be invested in accordance with 25 U.S.C. §162(a) with interest earned for the benefit of the ultimate payee.

The Superintendent, Northern California Agency is instructed to proceed to reprocess the per capita payment to the eligible recipients using the following categories:

1. Jessie Short plaintiffs involved in Jessie Short, *et al.* v. United States (Cl. Ct. No. 102-63) are to have 6.5 percent withheld from the amount due them. Determination of who are Jessie Short plaintiffs is to be made from the list supplied by the attorneys in the Jessie Short case. (see attached)

2. Eligible recipients who are not represented in Cl. Ct. No 102-63 and who are represented in cases 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) are not to have any amounts withheld as the Jessie Short attorneys make no claims against them.

3. All other eligible recipients are to have 25 percent withheld from their amount due.

Since the Jessie Short attorneys realize that the Settlement Fund included funds that their firms are not entitled to assess, a joint motion to modify the final judgment was filed and in response the judge has ordered certain funds excluded. Only those funds in 25 U.S.C. §1300i (b) (1) (A) and (B) and a portion of one of the funds, 25 U.S.C. § 1300i (b) (1) (F) is to be assessed. Therefore, before the 6.5 percent or 25 percent is calculated for each eligible individual, the proportional amounts from the accounts identified in 25 U.S.C. § 1300i (b) (1) (C), (D), (E), and (G) and that portion of 25 U.S.C. § 1300i (b) (1) (F) that is agreed to by the Department of Justice and the Jessie Short attorneys are to be excluded and not used in the calculation of the amount which is to be withheld from each eligible recipient.

The procedure is first to determine the total amount of the escrow funds at the date of the creation of the Settlement Act Fund account. (see attachment) Based on the information provided by your office this amount was $66,625,800.39. Then the total amount of the excluded moneys is to be determined. These moneys include the following: Proceeds of Klamath River Reservation, J52-562-7056, $75,616.41; Proceeds of Labor -Yurok Indians of Lower Klamath River, J52-562-7153, $16,626.36; Proceeds of Labor-Yurok Indians of Upper Klamath River, J52-562-7154, $218,837.02; and Klamath River Fisheries, No. 5628000001/Fish, $458,705.18.

Funds in Proceeds of Labor-Hoopa Reservation for Hoopa Valley and Yurok Tribes, Hoopa Yurok Settlement Act designation I.b.I.F, J52-575-7256, $14,344,254.75, are derived from both Hoopa as well as Yurok resources. It is necessary to determine the Yurok share of this account. The total amount in this fund is to be multiplied by one half of one percent, the figure which your office determined as the appropriate Yurok share.

The excluded funds are then totaled and equal, $841,505.97. The percentage of these funds is then calculated by dividing the total amount included in the Settlement Act and this amounts to 1.26303 percent. This amount is not subject to the 6.5 percent or 25 percent lien.

Using this percentage the amount to be excluded from the assessment is to be calculated for the $5000, $7500, or $15,000 that was to be paid to the qualified individuals on the Settlement Roll and, pursuant to §1300i3(d) of the Settlement Act, to the Yurok Tribe.

/S/ CAROL A. BACON

Attachment

cc: Sacramento Area Director

Surname/SOL/400 RF/Chrony-440A/ 216

CALCULATION OF YUROK PER CAPITA PAYMENTS

1. Total Funds at time of creation of Settlement Fund Account $66,625,800.39

2 Total Funds derived from Klamath River portion (see below) $841,505.97

3. Percentage of funds derived from Klamath River portion: .0126303

$$\frac{841,506}{66,625,800} = .0126303$$

4: Examples of the amount on which attorney fees are to be calculated

$15,000 - (.0126303 x 15,000) = 14,810.55
$7,500 - (.0126303 x 7,500) = 7,404.27
$5,000 - (.0126303 x 5,000) = 4,936.85

5. Examples of the calculation for the amounts to be withheld from each payment and the amount of payment for the recipient.

For $15,000:	Amount withheld	Payment to recipient
$15,000 - (.25 x 14,810.55	= 3702.64)	= $11,297.36
$15,000 - (.065 x 14,810.55	= 962.69)	= $14,037.31

For $7,500:

$7,500 - (.25 x 7,405.27 = 1851.32) = $5,648.68
$7,500 - (.065 x 7,405.27 = 481.34) = $7,018.66

For $5,000

$5,000 - (.25 x 4936.85 = 1234.21) = $3,765.79
$5,000 - (.065 x 4936.85 = 320.90) = $4679.10

Funds used in calculating Klamath River Funds

C	Proceeds of Klamath River Reservation	75,616.41
D	Proceeds of Labor (Lower Klamath)	16,626.36
E	Proceeds of Labor (Upper Klamath)	218,837.02
G	Klamath River Fisheries	458,705.18
F	Proceeds of Labor (Hoopa and Yurok) ($14,344,254.75 x .005) =	71,721.00
TOTAL		$841,505.97

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FEB 3 1992

In reply, please address to:
Main Interior, Room 6456

BIA.IA.1154

Memorandum

To: Area Director, Sacramento Area Office

Through: Director, Office of Tribal Services

From: Assistant Solicitor, Branch of General Indian Legal Activities

Subject: Issues raised at organizational meeting of the Yurok Interim Council held November 25, 26, 1991

This is in response to your informal request for an opinion on a number of issues relating to the interpretation of certain provisions of the Hoopa Yurok Settlement Act, Pub. L. 100-580, 102 Stat. 2924, 25 U.S.C. §§ 1300i et seq. These issues were raised at the organizational meeting of the Interim Council of the Yurok Tribe held in Arcata, California, November 25 and 26, 1991. They are as follows: 1) When does the dissolution of the Interim Council occur under 25 U.S.C. § 1300i-8(d)(5). 2) Whether 25 U.S.C. § 1300i-8(d)(2) requires a single resolution waiving claims against the United States, affirming tribal consent to contribution of Yurok Escrow monies to the Settlement Fund, and authorizing the Interim Council to receive grants and enter into contracts for Federal programs. 3) What are the consequences of refusing to enact a resolution waiving claims against the United States and/or filing a claim under 25 U.S.C. § 1300i-11(a) on the Yurok Tribe's ability to organize or form a government. 4). Whether a tribal resolution waiving claims against the United States is required for purposes of conferring the benefits specified in 25 U.S.C. § 1300i-1(c)(4) notwithstanding the expiration of the statute of limitations in 25 U.S.C. § 1300i-11(b)(3). 5) Whether individuals who receive and cash the payment authorized under the Yurok tribal membership option in 25 U.S.C. § 1300i-5(c) are precluded from filing claims against the United States arising out of the provisions of the Settlement Act. We address these issues seriatim.

1. Dissolution of the Interim Council of the Yurok Tribe

Section 9(d)(5) of the Settlement Act, 25 U.S.C. § 1300i-8(d)(5) provides as follows:

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

The structure of this subsection is confusing because the words "such installation" would normally be construed to refer to the installation of the initial tribe governing body. However, to so construe this subsection makes the words "whichever occurs first" meaningless. It is clear from the legislative history that Congress intended the Interim Council to be dissolved with the installation of the initial tribal governing body, or at the end of two years after the installation of the Interim Council, whichever occurs first. As stated in the Senate Report accompanying the legislation:

> 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. S. Rep. 100-564, 100th Cong., 2d Sess. (September 30, 1988) at 27-28.

Therefore, it is clear that the Interim Council's lifespan is two years from the date of its installation on November 25, 1991, unless a tribal governing body is elected before the expiration of the two-year period, whereupon the Interim Council would be dissolved following such election. If a tribal governing body is not elected within this two-year period, the Interim Council would still be dissolved at the end of the two-year period.

2. Number of Tribal Resolutions Required or Permitted under 25 U.S.C. § 1300i-8(d)(2)

Section 9(d)(2) of the Settlement Act, 25 U.S.C. § 1300i-8(d)(2) provides as follows:

> The Interim Council shall have full authority to adopt a resolution:
> (i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this subchapter, and
> (ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this subchapter, and
> (iii) 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.

It is our understanding that at the organizational meeting held November 25 and 26, 1991, the Bureau of Indian Affairs (BIA) indicated that it did not want to restrict the Interim Council by requiring a single resolution addressing all three concerns, and preferred a more permissive interpretation of this subsection if possible. The section-by-section analysis of the Senate Report, S. Rep. 100-564, states the following with respect to this subsection:

> 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 and shall have authority to execute the necessary waiver of claims against the United States, and consent to allocation of the escrow funds to the Settlement Fund. Id. at 27.

We believe that the Senate Report language indicates that it is unlikely that Congress intended to tie the award of federal contracts and grants to either the waiver of claims or the contribution of escrow funds. Therefore, we conclude that the statutory language does not preclude the BIA from construing this subsection to permit the Interim Council to enact three separate resolutions at different times.[1]

3. Consequences of Refusing to Pass a Resolution Waiving Claims Against the United States and/or Filing a Claim under 25 U.S.C. § 1300i-11(a) on the Yurok Tribe's Ability to Organize

Section 2(c)(4) of the Settlement Act, 25 U.S.C. § 1300i-1(c)(4) provides as follows:

> The --
> (A) apportionment of funds to the Yurok Tribe as provided in sections 1300i-3 and 1300i-6 of this title;
> (B) the land transfers pursuant to paragraph (2);
> (C) the land acquisition authorities in paragraph (3); and
> (D) the organizational authorities of section 1300i-8 of this title shall not be effective unless and until the Interim 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 subchapter.

---

[1] Although the statutory language could conceivably be interpreted so as to reach the opposite conclusion, the courts have consistently resolved statutory ambiguities in favor of the Indians, following a traditional canon of construction applicable in Indian law. See Montana v. Blackfeet Tribe, 471 U.S. 759, 766 (1985).

It is clear that should the Interim Council file a claim in the U.S. Claims Court on behalf of the Yurok Tribe pursuant to 25 U.S.C. § 1300i-11(a), the same consequences would follow as if it fails to enact a resolution waiving claims under 25 U.S.C. § 1300i-1(c)(4).

We do not believe that the Settlement Act precludes the Yurok Tribe from having a government if it refuses to waive claims against the United States. The Yurok Tribe's failure to waive claims only affects its authority to organize under the Indian Reorganization Act of 1934 (IRA), 48 Stat. 984, 25 U.S.C. § 461 et seq., pursuant to 25 U.S.C. § 1300i-8. Such an option would be foreclosed without the Settlement Act's specific authorization. Indian tribes, however, are free to form tribal governments independently of the IRA which only provides a certain mechanism for organization, and there are numerous federally recognized Indian tribes presently organized outside of the IRA. See Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 (1985). The legislative history supports our interpretation of this provision of the Settlement Act. The Senate Report states the following with respect to the Yurok Tribe's decision to organize under 25 U.S.C. § 1300i-8:

> It is not intended by this section that the Indian Reorganization Act shall provide the only means by which the Yurok Tribe may be organized. Nor does the Committee intend that the Constitution prepared by the drafting committee pursuant to subsection (e) is the only one upon which the Secretary may conduct an election in the future. S. Rep. 100-564, supra, at 28.

Therefore, it is our conclusion that the Yurok Tribe's failure to enact a resolution waiving claims against the United States does not prevent the tribe from having a tribal government. Clearly, the Settlement Act neither limits the Yurok Tribe to a single organizational method, nor does it compel the Yurok Tribe to organize under its authority.

4. The Requirement for a Tribal Resolution Waiving Claims against the United States Independently of the Statute of Limitations in 25 U.S.C. § 1300i-11(b)(3)

The Interim Council asked whether it would still be required to pass a tribal resolution waiving claims against the United States to obtain the benefits of §§ 2, 4, and 7 of the Settlement Act notwithstanding their failure to file a Fifth Amendment taking claim in the U.S. Claims Court before expiration of the statute of limitations. Their argument is that such a resolution would have become moot since any claim would be time-barred and no longer valid.

Although it is true that the Yurok Tribe's failure to file a timely claim against the United States in the U.S. Claims Court under the provisions of 25 U.S.C. § 1300i-11 may bar such a

claim, the statutory requirement for a tribal resolution waiving claims against the United States in 25 U.S.C. § 1300i-1(c)((4) is independent of the running of the statute of limitations. The statute simply does not authorize the Interim Council to dispense with the resolution requirement in order to be afforded the benefits conferred under specified sections of the Settlement Act for any reason, including the expiration of the statute of limitations in 25 U.S.C. § 1300i-11(b)(3). In addition, courts have held that a statute of limitations is subject to waiver, estoppel and equitable tolling under certain circumstances. See Jarrell v. United States Postal Service, 753 F.2d 1088, 1091 (D.C. Cir. 1985). Therefore, it is conceivable that the Yurok Tribe could file a claim against the United States in the U.S. Claims Court after the expiration of the § 1300i-11(b)(3) period on March 12, 1992, and argue that the court should allow the claim to be litigated notwithstanding the running of the limitations period. Under these circumstances, it would be imprudent to permit the fund transfers, land transfers, land acquisition authorities, and organizational authorities to become effective without securing a waiver resolution from the Interim Council.

5. Effect of Cashing the Payment Authorized under the Yurok Tribal Membership Option on an Individual's Ability to File a Claim under 25 U.S.C. § 1300i-11(a)

It is our position that those individuals who affirmatively elected the Yurok tribal membership option, 25 U.S.C. § 1300i-5(c), effectively waived their right to file a claim under 25 U.S.C. § 1300i-11(a). Thus, their cashing the check they received for the payment authorized under the Yurok tribal membership option has no significance with respect to their right to file a claim under 25 U.S.C. § 1300i-11(a). This conclusion is derived from the statutory language itself. Subsection 25 U.S.C. § 1300i-5(c)(4) provides as follows:

> 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, appertaining to, the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund. Any such person shall also be deemed to have granted to members of the Interim Council established under section 1300i-8 of this title an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this subchapter, and granting tribal consent as provided in section 1300i-8(d)(2) of this title.

As stated in the Senate Report, S. Rep. 100-564, "[this paragraph ...[does] not contemplate that such persons now have any interest, but that, to the extent that they do, it will be automatically relinquished upon an election of one of the options." Id at 23-24.

However, any individual who did not choose an option within the authorized time limit, and who subsequently refuses to accept the payment by refusing to cash the check for it, will not be deemed to have given up any claim he or she may have as a result of the partition, and will have preserved his or her legal right to challenge the provisions of the Act. This interpretation of the Settlement Act is bolstered by the Senate Report language addressing this issue:

> The Committee believes it is important that no person on the Hoopa-Yurok Settlement Roll lose benefits and privileges flowing from Yurok tribal membership and connection with the Yurok Reservation by virtue of inadvertence, failure to receive actual notice, accident or other unforeseeable events. Accordingly, persons failing to act timely will be deemed to have elected Yurok tribal membership if they accept and cash the check representing the payment authorized by subsection (c).
>
> The Committee believes that acceptance of the payment also establishes the consensual release of rights that accompanies the election. On the other hand, one who fails or refuses to make an election and refuses to accept the payment authorized by subsection (c) may not be deemed to have granted a release or to have granted a proxy to the Yurok Interim Council. Thus, refusing to accept the payment is one method by which persons who do not wish to join the Yurok Tribe may avoid becoming members. S. Rep. 100-564, supra, at 23.

Thus, in order for a Yurok enrollee who made no election to avoid the preclusion of claims effect of the Yurok tribal membership option by default, refusal to accept the payment is critical.[2]

In a Notice published on May 17, 1991, in the Federal Register, 56 F.R. 22998, the BIA notified all potential claimants except the Hoopa Valley Tribe and the Yurok Tribe that claims under Section 14 of the Settlement Act, 25 U.S.C. § 1300i-11(a), must be filed by September 16, 1991. As of that date, there were two claims filed in the U.S. Claims Court. The first one was filed by the Karuk Tribe in Karuk Tribe of California v. U.S., No. 90-3993-L, U.S. Cl. Ct; and the second one was filed by 32 individuals as "members of, and on behalf of, an identifiable group of American Indians," in Ammon v. U.S., No. 91-1432 L,

[2]Mere receipt of the check is not enough to trigger the waiver of claims or grant a release or grant a proxy to the Yurok Interim Council. The check must be both accepted and cashed.

U.S. Cl. Ct. It follows from our interpretation of the relevant statutory provisions that any individual who accepts and cashes the check representing the payment authorized under 25 U.S.C. § 1300i-5(c) would be precluded from recovering under Ammon.[3]

Duard R. Barnes

---

[3]Under our analysis, those individuals who affirmatively selected the Yurok membership option are automatically barred from recovering under Ammon. Therefore, recovery under Ammon, if any, is limited to those individuals for whom the Yurok membership option was selected by default and who subsequently refuse to cash the authorized payment.

IN THE UNITED STATES CLAIMS COURT

YUROK INDIAN TRIBE

v.

UNITED STATES OF AMERICA

No. 92-173 L

JURISDICTION

1. The Claims Court has jurisdiction of this action pursuant to 28 U.S.C. §§1491 and/or 1505, in that plaintiff, a federally-recognized Indian Tribe, asserts claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the Hoopa-Yurok Settlement Act of 1988, 102 Stat. 2924, Pub. Law No. 100-580, 25 U.S.C. §1300i, et seq. (hereinafter, "the Act").

PLAINTIFF

2. Plaintiff is the Yurok Indian Tribe, an American Indian Tribe recognized by the United States of America, located in the State of California and having a governing body duly recognized by the Secretary of the Interior. The Yurok Tribe sues on its own behalf, and upon behalf of its members.

FACTS

3. By the Act of April 8, 1864, 13 Stat. 39, Congress authorized the President, inter alia, to set apart not exceeding four tracts of land within the State of California for the purposes of Indian reservations, at least one of which was to be

in the State's northern district, of such extent as deemed suitable for the accommodation of all of the Indians of the State.

4. On February 18, 1865, the authorized representative of the Secretary of the Interior, the Superintendent of Indian Affairs for the State of California, located an Indian Reservation on a tract of land twelve miles square, described in general terms as beginning at a point where the Trinity River flows into Hoopa Valley and following down said stream, extending six miles on each side thereof, to its junction with the Klamath River. This tract, comprising approximately 89,572 acres, is known and will be referred to herein as "the Square."

5. By an Executive Order dated June 23, 1876, President Grant withdrew the Square from public sale and set it apart for Indian purposes as one of the permanent Indian Reservations authorized by the Act of April 8, 1864, 13 Stats. 39. The Yurok Tribe was one of the Tribes which the President intended should benefit from the establishment of the Square as a Reservation.

6. The setting apart of the Square as a Reservation reserved to the Indian beneficiaries thereof not only beneficial title to the lands, but also the right to hunt, fish, gather and otherwise use and benefit from all of the natural resources and other assets of the Reservation.

7. From its location in 1865 until the present, the Square has been recognized by the federal government as an existing Indian Reservation; its original boundaries were defined by

metes and bounds in President Grant's June 23, 1876 Executive Order.

8. By an Executive Order issued on October 16, 1891, President Harrison extended the boundaries of the Reservation comprising the Square to encompass, "... a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended."

9. The purpose of the October 16, 1891 Executive Order described in Paragraph 8 above was to create an enlarged, single, integrated reservation incorporating without distinction the added and original tracts upon which the Indians populating the newly-added lands should reside on an equal footing with the Indians theretofore resident upon it. Yurok Indians predominated in the lands added to the Reservation by the above-described Executive Order; however, a substantial number of Yurok Indians have resided and continue to reside on the Square itself, and the Indians of the Yurok Tribe have been recognized as being entitled to rights on the Reservation at least equal to those of the Indians of the Hoopa Valley Tribe.

10. The Hoopa-Yurok Settlement Act, P.L. 100-580, 25 U.S.C. §1300i, et seq. (hereinafter, "the Act"), authorized the partition of the Hoopa Valley Reservation and its resources into

separate Yurok and Hoopa Reservations solely upon the consent of the Hoopa Valley Tribe. As partitioned under the Act, the Hoopa Valley Reservation was to consist of the Hoopa Square, the approximately 87,000 acres of unallotted trust land within the Square which would be held in trust by the United States for the exclusive use and benefit of the Hoopa Valley Tribe. As partitioned under the Act, the Yurok Reservation was to consist of the Extension, the approximately 3,500 acres of unallotted trust lands within the Extension which would be held in trust by the United States for the exclusive use and benefit of the Yurok Tribe.

11. The Act created a "Hoopa-Yurok Settlement Fund" consisting of money derived from several different sources, including timber sales on the Square. The money in this fund was to be distributed to the Hoopa Valley Tribe, to persons choosing to join the Yurok Tribe, to persons choosing to join neither the Hoopa Valley nor the Yurok Tribe, and to the Yurok Tribe.

12. Partition of the Reservation under the Act was to extinguish all rights in the unallotted trust lands and other assets of the Square possessed by individual Indians of the Reservation who were not enrolled members of the Hoopa Valley Tribe.

13. The Act conditioned the Yurok Tribe's receipt of financial and other benefits under the Act upon the Yurok Tribe's disclaimer of any rights in the unallotted lands, resources and other assets of the Square, as well as a waiver of any claims

against the United States arising out of the Act.

14. The Hoopa Valley Tribe consented to the partition of the Reservation as contemplated by the Act, and the Reservation was partitioned in the manner authorized by the Act. By reason of that partition, the United States now recognizes the Hoopa Valley Tribe as the exclusive beneficiary of the unallotted trust lands and other assets and natural resources of the Square, and has excluded the Yurok Tribe, the members of the Yurok Tribe and all other Indians of the Reservation who are not enrolled in the Hoopa Valley Tribe from participating in the benefits of such assets and resources.

FIRST CLAIM FOR RELIEF

Uncompensated Taking of Property Rights in the Square

15. Plaintiff hereby realleges each of the allegations contained in paragraphs 1-14 above, and by this reference incorporates each such allegation as if set forth in full.

16. Prior to the partition of the Reservation pursuant to the Act, the Yurok Tribe had no fewer or less valuable compensable property rights in the unallotted trust lands and the natural resources of the Square than did the Hoopa Valley Tribe.

17. By reason of its compensable property rights in the unallotted trust land and natural resources of the Square, the Yurok Tribe was and is entitled to just compensation for the diminishment or extinguishment of those rights.

18. The Hoopa-Yurok Settlement Act extinguished or diminished the Yurok Tribe's compensable property rights in the

unallotted trust land and natural resources of the Square without payment of just compensation.

19. The United States is liable to the Yurok Tribe in an amount equal to the value of the Yurok Tribe's compensable property rights in the unallotted trust land and natural resources of the Square which were diminished or extinguished by the Act and for which just compensation has not been paid, plus interest from the date of taking, said amount to be proven at trial.

WHEREFORE, plaintiff prays that the Court enter judgment awarding the Yurok Tribe just compensation for the taking of its compensable property rights in the Hoopa Valley Indian Reservation in an amount corresponding to proof, plus interest from the date of taking, and that the Court grant such other relief, including an award of reasonable attorneys' fees, expenses and costs, as it may deem just and appropriate.

Dated: March 10, 1992

GEORGE FORMAN
ALEXANDER & KARSHMER
1900 Addison Street, Ste. 200
Berkeley, CA 94704
Telephone: (510) 841-5056
PAUL ALEXANDER
BARBARA E. KARSHMER, a
Professional Corporation
GARY P. HARRINGTON
Of Counsel

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 16 1992

Honorable Dale Risling, Sr.
Chairman, Hoopa Valley
Tribal Council
P.O. Box 1348
Hoopa, California 95546

Dear Chairman Risling:

Thank you for your letter of March 12, 1992, concerning the Yurok Interim Council's decision to file Yurok Tribe v. United States in the U.S. Claims Court.

The Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-8(d)(2)(i), authorizes the Interim Council to adopt a resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Settlement Act. Section 2(c)(4) of the Settlement Act, 25 U.S.C. § 1300i-1(c)(4), spells out the consequences to the Yurok Tribe of refusing to adopt such a resolution. It provides as follows:

> The --
>
> (A) apportionment of funds to the Yurok Tribe as provided in sections 1300i-3 and 1300i-6 of this title;
>
> (B) the land transfers pursuant to paragraph (2);
>
> (C) the land acquisition authorities in paragraph (3); and
>
> (D) the organizational authorities of section 1300i-8 of this title
>
> shall not be effective unless and until the Interim 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 subchapter.

It is clear that the Interim Council's decision to file the above-referenced claim in the U.S. Claims Court means that the same consequences follow as if it fails to enact a resolution waiving claims against the United States. Therefore, unless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will neither have access to its portion of the Settlement Fund, nor will title to all national forest system lands within the Yurok Reservation, and to the portion of the Yurok Experimental Forest described in the Settlement Act, be taken in trust for the Yurok Tribe. In addition, the Secretary will be unable to proceed with acquisition of any lands or interests in land for the Yurok Tribe, or with spending any appropriated funds for this purpose.

At this time, we cannot grant your request to establish Hoopa tribal access to the funds that remain in the Hoopa-Yurok Settlement Fund as a result of the filing of Yurok Tribe v. United States. We have not made a final determination concerning the legal status of these funds in the absence of a Yurok tribal resolution waiving claims against the United States, and this issue will be referred to the Solicitor's Office for an opinion. We will advise you of our determination once the legal evaluation is completed.

Please let us know if we can be of any further assistance in this matter.

Sincerely,

Assistant Secretary - Indian Affairs

APR 15 1992

Honorable Richard Haberman
Chairman, Interim Council
of the Yurok Tribe
517 Third, Suite 21
Eureka, California 95501

Dear Chairman Haberman:

Thank you for your letter of March 16, 1992, enclosing your submitted testimony before the Subcommittee on Interior and Related Agencies of the Appropriations Committee, the complaint in Yurok Indian Tribe v. United States, and a proposed amendment extending the statute of limitations in Section 14 of the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-11(b)(3).

Although we fully understand your reasons for filing a claim in the U.S. Claims Court and for seeking to amend the Hoopa-Yurok Settlement Act to extend the limitations period in Section 14 of the Settlement Act, as you are well aware, the Department of the Interior cannot commit the Administration to support any legislative proposal which has yet to be formally introduced.

