S. HRG. 100-949

HOOPA-YUROK INDIAN RESERVATION

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2723

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

SEPTEMBER 14, 1988
WASHINGTON, DC

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APPENDIX

HOOPA-YUROK INDIAN RESERVATION

WEDNESDAY, SEPTEMBER 14, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:12 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will please come to order.

I am pleased to announce that we will now conduct a hearing on S. 2723, a bill introduced by my esteemed colleague, the senior Senator from California, Senator Alan Cranston, to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Tribes and to clarify the use of tribal timber proceeds.

This measure which is now before us is the result of a claim brought in 1963 against the United States by a number of nonmembers of the Hoopa Valley Indian Tribe who claimed entitlement to a share of the proceeds of timber sales on the Hoopa Valley Indian Reservation. The case is known as *Jessie Short* v. *United States* in the U.S. Court of Claims.

It was 9 years before a decision was reached in this original case. In that decision, the court concluded that the Hoopa Square and the Hoopa or Klamath Extension constituted one reservation and that the reservation was established for the benefit of all Indians settled on the reservation.

The decision overturned a legal decision of the solicitor of the Department of the Interior and conflicted with an administrative practice of long standing regarding the governance of the reservation, particularly as it related to the recognition of the Hoopa Valley Indian Tribe as the governing body on the Hoopa Square. The *Short* case generated at least three companion cases, and litigation continues to this day in the *Short* and related cases.

S. 2723 proposed to resolve the continuing conflict that embroils the Hoopa Valley Reservation by partitioning the one reservation into two reservations, the Square being set aside for the use and benefit of the Hoopa Valley Indian Tribe and the Extension being set aside for the use and benefit of an organized Yurok Indian Tribe. Escrow funds which have accumulated from the sale of timber on the Hoopa Square and which now total about $65 million

will be used to establish a settlement fund to compensate individual claimants.

Some claimants will be eligible to become members of the Hoopa Valley Indian tribe. Those who elect to become members of the newly organized Yurok Tribe will receive compensation at the rate of $3,000 per person.

Finally, if a claimant does not wish to become a member of the organized Yurok Tribe, he or she may elect to receive a cash payment of $20,000 and shall no longer have any interest in either the Hoopa or the Yurok reservation or the tribe.

There are two principal issues raised in this legislation. Number one, does the legislation constitute a Fifth Amendment taking of property rights? The answer to this question appears to rest on whether individual Indians have a vested property right in tribal assets before they are individualized or whether the waivers and releases of claims provided for in this legislation are satisfactory.

The second principal issue is whether this legislation is fair and comports with the history of this area.

So, the purpose of this hearing is to receive testimony on both of these issues as well as other issues presented by the bill.

[Text of S. 2723 follow:]

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

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A BILL

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

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

SECTION 1. 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 after a special election conducted by the United States Department of the Interior, Bureau of Indian Affairs, on April 18, 1985;

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

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

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

(11) "Short cases" means the cases entitled Jesse Short et al. v. United States, (Cl. Ct. No. 102–63); Charlene Ackley v. United States, (Cl. Ct. No. 460–78); Bret Aanstadt v. United States, (Cl. Ct. No. 146–S5L); and Norman Giffen v. United States, Cl. Ct. No. 746–85L);

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

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

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

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

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

SEC. 2. RESERVATIONS; PARTITION AND ADDITIONS.

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

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

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

(b) HOOPA VALLEY RESERVATION.—Effective with the partition of the joint reservation as provided in subsection (a), the area of land known as the "square" (defined as the Hoopa Valley Reservation established under section 2 of the Act of April 8, 1864 (13 Stat. 40), the Executive order of June 23, 1876, and Executive Order 1480 of February 17, 1912) shall thereafter be recognized and established as the Hoopa Valley Reservation. The unallotted trust land and assets of the Hoopa Valley Reservation shall thereafter be

held in trust by the United States for the benefit of the Hoopa Valley Tribe.

(c) YUROK RESERVATION.—(1) Effective with the partition of the joint reservation as provided in subsection (a), the area of land known as the "extension" (defined as the reservation extension under the Executive order of October 16, 1891, but excluding the Resighini Rancheria) shall thereafter be recognized and established as the Yurok Reservation. The unallotted trust land and assets of the Yurok Reservation shall thereafter to be held in trust by the United States for the benefit of the Yurok Tribe.

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

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

(B) to that portion of the Yurok Experimental Forest described as Township 14 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 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).

(c) HOOPA VALLEY TRIBE PORTION.—Effective with the publication of the option election date pursuant to section 6(a)(3), the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Hoopa Valley Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of enrolled members of the Hoopa Valley Tribe as of the date of the promulgation of the Settlement Roll roll, including any persons enrolled pursuant to section 5, 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)(3), the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Yurok Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of persons on the Settlement Roll electing the Yurok Tribal Membership Option pursuant to section 6(c) by the sum of the number of the enrolled Hoopa Valley tribal members established pursuant to subsection (c) and the number of persons on the Settlement Roll, less any amount paid out of the Settlement Fund pursuant to section 6(c)(3).

(e) FEDERAL SHARE.—There is hereby authorized to be appropriated the sum of $10,000,000 which shall be deposited into the Settlement Fund after the payments are

made pursuant to 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 (d).

SEC. 5. HOOPA-YUROK SETTLEMENT ROLL.

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

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

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

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

(2) The Secretary's determination of eligibility under this subsection shall be final except that any Short plaintiff determined by the 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.

(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).

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

SEC. 6. ELECTION OF SETTLEMENT OPTIONS.

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

of their right to elect the settlement options provided in this section.

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

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

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

(b) HOOPA TRIBAL MEMBERSHIP OPTION.—(1) Any person on the Settlement Roll, eighteen years or older, who

can meet any of the enrollment criteria of the Hoopa Valley Tribe set out in the decision of the United States Court of Claims in its March 21, 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,

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

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

(3) Any person enrolled in the Hoopa Valley Tribe pursuant to this subsection shall be assigned by the Secretary that quantum of "Indian blood" or "Hoopa Indian blood", as

appropriate, as may be determined pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jessie Short et al. v. United States, (Cl. Ct. No. 102–63).

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

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

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

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

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund.

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

(2) Any 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.

(a) Any funds remaining in the Settlement Fund after the payments authorized to be made therefrom by subsections (c) and (d) of section 6 and any payments made to successful appellants pursuant to section 5(d) shall be evenly divided

between the Hoopa Valley Tribe and the Yurok Tribe and shall be held by the Secretary in trust for such tribes.

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

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

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

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

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

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

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

(c) GENERAL COUNCIL; ELECTION OF INTERIM COUNCIL.—(1) Within 30 days after the date established pursuant to section 6(a)(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-

vation, to be conducted under such order of procedures as the Secretary determines appropriate, for—

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

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

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

(3) Within 45 days after the general council meeting held pursuant to paragraph (2), the Secretary shall hold an election by secret ballot, with absentee balloting and write-in voting to be permitted, to elect the five members of the Interim Council from among the nomination submitted to him from such general council meeting. The Secretary shall assure that notice of the time and place of such election shall be provided to eligible voters at least fifteen days before such election.

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

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

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

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

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

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

(5) The Interim Council shall be dissolved effective with the election and installation of the initial 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.

SEC. 10. SPECIAL CONSIDERATIONS.

(a) LIFE 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 two-thirds of the adult members of the Resighini, Trinidad, Big Lagoon, Blue Lake, Smith River, Elk Valley, or Tolowa Rancherias vote in an election conducted by the Secretary to

merge with the Yurok Tribe and if the Yurok Tribe consents to such merger, the tribes and reservations of those rancherias so voting shall be extinguished and the lands 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. The Secretary shall publish in the Federal Register a notice of the effective date of the merger.

SEC. 11. KLAMATH RIVER BASIN FISHERIES TASK FORCE.

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

(A) in the matter preceding paragraph (1), by striking out "12" and 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 established and federally recognized, upon which time the Yurok Tribe shall appoint such representative beginning with the first appoint-

ment ordinarily occurring after the Yurok Tribe is recognized.".

(b) SPECIAL RULE.—The initial term of the representative appointed pursuant to section 4(c)(11) and (12) of such Act (as added by the amendment made by subsection (a)) shall be for that time which is the remainder of the terms of the members of the Task Force then serving. Thereafter, the term of such representatives shall be as provided in section 4(e) of such Act.

SEC. 12. TRIBAL TIMBER SALES PROCEEDS USE.

Section 7 of the Act of June 25, 1910 (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 absense of such a governing body, as determined by the Secretary for the tribe concerned.

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

(a) Any claim challenging the partition of 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 early 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 early date as may be established by the adoption of a resolution waiving such claims as provided in section 9(c)(2)(A).

(c)(1) The Secretary shall prepare and submit to the Congress a report describing the final decision in any claim

brought pursuant to subsection (b) against the United States or its officers, agencies, or instrumentalities.

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

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The CHAIRMAN. I have been advised that my senior colleague from California will not be able to be here at this moment. He will appear later. He is presently occupied with Senate business in the Senate chamber.

Senator Cranston has submitted a written statement to this committee which, without objection, we will place in the hearing record at this point.

[Prepared statement of Senator Cranston appears in appendix.]

The CHAIRMAN. I am at this time very pleased to call upon as our first witness the distinguished Congressman from that area, the Honorable Doug Bosco.

STATEMENT OF HON. DOUG BOSCO, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Bosco. Thank you very much, Mr. Chairman.

Let me first express my gratitude to you for the interest and attention you have paid to this complex and contentious issue that Senator Cranston and I have chosen to address. This interest is reflected not only in today's hearing but one which you held in Sacramento.

Thanks to your hard work and that of many people who will be directly affected by this legislation, I think we have come a long way in resolving the issues before us. We hope the measure will provide the framework for resolving decades of bitter dispute and allowing thousands of Indian people to live their lives in peace and tranquility.

The legislation would divide the Hoopa Valley Indian Reservation into two reservations, one for the use of the Hoopa Tribe which has existed in its present homeland for centuries and the other for the benefit of the Yurok and other Indians who are, for the most part, absentee tribesmembers, residing in many different parts of the country.

The legislation will provide for the payment of monies owed by the U.S. Government from timber sales on the reservation. Some of these funds will go to individuals, and some will provide revenues to the tribes, to the Hoopas who are organized and to the Yuroks should they some day decide to organize. The legislation establishes procedures for such organization and for election on the part of individuals as to which tribe, if any, they want to join.

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

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

Sadly, these people are some of the poorest people in our country, suffering unemployment rates up to 60 percent. The money and energy expended on lawyers and lawsuits could well have been

used far more productively. None of the Yuroks has received funds due them from the government, and hundreds have already died without seeing the benefit of their legal efforts.

Federal judges have thrown up their hands in exasperation. The case has outlasted two of these judges and two mediators. Today, it would be difficult to look at all of these lawsuits and determine who was the winner and who was the loser.

The Hoopas, moreover, are a model Indian tribe who have governed themselves admirably for decades. As a result of the legislation, they have sadly just lost their right to govern themselves.

Though this matter can be analyzed in many different ways and one can employ as much complexity as one would want, my decision to introduce the legislation came down to a single principle. I believe that people who have lived together over a period of years as a community, who have decided to organize and run their affairs for the benefit of the children, to build their roads, and to take care of the sick have a right to keep their homeland and govern it themselves. This right is more important than dollars and cents.

This legislation recognizes the distinction between those who actually want to live in an organized community on the reservation and those who simply want to reap the financial rewards of their status as being Indians of the reservation regardless of where they may intend to live. The former will be allotted land and financial resources and the right to govern themselves. The latter will receive payment in a fair manner from funds that heretofore have not been available to them as individuals.

The legislation before you deprives no one of the benefits they have won in court. It will allow many to receive benefits now held in trust. It returns to these Indians the land that was their ancestral home and, more importantly, it gives them the right to govern themselves.

Each tribe will be provided sufficient resources to succeed, and these are important goals, Mr. Chairman. I thank you for the work that you have already done to help us achieve them.

[Prepared statement of Mr. Bosco appears in appendix.]

The CHAIRMAN. Congressman Bosco, I thank you very much for your statement.

If I may, I would make an observation. Throughout these three-plus decades of involvement in the political arena, I have noted that most legislators would prefer to close their eyes and avoid controversy and problems in their constituency, hoping that, eventually, it will fly away.

It takes a person of some political courage to dive into the midst of a broiling sea such as one finds in your area. For that I commend you. Sometimes, your attempt may not succeed, but if no one tries, you will never get a resolution.

We will try our best to assist you in this matter.

I gather that the House has concluded that this measure does not take property in violation of the Fifth Amendment. However, we are, incidentally, calling upon the Library of Congress to make a special study of this issue as to whether this is an unconstitutional taking of property.

However, you have lived with this problem for years now. Do you believe that after these many months and years of concern and

consideration that this measure before us is a fair and equitable measure?

Mr. Bosco. I do believe that, Mr. Chairman, and I thank you for your earlier observation. I think that if you had the chance to know many of these people on both sides or all sides of the issue, you would agree with me that they are worthy of having this matter resolved.

Certainly, none of us can resolve it for them. I am happy to say that it is thanks to the work of the people who live on that reservation themselves that we have come up with this legislation.

Probably a more direct answer to your question is that Jessie Short, the woman who brought the lawsuit 25 years ago that created this furor over the years and who, presumably, knows more and has lived more through this than any of us supports this legislation. She began as an adversary of it, but it was always our intention to work with all different sides.

I think it is fair to say that we have come up with the best solution we possibly can. If the courts get this and decide that there is an unconstitutional taking, I would be surprised. It would also, I think, run contrary to what people elect us to do which is to settle issues.

It won't do these people any good to have this issue go on for decades more. It will certainly do the lawyers a lot of good. In fact, if one were to scrutinize the agreements under which lawyers will be paid on this lawsuit, one would see that they are extraordinarily lucrative.

These people have put a lot of time and hard work into the case. I am not saying they haven't, and the successes have gone both ways. But the time has come now to use these resources to benefit the poorest people in our State and to see that their kids get educated and that they get good health care and that we can build roads so that this won't be a back woods anymore.

These people will be able to live their lives in dignity and self-governance. I think that we can convince the court is more important than some very fine balancing of who got how much money.

The CHAIRMAN. When this is all over, they may be calling you Solomon Bosco.

Mr. Bosco. Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much, sir.

Now, we call upon a panel consisting of the Deputy Associate Attorney General of the U.S. Department of Justice, the Honorable Rodney Parker; and the Assistant Secretary in charge of Indian Affairs of the Department of the Interior, the Honorable Ross O. Swimmer.

Mr. Secretary, it is always good to have you, sir.

Mr. SWIMMER. Thank you, Mr. Chairman.

The CHAIRMAN. I would now call upon the Deputy Associate Attorney General, Mr. Parker.

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

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

I have submitted a brief written statement which I would like to summarize briefly.

The CHAIRMAN. You may be assured that your full statement will be made part of the record.

Mr. PARKER. Thank you.

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 satisfies our litigation concerns. However, because of budgetary and other policy concerns, we defer to the Department of Interior's position on the bill.

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 satisfies our litigation concerns, and those primarily go to the takings issue.

We have two remaining concerns with the bill from a legal standpoint. Our first concern is clarification that no Fifth Amendment taking is intended 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 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 clearly acknowledgment by the tribal government that no taking has occurred. Suggested language is set forth in my written statement.

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. In order to ensure that payment is not made before Congress has an opportunity to take action to make the payment unnecessary, we suggest that the bill include a provision which is also set forth in my written statement providing a 180-day delay before payment of any judgment arising out of a potential taking.

The remaining provisions of the bill largely involve budget and policy matters, and we defer to the Department of the Interior on those.

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

[Prepared statement of Mr. Parker appears in appendix.]

The CHAIRMAN. I thank you very much, sir.

Like most people here, I am concerned about the question of property interests individual Indians may have in undistributed tribal assets. Mr. Attorney General, do you believe that individual tribal members have vested rights in undistributed tribal assets?

Mr. PARKER. No, not as a—we don't believe that the individual tribal member would have an interest that could be enforced in a tribal asset until the asset is individualized.

The CHAIRMAN. I have been advised that individual claimants in the *Short* cases are not compelled to take any of the options granted in this bill. If they don't take an option, they are free to continue to litigate.

What legal activity do you foresee with respect to these claimants if we go forward with this bill, and do you think it will in fact resolve these cases?

Mr. PARKER. My understanding of the legislation is that it is not an attempt to resolve the Short case and the related cases. Those cases involve claims by individual members of the Yurok Tribe or that group to money which was individualized prior to 1980. The claim is a claim against the United States for breach of its trust responsibility.

This bill deals with money that has not been individualized. Therefore, if the bill is passed, the judgment in the *Jessie Short* case and the related cases would remain, and those 3,800 plaintiffs would still be entitled to their proportionate share of that judgment.

The CHAIRMAN. I have instructed the committee staff to sit with your office to discuss your amendments. At first blush, it appears to me that these amendments are proper and should be included, but I will leave it up to the professional staff.

So, if I may, I would like to call upon your office soon to resolve this matter.

Mr. PARKER. That is fine.

The CHAIRMAN. I thank you very much.

Mr. Swimmer.

STATEMENT OF HON. ROSS O. SWIMMER, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Mr. Chairman, I appreciate this opportunity to be here. We do have written testimony. I would like to have it submitted for the record and summarize a few points from it.

The CHAIRMAN. Without objection, your full statement will be made part of the record.

Mr. SWIMMER. I might add, Mr. Chairman, in that statement, there are quite a few technical amendments that we have offered, and we would also like to work with the committee and the committee staff to get those. I don't think there are too many that are substantive except the ones which I will speak to.

We do have a couple of very real concerns, monetary concerns, and that is that the Federal Government is being asked in the bill to add to the funds available from the reservation-wide accounts to, I suppose, make the bill more amenable to the Indians on the reservation.

We believe that this is an issue of Indians and tribes on the reservation and that what we are talking about here is an attempt to divide the reservation in some equitable way between two or more groups and also include in that a division of the resources or the assets or the income or whatever but that there would be no call for Federal contributions to make it saleable, so to speak. I think it it is not saleable from the simple attempt to divide that it would be

wrong to try to add money to it just to get someone to accept the agreement.

On the issue itself, you will hear a lot of conflicting testimony today. I have heard it over the past three years. The more I hear, the more confused I get.

I understand that this area was set aside years and years ago for the benefit of certain Indians in California. At one time, there was a reservation area called the Square and a small area near the Klamath River for other Indians. Eventually, these were connected by what is called the Extension, and it was the intent that this land be used for all of the Indians of the reservation, the reservation being the Hoopa Valley Reservation which was then to be one.

In about 1933, I understand that a Hoopa tribal group known as H-o-o-p-a came together and was recognized by the Bureau for certain management purposes and that most of the people in the business committee at the time were from the allottees of the Square.

However, I also understand—and some of the tribal witnesses can confirm or deny this—that the allottees on the Square were not just Hupa or descendant of H-u-p-a Indians. There were, in fact, Indians who had intermarried who had moved to the Square who had sought allotments on the Square versus the Extension, but I am not sure that there was ever a legal requirement that there be a proof of descendancy or anything like that, because the reservation, when it was connected, was pretty much made one at that time.

In 1948 or thereafter, the timber became quite a valuable resource, and the Bureau of Indian Affairs moved to get the Hoopa, H-o-o-p-a, Tribe that was then in existence as a business committee to come together a little more formally so that we would have an entity with which to deal on the timber issue. They did that, and the timber was sold, and quite a bit of income was received from it.

From that point forward, some of the income was distributed per capita to people who lived on the Square or were members of Hoopa Tribe as recognized by the Bureau then. That was the genesis, then, of *Jessie Short* and of the *Puzz* cases.

The other Indians and descendants of other tribal groups, tribes and individuals up and down the Square or the Extension along the Klamath River sued alleging that the Federal Government had breached a trusteeship to them because the proceeds of the reservation were for the benefit of all Indians on the reservation, not just the members of this Hoopa Tribe.

Of course, they won. I won't say of course, but they did win in the court and got a judgment against the United States claiming that we had improperly let some per capita payments be made to a select group to the detriment of all the others.

When I came in almost three years ago, I met with the Hoopa Tribe. It seemed to me that one of the most difficult things we were facing was that we had an unorganized group of Indians known as Yuroks, Karuks, and other Indians of the reservation. It was extremely difficult to try to deal with either one of these groups, because we knew that we had Indians of the reservation that were not being represented corporately except as just a Jessie Short class of plaintiffs.

We also knew that the Hoopa Tribe was well organized and doing an excellent job. They seemed to be running a good tribal government, contracting programs from us, and administering or helping us to administer the resources of the Square.

It seemed to me that the objectives that we needed to achieve were to get a group corporately recognized so that they could deal with each other as well as the Federal Government, being the Yuroks and the others. One of the things this bill does is to encourage that organization and then to figure out a way to equitably divide the reservation so that we had jurisdiction. We had the Hoopa jurisdiction and we had the Yurok jurisdiction.

The logical thing seemed to be to return to a pre-1900 ideal which was two reservations. It still seems that way. For that reason, we support this bill. We believe that it is necessary to divide the reservation.

However, I will admit, recently in particular, I have been troubled about the division of the resources on the reservation. In our attempts to reach the objectives of two tribes, a division of the reservation so each can have its jurisdictional area, we still have that dilemma of being sure that we are being equitable to all of the Indians of the reservation.

I leave that to the tribal testimony later on and for your satisfaction, but it does appear that we are doing what we can do legally and that we are pretty well protected from the Federal side as far as a taking, but I also want the committee to be aware that as they hear the testimony later on, there are issues that bother me and, I think, will bother the committee about the equities involved here.

My only suggestions—and these are just a couple that could possibly be considered as amendments—would be instead of actually dividing the resources as well as the jurisdiction would be something similar to what we have done at Wind River which is the joint management of the area by the two tribes or by a division of income from the Square to the Yurok people who remain as tribal members or some other suggestion like that.

I am not willing at this time to not support this legislation. It is too important to us. I think the objectives of getting two reservations so that we can have separate entities managing and having two tribes out there that represent all the Indians of the reservation is very important to us, and the other opportunity of offering to the Yuroks and some of the other Indians who have asked for this a payment in lieu of tribal membership, I think, are important to us at this time in history, and we need to advance that cause.

However, I did want to bring at least my concerns that I have heard the last several months to the attention of the committee.

[Prepared statement of Mr. Swimmer appears in appendix.]

The CHAIRMAN. Mr. Secretary, it is obvious that you have followed this matter rather carefully, and you have indicated your opposition to the consideration of this bill.

Do you have any alternative bill to offer?

Mr. SWIMMER. Mr. Chairman, the only thing I would offer is the two concerns I have. One is yes, I don't think we should have the Federal contribution. The only other amendment would be to, instead of seeking a set-aside of the Square and the real estate to one group, would be possibly to consider an amendment that would

share revenues from those resources on a tribe to tribe basis based on population or some other formula. Those would simply be amendments. I wouldn't offer a new bill.

The CHAIRMAN. If those two amendments were favorably considered, am I to conclude that the Administration would be supportive of this bill?

Mr. SWIMMER. Yes.

The CHAIRMAN. Do you believe that the best interests of our nation and the two contending parties will be best served with the passage of this bill?

Mr. SWIMMER. Yes, sir.

The CHAIRMAN. Do you believe that it is worth $15 million to pass this bill?

Mr. SWIMMER. I think the $15 million could be spent much more effectively someplace else in satisfying needs. I am not sure that it really adds anything to the effectiveness of the bill just to add Federal dollars to it.

The CHAIRMAN. What if the practical facts of the circumstances would indicate that the appropriation of $15 million may be necessary to bring about the successful conclusion of this matter? Would you think that the expenditure of such a sum would be in our national interest?

Mr. SWIMMER. I suppose to get this matter settled, it might be worth that, if that would bring it about, Mr. Chairman, but on the other hand, you have to accept that the $20,000 offer to those who do not desire to continue tribal membership is going to be accepted by that many people. I think if they are going to accept that, they would accept $19,000 in order to make this deal work. I am not sure that the extra money we would put into it is really going to be all that meaningful.

If everyone accepted it, we are talking about $72 million which is $22 million above what is even in the fund now. So, there is a chance that $15 million wouldn't even do it if we are going to set $20,000 as what it is going to take to pay the Indians.

The CHAIRMAN. Well, I am glad you believe that it may be worth an extra $15 million to resolve this matter.

Mr. SWIMMER. It has been around long enough that it would be worth something to get it off the table, but I still would oppose the money's coming from the Federal Treasury when the money really belongs to the two tribes.

The CHAIRMAN. I thank you very much, Mr. Swimmer. You have been, as always, very helpful, sir.

Mr. Attorney General, thank you.

Mr. SWIMMER. Thank you.

Mr. PARKER. Thank you, sir.

The CHAIRMAN. Our next panel consists of Ms. Roanne Lyall of Ashland, Oregon; Ms. Dorothy Haberman of Klamath, California; and Mr. Sam Jones of Hoopa, California.

Ms. Lyall, would you care to start?

Ms. LYALL. Thank you.

STATEMENT OF ROANNE LYALL, OF ASHLAND, OR

Ms. LYALL. Good morning. My name is Roanne Lyall. I am a Klamath River Yurok Indian of the Hoopa Valley Reservation. I am opposed to the proposal set forth in this bill.

S. 2723 is called a bill to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians. It is also called the Hoopa-Yurok Settlement Act. The bill is neither; it is a bill to terminate Yurok Indians.

Supporters of this bill represent it as a fair compromise worked out by all concerned parties, but they refuse to even discuss putting this proposal before the Indians in a referendum election to get a real consensus. Why?

If this bill is so fair and if they are really convinced there is a consensus, they should not fear the results of an election. After all, Senator Inouye's April 21, 1988 press release about the repeal of H. Con. Res. 108 said that termination would never again be considered without the consent of the tribes involved.

I know there is no consensus in favor of this bill. I have some letters and petitions here with me that I would like to introduce into the record. More are coming all the time.

The CHAIRMAN. Without objection, it will be received.

Ms. LYALL. The vast majority of Short plaintiffs oppose this bill and wish, at the very least, to have the right to vote on their future.

Organized tribes around the country have begun to label this bill a termination bill, one which they cannot support. California rancherias affected by the bill, including the Trinidad Rancheria, oppose it. The Chairman of the Coleville Tribes, a member of the Northwest Affiliated Tribes, opposes it. The Governors' Interstate Indian Council opposes it. Other Indian leaders have told us they oppose its termination language. Opposition to this bill is mounting daily as more people learn about it. This bill is viewed by many as the beginning of the next termination era, this time called "buy-outs."

The bill's supporters say it will finally settle one of the longest legal fights in U.S. history. It will not.

This bill is a simplistic and unconstitutional proposal that will not solve the problems created by more than 35 years of Federal administrative mismanagement of the reservation, its resources, and the income therefrom. Taking what is communally owned by many and giving it all to a favored few is not a solution. This bill will not end litigation; it will only prolong it.

On other non-tribal reservations where an amalgamation of Indians from various tribal cultures hold communal property rights, a confederacy or a consolidated tribe has usually been created as a single political unit. This was not done on the Hoopa Valley Reservation, and that created our problems.

Until 1952, reservation superintendents were instructed to make certain all Indians of the reservation had representation on any council that was formed, and that was so up until 1950.

The philosophy represented in this proposal shows a lack of respect for history, for the court system, for Indian property rights, for the Yurok people, and, ultimately, for Indians in general. It

sends the message to all Indians that they cannot trust the courts to protect their rights, because Congress will simply overturn their hard-won court victories.

The attorneys representing the Short plaintiffs have a contract that was signed 25 years ago for 6.5 percent of the judgment award. They have financed the entire case. They have never received a penny.

The attorney fees for the Puzz plaintiffs are my family's responsibilities, and no Puzz attorney is getting rich, believe me.

The supporters of this bill are asking you to legislatively impose the unequal, arbitrary, and illegal division of tribal assets that has been rejected repeatedly by the courts for the past 25 years. Why?

This bill is bad policy and bad law. Please don't enact it.

Upon enactment, this bill would take funds that were just recently made available by the April 8 order in Puzz for reservation programs open to all eligible Indians of the reservation. It takes them and deposits them into a so-called settlement fund. It would make $3.5 million of these funds available to the Hoopa Valley Tribe, and it would give exclusive jurisdiction over the Square to the Hoopa Valley Tribe.

It is this settlement fund comprised of revenue which the Indians already own which would be used for termination payments. You cannot pay the Indians their own money in exchange for their future rights.

The major portion of this settlement fund represents 70 percent of the income from annual sales of reservation timber since 1974. At that time, the government's liability was established by the Short decision and the appeal process exhausted. So, the government, in an effort to limit further liability, ceased to disburse 100 percent of the timber sales income to the Hoopa Valley Tribe as had been the practice since 1955 and began disbursing approximately 30 percent to the tribe, sequestering the balance for the qualified Short plaintiffs.

Approximately $65 million is currently in this escrow fund. According to a 1974 memo from the BIA and a court decision upholding the BIA's position, all money in the 70 percent escrow account belongs to the Short plaintiffs. The Hoopa Valley Tribe already got its share.

Yet, according to the schedule proposed in this bill, a little over a year after enactment, the Hoopa Valley Tribe will have received approximately $35 million from the settlement fund; exclusive jurisdiction over the property, resources, and assets of the Square; $1 to $5 million from the annual timber sales from which per capita payments could be made to the individual members of the Hoopa Valley Tribe; and a share of the income from the commercial fishery on the Klamath River. The Yuroks or other Indians of the reservation will have received nothing, as had been the custom since 1955.

It should be common knowledge by this time that there is not going to be any Yurok reservation. The bill does not establish a Yurok reservation. It says the Hoopa Valley Reservation, Square and Extension, will not be partitioned unless the Hoopa Valley Tribe waives any claims against the United States arising out of the provisions of this act.

No partition means no Yurok reservation. The Yuroks are not given similar power to stop the partition.

If the Hoopa Valley Business Council were to forfeit the communal rights of their individual members to the Extension, including the Extension's commercial fisher, the members of the Hoopa Valley Tribe would sue their business council. Why would the business council invite the wrath of their tribal members when the Hoopa Valley Tribe can have it all by doing nothing?

When the final settlement roll is published, those named on the roll may supposedly elect one of the options provided by the bill. These options amount to a choice between elect termination or don't elect termination and be terminated anyway.

While the bill clearly states only the persons named on the final settlement roll will have any interest in the reservation or the settlement fund, it is ambiguous about just who will be included other than Short plaintiffs already qualified by the Claims Court who are alive on the date of enactment and who apply for inclusion on the roll. The fate of more than 3,000 Indians would be determined by the options in this bill.

Since it is estimated by Jason Liles of Mr. Bosco's office and the Hoopa Valley Tribe that the enrollment criteria for the Hoopa Valley tribal membership option would apply to very few people, 30 as a maximum, I will skip over that option, because it doesn't apply to the majority of the Indians.

Anyone who elects the Yurok tribal option no longer has any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within or appertaining to the Hoopa Valley Reservation. This means the entire reservation, Square and Extension, if there is no Yurok reservation, or in the settlement fund except for the authorized $3,000 payment. The bill fails to indicate when that payment will be made.

How many Indians do you think would be willing to give up all their reservation rights in exchange for a promise of a $3,000 payment and the right to organize a Yurok Tribe that is given a two-year life span by this bill?

That brings us to the final option. A person may elect to give up all of his or her reservation and tribal rights for a $20,000 lump sum payment. The bill doesn't indicate when payment will be made, but tribal and reservation rights won't be terminated until payment has been received.

Since the bill does not provide tax exempt status for these funds, the IRS and the State of California will be waiting with outstretched hands if and when those payments are ever made. Absent a specific date for payment, it is reasonable to expect that the Secretary of the Interior will withhold all payments until the Fifth Amendment taking lawsuits are over lest he give out the money and then have a court rule the bill unconstitutional.

Anyone who does not choose one of these imposed options shall be deemed to have elected the termination for $20,000 option. I don't see anything voluntary about this bill.

Other than authorizing an arbitrary $10 million to be appropriated some day, this bill does not make any attempt to guarantee sufficient funds will be available to make these option payments let alone compensate these Indians for rights taken, and I do mean

taken. Mr. Bosco's office told us that even with the $10 million, there may not be enough money in the bill to make all the payments. He suggested the Senate might add some money.

But we understand that the BIA and the OMB already oppose authorizing even a $10 million appropriation.

About 1½ years after enactment, Indians who give up all of their reservation rights by electing the Yurok tribal option will be allowed to organize a Yurok Tribe if the first order of business is to adopt a resolution waiving all claims against the United States arising out of the provisions of this act. After the members receive their $3,000 payments, a percentage of the settlement fund will be disbursed to the tribe, the amount based on the number of tribal members. Basically, the bill grants the Interim Council the authority to receive grants and enter into contracts for Federal programs for a 2-year period. Then the council will be dissolved if there is no constitution agreed upon.

Short v. *the United States* decided that the reservation was a single, integrated reservation all of whose inhabitants were to be treated fairly and equally. In *Lillian Blake Puzz* v. *the United States,* the U.S. District Court for the Northern District of California ordered the BIA to treat all eligible Indians of the reservation fairly and equally. S. 2723 overturns those decisions. I do not think this is fair. Do you?

It has taken 25 years to have our legally held reservation rights restored by the courts. As one of many, I refuse to give up any of my rights.

Thank you.

[Prepared statement of Ms. Lyall appears in appendix.]

The CHAIRMAN. I thank you very much, Ms. Lyall.

Now, may I call upon Ms. Haberman?

STATEMENT OF DOROTHY HABERMAN, OF KLAMATH, CA

Ms. HABERMAN. Thank you.

I want to point out I have, in addition to my statement, some main points in opposition to S. 2723 and H.R. 4469, the Hoopa Valley Reservation Termination bill, and then I have a statement regarding my brother, because he was one of the attorneys in fact and would be vigorously opposed to this bill.

My name is Dorothy Williams Haberman. I am a Klamath River Yurok Indian and a qualified Indian of the Hoopa Valley Reservation. I am an acknowledged leader of over 3,000 Indians of the reservation. I have worked in Indian affairs since 1955. The *Jessie Short* case filed in 1963 was the result of hard work by my brother-in-law, Allan Morris; my brother, the late H.D. Timm Williams; and myself.

Recently, on August 6, the BIA conducted an election among the Indians of the reservation. This was to elect representatives to the Hoopa Valley Reservation Community Advisory Committee, an organization recently established to represent all the Indians of the reservation. I was elected, along with Sam Jones, Jr. and Ardith McConnell, to represent the majority of the Indians of the reservation, those not in the Hoopa Valley Tribe.

All three elected representatives oppose this bill. I do not understand how anyone can argue there is a consensus in favor of this bill.

It is interesting and telling that the candidates who supported splitting our reservation got only one-fourth as many votes as we did and they lost. Is that a consensus in favor of the bill?

This council is the first time that we have participated in a BIA-conducted election. It is the result of the April 8, 1988 order in the case of *Lillian Blake Puzz* v. *United States Department of Interior, Bureau of Indian Affairs.* We meet regularly with representatives of the Hoopa Valley Tribe to plan reservation-wide programs such as improvements to community water systems, distribution of food commodities to needy people, and education programs. Our purpose, and that of the *Short* and *Puzz* cases, is for the reservation to benefit all of the Indians in a nondiscriminatory manner. This bill would destroy the progress we have made in achieving this purpose.

There are a few Indians who are trying to give the impression that many other people on the reservation support this bill. These few speak only for themselves.

The *Jessie Short* case bears Jessie Short's name solely because she was the first plaintiff on the list, but there are over 3,800 plaintiffs, in all. Jessie Short speaks solely as an individual. She was never elected to represent us. She never consulted us nor did she hold meetings to explain what she thinks.

I understand, based on what people in the community tell me, that she supports this bill, mainly because she wants $20,000. I can understand that. She has waited a long time for the BIA to honor the *Short* decision so that she and the rest of us can benefit from the reservation's revenues. She is tired of waiting.

But the majority of people feel we have suffered and waited too long to give up all we won for a promise—and I say promise—of $20,000, money which is already ours. After all, the *Puzz* decision makes it possible for all of us to benefit from these revenues for the first time in over 35 years. That is what our Community Advisory Committee is all about.

Jimmie James, another supporter of this bill, is also speaking only for himself. Like Jessie Short, he has no authority to speak in support of this bill for the Indians of the reservation. He is not an elected representative.

Jessie Short will tell you that she has a power of attorney to speak for us, the people who started the *Short* case. We gave her a power of attorney 25 years ago to help protect our rights in the reservation, not to sell these rights. Any powers of attorney given 25 years ago do not confer the power to sell out our reservation.

Lisa Sundberg, the other Yurok witness who will speak in favor of this bill, does not represent us. She is a registered member of the Trinidad Rancheria, a federally recognized tribe. In other words, she has her own tribe. She should stay out of our business.

This is a termination bill. Calling it a buy-out does not change this fact. It is eerily similar to the Klamath Termination Act of 1954. Task Force 10 of the American Indian Policy Review Commission, chartered by Congress in 1974, said this about the Klamath

termination—I am not going to read all of this. I am just going to read a portion:

> One obvious conclusion of this study is that the Klamath and Western Oregon Indians did not consent to termination. No referendum vote took place in which the Indian people could express their preference on this most important event. The number of Indians who actively supported termination was small. Yet, the impression was given to Congress by the BIA and others that Indians initiated and accepted termination.

The same applies to this bill. No referendum has been conducted and a few Indians are trying to make you believe we asked for and consent to this bill. We were not asked, and we do not consent.

Federal trust regulations with the Klamath Tribe and most of the Western Oregon Indians have been restored based, in large part, on Task Force 10's report. They have lost most of their land, however, although, ironically, President Reagan just last week signed the bill giving the Grand Ronde Tribe a reservation for the first time in decades. Please do not subject us to this painful termination and restoration process.

S. 2723 does nothing good for us. I cannot believe any Indian in his right mind could support a termination bill such as this one in this day and age. I thought termination was a thing of the past.

On April 28, 1988, President Reagan signed the Augustus T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-277, which specifically repudiates termination as Federal policy. Senator Inouye, in a press release following the signing of this bill, said that termination is no longer even a possible threat to Indian people because it is morally and legally unacceptable. President Reagan's ink is barely dry in P.L. 100-277. Yet, we are facing a termination bill aimed straight at us.

In 1958, partly due to the urging of then-BIA Area Director Leonard Hill of the Sacramento Area Office, Congress passed Public Law 85-671-D terminating 41 California rancherias. Like this termination bill's $10 million appropriation authorization, that act authorized an appropriation of $509,000 to carry out its provisions.

The money was never appropriated. Mr. Hill testified under oath that the BIA informally agreed with then-Congressman B.F. Sisk not to seek the actual appropriation.

I fear that S. 2723 is the same sort of bill. We are told that OMB and BIA oppose the $10 million authorization in S. 2723. Even the people who back the bill thinking that they will get money may never get it, and, in any case, they won't get it soon.

It has been a sad and discouraging experience for me to be back here seeing a few of our people from our group working with the Hoopa Valley Business Council in lobbying for a bill to give away our reservation and wipe us out as Indians just so those few can sell their rights.

My brother, H.D. Timm Williams, worked most of his adult life for Indian people all over the country. He is as responsible as anyone for S. 2382, the Indian Health bill which passed the Senate last Friday. He passed away earlier this year. To see his own people subjected to this termination bill is one of the saddest things in my life.

Thank you, and I did say that I had attachments to my statement, did I not?

The CHAIRMAN. Yes, you did, and they will be accepted.

[Prepared statement of Ms. Haberman appears in appendix.]

The CHAIRMAN. I thank you very much, Ms. Haberman.

Now, may I call on Mr. Sam Jones?

Ms. HABERMAN. You are not going to ask us any questions? We are here ready to answer questions.

The CHAIRMAN. When you are all finished.

Ms. HABERMAN. Oh, OK.

The CHAIRMAN. Do you want me to ask you now?

Ms. HABERMAN. I thought we had to move out and he had to come up. OK, thank you.

STATEMENT OF SAM JONES, OF HOOPA, CA

Mr. JONES. My name is Sam Jones. I am a full-blooded Indian of the Hoopa Valley Reservation. I have lived on the reservation all of my life, sometimes in the Square, sometimes in the Extension. Seventy years I have been involved in Indian ceremonies, games, and teaching. Indians from all parts of the reservation and all tribes of the reservation participate together in the same ceremonies and games.

Although I was not approved by the Hoopa Valley Business Council for membership, all my children and my grandchildren are Hoopa Valley Tribe members. Willie Colgrove, chairman of the Hoopa Valley Tribe, is my cousin. This bill divides my family.

On August 6, the BIA held an election in connection with its plan to comply with the April 8, 1988 decision of the United States District Court in the *Puzz* case. That decision required the BIA to make sure the reservation benefits all the Indians of the reservation equally.

I was elected to the Community Advisory Committee to represent the Indians of the reservation who do not belong to the Hoopa Valley Tribe. We have been meeting with the Hoopa Valley Tribe's representatives to plan the reservation-wide budget for 1988 and 1989. This is the first time that the Indians of the reservation have gotten together in this way, but this bill will destroy any chance for this process to work.

I cannot begin to express how strongly I am opposed to S. 2723. I simply do not understand why Senator Cranston has decided to introduce this bill. In fact, in 1986, his aide told me that Senator Cranston would not support a split of the reservation. I do not believe there is any justification for these bills.

There is no excuse for taking the *Jessie Short* case out of the court and plopping it in the middle of Congress. Claiming that this bill will not affect the *Jessie Short* case is wrong. The reason we filed the *Jessie Short* case is that our reservation is one reservation, and the BIA was trying to take it from us. Money was not the point.

We won the *Jessie Short* case, but the BIA failed to live up to the court's decision. That is why the *Puzz* case was filed.

The BIA made a mistake in 1950 when it organized the Hoopa Valley Tribe and left us out. Over the years, the BIA has tried con-

tinuously to force us into organizing separately from the Hoopa Valley Tribe so it could split the reservation. Now, the BIA is trying to get Congress to do it for them.

I see this as a bill to bail out the BIA from its mistake in 1950 and to help it avoid complying with the court's order. If this is legal, taking our case out of the courts, I do not think it should be.

I understand that the BIA does not wholeheartedly support this bill. Instead, there are a few Indian people who have been traveling back and forth from California to Washington, D.C. to speak for this bill, thinking that the BIA supports them. I am sure the BIA encouraged this.

I see no excuse for anyone's jumping into our lives and trying to push us around. That is all this bill amounts to— taking our birthright and handing it over to the Hoopa Valley Tribe.

I do not want to be terminated, but I would be if I did not come here today to speak out for myself and the people back home who elected me to represent them. Termination will cause many of the people on our reservation to lose faith in themselves. They will face rejection from other Indian people, but they will still be Indian as far as white people are concerned. No one else in America is asked to opt out or buy out of their culture. Neither should we be asked to do so.

Termination will destroy our hunting and fishing rights. People who lose their tribal relations will be made to pay taxes on land that is now under trust. Many people on the reservation are not accustomed to paying taxes, and they will lose their land.

By losing their tribal relations, Indian people on our reservation will lose health care and educational benefits they now have. I am on the California Rural Indian Health Board. I have worked long and hard for Indian health care. I will see much of my work go down the drain if this bill passes.

I do not want $20,000. I do not want $3,000. I want my rights.

The Indians of the reservation have not had time to learn about this bill. The ones who say they support it do not understand what it will do to them. If Congress insists on going forward with a bill like this, the least it could do is allow all the Indians to vote on it before it would take effect. After all, this is our reservation.

But, really, I wish you people could understand how upsetting these bills are to our people. I would like to see this bill killed.

Thank you.

[Prepared statement of Mr. Jones appears in appendix.]

The CHAIRMAN. I thank you very much.

The committee has been advised that the majority of Yurok Indians who physically reside in this area support this measure, but the majority of those who live outside this area oppose it. Why is there a difference between those who live in that area and those who live outside the area?

Ms. HABERMAN. There is no difference. An election, I am sure, would show you that if you would but allow us to have it.

We need a referendum on the reservation, not after the fact, but before the fact. We need a referendum, and you will see from the results of that, whether they be outside or inside, I don't believe the majority would want this bill at all.

Besides that, Senator Inouye, anybody doesn't lose their Indian culture or background. Wherever you go in the territorial United States, you are what you are, an Indian.

I come to these offices in Washington. I look in every one of your offices. I see an Indian away from home. This is not their reservation. They are here for what? A job to better themselves, and that is all our people are trying to do also.

I don't like to be penalized because we go to Eureka or McKinleyville or nearby towns to fulfill our jobs, because, eventually, we go home.

The CHAIRMAN. I don't think anyone is trying to penalize any Indian who leaves the reservation. As long as you are enrolled, I would consider you a member.

Ms. HABERMAN. That is my feeling exactly. As long as you are an enrolled Indian of the reservation, you should never lose your rights anywhere in the territorial United States.

The CHAIRMAN. I have here a letter dated September 12, 1988 from the National Congress of American Indians, signed by the Executive Director, Susan Shown Harjo, together with a resolution adopted by the NCAI Executive Committee on June 17 of this year supporting the government-to-government of H.R. 4469 and the Hoopa Valley Tribe's efforts to achieve its approval.

The letter also indicates NCAI's support of H.R. 4469 and S. 2723 which was introduced by Senator Cranston on August 10.

Can you explain why the national organization representing American Indians would support this measure?

Ms. HABERMAN. It is my understanding they have just learned about the termination factor. This is happening all across the nation. If you would but wait and not pass this bill immediately, I am certain you are going to hear from major tribes all across this nation.

They weren't aware of the termination factor in the bill. They have just now received it. We have spoken with that organization, and they are alarmed also that it is in there.

The CHAIRMAN. Well, this letter is dated September 12 which is just a few days ago.

Ms. HABERMAN. I realize that, but we have talked with them in the last two or three days also.

The CHAIRMAN. What is your plan of resolution of this problem? How would you resolve this matter?

Ms. HABERMAN. We would like the cases to be finalized. In the meantime, Judge Henderson in the *Puzz* case that we who have this election of Indians who are representing the excluded Indians of the Hoopa Valley Reservation to sit with appointed members by the Hoopa Business Council in talking over budgetary things, and this is the first time we have ever had that opportunity. We are delighted with that opportunity.

It seems like this bill would thwart those actions, and it is destroying our self-determination. It is telling us that we have to have a Yurok organization.

We feel that the monies at one time were so great. At one time, I recall that we made around $7 million a year in the timber industry. That has diminished now to just a little over or maybe a little under $1 million.

If you look at the Hoopas' budget, they want $3.5 million every year, and this bill would give it to them. It gives us nothing. We have an income of $185,000 on the fishery. When? Just last year and this year.

If the Hoopa Valley Tribe cannot make it on $3.5 million, how can we numbering two-thirds more make it on $185,000? I think that is a vast difference.

I feel that if we had a reservation-wide council—we are not trying to destroy the Hoopa Valley Tribe. They can continue and have their jurisdiction over their own membership and whatever, but I feel that to take away 90,000 acres from us which is the prime timber resources and just allow the Hoopa Valley Tribe to have $3.5 million while we get along on $185,000 is a shame.

I feel it is a Fifth Amendment taking, and we should be reimbursed or paid for the loss of that acreage if you are indeed going to force us into a Yurok organization.

The CHAIRMAN. Then you are opposed to dividing this area into two separate reservations?

Ms. HABERMAN. As the bill states it, it is very bad. It leaves us no choice. If you listened to Roanne speak, she says your options are three. If you do nothing, you are deemed to have accepted the $20,000 buy-out. They say, on the other side, they expect better than—I think it was Congressman Bosco's office, Jason Liles, who mentioned that he thought it would wipe out 2,500 of the Klamath River Yurok Indians. The Hoopa Business Council people say they think it would rub out about 2,000.

I don't really feel that to rub these Indians out is the way that this bill should treat us.

The CHAIRMAN. I thank the panel very much, and your opposition will be noted. As you know, we have referred this matter to the Library of Congress to advise us on the constitutionality of the measure. When that happens, we will send you a copy of their report.

Ms. HABERMAN. Thank you. I would appreciate it.

The CHAIRMAN. Thank you very much.

Without objection, the letter from the National Congress of American Indians dated September 12 and the copy of the resolution dated June 17 will be made part of the record at this point.

[Materials referred to appears in appendix.]

The CHAIRMAN. May I now call upon Ms. Jessie Short of Eureka, California; and Ms. Lisa Sundberg of Trinidad, California.

Ms. SUNDBERG. Mr. Chairman, I would like to ask if we can also have Mr. Robert McCoy and Mr. Abbott. Jessie wanted to give the rest of her time to Mr. McCoy so we could have an equal number of people as well.

The CHAIRMAN. They may both come up.

Mrs. Short, do you want to proceed, or do you want your son to begin?

STATEMENT OF JESSIE SHORT, OF EUREKA, CA

I am Jessie Short. I have power of attorney, and I represent half of the Yurok Indians on the Short case, and I am here to tell you I

approve of Senator Cranston's bill. I believe it would get the two tribes, the Hoopa Tribe and the Yurok Tribe back together again.

We could get rid of the BIA and go on with our business.

Thank you.

[The prepared statement of Ms. Short appears in appendix:]

The CHAIRMAN. I thank you very much.

Ms. Sundberg.

STATEMENT OF LISA SUNDBERG, OF TRINIDAD, CA

Ms. SUNDBERG. Good morning, Mr. Chairman and members of the committee.

Thank you for hearing our testimony on this important bill. I am also grateful for the sincere efforts of Senator Inouye to assure a continuous relationship between the United States Government and Indian tribes by making this committee permanent.

My name is Lisa Sundberg-Brown. I am a Yurok Indian. My family comes from five different Yurok villages reaching from Trinidad to the mouth of the Klamath up to the Weitchpec area. I am a resident and a member of the Trinidad Rancheria, a full-time college student seeking a degree in government and political science. After completing this degree, I plan to continue on to law school.

I grew up along the Klamath River and attended Pecwan Elementary in the summer and the fall months. During those years, I spent time with my grandfather and great uncle during these years learning about my culture and participating in our ceremonial dances. My homeland encompasses some of the most beautiful stretches of land in this country.

I was too young to remember when I became a litigant in the *Jessie Short* v. *United States* case. While I was growing up, however, I remember talking with other young plaintiffs about all the money we were going to receive. As I got older, I began asking some adults what the case was about and when we were going to receive this pot of gold. The problem I ran into was that no two people had the same understanding of what the *Short* case was all about except that it would be a sum of money from the government.

Each year, we were told that we were going to get a check from the government the next year. The next year came and went, however, over and over again. In the meantime, over 400 plaintiffs have died without ever seeing a dime.

The Yurok Tribe failed to organize because of people's fear of losing their money judgments in *Short*. As a result, many people went without many of the services I was able to enjoy as a rancheria member.

Because I was an enrolled member of the tribe and my Jessie Short damages were protected, I could not figure out why our attorneys weren't informing people that their judgment money in *Short* would be jeopardized if the Yurok Tribe were organized.

It was at this time I began doing more research on the *Short* case and learning what it was all about. The more I found out, the more enlightened I became to the danger of this case and its sister case,

Puzz, to the future of my tribe and to the sovereignty of tribes across the United States.

Mr. Chairman, in view of myself as a Yurok Indian, I view myself as a Yurok Indian, not a Hoopa. I was raised in Yurok territory and raised with Yurok values. Just because I have white blood in me doesn't mean that I am white. I consider myself Indian.

That is why I believe that each plaintiff should be allowed to choose for themselves who they are and who they identify with. The Senate bill does this, but, more importantly, it protects the aboriginal territories of the Yurok Tribe.

I know that you have heard that because some of us have both Yurok and Hoopa blood, we are going to be one big happy family and should have one big reservation-wide government. However, other tribes have demonstrated that these types of governments are more problems than they are worth. I am sure the BIA and the members of the committee would agree.

Moreover, I know from growing up around my elders that it is not the type of blood you have but what cultural and religious values you were raised with which determine tribal and political affiliation. As a result, I came to believe that despite the *Short* case, the Yurok Tribe had some very obvious options.

Since the Yurok plaintiffs judgment money would not be affected by tribal organization, I felt that the tribe should be organized, have a membership roll, and start to receive Federal and State programs to provide services for its people. They could have asserted jurisdiction on the Extension and negotiated with the Hoopa Tribe to manage the resources of the Hoopa Valley Reservation.

As a result, in June of this year of 1988, I was actively involved in an effort to organize the Yurok Tribe. Unfortunately, however, this effort failed because Short and Puzz activists told people that by organizing, they were going to lose their Short money and their rights to the Yurok Tribe and that the organizational effort was simply a trick of the BIA. Thus, the time wasn't right, and the people voted it down but only by a narrow margin.

I also would like to add that I feel this is really a pity that we cannot have, even after all the efforts that have been made, there are so many people who have gone without services. As a rancheria member, I know that these people could have services. They are going without.

One of the pieces of information that I will be submitting for the record is a note that was written by a gentleman who has his family on the river bar in a tent, and that is their home, and they have two children and a baby as well.

I could not understand why this happened until I spoke with Mr. Theirolf, the attorney for the *Puzz* case who was present at the election. During our discussions, I learned that many of the people who voted no against organization had been convinced that rather than becoming a member of the Yurok Tribe, they should instead support the establishment of a reservation-wide government which was and is being advocated by the Puzz activists.

This is another avenue of organizing my people. However, in order to achieve this type of government, the Hoopa Tribe would then have to be abolished.

I have read that the only power capable of doing this is Congress, not a court, as the five Puzz plaintiffs and their attorney are proposing to do. I was outraged by this attempt to abolish a tribe which has been in existence for over 10,000 years, but I was more appalled to learn that part of the argument in the *Puzz* case was that there was no Yurok Tribe.

I might note, too, that the Yurok Tribe is published in the Federal Register as being a federally recognized tribe by the United States Government.

This ran counter to everything I was taught from birth. I was equally shocked to hear that the Puzz attorneys were advocating that as a result of the reservation's establishment language, no tribe should have rights to this reservation. This position affects not only the Hoopa and Yurok Tribes' sovereignty but the sovereignty of many tribes whose reservations were created with similar language to that found in the 1864 act which created the Hoopa Valley Indian Reservation.

As you are aware, they won in the *Puzz* case and now, since no one has vested rights to the reservation, the BIA has taken over the management of our tribal resources and accounts, taking 10 percent off the top of any money allocated as their management fee. In other words, they are paying themselves out of Indian money for services that are their responsibility in the first place. Furthermore, the Bureau of Indian Affairs is the very culprit who mismanaged our resources and got our people into this protracted 30-year legal battle in the first place.

I might also add here that the former panel that just spoke with you indicated that only $185,000 was made off the commercial fishery off the mouth of the Klamath. I would like to note that $900,000 was actually generated by that resource. The allocation of the fishery is split up the middle. It is being managed by the Bureau of Indian Affairs right now, and 50 percent of the Indian catch and allocation goes for subsistence, and the other half is for the commercial fishery.

In speaking with a tribe that has a commercial fishery, the figures they have indicated to me on the calculations of the way they run their fishery with their tribe, these figures are substantially low. I believe that the Yurok Tribe is missing out on a large base of income that they could be generating for their own people.

As I understand it, we get some of the biggest and best quality fish down there at the mouth. The multiple factor in the economic stimulation that could be multiplied is double times the amount of money that is actually made.

So, if the fishery resource brought in $1.4 million which the resource and the allocation that was allowed for the commercial fishery this year, it should have been at least $1.4 million. You multiply that by two, and that is the stimulation factor of the Yurok Tribe that could be had if we did have a tribal government.

I can submit more detailed information to that effect.

Also, the tribe that I spoke with has a timber resource, and they say that their timber resource doesn't generate as much income or as many jobs as their fishery resource does as well. So, I believe that the figures that are being used are substantially low.

Yes; the amount of money that went into the communal account for the lower extension from the fishery is $185,000. However, over $900,000 was generated from this resource. The tribe was not allowed to be the marketer. That was another base of income that could have been had. In addition, we get probably one of the biggest influxes of sport fishermen that the tribe is not able to tap into at this point.

In an attempt to resolve the land issue surrounding the Hoopa Valley Indian Reservation, Congressman Bosco introduced H.R. 4469, a bill with flaws but a step in the right direction. To me, this was a light at the end of the tunnel.

So, instead of killing the baby because it didn't have all the right features, a group of very dedicated Yurok people whom I have seen for many years fight for Indian programs and Indian issues even though it has meant sticking their necks out on the line in the process came together and started to work on a more equitable solution for this complex problem.

On June 30, 1988, in Sacramento, CA, a Senate oversight hearing was held by this committee. Mr. Chairman, you asked the two parties involved to come together and try to work out a solution among themselves. We took your advice, and that is what brings us here today.

From the outset, we realized that no one solution will make all of the people happy and that all parties involved are going to have to compromise if we are going to solve our problems and get on with our lives.

Mr. Chairman, I, like you, can now appreciate how it feels to put in long and difficult hours to develop a fair and equitable solution to an Indian problem only to have myself and that solution viciously attacked by people who don't understand what they are giving up and by people whose own self-interests are being jeopardized.

The final report of the American Indian Policy Review Commission stated:

> The ultimate objective of Federal Indian policy must be directed toward aiding the tribes in achievement of fully functioning governments exercising authority within the boundaries of the respective reservations. This authority would include the power to adjudicate civil and criminal matters, to regulation land use, to regulate natural resources such as fish and game and water rights, to issue business licenses, to impose taxes, and to do any and all of those things which all local governments within the United States are presently doing.

This is our goal for the Yurok Tribe and one of the main purposes for my being here today. Only a tribal government can exercise these rights and responsibilities. A citizens group cannot.

Thus, for the Puzz attorneys to advocate the continuation of the Community Advisory Council in lieu of the organization of the Yurok Tribe is wrong. The Community Advisory Council created by the *Puzz* decision currently can never have the sovereign authority of an Indian tribe. These powers stem from the inherent sovereignty of Indian tribes, and it is clear to me, as I hope it is clear to you, that the CAC is not a tribal government.

Sovereign authority of Indian tribes was not given to us by the United States. It was merely recognized. These powers can never be held by a mere group of individuals.

Thus, it is my belief that people like Ms. Lyle, Mrs. Haberman, and Mr. Jones are misguided in their beliefs, for even if they are successful in the long run, they themselves will lose something which can never be replaced and which anti-Indian groups across the country have been trying to take from them since the white man first came to these shores, their inherent rights as tribal members. Thus, to me, the *Puzz* case, not this bill, is a form of termination, the termination of the Yurok and Hoopa Tribes.

To get into the guts of the bill, there are things that I am just going to highlight, because we will be submitting very specified and detailed documentation on the changes that I feel very strongly about. But I would also like to highlight at this point, sir, if I can, some of the things that I feel this committee should be aware of at this time just briefly, if I may.

Any money that is used for the Hoopa tribal budget should come from the Hoopa Tribe's share of the escrow account, not off the top. The fact that the Yurok Tribe shares the escrow account is based on the total amount of the account divided by the number of Hoopas and Yuroks requires this if the proposal is to be fair and equitable.

Also, similar to what is required by the Yurok Tribe, none of the settlement funds should become available to the Hoopa Tribe until such time as the Fifth Amendment is waived by the tribe.

Because of the fact that the tribe will need access to this money at the time of enhancement and a determination of all those eligible to participate in the settlement won't be known for at least 2 years from enactment, it is suggested that a certain amount of money be set aside in a special account not to exceed at least $10 million for the Hoopa Tribe to draw down for their budget. However, when the number of eligible participants is finally determined, the calculations should be done as if this amount was never set aside for the tribe to draw from. When the figures for the tribe's share is determined, it will then be less any amount that was drawn down from this special account.

Since each successful project always requires a plan of action, I feel very strongly that there needs to be some kind of a transitional team that is created immediately after this bill is enacted. Therefore, I believe that it should be the determination of the Secretary of the Interior and perhaps Senator Cranston's and Congressman Bosco's office to elect a panel of dedicated Yurok people who have been involved in organizing or trying to promote tribal government to be on a committee to help provide information to the people.

One of the stigmas that we have had is getting information to the people. You have heard that very many people oppose the bill. I believe that there are a large number of people that do oppose the bill because of the fact of the misinformation that has been generated, as you have heard today.

Anybody who knows the contents of the bill can clearly compare the arguments that have been made by the panel earlier. These are things that I believe are not true, and I am sure your committee will agree.

I believe that the money contributed by the Federal Government is a far cry from what I believe the people are entitled to for the

services they should have had but did not receive over beyond the 30 years of the litigation. The irresponsibility of the BIA has left our people in a state of confusion with an empty reservation and little hope for the future.

We have absolutely no land base for our tribe to use to help bring our people home. Yes, I believe the Extension is excess of 50,000 acres. However, there are only roughly around 3,600 acres which the tribe can actually use at this time, and I believe that a lot of people who were not allotted and are descendants of allottees need a land base so that we can create housing, because housing projects are really based on reservation needs.

Thus, we feel that the Federal contribution to the Yurok land acquisition program should be substantially increased, and I have details on that as well.

I do believe that there is a taking on an expectancy that our people that would be giving up under this bill. I realize that because of the lawsuits, no one has vested rights or ownership to the resources of the reservation. However, there is a payment due for 30 years of neglect.

Therefore, a substantially increased Federal share is justifiable. The theory of land and vested rights in ownership comes from possession and aboriginal usage of land and not from bureaucratic mishandling of organic documents. I believe it is wrong for the government to fall back on loose interpretations by courts to avoid being held accountable for their own mistakes.

The Yurok and Hoopa Indians owned their lands long before the Constitution of the United States was ever thought of. For the people of this Congress to say we don't have ownership is putting the attitudes of the 1980's back to the times when the first settlers came in and treaties were made with Indians under duress.

I also feel that the monies left in the settlement fund should be left for the Yurok Tribe after the payments have been made out. I think there needs to be a substantial amount of work done on the configurations of amounts of monies being paid to those people that elect the tribal government option. I believe that people would most benefit by becoming members of the tribe, but I believe that they are and should be entitled to receive more than $3,000 at this time because of the lack of services. I would also hope that this money could come out of the settlement fund and not the tribe's share of the escrow.

I will run some figures by you on how the $20,000 option is made available, but I think the tax protection of those monies that are received by the people should be put back in as it was first introduced by Congressman Bosco.

I might also like to clarify some details that were indicated by the group that came before. I believe I have every right to speak on behalf of Yurok people, because I am a Yurok Indian and I am in my aboriginal territory.

We feel very strongly about the aboriginal territories. That is why we allowed and asked that the three rancherias that are within that territory could be possibly included in this bill and a part of the Yurok Reservation, because a lot of those people do not want to lose their identity or have to make a choice between the tribe and which tribal affiliation they want to join in.

I find it very ironic that this group feels that we are working with the enemy but yet want a reservation-wide government. I would think that if somebody had an enemy, they wouldn't want to go into business with them.

We are trying to promote a mutual respect for each other's tribes. That is something that is in line with what we had a long time ago, respect for each other.

One of the other pieces of information I will be submitting to this committee is line item appropriations that I feel are necessary for the Yurok Tribe, because they are going to be playing catch-up on a lot of housing needs, water, sewer, and roads. I have detailed itemizations of those things as well.

I wish I might add that the people back home knew the true intent of the language of this bill. We are faced with a very ugly scene, and I am appalled by the fact that my own attorneys have, for the first time, finally communicated with paid ads in the newspaper which are both false and misleading. Their failure to print the true facts of this bill has led to twisted interpretation which has placed fear in many of our people.

People are so confused at home that they simply do not know whom to believe. To give you an example of this, I am hereby submitting as a part of my testimony which will be coming to your committee the tapes of meetings that have been held by the Puzz Attorney, Mr. Theirolf, letters that have been mailed to the plaintiffs by Mr. Wunsch, a letter from Mr. Shearer giving his analysis of the bill, newspaper ads that have been printed to communicate to the plaintiffs the intent of these bills, and newspaper articles that have statements made by the Puzz and Short plaintiffs' attorneys.

In closing, I believe that the efforts made by the two Indian groups are courageous. I cannot begin to tell you the outright slander that has occurred against all of us because we have been trying to do something I know our ancestors would have done. But, unfortunately, we have the influence of people who don't understand our tribal values and whose motives are questionable.

Therefore, I ask your committee to maybe get involved in the communication to the plaintiffs and the people involved, and I thank you for helping us.

[Prepared statement of Ms. Sundberg appears in appendix.]

The CHAIRMAN. I thank you very much, Ms. Sundberg.

I would now call on Mr. Robert McCoy.

STATEMENT OF ROBERT McCOY

Mr. MCCOY. Mr. Chairman, I appreciate the opportunity to speak before this committee regarding S. 2723 which I support. My name is Robert McCoy, a Yurok Indian. I am a World War II veteran and a plaintiff in the *Jessie Short* case. Recently, I retired after falling trees in the timber industry for over 40 years.

For 30 years, I have supported the litigation efforts that my mother, Mrs. Jessie Short, helped initiate to improve the conditions of the Yurok people. I feel we, the Yurok people, must step forward with other methods to take control of our future since it is apparent that the courts are unable to come to any resolution. In fact,

after 100-plus years of BIA control with deception resulting in losing thousands of acres of Yurok land, we now have a decision in the *Puzz* case that gives the BIA full control again with unlimited powers.

Mr. Chairman, after the Sacramento hearings in June, I reexamined my position regarding the legislation, taking heed of your suggestion that we must present an Indian settlement and not solutions made up by people in Washington, D.C. We have met with the Hoopa people, Congressional staffers, and other Yurok people while trying to reach a settlement of the issue. We have reached an agreement in principle and are offering amendments for your consideration.

The conditions of the Yurok Reservation must be discussed in considering our additional requests to Senator Cranston's bill. First, we must consider the U.S. Government's position regarding termination process where the BIA, oftentimes under pretenses of honest officials, prepared contracts that gave the timber contractors the land in addition to the timber that was sold. Many of these allotments were owned by many heirs, so the BIA used the old divide and conquer method to reach agreements with them who later found that the BIA did not protect their rights.

We need land to build homes, economic development programs, replant forests for our descendants, and for general tribal operations. We request that the U.S. Senate appropriate a larger amount than is in the present bill.

Secondly, we request that the Senate authorize or require that the BIA, under present authorization, construct a two-lane highway from State Highway 96 to U.S. Highway 101. This would provide access from the upper part of the reservation to the Lower Klamath area.

Presently, there is a 52-mile mountain road, sometimes impassable in the wintertime, to get from one part of the reservation to the other. This road would be the catalyst for providing electricity and community water delivery systems that presently are unavailable on the reservation.

Finally, we request that the U.S. Senate authorize additional funds for the settlement account to ensure that the Yurok Tribe would have sufficient funds to start up an efficient tribal operation.