We agree with your statement that it is inappropriate for any tribal entity other than the Yurok Interim Council to involve itself in the internal affairs of the Yurok Tribe, and assure you that the Bureau of Indian Affairs will not tolerate any pressure to foster outside interests at the expense of those of the Yurok Tribe.

We also agree with your assessment of the consequences to the Yurok Tribe of failing to pass an ordinance waiving claims against the United States, and filing a claim in the U.S. Claims Court. Unless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will neither have access to its portion of the Settlement Fund, nor will title to all national forest system lands within the Yurok Reservation, and to the portion of the Yurok Experimental Forest described in the Settlement Act, be taken in trust for the Yurok Tribe. In addition, the Secretary will be unable to proceed with acquisition of any lands or interests in land for the Yurok Tribe, or with spending any appropriated funds for this purpose. Finally, the Yurok Tribe will be unable to organize under the Indian Reorganization Act (IRA). However, we agree with you that your decision to file a claim in the U.S. Claims Court does not

affect your access to appropriated funds which may be provided for the Interim Council's operations, grants and contracts, and the economic planning activity.[1] In addition, as stated in the Assistant Solicitor's opinion dated February 3, 1992, the Settlement Act does not restrict the Tribe to organizing under the IRA, and you may therefore organize outside of its provisions.

Finally, we have not made any final determination concerning the legal status of the funds that remain in the Hoopa-Yurok Settlement Fund, and what will happen to them in the absence of a Yurok tribal resolution waiving claims against the United States. We certainly have not agreed to allow the Hoopa Valley Tribe to access these funds. This issue will be referred to the Solicitor's Office for an opinion, and we will advise you of our determination once the legal evaluation is completed.

Please let us know if we can be of any further assistance in this matter.

Sincerely,

(sgd) William D. Bettenberg

Acting Assistant Secretary - Indian Affairs

cc: Sacramento Area Director
Supt., Northern California Agency

[1]The Settlement Act does require the adoption of a resolution "to receive grants from, and enter into conracts 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." 25 U.S.C. § 1300i-8 (d)(2)(iii). As stated in the Assistant Solicitor's opinion of February 3, 1992, such a resolution may be adopted independently of the resolution waiving claims against the United States.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

NOV 2 3 1993

Ms. Susie L. Long
Vice Chairman, Yurok Interim Council
517 Third, Suite 18
Eureka, California 95501

Dear Ms. Long:

Thank you for your letter of October 26, 1993, informing us of the decision of the Yurok Tribe (Tribe) to contract with an independent C.P.A. firm to conduct and certify the ratification election for the proposed Constitution of the Yurok Tribe, and forwarding us a copy of the draft constitution, dated October 22, 1993.

Please be assured of our support in your transition to a fully operational self-governing Tribe. We are prepared to recognize the proposed Constitution of the Yurok Tribe as the Tribe's governing document if such document is duly ratified by the membership of the Tribe in an election after adequate notice and a fair opportunity for all tribal members to participate. In addition, following ratification of the proposed constitution by the Yurok membership, and pursuant to Article XIV of the proposed Constitution of the Yurok Tribe, we will continue to recognize the current members of the Yurok Interim Council as the lawful representatives of the Tribe pending the election and installation of the Yurok Tribal Council.

However, it should be clearly understood that after November 25, 1993, the current members of the Yurok Interim Council will no longer derive their authority to represent the Tribe from powers vested in the Interim Council by the Hoopa Yurok Settlement Act, but from the newly adopted Constitution of the Yurok Tribe. Under section 9(d) of the Act, the Interim Council created under the authority of the Act will be dissolved on November 25, 1993. In that respect, the authority vested in the Interim Council by section 2(c)(4) of the Act to waive claims against the United States will expire on November 25, 1993. Any subsequent waiver of claims by the Tribe will be legally insufficient to effectuate the apportionment of funds to the Tribe as provided in sections 4 and 7 of the Act, the land transfers and land acquisition authorities under section 2 of the Act, or the organizational authorities of section 9 of the Act.

We look forward to working with you and offer our assistance in helping the Tribe organize and exercise its powers of self-government through the establishment of a tribal governmental structure for the Tribe.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

APR 0 4 1994

Ms. Susie L. Long
Chair, Interim Tribal Council
Yurok Tribe
517 Third, Suite 18
Eureka, California 95501

Dear Ms. Long:

Thank you for your letter of November 24, 1993, transmitting Resolution No. 93-61, approved November 24, 1993, by the Yurok Tribe Interim Council, regarding the waiver of claims against the United States by the Yurok Tribe arising out of the provisions of the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i et seq. For the following reasons, we conclude that Resolution No. 93-61 is not a resolution "waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act," within the meaning of 25 U.S.C. § 1300i-1(c)(4) or 25 U.S.C. § 1300i-8(d)(2).

Three provisions of the Hoopa-Yurok Settlement Act are relevant. Section 9(d)(2), 25 U.S.C. § 1300i-8(d)(2), provides in part:

> (2) The Interim Council shall have full authority to adopt a resolution -
>
> (i) waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act, and
>
> (ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this Act ...

Substantially identical language appears in Section 2(c)(4), 25 U.S.C. § 1300i-1(c)(4). In addition, Section 14, 25 U.S.C. § 1300i-11, provides in part:

> (a) Any claim challenging the partition of the 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 1 to section 1491 or 1505 of Title 28, in the United States Court of Federal Claims ...

(b) ...

(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(d)(2).

It is clear to us that the waiver referred to in the above-referenced provisions of the Hoopa-Yurok Settlement Act is a waiver of claims that would challenge the partition of the Joint Reservation or another provision of the Settlement Act as having effected a taking or as otherwise having provided inadequate compensation.

Among other things, Resolution No. 93-61 recites that:

> [T]he Interim Council believes that the Act's purported partition of the tribal, communal or unallotted land, property, resources, or rights within, or appertaining to the Hoopa Valley Reservation as between the Hoopa and Yurok Tribes was effected without any good-faith attempt to define, quantify or value the respective rights therein of the Indians of the Reservation or the Hoopa and Yurok Tribes, and so grossly and disproportionately favored the interest of the Hoopa Tribe over those of the Yurok Tribe as to constitute an act of confiscation rather than guardianship; and
>
> [T]he Interim Council does not believe that the Constitution of the United States would allow the federal government simply to confiscate vested Tribal or individual property rights in Reservation lands, resources or other assets without just compensation, or to condition participation in or receipt of federal benefits or programs and enjoyment of tribal property, assets and resources upon acquiescence in an unconstitutional statute.

Following the recitals, the Yurok Interim Council resolved as follows:

> 1. To the extent [to] which the Hoopa-Yurok Settlement Act is not violative of the rights of the Yurok Tribe or its members under the Constitution of the United States, or has not effected a taking without just compensation of vested Tribal or individual resources, or rights within, or appertaining to the Hoopa Valley Reservation, the Yurok Tribe hereby waives any claim which said Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act;

> 2. To the extent [to] which the determination of the Yurok Tribe's share of the Escrow monies defined in the Hoopa-Yurok Settlement Act has not deprived the Tribe or its members of rights secured under the Constitution of the United States, the Yurok [Tribe] hereby affirms its consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in the Hoopa-Yurok Settlement Act.

It is quite clear that Resolution No. 93-61 specifically preserves, rather than waives, the Yurok tribe's taking claim against the United States. Indeed, the Yurok Tribe has filed a claim in the U.S. Court of Federal Claims asserting that the Hoopa-Yurok Settlement Act effected a taking under the Fifth Amendment of the United States Constitution. See Yurok Indian Tribe v. United States, No. 92-173-L. On February 3, 1992, the Assistant Solicitor, Branch of General Indian Legal Activities, issued a memorandum to the Area Director, Sacramento Area Office, regarding issues raised at the organizational meeting of the Yurok Interim Council held November 25, 26, 1991. That memorandum discussed several aspects of the claim waiver resolution issue. The Assistant Solicitor stated:

> It is clear that should the Interim Council file a claim in the U.S. Claims Court on behalf of the Yurok Tribe pursuant to 25 U.S.C. § 1300i-11(a), the same consequences would follow as if it fails to enact a resolution waiving claims under 25 U.S.C. § 1300i-1(c)(4).

Accordingly, it follows that Resolution No. 93-61 is not a resolution "waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act," within the meaning of 25 U.S.C. § 1300-1(c)(4) or 25 U.S.C. § 1300-8(d)(2). Our conclusion is consistent with your statement to the Assistant Secretary - Indian Affairs, in a letter dated August 20, 1993, that the Interim Council would not provide any such waiver during its term.

Our determination that Resolution No. 93-61 fails to meet the requirements of 25 U.S.C. § 1300-1(c)(4) means that the Yurok Tribe will be unable to enjoy the benefits conferred under Section 2 and 9 of the Hoopa-Yurok Settlement Act upon the passage of a legally sufficient waiver of claims, including the Yurok Tribe's share of the Settlement Fund under Sections 4 and 7 of the Act, the

$5 million appropriated under the Snyder Act for the purpose of acquiring lands within or outside the Yurok Reservation, ownership of all Six Rivers National Forest lands within the boundaries of the old Klamath River Reservation or the Connecting Strip, and ownership of and reservation status for the Yurok Experimental Forest lands and buildings.

Sincerely,

/S/ Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

cc: Area Director, Sacramento Area Office
Superintendent, Northern California Agency

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

3/14/95

Honorable Susie L. Long
Chairperson
Yurok Tribal Council
517 Third, Suite 18
Eureka, California 95501

Dear Chairperson Long:

This is in response to the Yurok Tribal Council's letter of August 30, 1994, requesting reconsideration and clarification of certain aspects of our decision of April 4, 1994, that Resolution 93-61, adopted November 24, 1993, by the Interim Council of the Yurok Tribe (Tribe), is not a resolution "waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act (Act)," within the meaning of 25 U.S.C. § 1300i-1(c)(4) or 25 U.S.C. § 1300i-8(d)(2).

Having considered the arguments presented in your August 30, 1994, letter, we reaffirm our decision of April 4, 1994. In our opinion, there can be no question that the waiver of claims against the United States required under 25 U.S.C. § 1300i-1(c)(4) and 25 U.S.C. § 1300i-8(d)(2) must necessarily include a waiver of any taking claim the Tribe may have against the United States arising out of the provisions of the Act. In fact, as the legislative history of the Act indicates, potential taking claims against the United States were precisely the type of claims Congress was most concerned about. That is why, in our opinion, Congress made the waiver of such taking claims by both the Hoopa Valley and Yurok Indian Tribes the essential elements to triggering key provisions of the Act.

In your August 30, 1994, letter, you argue that construing the Act's requirement of a Yurok tribal waiver of claims as extending even to claims for lack of adequate compensation clearly would violate the doctrine of unconstitutional conditions. As a matter of law, we do not believe that the statutory scheme in the Act, requiring a waiver of claims including any taking claim, against the United States in exchange for valuable property rights, triggers the doctrine of unconstitutional conditions. However, even assuming, for the sake of argument, that this doctrine could be invoked, we would not be in a position to cure this potential defect by ignoring what we believe to be the clear requirements of the Act.

In addition, it is our opinion that the statutorily required waiver of taking claims against the United States in exchange for valuable property benefits is rationally tied to the Act's purpose to resolve long standing litigation between the United States and various Indian interests and to promote effective management of the Hoopa Valley and Yurok Indian reservations by their

respective tribal governments. As such, the statutory requirements in the Act meet the tied rationally test used by the courts in reviewing the constitutionality of Indian legislation. See e.g., Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73 (1977).

You also seek clarification of our April 4, 1994, letter with respect to the Tribe's option to cure the perceived deficiencies in Resolution 93-61 by subsequent tribal action or the final resolution of the Tribe's lawsuit in the U.S. Court of Federal Claims. It is our position that the Yurok Tribal Council could cure the deficiencies in the Resolution if it is so desired. As you point out in your letter, under tribal law the authority of the former Interim Council was transferred to the Tribal Council, and with that transfer goes the authority to amend Resolution 93-61, albeit subject to a referendum of the Yurok membership. The exercise of this authority by the Tribal Council is consistent with the provisions of the Act.

An amendment to Resolution 93-61 to cure the deficiencies relating to the waiver of claims against the United States, however, must be accompanied by a dismissal with prejudice of the Tribe's taking claim currently being litigated before the U.S. Court of Federal Claims in Yurok Tribe v. United States. In our opinion, the Tribe's decision to prosecute its claim in this litigation is inconsistent with the waiver of claims required under the Act. Were there to be a settlement of the lawsuit, it would have to be accomplished before the case has proceeded to a determination on the merits. This is necessary both to save time, energy and money on costly legal proceedings and because a settlement will not be possible if the Court has ruled on any portion of the merits.

Therefore, I propose that you immediately seek a stay of proceedings in Yurok Tribe v. United States for at least one hundred and twenty days in order to conduct your referendum of the Yurok membership, undertake settlement negotiations and to permit you to amend Resolution 93-61 to cure existing deficiencies. In this regard, members of the Bureau of Indian Affairs staff and the Office of the Solicitor staff will be made available to you and your attorneys for purposes of providing technical assistance with respect to what the Government believes must be included in the tribal resolution in order for the Tribe to obtain the benefits available under Sections 2 and 9 of the Act.

Finally, as requested in your letter, please find enclosed a copy of the February 3, 1992, memorandum from the Assistant Solicitor, Branch of General Indian Legal Activities, to the Bureau of Indian Affairs' Sacramento Area Director. It is our sincere hope that we can resolve this matter to our mutual satisfaction.

Sincerely,

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 2002

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Pursuant to Section 14(c) of the Hoopa-Yurok Settlement Act, Public Law 100-580, I respectfully submit the attached report. The Report includes a general history of the Hoopa-Yurok Settlement Act, and recommendations of the Department in this regard.

The Act requires that a "Report to Congress" be submitted, following the resolution of any claims brought against the United States which would challenge the constitutionality of the Act. After nearly a decade of litigation on the matter, claims filed by the Yurok Tribe of California, were decided earlier this year in favor of the United States. The conclusion of this litigation now triggers the requirement of the Act that this "report" be submitted to Congress. These matters are discussed more fully within the enclosed "report."

Should you have further questions on this matter, please feel free to contact me.

Sincerely,

Neal A. McCaleb

Assistant Secretary - Indian Affairs

Enclosure

REPORT TO CONGRESS

HOOPA-YUROK

Pursuant TO Section 14(c), Public Law 100-580

Submitted by the Secretary of the Interior
March 2002

REPORT TO CONGRESS
HOOPA-YUROK, Pursuant to Section 14(c) Public Law 100-580
Submitted by the Secretary of the Interior, February 2002

TABLE OF CONTENTS:

Introduction

This report is submitted pursuant to Section 14(c) of the Hoopa-Yurok Settlement Act of 1988 (Public Law 100-580, October 31, 1988) ("Act"). The major purpose of the Act was to establish definitive boundaries for the Hoopa Valley Reservation and the Yurok Reservation. Section14(c) of the Act directs the Secretary of the Interior to prepare and submit to Congress a report describing the final decision in any claim brought pursuant to subsection Section 14(b) against the United States, its officers, agencies, or instrumentalities. The Act further directs the Secretary to include within the report any recommendations of the Secretary for action by Congress. The Act provides that the Secretary shall submit the report to Congress within 180 days of the final judgment of any claim brought pursuant to the Act. Subsequent to the passage of the Act, the Yurok Tribe filed a "takings claim" against the United States. The Yurok claim was initially denied by the United States Court of Federal Claims, and was later denied a Petition for Writ of Certiorari by the U.S. Supreme Court on March 26, 2001.

History

In August of 1988, Senator Cranston introduced S. 2723, a bill to partition certain reservation lands between the Hoopa Valley Indian Tribe and the Yurok Tribe in the northern California. Introduction of the legislation followed a long history of contention and confusion surrounding the establishment and boundaries of the Hoopa Valley Reservation, created in 1891 by an executive order of President Harrison("1891 Reservation"). The 1891 Reservation included areas of land inhabited primarily by Yuroks, areas of land inhabited primarily by Hoopas, and a 25-mile strip of land that connected the two areas. The Hoopa-Yurok Settlement Act was enacted with the primary objective of providing finality and clarity to the contested boundary issue.

The Act concluded that no constitutionally protected rights had vested in any tribe or individual, to the communal lands and other resources of the 1891 Reservation, and provided for a fair and equitable resolution of disputes relating to ownership and management of the 1891 Reservation. Pursuant to and in accordance with the Act the 1891 Reservation was partitioned between the Hoopa Valley Tribe and the Yurok Tribe. The section of the 1891 Reservation known as "the Square" was established as the Hoopa Valley Reservation, and the section known as "the Extension" was established as the Yurok Reservation. The Act also created a Settlement Fund initially comprised of funds derived from economic activity occurring on the 1891 Hoopa Valley Reservation and supplemented by additional funds appropriated by Congress. Particular benefits of the Act, i.e., the provisions related to the partitioning of the Reservation, potential expansion of the newly formed reservations, and participation in the Settlement Fund, were conditioned upon the tribes adopting individual tribal resolution's granting their consent to the partition of the 1891 Reservation and waiving potential claims the tribes may have against the United States.

Subsequent to enactment of the Act, the Hoopa Valley Tribe executed and adopted such a resolution. The Yurok Tribe executed what they have described as a "conditional waiver" which they adopted by resolution.

Yurok "Conditional Waiver"

In November of 1994, the Yurok Tribe submitted documentation to the Department concerning the claims waiver requirement of the Act. This material included Tribal Resolution No. 93-61, which purported to waive claims of the Tribe pursuant to and in accordance with the Act. The Resolution states in relevant part, "[T]o the extent which the Hoopa-Yurok Settlement Act is not violative of the rights of the Yurok Tribe or its members under the Constitution of the United States, or has not effected a taking without just compensation of vested Tribal or individual resources, or rights within, or appertaining to the Hoopa Valley Reservation, the Yurok Tribe hereby waives any claim which said Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act." In a letter dated April 4, 1994, it was communicated to the Yurok Tribe by Assistant Secretary for Indian Affairs, Ada E. Deer, that Resolution No. 93-61 did not effectively waive any Tribal claims as required by the Act, but in fact acted to preserve any such claims.

Entitlement to the Hoopa-Yurok Settlement Fund/Benefits of the Act

In 1988 the Hoopa Valley Tribe executed a waiver of claims, pursuant to the Act, and as a result, received their portion of the benefits as enumerated within the Act. Accordingly, it is the position of the Department that the Hoopa Valley Tribe is not entitled any further portion of funds or benefits under the existing Act.

In 1993, the Yurok Tribe submitted to the Secretary a tribal resolution which according to the tribe, purports to waive potential claims against the United States as required within the Act. As previously stated, the Department responded to Yurok submission with a letter stating that the Department could and would not accept the resolution as a valid waiver within the confines of the Act. The Yurok Tribe subsequently filed a "takings" claim, *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Fed. Cl.), *Karuk Tribe of California v. United States*, 28 Fed. Cl. 694 (1993), *Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (Aug. 6, 1998), and *Karuk Tribe of California v. Ammon*, 209 F. 3d 1366 (Fed. Cir. 2000), that lasted nearly a decade. In briefings before the U.S. Supreme Court, the Yurok claimed that this was, "the most important Indian-lands takings case to come before the courts in this generation". Possible exposure to the U.S. Treasury was estimated close to $2 billion. The question for the Court was whether the Yuroks had a compensable interest in the 1891 Reservation under the 5th Amendment. In 1864, Congress had authorized the President, "at his discretion", to set apart land, "to be retained by the United States for purposes of Indian Reservations" (Act of 1864, 13

Stat. 39). Both trial and appellate courts held, in two-to-one decisions, that the executive order that created the reservation allowed permissive, not permanent, occupation. The U.S. Supreme Court denied certiorari. Accordingly, it is the position of the Department that the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act.

Following a request from the Department, each of the interested tribes submitted their written position regarding future actions of the Department with respect to the Settlement Fund, and the Section 14(c) "Report to Congress", required under the Act.The Department has consulted tribes on this report and reviewed information describing both the Hoopa and Yurok Tribes submitted as appendices to this report. Also, attached as appendices to this report, is the historical account information and supplemental present earning potential of the fund.

Recommendations of the Department

Notwithstanding the factual legal standing regarding tribal entitlement to the settlement fund under the existing Act, the Department recognizes that a financial and economic need currently exists within both Tribes and their associated reservations. The presence and extent of this need, combined with the historical difficulties in the administration of the provisions of the Act, make predominant the necessity to take further measures to accomplish the original intent of the Act. Further, it is the opinion of the Department that to withhold funds/benefits of the Act in their entirety, or to allow any accrued funds to revert to the Treasury, would not be an effective administration of the overall intent of Act and would, in effect be in direct opposition to the spirit of the Act. In this regard, it is the opinion of the Department that in addition to partitioning the 1891 Reservation, Congress intended the Act to provide the respective tribes and their reservations with the means to acquire a degree of financial and economic benefit and independence which would allow each tribe to prosper in the years to come.

Therefore, it is the recommendation of the Department that:

I. No additional funds be added to the current HYSA Settlement Fund;

II. Funds comprising the current HYSA Settlement Fund would not revert to the general fund of the Treasury, but would be retained in trust account status by the Department pending future developments;

III. There would be no general "distribution" of the HYSA Settlement Fund dollars to any particular tribe, tribal entity, or individual. But rather, the Fund dollars would be administered for the mutual benefit of both the Hoopa Valley and Yurok tribes, and their respective reservations, taking into consideration benefits either tribe may have heretofore received from the HYSA Settlement Fund;

IV. That Congress in coordination with the Department, and following consultation with the Hoopa and Yurok Tribes, fashion a mechanism for the future administration of the HYSA Settlement Fund;

V. That Congress, in order to accomplish the underlying objective of the HYSA, resolving any future issue of entitlement, give serious consideration to the establishment of one or more new Act(s) that provide the Secretary with all necessary authority to establish two separate permanent Fund(s) with the balance of the current HYSA Fund, for the benefit of the Hoopa and Yurok Tribes in such a manner as to fulfill the intent of the original Act in full measure.

APPENDIX:

I. Financial information on Hoopa-Yurok Settlement Fund
II. Informational submittal of Yurok Tribe
III. Informational submittal of Hoopa Tribe

FINANCIAL INFORMATONAL SHEET – "HYSA" FUND

The Hoopa/Yurok Settlement Fund was established in 1988, pursuant to Public Law 100-580, the Hoopa-Yurok Settlement Act.
The Act was intended to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Tribe, and to clarify the use of timber proceeds from the Hoopa Valley Reservation established originally in 1864.
Recognizing the Federal role in the creating of the problems then associated with the Hoopa Valley Reservation, the Act authorized the appropriation of $10,000,000 in federal funds, to be added to the corpus of the HYSA Fund.
The remainder of the settlement fund was made up of funds held as "Escrow funds" by the federal government, which were derived from the use/resources of the "joint reservation". These funds were held by the Secretary in accounts benefiting both the Hoopa and Yurok tribes, individually.
The Act was intended to settle any dispute over any/all such "Escrow funds".
The original principal balance of the fund was $66,978,335.93

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
505 MARQUETTE N.W. SUITE 700
ALBUQUERQUE, NEW MEXICO 87102

IN REPLY REFER TO:

ASST A
ASST AD ADMIN
ROUT
RESPO
DUE DATE
MEMO
TELE OTHER

AUG 22 1991

Memorandum

To: Area Director, Sacramento Area Office

From: Director, Office of Trust Funds Management

Subject: Distribution of funds awarded the Hoopas and Yuroks under the Hoopa-Yurok Settlement Act

Effective April 12, 1991, the distribution of the subject funds was made in accordance with Public Law 101-277 and in accordance with your request dated April 4, 1991.

The total value of the fund on April 12, 1991 was $85,979,348.37 derived in the following manner:

Fair Market Value of Investment Securities (Refer to Attachment I and II.)	$74,339,997.14
Cash-Unallotted Balance	139,351.23
Add Back: Hoopa Drawdowns	10,000,000.00
Yurok Drawdowns	1,500,000.00
Total:	$85,979,348.37

Hoopa's share of the fund was calculated using 39.55% as provided in you letter dated April 4, 1991.

Total Value of Fund	$85,979,348.37
	X .39552
Hoopa's Share	$34,006,551.87
Less Hoopa's Drawdowns	10,000,000.00
Less April 15, 1991 Drawdown	9,880,000.00
Balance Due Hoopa Tribe:	$14,126,551.87

The balance due was distributed using a percentage of 21.8679479 derived as follows:

Total Value of Fund	$85,979,348.37
Less Hoopa's Drawdowns	19,880,000.00
Less Yurok's Drawdowns	1,500,000.00
Balance of Fund to be Distributed:	$64,599,348.37

Hoopa's Share of Fund $14,126,551.87 = 0.218679479
Value of Undistributed Fund 64,599,348.37

The 21.867947% was applied to each outstanding investment and recorded to Hoopa's appropriation account 7194.

The balance of the fund is Yurok's share which remained in appropriation account 7193.

Subsequent to the above distributions, an internal transfer was done effective August 1, 1991, to transfer $3,000,000.00 into an escrow account to compensate any potential appeal cases. The amounts contributed are $1,186,560.00 and $1,813,440.00 for the Hoopas and the Yuroks respectively. It is our understanding that both tribes agreed to this arrangement. A separate appropriation (J50 A64 7197) was established for this escrow account.

Trust Funds records in the BIA's Finance System are maintained on a cash basis, therefore, income earned but not yet collected by the BIA is not recorded. Only the actual cash transfers and the cost bases of respective investments are shown in the Summary of Trust Funds reports for the Hoopa Tribe.

If you have any questions, please contact Sarah Yepa at FTS 474-3875 or Commercial (505) 766-3875. If you have questions on the valuation of the securities, please contact Fred Kellerup at FTS 474-2975 or Commercial (505) 766-2975.