In closing, Mr. Chairman, please consider the fact that after living for over 60 years in a system of BIA or government uncertainty, it is difficult for me to see a change unless the U.S. Congress provides the resources in a priority manner for the Yuroks to establish a government and play catch-up to other Indian tribes and to the society in general.

I thank you, sir.

[Prepared statement of Mr. McCoy appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. McCoy.

Now, we will hear from Mr. Charles Abbott.

STATEMENT OF CHARLES ABBOTT

Mr. ABBOTT. Mr. Chairman, thank you for the opportunity to speak before this committee regarding issues that will influence our lives for many generations to come.

My name is Charles Abbott, a Yurok Indian, a U.S. Navy veteran, a *Jessie Short* plaintiff, and a supporter of this bill. My home is on the upper part of the Hoopa Extension about six miles down river from Weitchpec. Like many of the people living on the reservation, I commute or live part-time near my employment.

The Yuroks are a proud people who have survived years of difficulty in trying to preserve our homelands. My grandparents told the story of our people being forced from our aboriginal territories to a strip of land one mile on each side of the Klamath River from Weitchpec to the ocean. Then, my parents witnessed the taking of allotments by the BIA who forced the Indians to sell their lands as they tried to terminate the reservation. Now today, as I become one of the elders of the tribe, it appears that we have little hope to preserve our identity, and in losing our identity, we slowly but surely lose part of our human dignity.

We Yuroks wish to change this trend by taking our destiny into our own hands and support this legislation that will provide a vehicle to organize the Yurok Tribe, retain ownership of our traditional lands, regulate the natural resources, and, most importantly, give us an opportunity to gain back our human dignity. The Yuroks are still a proud people.

Traditionally, the Yuroks did not have a central government with chiefs. Rather, the individual villages had leadership that centered around religious leadership. This lack of history in central organization is recognized; however, we know that in order to survive as a people, we must be organized. It will be a new era for the Yuroks.

For many years, I have worked in educational programs and other community development programs. So, I know that our lack of services trace back to a lack of strong tribal organization.

It is important for the committee to understand that just as the mighty redwoods started from a seed, the Yurok government also must start from a seed. We must have seed monies to provide technical assistance, staffing communication, et cetera, during the time of organization. We need to immediately involve our people in planning the development of our governmental operations which will ultimately affect all aspects of our people's social and economic development.

During this transition period, we would expect Congress to require that agencies concerned with tribal trust relationships report periodically regarding the development of the Yurok Tribe.

We Yuroks who have visions of a better life for our people and have stepped forward in a positive manner are being subjected to personal attacks by people who apparently have other interests. Please do not be misled by misinformation, disinformation, and other tactics employed by professional advocates. We Yurok people have been promised many benefits without seeing anything positive.

Mr. Chairman and members of the committee, we need this legislation to provide land and resources so that we can plant and nourish the seed that will bring back the Yurok people to a position where we can influence our destiny as a people and continue to be proud Yuroks. The law given to us by the Creator is to prepare

good ground, plant a good seed, water, cultivate, and allow time in the sun. Then, a great harvest is guaranteed.

Thank you for the opportunity to speak before this distinguished body.

[Prepared statement of Mr. Abbott appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Abbott.

Ms. Lyall, Ms. Haberman, and Mr. Jones have all indicated that the measure before us is a Yurok termination bill. Do you believe that this will terminate the Yuroks?

Mr. ABBOTT. I believe that this is completely the opposite of termination. It is now the beginning of a new era for the Yurok Tribe to be organized and in developing their own initiatives for self-determination. It strengthens the tribe and brings us together.

In the old days, it was really two tribes working together for many different reasons, but even today, it will make a stronger coalition to better provide services to all Indians of both tribes.

Mr. MCCOY. May I respond to that, sir?

The CHAIRMAN. Please do.

Mr. MCCOY. I feel that so many of the people who are scattered throughout the world today who are Yurok Indians— and I know this to be true—that they would prefer the buy-out because they no longer feel that they will come back to the reservation for those reasons that other people would stay. They have made their homes in far away places and raised their families and are established in good jobs.

For those people, I feel this bill addresses their needs with money, and I do not feel that the language in the bill is termination. I think it is an opportunity for Indian people to make intelligent decisions for themselves.

It seems that all my life I have heard people say well, Indian people don't have the brain to make their own decisions. I guess this stems from the BIA's thinking that Indians had to be protected.

Well, Indian people are getting more educated and always have had the brain to know what they wanted to do themselves and make decisions for themselves. So, I feel that this is an erroneous bit of thinking that the Indian people haven't got enough brains to make their own decisions.

Thank you.

Ms. HABERMAN. Senator, can I bring in Jimmie James who is on the power of attorney, too? He is sitting right here. Would you hear him for a little while?

The CHAIRMAN. You may.

Ms. HABERMAN. Thank you.

Ms. SUNDBERG. Mr. Chairman, if I may add to your question as well, as you recall, termination was termination of Indian tribes when it originated. I don't believe that this is the termination of a tribe, as Mr. Abbott had indicated. It is the bringing together of our Yurok Tribe.

Those people who want that option should have the option, but their option is not going to determine whether or not there is going to be a tribe. There is going to be a Yurok Tribe, but if those people want to take the buy-out would have that option, then it should be left and available to them.

I think the discrepancy of the money could be worked on so that people wouldn't—or maybe perhaps the Bureau of Indian Affairs educate the people prior to the decision being made available so that they fully are aware of the options and what they do.

I think it is just in the process of educating the people of the services they would be benefitted by as a tribe versus the buy-out.

The CHAIRMAN. Have the members of the Yurok Indian Tribe organized themselves in a manner that is generally recognized by the Government of the United States? To wit, do you have an elected chairman?

Ms. SUNDBERG. No; we don't.

The CHAIRMAN. Do you have an elected tribal council?

Ms. SUNDBERG. No; we don't.

The CHAIRMAN. Do you have a judicial council?

Ms. SUNDBERG. No; we don't at this time. We just have a tribe that has been recognized but is unorganized. It has been recognized by the U.S. Government.

The CHAIRMAN. Then, there is no elected chairman of your group?

Ms. SUNDBERG. Correct. That is why we have so many different factions coming back and going crazy around Washington, DC.

The CHAIRMAN. What percentage of the members of the Yurok Tribe favor this bill? Is there any way of knowing?

Ms. SUNDBERG. It is really hard to determine at this point. In opposition to the bill, I know that, as I mentioned earlier, the people that are saying that they are opposed to it are saying they are opposed to it because they think it is a termination bill.

Well, for anybody who reads the bill and completely understands it understands that this is not a termination bill. Therefore, I don't quite know where they would really lie if they had the true facts.

The people that we have spoken with one on one are those we have had the best success with because they can understand and ask questions without being intimidated by the people that make comments and pressure them to go against this idea because of people like myself who are involved.

We have made a decision that it is probably not the best arena even though we probably should have done it to have huge meetings where large numbers of people can come in and maybe vote or something like that, but I think it is so important that people clearly understand. The success of these meetings is people getting true information and not having to be bombarded by propaganda has made it difficult for us to communicate clearly like you would want to communicate to any one of these people so that they fully understand the implications and the impact of the bill.

I believe right now the people that we have spoken to that have had the chance to listen, the ones that we have spoken with, I would say 90 percent of them are in favor. Now, I am not saying that that is 90 percent of the total amount of people.

Jessie Short, right before she came back here had a mail-out, and she had gotten a lot of good responses with people calling in positively responding to the bill and the options that are made available to them. People are tired and they want to see something happen.

Like I said, these people have gone without services for many years, and for us to be bound by a court decision or tied up in lawsuits that prevent these people from getting services is not good.

I am a rancheria member. I am a Short plaintiff, and I get services at the same time. We have a clinic at Trinidad Rancheria that services over 5,000 active files of non-tribal Yurok people, and it is sad for me to see that those people are going without when they could have these things.

The CHAIRMAN. Thank you.

Mr. James.

STATEMENT OF JIMMIE JAMES

Mr. JAMES. My name is Jimmie James. I am three-quarters Yurok and one-quarter Hoopa. I have lived on the reservation all my life except the three years that I spent in the Armed Forces in World War II.

Right now, I am just wondering who I am, what I am doing, how I am doing it, and what is going to happen. Now, I am going to take you several years back when the U.S. Federal Government said let the Indians take care of their own business through organizations. It came to Hoopa.

Now, the BIA recognized the Hoopa Valley Indian Reservation only 20 miles down the Klamath River, but in the language and in the reading of the Federal Government, that extended clear to the Pacific Ocean. When they made the organization, they only made it Hoopa of 12 miles square, 20 miles down the river.

They had councilmen from in the Extension, and it worked beautifully. The old timers were just like me. They didn't go to college or universities, but they had a great understanding.

The number of cases from the Extension was brought to the council before the BIA. The BIA had to change their mind because the council said that that is the way the Indians wanted it. That is why I say it worked beautifully.

It came to a time when some of the Hoopa Indians decided that they wanted to separate. The BIA went along with it. So, that is how we got separated.

Now, they gave us a time when we were supposed to have an organization, and that was about 30 or 35 years ago. They made by-laws and a constitution, sent it to the BIA to Washington. It came back, and the reading of the by-laws and constitution was different.

So, the Indians didn't want it. From that time on, we couldn't and never did get recognized as the Hoopa Valley Indian Reservation Indians until the *Jessie Short* case came in.

They gave us three people the power of attorney, Jessie Short, myself, and Timm Williams. I think about it sometimes, sometimes when I do good for the *Jessie Short* case. I was recognized as a power of attorney man.

I found out I am an individual. That is what I mean that I don't know where I am, who I am, who I represent, but I do know I represent my family.

So, now, we have gone along up until now. We have a fishery. The salmon have been sold, a certain amount of salmon. Our Indi-

ans have become outlaws. They are selling salmon. They are catching salmon on the outside, and I stand there and I watch it.

Our lawmen are not doing their jobs, and our young people are without homes. Just the other day, somebody gave my daughter a little small trailer house. They have five children living in that little trailer house. They moved into it, but they are happy.

I had a little trailer house down at the mouth of the river. There was a guy down there, an Indian boy who had a child. I told him if he wanted my trailer house, he could give me $250 if he wanted to. Three days later, he went and got it, and he is happy.

Now, nobody seemed to care about those people who are homeless, and nobody knows what it is really like until they have to get in a condition like that.

I care. I love those people. Of course, there are people living in good homes. They know how to talk, and they have good homes.

Now, look at our fishing. We need to control it. Look at the boats that are going up on our river. We need to control that. The people that are on the river are hundreds and hundreds of fishermen out there, sport fishermen. We need to get the license control over it.

Our roads—there are no roads. We can't go up the river. We have to go way around.

In that area, we have no electricity. It is the only place in the United States that has no electricity for a bunch of people. They went to the BIA, and the BIA said it will cost too much. We don't have that money.

We care about those people.

Now, the BIA can't help us, but who is over the BIA? Isn't there anybody over the BIA? Then, if there is nobody over the BIA, then give us a chance to run our own business. We want to go ahead. There are some smart people in our area. There are kind people. We want to get those people working.

We need a fish cannery. We need a bingo place. We need motels. There are a lot of things we need. We want to go ahead on them and put our people to work rather than to say, hey, get those fellows off the job. They are Yuroks.

We don't want to hear that any more. We want to go about it on our own. And if this bill is termination, I don't want it for my people.

Now, in the Indian way of leadership, he has love for every one of them, even the smallest one. I have love for those people. I am not going to say anything against anybody. I love all of you. I feel that you will help us get something going for us.

Thank you.

The CHAIRMAN. Thank you very much, Mr. James. I can assure you that this committee has heard the pleas of the Yuroks. We are doing our very best to see if we cannot rectify the situation.

I just returned from a week's journey to visit Eskimos, Aleuts, and Indians in villages that very few members of the Congress have ever seen. Ninety-five percent of the Eskimo villages, incidentally, are inaccessible, because there are no roads—unless you have a dog sled in the winter or you are willing to walk miles and miles for days during the summer. These villages are located on tundra, permafrost. None of these villages has sewer systems or water systems. Very few have electricity.

So, I can understand your plight also.

I thank you, and we will now take a recess of 5 minutes. I have to call the other committee to tell them that I will not be there.

Ms. SUNDBERG. Thank you, sir.

[Recess taken.]

The CHAIRMAN. The committee will please come to order.

Now that we have order, Mr. Colegrove, you may proceed.

STATEMENT OF HON. WILFRED K. COLEGROVE, CHAIRMAN, HOOPA VALLEY TRIBAL BUSINESS COUNCIL

Mr. COLEGROVE. Thank you, Mr. Chairman.

We surely appreciate the time that we get to testify on this very important matter to our people. I have here with me today Mr. Dale Risling who is also on the tribal council.

There has been a lot said today about the issue, and I don't want to be repetitious. I submitted for the record a written testimony.

The CHAIRMAN. All of your prepared statements will be made part of the record.

Mr. COLEGROVE. Thank you.

Shortly after the bill was introduced in the House of Representatives by Congressman Bosco and we held oversight hearings in Sacramento, we were approached and welcomed the approach from a group of the Yuroks, many of whom are not here today. Their concerns were some of the concerns that you hear today. One of the major things that they were concerned about at that time was the fishing on the Lower Klamath River where the Hoopa who had negotiated the allocation of fish with off-shore fishing and other interests that dealt with the Pacific Management Fisheries Council on the West Coast. We were in the process of doing this.

They recognized that the Hoopas were involved in all of the processes, including bringing in more new fish and preservation of the streams on the Hoopa Reservation, and they also knew that we were involved in the political process with many of the people on the West Coast dealing with fisheries.

They were discouraged. The Yurok people were discouraged that they were not able to have their input into this. They said it is now time to sit down, develop our systems, work out our systems, and if this bill will do that, let's look at it.

After looking at it, they wanted a larger share of the escrow account, more land, a guarantee that the Yurok Tribe would be organized, a guarantee of eligibility for Federal services, and so on and so forth. Many of these things that the Hoopas were negotiating with we couldn't give to them. It was a question, I guess, of the United States Government being a third party in these negotiations.

Over the years, this case has dragged on into an area of negotiations and to mediation, in many cases, trying to get some sort of resolution on the case without any success whatsoever. Part of the reason, I think, was the failure, in looking back—it is always good to look back. You can see things probably clearer than we would like to see by looking into the future. We see now that the government was in fact a large part of the parties to all of the issues. However, they weren't in the negotiations.

We explained this to the Yuroks and to the other people that were there. As I said earlier, it was mostly people from the Lower Klamath who were very interested in the commercial fishing. They wanted us to sign an agreement with the State. They wanted to help us work out to preserve the allocation and so many other issues that were involved around the fishing.

We, in turn, met with the Representatives on the House side that were involved in Indian affairs. Through this way, we were able to come together to work out some sort of what we feel was an equitable solution.

Understand that our people consider the escrow account as theirs because it came out of Hoopa land.

The *Jessie Short* case says that there are other people who are to share in this. The *Jessie Short* case also says that there is no vested interest of the Hoopa in the Extension nor the Hoopa Square itself. But, then, if you use that premise as the basis for the *Jessie Short* case, then there is no basis for anyone to have, in fact, vested interest on the Extension.

So, this is the problem that we looked at. If they don't own the land, we don't own the land, no one knows who owns the land, then who does own the land? What happens to the land? How do we divide it up? What is equitable and what is not equitable?

We do know that there was a pot of money that was set aside. We looked at this money, and we came to an agreement with them. Now, this became a three-way agreement, because much of the negotiations were taking place in the committee of the House of Representatives who had extensive knowledge of the issues because they had looked at this issue many times over the last ten years.

We accept we gave up as Hoopas a substantial amount of the escrow account to settle the issue. We agreed to open up our enrollment criteria so that we could accept people into our tribe who had Hoopa blood and wished to come that way. We agreed to not become involved in the commercial fishing in the Lower Klamath even though we were part of the major provider and we still participate in the management of the Klamath River Basin.

These were some of the things that we were looking at that became a part of the bill. The rest of the bill that deals with the organization, settlement, and the options and these issues were developed with members of the Yurok delegation that were meeting with the committee, through the hearing process, comments, and all 39 members of the committee over in the House of Representatives, you can be assured, received a lot of mail, a lot of suggestions, telephone calls, and everything else in the House of Representatives.

It also was requested that there be a study to see the constitutionality of the action and whether the Fifth Amendment was in fact a viable issue in this project. This study, I was hoping, would be ready by today, but I guess it is not ready. It may be the latter part of this week. They had a deadline of the 19th to finish that.

After the bill was reported out of the House of Representatives by unanimous vote with the condition of the study and then also the condition that we wait an appropriate time before it be taken to the House of Representatives, Senator Cranston agreed to do the

bill. Since that time, we have made efforts to inform all the Indians that were involved about the legislation.

Shortly after that, after talking a bit, Mrs. Short and her family had become involved in the process. So, some of the original negotiators had changed, and the scope was enlarged from the people that we were talking to with a larger base of interest. Many of the people we originally talked to were people who lived on the reservation itself.

We support their request for additional funds. We support their request for rights to do additional lands. We helped to negotiate with the university to try to get a part of the 14 acres that the Forest Service was going to give up that had buildings so they could immediately start an operation.

I guess what we are all looking at at the same time is if the Fifth Amendment issue, that is, if the Hoopas have no vested rights, then the Yuroks have no vested rights in any part of the reservation. Then we are also looking at the position if there is a Fifth Amendment taking, that means someone has rights. That is against the basic principles of the *Jessie Short* case.

If they say there is a Fifth Amendment taking because there are vested rights by someone, then there is no *Jessie Short* case, because that is the same principle. We understand that, and many people are looking at that.

I think the most devastating thing that happened during this time was the takeover by the Bureau of Indian Affairs of the total reservation because of the decision in the *Puzz* case. The *Puzz* case said basically that there shall be no discrimination, and they ordered the Bureau of Indian Affairs to come up with a plan.

Their plan is to have a community action committee that will basically run the reservation. Stuck in within the order, they say there is another part in there that the Hoopa Tribe shall have sovereign authority over their own people. What does that mean?

We don't have any authority over our lands. We don't have any authority over our own properties. We don't have any authority over our monies. We don't have any authority over anything, but we have authority over our people. That means we can regulate for our people but only for our own people. It is completely a crazy situation to try to run a tribal government with.

The ironic part of this is that the Hoopa Tribe has been involved with the process of working under the demonstration projects and with our management system have been able to contract much of the Bureau of Indian Affairs' money. Now, we are in fact contracting almost all of the Federal money from the Hoopa Tribe, and the Bureau of Indian Affairs is managing our tribal money on the other side. It is completely reversed. Mr. Risling will talk a little later about this issue.

Mr. Chairman, if we pass this bill, we will be stopping 25 years of strife and will preserve the Hoopa Tribe and the Yurok Tribe. When we talk about stripping sovereign authority from a tribe, which is what the litigation basically has done, you can say when you look at termination that the *Puzz* decision and the *Jessie Short* case itself is a termination with litigation, because it has been proven it is doing that right now.

The court last week looked at this issue, and they said we don't want to hear anything about your community action plan, we don't want to hear about the legislation, we don't want to hear about anything. What he wanted to do in fact was—and he issued an order last week that said I want to wait to see what happens with the legislation, because if it does, the *Puzz* case is moot, and then there may be some order coming out of this.

He is confused. He was confused. He was worried about it. He said if there are 3,800 plaintiffs and less than 300 voted, then why? Bureau of Indian Affairs, did you do your job getting out the information that there was going to be an election?

They published it in the newspapers, but they didn't send out notices to them. The reason they didn't send out notices to them is because they didn't have the addresses of the plaintiffs. They didn't have the addresses of the Hoopa Tribe members.

So, we are operating in this type of vacuum, and I am saying this because of these people who have a great influence on our lives and will bear on what happens to us. That, in effect, is termination in itself.

This is in fact a restoration and a renaissance type of legislation. The Hoopas have no objections to how the Yuroks want to work out their side of the issue. We wish not to tell them what to do. We do not wish to do that, but we are prepared to help them along every step of the way.

If we talk about joint councils and some of the things that were said earlier today by the Assistant Secretary, I agree with the Secretary that he is very confused. I respectfully disagree with him that a joint situation like Wind River tribal council would be something that would be a resolution to this issue. We know what happens in the Wind River issue when they try to put their own regulations together, that the two tribes couldn't agree. In fact, the Bureau of Indian Affairs now is basically doing the same thing over there.

So, what we are doing is just transferring our problem to another problem, and we don't want to do that.

We are talking about two different people. We are talking about the Hoopas with a different language, different territorial grounds. The same is true of the Yuroks. They have a different language and different territorial bounds and different systems within their own heredity systems.

The religion is common. Mr. Jones talked earlier about being related. My grandmother and his grandmother, I think, were cousins or something like that. In effect, it was a long time ago.

It is not like we are separating the two peoples. He said we would be separated if the bill were in effect. In fact, he divorced his Hoopa woman and moved home. In that, he separated himself. It is not that we are separating Mr. Jones. He is my cousin. I assured him. We danced together. I participated in their things. But this is good relationships.

We want to keep these good relationships. We are looking at an analogy of, say, between Canada and the United States and the fact that since Canada lives next door to us and we speak the same language and we intermarry and do commerce together that we

should merge into one country. It would be unacceptable to the Canadians and, I am sure, to the United States.

This is the same part, but, together, we are a very strong people with open borders and this continuous interaction. This is the way we hope that the Hoopa-Yurok thing will work out.

We are looking at this as a solution and giving up money rather than going back to the courts.

I have here—and I am sure you don't want this for the record—the record of the docket sheet on the *Jessie Short* case itself. It is over 200 pages of just docket records of each one of these. Each one of these has maybe 100 issues on it. We have rooms that are just full of issues in the *Jessie Short* case, and we are not anywhere close to finishing up the case.

They were requested by the Justice Department and some of the Yuroks requested that *Jessie Short* be set aside from the main issue and let it continue. We agreed to do that.

Mr. Chairman, we urge you to take a good look at the considerations that the Yurok people have brought for you today with regard to changing the bill and, certainly, the Hoopas urge you to pass this bill.

Thank you.

[Prepared statement of Mr. Colegrove appears in appendix.]

The CHAIRMAN. Thank you.

Mr. Risling.

STATEMENT OF HON. DALE RISLING, COUNCIL MEMBER, HOOPA VALLEY TRIBAL BUSINESS COUNCIL

Mr. RISLING. Mr. Chairman, my name is Dale Risling. I am an elected member of the Hoopa Tribal Council. I live on the Square portion of the Hoopa Valley Indian Reservation where I was born and grew up. I would like to thank you for this opportunity.

I, like my tribal chairman, Mr. Colegrove, am here today because we have been democratically elected to represent and speak on behalf of our tribe. This is done under the authority of our tribal constitution which has been adopted by our enrolled membership and has been approved by the Secretary of the Interior.

We support S. 2723 because this is what our people want. Our people have directed us to do this through a referendum vote, through general meetings, and public hearings.

We speak this way, as do most other tribes in this nation, through the democratic process and through resolutions.

At this committee's oversight hearing on June 30, 1988, I described the nightmare which 25 years of litigation has caused as we struggled to manage our reservation and address unemployment and social service needs. Although I will not repeat that testimony and although today we focus on solutions to those problems which S. 2723 represents, we must bring you pup to date on the BIA takeover of our reservation community.

We want to be sure this committee knows how critical our situation is. We appreciate the hard work which you have put into helping all the tribal people on our reservation, and we urge you to exercise firm leadership to enact S. 2723 now during the remaining days of this Congress.

As you know, on April 8, 1988, a Federal District Court Judge issued a ruling in *Puzz* v. *Department of the Interior* which stripped our tribe of governmental authority over the Hoopa Square and directed BIA to run our lives. The judge directed BIA to prepare a plan to comply with his order.

BIA has seized the opportunity and applied the order in an extreme and irresponsible manner. Its untimely decisions have totally disrupted social services and tribal government. Even the judge said that he did not intend to destroy the existing structure of tribal self-government. Yet, BIA has superimposed a six-member body called the Community Advisory Committee or the CAC to advise BIA on all program and budgeting decisions. BIA has refused to deal with the elected Hoopa Tribal Council entirely, instead requiring us to designate three individuals to sit on the CAC.

Mr. Chairman, I would like to make it clear at this time that the CAC does not replace our tribal government. It is not a tribal council. The members that we have appointed to sit on the CAC are staff members. They are employees of ours, and two members are non-California Indians.

This should not be considered a replacement of a tribal council. They are merely advisors to BIA employees, to Federal employees. The Federal employees, in turn, make the decisions on budgeting and program matters.

We are somewhat insulted when this CAC committee is referred to as tribal leadership.

The BIA has run wild with the *Puzz* judge's direction that tribal programs not discriminate between enrolled members of the Hoopa Valley Tribe and others. It has used *Puzz* to try to muzzle the efforts of the Hoopa Tribe and responsible Yurok leaders to obtain enactment of S. 2723.

On August 5, the BIA ruled that no tribal trust funds may be used for our legislative office. This is not really because of *Puzz* but to protect and enhance Federal jobs and gain BIA spending authority which BIA hopes will be the permanent result of the *Puzz* case.

And its hopes are not without foundation. Already, the judge has approved payment of BIA's *Puzz* compliance costs from tribal trust monies.

The *Puzz* compliance plan changes stripes every time you look at it. There are now five separate versions of the plan, each different than the earlier one, each providing for later and later decision making, and each confirming the incompetence of BIA to administer Federal, much less tribal, programs.

For example, the plan filed with the court in June provided that reservation programs for the fourth quarter of fiscal year 1988 would be approved, funded, and announced in the newspapers the first week of July. Instead, BIA first released an insufficient amount of funds for the Hoopa Tribe to operate for one month of the fourth quarter and said the rest of its decisions would be postponed until August 10. Then BIA withheld all tribal funds until August 23.

The Hoopa Tribe reduced employee working hours and program services, borrowed and scraped to maintain tribal programs during the weeks for which tribal funding was withheld. Under the latest version of the plan, BIA will make no decisions about fiscal year

1989 until the fourth week of October, weeks after programs need to begin serving our people.

But you haven't heard the worst of it yet. BIA employees are acting like kids in a candy store, deciding which projects to fund with tribal money. The CAC and BIA have received a flood of funding proposals from Federal agencies themselves eager to use tribal money to fund activities for which they don't want to use federally appropriated dollars.

For example, two different BIA employees dealing with reservation fisheries designed about six fisheries related projects which they plan to operate directly through the BIA or personally as consultants. In addition, the Indian Health Service has grandiose funding schemes dealing with its personal water and sewage concerns but not the tribe's.

The BIA has approved five of these requests. Both agencies have federally appropriated funds available for these projects. Yet, because of funding priorities or the tribal money being more readily available, they want to use reservation income.

Mr. Chairman, here are two examples of the proposals that have been funded. The BIA submitted a proposal, one page, on a fisheries project funded for $7,000. The BIA housing study is one paragraph of nine lines and has been funded for $20,000. Both of these proposals were submitted to the CAC by the BIA themselves and then approved by the BIA themselves.

There are no budget justifications, no work scope, none of the things that they require of us when we ask for a dollar from them. This is what the BIA and the Puzz court is doing to our reservation.

Ironically, the *Puzz* judge says he sees nothing wrong with this. We have appealed to the Court of Appeals arguing that it is illegal for tribal trust funds to be used without specific appropriation authority from Congress. Yet, BIA rushes headlong into doing just that.

Perhaps this is the reason that the BIA has impounded the majority of tribal income since 1974 so that what is referred to as the escrow funds in S. 2723 have built up to approximately $65 million. BIA hopes and plans to use this money one way or another.

During the oversight hearing, I told you about one of our economic development projects, a tribal motel complex, the main positive economic expansion on our reservation. We were on the verge of construction when the *Puzz* order was issued in April.

In response to *Puzz,* BIA refused to approve the tribe's use of this unallotted tribal land, blocking our loan guarantee and funding for construction. After a long delay and nearly losing the project, finally, BIA permitted us to go ahead but on the condition that for the use of our own tribal land we sign a lease on which we will pay far more than if we had purchased fee patent land right next door.

Puzz, with BIA support, has terminated the Hoopa Valley Tribe's territorial sovereignty and set a dangerous precedent for tribal governments nationwide. BIA is taking the place of our elected leaders. Survival of our tribe depends on our ability to protect and responsibly manage our natural resources. Yet, our tribal court system now has no jurisdiction to enforce tribal ordinances to protect these resources.

We have no power to zone commercial development or regulate outsiders who may trespass or steal tribal resources. Without territorial sovereignty, we cannot continue tribal jurisdiction under environmental laws such as the Clean Water Act. Neither the BIA nor the *Puzz* court can answer these problems.

Thus, the Hoopa Valley is still without a reservation hospital or an emergency room without a memorandum of understanding to permit our tribal timber corporation to obtain logging and timber processing contracts on our own reservation. Future years' timber sales are delayed, Public Law 93-638 contracts are delayed, and the BIA refuses to turn over to the tribe surplus buildings and property essential for some major social service grants.

Ironically, the extreme anti-Indian government actions of the *Puzz* court, BIA, the five individuals who brought the *Puzz* case, and the *Short* and *Puzz* attorneys have strengthened the understanding of why enactment of legislation is urgent and essential for our reservation. Responsible Yurok people have come forward from communities on the reservation Extension and from nearby areas to sit down with us and work toward a solution to our problems.

This bill is generated by Hoopa and Yurok tribal people. Most of the provisions in S. 2723 are the result of the tireless efforts of the Hoopa Valley Business Council and Yurok leaders. Yurok leaders have demonstrated unselfish statesmanlike courage and determination in the fact of caustic non-tribal criticism.

It should not go unobserved that this opposition is not led by Yurok Indian people but by non-Indian attorneys from Oregon and Southern California and outside Indians with curious motives. We are proud that there is something positive, constructive, and forward thinking to report from Hoopa and Yurok people working together.

S. 2723 is a fair solution to our problem. It will return governmental authority to the Hoopa Tribe and enhance the exercise of governmental authority by the Yurok Tribe which has been dormant too long. It reestablishes the historic Hoopa Reservation, reestablishes and expands the historic Yurok Tribe's reservation, and allows Indians to choose with which tribe and reservation they will affiliate.

The bill assures both tribes substantial economic and natural resources of equal value, as detailed in our submission for the record.

In their efforts to defeat this legislation, *Short* and *Puzz* plaintiffs' attorneys have labeled it terminationist, comparing it to the 1954 Klamath legislation. S. 2723 is very different from that. It is in no way comparable.

It does not terminate the Federal relationship with the Yurok Tribe. Rather, it reaffirms that relationship and provides the tribe with essential financial resources and governmental tools to endure and prosper. It gives the individuals a variety of choices to make, depending on their own particular circumstances.

For example, a plaintiff living in Maine who has never been to the West Coast whose only interest is economic based on being a plaintiff may choose to buy out, taking the $20,000. Even for those individuals who do not want to affiliate with either the Hoopa or Yurok Tribe, the legislation does not end the trust status of any lands they hold, and it does not end their Federal Indian status.

Other plaintiffs who feel a sense of community or tribalism can choose to participate in the revitalized Yurok Tribe. This is genuine self-determination, and it is condescending and racist for plaintiff's attorneys to say their clients are incapable of making these choices. It is *Puzz* which is terminationist. *Puzz* has already begun to terminate the Hoopa and Yurok Tribes.

Moreover, S. 2723 will not affect the monies *Short* plaintiffs have won in the *Short* case. They will receive this money over and above anything that is provided for in S. 2723.

In our written submission, we have included a brief list of modifications which we ask be made in S. 2723, as introduced. Most of these changes are merely technical. Others address important but small issues.

We thank Senator Cranston and Congressman Bosco for their leadership in introducing this legislation, and we also thank this committee for the time and work it has devoted to the issues during the closing session of this Congress. We urge this committee to act quickly and favorably on S. 2723.

Thank you.

[Prepared statement of Mr. Risling appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Colegrove and Mr. Risling, the final witness this afternoon will be a council member of the Karuk Tribe, and he maintains in his testimony that the rights of the people of his tribe have been ignored in this bill. Do you agree with that?

Mr. COLEGROVE. Mr. Chairman, we sympathize with the Karuk Tribe, because they are a new tribe. I especially have a personal interest in them, because I helped put together the tribe myself as a consultant and somewhat as a favor, and my family which is part of the religious community has been very involved in helping them restore their religious ceremonials.

We look at the Karuk situation as that they are not under aboriginal claim, because this is not their aboriginal territory, neither the Hoopa Square itself nor the Hoopa Extension on the Klamath River. They are from the Upper Klamath River. Their boundaries meet with the Yuroks and they were well defined territories.

They speak a different language from both of us. Their claim seems to evolve from a process that they have some people who were involved in the *Jessie Short* case. It is our understanding, and we will submit for the record, that there were approximately six Karuk people who had Karuk blood who were allottees and who became a part of the *Jessie Short* case.

That, I think, is the basis of their claim on a Fifth Amendment claim. We don't think it has relevance. We tried to work out an agreement to get them on the Klamath River Fishing Council. We thought that if there were some way we could help that, we would.

We requested in the House of Representatives, along with them, that they become part of the definition and that they become part of the Klamath River Fishing Council. We also recommended that there be a study that be set aside so that they could clear up some of these issues of their fishing and hunting rights on the Klamath River but not on either one of the two reservations, because that is not their aboriginal territory. We don't think they do have a claim.

The CHAIRMAN. Are there any Karuks living in the Hoopa Reservation?

Mr. COLEGROVE. Yes, there are.

The CHAIRMAN. How many?

Mr. COLEGROVE. There are approximately three large families of Karuks that are living there, probably about 150, living on the Hoopa Square itself. It is between 150 and 200 people, I would say.

The CHAIRMAN. Are they enrolled members of your tribe?

Mr. COLEGROVE. Most of them are enrolled members of the Karuk Tribe.

Mr. RISLING. Mr. Chairman, I would just like to support what Mr. Colegrove has said and reaffirm that we really feel that there is no claim that exists as a Karuk Tribe, but there are some claims of individuals of Karuk descendancy who have married into the Yurok people and who are part of the *Short* case. I think the number there is about 25 that actually have claims through the *Short* case. That is how we see their tie to the reservation.

The CHAIRMAN. Well, I thank both of you very much. You have been very patient to be with us.

Our final witness is the Honorable Terry Supahan, council member of the Karuk Tribe of California.

STATEMENT OF TERRY SUPAHAN, BUSINESS MANAGER, KARUK TRIBE OF CALIFORNIA ACCOMPANIED BY ALVIS BUD JOHNSON, CHAIRMAN, AND DENNIS WHITTLESIE, ATTORNEY OF RECORD

Mr. SUPAHAN. Thank you, Mr. Chairman.

I will try to be brief. I would like our written statement to be entered as part of the record as well as some exhibits that we have submitted.

The CHAIRMAN. We have received your prepared statement with the attachment. Without objection, they will be made part of the record.

Mr. SUPAHAN. Thank you very much.

I would also like to introduce our chairman, Alvis Bud Johnson, and our attorney of record, Dennis Whittlesie.

The CHAIRMAN. Welcome, gentlemen.

Mr. SUPAHAN. I would first like to just clarify a correction that needs to be made in the witness list. I am not an elected council member from my tribe. I have the pleasure and honor to work for my tribe and make my living by working as the tribal business manager for the Karuk Tribe of California.

If the council found out that I was masquerading as an elected official, they would probably send me down the road. So, with that in the record, I would like to——

The CHAIRMAN. The record will be corrected.

Mr. SUPAHAN. Thank you very much.

The Karuk Tribe, historically, is, as Chairman Colegrove indicated, for the most part, people of the Klamath River. We are Karuk-Masaruda and Ara-Karuk-Masaruda-Katisurum which is further up the Klamath River.

We are in a difficult position with this legislation. We recognize that Congress created the problem when they established the

Hoopa Reservation and that we appreciate the opportunity to speak before you today. We had attempted to testify at your earlier field hearings in Sacramento and the initial hearing in Washington, D.C., and we very much appreciate staff's attempt to provide us this opportunity.

In 139 years of dealing with the Federal Government, the Karuk Tribe has never had this opportunity to speak before this body. We have had treaties that were never ratified by this body, and we had lands that we had hoped would be our reservation that were never ratified by this body.

The Hoopa Reservation primarily is the aboriginal territory of the Hoopa and Yurok people. Unfortunately, it was established much like internment for Japanese Americans, and Executive Order 9099 struck to my heart in Mrs. Cole's fifth grade class where Japanese Americans were interned. No Americans, regardless of their color, their creed, their religion, should be forced to relocate.

That was the situation that we were forced to consider, and we were told by the military to move to the Hoopa Valley Reservation. It was not established, as Chairman Colegrove said, did not vest rights in the Hoopa Tribe or the Yurok Tribe. They were trying to move a number of Indian people. They were not concerned with establishing tracts of land in a portion of our ancestral territory.

Since Congress established the situation—and it is very confusing—we appreciate the fact that Congress will one day have to fix the situation. The courts can only determine on a narrow basis the rules of establishment. In *Jessie Short,* the trial judge ruled that there were a number of tribal groups that had a connection to the reservation which included the Karuk Tribe. The Wintun, the Tolowa, the Wailake and the Wiyot were also named as an attachment to *Jessie Short.*

The Circuit Court ruled on October 6, 1983 that even though the Department of Justice wanted to have those named tribes removed from the list, the Federal Circuit wouldn't allow it, based on that evidence. He said it could go either way, but based on the historical record, we were included in that document.

We feel we have legitimate legal claims to the reservation, and I am sure that everyone let out a groan when we came to the party. We do not want—and we have told Senate staffers this; we have told the Congressional side of the House that we wanted this to be a comprehensive solution, a comprehensive piece of legislation, and that we had no desire to work against this bill.

We respect Congressman Bosco for stepping into something that goes very deep. We respect the Senator from California who has introduced it.

However, this is a bad bill. It is a bad policy, and it continues to confuse the issue. When they tell us that the Department of Justice says you folks have no claim, we say, well, the Department of Justice was wrong in *Jessie Short* and they were wrong in *Puzz.*

When they tell us that the CRS study or the Congressional Research Service does not address our claims, we realize that there are a lot of rules here in this city that you don't know until you begin to play them. One of the things is that the CRS study is not

going to address the Karuk issue or any of the other issues from other tribal groups unless directed to do so.

We had no one to do that on our behalf.

The Karuk Tribe of California is the political continuation of the aboriginal Karuk people. We do not want and have never been interested in exerting claims or rights to the reservation. Unfortunately, it is the only reservation that Congress has ever created where we were named to be a part of it.

When Congressional staff and Congress tell us that there is not enough time to deal with you folks and that if you feel you have a claim, go to the United States Court of Claims because you will never have rights given back but you may receive a money judgment, that seems to me a sorry solution to the Congressional process—to go to court if you feel that you have a position.

I can assure you that the attorney sitting to our right is not one of those attorneys who may be making lots of money. I can guarantee that, since I sign the checks and he has not received one.

If there are any questions, I would be glad to answer them, but we wanted to come, and we wanted to make the statement very plain and very clear that this legislation is not the vehicle for my tribe and other tribes that have not been heard.

Thank you very much.

[Prepared statement of Mr. Supahan appears in appendix.]

The CHAIRMAN. Where are your ancestral or aboriginal lands? Can you point them out on the map there?

Mr. SUPAHAN. There are a number of anthropologists and historians, experts who have testified in other situations as well as at the field hearing in Sacramento on June 30 that indicated the aboriginal territory of our tribe. There are many tribal members who will point to the Hoopa Square and indicate that a portion of the Trinity River was actually ancestral territory for the Yurok people as well as the uppermost corner having been a portion of the Karuk Tribe's aboriginal territory.

However, for the most part, we had over 1 million acres, 1.2 million acres, that made an oval shape up the Klamath River and extended into Oregon. We have submitted a map that the Senate select committee staff has on record.

The CHAIRMAN. Does the tribe own any property in that area?

Mr. SUPAHAN. We own property that we have purchased or acquired through grant. Until recently, it was less than 20 acres, but we have received 200 acres that we had initially planned to build housing on.

We have a tribal structure. We were fairly recognized as a tribe in 1979. We have an organized tribal government by constitution that was approved by my people in 1985. We are a relatively new and young group. I guess you could say that the United States decided to recognize us at a very late date, to choose to recognize the fact that we did exist.

As I mentioned before, there are at least two other groups that we are aware of that are part of this process or should be a part of this process that we know have applied for Federal recognition.

The CHAIRMAN. I have done a lot of reading about the history of the Indian people, many, many hours and days and weeks, but I have concluded how little I know. As a result, I have spent much

time visiting Indian country. Yet, with all the effort I have made, I know that I have just touched upon a minuscule part of Indian country.

It may interest you to know that I have spent more time in the past year and a half in Indian country than I have in my State of Hawaii. I have spent more time in Alaska this past month than I did in the past two months in Hawaii.

I am not complaining. All I am saying is that the problem is a vast one, and I must confess that I know very little about your problem.

So, I am instructing my staff to conduct a special study and involve the GAO if that is necessary. Who knows, we may come up with a legislative solution.

Mr. SUPAHAN. Mr. Chairman, we appreciate the time and the interest you have taken for all of the tribes in California. Unfortunately, the tribes in California have suffered much worse than—I can't say much worse. We have all suffered throughout the United States, but in California, our situation is somewhat unique because we went from a territory and because of the Gold Rush and the 49'ers, we had a State that did not look favorably upon Indian tribes. I feel that there seems to be an effort upon local Congressmen and our Senators to address those problems that are historical, and I believe this legislation has to be looked upon in an historical restoration sense as opposed to a settlement between two tribes.

The CHAIRMAN. I can assure you that before this committee acts, it will give this matter not only serious but hopefully proper consideration.

Mr. SUPAHAN. Thank you very much, sir.

The CHAIRMAN. I thank all of you who have participated in today's hearing. I will keep the record of these proceedings open until the end of this month so that if any of you wish to submit additional testimony or if others wish to submit their own testimony, please feel free to do so, but have that in our hands by midnight, September 30.

Mr. THEIROLF. Mr. Chairman, may I speak for about four minutes? I am the lawyer for the *Puzz* plaintiffs. I wondered if I could have a chance to speak.

The CHAIRMAN. All right. Please have a seat at the witness table.

Mr. THEIROLF. Yes, sir.

The CHAIRMAN. Ordinarily, we don't do these things, but I am a different type of Senator, so I just don't each lunch around here.

Mr. THEIROLF. I understand.

STATEMENT OF RICHARD THEIROLF, ATTORNEY FOR THE "PUZZ" PLAINTIFFS

Mr. THEIROLF. My name is Richard Theirolf, and I am the attorney for the *Puzz* plaintiffs. I was the attorney who helped file the case in 1980. I have been with it ever since.

The first thing I wanted to address is you asked Mrs. Haberman a question about the National Congress of American Indians and why they would be supporting this bill. I spoke with John Gonzales, the Chairman of the Board of Directors, this morning after I

saw the September 12 letter, and he told me that this letter was the basis of a conference call that occurred a couple of days ago and that the National Congress of American Indians decided to support the bill based upon the position of Dale Risling who is a member of the board and is also the Dale Risling who testified here today as a member of the Hoopa Valley Business Council.

There is a reference in Roanne Lyall's written statement to the Northwest Affiliated Tribes. I spoke with Mr. Mel Tenasket, and I had not seen his letter, but I want to make it very clear—and the letter speaks for itself—that the letter is on behalf of the Confederated Tribes of the Coleville Reservation. Confusion about that is entirely my confusion, and I want everybody here to be very clear about that. If anybody is going to get into any kind of trouble, I want it to be me, not Mr. Tenasket or anybody else involved.

Ms. Lyall, in her oral statement, made it clear that the letter was written by Mr. Tenasket for the Confederated Tribes of the Coleville Reservation.

There has been testimony concerning the Community Advisory Committee which the Bureau of Indian Affairs has established as a result of the April 8 *Puzz* decision. The judge's last order of September 2 provisionally approved the Bureau of Indian Affairs' plan for compliance with the April 8 order and the Community Advisory Committee process that that plan includes.

That means that the meetings and discussions that are taking place as a result of the election of Mrs. Haberman, Mr. Jones, and Ardith McConnell to represent the Indians of the reservation who do not belong to the Hoopa Valley Tribe and the representatives of the Hoopa Valley Business Council will continue.

This is the first time that there has ever been a formal structure under the auspices of the Bureau of Indian Affairs or any other auspices for discussions between the Hoopa Valley Business Council representatives and other Indians of the reservation through the means of elected representatives.

Remember on June 30 when you were in Sacramento, you said that you hoped that the people of the reservation could work out their problems, and that is the whole point of the *Puzz* case. It is to establish a basis for the Indians of the reservation to solve their problems.

You also said that you felt that if Congress had to pass legislation concerning this that everyone affected would regret it in 15 years. I am afraid that those words still ring true and that if this bill passes, it will be something that everyone will regret. If it isn't 15 years, it might be a shorter time, but I think that the Congress should allow the process which is just beginning to develop now as a result of the court's order in *Puzz* to develop and not to nip it in the bud with this bill.

Thank you.

The CHAIRMAN. I thank you very much, sir.

Senator Cranston, the author of S. 2723 wanted very much to be here to testify, but he is the Chairman of the Veterans' Committee. Like this committee, that committee is conducting a hearing, and he is presently chairing that hearing. Therefore, he could not be with us.

He has submitted a statement, and, without objection, the Senator's statement will appear at the beginning of the proceedings before the testimony of Congressman Bosco.

The committee will stand adjourned.

[Whereupon, at 1:15 p.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

TESTIMONY OF SENATOR ALAN CRANSTON

BEFORE

THE SELECT COMMITTEE ON INDIAN AFFAIRS

SEPTEMBER 14, 1988

MR. CHAIRMAN, I AM PLEASED TO BE HERE TODAY TO SPEAK IN SUPPORT OF S. 2723, THE PROPOSED "HOOPA-YUROK SETTLEMENT ACT," WHICH I INTRODUCED ON AUGUST 10, 1988. I APPRECIATE YOUR SWIFT ACTION IN SCHEDULING THIS HEARING TODAY.

THE MEASURE I INTRODUCED AS S. 2723 IS IDENTICAL TO H.R. 4469 AS REPORTED OUT UNANIMOUSLY BY THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE. AS YOU KNOW MR. CHAIRMAN, H.R. 4469 WAS FIRST INTRODUCED IN THE HOUSE BY A FELLOW CALIFORNIAN, MY GOOD FRIEND REPRESENTATIVE DOUG BOSCO. I APPLAUD THE LEADERSHIP OF REPRESENTATIVE BOSCO FOR FIRST INTRODUCING H.R. 4469, AND I LOOK FORWARD TO WORKING WITH HIM TO IMPROVE FURTHER THIS LEGISLATIVE INITIATIVE.

AT THIS TIME I WOULD ALSO LIKE TO THANK YOU, CHAIRMAN INOUYE, FOR HOLDING AN OVERSIGHT HEARING ON THE STATUS OF THE HOOPA VALLEY INDIAN RESERVATION AND RELATED ISSUES IN SACRAMENTO, CALIFORNIA, ON JUNE 30, 1988. I BELIEVE THAT THE FIELD HEARING PROVIDED AN EXCELLENT FORUM IN WHICH VARIOUS PARTIES COULD NOT ONLY EXPRESS THEIR OWN VIEWS, BUT LISTEN TO THE VIEWS EXPRESSED

BY OTHERS IN ATTENDANCE. MOREOVER, I BELIEVE YOUR CALL FOR HOOPA AND YUROK INDIAN PEOPLE TO PARTICIPATE IN THE DESIGN OF "AN INDIAN SOLUTION TO AN INDIAN PROBLEM" WAS TAKEN TO HEART BY MANY OF THOSE WHO ATTENDED THE FIELD HEARING IN SACRAMENTO. I DEEPLY APPRECIATE YOUR INTEREST IN THIS ISSUE AND THE VERY POSITIVE ROLE YOU HAVE PLAYED MR. CHAIRMAN.

IN BRIEF, MR. CHAIRMAN, S. 2723 PROPOSES TO PARTITION THE LANDS OF THE HOOPA VALLEY RESERVATION BETWEEN THE HOOPA VALLEY TRIBE AND THE YUROK TRIBE IN SETTLEMENT OF A DISPUTE AS TO THE OWNERSHIP AND MANAGEMENT RESPONSIBILITIES FOR SUCH LANDS. THIS PROPOSED PARTITION IS GENERALLY CONSISTENT WITH THE ABORIGINAL TERRITORY OF THE HOOPA AND YUROK TRIBES. FURTHER, S. 2723 PROVIDES FOR A NUMBER OF SETTLEMENT OPTIONS TO BE MADE AVAILABLE TO INDIVIDUAL INDIANS WHO CAN MEET REQUIREMENTS ESTABLISHED BY THE UNITED STATES COURT OF CLAIMS IN THE CASE OF JESSIE SHORT ET AL. V. U.S., FOR QUALIFICATION AS AN "INDIAN OF THE RESERVATION".

LITIGATION SPANNING A QUARTER OF A CENTURY, WHILE PERHAPS CORRECT FROM A LEGALISTIC PERSPECTIVE ~~ON THE LAW~~, HAS FAILED TO RESOLVE THE CONTROVERSY OVER OWNERSHIP AND MANAGEMENT OF THE HOOPA VALLEY RESERVATION AND, INDEED, HAS LED TO SOME MOST UNFORTUNATE RESULTS. IT IS CLEAR TO ME THAT ONLY THE CONGRESS, THROUGH AN EXERCISE OF ITS PLENARY POWER, CAN PUT AN END TO THE PRESENT UNHAPPY SITUATION ON THE HOOPA VALLEY RESERVATION. MR. CHAIRMAN, IN ORDER FOR CONGRESS TO CARRY OUT THE TRUST RESPONSIBILITIES OF THE UNITED STATES, I BELIEVE THAT IT IS INCUMBENT UPON CONGRESS TO DO NO LESS.

MR. CHAIRMAN, I STRONGLY BELIEVE THAT S. 2723 PRESENTS A REASONABLE AND EQUITABLE LEGISLATIVE SOLUTION TO THE CURRENT CONFUSION AND UNCERTAINTY AS TO EXISTING OWNERSHIP AND MANAGEMENT RIGHTS ON THE HOOPA VALLEY RESERVATION.

I LOOK FORWARD TO WORKING WITH YOU, MR. CHAIRMAN, THE MEMBERS OF THE COMMITTEE, REPRESENTATIVE BOSCO, AND OTHER INTERESTED PARTIES, TO ENHANCE FURTHER THE BENEFITS OF S. 2723 AND TO HELP GAIN ITS ENACTMENT INTO LAW.

THANK YOU.

TESTIMONY OF
CONGRESSMAN DOUGLAS H. BOSCO
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
CONCERNING S. 2723
THE HOOPA/YUROK SETTLEMENT ACT

September 14, 1988

Mr. CHAIRMAN -- Let me first express my gratitude to you for the interest and attention you have paid to the complex matters incorporated in the legislation before your committee today. This is reflected not only in today's hearing, but in an earlier one in Sacramento, California. Thanks to your hard work, and that of many people who will be directly affected by this legislation, we are proud to report that substantial agreement has been reached. We hope the measure before you will provide the framework for resolving decades of bitter dispute and allowing thousands of Indian people to live their lives in peace.

The legislation will divide the Hoopa Valley Indian Reservation into two reservations: one for the use of the Hoopa Tribe, which has existed in its present homeland for centuries; the other for the benefit of the Yurok and other Indians, who are, for the most part, absentee tribesmembers, residing in many different parts of the country. The legislation will provide for the payment of monies owed by the U.S. government as the result of timber sales on the reservation. Some of these funds will go to individuals and some will provide revenues to the tribes -- to the Hoopas who

are organized, and to the Yuroks should they someday decide to organize: Provisions are established for such organization and for election on the part of individuals as to which tribe, if any, they want to join.

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

Sadly, these people are some of the poorest in our country, suffering unemployment rates of over 60 percent. The money and energy expended on lawyers and lawsuits has taxed them heavily indeed, for there are far better, more productive uses for their resources. None of the Yuroks has received funds due them from the government -- hundreds of plaintiffs have already died without seeing the benefit of their legal efforts. Federal judges have thrown up their hands in

exasperation. The case has outlasted two of them and two mediators. Today it would be difficult indeed to put a positive light on all that has happened. It would be difficult to separate the winners from the losers in the legal thicket that they've gotten themselves into.

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

Though this matter can be analyzed in many different ways, and one can employ as much complexity as the imagination would allow, my decision to introduce this legislation came down to a simple principle. I believe that people who have lived together over the years as a community -- who have organized to run their own affairs (to educate their children, build their roads, take care of the sick), have a right to keep their homeland and to govern it themselves. This right is more important than dollars and cents. This legislation recognizes the distinction between those who actually want to live in an organized community on the reservation and those who simply want to reap the financial benefits of their status as Indians of the Hoopa Valley reservation regardless of where

they intend to live. The former will be allotted land and financial resources and the right to govern themselves. The latter will receive payment in a fair manner from funds that heretofore have not been available to them as individuals.

The legislation before you deprives no one of benefits that have been won in court. It will allow many to receive benefits now held in trust. It returns to these Indians the land that was their ancestral home, should they decide to organize into a tribe.

Most important, this legislation lays the groundwork for strong, healthy tribal communities. Each tribe will be provided with sufficient resources to succeed, and each with the all-important right to self-governance. These are important goals, Mr. Chairman, and I thank you for the important work you have done to help achieve them.

# # #

Department of Justice

STATEMENT

OF

RODNEY R. PARKER
ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE

THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

CONCERNING

S. 2723, TO PARTITION THE HOOPA VALLEY RESERVATION

ON

SEPTEMBER 14, 1988

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 satisfies 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 intended 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
>
> (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 provision 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.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE ON S.2723, A BILL TO PARTITION CERTAIN RESERVATION LANDS BETWEEN THE HOOPA VALLEY TRIBE AND YUROK INDIANS.

September 14, 1988

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 communal 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 recommend 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 may 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 "April 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 from 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".

Sections 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 paragraph "(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."

S. 2723
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

Testimony of Roanne Lyall
A Klamath River Yurok Indian of the Hoopa Valley Reservation
In Opposition To A Bill To Terminate Indian Rights

My name is Roanne Lyall. I am a Klamath River Yurok Indian of the Hoopa Valley Reservation. I am opposed to the proposal set forth in this bill.

S. 2723 is called a bill to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians; it is also called the Hoopa-Yurok Settlement Act. The bill is neither . . . . it is a bill to terminate Yurok Indians.

Supporters of this bill represent it as a "fair compromise" worked out by all concerned parties; but, they refuse to even discuss putting this proposal before the Indians in a referendum election to get a real consensus. Ask yourself: Why? If the bill is so fair, and if they are really convinced there is a consensus, they should not fear the results of an election; and after all, Senator Inouye's April 21, 1988 press release about the repeal of House Concurrent Resolution 108 said that termination would never again be considered without the consent of the tribes involved.

I know there is no consensus in favor of this bill. The vast majority of Short plaintiffs oppose this bill and want, at the very least, the right to vote on our future. Organized tribes around the country have begun to label this bill a termination bill, one which they cannot support.

California rancherias affected by the bill, including the Trinidad rancherias, oppose it. The Northwest Affiliated Tribes opposes it. The Governors' Interstate Indian Council opposes it. Other Indian leaders have told us they oppose its termination language. Opposition to this bill is mounting daily as more people learn about it. This bill is viewed by many as the beginning of the next termination era, this time called "buy-outs".

The bill's supporters say it will finally settle one of the longest legal fights in U.S. history. It will not. This bill is a simplistic and unconstitutional proposal that will not solve the problems created by more than 35 years of federal administrative mismanagement of the reservation, its resources, and the income therefrom. Taking what is communally owned by many and giving it all to a favored few is not a solution. This bill will not end litigation; it will only prolong it.

The philosophy represented in this proposal shows a lack of respect for history, for the court system, for Indian property rights, for the Yurok people, and ultimately for Indians in general. It sends the message to all Indians that they cannot trust the courts to protect their rights because Congress will simply overturn their hard-won court victories.

The supporters of this bill are asking you to legislatively impose the unequal, arbitrary, and illegal division of tribal assets that has been rejected repeatedly by

the courts for the past 25 years? Why? This bill is bad policy and bad law. Please don't do this.

Upon enactment, this bill would take funds that were just recently made available (by the April 8th Order in Puzz) for reservation programs open to all eligible Indians of the Reservation, and deposit them in a so-called "settlement fund"; it would make $3.5 million of these funds available to the Hoopa Valley Tribe; and, it would give exclusive jurisdiction over the "Square" to the Hoopa Valley Tribe.

It is this settlement fund, comprised of revenue which the Indians already own, which would be used for termination payments. You cannot pay the Indians their own money in exchange for their future rights. The major portion of this "settlement fund" represents 70% of the income from annual sales of reservation timber since 1974. At that time, the government's liability was established by the Short decision and the appeal process exhausted, so the government, in an effort to limit further liability, ceased to disburse 100% of the timber sales income to the Hoopa Valley Tribe, as had been the practice since 1955, and began disbursing approximately 30% to the Hoopa Valley Tribe, sequestering the balance for the qualified Short plaintiffs. Approximately $65 million is currently in the escrow fund. According to a 1974 memo of the BIA, and a court decision upholding the BIA's position, all money in the 70 percent escrow account belongs

to the Short plaintiffs. The Hoopa Valley Tribe already got its share.

Yet, according to the schedule proposed in the bill, a little over a year after enactment, the Hoopa Valley Tribe will have received approximately $35 million from the "settlement fund"; exclusive jurisdiction over the property, resources and assets of the "Square"; $1 - $5 million from the annual timber sales (from which per capita payments could be made to the individual members of the Hoopa Valley Tribe); and a share of the income from the commercial fishery on the Klamath River. The Yuroks (or other Indians of the reservation) will have received nothing.

It should be common knowledge, by now, that there is NOT going to be any Yurok Reservation. The bill does not establish a Yurok Reservation; it says the Hoopa Valley Reservation, Square and Extension, WILL NOT be partitioned UNLESS the Hoopa Valley Tribe waives any claims against the United States arising out of the provisions of this act. The Yuroks are not given similar power to stop the petition. If the Hoopa Valley Business Council forfeited the communal rights of the members of the Hoopa Valley Tribe to the Extension, including the Extension's commercial fishery, the members of the Hoopa Valley Tribe would sue the business council. Why would they invite the wrath of their members when the Hoopa Valley Tribe can have it all by doing nothing?

When the final settlement roll is published, those named on the roll may supposedly "elect" one of the "options" provided by the bill. These "options" amount to a choice between "elect" termination or don't elect termination and be terminated anyway.

While the bill clearly states only the persons named on the final settlement roll have any interest in the reservation or the settlement fund, it is ambiguous about who will be included, other than Short plaintiffs already qualified by the Claims Court who are alive on the date of enactment and who apply for inclusion on the roll. The fate of more than 3,000 Indians would be determined by the options in this bill.

Since it is estimated by Jason Liles of Mr. Bosco's office and the Hoopa Valley Tribe that the ambiguous enrollment criteria for the Hoopa Valley Tribal Membership Option would apply to very few people (0-30), I will skip over that option.

Anyone who elects the Yurok Tribal Option NO LONGER has any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the HOOPA VALLEY RESERVATION, (this means the entire reservation, Square and Extension, if there is NO Yurok Reservation), or in the "settlement fund", except for the authorized $3,000 payment. The bill fails to indicate when that payment will be made. How many Indians do you think

would be willing to give up all of their reservation rights in exchange for a promise of a $3,000 payment and the right to organize a Yurok Tribe that is given a two-year life span by the bill?

That brings us to the final option. A person may "elect" to give up all of his or her reservation and tribal rights for a $20,000 lump sum payment. The bill doesn't indicate when payment will be made; but, tribal and reservation rights won't be terminated until payment has been received. Absent a specific date for payment, it is reasonable to expect that the Secretary of the Interior will withhold all payments until the 5th Amendment taking lawsuits are over, lest he give the money out and then have a court rule the bill unconstitutional.

Anyone who does not choose one of these imposed options shall be deemed to have "elected" the termination for $20,000 option. I don't see anything voluntary about this bill.

Other than authorizing an arbitrary $10 million to be appropriated someday, this bill does not make any attempt to guarantee sufficient funds will be available to make these "option" payments, let alone compensate these Indians for rights taken, and I do mean taken. Mr. Bosco's office told us that even with the $10 million there may not be enough money in the bill to make all the payments. He suggested the Senate might add some money. But we understand that the BIA and the

OMB already oppose authorizing even a $10 million appropriation.

About a year and a half after enactment, Indians who give up all of their reservation rights by electing the Yurok Tribal Option will be allowed to organize a Yurok Tribe IF the first order of business is to adopt a resolution waiving all claims against the United States arising out of the provisions of this act. After the members receive their $3,000 payments, a percentage of the "settlement fund" will be disbursed to the tribe, the amount based on the number of tribal members. Basically, the bill grants the Interim Council the authority to receive grants and enter into contracts for federal programs for a 2 year period, then the council will be dissolved.

Short v. The United States decided that the reservation was a single, integrated reservation, all of whose inhabitants were to be treated fairly and equally. In Lillian Blake Puzz v. The United States, the U.S. District Court for the Northern District of California ordered the BIA to treat all Indians of the reservation fairly and equally. S 2723 overturns those decisions. I do not think this is fair, do you?

Governors' Interstate Indian Council, inc.

Established 1949

The National Association of State Indian Commissions and Offices of Indian Affairs

September 6, 1988

The Honorable Charles Pashayan, Jr.
House of Representatives
129 Cannon HOB
Washington, D.C. 20515

SEP 1988

Dear Representative Pashayan:

I have been informed that legislation for the Hoopa Tribe and Yurok Tribes in California, HR 4469/SB 2723, sponsored by Senator Cranston and Representative Bosco of California, is scheduled to be heard by the Senate Select Committee on Indian Affairs, on September 14, 1988. Backers of this legislation are eagerly waiting for this bill to get to the Senate floor for passage by the Senate.

Please correct me if I am wrong, but as I understand the bill, it proposes to pay-off tribal members for their rights in the Yurok Tribe, an "individual buy-out" of the Yurok's rights by a lump sum payment of $20,000+. If this is true, it has drastic implications of "termination".

I, as well as many other American Indians, are opposed to this type of legislation, and as a matter of fact, we are opposed to any legislation that has anything to do with the termination of Indian rights.

I also feel that the bill has not been thought out because it doesn't take into account the impact this could have on other tribes throughout the Nation. A question of whether the hearings were appropriately held on this piece of legislation also arises. The bills are unfair and they interfere with the tribe's sovereignty. I feel that bills such as these, need to be rolled over and mark-up prevented, in order to avoid any threats of terminations to tribes and tribal rights.

Respectfully yours,

Travis N. Parashonts
President
GIIC

TNP:lb

Travis N. Parashonts, Utah Division of Indian Affairs
6262 State Office Building, Salt Lake City, Utah 84114 (801) 538-3046

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

FOR IMMEDIATE RELEASE:
April 21, 1988

CONTACT: Kimberly Craven
(202)224-2251

1953 TERMINATION RESOLUTION FINALLY REPEALED

Senator Daniel K. Inouye, Chairman of the Select Committee on Indian Affairs, today announced an action by the United States Senate and the U.S. House of Representatives that has been awaited by Indian tribal governments and individuals for over thirty years -- the repeal of House Concurrent Resolution 108. The repeal language is part of H.R. 5, the major education reauthorization bill which was passed in final form by the House on April 19 and the Senate on April 20.

Noting that termination policy has now been fully discredited, the Chairman said that "the Indian nations of the United States can rest easier with the knowledge that termination is no longer even a possible threat. Termination was a doomed policy from its inception primarily because it was both morally and legally indefensible."

House Concurrent Resolution 108 was approved by the 83rd Congress on June 9, 1953, and set forth a Congressional policy of termination of the federal-tribal relationship with all tribes in certain named states and with named tribes in other states. Subsequent to the resolution, certain tribes were in fact terminated. Although the policy of termination has been soundly

-more-

rejected by the Congress through enactment of a number of statutes, and rejected by at least two Presidents, until now the Congress never officially rejected the resolution itself. While a resolution does not have the effect of law, the failure of Congress to expressly repudiate it has been seen by many Indians as a lingering threat to the federal-tribal trust relationship. Most of the tribes "terminated" under the policy in the early 1950s have now been restored to their former status as federally recognized tribes by the Congress.

Chairman Inouye praised the work of the other members of the Senate Select Committee on Indian Affairs and Members of the House of Representatives, particularly Congressman Dale Kildee, a member of the House Education and Labor Committee, in making this very significant overture to the Nation's First Americans.

"The wholesale breach of the long-standing trust relationship between the Indian tribes of this Nation and the federal government must never again be considered without the consent of the tribes involved," said Senator Inouye.

-30-

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450
OFFICIAL BUSINESS

Daniel K. Inouye
U.S.

CHAIRMAN
BISHOP TRIBAL COUNCIL
P.O. BOX 548
BISHOP, CALIFORNIA 93514

S. 2723
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
September 14, 1988

Testimony of Dorothy Williams Haberman
An Elected Representative of the Indians of
The Hoopa Valley Reservation
Opposing S. 2723

My name is Dorothy Williams Haberman. I am a Klamath River/Yurok Indian and a qualified Indian of the Hoopa Valley Reservation. I am an acknowledged leader of over 3,000 Indians of the Reservation. I have worked in Indian affairs since 1955. The Jessie Short Case, filed in 1963, was the result of hard work by my brother-in-law Allan Morris, my brother the late H. D. (Timm) Williams, and myself.

Recently, on August 6, the BIA conducted an election among the Indians of the Reservation. This was to elect representatives to the Hoopa Valley Reservation Community Advisory Committee, an organization recently established to represent all the Indians of the Reservation. I was elected, along with Sam Jones, Jr. and Ardith McConnell, to represent the majority of the Indians of the Reservation, those not in the Hoopa Valley Tribe.

All three elected representatives oppose this bill. I do not understand how anyone can argue there is a consensus in favor of this bill. It is interesting, and telling, that the candidates who supported splitting our Reservation got only 1/4 as many votes as we did, and they lost. Is that a consensus in favor of the bill?

This Council is the first time that we have participated in a BIA-conducted election. It is the result of the April 8, 1988, order in the case of Lillian Blake Puzz v. United States Department of Interior, Bureau of Indian Affairs. We meet regularly with representatives of the Hoopa Valley Tribe to plan reservation-wide programs such as improvements to community water systems, distribution of food commodities to needy people, and education programs. Our purpose, and that of the Short and Puzz cases is for the reservation to benefit all of the Indians in a nondiscriminatory manner. This bill would destroy the progress we have made in achieving this purpose.

There are a few Indians who are trying to give the impression that many other people on the reservation support this bill. These few speak only for themselves.