Jim R. Parris

Attachments

HOOPA-YUROK SETTLEMENT FUND, ESTABLISHED 12/9/88 AS J50/501/7193

DATE	BEGINNING FY BALANCE	FISCAL YEAR END BALANCE	DIFFERENCE			
FY 1989	66,978,335.93	69,982,201.01	3,003,865.08			
FY 1990	69,982,201.01	71,799,321.72	1,817,120.71			
FY 1991	71,799,321.72	48,940,123.38	(22,859,198.34)			
FY 1992	48,940,123.38	37,819,371.79	(11,120,751.59)			
FY 1993	37,819,371.79	39,700,898.45	1,881,526.66			
FY 1994	39,700,898.45	40,600,210.26	899,311.81			
FY 1995	40,600,210.26	42,916,637.49	2,316,427.23			
FY 1996	42,916,637.49	45,103,786.42	2,187,148.93			
FY 1997	45,103,786.42	50,708,006.06	5,604,219.64			
FY 1998	50,708,006.06	53,748,146.46	3,040,140.40			
FY 1999	53,748,146.46	56,912,744.76	3,164,598.30			
FY 2000	56,912,744.76	61,207,883.29	4,295,138.53			
FY 2001	61,207,883.29	64,824,655.61	3,616,772.32			

253

(1) the date the fund was established,

The Hoopa-Yurok Settlement Fund was established in the BIA's Finance System 12/9/88.

(2) the original principal amount of the fund,

The original principal balance amount of the Fund was **$66,978,335.93.**

(3) the date and amount of the Hoopa disbursement (principal and interest),

Effective April 12, 1991, Hoopa's share of the fund was determined to be **$34,006,551.87.**

Deduction of $19,880,000 for previous drawdowns and Hoopa's per capita payment left a final balance due of **$14,126,551.87.**

which was distributed to Hoopa April 12, 1991.

(4) the breakdown between principal and interest and gain if any, on the balance remaining after the Hoopa disbursement,

The FY 91 year end balance for the account, which was determined to be Yurok's share, was **$48,940,123.38**

According to the Act, a separate account for Yurok should have been established and this amount transferred.

(5) the projected yearly interest on these two amounts.

At 6%, $3,889,479, and at 2%, $1,296,493

S. HRG. 107–648

HOOPA-YUROK SETTLEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE DEPARTMENT OF THE INTERIOR SECRETARY'S REPORT ON THE HOOPA YUROK SETTLEMENT ACT

AUGUST 1, 2002
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

81–636 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

DANIEL K. INOUYE, Hawaii, *Chairman*
BEN NIGHTHORSE CAMPBELL, Colorado, *Vice Chairman*

KENT CONRAD, North Dakota
HARRY REID, Nevada
DANIEL K. AKAKA, Hawaii
PAUL WELLSTONE, Minnesota
BYRON L. DORGAN, North Dakota
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington

FRANK MURKOWSKI, Alaska
JOHN McCAIN, Arizona,
PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
ORRIN G. HATCH, Utah
JAMES M. INHOFE, Oklahoma

PATRICIA M. ZELL, *Majority Staff Director/Chief Counsel*
PAUL MOOREHEAD, *Minority Staff Director/Chief Counsel*

CONTENTS

HOOPA-YUROK SETTLEMENT ACT

THURSDAY, AUGUST 1, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 10:18 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Campbell, and Reid.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. This is the oversight hearing on the Department of Interior Secretary's report on the Hoopa Yurok Settlement Act submitted to the Congress in March 2002 pursuant to Section 14 of Public Law 100–580.

As with almost all matters in Indian affairs, there is a long history that preceded enactment of the legislation the Secretary's report addresses. It is a history of deception, I am sad to say, of a Senate that apparently met in secret session in 1852 and rejected the treaties that had been negotiated with California tribes, and didn't disclose their action for another 43 years.

In the interim, the California tribes proceeded in good faith, relying upon their contracts with the U.S. Government. In 1864, the Congress enacted legislation to establish four reservations in the State of California with the intent that these reservations would serve as the new homeland for tribes that had no cultural, linguistic, or historical ties to one another. The Hoopa Valley Reservation was one such reservation that was established for "the Indians of the Reservation."

Litigation later spawned a series of a series of court rulings, which while resolving the issues before each court, engendered considerable uncertainty into the daily lives of those who resided on the reservation, and soon,, the Congress was called upon to bring some final resolution to the matter.

Today, as we receive testimony on the Secretary's report, it is clear that a final resolution was not achieved through the enactment of the Hoopa-Yurok Settlement Act in 1988, and that the Congress will once again have to act. Accordingly, we look forward to the testimony we will receive today so that the committee and members of Congress may have a strong substantive foundation upon which to construct a final solution.

May I call upon the vice chairman.

ment but I wanted to put that in the record of my own personal experiences in California.

The CHAIRMAN. I'm glad that your remarks were made for the record because though it is rather sad, we who are the successors to the Senators two centuries ago must remember that our predecessors were a part of this terrible conspiracy.

With that, may I call upon the Assistant Secretary of the Bureau of Indian Affairs, Department of the Interior, Neal McCaleb. It's always good to see you, sir.

STATEMENT OF NEAL A. MCCALEB, ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MCCALEB. Thank you, Chairman Inouye. I am pleased to be here this morning to bring to you a report pursuant to section 14 of the Settlement Act.

Although I will not read my introductory background remarks because you did such an excellent job of presenting the history, I would have my entire testimony become a part of the record.

The CHAIRMAN. Without objection, so ordered.

Mr. MCCALEB. Prior to the Settlement Act, legal controversies arose over the ownership and management of the Square, that being the 12 square miles that were provided by the United States Government for the Indians of California, that ultimately became the Hoopa Reservation and its resources. Although the 1891 Executive order joined the separate reservations into one, the Secretary had generally treated the respective sections of the reservation separately for administrative purposes. A 1958 Solicitor's Opinion also supported this view.

In the 1950's and 1960's, the Secretary distributed only the timber revenues generated from the Square to the Hoopa Valley Tribe and its members. All the revenues from the Square were allocated to the Hoopa Valley Tribe. In 1963, Yurok and other Indians, eventually almost 3,800 individuals, challenged this distribution and the U.S. Court of Claims subsequently held that all Indians residing within the 1891 reservation were Indians of the reservation and were entitled to share equally in the timber resources proceeds generated from the Square. *Short* v. *United States* was the embodiment of that litigation.

Following the decision, the Department began allocating the timber proceeds generated from the Square between the Yurok Tribe, approximately 70 percent, and the Hoopa Valley Tribe, 30 percent. The 70/30 allocation was based upon the number of individual Indians occupying the joint reservation that identified themselves as members of either the Yurok or the Hoopa Valley Tribe respectively.

Another lawsuit challenged the authority of the Hoopa Valley Business Council to manage the resources of the Square among other claims. These and related lawsuits had profound impacts relating to the tribal governance and self determination, extensive natural resources that compromised the valuable tribal assets and the lives of thousands of Indians who resided on the reservation.

In order to resolve longstanding litigation between the United States, Hoopa Valley, Yurok, and other Indians regarding the own-

ership and management of the Square, Congress passed the Hoopa-Yurok Settlement Act in 1988. This act did not disturb the resolution of the prior issues through the *Short* litigation. Rather, the act sought to settle disputed issues by recognizing and providing for the organization of the Yurok Tribe by petitioning the 1891 Yurok joint reservation between the Hoopa Valley and the Yurok Tribes and by establishing a settlement fund primarily to distribute moneys generated from the joint reservation's resources between the tribes.

Section 2 of the act provided for the petition of the joint reservation. Upon meeting certain conditions of the act, the act recognized and established the Square, the original 12 square miles, as a Hoopa Valley Reservation to be held in trust by the United States for the benefit of the Hoopa Valley Tribe. The act recognized and established the original Klamath River Reservation and the connecting strip as the Yurok Reservation to be held in trust by the United States for the benefit of the Yurok Tribe.

In accordance with the conditions set in section 2(a), the Hoopa Valley Tribe passed a resolution, No. 88–115 on November 28, 1988 waiving any claims against the United States arising from the act and consenting to the use of the funds identified in the act as part of the settlement fund. The BIA published a notice of the resolution in the Federal Register of December 7, 1988. These actions had the effect of partitioning the joint reservation.

As for the settlement fund itself, section 4 of the act established a settlement fund which placed the moneys generated from the joint reservation into an escrow account for later equitable distribution between the Hoopa Valley and Yurok Tribes according to the provisions of the act. The act also authorized $10 million in Federal contribution to the settlement fund primarily to provide lump sum payments to any Indian on the reservation who elected not to become a member of either tribe. It allocated about $15,000 to any individual Indian who elected not to claim tribal membership of either tribe.

As listed in section 1(b)(1) of the act, the escrow funds placed in the settlement fund came from moneys generated from the joint reservation and held in trust by the Secretary in seven separate accounts, including the 70 percent Yurok timber proceeds account and the Hoopa 30 percent timber proceeds account. The Secretary deposited the money from these accounts into the Hoopa-Yurok Settlement Fund upon the enactment of the act. The settlement fund's original balance was nearly $67 million. At the beginning of fiscal year 2002, the fund contained over $61 million in principle and interest.

Even with the previous distributions as described below, appendix I to the report provides the relevant figures from the fund. The act sought to distribute the moneys generated from the joint reservation and placed in the settlement fund on a fair and equitable basis between the Hoopa Valley and Yurok Tribes. The Senate committee report briefly described what was then believed to be a rough distribution estimate of the fund based upon the settlement role, distribution ratios established in the act. Twenty-three million, roughly one-third of the fund would go to the Hoopa Valley Tribe pursuant to Section 4(c); a similar distribution to the Yurok

Tribe under Section 4(d) as described below assuming roughly 50 percent of those on the settlement roll would accept Yurok tribal membership; and the remainder to the Yurok Tribe after individual payments discussed below.

Substantial distributions have already been made from the settlement fund in accordance with the act. The Department disbursed to the Hoopa Valley Tribe just over $34 million between passage of the act and April 1991. The total amount determined by the BIA to be the tribe's share under 4(c) of the act. The Department also distributed $15,000 to each person on the settlement roll who elected not to become a member of either tribe under the act. Approximately 708 persons chose the lump sum payment option for a total distribution for this purpose in the amount of approximately $10.6 million, exceeding the $10 million Federal contribution authorized by the act for this payment.

Section 4(d) of the act provided the Yurok Tribe's share of the settlement fund similar to the determination of the Hoopa Valley share under section 4(c). Section 7(a) further provided the Yurok Tribe would receive the remaining moneys in the settlement fund after distributions were made to individuals in accordance with the settlement membership options under section 6 and to successful appellants left off the original settlement roll under section 5(d).

Under section 1(1)(4), the condition that the Hoopa Valley Tribe and Yurok Tribe received these moneys requiring the tribes adopt a resolution waiving any claim against the United States arising from the act. The Hoopa Valley Tribe adopted such a resolution but the Yurok Tribe did not. In November 1993, the Yurok Tribe passed Resolution 93–61 which purported to waive its claims against the United States in accordance with section 2(c)(4). The tribe, however, also brought a suit alleging that the act affected a constitutionally prohibited taking of its property rights as described below. In effect, the tribe sought to protect its rights under section 2 of the act to its share of the settlement fund and other benefits while still litigating the claims as contemplated in section 14 of the Act.

By a letter dated April 4, 1994, the Department informed the tribe that the Department did not consider the tribe's conditional waiver to satisfy the requirements of the act because the waiver acted to preserve rather than waive its claims. Instead of waiving its claims as the Hoopa Valley Tribe did, the Yurok Tribe as well as the Karuk Tribe and other individual Indians brought suit against the United States alleging the act constituted a taking of their vested property rights in the lands and resources of the Hoopa Valley Reservation contrary to the Fifth Amendment of the U.S. Constitution.

In general, the complaints argued that the 1864 Act authorizing Indian reservations in California and other acts of Congress vested their ancestors with compensable rights in the Square. Alternatively, plaintiffs argued that their continuous occupation of the lands incorporated into the reservation created compensable interest. Potential exposure to the U.S. Treasury was once estimated at close to $2 billion. This litigation began in the early 1990's and was only recently ended.

The U.S. Court of Federal Claims and the Federal Circuit Court of Appeals disagreed with the positions of the Yurok and other plaintiffs. The Federal courts generally followed the reasoning provided in the committee reports of the bills ultimately enacted as the Settlement Act. Unless recognized as vested by some Act of Congress:

> Tribal rights of occupancy and enjoyment, whether established by Executive order or statute may be extinguished, abridged or curtailed by the United States at any time without payment of just compensation.

The courts concluded that no act of Congress established vested property rights and the plaintiffs or their ancestors in the Square. Rather the statutes and Executive orders creating the reservation allowed permissive, not permanent occupation. Thus, the courts held the act did not violate the takings clause. Plaintiffs petitioned the U.S. Supreme Court for a writ of certiorari to review the lower court decision and on March 26, 2001, the Court denied certiorari thereby concluding the litigation.

On the Department's report, section 14 of the act provides:

> The Department shall submit to Congress a report describing the final decision that an illegal claim challenging the act as affecting a taking of property rights contrary to the Fifth Amendment to the U.S. Constitution or as otherwise providing inadequate compensation.

The Court's denial of the certiorari triggered this provision. The Department solicited the views of the Hoopa Valley and Yurok Tribes regarding future actions of the Department with respect to the settlement fund as required under the act. The report briefly describes issues both leading up to the subsequent act, attaches the written positions of the tribes and provides recommendations of the Department for further action with respect to the settlement fund.

In July 2001, the Hoopa Valley Tribe submitted its proposed draft report for consideration by the Department. After describing the history of the disputes, the Settlement Act and subsequent actions, the Hoopa Valley Tribe provided various recommendations and observations. The Hoopa submission noted that the separate lawsuit determined that only 1.26 percent of the settlement fund moneys were derived from the Yurok Reservation, with the remainder of the moneys derived from the Hoopa Reservation.

The Hoopa Valley Tribe has continued to assert its right to a portion of the benefits offered to and rejected by the Yurok Tribe. Prior to its July submission, the tribe previously requested the Department recommend the remaining funds from the Hoopa Square be returned to the Hoopa Valley Tribe. The Hoopa submission ultimately suggested the following recommendations.

First, the suspended benefits under the act, including the land transfer and land acquisition provisions for the Yurok Tribe and the remaining moneys in the settlement fund be valued and divided equally between the two tribes.

Second, the economic self-sufficiency plan of the Yurok Tribe be carried forward, including any feasibility study concerning the cost of the road from U.S. Highway 101 to California Highway 96 and other objectives of the self sufficiency plan.

Third, that additional Federal lands adjacent to or near the Yurok and Hoopa Valley Reservation be conveyed to and managed by the respective tribes.

The Yurok position. In August 2001, Counsel for the Yurok Tribe submitted the tribe's position and proposed a draft report. The Yurok Tribe submission similarly outlined the history of the dispute and other considerations in its recommendations for the Department to consider. In general, the Yurok Tribe takes the position, among others, that its conditional waiver was valid and became effective upon the Supreme Court's denial of certiorari in the taking litigation.

The Yurok submission discusses the tribe's concern with the process leading up to and ultimately resulting in the passage of the Settlement Act. In the tribe's view, the act nullified a large part which allowed all Indians of the reservation to share equally in the revenues and resources of the joint reservation. "The tribe, not formally organized at the time, was not asked and did not participate in this legislative process" and had the act imposed on the Yurok who were left with a small fraction of their former land resources.

In its view, the act divested the Yurok Tribe of its communal ownership in the joint reservation lands and resources and relegated that much larger tribe to a few thousand acres left in trust along the Klamath River with a decimated fishery, while granting to the Hoopa Tribe nearly 90,000 acres of unallotted trust land and resources including the valuable timber resources thereon.

With respect to the waiver issue, the Yurok submission considers the Department's view discussed above as erroneous. The tribe references a March 1995 letter from the Department in which the Assistant Secretary of Indian Affairs indicated the tribe could cure the perceived deficiencies with its conditional waiver by "subsequent tribal action or final resolution of the tribes lawsuit in the U.S. Court of Federal Claims."

The tribe takes the position that it made a reasonable settlement offer and would have dismissed its claim with prejudice but the Department never meaningfully responded. Now the tribe considers the Supreme Court's denial of certiorari as a final resolution suggested as curing the waiver. As a support for its position, the tribe states, "The text of the Act and the intent of Congress make clear that filing a constitutional claim and receiving the benefits of that act are not mutually exclusive." The tribe suggests that principles of statutory construction, including the canon ambiguities be resolved in favor of the tribes and that the provisions within the statute should be read so as not to conflict or be inconsistent requires that a broader reading of the waiver provision in section 2(c)(4) in light of the act's provision allowing a taking claim to be brought under section 14.

The tribe considers the Department's reading of the statute to be unfair and unjust. For these and other reasons, the tribe is of the view that it is now entitled to its benefits under the act.

Because the Yurok Tribe litigated its claims against the United States based on the passage of the Act rather than waiving those claims, the Department is of the view that the Yurok Tribe did not meet the conditions precedent to the establishment of section 2(c)(4) of the act for the tribe to receive its share of the settlement fund or other benefits.

The Department is also of the view that the Hoopa Valley Tribe has already received its portion of the benefits under the act and

is not entitled to further distributions from settlement funds under the provisions of the act.

Ultimately, this situation presents a quandary for the Department and for the tribes. We believe the act did not contemplate such a result. The moneys remaining in the settlement fund originated from seven trust accounts which held revenues generated from the joint reservation. Thus, the moneys remaining in the settlement fund should be distributed to one or both tribes in some form. Moreover, the Department recognizes that substantial financial and economic needs currently exist within both tribes and their respective reservations. Given the current situation, the report outlines five recommendations of the Department to address these issues.

First, no additional funds need be added to the settlement fund to realize the purpose of the Act.

Second, the remaining moneys in the settlement fund should be retained in a trust account status by the Department pending further considerations and not revert to the General Fund of the U.S. Treasury.

Third, the settlement fund should be administered for the mutual benefit of both tribes and their respective reservations taking into consideration prior distributions to each tribe from the fund. It is our position that it would be inappropriate for the Department to make any general distribution from the fund without further action of Congress.

Fourth, Congress should fashion a mechanism for the further administration of the settlement fund in coordination with the Department and in consultation with the tribes.

Fifth, Congress should consider the need for further legislation to establish a separate permanent fund for each tribe from the remaining balances of the settlement fund in order to address any issue regarding entitlement of the moneys and fulfill the intent and spirit of the Settlement Act in full.

This concludes my testimony and I will be happy to respond to any questions at the appropriate time. We have attached a schematic for the committee with a flow chart of the funds and the dates funds were disbursed pursuant to the short litigation in the 1988 Act.

[Prepared statement of Mr. McCaleb appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Secretary.

The chart you speak of, entitled "Hoopa-Yurok Settlement Act Funding History," received by the committee yesterday will be made a part of the record.

[The information appears in appendix.]

The CHAIRMAN. At this juncture, there will be a recess for 10 minutes.

[Recess.]

The CHAIRMAN. We will resume our hearings.

The vice chairman of the committee has a very urgent matter to work on this afternoon, so he will have to be leaving us in about 10 minutes, so may I call upon him for his questions.

Senator CAMPBELL. Thank you. I apologize for having to leave, we have some terrible wildfires out west and some of them are in Colorado, so I'm doing a joint event with some of the other Colo-

rado delegation on our fire problem. It just closed Mesa Area in our part of the State which is a big tourist attraction, so I probably won't be able to ask the representatives from the two tribes questions. I'll submit those in writing if they can get those back to me.

This is a very tough one for me because to me this is like refereeing a fight among family. Some folks on both sides of this issue I've known for years and years and am real close to from my old California days. Let me ask you just a couple.

We have two reservations, one allotted, one not allotted, and this is certainly a sad history but the Yurok land and resources were allotted and dissipated. The Hoopa lands and resources remain in tact. Why were they treated so differently when they are so geographically close in our history? Do you happen to know that?

Mr. MCCALEB. I don't have personal knowledge of that, Senator. Let me get that information and respond in writing to you. I have an impression but I don't have a real factual answer to that.

Senator CAMPBELL. Let me ask another general question. We've been through a lot of disagreements between tribes and it seems to me those that can settle their issues without intervention from the courts are a lot better off than the ones who are not. I have no problem with the legal profession but let me tell you, the attorneys end up getting paid very well from the Indians that are fighting with each other. In keeping with the spirit of the settlement in 1988, shouldn't we try to bring this to a conclusion that both tribes can live with without fighting it out in courts?

Mr. MCCALEB. That would certainly be my desire, Senator Campbell.

Senator CAMPBELL. Have you personally tried to impress on both sides your sentiments?

Mr. MCCALEB. I have met with representatives of both sides, yes, and made those kinds of suggestions.

Senator CAMPBELL. I understand there is a lot of money involved. Let me ask about the account balance. What is the balance of revenues of the settlement fund and can you trace where the moneys from the fund came from?

Mr. MCCALEB. Aside from interest that had accrued over time, the source of all the funds was timber sale proceeds.

Senator CAMPBELL. Did they come primarily from Hoopa or Yurok lands or both?

Mr. MCCALEB. I'm advised a little over 98 percent of the funds derived from the Square, are on Hoopa land.

Senator CAMPBELL. Before they were put in the settlement fund, was there any audit performed to verify the accuracy of the transactions?

Mr. MCCALEB. I'm not aware of that but I will investigate that and reply in writing to you.

Senator CAMPBELL. In the Secretary's report, I read part of it and the staff read all of it, but they make two key findings, that the Hoopas have been made whole and have no claims against the United States and that because the Yuroks failed to provide necessary waivers, they are not entitled to benefits under the act.

My question is, with a multimillion dollar fund sitting in the Treasury, how should it be divided?

Mr. MCCALEB. Senator, I was hoping you'd have some suggestion for me on that. I don't mean to be flip about it but it is a very difficult answer. The two extreme positions of the tribes are the Hoopas want half of all the proceeds and the Yuroks think they should have all of the funds.

Senator CAMPBELL. Would you recommend some kind of development fund for both tribes be established?

Mr. MCCALEB. I think that would be a good solution. As opposed to per capita payments, you mean?

Senator CAMPBELL. Yes.

Mr. MCCALEB. Yes; I almost always favor that kind of investment as opposed to per capita payments.

Senator CAMPBELL. Thank you, Mr. Chairman. I have no further questions. I appreciate you giving me that time.

The CHAIRMAN. Thank you.

Mr. Secretary, I have a few questions for clarification. Do the funds in the settlement fund represent revenues derived from the sale of timber located on the Square?

Mr. MCCALEB. Over 98 percent. According to the facts furnished to me, only about 1.26 percent were not derived from timber on the Square.

The CHAIRMAN. Were those revenues generated from the Square while members of the Yurok and Karuk Tribes were still considered "Indians of the reservation"?

Mr. MCCALEB. The money in the settlement fund is there pursuant to the *Short* litigation that was resolved in 1974 and the subsequent timber cuttings. Would you restate your question so I can make sure I understand it?

The CHAIRMAN. Were those revenues generated from the Square while members of the Yurok and Karuk Tribes were still considered "Indians of the reservation"? That is the phrase in the statute.

Mr. MCCALEB. Yes.

The CHAIRMAN. So they were Indians in the reservation at the time the revenues were generated in the Square?

Mr. MCCALEB. Yes; that's my understanding.

The CHAIRMAN. Because the *Short* case instructs us that if there is to be a distribution of revenues, the distribution must be made to all Indians of the reservation. Would that mean Hoopa, Yurok, Karuk?

Mr. MCCALEB. Yes, sir.

The CHAIRMAN. The Hoopa Valley Tribe contends it is the only tribe entitled to the funds in the settlement fund, so your response does not agree with that?

Mr. MCCALEB. No; for the reasons you just said. The *Short* case is, I think, specific on that point.

The CHAIRMAN. So it seems it may be critical to the resolution of the competing claims of entitlement to funds in the settlement fund to know whether the timber revenues that were placed in the fund were generated after the reservation was partitioned or whether they were generated while there were three tribal groups making up the "Indians of the reservation," isn't that correct?

Mr. MCCALEB. The revenues that make up the original amount, almost $17 million in the chart, were generated prior to the partitioning of the reservation, while other revenues were generated

from the timber fund after 1988, the partitioning actually occurred in 1988 by act of Congress.

The CHAIRMAN. There are two time periods?

Mr. MCCALEB. Yes; there are.

The CHAIRMAN. Can you tell the committee what disbursements have been made from the settlement fund, when the disbursements were made and to whom these disbursements were made?

Mr. MCCALEB. From the settlement fund, $15 million was disbursed to individual Indians who elected to become Yurok. There was another $10.6 million distributed to individual Indians who elected to buy out. That $10.6 million was offset by a $10-million direct appropriation of Congress. There has been another $1.5 million distributed to the Yurok Tribe since 1991 given they were provided about $500,000 a year for 3 years to help them in the process of establishing their tribal government.

The CHAIRMAN. Anything distributed to the Karuk Tribe?

Mr. MCCALEB. None directly to the Karuk to my knowledge. There was another $34 million distributed to the Hoopa Tribe, $34,651,000 pursuant to their signing their waiver in keeping with the act.

The CHAIRMAN. Given the Department's position as set forth in the Secretary's report that neither the Hoopa Valley Tribe nor the Yurok Tribe is entitled to the balance of the funds remaining in the HYSA fund, what benefits of the act or activities authorized in the act does the Department envision should be carried out and funded by the recommended two separate permanent funds to fulfill the intent of the original Act in full measure?

Mr. MCCALEB. I think all the funds should be distributed that are in the settlement fund. I don't think there is much debate over that. I think the issue is over the distribution, how the money should be distributed.

The CHAIRMAN. How shall the distribution be made?

Mr. MCCALEB. I guess if you go to our third recommendation, it touches as closely as anything on that:

> The settlement fund should be administered for the mutual benefit of both tribes and the reservations taking into consideration prior distributions to each tribe from the fund.

If you assume that 30–70 percent distribution was appropriate originally and take into consideration the prior distribution of the funds, that would provide some guidance in that area.

The CHAIRMAN. In your opinion, were all the provisions of the Act benefiting the Hoopa Valley Tribe implemented?

Mr. MCCALEB. Yes.

The CHAIRMAN. Would you say the same of the act benefiting the Yurok Tribe implemented?