The Jessie Short case bears Jessie Short's name solely because she was the first plaintiff on the list, but there are over 3,800 plaintiffs in all. Jessie Short speaks solely as an individual. She was never elected to represent us. She never consulted us; nor did she hold meetings to explain what she thinks. I understand, based on what people in the community tell me, that she supports this bill mainly because she wants $20,000. I can understand that; she has waited a long time for the BIA to honor the Short decision so that she and the rest of us can benefit from the reservation's revenues. She is tired of waiting. But the majority of

people feel we have suffered and waited too long to give up all we won for a promise of $20,000, money which is already ours. And after all, the Puzz decision makes it possible for all of us to benefit from these revenues for the first time in over 35 years. That is what our Community Advisory Committee is about.

Jimmie James, another supporter of this bill, is also speaking only for himself. Like Jessie Short, he has no authority to speak in support of this bill for the Indians of the Reservation. He is not an elected representative. Jessie Short will tell you that she has a power of attorney to speak for us, the people who started the Short case. We gave her a power of attorney 25 years ago to help protect our rights in the Reservation, not to sell these rights. Any powers of attorney given 25 years ago do not confer the power to sell out our Reservation.

Lisa Sundberg, the other Yurok witness who will speak in favor of this bill, does not represent us. She is a registered member of the Trinidad Rancheria, a federally recognized tribe. In other words, she has her own tribe. She should stay out of our business.

This is a termination bill. Calling it a buyout does not change this fact. It is eerily similar to the Klamath Termination Act of 1954. Task Force Ten of the American Indian Policy Review Commission, chartered by Congress in 1974, said this about Klamath Termination:

It has been suggested that the Indian problem will disappear when the Indians no longer have anything anyone wants. Termination, on one level, can be viewed as an attempt to discover if this proposition holds any water. In the case of Oregon Indians, termination did not solve the "Indian problem;" far from it. Termination was a political child of the times when the principles of cooperation and tribalism were seen as "communistic" and therefore dangerous. Indians were viewed as unnecessary wards of the government who would be much better off "on their own."

One obvious conclusion of this study is that the Klamath and Western Oregon Indians did not consent to termination. No referendum vote took place in which the Indian people could express their preference on this most important event. The number of Indians who actively supported termination was small; yet, the impression was given to Congress by the B.I.A. and others that Indians initiated and accepted termination. It is unfortunate that such a distorted view apparently carried such great weight.

The Klamath and Western Oregon Indians did not have an adequate understanding of how termination would be accomplished or what the effects would be. In fact, not even those who prepared the legislation were aware of the possible effects. Termination was an experiment, one that has no controls and no provision for reversal once implemented. The effects of termination have been disastrous from the standpoint of the Klamath and Western Oregon Indians. They have lost their land and have not been compensated for that loss in such a way as to improve their lives. Their tribal organizations have been weakened by termination placing cultural identity in jeopardy. In addition, the loss of special federal services has left those most in need, the young, the old, the sick, without adequate programs to help them.

The same applies to this bill. No referendum has been conducted and a few Indians are trying to make you believe we asked for and consent to this bill. We were not asked and we do not consent. Federal Trust regulations with the Klameth tribe and most of the Western Oregon Indians have been restored, based in large part on Task Force Ten's report. They have lost most of their land, however; although ironically President Reagan just last week signed the bill giving the Grand Ronde Tribe a reservation for the first time in decades. Please do not subject us to this painful termination and restoration process.

S.2723 does nothing good for us. I cannot believe any Indian in his right mind could support a termination bill such as this one in this day and age. I thought termination was a thing of the past.

On April 28, 1988, President Reagan signed the "Augustus T. Stafford Elementary and Secondary School Improvement Amendments of 1988", Public Law 100-277, which specifically repudiates termination as federal policy. Senator Inouye, in a press release following the signing of this bill, said that termination is no longer even a possible threat to Indian people, because it is morally and legally unacceptable. President Reagan's ink is barely dry on P.L. 100-277; the law yet we are facing a termination bill aimed straight at us.

In 1958, partly due to the urging of then BIA Area Director Leonard Hill of the Sacramento Area Office, Congress

passed Public Law 85-671-D, terminating 41 California rancherias. Like this termination bill's $10 million dollar appropriation authorization, that act authorized an appropriation of $509,000 to carry out its provisions. The money was never appropriated. Mr. Hill testified under oath that the BIA informally agreed with then-Congressman B. F. Sisk not to seek the actual appropriation. I fear that S 2723 is the same sort of bill. We are told that OMB and BIA oppose the $10 million authorization S.2723. Even the people who back the bill thinking that they will get money may never get it, and in any case they won't get it soon.

It has been a sad and discouraging experience for me to be back here seeing a few people from our group working with the Hoopa Valley Business Council lobbying for a bill to give away our reservation and wipe us out as Indians just so those few can sell their rights.

My brother, H. D. Timm Williams, worked most of his adult life for Indian people all over the country. He is as responsible as anyone for S.2382, the Indian health bill which passed the Senate last Friday. He passed away earlier this year. To see his own people subjected to this termination bill is one of the saddest things in my life.

Officials honor Indian leader

Reagan, Wilson recognize efforts of Timm Williams

By Mark Rathjen
Times-Standard staff writer

EUREKA – Timm Williams once described himself well: "I'm a worker," he said.

The efforts the Yurok leader made to improve education and health care for American Indians made life better for millions throughout the country.

Now government leaders, from the president down, are expressing their sadness at his recent death and preparing to formally recognize the contributions he made during his energetic life.

March 15, nine days after Williams was killed in a car accident in Crescent City, President Reagan sent a letter of sympathy to Williams' family.

"Nancy and I were saddened to learn of your brother's passing," Reagan wrote. "He will be greatly missed by everyone associated with the National Indian Health Board, as well as his many friends."

At the other end of Pennsylvania Avenue, California Sen. Pete Wilson is preparing a statement for the Congressional Record noting Williams' accomplishments.

At the state and county levels, Assemblyman Dan Hauser and Supervisor Anne Sparks are preparing resolutions in his honor.

Two factors the politicians are sure to mention in their memorials are Williams' work to improve health care for Indians and his years as mascot of Stanford University's athletic teams.

Timm Williams, who worked to improve education and health care for Indians across the country, is pictured with then-Gov. Ronald Reagan in 1973 photo.

Williams spent decades working for better health care for Indians, serving as chairman of the United Indian Health Service and the California Rural Indian Health Board. He was a founding member of the National Indian Health Board and director of the Indian Assistant Project, an appointment made by Reagan when he was California's governor.

In those capacities, Williams was able to help persuade Congress to send billions of dollars in federal health-care money to Indians throughout the United States.

Williams may have been motivated to fight for the health of others after struggling for it himself.

At age 4 he contracted spinal meningitis and his doctors said he would never walk again. But he did learn to walk and eventually became a skilled dancer.

Later, as a young man, he spent three years overcoming heart problems.

According to his sister, Dorothy Haberman, those early experiences taught him that a productive citizen must be a healthy one.

"He felt if you had good health, you were not only productive to yourself but to everyone else," Haberman said.

In 1981, with the encouragement of friends, Williams began dressing in Indian dress and performing as Stanford's mascot at the university football games. He continued until 1972, when the school dropped its Indian mascot in favor of the cardinal.

Although some Indian students at Stanford criticized his performances as demeaning, Williams used his celebrity status to win scholarship money to bring Indians to the school.

More than 1,200 people attended the funeral for Williams in Crescent City last month.

MAIN POINTS IN OPPOSITION TO S 2723/HR 4469,
HOOPA VALLEY RESERVATION TERMINATION BILL

1. THERE IS NO CONSENSUS IN FAVOR OF THIS BILL.

There has never been a referendum on the Reservation to determine whether the majority of Indians want to splint the Reservation and terminate their rights. The Congressional report by the American Indian Policy Review Commission, Task Force 10, determined that termination was bad government policy and that it should not occur without a referendum of the Indians. The majority of the Indians who are not in the minority Hoopa Valley Tribe oppose this termination bill and any bill which divides their Reservation.

- The three members of the Hoopa Valley Reservation Community Advisory Council, who were recently elected by and to represent the Indians who are not in the Hoopa Valley Tribe, oppose this bill. Two will be testifying against the bill.

- Some members of the Hoopa Valley Tribe have expressed their opposition to this bill because it would adversely affect members of their families.

- Jessie Short has said that there are provisions in the bill which she wants changed.

- Tribal leaders across the country, and representatives from the National Congress of American Indians, have stated their opposition to this termination bill.

2. THE BILL DOES NOT SPLIT THE RESERVATION FAIRLY.

- The 90,000 acre Square, which has produced $5,000,000 in communal revenues in good years, will be given to the minority group which lost the Short case (1,700 Indians).

- The 3,600 acre Extension, which last year produced from its main resource, fish, only $185,000 in communal revenues, will be given to the majority group which won the Short case (3,500 Indians).

- Approximately 900 Hoopa Valley Tribe members live on the Reservation; the other half live off the Reservation.

- Approximately 500 Indians who are not in the Hoopa Valley Tribe live on the Square; they would lose all rights in their home.

3. **THE BILL DOES NOT DIVIDE THE ESCROW FUND FAIRLY.**

- In 1974, the BIA began escrowing 70% of the communal revenues for plaintiffs. The Hoopa Valley Tribe's 30% share (by population) was given to them each year.

- The BIA has argued successfully in Court that all the money in the escrow fund belongs to the Short plaintiffs and that none of it belongs to the Hoopa Valley Tribe.

- This bill could give the Hoopa Valley Tribe up to half of the money in the escrow fund.

4. **THE BILL WILL NOT NECESSARILY ESTABLISH A YUROK RESERVATION.**

- The bill gives the Hoopa Valley Tribe the power to prevent the Yurok Reservation from being established simply by refusing to waive its claims against the Government. The rest of the bill would still go into effect.

- The majority group has no similar right to prevent the partition.

- Even if the Hoopa Valley Tribe prevents the partition, another provision of the bill (Section 8) still gives the Hoopa Valley Tribe jurisdiction over the Square.

5. **THE BILL DOES NOT NECESSARILY ALLOW A YUROK TRIBE TO BE FORMED.**

- The Yurok Tribe may not be formed under the bill unless it agrees to waive its claims to the 500 million dollar Square.

- If the Yurok Tribe refuses to waive its valuable claims, those who chose to join that tribe still lose the Square but get none of the monetary or other benefits of the bill.

6. **THE BILL DOES NOT ALLOW SELF-DETERMINATION FOR THE MAJORITY.**

- The bill requires the Yurok Tribe to allow into membership all Indians of the Reservation regardless of whether they have Yurok blood at all.

- Hoopas, Tolowas, Chetcos, Karoks, Wintuns, etc. may all join the Yurok Tribe even if the Yurok Tribe does not want them.

7. THE BILL DOES NOT ENSURE THAT THE YUROK TRIBE WILL ALWAYS HAVE THE YUROK RESERVATION.

- The bill provides land transfer and acquisition powers which the Secretary can use to trade parts of the Extension for land outside the Reservation.

- The bill gives the Secretary the power to take away the Klamath River from the Yurok Tribe in exchange for land elsewhere.

8. THE BILL ENSURES THAT THE YUROK TRIBE AND RESERVATION WILL FAIL.

- The Hoopa Valley Tribe has stated that it needs at least $3.5 million/year in order to run a government for its 1,700 members.

- The $200,000/year communal revenues of the Extension could never support a tribal government for the Yuroks.

- The part of the escrow fund which the bill gives to the Yurok Tribe will be spent within a few years, leaving the Yurok Tribe seeking public monies.

- There is not enough land or revenues on the Extension to enable the Yurok Tribe to spur economic development or to provide necessary services now lacking: electricity, telephone, water, paved roads.

9. THE BILL DOES NOT PROVIDE FOR ENOUGH MONEY TO MAKE ALL THE PAYMENTS PROMISED.

- According to Mr. Bosco's aide, Jason Lyles, Congress will have to provide more money than the $10 million in the bill in order to meet its obligations under the bill.

- Even the $10 million discussed in the bill for termination payments will not be given to the majority group unless Congress passes another bill, an appropriations bill.

- There is therefore no guarantee that Indians accepting termination will be paid their termination payments.

10. THE TERMINATION PAYMENTS COME FROM PLAINTIFF'S OWN MONEY.

- The money in the escrow fund already belongs to the Indians since it is derived from <u>past</u> revenues.

- According to Bosco's aide, Jason Lyles, only 800 to 1,000 people will join the Yurok Tribe, leaving approximately 2,500 to terminate.

- Most of the termination money, which could be approximately $50 million, would come from the escrow fund.

- Congress cannot pay for a Fifth Amendment taking with money already owned by the Indian.

- The fair market value of each Indian's share of the Square exceeds $20,000 by so much that if it were specified in the bill, it would not be able to pass Congress.

- Subsequent payments for the Fifth Amendment taking are left to future lawsuits.

- The bill provides for the Secretary to report to Congress concerning further funding proposals. No one knows how much money Congress will ultimately spend.

11. **MANY PLAINTIFFS WILL BE TERMINATED WITHOUT RECEIVING ANY PAYMENTS.**

- The only Indians who will receive $20,000 payments are those who meet the Jessie Short criteria.

- Thousands of plaintiffs, including some of Jessie Short's grandchildren, cannot meet those criteria so will lose all rights without any payments.

12. **MINOR CHILDREN MAY BE TERMINATED BY THEIR PARENTS.**

13. **THE BILL DOES NOT GUARANTEE QUICK PAYMENTS.**

- There are no time limits set within which the Secretary must make the termination payments. Because the bill does not provide for enough money to make all the payments, even if the Secretary wanted to, many people could not be paid until supplemental funding is provided.

- The Secretary would reasonably refuse to make any payments from the escrow fund until all the litigation over this bill is completed. Otherwise, the Treasury would have to reimburse the escrow account for all amounts distributed when the Fifth Amendment lawsuits succeed.

- While Short plaintiffs wait for their money, the Hoopa Valley Tribe is guaranteed $3.5 million/year from the escrow fund, plus the millions in future communal revenues from the Square.

14. THIS BILL DOES NOT SETTLE THE LITIGATION OR STRIFE ON THE RESERVATION.

- The bill specifically contemplates that the Short case will continue.

- Fifth Amendment lawsuits will be filed seeking the $500,000,000 value of the Square.

- Lawsuits will be filed challenging the constitutionality of the bill as a taking for a private purpose, the purpose of the Hoopa Valley Tribe.

- Lawsuits will be filed over hunting, fishing and gathering rights.

- Families will be torn apart as husbands and wives, brothers and sisters are given such unequal treatment.

S. 2723

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

Testimony of Sam Jones
An Indian of Hoopa Valley Reservation
And to Terminate Indian Rights
In Opposition to a Bill to Divide The Reservation

My name is Sam Jones, a full-blood Indian of the Hoopa Valley Reservation. I have lived on the Reservation all of my life, sometimes on the Square, sometimes on the Extension. Seventy years I have been involved in Indian ceremonies, games, and teaching. Indians from all parts of the Reservation and all tribes of the Reservation participate together in the same ceremonies and games.

Although I was not approved by the Hoopa Valley Business Council for membership, all my children and my grandchildren are Hoopa Valley Tribe members. Willie Colgrove, Chairman of the Hoopa Valley Tribe, is my cousin. This bill divides my family.

On August 6 the BIA held an election in connection with its plan to comply with the April 8, 1988, decision of the United States District Court in the Puzz case. That decision required the BIA to make sure the Reservation benefits all the Indians of the Reservation equally. I was elected to the Community Advisory Committee to represent the Indians of the Reservation who do not belong to the Hoopa Valley Tribe. We have been meeting with the Hoopa Valley Tribe's representatives to plan the reservation-wide budget

for 1988-1989. This is the first time that the Indians of the Reservation have gotten together in this way; but this bill will destroy any chance for this process to work.

I cannot begin to express how strongly I am opposed to S. 2723. I simply do not understand why Senator Cranston has decided to introduce this bill. In fact, in 1986 his aid told me that Senator Cranston would not support a split of the Reservation. I do not believe there is any justification for these bills.

There is no excuse for taking the Jessie Short case out of the court and plopping it in the middle of Congress. Claiming that this bill will not affect the Jessie Short case is wrong. The reason we filed the Jessie Short case is that our reservation is one reservation, and the BIA was trying to take it from us. Money was not the point.

We won the Jessie Short case, but the BIA failed to live up to the court's decision. That is why the Puzz case was filed. The BIA made a mistake in 1950 when it organized the Hoopa Valley Tribe and left us out. Over the years, the BIA has tried continuously to force us into organizing separately from the Hoopa Valley Tribe so it could split the reservation. Now the BIA is trying to get Congress to do it for them. I see this as a bill to bail out the BIA from its mistake in 1950, and to help it avoid complying with the Court's order. If this is legal - taking our case out of the courts - I do not think that it should be.

I understand that the BIA does not wholeheartedly support this bill. Instead, there are a few Indian people who have been travelling back and forth from California to Washington, D.C. to speak for this bill, thinking that the BIA supports them. I am sure the BIA encouraged this.

I see no excuse for anyone jumping into our lives, trying to push us around. That is all this bill amounts to - taking our birthright and handing it over to the Hoopa Valley Tribe.

I do not want to be terminated, but I would be if I did not come here today to speak out for myself and the people back home who elected me to represent them. Termination will case many of the people on our reservation to lose faith in themselves. They will face rejection from other Indian people; but they will still be Indian as far as white people are concerned. No one else in America is asked to "opt out" or "buy out" of their culture. Neither should we be asked to do so.

Termination will destroy our hunting and fishing rights. People who lose their tribal relations will be made to pay taxes on land that is now under trust. Many people on the Reservation are not accustomed to paying taxes, and they will lose their land.

By losing their tribal relations, Indian people on our Reservation will lose health care and educational benefits they now have. I am on the California Rural Indian Health

Board. I have worked long and hard for Indian health care. I will see much of my work go down the drain if this bill passes.

I do not want $20,000.00. I do not want $3,000.00. I want my rights.

The Indians of the Reservation have not had time to learn about this bill. The ones who say they support it do not understand what it will do to them. If Congress insists on going forward with a bill like this, the least it could do is allow all the Indians to vote on it before it would take effect. After all, this is our Reservation.

But really I wish you people could understand how upsetting these bills are to our people. I would like to see this bill killed.

By: Samuel Jones
Weitchpec Route
Hoopa, California 95546

NATIONAL CONGRESS OF AMERICAN INDIANS

Est. 1944

September 12, 1988

The Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to transmit a resolution of the Executive Committee of the National Congress of American Indians in support of the government-to-government principles of H.R. 4469 and the Hoopa Valley Tribe's efforts to achieve its approval. This resolution, which was adopted unanimously on June 17th of this year, was considered and accepted in the context of the divisive, longstanding litigation that poses a threat to many Indian governments and their property and assets.

Since passage of our resolution, H.R. 4469 has undergone certain changes, later adopted by the House Committee on Interior and Insular Affairs and incorporated into the bill, S. 2723, introduced by Senator Cranston on August 10th. As we understand, these changes are the result of negotiations between the Hoopa and Yurok peoples, who are the most directly affected by this legislation. We applaud and encourage the Hoopa-Yurok efforts to reach common understandings and to protect their future generations as tribal peoples. The recent court decision that has placed the Bureau of Indian Affairs in control of the Hoopa Reservation is an affront to the principles of tribal sovereignty and Indian self-determination, signalling a return to the discredited era of termination. This legislation would help to restore order to the positive development of Indian law in this area.

We support the Hoopa Valley Tribe's willingness to provide a significant amount of their money, $45 million, to resolve the current situation. We urge the Committee to support the Hoopa-Yurok attempt to resolve differences promoted over four decades by the Bureau of Indian Affairs. Thank you for making this statement part of the hearing record on S. 2723.

Sincerely,

Suzan Shown Harjo
Executive Director

Enclosure

804 D STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 546-9404

Resolution EC/MYC/1988-5

NATIONAL CONGRESS OF AMERICAN INDIANS

Est. 1944

RESOLUTION SUPPORTING THE GOVERNMENT-TO-GOVERNMENT PRINCIPLES OF H.R. 4469 AND THE HOOPA VALLEY TRIBE'S EFFORTS TO ACHIEVE ITS APPROVAL

Whereas, the Executive Committee of the National Congress of American Indians met during the 1988 NCAI Mid-Year Conference, in order to promote the common interest and well-being of American Indian and Alaska Native peoples; and,

Whereas, the Hoopa Valley Tribe, a long-time member of NCAI, has come under legal attack from the courts in a manner that threatens the basic premise of vested ownership of reservation lands and threatens the sovereignty of the Hoopa Valley Tribe; and,

Whereas, U.S. Representatives Bosco, Coelho and Miller (D-Calif.) have introduced H.R. 4469, legislation that attempts to reaffirm the Tribe's boundaries and ownership as originally introduced by the U.S. Congress in 1864;

Now, therefore, be it resolved that the NCAI Executive Committee hereby endorses the principles of H.R. 4469, as introduced, and encourages the U.S. Congress and President to enact and approve legislation to preserve the government-to-government relationship that Indian tribes and the U.S. government enjoy.

Adopted by the NCAI Executive Committee, June 17, 1988, NCAI Mid-Year Conference, Oneida Territory.

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TESTIMONY ON S. 2723
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

BY

JESSIE SHORT

MR. CHAIRMAN, THANK YOU FOR THE TIME TO HEAR MY CONCERNS ABOUT S. 2723. I AM JESSIE SHORT, A YUROK INDIAN WHO HAS BEEN INVOLVED IN A THIRTY YEAR OLD FIGHT TO ACHIEVE JUSTICE FOR OUR PEOPLE. IN FACT, THE LITIGATION JESSIE SHORT, ET AL V. U.S. WAS INITIATED BY A GROUP OF YUROKS SEEKING TO BE RECOGNIZED BY THE FEDERAL GOVERNMENT FOR SERVICES. THIRTY YEARS LATER WE STILL HAVE NOT RECEIVED SERVICES NOR AWARDS FROM THE LAWSUIT FILED IN THE U.S. CLAIMS COURT IN 1963.

I FEEL THAT THE TIME HAS COME FOR OUR PEOPLE TO SETTLE THIS DISAGREEMENT, AND NOW, AGAIN WITH MY SON, WE ARE STEPPING FORWARD IN REQUESTING THAT THE U.S. CONGRESS PROVIDE LEGISLATION THAT WILL HELP THE YUROK PEOPLE PROTECT OUR RESOURCES, KEEP OUR IDENTITY AS YUROK PEOPLE AND PRESERVE OUR HOMELANDS ON THE KLAMATH RIVER. IT IS THESE POINTS THAT I CONSIDERED WHEN I DECIDED TO SUPPORT THIS LEGISLATION. WE NEED THIS LEGISLATION TO PASS. I AM 83 YEARS OLD AND I'VE HAD PLENTY OF OPPORTUNITIES TO OBSERVE THE UPS AND DOWNS OF THE INDIAN TRYING TO SURVIVE DURING THE DEPRESSION, WARS AND THE OPPRESSION OF THE BIA. THE COURTS STILL HAVE NOT DECIDED WHO ARE THE ELIGIBLE PLAINTIFFS IN THE JESSIE SHORT CASE. I HAVE, WITHOUT SUCCESS, ASKED THE ATTORNEYS FOR REPORTS OF THE CASE'S PROGRESS. NO ONE KNOWS HOW MUCH LONGER THE CASE WILL CONTINUE. I SEE OUR YOUNG PEOPLE TRYING TO GO TO SCHOOL, BUT UNABLE TO GET SCHOLARSHIPS BECAUSE WE ARE NOT ORGANIZED AS A TRIBE. PEOPLE ARE GIVEN RIGHTS IN YUROK TERRITORY WHO ARE NOT EVEN CONNECTED TO THE YUROK TRIBE AND WE CANNOT DO ANYTHING ABOUT THIS VIOLATION BECAUSE WE ARE NOT ORGANIZED AS A TRIBE.

I ALSO SUPPORT THIS BILL BECAUSE OF A RECENT TELEPHONE CONVERSATION I HAD WITH ONE OF OUR ATTORNEYS IN THE SHORT CASE. I ASKED HIM TO TELL ME WHAT I COULD EXPECT OUT OF THE SETTLEMENT OF OUR 30 YEAR LITIGATION IF WE WERE TO BE PAID TODAY! THE REPLY WAS ABOUT $9,000.

MR. CHAIRMAN, I'VE SPENT MORE THAN $9,000 ON TELEPHONE CALLS, COPYING AND TRAVEL, AND SO HAVE SOME OF THE OTHER PEOPLE WHO HAVE BEEN ACTIVE IN THIS CASE. I FEEL VERY SHORT CHANGED, AND DEPRIVED OF MANY SERVICES THAT THE YUROK PEOPLE COULD HAVE BEEN RECEIVING, THAT WOULD HAVE FAR EXCEEDED ANY PAYMENT THIS CASE

WILL PROVIDE US.

THE PUZZ DECISION NOW SAYS THAT NO ONE OWNS THE RESERVATION AND BIA HAS ALL THE POWERS. THIS IS NOT WHAT OUR PEOPLE WANT. WE NEED TO HAVE OUR OWN GOVERNMENT RUN BY YUROKS FOR THE BENEFIT OF YUROKS. MR. CHAIRMAN, IT IS TIME TO START A NEW TIME FOR THE YUROKS. WE HAVE NEGOTIATED WITH THE HOOPAS AND AGENCIES OF THE U.S. GOVERNMENT AND HAVE COME TO AGREEMENTS WITH EVERY ONE EXCEPT THE BIA WHO OPPOSES GIVING ANYTHING TO SETTLE THIS ISSUE. THIS IS IRONIC SINCE THE BIA HAS A LONG HISTORY OF BEING THE PROBLEM, THE REASON THE YUROKS HAVE NOT ADVANCED AS A TRIBE.

THE LACK OF AN ORGANIZED TRIBAL GOVERNMENT AND LACK OF SERVICES, IS NOT THE FAULT OF THE INDIANS. MANY YEARS AGO BEFORE THIS CASE EVER STARTED, A GROUP OF US INDIANS WENT TO THE BIA TO SEE IF WE COULDN'T GET A TRIBAL GOVERNMENT LIKE THE HOOPAS. THEIR REPLY WAS, "WE DON'T RECOGNIZE YOU PEOPLE. AS FAR AS WE'RE CONCERNED YOU PEOPLE ARE FROM SIBERIA!" EVER SINCE THAT TIME, AND SINCE THE SHORT CASE WAS FILED, THERE HAS BEEN MUCH CONFUSION ABOUT ORGANIZING A TRIBE AND FURTHER VERY LITTLE TRUST IN THE BIA, FOR OBVIOUS REASONS. AS A RESULT, THE YUROK INDIANS HAVE NOTHING!

I FEEL VERY DISMAYED THAT THE FEDERAL GOVERNMENT AFTER 30 YEARS CAN LOOK ME IN THE FACE AND SAY THE YUROKS ARE NOT ENTITLED TO ANY FEDERAL CONTRIBUTION IN THIS BILL! I AM VERY HURT. OUR PEOPLE HAVE SUFFERED, AND MANY HAVE DIED WITH EMPTY PROMISES.

I URGE YOU TO PASS S. 2723 WITH APPROPRIATE CHANGES.

THANK YOU.

Senate Testimony on S. 2723
before the
Senate Committee on Indian Affairs
September 14, 1988

by

Lisa G.Sundberg-Brown

Good morning Mr. Chairman and members of the Committee. Thank you for hearing our testimony on this important bill. I am also grateful for the sincere efforts of Senator Inouye to assure a continuous relationship between the United States Government and Indian Tribes by making this Committee permanent.

My name is Lisa Sundberg-Brown. I am a Yurok Indian. My family comes from 5 different Yurok villages reaching from Trinidad to the mouth of the Klamath up to the Weitchpec area. I am a resident and member of the Trinidad Rancheria, a full time college student seeking a degree in Government and Political Science. After completing this degree I plan to continue on to law school. I am also a consultant for tribes who need assistance in proposal writing and fund raising for economic development projects, and a designer of high fashion Yurok Indian jewelry. I grew up along the Klamath River and attended Pecwan Elementary in the summer and fall months. During those years, I spent time with my grandfather and great uncle during these years, learning about my culture, and participating in our ceremonial dances. My homeland encompasses some of the most beautiful stretches of land in this country.

I was too young to remember when I became a litigant in Jesse Short v. United States. While I was growing up, however, I remember talking with other young plaintiffs about all the money we were going to get from the Short case. As I got older, I began asking some adults what the case was about and when were we going to get this pot of gold. The problem I ran into was that no two people had the same understanding of what Short was all about, except that we would get a sum of money from the government.

Each year, we were told that we were going to get our checks the next year. The next years came and went, however, over and over again. In the meantime, over 400 plaintiffs died without ever

seeing a dime. The Yurok Tribe failed to organize because of peoples fear of losing their money judgments in Short, and as a result many Yurok people went without many of the services I was able to enjoy as a member of the Trinidad Rancheria. Because I was an enrolled member of a tribe and my Jesse Short damages were protected, I could not figure out why our attorneys were informing people that their judgment money in Short would be jeopardized if the Yurok Tribe organized. It was at this time I began doing more research on the Short case and learning what it was all about. The more I found out, the more enlightened I became about the danger of this case and its sister case, Puzz, to the future of my tribe, and to the sovereignty of tribes across the country.

Mr. Chairman, I view myself as a Yurok Indian, not a Hoopa. I was raised in Yurok territory and raised with Yurok values. Just because I have white blood in me doesn't mean that I am white. I consider myself Indian. That is why I believe that each plaintiff should be allowed to choose for themselves who they are, and who they identify with. S.2723 does this but more importantly it protects the aboriginal territories of the Yurok Tribe.

I know that you have heard that because some of us have both Yurok and Hoopa blood, we are one big happy family and should have one big reservation-wide government, however, other tribes have demonstrated that these types of governments are more problems than they are worth. With this I am sure the BIA and the members of this Committee would agree. I know from growing up around my elders that it is not the type of blood, you have but what cultural and religious values you were raised with which determine tribal political affiliation. As a result, I came to believe that despite the Short case the Yurok Tribe had some very obvious options. Since the Yurok plaintiffs judgement money would not be affected by tribal organization, I felt that the Tribe could organize, have a membership role, and start to receive federal and state programs to provide services for its people. They could have asserted jurisdiction on the Extension and negotiated with the Hoopa Tribe to manage the resources of the Hoopa Valley Reservation. As a result, in June of this year (1988) I was actively involved in an effort to organize the Yurok tribe. Unfortunately, however, this effort failed because Short and Puzz activists told people that by organizing they were going to lose their Short money and their rights to the Yurok Tribe, and the organizational effort was simply a trick of the BIA, thus the time wasn't right and the people voted it down, but only by a narrow margin.

I could not understand why this happened, until I spoke with Mr. Theirolf, the attorney for the Puzz case who was present at the election. During our discussions, I learned that many of the

people who voted no against organization, had been convinced that rather than becoming member of the Yurok tribe, they should instead support the establishment of a reservation-wide government which was and is being advocated by the Puzz activists. This is another avenue of organizing my people; however, in order to achieve this type of government, the Hoopa Tribe would then have to be abolished. I have read that the only power capable of doing this is Congress, not a court, as the 5 Puzz plaintiffs and their attorney are proposing to do. I was outraged by this attempt to abolish a tribe who has been in existence for over 10,000 years but I was more appalled to learn that part of the argument in the Puzz case was that there is no Yurok Tribe. This ran counter to everything I was taught from birth. I was equally shocked to hear that the Puzz attorneys were advocating that as a result of the reservations establishment language no tribe should have rights to this reservation. This position affects not only the Hoopa and Yurok tribes' sovereignty but the sovereignty of many tribes whose reservation were created with similar language to that found in the 1864 Act which created the Hoopa Valley Indian Reservation was established. As you are aware, they won in the Puzz case and now, since no one has vested rights to the reservation, the BIA has been taken over the management of our tribal resources and accounts, taking 10% off the top of any money allocated as their "management fee". In other words they are paying themselves out of Indian money for a service that is their responsibility in the first place. Furthermore, the BIA is the very culprit who mismanaged our resources and got our people into this protracted 30 year legal battle in the first place!

In an attempt to resolve the land issue surrounding the Hoopa Valley Indian Reservation, Congressman Bosco introduced H.R. 4469, a bill with flaws, but a step in the right direction. To me this was a light at the end of the tunnel. So, instead of killing the baby because it didn't have all of the right features, a group of very dedicated Yurok people who have for years been fighting for Indian programs and Indian issues for many years, even though it has meant sticking their necks on the line in the process, came together and started to work on a more equitable solution to this complex problem.

On June 30, 1988, in Sacramento, California, a Senate oversight hearing was held by this Committee. Mr. Chairman, you asked if the two parties involved could come together and try and work things out between them. We took your advice, and that is what brings us here today. From the outset, we realized that no one solution will make all of the people happy, and that all parties involved are going to have to compromise if we are going to try and solve our problems and get on with our lives.

Mr. Chairman, I, like you, can now appreciate how it feels to put

in long and difficult hours to develop a fair and equitable solution to an Indian problem, only to have myself and that solution viciously attacked by people who don't understand what they are giving up, and by people whose own self-interests are being jeopardized.