Mr. MCCALEB. No; that's not correct.

The CHAIRMAN. So the Hoopa Valley got all the benefits, Yurok did not?

Mr. MCCALEB. One of the provisions was the partitioning of the tribal lands. That was done, that was accomplished but the Yuroks got none of the money except for the $1.5 million I indicated. There were other provisions for economic development that were supposed to be carried out pursuant to an economic development plan submitted by the Yuroks. The plan was never submitted, so it was

never implemented. For example, there was some roadbuilding to be done pursuant to that economic development plan that has never been done. The Yurok only received a partitioning of tribal lands plus the $1.5 million.

The CHAIRMAN. Because of the obvious complexities, may we submit to you questions of some technicality that you and your staff can look over and give us a response?

Mr. MCCALEB. I would appreciate that because I really need to rely on the historical and technical views of the staff to answer the meaningful questions that are attendant to this really sticky issue.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Mr. MCCALEB. May I be excused at this point?

The CHAIRMAN. Yes; and thank you very much, sir.

The second panel consists of the chairman of the Hoopa Valley Tribal Council of Hoopa, California, Clifford Lyle Marshall, Sr., accompanied by Joseph Jarnaghan, tribal councilman, Hoopa Valley Tribal Council and Thomas Schlosser, counsel, Hoopa Valley Tribal Council and Sue Masten, chairperson, Yurok Tribe, Klamath, CA.

STATEMENT OF CLIFFORD LYLE MARSHALL, SR., CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL, ACCOMPANIED BY JOSEPH JARNAGHAN, TRIBAL COUNCILMAN, HOOPA VALLEY TRIBAL COUNCIL AND THOMAS SCHLOSSER, COUNSEL

Mr. MARSHALL. I am Clifford Lyle Marshall, chairman of the Hoopa Valley Tribe.

At this time, I ask that our written testimony be included in the record.

The CHAIRMAN. Without objection.

Mr. MARSHALL. Thank you for this opportunity to present the Hoopa Tribe's position on the Interior Report on the Hoopa Yurok Settlement Act. I am here today with council member Joseph Jarnaghan and attorney Tom Schlosser.

First, let me express the Hoopa Tribe's deepest gratitude to Chairman Inouye, Vice Chairman Campbell and the other members of this committee for the leadership in achieving passage of the landmark Hoopa Yurok Settlement Act. We also acknowledge and appreciate the hard work of your dedicated staff. This act could not have occurred without your decision to resolve the complex problems that had crippled our reservation and tribal government for more than 20 years.

The years since its passage have demonstrated the outstanding success of the Settlement Act. It resolved the complex issues of the longstanding *Jesse Short* case, the act vested rights and established clear legal ownership in each of the tribes to the respective reservations. It also preserved the political integrity of the Hoopa Tribe by confirming the enforceability of our tribal constitution.

The Hoopa Tribe waived its claims against the United States and accepted the benefits provided in the act and since then we have accomplished a number of tribal objectives. We immediately embarked on a strategy to reestablish control of our small Indian nation and were one of the self-governance tribes. We believe that tribal self-governance is the true path to trust reform.

Although the Yurok Tribe rejected the settlement offer provided in the act, it nevertheless provided a means for organization of the

big conference. In some places they smoked tobacco or exchanged gifts. Maybe the time has come for the restoration of the old method because as certain as I sit here if the Congress of the United States should come forth with Settlement Act No. 2, we will be back here in about 20 years trying to draw up Settlement Act No. 3.

I have a series of technical questions but those are all legal questions. It is good to know the history but I was trained to be a lawyer myself and when one presents his case, you make certain you don't say good things about the other side, you speak of the good things about your side. That is what you are paid for. I would expect lawyers to do the same.

With that, I will be submitting questions of a technical nature for the record.

May I thank you, Mr. Chairman and your staff.

Our next witness is the most distinguished member of Indian country, the chairperson of Yurok Tribe of Klamath, California, Sue Masten.

STATEMENT OF SUE MASTEN, CHAIRPERSON, YUROK TRIBE

Ms. MASTEN. Good morning.

I have the distinct honor to serve as the chairperson of the Yurok Tribe. The Yurok Tribe is the largest tribe in California with over 4,500 members of which 2,800 members live on or near the reservation.

Thank you for holding this hearing. We appear today with deep resolve and a commitment to working hard toward addressing the issues before you.

I know you can appreciate that the issues here run deep and are heart felt. I also know that when the act was passed Congress believed that the act reached equity for both tribes. Thank you for your willingness to hear our concerns that those goals were not achieved.

We especially thank you, Chairman Inouye, for taking this very significant step toward addressing our concerns for equity under the Hoopa Yurok Settlement Act to look at what has been achieved or not achieved during the last 14 years and for asking what now may need to be done.

We are deeply appreciative of your October 4, 2001 letter where you invited both tribes to step beyond the act to address current and future needs. We know this committee sought to achieve relative equity for both the Hoopa Valley Tribe and the Yurok Tribe in 1988.

During the course of our many meetings with members of Congress and their staff, we have been asked why Congress should look at this matter again. The answer to this question is clear, the act has not achieved the full congressional intent and purpose and Congress often has to revisit issues when its full intent is not achieved.

Additionally, we believe that the Departments of the Interior and Justice did not completely or accurately inform Congress of all the relevant factors. Congress did not have the full assistance from the departments that you should have had.

In reviewing the Department's testimony and official communications, we were appalled that the Yurok historic presence on the Square was minimized or ignored and that the relative revenue and resource predictions for the tribe were also wrong. Furthermore, we are also concerned about the significant disparity of actual land base that each tribe has received.

Can you imagine in this day and age an Assistant Secretary addressing a serious dispute between tribes by describing one tribe as a model tribe and dismissing the other, as some sort of remnant who would only need 3,000 acres because only 400 Indians remain on what would become their reservation.

Interior also told Congress that the income of the tribes was comparable. The Hoopa Tribe would earn somewhat over $1 million a year from timber resources and the Yuroks had just had $1 million plus fishery the year before. Here are the real facts.

Several thousand Yuroks lived on or near the reservation, on or near is the legal standard for a tribe's service district. There is a serious lack of infrastructure, roads, telephones, electricity, housing on the Yurok Reservation and we have 75 percent unemployment and a 90-percent poverty level. Further, there is a desperate need for additional lands, particularly lands that can provide economic development opportunities, adequate housing sites and meet the tribal subsistence and gathering needs.

The Department gave the impression that the *Short* plaintiffs who were mostly Yurok had left our traditional homelands, were spread out over 36 States, were perhaps non-Indian descendants and were just in the dispute for the dollars. This impression was highly insulting to the Yurok people and a disservice to Congress.

There are at least as many Yuroks on or near the reservation as are Hoopas. With respect to the relative income or resource equity projected for the new reservations, it is true there was a commercial fishery shortly before the act, true but also very misleading. Commercial fishing income, if any, went predominantly to the Hoopa and Yurok fishermen. The fact was that in most years, there was no commercial fishery and in many years, we did not meet our subsistence and ceremonial needs.

Since the act, Klamath River coho salmon have been listed as an endangered species and other species are threatened to be listed. In fact, the Klamath River is listed as one of the 10 most threatened rivers in the Nation and has lost 80 to 90 percent of its historic fish populations and habitat. Today, the fish runs we depend on are subject to insufficient water flows and in spite of our senior water right and federally recognized fishing right, we continue to have to fight for water to protect our fishery.

The average annual income of the Yurok Tribe from our salmon resource was and is nonexistent. To be fair, we should note that since the Settlement Act, the Yurok Tribe has had a small income from timber revenues, averaging about $600,000 annually. With respect to the land base, the Yurok Tribe's Reservation contains approximately 3,000 acres of tribal trust lands and approximately 3,000 acres of individual trust lands. The remainder of the 58,000 acre reservation is held in fee by commercial timber interests.

The Hoopa Tribe Reservation has approximately 90,000 acres with 98 percent in tribal trust status. Regarding the $1 million

plus in timber revenues projected for the Hoopa Tribe, testimony of the Hoopa tribal attorney in 1988 indicated the annual timber revenue from the Square was approximately $5 million. Since the act, the Hoopa timber revenues have been $64 million. The point is the projected revenue comparison that should have been before the committee in 1988 was zero fisheries income for the Yurok Tribe and more than $5 million in annual timber and other revenues from the Square for the Hoopa Valley Tribe, not the comparable $1 million or so for each tribe the committee report relied upon.

This disparity of lands, resources and revenues continues today and hinders our ability to provide services to our people. Unfortunately, the Yurok Tribe in 1988 unlike today was unable to address misleading provisions of key information. The Yurok Tribe, although federally recognized since the mid-19th century, was not formally organized and had no funds, lawyers, lobbyists or other technical support to gather data or analyze the bill, to present facts and confront misinformation.

It is important to acknowledge the positive provisions of the Act which provided limited funds to retain attorneys and others to assist us in the creation of the base roll, the development of our constitution and the establishment of our tribal offices. We also appreciated the Senate committee report recognized and acknowledged that the tribe could organize under our inherent sovereignty which we did.

Had we been an organized tribe, we would have testified before you in 1988 and we would have pointed out that while it is true the Square is part of the Hoopa peoples' homeland, it is also true that the Square is part of the ancestral homelands of the Yurok people.

Almost without fail throughout the testimony received in 1988, the Square is described as Hoopa and the addition is described as Yurok. The Yurok ancestral map provided to you shows that our territory was quite large and included all the current Yurok Reservation, 80 percent of Redwood National Park, as well as significant portions of the U.S. National Forest.

Yurok villages existed in the square and these sites have been verified by anthropologists. This fact should not be a matter of dispute. The Justice Department and the Hoopa Valley Tribe in *Yurok* v. *United States* agreed in a joint fact statement that the Yuroks were always inhabitants of the Square. We are not claiming that we had Indian title to the whole square but that we have always been a part of the Square. The *Short* cases reached that same determination.

We think these different perspectives are important as we consider today's issues. However, it is critical for everyone to understand that we are not asking Congress to take back anything from the Hoopa Valley Tribe that they received under the Settlement Act. What we do want is for the committee to look at the relative equities achieved under the act, understanding the Yuroks have always been inhabitants of the Square and have never abandoned our connection to our territories, our culture and traditions.

We have already noted the significant disparities between the tribes in income, resources, land base and infrastructure after the

act. The data provided by Interior Department today supports our position. To reiterate, the Hoopa Valley Tribe received a 90,000-acre timbered reservation of which 98 percent is held in tribal trust. The Yurok Tribe received a 58,000-acre reservation with 3,000 acres in tribal trust, containing little timber. The map we have provided to you shows this extreme disparity.

We have already noted that the projected income for the tribes were incorrect. Time has verified that the predictions of a bountiful or restored Yurok fishery has not happened. It is also a fishery that we share with the non-Indians as well as Hoopa. Hoopa timber resources however have produced substantial income exceeding the 1988 predictions as reflected in the Interior Department's records. In addition, as this committee is aware from your recent joint hearing on telecommunications, infrastructure on the Yurok Reservation is virtually nonexistent.

In our response to Senator Inouye's letter of October 4, 2001, we have submitted an outline of an economic development and land acquisition plan to you and the Department of the Interior. The plan is based on our settlement negotiations with the Department in 1996 and 1997. We would like to request from you today the creation of a committee or a working group composed of tribal administration and congressional representatives and hopefully, under your leadership, Senator.

We recommend that the committee's responsibility be to develop legislation that would provide a viable self sufficient reservation for the Yurok people as originally intended by the Settlement Act. As you can see, our issues are broad based and focus on equity for the Yurok Tribe. The Department's report has prompted this hearing to address access by the Yurok Tribe to the Yurok Trust Fund. The Interior Department has said that neither tribe has legal entitlement to the Yurok Trust Fund. Our view is simple.

The financial equities and the actual distributions of timber revenues from 1974 to 1988 clearly demonstrate that the Yurok Tribe should receive its share of the settlement fund as the act intended. Arguments based on where the revenue came from on the joint reservation are wrong. These revenues belonged as much to the Yuroks of the Square and the Yuroks of the extension as they did to the Hoopas of the Square. This is the key point of the cases both tribes lost in the Claims Court.

The point is that prior to 1988, the Hoopa Valley Reservation was a single reservation intended for both tribes and whose communal lands and income were vested in neither tribe. *Short* also means that the Department could not favor one tribe above the other in the distribution of assets. These are pre-1988 moneys. We should not have to reargue what Yuroks won in the *Short* cases.

After the final 1974 decision in *Short* I, the Department ceased to distribute timber revenues only to the members of the Hoopa Valley Tribe and began to reserve 70 percent of the timber revenues for the *Yurok* plaintiffs. The remaining 30 percent of the revenues were for Hoopa and were placed in a separate escrow account which the Department disbursed to the Hoopa Valley Tribe. When we discussed the 1974–88 timber revenues with the Hoopa Tribal Council, they asserted that all of the timber revenues should have been theirs. Legally as the committee knows, that is not what the

courts have said. No Indian tribe, before 1988, had a vested right to the Square or its assets. In 1974, the Federal courts had finally determined that the Secretary had since 1955 wrongfully made per capital distributions to only Hoopa tribal members and the plaintiffs, mostly Yurok, were entitled to damages against the United States. Damages were eventually provided to the plaintiffs for the years 1955–74 but not for 1974–88. The point is that neither tribe had title to timber or a constitutional right to the revenues from 1974–88. If the revenues were distributed to one group, the other group was entitled to its fair share. It did not matter what percentage of the timber proceeds came from the square or came from the addition because according to the Federal courts, neither revenues were vested in either tribe.

In 1974–88, revenues were distributed to the Hoopa Tribe, first under the 30 percent Hoopa share totaling $19 million and second under the Settlement Act. As you are aware, the Settlement Act placed the 70 percent escrow account which was $51 million, the small balance of the Hoopa 30 percent escrow account, some smaller joint Hoopa Yurok escrow accounts, Yurok escrow accounts, as well as the $10 million Federal appropriation all in the settlement fund.

In 1991, the Department split the settlement account between the two tribes based on our enrollments. The Hoopa Valley Tribe was allocated 39.5 percent of the settlement fund or $34 million. Because the Hoopa Valley Tribe had executed its waiver, the Department provided these funds to the tribe. The Yurok Tribe was allocated $37 million and it was put in a Yurok trust account and was not provided to us.

From 1974 to 1988, timber revenues and interest was approximately $64 million of which the Hoopa Tribe received a total of $53 million or 84.2 percent of this total. Also in 1991, the claims attorneys for the Short cases sued the United States to try to recover attorneys fees from the settlement account. Two other Yuroks and I intervened in this case as co-defendants to protect the Yurok share of the settlement funds. The United States approved this intervention and the Justice Department attorneys encouraged our participation and we won this case.

As you are aware, in 1993, the Yurok Tribe sued the United States for a takings claim under the Settlement Act. We lost this case in 2001 when the Supreme Court declined to review a 2 to 1 decision by the Federal Court of Appeals. We lost this case for the same reason that the Hoopa Tribe lost all of their pre-1988 cases. No part of the pre-1988 Hoopa Valley Reservation was vested to any Indian tribe and none of us had title against the United States. We could argue that the case was unfair and historically blind and that it is outrageous to use colonial notions of Indian title in these modern times but it doesn't matter. We lost, as the Hoopa Tribe lost before us, and in this legal system, the only appeal we have left is an appeal to equity and justice before Congress to fix these wrongs.

At the same time in 1993, we adopted the conditional waiver which provided that our waiver was effective if the Settlement Act was constitutional. The courts have determined that the act is constitutional. That determination should have been sufficient to meet

the condition of our waiver but the Department held that our waiver was not valid. Although we disagree, we have not challenged the Department's judgment in the court and will not take the committee's time to debate it today.

The Department determined that the Hoopa waiver was effective and they received their funds under the Act. Therefore, they have no legal right to additional funds. The Department has reported to Congress that you should resolve this issue. Among other things, the Department sees itself as the administrator of the funds for both tribes. In resolving these issues, the report indicates that Congress should consider funds already received and focus on the purpose of the act to provide for two self sufficient reservations. A better solution would be to permit the Yurok Tribe to manage our own funds. We, of course, would be willing to submit a plan for review and approval. In fact, our constitution mandates that a plan be developed and approved by our membership before any of these funds are spent.

As we have stated, a complete review of the record indicates that almost all of the trust lands, economic resource and revenues of the pre-1988 joint reservation have to date been provided almost exclusively to the Hoopa Valley Tribe. A final point to consider is that in 1996, we negotiated an agreement with the Hoopa Valley Tribe to support H.R. 2710 in return for their support of our settlement negotiation issues specifically the balance of the settlement funds. Apparently the Hoopa Valley Tribal Council now believes that its end of the deal ended with the collapse of our settlement negotiations. We lived up to our end of the bargain and the Hoopa Valley Tribe received an additional 2,600 acres of trust land. This almost equals the total tribal trust lands we received under the act. Copies of both of our 1996 commitment letters have been provided with our written testimony.

In closing, back home our people are preparing for our most sacred ceremonies, the White Deer Skin dance and the Jump dance. These ceremonies are prayers to the Creator to keep balance in our Yurok world. When our people are in balance, we are strong, our children's futures are bright, life is as it should be, good. When our people are not in balance, we are weakened, our people are disheartened and we worry about what will become of our children. Life is not good.

In a way, this hearing is a kind of ceremony. We come seeking balance for our people, we come seeking strength, we come seeking a stable future for our children, we come seeking a good life for our tribe. Sadly, our people are not now in balance. Though our dances help our spiritual well being, the resources given to us by the Creator so that we would never want for anything have been taken from us. Once we were a very wealthy people in all aspects in our Yurok world, in our spirituality, in our resources and in our social-economic affairs. The sad irony is that because of our great wealth, we were targeted heavily by the Government's anti-Indian policies for termination and assimilation. Many of our elders have passed on never having received the benefits they were entitled to under *Short* and under the Hoopa Yurok Settlement Act. We hope Congress will not let more pass on without benefiting from the settlement fund.

Be that as it may, we pray Congress will use its power to bring balance back to our people, that it will relieve our fears about our children's futures and make us strong once again, that it will make our lives good as they should be.

Once more, Senator, thank you for the honor of appearing before the committee today and would welcome any of your questions.

[Prepared statement of Ms. Masten appear in appendix.]

The CHAIRMAN. Thank you very much.

If the Congress is called upon to resolve this matter, I can assure you that the Congress can and will do so but I would hope that all of you assembled here would realize under what circumstances these decisions would be made. Here I sit alone before you. This is a committee of 15 members. The vice chairman unfortunately had to leave because of other commitments and other issues. As a general rule, we are the only two who sit through all of these hearings.

Second, I think you should take into consideration that the sanctuary that Indian country once held in the Supreme Court may not be available. Supreme Court decisions of recent times have indicated that they are not too favorably inclined as to the existence of Indian sovereignty. I need not remind you of *Nevada* v. *Hicks* and the *Atkins* on Trading Post cases. Keeping that in mind, I wasn't being facetious when I said if you left it up to us for Settlement Act No. 2, you may get it but it may be worse than Settlement Act No. 1.

Solutions for Indian problems coming from Indian country are always the best and I know you have attempted to sit together in the past but it has not succeeded but I would hope you can do so and come forth with a joint recommendation that both of you can approve and support because if we do it, somebody is going to get hurt. I have no idea who is going to get hurt but I can guarantee you somebody is going to get hurt.

If you have the patience and the wisdom to get together and sit down, have negotiations and discussions and if you want to have the help of this committee to some mediation, we are happy to do so but to try to do this legislatively at this stage, I don't think is a wise thing because the foundation is shaky to begin with and this is not the kind of solution that lawyers can make, only Indians can make it. I would hope that you can sit together, begin a process. We would be very happy to help you and hopefully come forth in the not too distant future, maybe 6 months from now, with some solution. I can assure you that I will act speedily and expeditiously.

The way it is now, I am the only one sitting here but this is the way the Congress of the United States acts unfortunately. If you want people who have no knowledge, no idea of your issues acting upon your case, you can have it but I think that's the wrong way.

I will not ask you any questions at this time. We will just confuse it and maybe anger people further and that's not my mission here, to anger Indians. I think the time has come for Indians to get together. You have big problems ahead of you. If you can't solve the immediate problems at home, then you will have real problems on the big ones.

With that, Chairperson Masten and Chairman Marshall, just for us, would you please stand up and shake hands?

Table I. Comparison of assets and resources received under the HYSA.

	Yurok Tribe	**Hoopa Tribe**
Land	3000 acres of Tribal trust	89,000 acres of Tribal trust
Funds	1974-1988: 0 1988-1991: $1.5 million	1974-1988: $ 19 million 1988-1991: $34 million
1998 – Present Resources Income	Fishery: 0 Timber: $9 million	Fishery: 0 Timber: $64 million
Other	Organizing Assistance	Recognition of governing Authority over territory
Provided to Yurok Tribe But not received	1) $37 million ($76 million with 11 years of interest) 2) Assorted Land parcels 3) $2.5 million land purchase appropriations	

Testimony of
Neal A. McCaleb
Assistant Secretary for Indian Affairs
before the Committee on Indian Affairs
United States Senate
on the
Hoopa-Yurok Settlement Act
August 1, 2002

Good morning. I am Neal McCaleb, and I serve as the Assistant Secretary of Indian Affairs for the Department of the Interior. I am pleased to be here before you today to report on the status of events subsequent to the passage of the Hoopa-Yurok Settlement Act (Settlement Act or Act) in 1988, Public Law 100-580, 25 U.S.C. section 1300i *et seq.*, as amended. Earlier this year, the Department submitted its Report to Congress (Report) pursuant to section 14 of the Act (25 U.S.C. § 1300i-11(c)).

Background

Establishment of Reservations

As recognized in the legislative history of the Act, the attachments to the Report, and numerous other documents, the federal government set aside lands bisected by the Trinity and lower Klamath Rivers in the mid- to late-1800s, in accordance with statutes and executive orders, to establish what are known today as the Hoopa Valley and Yurok Indian Reservations. Based on an 1853 Act of Congress, President Pierce set aside the Klamath River Reservation by executive order in 1855. The reservation extended approximately 20 miles up the Klamath River from the Pacific Ocean and including lands one mile in width on either side of the river. Based on an 1864 Act of Congress and an 1864 proclamation by the Department, President Grant issued an executive order in 1876 which formally set aside the original Hoopa Valley Reservation, a 12-mile square reservation (the "Square") bisected by the Trinity River and extending upstream from the Klamath-Trinity River confluence.

Because of some confusion about the effect of the two separate congressional acts and concern regarding the status of the original Klamath River Reservation, President Harrison issued another executive order in 1891 forming the extended or "joint" Hoopa Valley Reservation. The extended reservation, termed the "1891 Reservation" in the Report, encompassed the original Hoopa Valley Reservation, the Klamath River Reservation, and an additional strip of land down the Klamath River from the Klamath-Trinity confluence which connected the two reservations ("connecting strip"). Pursuant to section 2 of the Settlement Act, Congress partitioned the extended reservation between the two tribes.

Legal claims to the Reservation

Prior to the Settlement Act, legal controversies arose over the ownership and management of the Square and its resources. Although the 1891 executive order joined the separate reservations into one, the Secretary had generally treated the respective sections of the reservations separately for administrative purposes. A 1958 Solicitor's opinion also supported this view. 62 I.D. 59, 2 Op. Sol. Int. 1814 (1958). In the 1950s and 1960s, the Secretary thus only distributed timber revenues generated from the Square to the Hoopa Valley Tribe and its members.

In 1963, Yurok and other Indians (eventually almost 3800 individuals) challenged this distribution, and the United States Court of Claims subsequently held that all Indians residing within the 1891 Reservation were "Indians of the Reservation" and were entitled to share equally in the timber proceeds generated from the Square. *Short v. United States*, 486 F.2d 561 (Ct. Cl. 1973) (per curiam), *cert. denied*, 416 U.S. 961 (1974). Following this decision, the Department began allocating the timber proceeds generated from the Square between the Yurok Tribe (70%) and the Hoopa Valley Tribe (30%). The 70/30 allocation was based upon the number of individual Indians occupying the Joint Reservation that identified themselves as members of either the Yurok Tribe or Hoopa Valley Tribe, respectively. Another lawsuit (*Puzz*) challenged the authority of the Hoopa Valley Business Council to manage the resources of the Square, among other claims. These and related lawsuits had profound impacts relating to tribal governance and self-determination, extensive natural resources that comprise valuable tribal trust assets, and the lives of thousands of Indians who resided on the Reservation.

1988 Settlement Act

In order to resolve longstanding litigation between the United States, Hoopa Valley Tribe, and Yurok and other Indians regarding the ownership and management of the Square, Congress passed the Hoopa-Yurok Settlement Act in 1988. The Act did not disturb the resolution of prior issues through the *Short* litigation; rather, the Act sought to settle disputed issues by recognizing and providing for the organization of the Yurok Tribe, by partitioning the 1891 Joint Reservation between the Hoopa Valley and Yurok Tribes, and by establishing a Settlement Fund primarily to distribute monies generated from the Joint Reservation's resources between the Tribes. The testimony below discusses relevant sections of the Act with respect to current issues.

Partition

Section 2 of the Act provided for the partition of the Joint Reservation. Upon meeting certain conditions in the Act, the Act recognized and established the Square as the Hoopa Valley Reservation, to be held in trust by the United States for the benefit of the Hoopa Valley Tribe; and the Act recognized and established the original Klamath River Reservation and the

connecting strip (the "extension") as the Yurok Reservation, to be held in trust by the United States for the benefit of the Yurok Tribe.

In accordance with the conditions set in section 2(a), the Hoopa Valley Tribe passed Resolution No. 88-115 on November 28, 1988, waiving any claims against the United States arising from the Act and consenting to use of the funds identified in the Act as part of the Settlement Fund. The BIA published notice of the resolution in the Federal Register on December 7, 1988 (53 Fed. Reg. 49361). These actions had the effect of partitioning the joint reservation.