The final report of the American Indian Policy Review Commission stated, "the ultimate objective of Federal-Indian policy, must be directed toward aiding the tribes in achievement of fully functioning governments exercising authority within the boundaries of the respective reservations. This authority would include the power to adjudicate civil and criminal matters, to regulation land use, to regulate natural resources such as fish and game and water rights, to issue business licenses, to impose taxes, and to do any and all of those things which all local governments within the United States are presently doing." This is our goal for the Yurok Tribe, and one of the main purposes for my being here today. Only a tribal government can exercise these rights and responsibilities. A citizens group cannot. Thus, for the Puzz attorneys to advocate the continuation of the Community Advisory Council in lieu of the organization of the Yurok Tribe is wrong. The Community Advisory Council created by the Puzz decision currently can never have the sovereign authority of an Indian tribe. These powers stem from the inherent sovereignty of Indian tribes and it is clear to me, as I hope it is clear to you that the CAC is not a tribal government. Sovereign authority of Indian tribes was not given to us by the U.S., it was merely recognized. These powers can never be held by a mere group of individuals. Thus, it is my belief that people like Ms. Lyle and Mrs. Habberman are misguided in their beliefs, for even if they are successful in the long run, they themselves will lose something which can never be replaced and which anti-Indian groups across this country have been trying to take from them since the white man first came to these shores: their inherent rights as tribal members. Thus, to me the Puzz case not S. 2723 is a form of termination of the Yurok Tribe.

To get into the guts of this bill, there are many changes I feel are necessary if this bill is to provide a more equitable settlement for the Yurok Tribe and the other Indians involved. I'd like to take just a minute to highlight some of the items in the bill I feel need to be added or changed:

- The term "Yurok Tribe", should also recognize the other two names that these people were identified as: "Lower Klamath River, and Pohlik-lah".

- An Indian of the Reservation should also mean any Yurok who has 1/4 Indian blood, as well, since there are people who were not allotted land, but who's ancestry is derived from the reservation prior to allotments.

- The boundary lines that separate the two tribes needs to be researched thoroughly to ensure the aboriginal boundaries are correct. This can be done after the organization of the Yurok Tribe but the fact that all aboriginal Yurok lands are not included in this bill should be noted in the Committee's report.

- Any money that is used for the Hoopa Tribal budget (i.e., the $3,500,000), should come from the Hoopa tribe's share of the escrow account, not off the top. The fact that the Yurok Tribe share of the escrow account is based on the total amount in the account divided by the number of Hoopas and Yurok requires this if the proposal is to be fair and equitable. Also, similar to what is required by the Yurok Tribe, none of the settlement funds should become available to Hoopa Tribe until such time as the Fifth Amendment is waived by the tribe.

- Because of the fact that the Hoopa Tribe will need access to this money at the time of enactment, and the determination of all those eligible to participate in the settlement won't be known for at least 2 years from enactment, it is suggested that a certain amount of money be set aside in a special account (not to exceed $10,000,000) for the Hoopa tribe to draw down for their budget. But when the number of eligible participants is finally determined, the calculations should be done as if this amount was never set aside for the tribe to draw from. When the figures for the tribes share is determined, it will then be less any amount that was drawn down from this special account.

- While I strongly feel that all funding for the Yurok Interim Council should be paid for by federal funds it is possible that this group will request to use some of the settlement account funds. In the event that they do I would suggested that the monies allowed for the Yurok Committee, and the Yurok Interim Council, be handled in the same fashion as described above.

- Since each successful project always requires a plan of action, I feel strongly that there needs to be a start-up and information committee established immediately to help implement the bill. Activities such as work shops, printed information to the people will help get things into place for the Yurok Interim Council. If this informational committee is to work, it is very important that the individuals who sit on it be dedicated people who have had a history of participation in the formation of the Yurok Tribe and who are dedicated to the protection of the integrity of the bill's intent. They must also be people who are educated and familiar with programs. I would also suggest that some government officials from Congress sit on this committee during the first stages of the implementation of this bill. The members of this committee should be selected by the Assistant Secretary of Indian Affairs, and Congressman Bosco and Senator Cranston. Further this committee should be viewed as a valid tribal

organization for the purposes of the USDA Food Commodity Distribution program.

- The amount of money contributed by the Federal Government is a far cry from what I believe my people are entitled to for the services they should have, but did not receive over the past 30 years. The irresponsibility of the Bureau of Indian Affairs has left our people in a state of confusion with an empty reservation and little hope for the future. We have absolutely no land base for our tribe to use to help bring our people home. Thus, we feel that the federal contribution to our Yurok land acquisition program should be substantially increased.

- I do believe that there is a taking of an expectancy that our people would be giving up under this bill. I realize that because of the lawsuits no one has vested rights or ownership to the resources of the reservation; however, there is a payment due for 30 years of neglect. Therefore, a substantially increased federal share is justifiable. The theory of land and vested rights and ownership comes from possession and aboriginal usage of land, and not from bureaucratic mishandling of organic documents. I believe it is wrong for the government to fall back on lose interpretations by the courts to avoid being held accountable for their own mistakes. The Yurok and Hoopa Indians owned their lands long before the Constitution of the United States was ever thought of, and, for the people of this Congress to say that we don't have ownership is putting the attitudes of the 80's back to the times of when these very lands were stolen from the Indians by treaties made under duress.

- I also feel that the monies left in the settlement fund after both tribes receive their share should be used to pay the people who elect tribal government and the $20,000 buy-out. I do not feel it is the tribes responsibility to make these payments. It is the taking of the expectancy of the individuals in the Short litigation as well the Yurok Tribe. I further feel that there should not be such a discrepancy between the $3,000 tribal government option and the $20,000 buy-out. I would like to see the people who become a part of the tribe receive $10,000. If this is not possible I would propose lowering the $20,000 to $15,000 and increasing the $3,000 to $8,000. Or, $1,000 for the children, $5,000 for adults and $7,500 for those elders over the age of 50. I believe a lot of people will be better off if they stay a member of the tribe and are able to receive the benefits in services; however, most are not educated as to how the services would actually reach them. Therefore, they might take the $20,000 instead, thinking they'll never see any benefits from the tribe that could match it; yet, by the time you get an education you'll have gotten $20,000 plus in benefits, if you received a home you'd have gotten a benefit of at least $45,000, and if there is health care, business development programs etc... that would well out weigh the $20,000 buy-out. I do agree that

this provision should be available, however, to those individuals who are duel enrolled or who have lived away from the reservation for generations and who have no desire to return.

- Along the same lines, I feel that whatever amount ends up being used for the buy-out option, the BIA must lay out clearly what that person is giving up in program services, potential tribal benefits etc. People need to be educated before they make that election. In addition, many of our people need a lot of education on tribal government, because they have not been a part of one before.

- I would also like to see workshops held by the BIA and other government officials, to help the Yuroks understand these principles.

- I am very concerned about parents being able to choose the buy out option for their children. I believe the parent should only have the power to make that decision for him/herself. What if both parents were qualified and each elected something different, which parent then would you deem to be the decision of the child's? I believe it would be in the best interest of the child if he/she were automatically enrolled in the tribe, and be deemed to have taken the lesser amount. Further, I believe that a child's money should be protected in a high interest bearing account until such time as the child reaches the age of 18, so the parents could not arbitrarily go out and spend it. It is possible that if a child were a new born at the time of enactment, his $3,000 would triple by the time he reaches 18. This is better than a buy out. Being a young person, and I hope other young people can share my views, by the time I reached the age of 25, I would have already received in excess of $20,000 in education grants, medical and dental care, and any other services that are available to me. You can't go wrong! Therefore, it is much to the child's advantage to be enrolled automatically, than to deem the parent's option to be the option for the child, or even to let the parent choose for the child.

- Stronger language is required to clearly state that the lands within one mile each side of the Klamath River are the Yurok Reservation and are to be recognized as Indian territory and managed like all other reservations in the U.S.

- I am very concerned with assuring that the Yurok Tribe once, organized, will receive its fair share of federal programs as soon as possible. It is my feeling that funding for the Interim Council should come from the BIA's New Tribes account and should not be less than $500,000. While I realize that this Committee is likely to be reluctant to line item a base budget for the Yurok Tribe, I feel that it is not inappropriate for me to ask that the bill and the report language insure that the Sacramento area's budget will be increased to accommodate the needs of the

Yurok tribe. In addition, I would point out that the Yurok tribe's base budget should not be less than is made available for tribes of comparable size and resources in other areas of the country. In addition, because of the problems other new Tribes have experiences in working their way into the BIA's budget system, I would asks that the bill require the BIA to submit a report to this Committee six months after the organization of the Interim Council and once every year thereafter for three years detailing the monies and programs it has provided to the Yurok Tribe and how those programs and monies compare with those provided to other Tribe of comparable size and needs. Also, because the Yurok Tribe has been deprived of housing, water and sewer, roads and other facilities construction dollars, I would ask that it be placed on the top of the priority list of each of these items. In the area of housing for example, I would ask the committee to earmark a minimum of 75 HUD units per year for the next five years to the Yurok Tribe. In addition, I would ask that since the development of our reservation depends on the available of good transportation, I would ask that the Committee earmark funds for the construction of a road connecting California Highway 96 to U.S. Highway 101. Finally, since unsafe drinking water presents an immediate and ongoing health hazard to our Yurok people, I would ask the Committee to direct IHS to within existing water and sanitation funds begin work on the one million dollar safe water projects I have appended to this testimony. These are projects which the Indian Health Service Area Office has presented to the Community Advisory Council for funding out of the Escrow Account. To my knowledge, non of these proposal have been forwarded to the IHS Central Office since the Yurok Tribe is not currently organized.

- I would request access to the fisheries money provided under the Klamath River Restoration Bill. To my knowledge, none of these monies have been used on the lower 40 miles of the Klamath River or anywhere on the extension or Indian territory. Many of the spawning steams that were major contributors to the fishery system have been damaged due to back logging practices that were allowed under the management of the BIA. Further, any monies that are allocated from the BIA into the fisheries department should be used to help achieve enhancement and development of the Indian fishery.

-I am requesting additional FTE's in the Sacramento Area to assure services to the Yurok Tribe. Our plan, however, is to contract for the programs such as biologist, forestry personnel, rights protection, realty and so on.

- I am requesting assurance that the Yurok Tribe will have an adequate HIP program. In view of the fact that many of the Yurok people have homes near as opposed to on the reservation to be closer to their jobs, their needs will be better met by the this home improvement program. However, this program only considers

on or near to be the county in which the reservation is located. The Yurok Reservation, as defined in this bill, is located in two different counties, Del Norte and Humboldt. I am, therefore, asking that for this and all other BIA and IHS programs which define eligibility on an on or near basis, the bill specify that on or near means residency in either county.

- Language should be included in the bill to clarify that the Yurok Constitution will define the future enrollment criteria for the Yurok Tribe, so that people do not misinterpret the bill to mean the tribe has no say so as to who its future membership will be.

- I would ask that the original Tax language proposed by Congressman Bosco be inserted back into bill. In view of the fact that the government has not had to service the Yurok people for all of these years they have saved far more than what they will receive by taxing these people.

- I would ask that the bill be amended to require a vote of 51% of the residents of a rancheria instead of 2/3 of the members to merge the rancheria into the Yurok Tribe. This is consistent with the Constitutions of most rancherias.

- The bill should be amended to provide that the Yuroks will receive any monies left from the settlement fund and not split 50/50 with the Hoopas. This is only fair since the Hoopas have been taking money from the escrow account for a number of years to run Hoopa programs.

- The federal share for land acquisition should be a minimum of $20 million. $10 million in the first year, and a minimum of $2 million a year for 5 years. I am also asking that the bill be amended to allow these funds to be used to purchase lands adjacent and contiguous to the reservation lands. This should include lands adjacent and contiguous to any of the rancherias that merge with the Yurok Tribe.

- I propose the bill be amended to read that if an individual does not make a decision under the options provided for in the bill, that the person should be considered to have made the decision for the lesser amount and be enrolled on the base roll of the Tribe.

- The rancheria merger provision should require that the merger take place before the eligible Indians choose which options they will select, otherwise we will have a duel enrollment problem with rancheria members. I am also sure these people would like to know if they are going to lose their assignments. They will if they choose to become a Yurok tribal member and the rancheria doesn't vote to merge. A rancheria electing to merge with the Yurok Tribe should also remain intact until such time as the

Yurok Tribe's constitution in approved by the Secretary of the Interior.

I truly wish my people back at home new the true intent of the language in this bill. We are faced with a very ugly scene. I am appalled by the fact that my own attorneys have for the first time finally communicated with paid adds in the paper which are both false and misleading. Their failure to print the true facts of this bill has led to twisted interpretations, which has placed fear in many of our people. People are so confused at home they simply d not know who to believe. To give you an example of this, I am hereby submitting as a part of my testimony, these tapes of meetings that have been held by the Puzz attorney, Mr. Theirolf, letters that have been mailed to the plaintiffs by Mr. Wunsch, a letter from Mr. Shearer giving his analysis of the bill, newspaper adds that have been printed to communicate to the plaintiffs the intent of these bills, and newspaper articles that have statements made by the Puzz and Short plaintiffs' attorneys.

In closing, I believe that the efforts made by the two Indian groups is courageous. I cannot begin to tell you the outright slander that has occurred against all of us because we have been trying to do something I know our ancestors would have done. But, unfortunately, we have the influence of people who don't understand our tribal values and whose motives are questionable. Therefore, I thank you for helping us.

TESTIMONY OF ROBERT MCCOY
IN SUPPORT OF
S. 2723, THE HOOPA/YUROK SETTLEMENT BILL
BEFORE
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

Mr. Chairman, I appreciate the opportunity to speak before this Committee regarding Senate Bill 2723. My name is Robert McCoy, Yurok Indian, WWII veteran and a plaintiff in the Jessie Short Case. Recently I retired after falling trees in the timber industry for over 40 years.

For thirty years I've supported the litigation efforts that my mother Mrs. Jessie Short helped initiate to improve the conditions of the Yurok people. I feel we, the Yurok people must step forward with other methods to take control of our future since it is apparent that the courts are unable to come to any resolution. In fact, after 100 plus years of BIA control with deception resulting in losing thousand acres of Yurok land we now have a decision in the Puzz case that gives the BIA full control again with unlimited powers.

Mr. Chairman, after the Sacramento hearings in June, I reexamined my position regarding the legislation, taking heed of your suggestion that we must present an "Indian Settlement" and not solutions made up by people in Washington, D.C. We have met with the Hoopa people, congressional staff and other Yurok people while trying to reach a settlement of the issue. We have reached an agreement in principle and are offering amendments for your consideration.

The conditions of the Yurok Reservation must be discussed when considering our additional requests to Senator Cranston's bill. First, we must consider the U.S. Governments position regarding termination process where the BIA, often times under pretenses of honest officials, prepared contracts that gave the timber contractors the land in addition to the timber that was sold. Many of these allotments were owned by many heirs so the BIA used the old divide and conquer method to reach agreements with them only to later find that the BIA did not protect their rights. We need land to build homes, economic development programs, replant forests for our descendants and funds for general tribal operations. We request that the U.S. Senate appropriate a larger amount of federal money than is the presently in the bill.

Secondly, we request that the Senate authorize or require that the BIA under present authorization construct a two lane highway from State Highway 96 to U.S. Highway 101. This would provide access from the upper part of the Reservation to the Lower Klamath area. Presently, there is a 52 mile detour to go

from one part of the Reservation to the other part. This road would be the catalyst for providing electricity, and community water delivery systems and jobs presently are unavailable on the Reservation.

Finally, we request that the U.S. Senate authorize additional funds for the settlement account to insure that the Yurok Tribe would have sufficient funds to start up an efficient Tribal operations and plan for the future.

In closing Mr. Chairman, please consider the fact that after living for over sixty years in a system of BIA or Government uncertainty, it is difficult for me to see a change unless the U.S. Congress provides resources in a priority manner for the Yuroks to establish a government and play catch up to other Indian Tribes and to the society in general.

Thank you for your time and hopefully the Yurok people will benefit from your considerations.

TESTIMONY OF CHARLES ABBOTT
IN SUPPORT OF
S. 2723, THE HOOPA/YUROK SETTLEMENT BILL
BEFORE
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

Mr. Chairman, thank you for the opportunity to speak before this Committee regarding issues that will influence our lives for many generations to come.

My name is Charles Abbott, Yurok Indian , veteran U.S. Navy, Jessie Short plaintiff, and a supporter of the bill before you today. My home is on the upper part of the Hoopa extension about 6 miles down the Klamath River from Weitchpec. Like many of the people living on the Reservation I commute or live part time near my employment.

The Yuroks are a proud people who have survived years of difficulty in trying to preserve our homelands. My grandparents told the story of our people being forced from our aboriginal territories to a strip of land one mile on each side of the Klamath River from Wietchpec to the Ocean. Then my parents witnessed the taking of allotments by the BIA who forced the Indians to sell their lands as they tried to terminate the reservation. Now today, as I become one of the elders of the Tribe, it appears that we have little hope to preserve our identity; and in losing our identity, we slowly but surely lose a part of our human dignity.

We Yuroks wish to change this trend by taking our destiny into our own hands and support this legislation that will provide a vehicle to organize the Yurok Tribe, retain ownership of our traditional lands, regulate the natural resources, and most importantly, give us an opportunity to gain back our human dignity. The Yuroks are still a proud people.

Traditionally, the Yuroks did not have a central government with chiefs; rather, the individual villages had leadership that centered around the religious leadership. This lack of history in central organization is recognized; however, we know that in order to survive as a people, we must be organized. It will be a new era for the Yuroks. For many years I've worked in educational programs and other community development programs; so, I know that our lack of services trace back to lack of a strong tribal organization.

It is important for the Committee to understand that just as the mighty Redwoods stand started from a seed, the Yurok government also must start from a seed. We must have seed monies to provide technical assistance, staffing communication, etc., during the time of organization. We need to immediately involve our people in planning the development of our governmental operations, which will ultimately affect all aspects of our

people's social and economic development. During this transition period, we would expect the Congress to require that agencies concerned with tribal trust relationships report periodically regarding the development of the Yurok Tribe.

We Yuroks, who have visions of a better life for our people and have stepped forward in a positive manner, are being subjected to personal attacks by people who apparently have other interests. Please do not be misled by misinformation, disinformation and other tactics employed by professional advocates. We Yurok people have been promised many, many benefits without seeing anything positive. Mr. Chairman and members of the Committee, we need this legislation to provide land and resources so that we can plant and nourish the seed that will bring back the Yurok people to a position where we can influence our destiny as a people and continue to be proud Yuroks. Thank you for the opportunity to speak before this distinguished body.

TESTIMONY OF WILFRED K. COLEGROVE
HOOPA VALLEY TRIBE
ON S. 2723
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

My name is Wilfred Colegrove and I am the Chairman of the Hoopa Valley Tribe. I live in northern California on that portion of the Hoopa Valley Indian Reservation known as the "Square" where our tribe has lived and governed its affairs for over 10,000 years. With me today is Hoopa Tribal Councilman Dale Risling. On behalf of our Council and all Hoopa people, thank you for this opportunity to testify in support of S. 2723.

Background of the Problem

To put my testimony in perspective, I would like to take just a few minutes to explain the background of S. 2723. Basically, the problem needing corrective legislative action was caused about 100 years ago by the joinder through an Executive Order of two historically separate, non-contiguous reservations, the Hoopa Reservation (know as the Square) and the Klamath River Reservation (known as the Extension).

In the 1850's and 1860's there was war in California. To help bring about the peace in 1864, Congress authorized the establishment of four tracts of land in California for Indian reservations. Under this Act the Hoopa Valley Reservation was established.

Our trouble began when non-Indians living north of us in the coastal area challenged the validity of the Klamath River Reservation in an effort to gain access to the Redwood forests along the River. They argued that the Klamath River Reservation constituted a fifth reservation in California and, thus, was illegal. In 1891 an Executive Order joined the boundaries of the Hoopa Reservation with those of the Klamath River Reservation, reducing the number of reservations to four. Despite the merger, the two tribes continued to conduct their affairs separately.

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

Because of better access to the coastal transportation systems, most Extension timber had been harvested by the 1950's, when the Interior Department began selling Hoopa Tribal timber from the Square. Under federal law the income was used by the Tribe for essential governmental functions, and the remainder distributed to individual tribal members per capita. The Solicitor of the Department of the Interior issued an opinion that the timber proceeds from the Square should be used only for the benefit of Hoopa tribal members.

Short Litigation

In 1963, a few people brought the Short lawsuit challenging the exclusion of Indians of the Extension from these per capita distributions. However, according to Mrs. Short and many other plaintiffs I have spoken with, their intent in bringing this suit was not to create problems for the Hoopa Tribe, but rather to gain BIA recognition of their status as Indian people eligible for federal services and protection, and to obtain damages for the loss of their lands through federal sales and the allotment process. In searching for a legal basis for the Yurok claims, their attorneys developed the argument that there was one reservation and that Yuroks were entitled to an equal share of timber income from the Square. This was the beginning of the legal battle which has lasted for over 25 years.

The claims attorneys rounded up 3,800 individual plaintiffs who were descendants of the pre-1900 Indians of the Klamath River area to intervene in the suit. Only about 500 of these people live on the Hoopa Square or the Extension, and about another 500 within 50 miles. The rest are located throughout the State of California and the United States; and a few are even in foreign countries.

Nevertheless, in 1973 the Court of Claims ruled that the Interior Department had been wrong to limit timber proceeds per capita payments solely to our tribal members. In so doing, however, it necessarily ruled that no Indian tribe has a vested right to the resources of the reservation. In this narrow decision, the court granted the plaintiffs damages for the past, but only a hope of future sharing. It stated that if the proceeds of the reservation were individualized through per capita payments, allotments and so on, the plaintiffs did have the same rights to a share in those individualized assets as a Hoopa tribal member did. Thus, I cannot see how the plaintiffs think they will win this 5th Amendment lawsuit they threaten to bring if this bill passes. In order to win, they have to claim that they have vested rights in the reservation; but if they do, they take the chance of having the Short case reversed: the Short decision is premised on the fact that no tribe has vested

rights to the reservation.

Puzz Litigation

Short was followed in 1980 by another suit, Puzz v. United States. This case was brought by 5 individuals who sought to dissolve the Hoopa Tribe and prevent the federal government from recognizing any tribes on the reservation. In its decision earlier this year, the Puzz court ruled that federal deference to the authority of the Hoopa Tribe was unlawful. Thus, the court ordered BIA to take over reservation management. Citing this decision, the BIA has assumed total authority of tribal and reservation affairs, and vital social services have been lost or upset because of BIA's inability to decide issues or take action. The Puzz decision was the straw that broke the camel's back.

Negotiation Failed Repeatedly - Legislative Solution Initiated with H.R. 4469

Soon after the case was decided, Congressman Doug Bosco introduced H.R. 4469 to settle the reservation's problems. Congressman Bosco was aware that during the 25 years of litigation, there had been numerous attempts at a negotiated settlement. The House Interior Committee staff has met with the parties. The judge had ordered meetings just between parties, meetings just between attorneys, and even meetings in which the judge himself participated. Unfortunately, all of these attempts at a negotiated solution failed and instead led to more motions, more briefs, and more court cases. Realizing that the courts could not solve this problem, Congressman Bosco introduced H.R. 4469, understanding that it was not a perfect bill, but feeling that it might bring the parties to the negotiating table.

Senate Continued with Oversight - Tribes Worked Together

Shortly after introduction of H.R. 4469, this Committee held its oversight hearing in Sacramento. It was at that hearing that you, Senator Inouye, encouraged us to arrive at "an Indian solution to this Indian problem." As a result of your statement, a group of tribally-oriented, on-reservation Yurok people sat down with our Hoopa Tribal Council and began to discuss how best to resolve this problem.

The Yurok representatives were extremely concerned with the lack of Yurok provisions in the initial bill. They wanted a larger share of the escrow account, more land, and a guarantee that the Yurok Tribe would be organized and eligible for the hundreds of thousands of dollars in federal services of which Yurok people are currently being deprived. Our negotiations went

on for several weeks, but in the end we reached agreement on the majority of points.

We then went together to meet with representatives of all of the members of the House Interior and Insular Affairs Committee and staff to explain our feelings. It appears that many of our arguments were heard, because H.R. 4469 was re-written to include Yurok organizational provisions, increased lands for the Yurok Tribe, and compensation for Short plaintiffs and other Indians of the reservation.

At the same time, the House Committee staff was not as good to the Hoopa Tribe. The bill will pay Yurok benefits with Hoopa dollars.

Hoopa Tribe Accepted Compromise

When the bill finally emerged, the Hoopa Tribe was forced to accept the loss of over $45 million in escrow account funds and to agree to the unprecedented requirement that we accept as members persons who do not meet our Hoopa enrollment criteria. It also requires that we grant a life estate on our reservation to a Yurok family, the Smokers, at the same time we are denying permanent assignments to our own members. In addition the partition of the reservation will deny Hoopa commercial fisherman any further rights to fish at the mouth of the Klamath Extension.

None of these points were easy for us to support; however, we have agreed to do so in the hope of arriving at a solution to the prolonged problem.

Senate Bill Emerged

The Hoopa/Yurok agreement, the proposals presented by the House Committee, and Senator Cranston's hope for resolution of the controversy led to his introduction of the House reported bill in the Senate as S. 2723.

Efforts to Inform All About Legislation

We at Hoopa have gone a long way to ensure that all people involved in this case have accurate information on this legislation. We have published a joint full page newspaper ad with the Yurok people. Other members of our tribal council have done radio shows and held community meetings. We feel confident in saying that this bill has strong support from both on-reservation and off-reservation Yurok people.

Hoopa Supports Yurok Requests

We of the Hoopa Tribe want nothing more than to find a fair, reasonable, and quick answer to our long-range problems. We believe that S. 2723 does that. At the same time, we recognize the importance of ensuring the continued existence of the Yurok Tribe, and we, therefore, support Ms. Sunberg's requests for additional land and program monies. We also support her proposal for limiting parents' rights to accept the cash settlement option for their children.

Real Meaning of S. 2723

Mr. Chairman, the passage of S. 2723 would not only mean the end to 25 years of strife and stalemate, it would also mean the preservation of the Hoopa and Yurok Tribes. We of the Hoopa Valley Tribe cannot put into words what it feels like to have a congressional mistake in 1864 now, 114 years later, leaving our tribal government fighting for its mere existence. S. 2723 will, if enacted, put an end to our struggle and allow the Hoopa and Yurok people to live at peace and prosper.

We Hoopa Indians, who have had our tribal sovereign authority stripped by five plaintiffs in a court of law, who have had the income from our land taken from us and placed in escrow, who have had the federal court and the BIA try to replace our elected officials with BIA bureaucrats, find it difficult to understand how others can claim that S. 2723 is a termination bill. Mr. Chairman, the Puzz case is termination; this bill is not. The Puzz case is a direct attack on the principle of the Indian Self-Determination Act and federal Indian policy as it has existed for the last 30 years. These are policies which this Committee and so many others have fought for so long to achieve.

S. 2723 assures the continued existence of the Hoopa Tribe, provides for the organization and rebuilding of the Yurok Tribe, and resolves many of the problems which have stifled the progress of both. It also expands the acreage of the Yurok Reservation and frees up monies for economic development on both reservations. In addition, it prevents the ad hoc abolishment of tribal government on this and other Indian reservations which is possible as a result of the Puzz decision. This is not termination, as some allege. It is restoration.

Joint Council Unacceptable - Like Joining U.S. and Canada

Some opponents of this legislation have and will come before this Committee and suggest that S. 2723 is not necessary. They propose in lieu of the establishment of two separate reservations the establishment of one joint council to manage both the Hoopa and Yurok aboriginal lands.

This may seem to some like a logical and very acceptable proposal. What they do not understand, however, is that this proposal is analogous to the abolishment of the United States and Canada and the creation of a new nation "AmerCan." While the AmerCan analogy may seem a bit silly to some of you I assure you it is not. To us it is exactly the same. The U.S. and Canada are geographically connected on the map. There is some intermarriage. Many of their people have some similarities in language. Our lands have to some extent been managed in comparable ways. But I must emphatically state, Mr. Chairman, that a joint Hoopa-Yurok management council is as unacceptable to the Hoopa people as I hope that an AmerCan nation is to you and the other members of this Committee.

Our people feel in their hearts and know in their minds that we are Hoopa, just like you and the other members of this Committee know you are Americans. Those feelings are based on numerous things: our culture, our way of life, our political beliefs, our language, our religion, and our history. I do not believe that there is one member of this Committee who would vote for legislation to join the United States and Canada, even if the United States was guaranteed its pro rata share of elected representatives in the joint government. Thus, we hope that you can understand why we, as Hoopa people, cannot accept or even consider the idea of a joint government to manage our reservation. We are a nation of people fighting for our homelands, and we will continue to fight until the day we die.

This is not to say that the Hoopa Tribe will be unwilling to work closely with a newly formed Yurok Tribe. We are anxious to do so. Our tribes have many common interests and concerns which I am positive can and will be addressed through the mutual cooperation of our two separate governments.

Basis For Services and Development

You have heard comments about the economic situation on the Extension and the Square having has some services which the Extension lacks. That is true, but the lack of services stems in large part from the litigation and the Yurok Tribe's failure to organize. The power, phone, and water lines we have are a result of thousands of hours of negotiation and work by our Hoopa Government. The agreements providing for many of these services are and were agreements between government and private businesses and groups of individuals. This bill will not only begin to correct many of the problems faced by the Extension, it will improve the economy and way of life on the two reservations and the surrounding communities. The organization of the Yurok Tribe will allow the Yurok people access to federal and state programs which is now denied. It will free up over $65 million in private

funds for economic development on the Square and the Extension. It will allow for the continuation of Hoopa Tribal businesses and the development of Yurok Tribal businesses. But, above all, it will preserve our traditional homelands and our culture. The Hoopa and Yurok Tribes are composed of many strong and capable individuals, and I do not hesitate to tell you that our communities will look substantially different as soon as S. 2723 lifts the federal obstacles to development.

Passage Will Lift State of Siege and Halt Termination

I cannot stress strongly enough the impact the Puzz decision has had on the Hoopa Valley Tribe. If this bill does not pass this Congress, the BIA will continue to erode the governmental structure which our Hoopa people have worked for generations to develop. Our community is in a state of siege. A state of siege was imposed by the federal court, but is managed by the BIA.

Councilman Risling will go into some detail about the recent developments in this so-called "reservation management plan." Therefore, I will only say that it is a disaster which is becoming worse every day.

Mr. Chairman and members of the Committee, on behalf of the Hoopa Council and all Hoopa Valley people, I implore you to pass this bill as soon as possible. It is our only hope. Failure to pass this bill this Congress will mean the termination of the Hoopa Valley Tribe as we know it. Passage, on the other hand, will mean the rebirth of not just one, but two, Indian nations.

Thank you.

TESTIMONY OF DALE RISLING
HOOPA VALLEY TRIBE
ON S. 2723
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 14, 1988

My name is Dale Risling, and I am an elected member of the Hoopa Tribal Council. I live on the Square portion of the Hoopa Valley Indian Reservation, where I was born. Thank you for the opportunity to testify before you.

END TRIBAL NIGHTMARE THIS CONGRESS

At this Committee's Oversight Hearing on June 30, 1988, I described the nightmare which 25 years of litigation has caused as we struggled to manage our Reservation and address unemployment and social service needs. Although I will not repeat that testimony, and although today we focus on the solution to those problems which S. 2723 represents, we must bring you up to date on the BIA takeover of our Reservation community. We want to be sure this Committee knows how critical our situation is. We appreciate the hard work which you have put into helping all the tribal people on our Reservation, and we urge that you exercise firm leadership to enact S. 2723 now, during the remaining days of this Congress. Please end this nightmare. Do not let it continue until 1989 and beyond.

BIA TAKEOVER DESTRUCTION

1. BIA Has Crippled Tribal Government

As you know, on April 8, 1988 a Federal District Court Judge issued a ruling in Puzz v. Department of the Interior, which stripped our tribe of governmental authority over the Hoopa Square and directed BIA to run our lives. The judge directed BIA to prepare a plan to comply with his order. BIA has seized the opportunity and applied the order in an extreme and irresponsible manner. Its untimely decisions have totally disrupted social services and tribal government. Even the judge said that he did not intend to destroy the "existing structure of tribal self-government;" yet, BIA has superimposed a six-member body called the CAC to advise BIA on all program and budgeting decisions. BIA has refused to deal with the elected Hoopa Tribal Council entirely, instead requiring us to designate three individuals to sit on the CAC.

2. BIA Perpetuates Itself with Trust Funds

BIA has run wild with the Puzz judge's direction that tribal programs not discriminate between enrolled members of the Hoopa Valley Tribe and others. It has used Puzz to try to muzzle the efforts of the Hoopa Tribe and responsible Yurok leaders to

obtain enactment of S. 2723. For example, on August 5th BIA ruled that no tribal trust funds may be used for our legislative office. This is not really because of Puzz but to protect and enhance federal jobs and gain BIA spending authority, which BIA hopes will be the permanent result of the Puzz case. And its hopes are not without foundation. Already the judge has approved payment of BIA's Puzz compliance costs from tribal trust monies.

3. BIA Incompetence Evident in Plan

The Puzz Compliance Plan changes stripes every time you look at it. There are now five separate versions of the Plan, each different than the earlier one, each providing for later and later decision-making, and each confirming the incompetence of BIA to administer federal, much less tribal, programs. For example, the Plan filed with the court in June provided that Reservation programs for the Fourth Quarter of fiscal year 1988 would be approved, funded, and announced in the newspapers the first week of July. Instead, BIA first released an insufficient amount of funds for the Hoopa Tribe to operate for one month of the Fourth Quarter, and said the rest of its decisions would be postponed until August 10. Then BIA withheld all tribal funds until August 23rd. The Hoopa Tribe reduced employee working hours and program services, borrowed and scraped to maintain tribal programs during the weeks for which tribal funding was withheld. Under the latest version of the Plan BIA will make no decisions about fiscal year 1989 until the fourth week of October, weeks after programs need to begin serving the people.