Settlement Fund

Section 4 of the Act established a Settlement Fund which placed the monies generated from the Joint Reservation into an escrow account for later equitable distribution between the Hoopa Valley and Yurok Tribes according to the provisions of the Act. The Act also authorized a $10 million federal contribution to the Settlement Fund, primarily to provide lump sum payments to any "Indian of the Reservation" who elected not to become a member of either Tribe.

As listed in section 1(b)(1) of the Act, the escrow funds placed in the Settlement Fund came from monies generated from the Joint Reservation and held in trust by the Secretary in seven separate accounts, including the Yurok 70% timber proceeds account and the Hoopa 30% timber proceeds account. The Secretary deposited the monies from these accounts into the Hoopa-Yurok Settlement Fund upon enactment of the Act. The Settlement Fund's original balance was nearly $67 million. At the beginning of Fiscal Year 2002, the Fund contained over $61 million in principal and interest, even with previous distributions as described below. Appendix I to the Report provides relevant figures from the Fund.

Distribution of Settlement Fund

The Act sought to distribute the monies generated from the Joint Reservation and placed into the Settlement Fund on a fair and equitable basis between the Hoopa Valley and Yurok Tribes. The Senate Committee Report briefly described what was then believed to be the rough distribution estimates for the Fund based on the settlement roll distribution ratios established in the Act: $23 million (roughly 1/3 of Fund) would go to the Hoopa Valley Tribe pursuant to section 4(c); a similar distribution to the Yurok Tribe under section 4(d), as described below, assuming roughly 50% of those on the settlement roll would accept Yurok tribal membership; and the remainder to the Yurok Tribe after individual payments discussed below. *See* S. Rep. No. 564, 100th Cong., 2d Sess. 20, 25 (1988).

Substantial distributions have already been made from the Settlement Fund in accordance with the Act. The Department disbursed to the Hoopa Valley Tribe just over $34 million between passage of the Act and April 1991, the total amount determined by the BIA to be the Tribe's share under section 4(c) of the Act. The Department also distributed $15,000 to each person on the settlement roll who elected not to become a member of either Tribe under section 6(d) of the Act. Approximately 708 persons chose the "lump sum payment" option for a total distribution

3 3

for this purpose of approximately $10.6 million, exceeding the $10 million federal contribution authorized under the Act for this payment.

Section 4(d) of the Act provided for the Yurok Tribe's share of the Settlement Fund, similar to the determination of the Hoopa Valley Tribe's share under section 4(c). Section 7(a) further provided that the Yurok Tribe would receive the remaining monies in the Settlement Fund after distributions were made to individuals in accordance with the settlement/membership options in section 6 and to successful appellants left off the original settlement roll under section 5(d). Section 1(c)(4), however, conditioned the Hoopa Valley Tribe's and Yurok Tribe's receipt of these monies, requiring the Tribes to adopt a resolution waiving any claim against the United States arising from the Act. The Hoopa Valley Tribe adopted such a resolution but the Yurok Tribe did not.

In November 1993, the Yurok Tribe passed Resolution 93-61 which purported to waive its claims against the United States in accordance with section 2(c)(4). The Tribe, however, also brought suit alleging that the Act effected a constitutionally prohibited taking of its property rights, as described below. In effect, the Tribe sought to protect its rights under section 2 of the Act to its share of the Settlement Fund and other benefits while still litigating its claims as contemplated in section 14 of the Act. By letter dated April 4, 1994, the Department informed the Tribe that the Department did not consider the Tribe's "conditional waiver" to satisfy the requirements of the Act because the "waiver" acted to preserve, rather than waive, its claims.

Takings Litigation

Instead of similarly waiving its claims as the Hoopa Valley Tribe did, the Yurok Tribe--as well as the Karuk Tribe and individual Indians--brought suit against the United States alleging that the Act constituted a taking of their vested property rights in the lands and resources of the Hoopa Valley Reservation contrary to the 5th Amendment to the U.S. Constitution. In general, the complaints argued that the 1864 Act authorizing Indian reservations in California or other Acts of Congress vested their ancestors with compensable rights in the Square. Alternatively, plaintiffs argued that their continuous occupation of the lands incorporated into the Reservation created compensable interests. Potential exposure to the U.S. Treasury was once estimated at close to $2 billion. This litigation began in the early 1990s and only recently ended.

The United States Court of Federal Claims and the Federal Circuit Court of Appeals disagreed with the positions of the Yurok Tribe and other plaintiffs. *Karuk Tribe et al. v. United States et al.*, 41 Fed. Cl. 468 (Fed. Cl. 1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000) (2-1 decision). The federal courts generally followed the reasoning provided in the Committee Reports to the bills ultimately enacted as the Settlement Act. *See* S. Rep. No. 564, *supra*, at 9-11; H.R. Rep. No. 938, 100th Cong., 2d Sess. 15-16 (1988). "Unless recognized as vested by some act of Congress, tribal rights of occupancy and enjoyment, whether established by executive order or statute, may be extinguished, abridged, or curtailed by the United States at any time without payment of just compensation." *Karuk Tribe et al. v. United States et al.*, 41 Fed. Cl. at 471 (citing, *inter alia*, *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 278-79 (1955) and *Hynes v. Grimes Packing*

Co., 337 U.S. 86, 103-04 (1949)); *see also* 209 F.3d at 1374-76, 1380. The courts concluded that no Act of Congress established vested property rights in the plaintiffs or their ancestors to the Square; rather the statutes and executive orders creating the Reservation allowed permissive, not permanent, occupation. Thus, courts held the Act did not violate the Takings Clause.

Plaintiffs petitioned the U.S. Supreme Court for a writ of *certiorari* to review the lower court decisions. On March 26, 2001, the Court denied *certiorari*, thereby concluding this litigation. 532 U.S. 941 (2001).

Departmental Report

Section 14(c) of the Act provides that the Department shall submit to Congress a Report describing the final decision in any legal claim challenging the Act as effecting a taking of property rights contrary to the 5th Amendment to the U.S. Constitution or as otherwise providing inadequate compensation. The Supreme Court's denial of *certiorari* triggered this provision.

The Department solicited the views of the Hoopa Valley and Yurok Tribes regarding future actions of the Department with respect to the Settlement Fund and the Report required under the Act. The Report briefly describes issues both leading up to and subsequent to the Act, attaches the written positions of the Tribes, and provides recommendations of the Department for further action with respect to the Settlement Fund.

Hoopa Position

In July 2001, the Hoopa Valley Tribe submitted its proposed draft report for consideration by the Department. After describing the history of the disputes, the Settlement Act, and subsequent actions, the Hoopa Valley Tribe provided various recommendations and observations.

The Hoopa's submission noted that a separate lawsuit determined that only 1.26303 percent of the Settlement Fund monies were derived from the Yurok Reservation, with the remainder of the monies derived from the Hoopa Reservation. "The Hoopa Valley Tribe has continued to assert its right to a portion of the benefits offered to and rejected by the Yurok Tribe." *Id.* at 16. Prior to its July submission, the Tribe previously requested that the Department recommend "that the remaining funds from the Hoopa Square be returned to the Hoopa Valley Tribe." *Id.*

The Hoopa's submission ultimately suggested the following recommendations:

> –that the "suspended benefits" under the Act–including the land transfer and land acquisition provisions for the Yurok Tribe and the remaining monies in the Settlement Fund–"be valued and divided equally between the two tribes";
>
> –that the economic self-sufficiency plan for the Yurok Tribe be carried forward, including "any feasibility study concerning the cost of a road from U.S. Highway 101 to California Highway 96 . . . and other objectives of the self-sufficiency plan";

5 5

–that additional federal lands adjacent to or near the Yurok and Hoopa Valley Reservations be conveyed to and managed by the respective Tribes.

Yurok Position

In August 2001, counsel for the Yurok Tribe submitted the Tribe's positions and proposed draft report. The Yurok Tribe's submission similarly outlined the history of the dispute, other considerations, and its recommendations for the Department to consider. In general, the Yurok Tribe takes the position, among others, that its "conditional waiver" was valid and became effective upon the Supreme Court's denial of *certiorari* in the takings litigation.

The Yurok's submission discusses the Tribe's concerns with the process leading up to and ultimately resulting in passage of the Settlement Act. In the Tribe's view, the Act "nullified in large part the *Short* ruling" which allowed all "Indians of the Reservation" to share equally in the revenues and resources of the Joint Reservation. The Tribe, not formally organized at the time, "was not asked and did not participate in the legislative process" and had the Act "imposed on the Yuroks who . . . were left with a small fraction of their former land and resources." In its view, the Act divested the Yurok Tribe of its "communal ownership" in the Joint Reservation's lands and resources and "relegated the much larger" Tribe to a few thousand acres in trust along the Klamath River with a decimated fishery while granting to the Hoopa Valley Tribe nearly 90,000 acres of unallotted trust land and resources, including valuable timber resources.

With respect to the waiver issue, the Yurok's submission considers the Department's view, discussed above, as erroneous. The Tribe references a March 1995 letter from the Department in which the Assistant Secretary-Indian Affairs indicated that the Tribe could cure the "perceived deficiencies" with its "conditional waiver" by "subsequent tribal action or the final resolution of the Tribe's lawsuit in the U.S. Court of Federal Claims." The Tribe takes the position that it made a reasonable settlement offer and would have dismissed its claim with prejudice, but that the Department never meaningfully responded. Now, the Tribe considers the Supreme Court's denial of *certiorari* as the "final resolution" suggested as curing the waiver.

As support for its position, the Tribe states: "The text of the Act and the intent of Congress make clear that filing a constitutional claim and receiving the benefits of the Act are not mutually exclusive." The Tribe suggests that principles of statutory construction, including the canon that ambiguities be resolved in favor of tribes and that provisions within a statute should be read so as not to conflict or be inconsistent, requires a broader reading of the waiver provision in section 2(c)(4) in light of the Act's provision allowing a taking claim to be brought under section 14. The Tribe considers the Department's reading of the statute to be unfair and unjust. For these and other reasons, the Tribe is of the view that it is now entitled to its benefits under the Act.

Departmental View

6 6

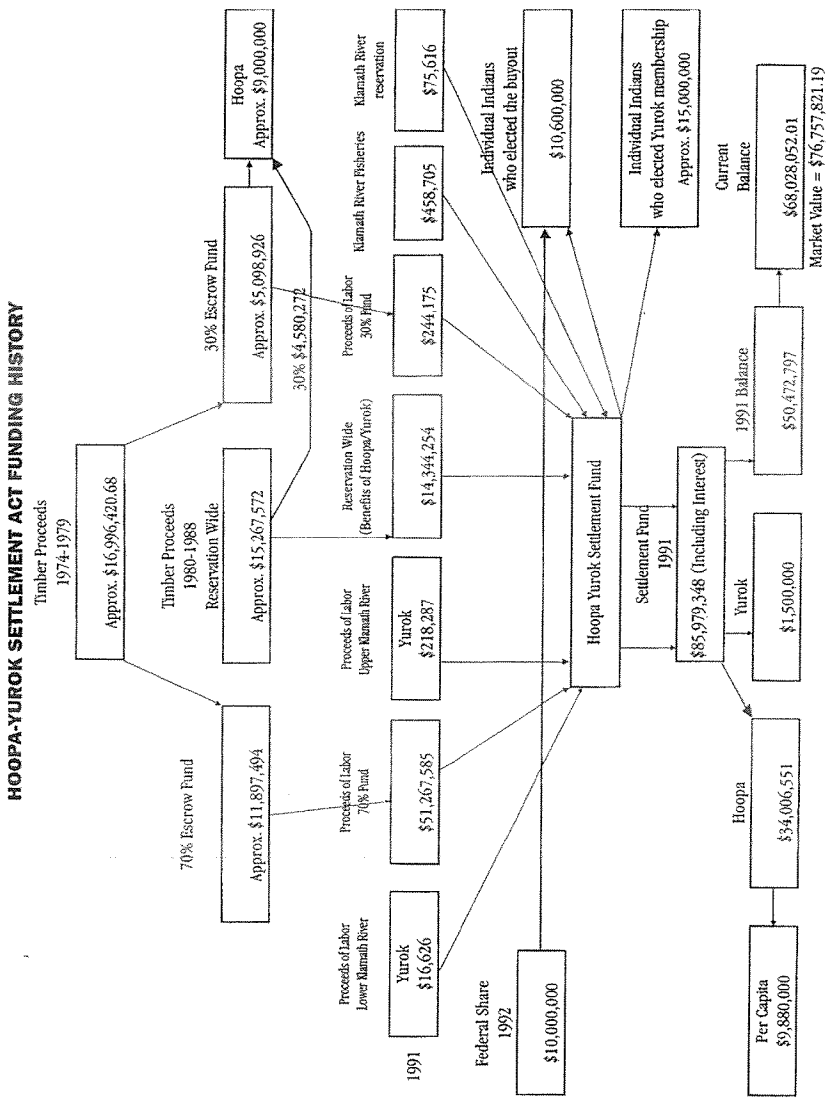
Because the Yurok Tribe litigated its claims against the United States based on passage of the Act rather than waiving those claims, the Department is of the view that the Yurok Tribe did not meet the condition precedent established in section 2(c)(4) of the Act for the Tribe to receive its share of the Settlement Fund or other benefits. But, the Department is also of the view that the Hoopa Valley Tribe has already received its portion of the benefits under the Act and is not entitled to further distributions from the Settlement Fund under the provisions of the Act. Ultimately, this situation presents a quandary for the Department and for the Tribes, as we believe the Act did not contemplate such a result. The monies remaining in the Settlement Fund originated from the seven trust accounts which held revenues generated from the Joint Reservation. Thus, the monies remaining in the Settlement Fund should thus be distributed to one or both Tribes in some form. Moreover, the Department recognizes that substantial financial and economic needs currently exist within both Tribes and their respective reservations.

Given the current situation, the Report outlines five recommendations of the Department to address these issues:

> First, no additional funds need to be added to the Settlement Fund to realize the purposes of the Act;
>
> Second, remaining monies in the Settlement Fund should be retained in trust account status by the Department pending further considerations and not revert to the general fund of the U.S. Treasury;
>
> Third, the Settlement Fund should be administered for the mutual benefit of both Tribes and their respective reservations, taking into consideration prior distributions to each Tribe from the Fund. It is our position that it would be inappropriate for the Department to make any general distribution from the Fund without further instruction from Congress;
>
> Fourth, Congress should fashion a mechanism for the future administration of the Settlement Fund, in coordination with the Department and in consultation with the Tribes; and,
>
> Fifth, Congress should consider the need for further legislation to establish a separate, permanent fund for each Tribe from the remaining balance of the Settlement Fund in order to address any issue regarding entitlement to the monies and to fulfill the intent of the Settlement Act in full.

This concludes my testimony. I would be happy to respond to any questions you may have.

7 7


HOOPA-YUROK SETTLEMENT ACT FUNDING HISTORY
Timber Proceeds
1974-1979
Approx. $16,996,420.68
70% Escrow Fund
Approx. $11,897,494
30% Escrow Fund
Approx. $5,098,926
Timber Proceeds
1980-1988
Reservation Wide
Approx. $15,267,572
Hoopa
Approx. $9,000,000
30% $4,580,272
Proceeds of Labor
70% Fund
$51,267,585
Proceeds of Labor
Lower Klamath River
Yurok
$16,626
1991
Proceeds of Labor
Upper Klamath River
Yurok
$218,287
Reservation Wide
(Benefits of Hoopa/Yurok)
$14,344,254
Proceeds of Labor
30% Fund
$244,175
Klamath River Fisheries
$458,705
Klamath River
reservation
$75,616
Individual Indians
who elected the buyout
$10,600,000
Federal Share
1992
$10,000,000
Hoopa Yurok Settlement Fund
Settlement Fund
1991
$85,979,348 (Including Interest)
Individual Indians
who elected Yurok membership
Approx. $15,000,000
Current
Balance
$68,028,052.01
Market Value = $76,757,821.19
1991 Balance
$50,472,797
Yurok
$1,500,000
Hoopa
$34,006,551
Per Capita
$9,880,000

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

KARUK TRIBE OF CALIFORNIA, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	No. 90-3993L Judge Lawrence S. Margolis
CAROL AMMON, et al., Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	No. 91-1432L Judge Lawrence S. Margolis
YUROK INDIAN TRIBE, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	No. 92-173L Judge Lawrence S. Margolis

UNITED STATES' AND HOOPA VALLEY TRIBE'S JOINT STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS OF UNCONTROVERTED FACT OFFERED IN OPPOSITION TO THE CROSS-MOTIONS OF THE YUROK TRIBE RELATING TO THE DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES, UNCONTROVERTED FACTS, AND PROPOSED SUPPLEMENTAL FINDINGS
1. The Yurok people were aboriginal residents of the Square. (Short I, 486 F.2d at 565).	UNCONTROVERTED.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
2. The Yuroks were beneficiaries of the 1864 Treaty (never ratified) that called for the creation of the Reservation (Short I, 486 F.2d at 565).	UNCONTROVERTED.
3. Congress established the Hoopa Reservation in part for the Yuroks (Short I, 486 F.2d at 565).	UNCONTROVERTED.
4. Congress in 1864 intended that the Reservation be the solution to the problem of Indian/white conflict in Northern California. (Short I, passim; Comments of Sen. Doolittle, March 21, 1864 Hearing, Cong. Globe at 1209; Beckham Decl. at 36-47 (April 30, 1993)).	UNCONTROVERTED.
5. The 1891 Executive Order adding the Addition created an enlarged, single Reservation (Short I, 486 F.2d at 567-68).	UNCONTROVERTED.
6. The expansion put the Yurok Indians of the Addition on equal footing with the Hoopa Indians of the Square, such that the Hoopas did not enjoy any exclusive rights to the Square (Short I at 486 F.2d at 567-68, and passim).	UNCONTROVERTED.
7. Individual Yurok Indians of the Reservation were entitled to a per capita share of the Joint Reservation resources. (Short I at 561, 568, passim).	CONTROVERTED. Defs.' Proposed Fdg 61 in Defs.' Comprehensive Table.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
8. Numerous Interior Department administrative opinions subsequent to the 1891 Extension confirmed that the Yuroks of the Reservation "were entitled to rights on the reservation." (Short I at 567-68).	UNCONTROVERTED. Defs.' Proposed Fdg 26 in Defs.' Comprehensive Table.
9. Both the Square and the Extension are "recognized" Reservations. Watts v. Arnett, 412 U.S. 481, 494, 505 (1973).	CONCLUSION OF LAW; CONTROVERTED. Defs.' Proposed Fdgs 18-22 in Defs.' Comprehensive Table.
10. Between enactment of the 1864 Act and the enactment of the Hoopa-Yurok Settlement Act ("HYSA") in 1988, no act of Congress or Executive Order purported to expel Yuroks or the Yurok Tribe from the Square.	UNCONTROVERTED.
11. Between enactment of the 1864 Act and the enactment of the HYSA in 1988, no act of Congress or Executive Order purported to divest Yuroks or the Yurok Tribe of their rights to the land or resources of the Square.	CONTROVERTED. Defs.' Proposed Fdgs 27-35 in Defs.' Comprehensive Table.
12. Between enactment of the 1864 Act and the enactment of the HYSA in 1988, no act of Congress or Executive Order purported to put Yuroks or the Yurok Tribe on notice that they had no right to consider the Reservation their permanent home.	IMMATERIAL; CONTROVERTED. Defs.' Proposed Fdgs 27 in Defs.' Comprehensive Table.
13. Since 1891 the Yurok people have considered the Joint Reservation to be their	IMMATERIAL; CONTROVERTED. Defs.' Proposed Fdg 157 in Defs.' Comprehensive Table.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
permanent home. See generally Matts v. Arnett, supra; Donnelly v. United States, 228 U.S. 243 (1913); Mattz v. Superior Court, 46 Cal.3d 355 (1988); People v. McCovey, 36 Cal.3d 517, 205 Cal. Rptr. 643, 685 P.2d 687 (1984); United States v. Eberhardt, 789 F.2d 1354 (9th Cir. 1986); Pacific Coast Fed. v. Secretary of Commerce, 494 F. Supp. 626 (N.D.Cal. 1980); Blake v. Arnett, 663 F.2d 906 (9th Cir. 1981); Elser v. Gill Net Number One, 246 Cal.App.3d 30, 54 Cal.Rptr. 568 (1966); Arnett v. Five Gill Nets, 48 Cal.App.3d 454, 121 Cal. Rptr. 906 (1975); Donahue v. Justice Court, 15 Cal.App.3d 557, 93 Cal.Rptr. 310 (1971).	
14. Since 1891 the Yurok people have centered their cultural and social life in and around the Joint Reservation. See generally the cases cited in Paragraph 13 above.	IMMATERIAL; UNCONTROVERTED.
15. Since 1891 many of the Yurok people have earned their living in whole or in part from the resources of the Joint Reservation. See generally the cases cited in Paragraph 13 above.	IMMATERIAL; UNCONTROVERTED.
16. The Yuroks "rely in their daily lives" on the expectation that they have a permanent home on the Reservation. See generally the cases cited in Paragraph 13 above.	IMMATERIAL; UNCONTROVERTED.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
17. The Yurok Tribe is the duly organized representative of the Yurok people. 25 U.S.C. § 1300i(b)(16), 13001-8; Letter from Assistant Secretary Indian Affairs re recognition of ratification of Tribal Constitution (Exhibit A to Yurok Memorandum).	UNCONTROVERTED.

DATED this 12th day of September, 1994.

LOIS J. SCHIFFER
Acting Assistant Attorney General

John S. Gregory
U.S. Department of Justice
Environment & Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
(202) 272-6217

OF COUNSEL:

GEORGE SKIBINE, Esq.
U.S. Dept. of the Interior
18th & C Street, N.W.
Washington, D.C. 20240
(202) 208-4388

PIRTLE, MORISSET, SCHLOSSER & AYER

Thomas P. Schlosser
801 Second Avenue, Suite 1115
Seattle, Washington 98104
(206) 386-5200

Attorney of Record for Intervenor Hoopa Valley Tribe

OF COUNSEL:

K. ALLISON McGAW, Esq.

71:041394
CATFF20-9561\CONT-YRK.003
Printed: September 8, 1994

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by first class mail, postage prepaid, this 12th day of September, 1994 to:

Dennis J. Whittlesey, Esq.
WINSTEAD SECHREST & MINICK, P.C.
Suite 500
1133 21st Street, N.W.
Washington, D.C. 20036-3371
(202) 296-5195
Fax: (202) 872-6430

George Forman, Esq.
ALEXANDER & KARSHMER
2150 Shattuck Ave, Suite 725
Berkeley, CA 94704
(510) 841-5056
Fax: (510) 841-6167

Thomas P. Schlosser
PIRTLE, MORISSET, SCHLOSSER & AYER
1115 Norton Building
801 Second Avenue
Seattle, Washington 98104-1509
(206) 386-5200
Fax: (206) 386-7322

William C. Wunsch, Esq.
FALKNER, SHEEHAN & WUNSCH
351 California Street
San Francisco, CA 94104
(415) 362-6340
Fax: (415) 362-6341

John S. Gregory

Hoopa Valley Tribal Council
PO Box 1348
Hoopa, CA 95546

Yurok Tribal Council
PO Box 1027
Klamath, CA 95548

12/03/03

Proposed Amendments to the Hoopa-Yurok Settlement Act Developed jointly by the Hoopa Valley Tribe and the Yurok Tribe in Formal Mediation

Title I. YUROK

Section A. Lands.

1. Notwithstanding any provision of law, there is hereby authorized from the Bureau of Indian Affairs of the $2,500,000 previously appropriated under Pub. L. 100-580 such amounts as may be necessary for use in conducting purchase, appraisals, surveys, and other requirements needed to acquire privately owned lands, excluding lands within the boundaries of the Hoopa Valley Reservation.

2. Within one year of enactment, the Secretaries of the Department of Interior and Agriculture shall identify 238,433 acres of federal and private lands and the Yurok Tribe and the United States shall from these lands mutually determine an adequate land base for the Yurok Tribe and shall transfer such land base, including the acquisition of private lands from willing owners, by land trade or purchase, to the Yurok Tribe and to adjust the Yurok Reservation boundaries to reflect such transfer. Such Reservation shall be identified from 67,564 acres of private lands, 155,210 acres of USFS lands, 300 acres of BLM, 13,647 acres of other lands and 1,712 acres of RNPS lands. Within the identified lands 46,080 acres shall be set aside as cultural districts protected from all management activities not consistent with the religious and ceremonial interests of the Yurok Tribe. The purposes of this subsection are to establish a land base for the Yurok Tribe that is economically viable for commercial timber harvest of approximately 11,000,000 board feet annually on a sustained yield basis, and to meet the subsistence and other cultural needs of the Yurok Tribe. All land acquired by trade or by direct transfer shall be held in trust.

3. As part of subsection A (2) above, there is hereby transferred to the Yurok tribe in trust all federal lands within the Yurok Reservation established under the Act

that are now under the jurisdiction of the National Park Service, Forest Service and/or Bureau of Land Management. These lands are included in the acreage described in subsection 2, above.

4. The U.S. Court of Federal Claims is authorized to hear and determine all claims of the Yurok Indian Tribe and its members arising from the loss of lands from Indian ownership, sold, homesteaded or otherwise lost without the consent of the tribe, from the Klamath River Reservation or Connecting Strip. The statute of limitations is expressly waived.

Section B. Jurisdiction.

1. Notwithstanding Pub. L. 83-280, federal law enforcement and tribal court funds and programs shall be made available to the Yurok and Hoopa Valley Tribes on the same basis as they are available to tribes located in non-Pub. L. 83-280 States. There is hereby authorized to be appropriated not less than $1,000,000 annually for Yurok Tribal Court and law enforcement programs to be provided in the Department of Justice or Bureau of Indian Affairs budgets.

2. The authority of the Yurok Tribe over the territories as provided in the Constitution of the Yurok Tribe as of the date of enactment of this Act are ratified and confirmed on the same basis as such provisions of the Hoopa Valley Tribe's Constitution were ratified in Section 8 of Pub. L. 100-580, insofar as it relates to the jurisdiction of the Yurok Tribe over persons and lands within the boundaries of the Yurok Reservation.