4. BIA Views Trust Funds Like Kids in Candy Store

But you haven't heard the worst of it yet. BIA employees are acting like kids in a candy store deciding which projects to fund with tribal money: the CAC and BIA have received a flood of funding proposals from federal agencies themselves eager to use tribal money to fund activities for which they don't want to use federally appropriated dollars. For example, two different BIA employees dealing with Reservation fisheries designed about six fisheries related projects which they plan to operate directly through the BIA, or personally as consultants. In addition, Indian Health Service has grandiose funding schemes dealing with its personal water and sewage concerns, not the tribes'. BIA has approved five of these requests. Both agencies have federally appropriated funds available for these projects; yet, because of funding priorities or the tribal money being more readily available, they want to use Reservation income. Ironically, the Puzz judge says he sees nothing wrong with this. We have appealed to the Court of Appeals, arguing that it is illegal for tribal trust funds to be used without specific appropriation authority from Congress. Yet, BIA rushes head-long into doing just that. Perhaps this is the reason that BIA has impounded the majority of our tribal income since 1974, so that what is

referred to as the "escrow funds" in S. 2723 have built up to approximately $65 million. BIA hopes and plans to use this money one way or another.

5. BIA Economic Development Project Obstacles

During the Oversight Hearing, I told you about one of our economic development projects, a tribal motel complex, the main positive economic expansion on the Reservation. We were on the verge of construction when the Puzz order was issued in April. In response to Puzz, BIA refused to approve the tribe's use of this unallotted tribal land, blocking our loan guarantee and funding for construction. After a long delay, finally, BIA permitted us to go ahead, but on the condition that for use of our own Reservation land we sign a lease under which we will pay far more that if we had purchased fee patent land right next door.

6. Tribe Without Territorial Sovereignty to Manage Resources

Puzz, with BIA support, has terminated the Hoopa Valley Tribe's territorial sovereignty and set a dangerous precedent for tribal governments nation-wide. BIA is taking the place of our elected leaders. Survival of our Tribe depends on our ability to protect and responsibly manage our natural resources. Yet our tribal court system now has no jurisdiction to enforce tribal ordinances to protect these resources. We have no power to zone commercial development or regulate outsiders who may trespass or steal tribal resources. Without territorial sovereignty we cannot continue tribal jurisdiction under environmental laws such as the Clean Water Act. Neither BIA nor the Puzz court can answer these problems. Nor are they the least bit concerned.

Thus, Hoopa Valley is still without a Reservation hospital or an emergency room, without a memorandum of understanding to permit our tribal timber corporation to obtain logging and timber processing contracts on our own Reservation. Future years' timber sales are delayed, P.L. 93-638 contracts are delayed, and BIA refuses to turn over to the Tribe surplus buildings and property essential for some major social service grants. This federal compliance plan is unworkable, oppressive, and is devastating our lives and communities.

HOOPA AND YUROK TRIBAL COOPERATION

Ironically, the extreme, anti-tribal government actions of the Puzz court, BIA, the five individuals who brought the Puzz case, and the Short and Puzz attorneys have strengthened the understanding of why enactment of legislation is urgent and essential for this Reservation. Responsible Yurok people have come forward from communities on the Reservation Extension and from nearby areas to sit down with us and work toward a solution to our problems. This bill is generated by Hoopa and Yurok tribal people. Most of the provisions in S. 2723 are the result of the tireless efforts of the Hoopa Valley Business Council and

Yurok leaders. Yurok leaders have demonstrated unselfish statesman-like courage and determination in the face of caustic non-tribal criticism. It should not go unobserved that this opposition is led not by Yurok Indian people, but by non-Indian attorneys and outside Indians with curious motives. We are proud that there is something positive, constructive and forward thinking to report from Hoopa and Yurok people working together.

S. 2723 IS FAIR TO BOTH TRIBES

S. 2723 is a fair solution to our problem. It will return governmental authority to the Hoopa Tribe, and enhance the exercise of governmental authority by the Yurok Tribe, which has been dormant too long. It reestablishes the historic Hoopa Reservation, reestablishes and expands the historic Yurok Tribe's Reservation, and allows Indians to choose with which tribe and reservation they will affiliate. The bill assures both tribes substantial economic and natural resources of equal value, as detailed in our submissions for the record.

S. 2723 PROMOTES SELF-DETERMINATION NOT TERMINATION

In their efforts to defeat this legislation, Short & Puzz plaintiffs' attorneys have labeled it terminationist, analogizing it to the 1954 Klamath legislation. S. 2723 is very different. It does not terminate the federal relationship with the Yurok Tribe. Rather, it reaffirms that relationship and provides the Tribe with essential financial, resource and governmental tools to endure and prosper. And it gives the individuals a variety of choices to make, depending on their own particular circumstances. For example, a plaintiff living in Maine, whose only interest is economic based on being a plaintiff, may choose to buy out, taking the $20,000.00. Even for those individuals who do not want to affiliate with either the Hoopa or Yurok Tribe, the legislation does not end the trust status of any lands they hold, and it does not end their federal Indian status. Other plaintiffs who feel a sense of community or tribalism can choose to participate in the revitalized Yurok Tribe. This is genuine self-determination, and it is condescending and racist for plaintiffs' attorneys to say their clients are incapable of making these choices. It is Puzz which is terminationist. Puzz has already begun to terminate the Hoopa and Yurok Tribes.

Moreover, the enhancement of Yurok tribal status and the individuals' options are over and above the substantial monetary recovery of each entitled Short plaintiff. S. 2723 does not affect their recovery in any way whatsoever.

TECHNICAL CHANGES

In our written submission we have included a brief list of modifications which we ask be made in S. 2723 as introduced. Most of these changes are merely technical; others address important but small matters.

APPRECIATION AND REQUEST FOR PROMPT ACTION

We thank Senator Cranston and Congressman Bosco for their leadership in introducing this legislation. We also thank this Committee for the time and work devoted to this issue during the closing session of this 100th Congress. We urge this Committee to act quickly and favorably on S. 2723.

TESTIMONY OF TERANCE J. SUPAHAN

In Opposition to S.2723

Before the Senate Select Committee on Indian Affairs
September 14, 1988

I am Terry Supahan, Business Manager of the Karuk Tribe of California, a federally recognized Indian Tribe with tribal offices in Orleans, Happy Camp and Yreka, California. I am a resident of the Hoopa Valley Reservation.

On behalf of my Tribe and my people, I want to thank the Committee for permitting me to appear and testify here today. We have been forgotten in the dialogue about the Hoopa Valley Reservation, and our tribal entitlements have been ignored. For me to be allowed to speak here today is important for our people, because we feel that our interests are not important to certain officials who have been involved in the drive to "resolve" the "Hoopa problem."

Our tribe is federally-recognized. We have over 1,600 enrolled members, each of whom can trace ancestry to the aboriginal Karuk Tribe. This is important, since the courts have determined that ours is one of 16 Indian tribes for which the Hoopa Valley Reservation was originally established.

Our members have ties to the Hoopa Valley Reservation -- despite what you may have heard to the contrary. In addition to me, we have over 100 members residing within the Reservation. Moreover, scores of Karuk Indians have been adjudicated in the Jesse Short litigation to be entitled to share in the Reservation timber revenues. I should add that most of our people have not yet attempted to intervene in Short, but we and our attorneys believe that they have a right to do so and I fully expect to see hundreds of Karuks seek intervention within the next several months.

We oppose this legislation for the simple reason that it ignores the rights of not only our tribe but of other Indian tribes and bands for which the Reservation was established.

The Short litigation has determined that the Reservation was established for 16 tribes. Of the 16, two got together and divided the Reservation and all entitlements attaching thereto. I point to my tribe, which is federally recognized, and the Tolowa and Wintun, which are seeking federal acknowledgment through administrative processes at the Department of the Interior. What about our rights? This legislation would carve the Reservation into two parts only: Hoopa and Yurok. The rest of us are left without land, without aboriginal rights and without remedies other than litigation before the United States Claims Court.

We are not afraid of litigation, but view this result as a sad commentary on the Congressional process.

Our attorneys have prepared a legal memorandum which explains the legal basis for our claims. I have made that legal opinion Exhibit A to this testimony.

We are not sophisticated people and we do not understand courts.

But we know that this is wrong.

And we know that this is unfair.

And -- because we have lawyers -- we now know that this is illegal.

We did not originally come to Washington to stop this legislation; we only came to obtain some equity for my people. We now know that this legislation does not care about equity. It should be stopped, and it must be stopped.

You should table this bill and send all of the tribes of the Hoopa Valley Reservation back to the negotiating table to develop legislation which resolves all of the issues and does not leave some tribes with empty promises and litigable claims.

Thank you.

Exhibit A

TESTIMONY OF TERANCE J. SUPAHAN

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September 6, 1988

MEMORANDUM DISCUSSING KARUK TRIBAL RIGHTS AT HOOPA VALLEY RESERVATION

Pending before Congress are two bills which propose to legislate certain Indian and tribal rights of the Hoopa Valley Reservation of California (herein known as the "Reservation"). The legislation is H.R. 4469, sponsored by Congressman Douglas H. Bosco (D-Cal.), and S. 2723, sponsored by Senator Alan Cranston (D-Cal.).

Both bills ignore the adjudicated legal rights at the Reservation of the Karuk Tribe of California and, indeed, would legislatively terminate those rights without compensation or tribal consent. This would constitute a "taking" in derogation of the Fifth Amendment to the United States Constitution, for which we believe the Karuks would have a monetary claim against the United States.

Among those rights to be terminated are hunting, fishing, gathering and entitlement to Reservation revenues. The value of those rights has not been calculated, but it almost certainly would be a sum in the millions of dollars.

As will be discussed in detail below, there are several indisputable facts which should bear upon Congress' ultimate judgment on the merits of the legislation:

1. The Reservation was established for 16 distinct Indian groups and tribes: (1) Yurok; (2) Hoopa or Hupa; (3) Grouse Creek; (4) Hunstang, Hoonsotton or Hoonsolton; (5) Miskut, Miscotts or Miscolts; (6) Redwood or Chilula; (7) Saiaz, Nongatl or Siahs; (8) Sermalton; (9) South Fork; (10) Tish-tang-atan;

(11) Karok (now "Karuk"); (12) Tolowa; (13) Sinkyone or Sinkiene; (14) Wailake or Wylacki; (15) Wiyot or Humboldt; and (16) Wintun.

2. The groups and tribes identified at paragraph 1 have full and coequal rights at the Reservation, and the rights of the Hoopa or Yurok Tribes are no greater than those of any of the others.

3. As a matter of federal law, the Hoopa Tribe has never been recognized as the governing body of the so-called "Square" within the Reservation.

4. As a matter of federal law, the Yurok Tribe has never been recognized as the governing body of the so-called "Extension" or "Addition" within the Reservation.

Detailed histories of the Reservation and its establishment for the above-identified tribes in addition to Hoopa and Yurok are found in the series of rulings known as the "Short Litigation." The central line of rulings is found at Short v. United States, 486 F.2d 561, 202 Ct.Cl. 870 (1973), cert. denied, 416 U.S. 961 (1974) ["Short I"]; Short v. United States, 661 F.2d 150, 228 Ct.Cl. 535 (1981), cert. denied, 455 U.S. 1034 (1982) ["Short II"]; Short v. United States, 719 F.2d 1133 (Fed. Cir. 1983), cert. denied, 467 U.S. 1256 (1984) ["Short III"]. Other significant rulings in this same long-standing litigation over individual and tribal entitlements at the Reservation are, chronologically: Hoopa Valley Tribe v. United States, 596 F.2d 435, 219 Ct.Cl. 492 (1979); Short v. United States, ___ F.2d ___, 12 Cl.Ct. 36 (Fed. Cir. 1987); Puzz v. United States, No. C-80-2908, United States District Court for the Northern District of California (April 8, 1988). A copy of Puzz is attached hereto as Appendix A.

A. Establishment of the Reservation.

The Reservation was established pursuant to the Act of April 8, 1864 (13 Stat. 39), which authorized the President to locate not more than four Indian reservations within California and stipulated that at least one would be situated in the northern part of the state. The original tract was a 12-mile square (the "Square") and it was formally identified and set aside by President Grant in the Executive Order of June 23, 1876 (1 Kapp. 815). By President Harrison's Executive Order of October 16, 1891 (1 Kapp. 815), the Reservation was enlarged through the addition of a tract along the Klamath River (known as the "Extension" or the "Addition").

The Reservation was set aside for the Indian tribes of Northern California. A critical element to this matter is that the 1864 statute sought to establish a reservation for any and

all tribes which were living there or could be induced to live there.[1]

B. The Reservation Was Created for 16 Tribes.

Throughout the Short litigation, the Hoopas have claimed that they have exclusive jurisdiction over the Square, an argument which has been rejected each time it has been raised.[2] This is because of the Reservation's history, as noted at Section A above, that it was created for the various tribes residing in the vicinity prior to the intrusion into Northern California of the nonIndian population.

Despite the consistent rejection of their position, the Hoopas have continued to press their "exclusivity" claim to the present time.[3] And some non-Hoopas promoted the same argument in the recently decided case of Puzz v. United States, supra. The Puzz Court noted the plaintiffs' suggestion that the "Indians of the [R]eservation"[4] are now unified as a single tribe for the purposes of managing the Reservation. This argument, the Court said --

> is inaccurate. No legislative or executive act has ever consolidated the tribes on the [R]eservation. Indeed, this could not be done without the consent of all tribes. . . . [Plaintiffs'] status as Indians of the [R]eservation necessarily entails ties to one or another of the historic Indian groups for which the [R]eservation was created, and those ties create the right to share in the

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[1] Short I, 486 F.2d at 565; Puzz v. United States, supra, Appendix A at p.7.

[2] See, e.g., Short I; Short III, 719 F.2d at 1133; Hoopa Valley Tribe v. United States, supra, 596 F.2d at 441-42.

[3] By the pending legislation which they are promoting, the Hoopas would effectively control the Square and give the Extension -- which they don't want -- to the Yuroks.

[4] Throughout the Short litigation, the courts have attempted to identify the Indians for whom the Hoopa Reservation was established. In this, the phrase "Indians of the Reservation" has been developed.

benefits of the [R]eservation. [Emphasis supplied.][5]

And we know who those historic groups are because identity of the tribes for which the Reservation was established is both (i) a historical fact and (ii adjudicated. They are as follows: (1) Yurok; (2) Hoopa or Hupa; (3) Grouse Greek; (4) Hunstang, Hoonsotton or Hoonsalton; (5) Miskut, Miscotts or Miscolts; (6) Redwood or Chilula; (7) Saiaz, Nongatl or Siahs; (8) Sermalton; (9) South Fork; (10) Tish-tang-atan; (11) Karok (now "Karuk") (12) Tolowa; (13) Sinkyone or Sinkiene; (14) Wailake or Wylacki; (15) Wiyot or Humboldt; and (16) Wintun.[6]

C. Karuk Is a Tribe of the Reservation.

Until recently, the Karuk Tribe of California was known by the name "Karok" -- the spelling was adjusted to reflect the correct pronunciation. As noted by the Court in Short I, the Reservation was created for more than one tribe; and, as noted in Short III, Karuk (or "Karok") is one of the tribes other than Hoopa for which the Reservation was established.

That Karuk rights at the Reservation are still in existence and enforceable is a matter of federal law. For until those rights have been extinguished (e.g., by Congress) or voluntarily surrendered, they are (i) preserved and (ii) federally protected.[7]

In this regard, it is irrelevant that the Karuk Tribe maintains its tribal headquarters at a site not within the Reservation and that many Karuks live away from the Reservation. In the course of the Short litigation, the courts have specifically found that Indians are entitled to share in the proceeds of Reservation property who do not reside within the Reservation.[8] Moreover, lack of any residency requirement in

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[5] Puzz v. United States, supra, Appendix A at 11.

[6] Short III, 719 F.2d at 1144.

[7] See, e.g., Dobbs v. United States, 33 Ct.Cl. 308, 317 (1898); Puzz v. United States, supra, Appendix A at 11; Act of May 17, 1882, as amended, 25 U.S.C. § 63.

[8] Short III, 719 F.2d at 1136. In this same regard, in 1964, (Footnote Continued)

order for Indians and tribes of the Reservation to exercise rights at the Reservation is buttressed by the adjudicated principle that tribes can be "of the Hoopa Reservation" despite their failure to organize a formal government at the Reservation![9]

D. The Karuk Tribe Has Substantive Rights at the Reservation.

Thus, the law is clear that Karuk Indians need not reside within the Reservation in order to enjoy full benefits flowing from and through the Reservation.[10] And this rule is consistent with the rule previously established for another West Coast reservation established for multiple tribes: the Quinault Indian Reservation ("QIR") of Western Washington. Like the Reservation's Square, the QIR was a heavily forested area not suited for the traditional allotment purposes of agriculture and grazing. Nonetheless, a non-Quinault Indian of the Quileute Tribe sought an allotment within the QIR on the grounds that his tribe was one of several for which the QIR was established; the Supreme Court upheld his claim and ordered that he be given an allotment.[11] This was followed by suits for allotments within the QIR filed by members of other tribes not residents within the QIR, and the Supreme Court again sustained their entitlements as "Indians of the reservation."[12] Central to this ruling was the Court's determination that every tribe for which the QIR was established has rights at the reservation equal to those of the Quinaults, and that they all were "affiliated" at the QIR.[13] That these affiliated tribes had rights equal to those of the QIR resident tribe -- the Quinault Tribe -- was further reiterated in

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(Footnote Continued)
Congress amended and reenacted 25 U.S.C. § 407 to direct the use of timber proceeds from Indian lands. In so doing, Congress was careful to clearly allow coverage of Indians who were entitled to proceeds from reservation property but who were not reservation residents. See H.Rpt. No. 88-1292 (88th Cong., 2d Sess.), 1964 U.S. Code Cong. & Adm. News 2162-63. Also, see Hoopa Valley Tribe v. United States, supra, 596 F.2d at 439, 441.

[9] Puzz v. United States, supra, Appendix A at 12.

[10] Again, see Hoopa Valley Tribe v. United States, supra, 596 F.2d at 439, 441.

[11] United States v. Payne, 264 U.S. 446 (1924).

[12] Halbert v. United States, 283 U.S. 753 (1931).

[13] Ibid, 283 U.S. at 758-59.

The Quinaielt [sic] Tribe of Indians v. The United States, 102 Ct.Cl. 822 (1945), when the court found that the Quinault Tribe could not lawfully litigate a dispute over QIR boundaries since such a dispute would affect the rights of all of the other tribes with jurisdiction over the QIR -- including those not resident at the reservation -- and those tribes were not participants in the litigation.[14]

Just as the nonresident tribes at the QIR have substantial rights equal to the Quinault Tribe at that reservation, so too does the Karuk Tribe have rights at the Hoopa Reservation equal to, inter alia, the Hoopa Tribe.

E. The Law Is Settled That More Than One Tribe Can Have Rights at a Reservation.

The Short litigation already has confirmed that equal tribal rights are enjoyed by the Hoopas and Yuroks. And, with this, we note that notion is not novel that more than one tribe can be resident at a reservation -- each with substantive rights.[15]

Thus, the Karuks are only asserting tribal rights which are well-established as a matter of federal law.

F. This Legislation Would Repeal the Federal Duty to Aid Karuk Indians.

The United States has a duty to aid all Indians of the Reservation.[16] The legislation would invalidate the Reservation status of Karuk Indians, in effect repealing the federal duty and terminating Karuk rights.

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[14]102 Ct.Cl. at 835.

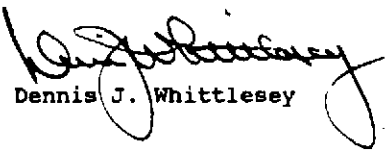
[15]See Short I, 486 F.2d at 563; Solicitor's Opinion M-27796. In addition, the federal government recognizes two tribes at the Wind River Reservation and, conversely, the Minnesota Chippewa Tribe is the governing body of six reservations. (See 44 Fed. Reg. 7235-36.)

This same point has been confirmed by the Ninth Circuit in two recent decisions. Williams v. Clark, 742 F.2d 549 (9th Cir. 1984); Wahkiakum Band of Chinook Indians v. Bateman, 655 F.2d 176 (9th Cir. 1981).

[16]Puzz v. United States, supra, Appendix A at 12.

CONCLUSION

The Karuk Tribe has adjudicated and federally-protected rights at the Hoopa Reservation. In the rush to promote the narrow and exclusionary interests of the Hoopa and Yurok Tribes, Congress proposes to terminate the rights of 14 Indian groups and tribes -- including the federally recognized Karuk Tribe. Such an action is unfair, would terminate Karuk entitlements and take Karuk aboriginal rights in violation of the Fifth Amendment of the United States Constitution.



Dennis J. Whittlesey

021DJW1.3D/nmf

QIR

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LILLIAN BLAKE PUZZ, et al.,

Plaintiffs,

v.

UNITED STATES, et al.,

Defendants.

NO. C 80 2908 TEH

ORDER

The cross motions for summary judgment in this case raise novel and difficult questions of Indian law.[1] Plaintiffs are individual Indians of the Hoopa Valley Reservation ("reservation"), and defendants are the Bureau of Indian Affairs and various federal officials (collectively referred to as "the government" or "federal defendants") and the Hoopa Business Council ("HBC"), the governing body of the Hoopa Tribe. Plaintiffs' claim, in essence, is that defendants have violated their rights to participate in reservation

[1] Throughout this Order, the Court will follow the parties' practice in referring to Native American persons and groups as Indians. This is merely a matter of convenience, and is not intended to convey a lack of respect or sensitivity.

Appendix A

administration and to benefit from the reservation's resources.

I. Factual Background

This Court will not attempt to set forth fully the tangled factual and legal history of this dispute. Briefly, this litigation originated because only one functioning tribal government was formed, on a reservation occupied by members of several distinct tribes and groups.

The Hoopa tribe, whose members mostly live on the part of the reservation known as the Square, is represented by the Hoopa Business Council. Other Indians of the reservation, such as plaintiffs, are not eligible for membership in the Hoopa tribe and are not represented by the Hoopa Business Council. Most of these Indians live on the reservation's "Addition" or "Extension" along the Klamath river, or in other places distant from the Square, and many of them trace their origin to the Yurok tribe or other historic Indian groups. They have no council or governing body, do not view themselves as a separate tribe or tribes, and have resisted the government's efforts to have them organize themselves as a tribe. Plaintiffs are among these Indians of the reservation, but they sue as individuals, not on behalf of the class of all non-Hoopa Indians of the reservation.

Part of the origin of this dispute is geographical. The reservation as originally created by the Act of April 8, 1864 (13 Stat. 39 et seq.) contained only the area now called the

Square. The Extension was added to the reservation by the Executive Order of October 16, 1891 (1 Kapp. 815). Most of the Hoopa tribe traditionally lived on the Square, and regarded it as their tribal homeland. It appears that until about 30 years ago the government informally treated the Square and the Extension as separate reservations, and tacitly regarded the Square as belonging to the Hoopas. Moreover, most of the timber from which reservation income is derived is on the Square. This history of non-unified reservation administration partly accounts for the strongly felt territorial and political divisions within what is legally a single, unified reservation. Short v. United States, 661 F.2d 150, 155 (Ct. Cl. 1981).

Since less than one third of the Indians of the reservation belong to the Hoopa tribe, the interests of the majority of Indians are not represented by any tribal organization. Despite this, the government pursued its policy of strengthening tribal self-government by working closely with the Hoopa Business Council in administering the reservation. People not represented by the Hoopa Business Council came to believe that the government's administration of the reservation in conjunction with the HBC was unfair. They claimed that the government was allowing the Hoopa tribe to enrich itself, denying non-Hoopa Indians a fair share of income from reservation resources, administering social services in a discriminatory manner, and denying non-Hoopa Indians a voice in reservation government.

The issue of distribution of reservation income has been litigated in a related action, Short v. United States, supra. The present action focuses on the political rights of plaintiffs as non-Hoopa Indians of the reservation--their right to participate in future decisions on budgeting, resource management, provision of services, etc.

This action, like Short, has been plagued by long delays, by a lack of clarity as to precisely what factual and legal questions are dispositive, and by the extremely hostile and inflexible positions taken by the parties. Nonetheless, this Court finds that this action essentially turns on purely legal questions appropriate for summary judgment.

Three summary judgment motions are now before this Court: (1) federal and Hoopa defendants' motion based on the tribal nature of the reservation and the nonjusticiability of executive and legislative dealings with tribes; (2) plaintiffs' motion based on the preclusive effect of the "four modified facts" this Court found to be established by Short; and (3) plaintiffs' motion based on the federal defendants' noncompliance with the Administrative Procedures Act in making crucial decisions concerning reservation administration.[2]

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[2]In addition, Hoopa defendants have moved for summary judgment on their counterclaim based on the contention that, if this Court grants the relief plaintiffs seek, the Hoopas' constitutional rights will be infringed. This motion is premature and improper Hoopa defendants' proper remedy, if and when they believe that this Court's decision violates their rights, is to appeal the decision. Therefore the present Order need not address the merits of this fourth motion. It must be denied as unripe.

II. The "Tribal Premise" and Justiciability

Defendants argue that the reservation is tribal; its resources are tribally owned, and plaintiffs as individuals have no property rights in the land nor political rights to have a voice in reservation government. They also claim that the government's actions in dealing with sovereign tribes are nonjusticiable, and that there are no judicially manageable standards to decide plaintiffs' claims.

However, this Court concludes that although Congress and the executive did intend to create the reservation for tribes, as opposed to granting individual entitlements for each Indian, they never intended one specific tribe, the Hoopas, to have exclusive property or political rights. Thus, we agree with defendants that reservation property is tribal or communal in nature, and that the courts cannot tell the government whether or not to recognize an Indian group as a tribe. But these facts do not bar us from ordering the government not to give some Indians idiosyncratic rights to manage and profit from resources held for the benefit of all.

Thus, defendants are not entitled to summary judgement on all of plaintiffs' claims on the grounds raised in this motion, but these grounds do set important constraints on the relief this Court can grant. This motion is therefore the proper starting place for discussion.

Defendants' basic premise is that governmental recognition of an Indian tribe as a sovereign entity is a

political question not subject to judicial scrutiny. This Court agrees. We have no power to compel Congress or the executive branch to recognize or not to recognize an Indian group as a sovereign tribe. United States v. Holliday, 70 U.S. 407, 419 (1865); Baker v. Carr, 369 U.S. 186, 215 (1962). Both the Hoopa and Yurok tribes are currently federally recognized. 50 Fed. Reg. 6055-6058 (Feb. 13, 1985); see Blake v. Arnett, 663 F.2d 906, 912 (9th Cir. 1981). This Court therefore cannot compel the government to stop treating the Hoopa tribe as a sovereign body.

However, the question remains of just what "recognition" means. Recognition, or lack thereof, is not the sine qua non of Indians' rights in reservations. See Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370, 378 (1st Cir. 1975). It is clear that a sovereign tribe has the right to define its membership standards and govern its members, that is, to "regulate their internal and social relations." United States v. Kagama, 118 U.S. 375, 381-82 (1886); see also Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.2 (1978); United States v. Mazurie, 419 U.S. 544, 557 (1975); McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 173 (1973).

Recognition does not necessarily entail the exclusive right to control territory and manage resources shared with non-members. Tribes have these further powers only when the government has conferred on them, by treaty or statute, a right of territorial management. See Babbitt Ford, Inc. v. Navajo

Indian Tribe, 710 F.2d 587, 591 (9th Cir. 1983), cert. denied, 466 U.S. 926 (1984).

We must turn to the history of legislative and executive actions concerning the reservation, to determine whether federal recognition of the Hoopa tribe entails a right to control reservation land and resources. The text and legislative history of the Act of 1986 shows that it did not refer specificaly to the Hoopa tribe, but concerned any and all tribes which were living there or could be induced to live there. Short v. United States, 486 F.2d 561, 565 (Ct. Cl., 1973). The Act conferred continuing executive discretion to locate any tribe or tribes thereon, and to change the boundaries of the reservation. See Short v. United States, 202 Ct. Cl. 870, 881-82 (Ct. Cl. 1973); Hynes v. Grimes Packing Co., 337 U.S. 86, 103-04 (1949); Donnelly v. United States, 228 U.S. 243, 256-57 (1913).

Thus, although the reservation was created for tribes, not for individuals, the 1864 Act did not grant any territorial rights to the Hoopa tribe alone. Short v. United States, 486 F.2d at 564. Likewise, none of the later legislative enactments concerning the reservation conferred any rights on the Hoopa tribe per se.

Congress must have contemplated that each reservation could include more than one tribe. It limited the number of California reservations to four. Short v. United States, 12 Cl. Ct. 36, 42 (1987). Similarly, the Indian Reorganization Act of

1934, 25 U.S.C. S 461 et seq., shows that Congress realized that more than one tribe could live on and have rights in a reservation. Thus, Congress' intent to create the reservation for tribes, not exclusively for the Hoopa tribe, is beyond reasonable dispute.

This Court concludes that the government's recognition of the Hoopa tribe gave the tribe sovereignty over its membership standards and the internal relations of its members, neither of which are at issue in this action. Recognition did not, however, give the tribe sovereign control over reservation land and resources. Thus, the rule that recognition is a nonjusticiable political question does not bar this Court from adjudicating this dispute, since the dispute is not really about tribal recognition.

However, defendants raise another threshhold challenge, concerning plaintiffs' standing to bring this action. They correctly articulate the basic premise of tribal enjoyment of reservation land and resources. Indians as individuals have no vested ownership rights in the reservation; they have beneficial ownership only as members of tribes. Since plaintiffs sue as individual Indians of the reservation, not as members of a reservation tribe, defendants conclude that they have no rights in reservation land or resources, and hence no interest which gives them standing to bring this action.

This Court agrees with defendants that the reservation is tribal, in the sense that its land and resources are

communally, not individually, owned. The premise of tribal enjoyment is fundamental, and reservations are deemed tribal unless their status is explicitly altered by statute or executive order. Rice v. Rehner, 463 U.S. 713, 726 (1983); White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143-44 (1980); see Cohen, Handbook of Federal Indian Law 605 (1982 ed.). Thus, unallotted reservation resources do not belong to individuals, but are held for the common benefit of all. United States v. Jim, 409 U.S. 80, 82-83 (1972); Gritts v. Fisher, 224 U.S. 640, 642 (1912); The Cherokee Trust Funds, 117 U.S. 288, 308 (1886); Cohen, supra, at 606.

No intention appears in the language or history of the 1864 Act to alter this basic premise. Subsequent legislation shows that Congress continued to view the reservation, and reservations in general, as tribally enjoyed. See, e.g., Act of May 19, 1958 (72 Stat. 121); Act of June 25, 1910 (as amended, 25 U.S.C. § 407); Act of March 3, 1883 (as amended, 25 U.S.C. § 155). Likewise, executive administration of the reservation from the time of its creation forward is consistent with the tribal premise. For example, allotment and fishing rights depended on membership in some tribe of the reservation. Government agents consistently recognized the existence of various tribes on the reservation, including the Hoopas and Yuroks, and dealt with these and other groups as tribes. See, e.g., Thompson v. United States, 44 Ct. Cl. 359, 366 (1909); Elser v. Gill Net #1, 54 Cal. Rptr. 568, 575 (1966).

However, defendants' reasoning from this solid premise to the conclusion that plaintiffs lack standing is unconvincing. Admittedly, plaintiffs' strident emphasis on their rights as individuals does little to assist them on this issue. However, plaintiffs are Indians of the reservation, which necessarily means that they trace their origins to one or another of the Indian tribes or groups for whose benefit the reservation was created.

It is as true today as in 1898 that the Indians of the reservation are made up of assorted tribes, bands, and groups, which have intermarried, merged and divided extensively over the history of the reservation, and that these groups have always "simply in fact existed, irrespective of recognition." Dobbs v. United States, 33 Ct.Cl. 308, 316 (1898). Thus, plaintiffs make a valid point that their claims depend not on their membership in a specific, formally organized tribe like the Hoopas, but rather on their connections with any of the various Indian groups, organized or not, for whom the reservation was created.

This Court therefore finds that the reservation is indeed tribally enjoyed, and plaintiffs can make no claim for individual, severable shares of its land or resources. See Short v. United States, 12 Ct.Cl. 36, 42. However, it does not follow that plaintiffs, as Indians of the Reservation, have no standing to claim a right to share in the communal enjoyment of the reservation. In this action, plaintiffs make the latter, not the former, kind of claim.

Some clarification is required. In some parts of their argument, plaintiffs speak as if all Indians of the reservation are now one unified tribe for purposes of reservation administration. This is inaccurate. No legislative or executive act has ever consolidated the tribes on the reservation. Indeed, this could not be done without the consent of all tribes. Dobbs v. United States, 33 Ct.Cl. 308, 317 (1898); Act of May 17, 1882 (as amended, 25 U.S.C. § 63). Therefore, plaintiffs cannot predicate their standing on membership in some new, reservation-wide tribal community. But they need not have made this unhelpful and confusing argument. Their status as Indians of the reservation necessarily entails ties to one or another of the historic Indian groups for which the reservation was created, and these ties create the right to share in the benefits of the reservation. This is enough of an interest to confer standing.