3. The Secretaries of the Departments of Interior and Agriculture shall enter into stewardship agreements with the Yurok Tribe with respect to management of Klamath River Basin fisheries and water resources. Nothing herein shall be interpreted as providing the Yurok Tribe with any jurisdiction within the Hoopa Valley Reservation.

4. There is hereby granted co-management of all natural resources, sacred and cultural sites of the Yurok Tribe within its usual and accustomed places within Yurok aboriginal territories that are on lands remaining under the jurisdiction of the National Park Service, Forest Service and/or Bureau of Land management. Co-management shall be defined as joint decision making responsibility regarding subject resources requiring concurrence of the Tribe.

5. There is hereby granted access for subsistence hunting, fishing, and gathering rights for members of the Yurok Tribe over all lands within its aboriginal territory that remain under the jurisdiction of the Yurok Tribe, National Park Service, Forest Service and/or Bureau of Land Management. All subsistence related activities shall be conducted pursuant to proper management plans developed by the Yurok Tribe.

Section C. Base Funding.

There is hereby authorized to be appropriated from New Tribes Funding an adjustment in the base funding for the Yurok Tribe based upon the actual enrollment of the Yurok Tribe at the time of the enactment of this Amendment.

Section D. Yurok Infrastructure Development.

There is hereby authorized to be appropriated from existing appropriations as they may be made, from year to year:

1. $20,000,000 for the upgrade and construction of BIA and tribal roads on the Yurok Reservation;
2. $500,000 per year for the operation of a road maintenance program for the Yurok Tribe;
3. $3,500,000 is authorized to be appropriated as a one time cost for purchase of equipment and supplies for the Yurok Tribe road maintenance program;
4. $7,600,000 for the electrification of the Yurok Reservation;
5. $2,500,000 for telecommunication needs on the Yurok Reservation;
6. $18,000,000 for the improvement and development of water and wastewater treatment systems on the Yurok Reservation;
7. $6,000,000 for a residential care, drug and alcohol rehabilitation and recreational complex near Weitchpec;
8. $7,000,000 for the building of a Cultural Center for the Yurok Tribe;
9. $4,000,000 for a Tribal Court, Law Enforcement and detention facility in Klamath;
10. $10,000,000 for the construction of 50 homes for Yurok Tribe elders.
11. $3,200,000 for the development and initial start up cost for a Yurok School District;
12. $800,000 to supplement Yurok Tribe higher education need.

Congress recognizes the unsafe and inadequate condition of roads and major transportation routes on and to the Yurok Reservation. As such, the Congress identifies a priority that these transportation systems be upgraded and brought up to the same standards as transportation systems throughout the State of California.

Section E. Yurok Economic Development

There is hereby authorized to be appropriated from existing appropriations as they may be made, from year to year, from the Departments of HUD, Commerce, and Agriculture:

1. $20,000,000 for the construction and associated costs required to build an eco lodge;
2. $1,500,000 for the purchase of equipment to start a gravel operation;
3. $6,000,000 for the purchase and improvement of RV and fishing resorts

on the Yurok Reservation.

Section F. BLM Lands

Certain BLM lands within Yurok aboriginal territory are hereby transferred to the Yurok Tribe, to wit: T.9N., R.4E, HUM, Section 1, T.9N., R.4E, Section 7, T.9N., R.4E., Section 8, Lot 3, T.9N., R.4E., Section 9, Lots 19&20, T.9N.,R.4E., Section 17, Lots 3-6, T.9N., R4E., Section 18, Lots 7&10, T.9N., R.3E., Section 13, Lots 8&12, T.9N., R3E, Section 14, Lot 6.

Certain BLM lands along the western boundaries of the Hoopa Valley Reservation are hereby transferred to the Hoopa Valley Tribe, to wit: T.9N, R.3E., Section 23, Lots 7&8, T.9N., R.3E., Section 26, Lots 1-3, T.7N., R.3E., Section 7, Lots 1&6, Section 1.

Title III. Hoopa-Yurok Settlement Act Provisions

Section A. Within one year and ninety days following enactment of this Amendment, the Secretary of the Interior, in consultation with Secretary of Agriculture relative to the establishment of an adequate land base, shall prepare and submit to the Congress a report describing the establishment of an adequate land base for the Yurok Tribe and implementation of Title I of this amendment. The report shall also describe: the sources of funds remaining in the Settlement Fund, including the statutory authority for such deposits and the activities, including environmental consequences, if any, which gave rise to such deposits; disbursements from such deposits; the provision of resources, Reservation lands, trust lands, and income producing assets including, to the extent available (including data provided by the Tribes) the environmental condition of such lands and income producing assets, infrastructure and other valuable assests, including financial distributions to each Tribe pursuant to the Settlement Act This amendments, and otherwise; and to the extent available (including data provided by the Tribes) the unmet economic, infrastructure and land needs of each Tribe, at the time of the Report No expenditure from the Settlement Fund shall be made prior to submission of the report, and Congressional action upon such report, except as may be agreed upon by the Hoopa Valley and Yurok Tribes pursuant to their constitutional requirements.

Section B. Subsections of the HYSA that conditioned certain provision on a Yurok Council waiver resolution, found in P.L. 100-580, Section 2(c)(4)(B),(C) and (D) (relating to land transfers, land acquisition and organizational authorities), are hereby repealed.

Section C. The provisions of the Klamath River Basin Fisheries Restoration Act of 1986, Pub. L. 99-552 creating the Klamath Fisheries Management Council are hereby amended to provide a voting member to be appointed by the Yurok Tribe to replace the non Hoopa Indian voting member.

Section D. Section 10 of the HYSA is amended by deleting subsection 10 (a) and inserting in lieu thereof: Section 10 (a) Plan for Economic Self-Sufficiency -There is authorized to be appropriated no less than 3 million dollars for the Yurok Self Sufficiency Plan.

1. The Secretary shall enter into negotiations with the Yurok Tribe in order to establish a plan for the economic self-sufficiency of the Tribe, which shall be completed within eighteen months of the enactment of this amendment;

2. Upon the approval of such Plan by the Yurok Tribe, the Secretary shall submit such Plan to the Congress.

Respectfully submitted,

Clifford Lyle Marshall, Chairman
Hoopa Valley Tribal Council

Howard D. McConnell, Chairman
Yurok Tribal Council

T:\WPDOCS\0020\09561\HYSA12.3.Final.18.doc
nmc:12/5/03

108TH CONGRESS
2D SESSION

S. 2878

To amend the Hoopa-Yurok Settlement Act to provide for the acquisition of land for the Yurok Reservation and an increase in economic development beneficial to the Hoopa Valley Tribe and the Yurok Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2004

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Hoopa-Yurok Settlement Act to provide for the acquisition of land for the Yurok Reservation and an increase in economic development beneficial to the Hoopa Valley Tribe and the Yurok Tribe, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hoopa-Yurok Settlement Amendment Act of 2004".

SEC. 2. ACQUISITION OF LAND FOR THE YUROK RESERVATION.

Section 2(c) of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–1(c)) is amended by adding at the end the following:

"(5) LAND ACQUISITION.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary and the Secretary of Agriculture shall—

"(i) in consultation with the Yurok Tribe, identify Federal and private land available from willing sellers within and adjacent to or in close proximity to the Yurok Reservation in the aboriginal territory of the Yurok Tribe (excluding any land within the Hoopa Valley Reservation) as land that may be considered for inclusion in the Yurok Reservation;

"(ii) negotiate with the Yurok Tribe to determine, from the land identified under clause (i), a land base for an expanded Yurok Reservation that will be adequate for economic self-sufficiency and the maintenance of religious and cultural practices;

"(iii) jointly with the Yurok Tribe, provide for consultation with local governments, and other parties whose interests are directly affected, concerning the potential sale or other transfer of land to the Yurok Tribe under this Act;

"(iv) submit to Congress a report identifying any parcels of land within their respective jurisdictions that are determined to be within the land base negotiated under clause (ii); and

"(v) not less than 60 days after the date of submission of the report under clause (iv), convey to the Secretary in trust for the Yurok Tribe the parcels of land within their respective jurisdictions that are within that land base.

"(B) ACCEPTANCE IN TRUST.—The Secretary shall—

"(i) accept in trust for the Yurok Tribe the conveyance of such private land as the Yurok Tribe, or the United States on behalf of the Yurok Tribe, may acquire from willing sellers, by exchange or purchase; and

"(ii) provide for the expansion of the Yurok Reservation boundaries to reflect the conveyances.

"(C) FUNDING.—Notwithstanding any other provision of law, from funds made available to carry out this Act, the Secretary may use $2,500,000 to pay the costs of appraisals, surveys, title reports, and other requirements relating to the acquisition by the Yurok Tribe of private land under this Act (excluding land within the boundaries of the Hoopa Valley Reservation).

"(D) REPORT.—

"(i) IN GENERAL.—Not later than 90 days after the date of submission of the report under subparagraph (A)(iv), the Secretary, in consultation with the Secretary of Agriculture relative to the establishment of an adequate land base for the Yurok Tribe, shall submit to Congress a report that describes—

"(I) the establishment of an adequate land base for the Yurok Tribe and implementation of subparagraph (A);

"(II) the sources of funds remaining in the Settlement Fund, including the statutory authority for such deposits and the activities, including environmental consequences, if any, that gave rise to those deposits;

"(III) disbursements made from the Settlement Fund;

"(IV) the provision of resources, reservation land, trust land, and income-producing assets including, to the extent data are available (including data available from the Hoopa Valley Tribe and the Yurok Tribe), the environmental condition of the land and income-producing assets, infrastructure, and other valuable assets; and

"(V) to the extent data are available (including data available from the Hoopa Valley Tribe and the Yurok Tribe), the unmet economic, infrastructure, and land needs of each of

the Hoopa Valley Tribe and the Yurok Tribe.

"(ii) LIMITATION.—No expenditures for any purpose shall be made from the Settlement Fund before the date on which, after receiving the report under clause (i), Congress enacts a law authorizing such expenditures, except as the Hoopa Valley Tribe and Yurok Tribes may agree pursuant to their respective constitutional requirements.

"(6) CLAIMS.—

"(A) IN GENERAL.—The Court of Federal Claims shall hear and determine all claims of the Yurok Tribe or a member of the Yurok Tribe against the United States asserting that the alienation, transfer, lease, use, or management of land or natural resources located within the Yurok Reservation violates the Constitution, laws, treaties, Executive orders, regulations, or express or implied contracts of the United States.

"(B) CONDITIONS.—A claim under subparagraph (A) shall be heard and determined—

"(i) notwithstanding any statute of limitations (subject to subparagraph (C)) or any claim of laches; and

"(ii) without application of any setoff or other claim reduction based on a judgment or settlement under the Act of May 18, 1928 (25 U.S.C. 651 et seq.) or other laws of the United States.

"(C) LIMITATION.—A claim under subparagraph (A) shall be brought not later than 10 years after the date of enactment of this paragraph.".

SEC. 3. JURISDICTION.

(a) LAW ENFORCEMENT AND TRIBAL COURT FUNDS AND PROGRAMS.—Section 2(f) of the Hoopla-Yurok Settlement Act (25 U.S.C. 1300i–1(f)) is amended—

(1) by striking "The Hoopa" and inserting the following:

"(1) IN GENERAL.—The Hoopa";

(2) by striking the semicolon after "Code" the first place it appears and inserting a comma; and

(3) by adding at the end the following:

"(2) LAW ENFORCEMENT AND TRIBAL COURT FUNDS AND PROGRAMS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), Federal law enforcement and tribal court funds and programs shall be made available to the Hoopa Valley Tribe and Yurok Tribe on the same basis as the funds and programs are available to Indian tribes that are not subject to the provisions of law referred to in paragraph (1).

"(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for Yurok law enforcement and tribal court programs $1,000,000 for each fiscal year.".

(b) RECOGNITION OF THE YUROK TRIBE.—Section 9 of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–8) is amended by adding at the end the following:

"(f) RECOGNITION OF THE YUROK TRIBE.—The authority of the Yurok Tribe over its territories as provided in the constitution of the Yurok Tribe as of the date of enactment of this subsection are ratified and confirmed insofar as that authority relates to the jurisdiction of the Yurok Tribe over persons and land within the boundaries of the Yurok Reservation.".

(c) YUROK RESERVATION RESOURCES.—Section 12 of the Hoopa Yurok Settlement Act (102 Stat. 2935) is amended by adding at the end the following:

"(c) KLAMATH RIVER BASIN FISHERIES.—

"(1) IN GENERAL.—The Secretary and the Secretary of Agriculture shall enter into stewardship agreements with the Yurok Tribe with respect to management of Klamath River Basin fisheries and water resources.

"(2) EFFECT OF PARAGRAPH.—Nothing in paragraph (1) provides the Yurok Tribe with any jurisdiction within the Hoopa Valley Reservation.

"(d) MANAGEMENT AUTHORITY.—

"(1) DEFINITION OF COMANANGEMENT AUTHORITY.—In this subsection, the term 'management authority' means the right to make decisions jointly with the Secretary or the Secretary of Agriculture, as the case may be, with respect to the natural resources and sacred and cultural sites described in paragraph (2).

"(2) GRANT OF MANAGEMENT AUTHORITY.—There is granted to the Yurok Tribe management authority over all natural resources, and over all sacred and cultural sites of the Yurok Tribe within their usual and accustomed places, that are on land remaining under the jurisdiction of the National Park Service, Forest Service, or Bureau of Land

Management within the aboriginal territory of the Yurok Tribe.

"(e) SUBSISTENCE.—

"(1) IN GENERAL.—There is granted access for subsistence hunting, fishing, and gathering rights for members of the Yurok Tribe over all land and water within the aboriginal territory of the Yurok Tribe that remain under the jurisdiction of the Yurok Tribe or the United States, excluding any land within the Hoopa Valley Reservation.

"(2) CONDITION.—All subsistence-related activities under paragraph (1) shall be conducted in accordance with management plans developed by the Yurok Tribe.".

SEC. 4. BASE FUNDING.

From amounts made available to the Secretary for new tribes funding, the Secretary shall make an adjustment in the base funding for the Yurok Tribe based on the enrollment of the Yurok Tribe as of the date of enactment of this Act.

SEC. 5. YUROK INFRASTRUCTURE DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated—

(1) $20,000,000 for the upgrade and construction of Bureau of Indian Affairs and tribal roads on the Yurok Reservation;

(2) for each fiscal year, $500,000 for the operation of a road maintenance program for the Yurok Tribe;

(3) $3,500,000 for purchase of equipment and supplies for the Yurok Tribe road maintenance program;

(4) $7,600,000 for the electrification of the Yurok Reservation;

(5) $2,500,000 for telecommunication needs on the Yurok Reservation;

(6) $18,000,000 for the improvement and development of water and wastewater treatment systems on the Yurok Reservation;

(7) $6,000,000 for the development and construction of a residential care, drug and alcohol rehabilitation, and recreational complex near Weitchpec;

(8) $7,000,000 for the construction of a cultural center for the Yurok Tribe;

(9) $4,000,000 for the construction of a tribal court, law enforcement, and detention facility in Klamath;

(10) $10,000,000 for the acquisition or construction of at least 50 homes for Yurok Tribe elders;

(11) $3,200,000 for the development and initial startup cost for a Yurok School District; and

(12) $800,000 to supplement Yurok Tribe higher education need.

(b) PRIORITY.—Congress—

(1) recognizes the unsafe and inadequate condition of roads and major transportation routes on and to the Yurok Reservation; and

(2) identifies as a priority that those roads and major transportation routes be upgraded and brought up to the same standards as transportation systems throughout the State of California.

SEC. 6. YUROK ECONOMIC DEVELOPMENT.

There are authorized to be appropriated—

(1) $20,000,000 for the construction of an ecolodge and associated costs;

(2) $1,500,000 for the purchase of equipment to establish a gravel operation; and

(3) $6,000,000 for the purchase and improvement of recreational and fishing resorts on the Yurok Reservation.

SEC. 7. BLM LAND.

(a) CONVEYANCE TO THE YUROK TRIBE.—The following parcels of Bureau of Land Management land within the aboriginal territory of the Yurok Tribe are conveyed in trust status to the Yurok Tribe:

(1) T. 9N., R. 4E, HUM, sec. 1.

(2) T. 9N., R. 4E, sec. 7.

(3) T. 9N., R. 4E., sec. 8, lot 3.

(4) T. 9N., R. 4E., sec. 9, lots 19 and 20.

(5) T. 9N., R. 4E., sec. 17, lots 3 through 6.

(6) T. 9N., R. 4E., sec. 18, lots 7 and 10.

(7) T. 9N., R. 3E., sec. 13, lots 8 and 12.

(8) T. 9N., R. 3E, sec. 14, lot 6.

(b) CONVEYANCE TO THE HOOPA VALLEY TRIBE.—The following parcels of Bureau of Land Management land along the western boundaries of the Hoopa Valley Reservation are conveyed in trust status to the Hoopa Valley Tribe:

(1) T. 9N, R. 3E., sec. 23, lots 7 and 8.

(2) T. 9N., R. 3E., sec. 26, lots 1 through 3.

(3) T. 7N., R. 3E., sec. 7, lots 1 and 6.

(4) T. 7N., R. 3E., sec. 1.

SEC. 8. REPEAL OF OBSOLETE PROVISIONS.

Section 2(c)(4) of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–1(c)(4)) is amended by striking "The—" and all that follows through "shall not be" and inserting

"The apportionment of funds to the Yurok Tribe under sections 4 and 7 shall not be".

SEC. 9. VOTING MEMBER.

Section 3(c) of the Klamath River Basin Fisheries Restoration Act (16 U.S.C. 460ss–2(c)) is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6); and

(2) by striking paragraph (3) and inserting the following:

"(3) A representative of the Yurok Tribe who shall be appointed by the Yurok Tribal Council.

"(4) A representative of the Department of the Interior who shall be appointed by the Secretary.".

SEC. 10. ECONOMIC SELF-SUFFICIENCY.

Section 10 of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–9) is amended by striking subsection (a) and inserting the following:

"(a) PLAN FOR ECONOMIC SELF-SUFFICIENCY.—

"(1) NEGOTIATIONS.—Not later than 30 days after the date of enactment of the Hoopa-Yurok Settlement Amendment Act of 2004, the Secretary shall enter into negotiations with the Yurok Tribe to establish a plan for the economic self-sufficiency of the Yurok Tribe, which shall be completed not later than

18 months after the date of enactment of the Hoopa-Yurok Settlement Amendment Act of 2004.

"(2) SUBMISSION TO CONGRESS.—On the approval of the plan by the Yurok Tribe, the Secretary shall submit the plan to Congress.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $3,000,000 to establish the Yurok Tribe Self-Sufficiency Plan.".

SEC. 11. EFFECT OF ACT.

Nothing in this Act or any amendment made by this Act limits the existing rights of the Hoopa Valley Tribe or the Yurok Tribe Tribe.

○

HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

MEMORANDUM

October 21, 2005

TO: Hon. Sue Ellen Wooldridge

FROM: Hogan & Hartson, L.L.P.

RE: Critical Issues Facing the Yurok Tribe

On behalf of the Yurok Tribe and us at Hogan & Hartson, thank you very much for your continued willingness to understand the Tribe's concerns and for all your efforts in addressing those concerns. We appreciate also the work of Scott Bergstrom on matters of importance to the Tribe.

In anticipation of a possible meeting on or discussion of these issues with you soon, we wanted to be sure that we have accurately expressed to you the Tribe's clear priorities. The most urgent matter for the Yurok Tribe is to obtain a speedy release of the $3 million for land acquisition and associated expenses as mandated by the Hoopa-Yurok Settlement Act of 1988 ("the Act"). *See* 25 U.S.C. § 1300i-1(c)(3)(B). As you are aware, the land acquisition monies have already been appropriated[1] and the Tribe's claim to those monies is undisputed. The distribution of the monies intended for the Tribe under the Act and currently being held in the Settlement Fund also is important to the Tribe. However, due to the immediate need that the Tribe has for the land acquisition monies and the fact that those monies will serve as a first step to helping the Tribe address its urgent priorities, including a pending transaction to acquire substantial additional forested acreage, the Tribe considers its request for prompt release of this $3 million to be its most urgent current claim.

---

1 We understand from Bureau of Indian Affairs staff that two separate appropriations have been made: one for $2.5 million and another for $500,000.

The Tribe's strong preference is to find an acceptable arrangement by which the $3 million for land acquisition could be provided to the Tribe administratively, without need of further intervention by the Congress. By this we mean that the Tribe is eager to learn what waivers or other conditions the Department of the Interior ("the Department") would require the Tribe to meet in order to receive the $3 million for land acquisition and the basis for any such conditions. The Tribe strongly urges the Department to look to such an administrative resolution. As explained below, the Tribe believes that: (1) it is clear that the Department has legal authority for administrative resolution of such matters; 2) such administrative resolution would effectuate the clearly-expressed intention of Congress; and (3) no further expression of Congressional intent is required.

The Department Has Authority Under the Law to Make Such Distribution Once the Yurok Tribe Meets Interior's Conditions

While the Act may provide for certain minimal conditions that must be met by the Tribe, such as execution of a complete waiver of claims arising under the Act and certain organizational requirements, the Act clearly provides the Department with the discretion and authority to disburse funds to the Tribe once those conditions are met. Indeed, as we understand it, the Department maintains the Yurok's portion of the funds and manages them on behalf of the Yurok with the expectation that they will ultimately be disbursed for the Tribe's benefit.

The Department is still entitled to rely upon the provisions of the Act, notwithstanding what has transpired since its enactment, including the initiation and resolution of litigation. The settlement of litigation pertaining to takings claims against the United States was not the primary purpose of the Act. Rather, the primary purposes of the Act were to establish an adequate land base for the Yurok, settle ongoing disputes between the Hoopa and Yurok pertaining to land distribution and equitably distribute the Settlement Funds to the Tribes and their members. Indeed, the Act itself anticipates the possibility of a takings claim arising from the Act and specifically provides for it. *See* 25 U.S.C. § 1300i-11. The final judgment against the Yurok's claim completes a cycle of events specifically contemplated by the Act and allows the Yurok and the Department now to proceed with accomplishing the underlying purposes of the Act, including the disbursement of the Yurok's portion of the funds to the Tribe.

The Act neither states nor implies that additional Congressional direction is necessary for disbursement of funds under the Act. Specifically, Section

14(c) of the Act, requiring a report to Congress following the final judgment of a takings claim against the United States, does not diminish the Department's discretion nor require the Department to seek Congressional approval before acting within its authority to disburse the funds. As evidenced by the legislative history and plain language of the Act, the intent of Section 14(c) was to provide Congress with recommendations if additional funds or management authorities were needed and, most importantly, to afford time for Congress to correct the language of the Act to avoid having to pay a final judgment in the event the claims were successful. *See* 25 U.S.C. § 1300i-11(c)(2); S. Rep. 100-564, at 30, 40 (1988).

Finally, the Act does not specify a time-certain in which the waiver conditions must be met. Nor does the Act indicate that pursuit of a takings claim against the government would nullify the Tribe's ability to obtain, or the Department's obligation to provide, the funds authorized by Congress. Instead, as noted above, the Act specifically contemplates the filing of a takings claim. As evidenced by other settlement acts with other tribes employing much stronger language in their waiver provisions, Congress certainly knew how to limit the Tribe's ability to obtain access to its portion of the funds, if that is what Congress so intended. It is not. According to the plain language of the Act, Congress intended for the Department to handle the details of disbursement of the Yurok's portion of the funds under the Act once the Tribe met certain conditions.

Distributing the Funds Is Consistent with Congressional Intent

The intent of Congress in enacting the Hoopa-Yurok Settlement Act was to deal fairly with the interests of both of the Tribes. As time has passed, however, the inequities of the Yurok's treatment under the Act have become apparent. Nevertheless, Congressional intent that the Yurok be entitled to certain funds under the Act is plain. The Department's disbursement of those funds, in particular the land acquisition funds and the remainder of the Settlement Fund, would be consistent with that intent.

The $3 million of land acquisition funds has already been authorized and appropriated in two installments to the Department for disbursement solely to the Yurok. No other party has any rightful claim to those funds.

With regard to the remainder of the Settlement Fund, the Tribe recognizes its own role in contributing to the delay of the Fund's disbursement. However, to deny the Yurok Tribe access to the Settlement Fund now would be in direct opposition to clear Congressional intent. Even though portions of the

Settlement Fund were derived from Yurok tribal members' settlement of previous litigation and the Yurok's portion of the joint reservation (i.e., the Yurok Escrow funds), the Tribe has yet to receive its distribution as provided for by Congress. *See* 25 U.S.C. § 1300i-3(d). Conversely, the Hoopa have already received their portion of the funds under the Act. In its Section 14(c) Report, the Department acknowledged the Hoopa's receipt of their benefits under the Act[2] and stated that "it is the position of the Department that Hoopa Valley Tribe is not entitled [to] any further portion of funds or benefits under the existing Act." DOI Report to Congress at 2 (2002).

Finally, no one but the Yurok Tribe is prejudiced by the passage of time that has occurred between enactment of the Act, the disbursement of the Hoopa's portion of funds, and, what can hopefully be, a final disbursement of the Yurok's funds. The Yurok's delay in executing what the Department considers a complete waiver does not somehow negate Congress' intent that the Yurok receive their portion of the funds specifically provided for the Tribe under the Act. As stated in the original legislative history of the Act, Congress did not intend that the waiver conditions would prevent the tribes from enforcing rights or obligations created by the Act. *See* S. Rep. 100-564 at 17 (1988). Once the waiver conditions of the Act are met, the Department is free to distribute the funds to which the Yurok are entitled as intended by Congress and clearly expressed in the original Act. The Hoopas' claim to Settlement Funds having been met, and their waiver to further claims against the United States having been executed, a distribution of the Yuroks' share remains the principal unfinished business of the Department under the Act.

No Further Action by Congress Is Required

The Act was a landmark piece of legislation that took an important first step in addressing Congress' concerns regarding the Yurok and Hoopa tribes. Owing to the inequities noted above, the Congress has since recognized that it must do more (i.e., S.2878, proposed amendments to the Act, introduced in the 108th Congress). Similar legislation is being considered by Members of the 109th Congress. However, before the Congress can take further action it is necessary for the U.S. government and the parties involved to allow the already-expressed intention of Congress to be fully realized. It is not necessary for the Department to seek to obtain additional Congressional guidance before distributing the funds clearly intended by Congress to be received by the Yurok Tribe. Additional issues yet to be addressed include

---

2 The Department also noted that the Hoopa had executed a tribal resolution "waiving any claim such tribe may have against the United States arising out of the provisions of the Act." 53 Fed. Reg. 49,361 (1988) (emphasis added).

expansion of the Reservation boundaries, acquisition of land, public and private, within the expanded boundaries, and authorization of infrastructure improvements on the Reservation.

Furthermore, although Congressional guidance *may* have been necessary during the period when the Yurok Tribe's waiver was not considered complete, such guidance would not be necessary today if the Yurok were to execute a complete waiver that met the Department's conditions. Similarly, if the Yurok had succeeded in their claim against the government a case might be made for the necessity of further Congressional guidance. However, the Yurok's claim was not successful and the Tribe is now willing seriously to consider promptly meeting the Department's conditions. The Tribe is eager to move forward in cooperation with the Department to help achieve both the Department's and the Tribe's goals. Such cooperation is a very high priority for the Yurok's new leadership. To that end, the Tribe looks forward to a constructive discussion, and hopefully quick resolution, of these matters with the Department.

We look forward to discussing these matters with you as your schedule permits.

Hogan & Hartson, L.L.P.

cc: Scott Bergstrom

LAW OFFICES
MORISSET, SCHLOSSER, JOZWIAK & McGAW
A PROFESSIONAL SERVICE CORPORATION

SHARON I. HAENSLY (WA)
FRANK R. JOZWIAK (WA)
KYME A.M. McGAW (WA, OK)
MASON D. MORISSET (WA)
THOMAS P. SCHLOSSER (WA)
ROB ROY SMITH (WA, OR, ID)
THANE D. SOMERVILLE (WA)

COMPTROLLER
M. ANN BERNHEISEL

1115 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WA 98104-1509

TELEPHONE: (206) 386-5200
FACSIMILE: (206) 386-7322

WWW.MSAJ.COM

MEMORANDUM

TO: David Bernhardt, Solicitor

FROM: Thomas P. Schlosser

DATE: March 23, 2006

RE: Can the Yurok Interim Council's Failure to Satisfy 25 U.S.C. § 1300i-1(c)(4) be Cured?

This memorandum examines whether the Yurok Tribe or its current governing body can now satisfy the requirements of section 2(c)(4) of the Hoopa-Yurok Settlement Act by curing the failure of the Interim Council of the Yurok Tribe to adopt a resolution "waiving any claims such tribe may have against the United States arising out of the provisions of this Act." Briefly, the answer is "no."

This memorandum reviews the Act, Interior Department rulings concerning the Interim Council of the Yurok Tribe, the litigation initiated by the Interim Council and pursued by the Yurok Tribe's governing body, and the effect of *res judicata* and the concept of bar.

1. The Hoopa-Yurok Settlement Act Waiver Requirement

The Hoopa-Yurok Settlement Act, Pub. L. 100-580, *codified as amended at* 25 U.S.C. § 1300-i *et seq.*, offered monetary awards in exchange for claim waivers by individuals qualified for a Settlement Roll, the Hoopa Valley Tribe, and the Interim Council of the Yurok Tribe. The tribal claim waiver provisions appear in sections 2 and 9 of the Act. The waiver provisions arose from concerns by the United States Department of Justice that a taking of property protected by the Fifth Amendment could be found by a court reviewing the Act. The statement of Rodney R. Parker, for the Justice Department, expressed the understanding that waiver language in the Senate bill as introduced already evidenced tribal consent but he requested "a provision requiring express tribal consent [which] could provide a clearer acknowledgment by the tribal government that no taking has occurred." S. Rep. 100-564 at 40 (1988). Accordingly,

the final version of the bill expanded the claim waiver requirements of sections 2(a), 2(c)(4) and 9(d)(2) of the Act. The Senate Report explains that the authority for certain transfers of funds and lands:

> [S]hall not be effective unless the Interim Council of the Yurok Tribe adopts a resolution waiving any claims it might have against the United States under this Act and granting consent as provided in section 9(d)(2). Section 9 of the bill provides for an Interim Council to be elected by the General Council of the tribe.

S. Rep. 100-564 at 18 (1988).

2. Application of the Waiver Requirement

On December 7, 1988, the Interior Department published a notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of section 2(a)(2)(A) of the Act. 53 Fed. Reg. 49361.[1] Pursuant to the Act, a roll of eligible Indians was prepared and approximately 3,000 persons selected the option of membership in the Yurok Tribe. Pursuant to section 6(c)(4), persons electing Yurok membership waived their individual claims and also granted to members of the Interim Council a proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the Act and granting necessary tribal consent. Under section 9(c), the Secretary of the Interior prepared a voter list for adults who elected the Yurok tribal membership option, convened a General Council meeting of the eligible voters, and conducted an election of a five-member Interim Council.

On November 19, 1991, Acting Associate Solicitor, Division of Indian Affairs, Scott Keep wrote to congressional aide Jason Conger concerning individuals who accepted the payments authorized to be made under section 6(c) of the Act ($5,000 or $7,500 each). He held they were "legally bound by the terms of the Act to accept the privileges and limitations associated with Yurok tribal membership," although certain amounts had been withheld from the payments for attorney fees.

The BIA Sacramento Area Director requested an opinion on several issues that arose at the organizational meeting of the Interim Council held on November 25-26, 1991. Duard R. Barnes, Assistant Solicitor, Branch of General Indian Legal Activities, responded with a thorough opinion on February 3, 1992, which concluded:

(1) The Interim Council of the Yurok Tribe automatically dissolved two years after November 25, 1991;

---

[1] The approved resolution noted that "the waiver required by the Act does not prevent the Hoopa Valley Tribe "from enforcing rights or obligations created by this Act," S. Rep. 100-564 at 17." *Id.*

(2) The Settlement Act permits three separate Interim Council resolutions, if necessary, to address claim waiver, contribution of escrow monies, and receipt of grants and contracts;

(3) Refusal to pass resolution waiving claims against the United States and/or filing a claim would prevent the Yurok Tribe from receiving the apportionment of funds, the land transfers, and the land acquisition authorities provided by various sections of the Settlement Act, but would not preclude the Yurok Tribe from organizing a tribal government;

On March 11, 1992, the Yurok Interim Council filed *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Fed. Cl.). The complaint asserted "claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the Hoopa-Yurok Settlement Act of 1988." *Id.*, ¶ 1.

On April 13, 1992, Assistant Secretary-Indian Affairs Eddie F. Brown wrote to the Chairman of the Hoopa Valley Tribe indicating that the Yurok Interim Council's decision to file the claims in *Yurok Tribe v. United States* "means that the same consequences follow as if it fails to enact a resolution waiving claims against the United States." Mr. Brown deferred responding to the Hoopa Valley Tribe's request for access to the funds remaining in the Hoopa-Yurok Settlement Fund as a result of the filing of *Yurok Tribe v. United States*.

On November 23, 1993, Assistant Secretary-Indian Affairs Ada E. Deer wrote to the Vice-Chairman of the Yurok Interim Council expressing willingness to accept the decision of the Yurok Tribe to organize outside the authority offered by the Settlement Act. Ms. Deer cautioned that the Yurok Interim Council would, on November 25, 1992, lose the legal powers vested in it by the Settlement Act. She said, "the authority vested in the Interim Council by section 2(c)(4) of the Act to waive claims against the United States will expire on November 25, 1993." Ms. Deer pointed out that "[a]ny subsequent waiver of claims by the Tribe will be legally insufficient."[2]

On April 4, 1994, Assistant Secretary-Indian Affairs Ada E. Deer wrote to the Chair of the Interim Tribal Council of the Yurok Tribe determining that Resolution No. 93-61, approved November 24, 1993, did not meet the requirements of the Act. She stated:

> It is quite clear that Resolution No. 93-61 specifically preserves, rather than waives, the Yurok tribe's taking claim against the United States. Indeed, the Yurok Tribe has filed a claim in the

[2] The Yurok Tribe could have challenged the Assistant Secretary's determination that any waiver after November 25, 1993, would be legally insufficient, but failed to do. The claim is now barred by the applicable six-year statute of limitations.

> U.S. Court of Federal Claims asserting that the Hoopa-Yurok Settlement Act effected a taking under the Fifth Amendment of the United States Constitution.

Id. at 3. The Assistant Secretary reaffirmed the February 3, 1992 Solicitor's Opinion conclusion that filing suit in the Claims Court would produce the same results as would the Interim Council's failure to enact a resolution waiving claims under the Act.[3]

On March 14, 1995, Assistant Secretary-Indian Affairs Ada E. Deer wrote the Chairperson of the Yurok Tribal Council rejecting the Tribal Council's request for reconsideration of her decision of April 4, 1994. Ms. Deer explained that the legislative history of the Act indicates that potential taking claims against the United States were precisely the type of claims Congress was most concerned about, which explained why waiver of such claims were essential elements to triggering key provisions of the Act. She stated:

> In our opinion, the Tribe's decision to prosecute its claim in this litigation is inconsistent with the waiver of claims required under the Act. Were there to be a settlement of the lawsuit, it would have to be accomplished before the case has proceeded to a determination on the merits. This is necessary to both save time, energy and money on costly legal proceedings and because a settlement will not be possible if the court has ruled on any portion of the merits.

Ms. Deer urged the Yurok Tribe to seek a stay of proceedings in *Yurok Tribe v. United States* in order to conduct a referendum and undertake settlement negotiations. The Yurok Tribe made no such motion nor did it conduct a referendum.

After another year, on May 17, 1996, the parties to *Yurok Tribe v. United States* (which had been consolidated with other claims under the heading of *Karuk Tribe of California, et al. v. United States, et al.*, No. 90-CV-3993), filed a joint motion to postpone oral argument on cross-motions for summary judgment on the merits. The court granted that motion, and related motions, delaying oral argument on the motions for summary judgment until January 29, 1998. Subsequently, on August 6, 1998, the court denied plaintiffs' motions for summary judgment and granted the cross-motions for summary judgment of the United States and the Hoopa Valley Tribe, and directed the clerk to dismiss the complaints. *See Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

During the period 1995-2001, the Yurok Tribe and the United States engaged in settlement negotiations concerning its claims. Indeed, the March 14, 1995 letter of Assistant Secretary-Indian Affairs Ada E. Deer, states a settlement position advanced by

[3] The 1994 decision of the Assistant Secretary also could have been challenged, but was not, and that claim is barred by the statute of limitations.

the United States, which was that the Yurok Tribal Council could cure the deficiencies in Resolution No. 93-61 of the Interim Council, even at that late date, if a settlement was accomplished before a final determination on the merits. The Hoopa Valley Tribe made similar proposals and urged the settlement of the case. Defendants were concerned that unless the Act's benefits could be made available there would be little incentive for the Yurok Tribe to settle. Defendants explored every option to bring the matter to a close. However, no settlement offer was accepted and the litigation was concluded on the merits by the U.S. Supreme Court's Order of March 26, 2001. Defendants' proposals, including the suggestion in the Assistant Secretary's March 14, 1995 letter, cannot change the requirements of the Act. Also, conduct or statements of this kind that were made in settlement negotiations during this period have no evidentiary value. *See* Fed. R. Evid. 408.

3. Res Judicata and the Concept of Bar

The takings claim that was to be waived by the Yurok Interim Council under the HYSA was instead litigated and lost by the Tribe. As explained below, the takings claim has been extinguished by the previous litigation and judgment on the merits in favor of the United States. As a matter of law, the Tribe no longer has a takings claim to waive.

Under the doctrine of claim preclusion, a party that litigates a claim to final judgment is forever barred from subsequent litigation of that same claim. *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (stating "[r]es judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action"); *Cromwell v. County of Sac.*, 94 U.S. 351, 352 (1876) (holding "[T]he judgment, if rendered upon the merits, constitutes an absolute bar to the subsequent action. It is finality as to the claim or demand in controversy . . ."); *see also* 18 Moore's Federal Practice (3d. ed), § 131.01 (2005) (stating "[I]f the plaintiff loses the litigation, the resultant judgment acts as a *bar* to any further actions by the plaintiff on the same claim, with limited exceptions") (emphasis in original). The doctrine of claim preclusion is applicable whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *See Glickman*, 123 F.3d at 1192. When claim preclusion applies, as it does here, a party's claim is extinguished upon final judgment. *Hornback v. United States*, 405 F.3d 999, 1001 (Fed. Cir. 2005). Thus, a purported waiver of a claim that has been extinguished by a prior final judgment is void *ab initio*.

Claim preclusion, and the concept of "bar" prevents a party who loses in litigation from bringing a subsequent action based on the same transaction or series of transactions by simply asserting additional facts or proceeding under a different legal theory. *Skillsky v. Lucky Stores, Inc.*, 893 F.2d 1088, 1095 (9th Cir. 1990) (stating that claim preclusion precludes relitigation of all grounds supporting recovery regardless of whether they were asserted or determined in the prior proceeding); *Kasper Wire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 535 (5th Cir. 1978) (concluding that when defendant obtains favorable judgment, it acts as a "bar" to subsequent litigation on same claim by

plaintiff); Restatement 2d of Judgments §§ 19, 24 (1982). A valid judgment, even if erroneous, that is final and rendered on the merits can form the basis for claim preclusion. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). The judgment "puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever . . ." *Comm'r v. Sunnen*, 333 U.S. 591, 597 (1948).

4. Claim Preclusion Extinguishes the Claim

The doctrine of claim preclusion not only prohibits subsequent litigation of claims, but it wholly *extinguishes* the claim and any rights that a plaintiff has in the claim after final judgment is rendered. *Hornback*, 405 F.3d at 1001 (Fed. Cir. 2005) (holding that claim preclusion "extinguishes all rights of the plaintiff . . . with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose); *Gonzales v. Hernandez*, 175 F.3d 1202, 1205 (10th Cir. 1999) (stating that a final judgment extinguishes plaintiff's claims); *Kotsopoulos v. Asturia Shipping Co., S.A.*, 467 F.2d 91, 95 (2d. Cir. 1972) (stating "once a claim is reduced to judgment, the original claim is extinguished and merged into the judgment"); *see also* Restatement 2d of Judgments § 24(1) (1982) ("When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of [res judicata], the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose"). Thus, once a plaintiff litigates a claim to final judgment on the merits, as the Yurok Tribe did in litigation, the plaintiff no longer possesses a legal claim - - the plaintiff's claim is extinguished by the prior judgment.

The United States Supreme Court has emphasized that the doctrine of claim preclusion is more than a matter of procedure, it ensures that "rights once established by the final judgment of a court of competent jurisdiction shall be recognized by those who are bound in it in every way." *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). Extinguishing claims via the claim preclusion doctrine provides finality and a conclusive end to litigation, promotes judicial economy, and fosters reliance on court judgments. 18 Moore's Federal Practice (3d ed.), § 131.12 (2005).

Applying these well-established principles here, it is plain that the Yurok Tribe's takings claim against the United States arising out of the Act has been adjudicated in a final decision on the merits, is extinguished, and thus can no longer be "waived." *Karuk, et al.*, 209 F.3d at 1366. The Tribe's Complaint against the United States, filed in March 1992, states that "plaintiff, a federally recognized Indian Tribe, asserts claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the [HYSA of 1988]." The Tribe's Complaint requested the Court to enter "judgment awarding the Yurok Tribe just compensation for the taking of its compensable property rights . . . ." This takings claim was the claim that was to be waived by the Interim Council prior to November 25, 1993. 25 U.S.C. §§ 1300i-1(c)(4) and 1300i-11(a). Congress chose the term "claim," which has a well-recognized legal

meaning. The use of the term must be given its purposeful effect. *Russello v. United States*, 464 U.S. 16, 23 (1983).

Instead of waiving its takings claims against the United States in accordance with the Act, the Yurok Tribe opted to litigate. Having been determined with finality on the merits against the Yurok Tribe, the takings claim that was the subject of the litigation has been extinguished. Accordingly, as a matter of law, the takings claim arising out of the Act no longer exists. Because the claim that was to be waived in 1993 no longer exists, it simply cannot be waived now, even if the Interim Council purported to do so.

5. Conclusion

The Settlement Act conditioned some benefits upon waiver of precisely the claim that the Yurok Tribe litigated on the merits from 1992 through 2001 and lost. The Act authorized certain persons to elect a five-member Yurok Interim Council, a Council that would exercise specific statutory powers for a two-year period and then go out of existence. During the two-year lifespan of the Yurok Interim Council, it was also hoped that the Yurok Tribe would adopt a constitution and choose a governing body. In fact, it did that, although the Tribe was unable to use the Indian Reorganization Act authority which was also offered as a Settlement Act benefit, but conditioned upon waiver.

After filing *Yurok Indian Tribe v. United States* in 1992, the Yurok Interim Council managed that litigation for approximately 20 months before it ceased to exist on November 25, 1993. Thereafter, the Yurok Tribal Council assumed the reins and managed the litigation to its bitter end in 2001. There is no action that the Yurok Tribe can take today that could resuscitate the extinguished taking claim against the United States that arose out of this Act. Any attempt at a new or amended waiver by the Yurok Tribal Council would be legally insufficient, as the Department has repeatedly ruled. A new waiver would be void *ab initio* because having been litigated and extinguished, there is no claim to be waived now, nor does the Yurok Interim Council exist to take action. There can be no waiver of a claim that no longer exists. The Department of the Interior correctly concluded in its March 15, 2002 report to Congress pursuant to section 14(c) of the Act that "the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act." The Department should adhere to that conclusion.

T:\WPDOCS\0020\09561\CORRESP\Bern032306_m01.doc
tps:3/23/06

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

March 1, 2007

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairman Marshall and Chairperson Tripp:

As you both know too well, issues related to the 1988 Hoopa-Yurok Settlement Act (Act), including the establishment and distribution of the Hoopa-Yurok Settlement Fund (Fund), have a long history. Notwithstanding resolution of decades of disputed issues between the two Tribes and their members, one final issue remains to be resolved nearly twenty years after the Act's passage: distribution of funds still held by the Department pursuant to the Act.

At the request of both the Hoopa Valley Tribe and the Yurok Tribe, as well as the Tribes' Congressional delegation, the Department has evaluated whether authority still exists to distribute these funds administratively or whether the parties must resolve this matter through the courts or Congress. As explained below, the Department has concluded it can distribute these funds to the Yurok Tribe administratively, consistent with the provisions of the Act, if the Yurok Tribe were to submit a new waiver of claims as required by the Act.

Discussion and Analysis

Pursuant to the Act, the Department placed into escrow monies from seven Indian trust fund accounts, representing the proceeds still held in trust by the Department from the resources of the former Joint Reservation, to establish the Fund. The Act envisioned three specific distributions of the Fund: certain individual payments based on tribal membership elections; distribution to the Hoopa Valley Tribe of roughly one-third of the Fund; and distribution to the Yurok Tribe of roughly one-third of the Fund plus the Fund's remainder once the individual payments were made. The Hoopa Valley Tribe received over $34 million between 1988 and 1991, its designated share under the Act. The Department continues to hold the remaining balance, representing the share set aside in 1991 for the benefit of the Yurok Tribe (roughly $37 million), with interest accrued over the past fifteen years (now totaling roughly $90 million), as well as funds authorized by the Act specifically for the Yurok Tribe (roughly $3.1 million).

The Department has not previously distributed these remaining funds because the Yurok Tribe did not provide the waiver required by the Act in order to receive benefits.

Although purporting to waive claims, the Department interpreted the 1993 Yurok Resolution to preserve the Tribe's claims and thus failed to satisfy the Act's waiver requirement. The Yurok Tribe brought a takings claim, which led to the decision rendered in *Karuk Tribe v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

Conclusion of this litigation triggered the Secretary's obligation under the Act to issue a Report to Congress. The Secretary, through the Bureau of Indian Affairs, submitted the Report in March 2002, and the Senate Indian Affairs Committee held a hearing in August 2002, in which the Department and both Tribes participated.

The Department stated then that, because the Yurok Tribe litigated its takings claims rather than waiving them, the Yurok did not meet the Act's condition precedent for the Yurok to receive its share of the Fund or other benefits. The Department stated also the Hoopa Valley Tribe had already received its benefits under the Act and was not entitled to further distributions. Based on those factors, the Department recommended, *inter alia*, that it would be inappropriate to make any general distribution without further instruction from Congress and that Congress should consider the need for additional legislation to address any issue regarding entitlement and to fulfill the Act's intent. Congress has not acted on the Department's recommendations to date.

The Yurok Tribe proposes now to provide the Department with a new, unconditional waiver of claims, a concept not proposed at the time of the 2002 hearing. The Hoopa Valley Tribe argues, in essence, that the Act's authority no longer remains viable and that the fully-litigated takings claim precludes the Yurok Tribe from providing a new waiver. After careful review of all the issues, the Department concludes that the Yurok Tribe can tender a new, unconditional waiver and that the Act provides authority to the Department to act administratively to distribute the remaining funds to the Yurok Tribe upon receipt of such a waiver if it otherwise comports with the waiver requirements under the Act.

Neither the Act nor its legislative history specifies whether proceeding under one provision would preclude the Yurok Tribe from proceeding under the other, *i.e.*, whether bringing a takings claim and providing a waiver, actions both authorized under the Act, were mutually exclusive. For a number of reasons, we conclude that the takings litigation in *Karuk Tribe* did not result in the Yurok Tribe's forfeiting the benefits established in the Act. For example, the Act does not specify a time limitation, like the limited period to bring a constitutional challenge, on the ability to provide a waiver. Moreover, the Act's Yurok waiver provision is not limited solely to the constitutionally-based property claims authorized by the Act and litigated by the Yurok Tribe. The Act did not provide any contingent distribution arrangements if the Yurok Tribe chose to assert a takings claim. Fundamentally, nothing in the Act states that the Yurok Tribe's choosing to litigate its takings claim would cause the Tribe to forfeit the benefits under the Act.

Because Congress acted as a trustee in passing the Act and because the Hoopa Valley Tribe received already all of its benefits established by the Act, including its designated

share of the Fund, we believe that any ambiguity in the Act should be read in favor of providing the other beneficiary, the Yurok Tribe, with its benefits established by the Act. Because the Act specifically authorized either Tribe to bring certain claims against the United States yet did not provide for an alternative distribution of benefits if a Tribe took such an action, we further believe that an interpretation of the Act that avoids penalizing a beneficiary for taking an authorized action and that avoids potentially troublesome constitutional issues to be necessary here. Thus, we believe that it would be unreasonable to read the Act to work a forfeiture of the Yurok's right to receive the monies from the Fund, and we decline to do so.

The Act authorized the Yurok Interim Council, an entity that ceased to exist in 1993, to provide the requisite waiver under the Act. The Act did not preclude or otherwise divest power from the permanent Yurok Council also to waive claims. Both the Department and the Hoopa Valley Tribe subsequently acknowledged that the Yurok Tribe, after the expiration of the Interim Council, could "cure" its conditional waiver. Therefore, we also conclude that the current governing body of the Yurok Tribe can submit the waiver required by the Act.

Conclusion

After careful consideration and for the reasons set out briefly above, the Department has concluded that, through administrative action, the remaining funds set aside pursuant to the Act can still be distributed to the Yurok Tribe. The better reading of the Act and the underlying circumstances is to allow the Yurok Tribe to submit an unconditional waiver and to authorize the Department to distribute these funds to the Yurok Tribe upon that proper submission.

The Department appreciates that the underlying issues of this dispute have been argued between the two Tribes (and others) for over 40 years. Both Tribes have argued vigorously and persuasively for their respective positions. In recognition of these divergent views, the Department will not take action on this final decision and distribute the remaining funds until thirty days after the Department has received an unconditional waiver from the Yurok Tribe consistent with the Act.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

March 21, 2007

SENT VIA FACSIMILE

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairman Marshall and Chairperson Tripp:

I received today a copy of Yurok Tribal Council Resolution 07-037. This resolution provides an unconditional waiver of claims that the Yurok Tribe may have against the United States arising out of the provisions of the 1988 Hoopa-Yurok Settlement Act.

Upon review, I find that the resolution meets the requirements of the Act. Therefore, the Department intends to distribute to the Yurok Tribe the funds still held by the Department pursuant to the Act, including the remaining balance of the Hoopa-Yurok Settlement Fund, based on my decision letter dated March 1, 2007.

As noted in the March 1 letter, however, the Department will not distribute the remaining funds to the Yurok Tribe until thirty days after the Department received the waiver required by the Act. Accordingly, the Department will not take further action consistent with this decision until April 20, 2007.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

RESOLUTION
of the
YUROK TRIBAL COUNCIL

RESOLUTION NO.: 07-037

DATE APPROVED: March 21, 2007

SUBJECT: **Waiver of Certain Claims and Consent to Uses of Tribal Funds Pursuant to the Hoopa-Yurok Settlement Act**

WHEREAS: The Yurok Tribe is a Federally recognized Indian Tribe pursuant to a determination by the Bureau of Indian Affairs that was published in the *Federal Register* (60 Fed. Reg. 9,249 (February 16, 1995)), eligible for all rights and privileges afforded to Federally recognized tribes, including, but not limited to, the rights and privileges afforded under the Hoopa-Yurok Settlement Act, and the Yurok Tribal Council is the governing body of the Yurok Tribe under the authority of the Yurok Constitution of 1993; and,

WHEREAS: On April 26, 1988, Representative Doug Bosco introduced H.R. 4469, a version of which was enacted as the Hoopa-Yurok Settlement Act (the "Act") on October 31, 1988; and,

WHEREAS: Section 2(c) of the Act provides for certain benefits to the Yurok Tribe, including apportionment of funds, certain land transfers, and certain land acquisition authorities, provided that the Yurok Tribe adopt a resolution waiving certain claims, as required by the Act; and,

WHEREAS: The Senate Report accompanying the Act states that the waiver required by the Act does not prevent the Yurok Tribe "from enforcing rights or obligations created by this Act," S. Rep. 100-564 at 17; and,

WHEREAS: The Yurok Tribal Council has fully considered the claims to be waived under the Act and the consent to be granted and has balanced them against the benefits identified and mandates to the Yurok Tribe under the Act and has concluded that the Tribe would best be served by complying with the mandates identified in the Act; and,

WHEREAS: The Act provided for the establishment of the Yurok Interim Tribal Council, which on March 9, 1992 was authorized to submit the Waiver of Claims described in the Act; the permanent Yurok Tribal Council now has the authority originally granted by the Act to the Yurok Interim Tribal Council; and,

Phone: (707) 482-1350 • Fax: (707) 482-1377

WHEREAS: The Yurok Tribal Council has carefully considered the Tribe's Constitution and other Tribal law and custom concerning the method by which the resolution called for by the Act should be enacted; and,

NOW THEREFORE BE IT RESOLVED: That the Yurok Tribal Council has the authority and responsibility under the Constitution and Bylaws of the Yurok Tribe to approve, certify, and enact the resolution required by the Hoopa-Yurok Settlement Act; and,

BE IT FURTHER RESOLVED: That this Resolution is not intended, and shall not be construed, so as to prevent the Yurok Tribe from enforcing its rights and the obligations of the United States created by the Hoopa-Yurok Settlement Act, see S. Rep. 100-564 at 17; and,

BE IT FURTHER RESOLVED: That the Yurok Tribe hereby waives any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act; and,

BE IT FURTHER RESOLVED: That the Yurok Tribe affirms tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, such contribution having already been made as provided in Section 4(a) of the Act, and for their use as payments to the Hoopa Tribe, such payments having already been made as provided in Section 4(c) of the Act, and to individual Yuroks, such payments having already been made as provided in Section 6(c)(3) of the Hoopa-Yurok Settlement Act; and,

BE IT FURTHER RESOLVED: That the Chairperson and Secretary of the Yurok Tribal Council are hereby authorized, directed and empowered to sign the resolution for and on behalf of the Yurok Tribe as its act and deed.

CERTIFICATION

This is to certify that this **Resolution No. 07-037** was approved at a duly called meeting of the Yurok Tribe on **March 21, 2007,** at which a quorum was present and that this **Resolution No. 07-037** was adopted by a vote of **6** for and **0** opposed and **0** abstentions. This **Resolution No. 07-037** has not been rescinded or amended in any way.

DATED THIS 21ST DAY OF MARCH, 2007

Maria Tripp, Chair

ATTEST:

Cynthia McKernan

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

HOOPA VALLEY TRIBE, Appellant,	:	Order Docketing and Dismissing Appeal
v.	:	
SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR, Appellee.	:	Docket No. IBIA 07-90-A
	:	March 27, 2007

On March 26, 2007, the Board of Indian Appeals (Board) received a notice of appeal from the Hoopa Valley Tribe (Hoopa Tribe), seeking review of decisions dated March 1, 2007, and March 21, 2007, issued by the Special Trustee for American Indians, Department of the Interior (Special Trustee; Department). 1/ In the March 1 decision, the Special Trustee announced that the Department has concluded that it could distribute remaining funds from the Hoopa-Yurok Settlement Fund (Settlement Fund) to the Yurok Tribe administratively, if the Yurok Tribe were to submit a new waiver of claims pursuant to the 1988 Hoopa-Yurok Settlement Act, 25 U.S.C. §§ 1300i to 1300i–11 (Settlement Act). In the March 21 decision, the Special Trustee accepted a resolution from the Yurok Tribal Council as a waiver of claims that meets the requirements of the Settlement Act, and stated that the Department intends to distribute to the Yurok Tribe the funds still held by the Department pursuant to the Act, including the remaining balance of the Settlement Fund.

We docket this appeal but dismiss it because the Board lacks jurisdiction to review these decisions of the Special Trustee.

The Hoopa Tribe's notice of appeal relies on three separate regulatory provisions as grounds for invoking the Board's jurisdiction to review the Special Trustee's decisions:

1/ Each decision is addressed jointly to the Chairman of the Hoopa Tribe and the Chairperson of the Yurok Tribe.

(1) 43 C.F.R. § 4.2(b)(2)(ii), which is one of the provisions in the regulations of the Office of Hearings and Appeals describing the Board's jurisdiction to review certain matters; (2) 25 C.F.R. § 2.4(e), which describes the Board's jurisdiction over decisions by officials of the Bureau of Indian Affairs (BIA) and within the Office of the Assistant Secretary - Indian Affairs; and (3) 25 C.F.R. Part 1200, which provides the Board with jurisdiction over the denial of a tribe's request under Section 202 of the American Indian Trust Fund Management Reform Act of 1994 (Reform Act), 25 U.S.C. § 4022, to withdraw funds currently held in trust by the Department and to remove them from Federal trust status. We address each ground in turn, but conclude that none provides a basis for our jurisdiction over this appeal.

Subsection 4.2(b)(2)(ii) of 43 C.F.R. describes the Board's jurisdiction to include, in relevant part for this case, "such other matters pertaining to Indians as are referred to it by the Secretary, the Director of the Office of Hearings and Appeals, or the Assistant Secretary - Indian Affairs for exercise of review authority of the Secretary." None of these officials has purported to refer this matter to the Board. Nor (assuming he has delegated authority to do so) has the Special Trustee referred it: the Special Trustee's decisions contain no language granting a right of appeal to the Board. Therefore, subsection 4.2(b)(2)(ii) does not serve as a basis for the Board's jurisdiction over the Hoopa Tribe's appeal.

Subsection 2.4(c) of 25 C.F.R. provides that the Board has jurisdiction over appeals from decisions made by an Area (now Regional) Director or a Deputy to the Assistant Secretary - Indian Affairs, other than the Deputy to the Assistant Secretary - Indian Affairs for Indian Education Programs. The Special Trustee falls within none of the categories of officials over whose decisions the Board has jurisdiction under subsection 2.4(e). The Special Trustee reports directly to the Secretary of the Interior. 25 U.S.C. § 4042(a).

The Hoopa Tribe notes that the Board has exercised jurisdiction over a dispute involving the Office of the Special Trustee, citing California Trust Reform Consortium v. Director, Office of Trust Funds Management, Office of the Special Trustee for American Indians, 33 IBIA 257 (1999). That case, however, arose under the Indian Self-Determination and Education Assistance Act (ISDA). The ISDA regulations do expand the Board's jurisdiction to include certain ISDA decisions made by officials outside of BIA or the Office of the Assistant Secretary - Indian Affairs, see 25 C.F.R. Parts 900 and 1000. But the Special Trustee's decisions at issue here were not made pursuant to ISDA, nor does the Hoopa Tribe contend that they were, and thus neither California Trust Reform Consortium nor the ISDA regulations provide grounds for our jurisdiction.

Finally, the Hoopa Tribe's notice of appeal identifies 25 C.F.R. Part 1200 as a basis for the Board's jurisdiction. We disagree. Part 1200 was promulgated to implement a provision in the Reform Act that allows a tribe to withdraw from Federal trust status tribal funds that are held and administered by the Department in trust for a tribe. Part 1200 does afford a right of appeal to the Board from a denial of a request or failure by the Secretary or his designee to approve a tribe's application to withdraw its funds from Federal trust status. See 25 C.F.R. § 1200.21; see also id. § 1200.3(b) (describing Reform Act provisions implemented by Part 1200). The Special Trustee's decisions, however do not purport to be taken pursuant to 25 C.F.R. Part 1200, nor do we think they can be so characterized.

Instead, what the two decisions and the notice of appeal and supporting documentation indicate, and what the Hoopa Tribe itself acknowledges, is that the Special Trustee's decisions were made pursuant to the Department's administration of the Settlement Act, and constitute a determination that the Yurok Tribe is entitled to the remaining monies in the Settlement Fund. See Notice of Appeal at 44 (Special Trustee "purport[ed] to unilaterally and administratively allocate the balance of the Settlement Fund" and distribute it to the Yurok Tribe). The fact that the Hoopa Tribe at one time may have suggested an allocation of the remaining funds by dividing them equally between the Hoopa Tribe and the Yurok Tribe, id. at 3, does not mean, as the Hoopa Tribe apparently contends, that the Special Trustee's decision to distribute all of the remaining funds to the Yurok Tribe amounts to a "denial" of the Hoopa Tribe's request to withdraw funds currently held in trust on its behalf from Federal trust status. None of the documents submitted with the notice of appeal suggest that the Special Trustee was acting, or failing to act, on an application submitted by Hoopa Tribe pursuant to 25 C.F.R. § 1200.13, to remove its funds from Federal trust status pursuant to the Reform Act. This fact is underscored by the Hoopa Tribe's assertion that in this appeal it does not seek a share of the remainder of the Settlement Fund. Notice of Appeal at 5-6. Thus, we conclude that 25 C.F.R. Part 1200 does not provide grounds for the Board to assert jurisdiction over this appeal. 2/

2/ The notice of appeal also contends that the Special Trustee did not have authority to issue a final decision for the Department. Whether or not that is the case, it does not affect our jurisdictional analysis. For decisions that are subject to the Board's review, such as those of a BIA Regional Director, the decision maker cannot make his or her decision final for the Department simply by declaring it so. Citation Oil & Gas, Ltd. v. Acting Billings Area Director, 21 IBIA 75, 85 n.14 (1991). But it does not follow that the absence of authority by an official to render a final decision for the Department necessarily vests the Board with review authority. We must still look to some regulatory provision or referral as the source of our jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dockets but dismisses this appeal for lack of jurisdiction. 3/

I concur:

Steven K. Linscheid
Chief Administrative Judge

Debora G. Luther
Administrative Judge

3/ Because we lack jurisdiction over this appeal, we do not consider the Hoopa Tribe's Petition for Stay Pending Appeal, which was filed with its notice of appeal.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET, SUITE 300
ARLINGTON, VA 22203

HOOPA VALLEY TRIBE, Appellant, v. ROSS SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF INTERIOR, Appellee.	Docket No. IBIA 07-90-A **PETITION FOR RECONSIDERATION** April 17, 2007

1. Introduction

On March 27, 2007, the Board of Indian Appeals ("Board") docketed and dismissed the Hoopa Valley Tribe's Notice of Appeal and Statement of Reasons which the Board received the previous day. Pursuant to 43 C.F.R. § 4.315, the Hoopa Valley Tribe ("Tribe") respectfully petitions for reconsideration of the Board's decision, which is reported at 44 IBIA 210, and requests that the Board stay the effectiveness of the Special Trustee's decision subject to this appeal until the Board rules on the instant Petition.

As explained below, reconsideration should be granted and jurisdiction found to hear this appeal for the following reasons: (1) the Board has jurisdiction because this is a "dispute" within the meaning of 25 C.F.R. pt. 1200 and the related provisions in 25 C.F.R. pt. 115, subpart G; and (2) review by the Board, before the release of tribal trust funds in violation of federal law, is in the interests of justice because it might prevent substantial money damages liability for the United States for breach of trust. In addition, the Board may hear this appeal pursuant to

YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

RESOLUTION
of the
YUROK TRIBAL COUNCIL

RESOLUTION NO: 07-41

DATE APPROVED: April 19, 2007

SUBJECT: Direction and Authorization to Distribute Yurok Assets Held in Trust by the Office of the Special Trustee for American Indians of the Department of the Interior

WHEREAS: The Yurok Tribe is a Federally recognized Indian Tribe pursuant to a determination by the Bureau of Indian Affairs that was published in the *Federal Register* (60 Fed. Reg. 9,249 (February 16, 1995)), eligible for all rights and privileges afforded to Federally recognized tribes, including, but not limited to, the rights and privileges afforded under the Hoopa-Yurok Settlement Act, and the Yurok Tribal Council is the governing body of the Yurok Tribe under the authority of the Yurok Constitution of 1993; and,

WHEREAS: Section 2(c) of the Hoopa-Yurok Settlement Act (the "Act") provides for certain benefits to the Yurok Tribe, including apportionment of funds, certain land transfers, and certain land acquisition authorities, provided that the Yurok Tribe adopt a resolution waiving certain claims, as required by the Act; and,

WHEREAS: The Yurok Tribe did on March 21, 2007 waive any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act, and thereby came in full compliance with the requirements of the Act; and;

WHEREAS: On March 21, 2007, the Office of the Special Trustee for American Indians reviewed the Yurok Tribe's March 21, 2007 waiver and found that "the resolution meets the requirements of the Act"; and,

WHEREAS: In its March 21, 2007 letter the Office of the Special Trustee for American Indians stated that it would "distribute to the Yurok Tribe the funds still held by the Department of the Interior pursuant to the Act, including the remaining balance of the Hoopa-Yurok Settlement Account" on or after April 20, 2007; and,

Phone: (707) 482-1350 • Fax: (707) 482-1377

NOW THERFORE BE IT RESOLVED: The Yurok Tribal Council hereby authorizes and directs the Department of the Interior to Free Deliver as soon as possible all assets in Hoopa-Yurok Settlement Accoun Ex. 4 to the Custodian listed below:

CUSTODIAN

Money Market Accounts to:
ABA# Ex. 4
Bank: Citibank, New York
For the Benefit of Morgan Stanley & Co., Incorporated
Beneficiary Account: Ex. 4
For further credit to # Ex. 4 , Yurok Tribe Tribal Reserve

Securities to:
DTC Clearing Number Ex. 4
FBO Yurok Tribe Tribal Reserve
A/C#
Ex. 4

BE IT FURTHER RESOLVED: That the Chairperson is hereby authorized to sign this resolution and to negotiate all matter pertaining hereto and that the Recording Secretary is authorized to attest.

C*E*R*T*I*F*I*C*A*T*I*O*N

This is to certify that this Resolution Number 07-41 was approved at a duly called Special Meeting of the Yurok Tribe on April 19, 2007 at which a quorum was present and that this resolution Number 07-41 was adopted by a vote of 6 for and 0 opposed and 0 abstentions. This resolution Number 07-41 has not been rescinded or amended in any way.

DATED THIS 19TH DAY OF APRIL, 2007

Maria Tripp

Maria Tripp, Chair

ATTEST:

Cynthia McKernan, Executive Assistant

United States Department of the Interior

OFFICE OF THE SOLICITOR
1849 C STREET N.W.
WASHINGTON, DC 20240

APR 20 2007

SENT VIA FACSIMILE

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Dear Chairman Marshall:

On behalf of Secretary Kempthorne, this letter responds to your April 9, 2007 letter, in which you request the Secretary to refer decisions dated March 1 and March 21, 2007, by the Special Trustee for American Indians to the Interior Board of Indian Appeals (IBIA). These decisions addressed the distribution of funds still held by the Department of the Interior pursuant to the 1988 Hoopa-Yurok Settlement Act (Act).

As your letter notes, the IBIA has already dismissed the Tribe's appeal of this matter, concluding that it did not have jurisdiction. *Hoopa Valley Tribe v. Special Trustee for American Indians*, 44 IBIA 210 (March 27, 2007). Likewise, the Assistant Secretary – Indian Affairs, in a response dated April 6, 2007, declined to refer the matter to the IBIA as you requested pursuant to 43 C.F.R. § 4.2(b)(2)(ii).

As expressed in the Assistant Secretary's letter, the Special Trustee can render final decisions for the Department, and the March 1 and March 21 decisions present the final decision of the Department on this matter. Referral to the IBIA would not be appropriate.

As noted in the Special Trustee's decisions and the Assistant Secretary's response, the Department will not take further action consistent with those decisions before April 20, 2007. The 30-day period established in the Special Trustee's decisions provides the Tribe an opportunity to explore further steps that you may want to take. From the Department's perspective, however, the Special Trustee has rendered a final decision.

Sincerely,

Lawrence J. Jensen

Lawrence J. Jensen
Deputy Solicitor

RMM

cc: Special Trustee
Assistant Secretary – Indian Affairs
Chairperson, Yurok Tribe

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

April 20, 2007

SENT VIA FACSIMILE

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairman Marshall and Chairperson Tripp:

As I noted in letters to you dated March 1 and March 21, 2007, the Department has concluded that authority exists under the 1988 Hoopa-Yurok Settlement Act (Act) to distribute funds still held by the Department pursuant to the Act to the Yurok Tribe upon the submission of a new waiver of claims by the Yurok Tribe. The Department has received the waiver of claims, adopted as Yurok Tribal Council Resolution 07-037, which meets the requirements of the Act.

As I also noted in those letters, the Department would not take further action consistent with this decision before April 20, 2007, in recognition of the fact that issues involving the Act have had a long and disputed history and that the Tribes may want to explore further steps in light of this decision. The Hoopa Valley Tribe filed a notice of appeal with the Interior Board of Indian Appeals (IBIA), but the IBIA dismissed the appeal because it did not have jurisdiction. *Hoopa Valley Tribe v. Special Trustee for American Indians*, 44 IBIA 210 (March 27, 2007). The Hoopa Valley Tribe recently filed a motion for reconsideration before the IBIA; the applicable regulations provide, however, that the initial IBIA decision is final and that petitions for reconsideration do not stay the effect or otherwise affect the finality of any decision unless so ordered by the IBIA. 43 CFR §§ 4.312, 4.315. Moreover, as confirmed in Assistant Secretary Artman's April 6, 2007 response to Chairman Marshall, the decision in this matter represents the final decision of the Department and thus is not subject to review by the IBIA.

Accordingly, nothing precludes me from taking action consistent with the decision in this matter. As of 10:00 a.m. Eastern Daylight Time today, I have advised the custodian of the account holding the remaining balance of the Hoopa-Yurok Settlement Fund that its ownership has been transferred solely to the Yurok Tribe.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Albuquerque, NM 87109

TAKE PRIDE IN AMERICA

APR 2 0 2007

SEI Private Trust Company
Attn: Tim Cienkowski
Asset Movement
Hillside 2nd Floor
One Freedom Valley Drive
Oaks, Pennsylvania 19456

Ex. 5

Fax: 610-676-2115; Phone: 610-676-1337

Re: Hoopa/Yurok Settlement -7193

Gentlemen:

Please take this letter as authorization for SEI Private Trust Company to free deliver, as soon as possible, the assets in the following account to the recipient custodian listed below.

Account:	Hoopa/Yurok Settlement-7193
Account No:	Ex. 2
Custodian:	Morgan Stanley; DTC # Ex. 4
FBO TO:	York Tribe Tribal Reserve
Account No:	Ex. 4

Delivery request documents and transfer instructions are enclosed.

If you have questions, please call Richard Zakrzewski at (505) 816-1112.

Sincerely,

Robert J. Winter
Deputy Special Trustee-Trust Services

Margaret Treadway
Chief of Staff

Enclosure

4400 Masthead N.E.

DELIVERY REQUEST FORM – DTCC / FED / Mutual Fund / Physical / Gifting (PAGE 1)						1. Date:	APRIL 20, 2007
5. Trust A/C#:	Ex. 2					2. Contact Info:	RICHARD ZAKRZEWSKI
6. Trust A/C Name:	YUROK Settlement					3. Bank Name:	0428-OST
7. Explanation (50 char max):	FREE - IN KIND DELIVERY					4. Phone:	505-816-1112
8. Transfer Type:	FULL: ☒	PARTIAL (Include Asset Specifics Below): ☐					
9. Delivery Type:	(DTCC:) ☒	FED: ☐	Mutual Fund: ☐	Physical: ☐	Gift (Same Day/CASH): ☐	Disclose Donor Info? Y☐ N☐	

- Use this section below to detail positions

	CUSIP_ID	Asset_Short_Nm	Par Value	Market Value	Federal Cost
1	31331TYF2	FFCB 2.625% 9/17/07	$5,000,000.00	$4,948,450.00	$4,987,800.00
2	3133XCXL2	FHLB 5.000% 3/07/08	$4,000,000.00	$3,995,000.00	$4,030,560.00
3	31315PFU8	FAMCA 3.950% 9/02/08	$7,000,000.00	$6,905,290.00	$7,000,000.00
4	3128X3WY5	FHLMC 4.000% 9/22/09	$3,000,000.00	$2,942,190.00	$2,986,680.00
5	31358C6W1	FNMA Z-CPN 11/15/09	$15,000,000.00	$13,266,450.00	$12,480,675.00
6	3128X1LH8	FHLMC 3.380% 9/30/10	$5,000,000.00	$4,769,600.00	$5,000,000.00
7	3133XDDP3	FHLB CMO 00-0582 H 4.750% 10/25/10	$2,674,247.38	$2,643,333.08	$2,665,890.36
8	3136F62L2	FNMA 1XC 4/25/08 5.000% 4/25/11	$1,500,000.00	$1,489,215.00	$1,500,000.00
9	3128X5EX2	FHLMC 1XC 7/20/09 5.750% 7/20/11	$1,000,000.00	$1,015,550.00	$1,000,000.00
10	31359M3Y7	FNMA 1XC 1/12/09 5.250% 1/12/12	$1,000,000.00	$1,000,000.00	$999,750.00
11	3128X1LF2	FHLMC CC 6/19/07 3.890% 6/19/13	$5,000,000.00	$4,710,300.00	$5,000,000.00
12	3136F73C9	FNMA 1XC 10/18/10 5.250% 10/18/13	$1,000,000.00	$1,000,310.00	$999,850.00
13	3128X4W72	FHLMC 1XC 3/28/11 5.500% 3/28/16	$1,000,000.00	$1,005,940.00	$1,000,000.00
14	3128X5BT4	FHLMC 1XC 6/6/11 5.800% 6/06/16	$10,000,000.00	$10,202,200.00	$10,000,000.00
15	31359MB69	FNMA 1XC 4/26/10 5.000% 4/26/17	$5,000,000.00	$4,892,200.00	$4,900,000.00
16	3136F3YS9	FNMA CQ 10/2/06 5.000% 7/02/18	$5,000,000.00	$4,818,750.00	$5,000,000.00
17	3128X2K46	FHLMC 1XC 3/5/09 5.200% 3/05/19	$500,000.00	$490,625.00	$487,590.00
18	3133X8U75	FHLB CC 4/15/05 5.750% 10/15/19	$5,000,000.00	$4,937,500.00	$4,999,750.00
19	31331SQM8	FFCB CC 2/24/10 5.230% 2/24/20	$5,000,000.00	$4,843,750.00	$4,975,000.00
20	3128X4TP6	FHLMC CS 11/16/07 6.080% 11/16/20	$500,000.00	$496,650.00	$500,000.00
21	3128X4G62	FHLMC CS 2/23/09 6.000% 2/23/21	$1,000,000.00	$990,530.00	$1,000,000.00
22	31359MM34	FNMA 1XC 4/28/11 6.000% 4/28/21	$1,000,000.00	$1,017,810.00	$998,750.00
23	31331VX92	FFCB CC 8/16/13 5.875% 8/16/21	$1,000,000.00	$1,015,940.00	$997,500.00

Morgan Stanley
Harborside Financial Center
Plaza 3, 6th Floor
Jersey City, NJ 07311
Attn: Banking and Cash Services

02194

PO BOX 141
HOOPA, CA 95546-0141

Pursuant to client instructions, we have issued to you the attached check in the amount of $15,652.89. Please direct any inquiries concerning this transaction to our Customer Interaction Center at 1-800-869-3326.

Check Date: 01/15/2008
Check Number: 902822132
Payable to:

SETTLEMENT

PLEASE DETACH AND RETAIN THIS PORTION FOR YOUR RECORDS.

ORIGINAL CHECK HAS A COLORED BACKGROUND WITH A MICRO PRINTED WARNING BAND

Morgan Stanley
Banking and Cash Services
Jersey City, NJ 07311

Bank of America
Community Development Bank
WALNUT CREEK, CALIFORNIA 94596
920

902822132
90-4182/1211

ACCOUNT NUMBER: 169-033778-0

DATE: 01/15/2008

PAY FIFTEEN THOUSAND SIX HUNDRED FIFTY TWO DOLLARS AND 89 CENTS $ **15,652.89

TO THE ORDER OF PO BOX 141
HOOPA, CA 95546-0141

Morgan Stanley

VOID 180 DAYS AFTER ISSUE DATE

EXPLANATION OF ADDITIONAL SECURITY FEATURES INDICATED ON REVERSE SIDE

⑈902822132⑈ ⑆121141822⑆ 73138001621⑈

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

December 16, 2008

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairperson Tripp:

I met with the Yurok Tribe's counsel from Hogan & Hartson, at their request, regarding the treatment of the per capita amounts that the Yurok Tribe distributed to its members earlier this year from the amounts that the Tribe received in 2007 from the Hoopa-Yurok Settlement Fund. They asked the Department to confirm that the per capita payments were made by the Tribe pursuant to a plan approved by the Department for purposes of section 117a and 1407 of Title 25 of the United States Code. Section 117a applies the exemption from Federal and state income taxes in 25 U.S.C. 1407 to such payments.

Per capita distributions by the Tribe were contemplated by the 1988 Hoopa-Yurok Settlement Act. The Department did not impose any restrictions on the distributions. Procedures for making the distributions were set forth in the Yurok Tribal Constitution, including the requirement that a plan for distribution be approved by members, which was reviewed by the Department. The distributions were approved in accordance with the Yurok Tribal Constitution, and provisions were made for handling distribution to minors.

Accordingly, I find that the per capita distributions were made by the Tribe pursuant to the Settlement Act that constituted the use and distribution plan for the money received by the Yurok Tribe.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2009, that 12 copies of the Joint Appendix were filed with the U.S. Court of Appeals for the Federal Circuit, via First-Class Mail to:

Clerk of the Court
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

I further certify that two copies of the Joint Appendix were mailed USPS next day delivery to:

Jonathan L. Abrahm
Hogan & Hartson, LLP
555 13th Street, NW
Washington, DC 20004-1109

Mary G. Sprague
P.O. Box 23795
L'Enfant Plaza Station
Washington, DC 20026-3795

Thomas P. Schlosser, Attorney of Record
MORISSET, SCHLOSSER & JOZWIAK
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
Tel: (206) 386-5200
Fax: (206) 386-7322
t.schlosser@msaj.com

T:\WPDOCS\0020\09561\FedCirBrfs\Joint Appendix_04.doc
nmc:7/15/09