Defendants also advance another version of the political question argument, that plaintiffs are essentially seeking political recognition and power, and their proper remedy is not through litigation but through organizing as a separate tribe and dealing with the government through a tribal council. Defendants cite cases holding that the political rights in reservation government of non-members of tribes are nonjusticiable. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978); United States v. Mazurie, 419 U.S. 544 (1975).

Plaintiffs, for reasons that remain a mystery to this Court, have chosen not to pursue political rights through organizing into a non-Hoopa tribal council or councils. Defendants may be correct that some of the results they seek through this lawsuit are only attainable by this course of action. However, unlike the plaintiffs in Martinez and Mazurie, plaintiffs here do have justiciable claims as Indians of the reservation, as explained above. It is possible to respect the limitations imposed by cases like Martinez and Mazurie on adjudication of political rights, but still grant plaintiffs some relief. The possibility of a political remedy does not entirely preclude plaintiffs' claims.

Having addressed threshhold issues of standing and political question, the next obstacle plaintiffs face is the federal policy favoring tribal self-determination. Since the Hoopa Business Council is the only organized, functioning tribal body on the reservation, defendants argue that the federal government is entitled to pursue this policy by involving the HBC in reservation administration.

It is undeniable that current legislative and executive policy favors tribal self-government. See, e.g., White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 149 (1980); Bryan v. Itasca County, 426 U.S. 373, 389 n.14 (1976); Mescalero Apache Tribe v. Jones, 411 U.S. 145, 151 (1973). Therefore, this Court cannot enjoin the federal defendants from supporting the HBC, as far as is consistent with their other legal duties.

Federal defendants have broad administrative discretion over reservation administration and relations with tribes. Donnelly v. United States, 228 U.S. 243, 256 (1913). Since the HBC is the only functioning tribal body on the reservation, the government is not acting unlawfully in giving it a role in reservation administration. Federal defendants' discretion encompasses the use of the HBC as an advisory body both to aid in reservation administration and to carry out the policy of tribal self-determination. Short v. United States, 12 Cl. Ct. at 41-42.

This exercise of discretion does not offend equal protection principles because it is not unlawful to treat an organized tribal body differently than unorganized Indians of the reservation, "so long as that [disparate] treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians." Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 84 (1977), quoting Morton v. Mancari, 417 U.S. 535, 555 (1974).

Hence, the federal policy of encouraging tribal self-government, coupled with federal defendants' broad administrative discretion, supports a partial grant of defendants' summary judgment motion. This Court cannot enjoin federal defendants from involving the HBC in decisions concerning budgeting of reservation funds, resource management, and provision of services. Nor can this Court enjoin the HBC

from conducting business as an advisory body participating in reservation government.

This conclusion severely restricts the scope of relief that plaintiffs may obtain. However, it does not defeat their claims entirely. The government has an overriding responsibility to administer the reservation for the use and benefit of all Indians of the reservation. Insofar as its and Hoopa defendants' actions violate that duty, plaintiffs may be entitled to injunctive relief. As detailed below, this Court concludes that some of the federal defendants' actions in conjunction with the HBC violate their duties to plaintiffs. Hence, defendants' summary judgment motion must be denied in part.

III. The "Four Facts" and Federal Defendants' Trust Duties

In an Order of October 2, 1984, this Court found that four factual propositions were conclusively established by the related litigation in Short v. United States.

These facts are:

1. The Square and the Addition constitute one unified reservation for the purpose of distributing income from unallotted trust lands of the Reservation to "Indians of the Reservation";

2. There are no tribes on the Hoopa Valley Reservation having vested rights to the income from unallotted trust lands on the Reservation;

3. The Indians of the Reservation hold equal rights to income from unallotted trust lands of the Reservation; and

4. The United States Department of Interior, Bureau of Indian Affairs, acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe as the persons entitled to the income from the unallotted trust lands on the Square.

Plaintiffs claim that the four facts have preclusive effect entitling them to a judgment in this action. Defendants, in response, point out the narrowness of the Short decision and the limits of the Court of Claims' jurisdiction.

The decision in Short did not resolve the present dispute, because Short only actually and necessarily decided that the government could not exclude non-Hoopas in making per capita payments of income from unallotted reservation resources. The decision in Short did not determine prospective issues, such as who has the right to decide how reservation income should be spent, to manage reservation resources, and to administer social services. However, this Court now concludes that the four facts, seen in the context of the government's trust responsibilities to all Indians of the Reservation, establish that plaintiffs are entitled to relief insofar as they have been deprived of the use and benefit of reservation resources.

The government has a trust responsibility to protect all Indians and their property. United States v. Creek Nation, 295 U.S. 103, 110 (1935); Cramer v. United States, 261 U.S. 219, 232

1923). In performing this duty, the government is held to the highest standards of fiduciary responsibility and trust. Seminole Nation v. United States, 316 U.S. 286, 297 (1942). The government must administer reservations solely in the benefit of the beneficiaries. Manchester Band of Pomo Indians v. United States, 363 F.Supp. 1238, 1245 (N.D.Ca. 1973). Its actions in carrying out this duty cannot be arbitrary or discriminatory. Short v. United States, 719 F.2d 1133, 1137 (Fed. Cir. 1983). Thus, this duty logically must extend to each Indian alike, not just to organized tribes. Hence, the government has a duty to allow all Indians of a reservation to benefit from reservation resources and to participate in self-government, on a non-discriminatory basis. See Kerr-McGee Corp. v. Navajo Tribe, 471 U.S. 195, 201 (1985); White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143-44 (1980).

This is essence of our claim

Defendants respond that the doctrine of trust does not impose broad, sweeping duties on the government. To be enforceable, trust duties must be based on specific statutes, treaties or agreements which define and limit the relevant duties. Joint Tribal Council of Passamaquoddy Tribe v. Morton, 528 F.2d 370, 379 (1st Cir. 1975); see also United States v. Mitchell, 445 U.S. 535 (1980). Thus, they argue, there is no breach of trust in supporting the Hoopa tribe and giving it funds and political power, since there is no trust duty to confer governmental power equally on an organized tribal body and on a number of unorganized individual Indians. Nor is there

a duty to refrain from supporting a tribal body unless it represents all Indians of the reservation. Since such actions by defendants do not clearly contradict the terms or intent of the 1864 Act creating and defining the trust relationship, federal defendants argue that there are no applicable legal standards by which to adjudicate their conduct. They conclude that we must defer to their discretion in carrying out their trust duties. See Strickland v. Morton, 519 F.2d 467, 470 (9th Cir. 1975).

This Court agrees that the government's trust duties do not prohibit it from supporting the Hoopa Business Council. Plaintiffs' equal protection argument fails because an organized tribal body and unorganized individuals simply are not similarly situated. Moreover, equal protection doctrine must be interpreted in the special context of the government's duties toward Idians. See Morton v. Mancari, 417 U.S. 535, 555 (1974). Moreover, as discussed above, the government's broad discretion gives it great latitude in dealing with tribes. Hence, the four facts and applicable law do not compel the conclusion that the federal defendants cannot fund and support the HBC, nor that Hoopa defendants cannot participate in reservation government.

However, the 1864 Act and subsequent legislative and executive actions do impose on federal defendants a duty to administer the reservation for the use and benefit of all Indians of the reservation. As stated above, the reservation was created for tribes, but not exclusively for the Hoopa tribe.

Hence, the federal defendants cannot give any group within the reservation idiosyncratic rights. Cf. Whitmire v. Cherokee Nation, 30 Cl.Ct. 138, 158 (1895). Actions that deny plaintiffs the use and benefit of the reservation and its resources violate the government's trust duties.

On this basis, plaintiffs are entitled to part of the declaratory and injunctive relief that they seek.

The federal defendant may continue to support the HBC and involve it in reservation government, but only so far as this benefits all Indians of the reservation. The federal defendants may not dispense funds for any projects or services that do not benefit all Indians of the reservation in a nondiscriminatory manner. An extreme example of impermissible spending is that the federal defendants have allowed the use of reservation funds for the Hoopa defendants' litigation expenses in this action. It is an obvious violation of trust to allow the dissipation of reservation income to arm one faction of the Indians of the reservation against another.

Joint Relief for all

Federal defendants must retain supervisory authority over all spending of reservation funds, to assure that they are used for purposes which benefit non-Hoopa as well as Hoopa Indians of the reservation. To fulfill the responsibility, federal defendants must develop and implement a process to receive and take account of the opinions of non-Hoopas on the proper use of reservation funds. This Court will therefore

require defendants to propose a plan conforming to the requirements of this Order.

This Court acknowledges that the federal defendants have made some attempt to include non-Hoopas in decision making, through the issue-by-issue procedure. The issue-by-issue procedure is a process whereby the federal defendants reach a proposed decision on a matter of reservation administration with the participation of the HBC, and then publish the proposal in reservation newspapers. Comments by letter are solicited from all Indians of the reservation. These comments are considered before a final decision is made.

This process is not sufficient by itself to comply with the requirements of this Order. The federal defendants' compliance plan must replace this ad hoc process with an orderly system for determining the needs and views of non-Hoopa Indians of the reservation. Some possibilities the government should consider are: regular meetings open to all Indians of the reservation, held in areas largely populated by non-Hoopas; mail-in advisory ballots on issues of reservation-wide importance, distributed to all non-Hoopas; and appointment of federal officials specifically responsible for representing non-Hoopa interests in federal defendants' decision making processes.

This Court cannot compel the political reorganization of the reservation, nor infringe on federal defendants' discretion to govern it and cooperate with its single functioning tribal

body. However, we can confine the exercise of that discretion within the boundaries of the trust relationship created by the 1864 Act. Federal defendants must run the reservation for the use and benefit of all, not for the benefit of some to the clear detriment of others. This Court therefore grants, in part, plaintiff's motion for summary judgment based on the four modified facts.

IV. The Administrate Procedures Act

Plaintiffs argue in this motion that several crucial decisions by the federal defendants violated the Administrative Procedures Act, 5 U.S.C. § 553, in that they are rules made without the required notice and comment procedure. Rules made without a prior notice and comment period are invalid. 5 U.S.C. § 706(2)(D); Hotch v. United States, 212 F.2d 280, 283 (9th Cir. 1954). Specifically, the challenged decisions are: (1) the federal defendants' recognition and support of the Hoopa tribe in the 1950's; (2) the approval of the Hoopa tribe's constitution and bylaws in 1972; (3) the 70/30 split whereby the federal defendants allocated 30% of reservation income to the Hoopas and held 70% in trust; and (4) the issue-by-issue procedure and two actions taken pursuant to it: allocating more than 30% of reservation income to the Hoopas in 1983, and issuing a Memorandum of Understanding allowing the Hoopa timber company to buy reservation timber on a preferential basis.

Defendants oppose the motion on the grounds that some of plaintiffs' objections are moot or time-barred, that these

administrative decisions are not "rules" within the meaning of the Administrative Procedures Act, and that plaintiffs have no standing to object to some of the decisions. This Court finds it unnecessary to reach the questions of standing and of whether the challenged decisions are rules, because plaintiffs' motion must be denied on other grounds.

First, defendants are correct that some of the issues are barred by the applicable six-year statute of limitations, 28 U.S.C. § 2401(a). Plaintiffs' challenge in this motion is not based on the substance or effects of the decisions, but on the fact that they were made without notice and comment. Thus, plaintiffs cannot invoke the continuing violation doctrine by arguing that the federal defendants continue to carry out the substantive policies embodied in those decision, and plaintiffs continue to feel the ill effects of those policies. The omissions of notice and comment periods were discrete historical events, and the statute of limitations began to run at the time each of the challenged decisions was made. Hence, plaintiffs' challenges to the federal defendants' decisions regarding the Hoopa tribe in the 1950's, and to the approval of the tribe's constitution and bylaws in 1972, are time-barred.

Plaintiffs' challenge to the 70/30 split is moot, as plaintiffs concede in their reply brief. Likewise, the present Order renders their challenge to the issue-by-issue procedure moot, since federal defendants are required to replace or

supplement that procedure with a more effective means of ascertaining and respondinbg to non-Hoopas' concerns.

The motion is also moot with respect to the June 4, 1987 budget statement which succeeded the 70/30 split. This Order requires federal defendants henceforward to evaluate all spending decisions to ensure that they benefit all Indians of the reservation on a nondiscriminatory basis. Hence, the 1987 budget statement can have no prospective effect. This action's scope excludes challenges to past spending.

What remains is the timber Memorandum of Understanding. This Court concludes that the Memorandum can no longer be valid and binding, but for a more substantive reason than noncompliance with the Administrative Procedures Act. The Momorandum was adopted under an administrative system which this Court now orders the federal defendants to change, to respond adequately to non-Hoopas' concerns. Since it was not properly determined whether the Memorandum is in the interest of all Indians of the reservation, the Memorandum cannot have any prospective effect. Thus, this Court need not reach the questions of its compliance with the Administrative Procedures Act.

Plaintiffs' motion for summary judgment based on the Administrative Procedures Act must be denied, because it is time-barred in part and moot in part.

Good cause appearing, IT IS HEREBY ORDERED that:

1. Federal and Hoopa defendants' motion for summary judgment is granted in part and denied in part. The motion is granted in that federal defendants may lawfully allow the Hoopa Business Council to participate in reservation administration, and the Hoopa Business Council may lawfully conduct business as a tribal body sovereign over its own members, and as an advisory body participating in reservation administration. The motion is denied in that plaintiffs are entitled to injunctive relief as follows.

2. Plaintiffs' motion for summary judgment based on the four modified facts is denied in part, as to the issues on which defendants' summary judgment motion is granted. Plaintiffs' motion is granted in part, in that the federal defendants shall not dispense funds for any projects or services that do not benefit all Indians of the reservation in a nondiscriminatory manner. Federal defendants shall exercise supervisory power over reservation administration, resource management, and spending of reservation funds, to ensure that all Indians receive the use and benefit of the reservation on an equal basis. Specifically, federal defendants shall not permit any reservation funds to be used for litigation among any Indians or tribes of the reservation.

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-Hoopas as to the proper use of reservation resources and funds. Federal defendants

shall submit a plan for compliance with this Order within sixty (60) days of the date of this Order.

4. Plaintiffs' motion for summary judgment based on the Administrative Procedures Act is denied because it is time-barred in part and moot in part.

5. Hoopa defendants' motion for summary judgment on their counterclaims is denied.

IT IS SO ORDERED.

DATED: April 6, 1988

THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

TESTIMONY OF GERALD R. BALDY
HOOPA TRIBAL MEMBER

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
H.R. 4469
JULY 19, 1988

As a member of the Hoopa Valley Tribe, I am urging your support to approve Bill H.R. 4469, as amended by the Hoopa Valley Business Council, Hoopa, California; because

it keeps intact the sovereign reign of the Hoopa Valley Tribal Constitution and by-laws established since 1933;

protects the policies of the Indian Self-Determination Act;

maintains the Hoopa Valley Tribe land base;

guards our rights to intervene on behalf of our children in Juvenile Court;

entitlement to education, natural resources, social services, health, law and order, courts, fisheries, water rights and hunting rights offered only to and/or through federally recognized tribes;

fairness and a rightfulness to govern ourselves;

and ensures a fair democratic process.

Testimony of,
RUTH (BROWN) BECK
(A Hoopa Tribal Member)
to the
House Interior and Insular Affairs Committee
On H.R. 4469
July 19, 1988

My name is Ruth (Brown) Beck. I am a Hoopa Valley Tribal member. I've lived in Hoopa all my life. My grandparents were Oscar and Maggie Brown. I was the first baby born in the old Hoopa Hospital. I am in favor of Congressman Doug Bosco's Bill, H.R. 4469, as amended by the Hoopa Valley Business Council on behalf of the Hoopa Valley Tribe.

As Hoopa people, we want our land undisturbed. The land, our home, is our main concern. The Yurok Plaintiffs, on the other hand, see only the money involved. I am afraid that if the Yuroks got legal control over our homeland, they would sell the timber and the land the way they did their own land along the Klamath River.

I remember how the Yuroks would make fund of us, years ago, when it was against the policies of certain businesses in Eureka to serve Indians. The Yuroks teased us, calling us Indians, Tribal Members, Reservation people, because we chose to live in Hoopa, on the square. They believed that they were free to carry on with outside non-Indian people whenever they wanted. We were considered trash, but if you could prove you were a Yurok, businesses in Eureka would serve you.

I recommend that H.R. 4469 be approved as amended, because, I feel that since the Hoopas and Yuroks could not get along before, we wouldn't be able to get along together on one reservation made up of the Hoopa Square and the Klamath extension.

Testimony of,
HAROLD H. CAMPBELL SR.
(A Hoopa Tribal Member)
to the
House Interior of Insular Affairs Committee
on H.R. 4469
July 20, 1988

My name is Harold Campbell Sr. and I was born and raised on the square. I am fifty-three years old, and my parents were Harry Campbell and Violet Socktish, both full-blooded Hoopa Indians.

My Dad and Mom both spoke Hoopa Language and I could understand. I cannot understand the Yurok Language. When I grew up my dad told us we were two different tribes, through our traditions and Indian Language.

My dad was one of the Traditional Dance Leaders from the Takimilthdin Rancheria. We have different names and places where we worship on the square, through our traditional dances. It was only on special invitation that we asked the Yuroks to participate in our dance.

The Yuroks sold a majority of their timber and land on the strip. We did not receive timber land like the Yuroks did, only agricultural land which we still have today.

I am in favor of Congressman Doug Bosco's Bill, H.R. 4469, as amemded, to divide the reservation in two so that we keep our homeland.

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Telegram

SENATOR K DANIEL INOUYE
CAPITOL ONE DC 20510

TESTIMONY OF HAROLD H CAMPBELL JR., A HOOPA TRIBAL MEMBER TO THE HOUSE INTERIOR OF INSULAR AFFAIRS COMMITTE ON HR4469 JULY 20, 1988.

MY NAME IS HARRY CAMPBELL, I WAS BORN AND RAISED HERE IN HOOPA, I AM 30 YEARS OLD AND HAVE LIVED HERE ALL MY LIFE, MY GRANDFATHER, HARRY CAMPBELL, A FULLBLOOD HOOPA INDIAN, WAS A TRADITIONAL DANCE OWNER FROM TAKIMITHDIN (HOSTLER) RANCHERIA, WE ARE NOT GUILTY OF ANYTHING, WE HAVE NOT MISMANAGED, WHEN WE ORGANIZED WE HAD THE BLESSINGS OF THE FEDERAL GOVERNMENT, WE WORKED HAND IN HAND, WE HAVE SURVIVED EVERY OBSTACLE PUT IN FRONT OF US BY THE WHITE MAN, NOW WE FACE THE BIGGEST OBSTACLE OF ALL IN OVER 10,000 YEARS OF EXISTANCE, ALL WE ASK FOR IS OUR ABORIGINAL HOMELAND AND THE CONTROL OF OUR DESTINY, I SUPPORT DOUG BOSCO'S BILL HR4469 AS AMENDED, HOW CAN ANYONE SAY THAT WHAT WE WERE YESTERDAY WE ARE NO LONGER TODAY, IT IS NOT OUR FAULT THAT HOOPA IS WHERE WE COME FROM, IT IS NOT OUR FAULT THAT OTHER INDIANS WERE FORCED FROM THEIR HOMELANDS AND INTERRED HERE AT HOOPA, WE HAVE BEEN EXPLOITED, WE ARE THE ONES WHO STAND TO LOOSE, HAVING BEEN CARBON DATED 10,000 YEARS PRIOR TO THE 1864 TREATY WE HAVE ALREADY ESTABLISHED LEGAL CLAIM TO OUR HOMELANDS.

HAROLD H CAMPBELL, JR.

HOOPA CA 95546

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Testimony of,
JOYCE (LITTLE) CROY
(A Hoopa Tribal Member)
to the
House Interior of Insular Affairs Committee
on H.R. 4469
July 20, 1988

I Joyce (Little) Croy am a Hupa Indian from Medildin Rancheria. I am a mother of five and a grandmother of eight. I was raised by my grandparents Billy Little (A full-blooded Hupa) and Susie (Wauteckson) Little (A full-blooded Yurok). My grandfather went and bought his wife from Yurok Land, and brought her to the Medildin Rancheria. He was a Ceremonial Dance Leader from Medildin.

I remember the "Early On" Yuroks coming to my grandmother and asking her for money to help with the Jessis Short Case. She always replied "No" as it would jeopardize her grandchildren.

After my grandfathers death, she still hosted his camp during the ceremonial dances out of deep respect, even though she had no traditional rights. She willed all his land to my brothers (cousins) as she believed Yuroks didn't have a right to Hoopa Land or have traditional rights. My grandmother received a twenty acre allotment down Yurok Land, and it is still there today, as she did not sell it.

I support Congressman Doug Bosco's Bill, H.R. 4469, as amemded, to divide the Reservation in two, as it was in the beginning of time. Even though there are different kinds of Indians living here in Hoopa as a community, people have to remember and respect that the Hupa People are the authority in their homeland, and maintain a goverenment as people of America.

TESTIMONY OF MARGARET MATTZ DICKSON
HOOPA VALLEY TRIBE
TO THE
HOUSE INTERIOR AND INSULAR AFFAIRS
COMMITTEE
ON H.R. 4469
JULY 18, 1988

As an enrolled member of the Hoopa Valley Tribe, the Bill

ensures the ¼ blood degree required of Hoopa Indians;

continuance of establishment of a Tribal Constitution and by-laws;

keeps the Yuroks from taking our land base of which they gave their land base away years ago;

and what about the hundreds of millions of dollars the Yuroks sold years ago?

Hoopas reserve the right to come back

to our designated Sacred Grounds;
to our designated Ceremonial sites;
to our designated fires;
to our designated fishing places;
to our designated Sacred mountains
and to our designated gatherings!

Hoopas have always known where we are all from:
Hostler Rancheria;
Matilton Rancheria;
Meskit Field;
Campbell Field ,
Norton Field, and
Socktish Field.

Hoopa will always 'fight' to keep together:

to learn our language;
to learn our dances;
to learn our songs;
to learn our stories; and
to learn our card games!

Testimony of,
MANUAL MATTZ
(A Tolowa Indian)
to the
House Interior and Insular Affairs Committee
on H.R. 4469
July 19, 1988

I am asking for help on behalf of the Hoopa Tribe. Congressman Doug Bosco of California First District has introduced Bill H.R. 4469. This bill proposes to partition certain Indians, to clarify the use of Tribal Timber proceeds, and other purposes.

The Hoopa Tribe has endorsed this bill. I will make an effort why I think the two Tribes should be separated. First, I should tell you about myself. I am a Tolowa Indian married to a Hoopa girl, seventy-six years old. I retired from the B.I.A., served my community on the school board for thirty-six years, and I have worked fifty-three years with the Hoopas and Yurok Tribes. Bringing the Hoopas and Yuroks together as one will only hold them back. They will never get along. They are as different as night and day.

The Yuroks have never been organized, and at present they still refuse to organize. No spiritual leader has carried on their ceremonial dances, and their language is algonkian verses Athapascan of the Hoopas.

The Yuroks were allotted forty and sixty acre timber allotments of Redwood, White Cedar, Fir, and some Tanbark. They not only sold their timber, but also most of the land. In the early days, some farming was done on the strip (the Lewis family noted for cattle and sheep ranching).

Only a small percentage of Yuroks now live on the strip, but the ones who chose to stay, need help. Better roads, electricity, telephones, etc., as the Klamath River attracts thousands of tourists.

When the Short Case was started, the cry was the "Poor Yuroks". This is not true. The Yuroks had it good, but did not take care of it due to lack of leadership. In the 1900's to early 1930's, commercial fishing was booming. Every family fished, and sold their fish to canneries at the mouth of the Klamath River. In the early 1930's, the Yuroks started to sell Redwood and Cedar timber; during World War II, Fir timber was on the boom. There were four saw mills on the strip. Commercial fishing was restored in 1987, and the Yurok families did very well financially.

The Hoopa Tribe has always been well organized, and have always had a spiritual leader. In 1933, the Tribal Council was formed and before that the Tribal Leaders prevailed. Tribal Leaders met Austin Wiley for Indian Affairs in California and signed a treaty leading to the square and a reservation for the Hoopas, South Fork Hoopa, Grouse and Redwood Creek Indians. The Hoopa along with its Tribal Council still have their Tribal Spiritual Leader. The Hoopas are good farmers and they still carry on with their ceremonial dances.

In the early days the Hoopas had it rough. Farming, cutting wood and selling it to the government school and employees, making shakes for houses and barns, pickets and posts for fences. Then in the 1930's, it was President Roosevelt's C.C.C. and W.P.A. (Civilian Conservation Core and Works Progress Administration) programs that every family had someone working.

In the early 1930's while the Yuroks began selling their timber, the Hoopas were just being alloted four acres on the valley floor and twenty acres side hill with no timber. There again Tribal leaders could see value in their timber. I cannot understand Judge Henderson's ruling on the Puzz Case. This ruling will set the Hoopas back fifty years.

In my fifty-three years here in Hoopa, I have given you the History of the Hoopas and Yuroks as I know it.

I ask you to please back Congressman Bosco's Bill H.R. 4469 and keep the two tribes separate.

Testimony of,
PAULINE (MESKIT) MATTZ
(A Hoopa Valley Tribal Member)
to the
House Interior and Insular Affairs Committee
on H.R. 4469
July 19, 1988

I am a bona fide Hoopa Indian. I am seventy-six years old and my parents were Anderson Meskit and Marion Hostler, both full-blooded Hoopas.

I grew up knowing that there were two tribes and two different languages.

The Yuroks had millions of timber to sell as far back as 1909. The Yuroks also had fish canneries located on the Klamath River (their Country).

The Hoopas were farmers, raising all animals, hay, and vegetable gardens.

There was no timber to be sold for the Hoopas until the 1950's. The Hoopas equally shared the timber revenues with all Tribal Members. The Yuroks did not share--not even with their own.

I vividly remember being at the Jump Dance and seeing this big fancy car drive up and women who got out wearing big fancy hats, and when I asked who they were, I was told "Those are those Yuroks who sold their timber!"

I support Congressman Doug Bosco's Bill, H.R. 4469, because it will benefit both Tribes, and the Hoopas will keep their homeland.

Testimony of
Minnie McWilliams
Hoopa Tribal Member
to the
House of Interior and Insular Affairs Committee
H.R. 4469
July 20, 1988

My name is Minnie McWilliams. I lived here all my life. I was born on January 1, 1916, and was raised in Hoopa. I am 72 years old.

The only way the Yuroks got here was that they brought here or the Yurok women were 'bought' years ago by few of our Hoopa Men.

Our Hoopa's are of one group. We speak different Languages.

And besides, we are an organized tribe.

And, we are under the jurisdiction of the Federal Government. They are not.

In the first place, they sold out their fishing rights.

Up here, we were not allowed to fish, and now, we have to go through their regulations.

When I fish down there, (Klamath), I buy my license, and on the Reservation, I don't have to.

We are also the only California Indians that uphold our religious dances ever two years.

TESTIMONY OF MARIAN F. MOONEY
HOOPA TRIBAL MEMBER

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
H.R. 4469
JULY 19, 1988

As an enrolled member of the Hoopa Valley, I strongly support Bill H.R. 4469,

Because the U.S. Government caused the legal loopholes which put both the Hupas and the Yuroks in great turmoil for the past 25 years. I feel the U.S. Government should solve the problems they created by passing H.R. 4469 as amended by the Hoopa Valley Business Council on behalf of the Hoopa Valley Tribe.

I feel that the U.S. Government was wrong not to ratify the treaty between the Hoopas, their allies and the United States in 1864. That treaty clearly indentified who was to be a Hoopa Valley Indian. The Hupas, known then as Na:-ti-ni-xwe, understood at the time they agreed to this treaty, that the Hoopa Valley would remain ours forever. By not ratifying this treaty, an interpretation of the original intent of the Hoopa Valley Indian Reservation was open to an opinion that created a legal loophole allowing the Jessie Short and Puzz plaintiffs a hearing in U.S. Courts.

By preventing these envolved loopholes is a resolving vote in the right direction.

Testimony of,
Joseph Russell Orozco
A Hoopa Valley Tribal Member
to the
House Interior and Insular Affairs Committee
on H.R. 4469
July 18, 1988

As a Hoopa Valley Tribal member, I submit my testimony in favor of the passage of H.R. 4469, as amended by the Hoopa Valley Business Council on behalf of the Hoopa Valley Tribe. This land has been in our care for a long as our songs and stories. Such rememberances span thousands of years.

When one listens to our old people today tell the stories and sing the songs, told and sung to them when they were young, by the older people of that time; then put together the occurrances in the themes with modern day knowledge, a bigger picture emerges. Greater understandings of long held myths begin to make greater sense in terms of knowing what really happened and about what time era it occurred.

Modern day archaeologists calulate by carbon dating techniques that our people inhabited the Hoopa Valley for ten thousand years. Some archaeologists go as far as saying one hundred thousand years. Within these educated estimates our people lived here and made up songs and stories to explain their life and times.

Dr. Immanuel Velikovsky, in his book Worlds in Collision, explains the many times our planet has undergone upheavals and the shifting of land masses and bodies of water. One episode happened, by his estimate, two thousand-six hundred years ago. All along the Pacific northwest, from western Canada, sweeping southwest down through Idaho, Oregon, Nevada and Northern California to the San Francisco Bay, volcanoes erupted, the Earth opened up in great chasms and the Earth's crust rippled causing whole mountains to move over other mountains. Rivers changed courses as the terrain changed.

In our songs and stories is told of a time when the Trinity River flowed due west to the Pacific Ocean. It did not join the Klamath River at Weitchpec. Where Beaver Creek is now at the base of Bald Hill is where the Trinity River flowed west. Bald Hill was not there at this time. Geological surveys confirm that at one time the Trinity River flowed west at Beaver Creek.

In our sacred dance, the Deerskin Dance, we dance and camp at several sites along the Trinity River. In our language the name of this dance literally translates to, the Summer dance along the river. On the last day of this dance we now dance and camp on Bald Hill. This is the most sacred place of the dance, as well as in the valley.

From where we dance today on Bald Hill the river is no where near, but at one time when the Trinity River went due west it was the last place along the river we danced. In the main men's camp today one can hear the sound of the river, but the river is too far away. Only the spirit remains the same, that's why we keep dancing.

Professor Joseph Campbell explains in his series of books subtitled, The masks of God, all religions are based upon myths. All cultures developed myths and stories as an attempt to explain the physical realities of their life, times and space. Religions are built upon these myths and legends. Sometimes this is good as it bonds the common group together. But myths are myths and should not be taken literally. They at best abstractly explain physical realities which are obviously beyond human control and capabilities.

Thus, in our myths is told the story of how Bald Hill was put where it is today. Bald Hill is like no other mountain surrounding our valley. It is more like the type of mountains found in Karok territory our neighbors to the northeast. The legend says that our gods, being gods, knew of lands and things that were not in our valley. Among the things thet like that were beyond our valley was the Karok God's Bald Hill. So one day our gods visited the Karok gods to play a gambling game. The prize was Bald Hill. Our gods won so they moved Bald Hill to where it is today. It became the god's mountain, where they could look over the valley they fixed up for our people.

The physical act of a mountian butted into the present terrain of that time closed off the Trinity River's flow to the west. A channel opened up going north-northwest from where Beaver Creek is, around the base of Bald Hill. The Trinity River followed the new landscape to meet the Klamath River at Weitchpec. Actually the name Weitchpec means the place where the rivers meet.

Since we always danced along the river, with the most sacred dance site being in the north end of the valley, we continued to dance in the same physical plain we always did. We moved the dance grounds of the last day up the mountain to remain with the spirits, the gods. Even-though it is away from the river, it still remains to be the spiritual honing point.

As Velikovsky points out this was 2,600 years ago. As other geologists point out this could have been 10,000 years ago. As our songs and legends point out this all occurred inour lifetime and remains in our memory. These facts lend credence to our claims. These facts, these myths, legends and stories are not the ones told by Yurok people speaking of their claim to our valley.

In fact the only claim the Jessie Short plaintiffs have to our land is based upon the actions of a foriegn governmental president, not a god. And this claim is less tahn 100 years old, at best.

To explain further, our Hupa leaders at the time when our valley was made into a reservation, did so to save the lives of our people and the lives of our allies. They understood the gravity of the situation. New people have come to our lands in numbers and with violent powers far exceeding our own.

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So they agreed to stop fighting. They agreed to call in all our allies to stop fighting. But they also agreed to do so with the understanding that our valley, our home, would remain ours. So to comprimise and to accommendate the wishes of the U.S. Government, and the needs of our allying tribes' people, the Hupas, (known then as Na:-ti-ni-xwe, the people who live in Hoopa Valley. Actually, Natinook, the place where the trails return), agreed to form a new identity - The Hoopa Valley Indian Tribe.

Hupa people and other tribes' people were invited to join and share the valley. These people were identified as members. Some people, some Hupas, chose not to be members, or not to live under the soldiers rule, so they lived elsewhere, or they remained down river along the Klamath.

Later another President extended the reservation boundaries to add a strip of land along the Klamath River. But this action did not include the expansion of the Hoopa Valley Tribal membership. Likewise, the Hupa Tribe made no claims of ownership of the new boundary expansion brought about by the president's action.

Our songs, legends and stories have always told us what was our land and our duties to these lands. They do not include down river territory. That land bleongs to the Yurok people. That is why I support H.R. 4469, to divide the Hoopa Valley Reservation. It will give our people, the Hupas, sole careship to the Hoopa Valley once again.

If the results of this Bill causes a large amount of American dollars to change hands to gain sole careship of our valley, then so be it. The American dollar, or for that matter, the American obsession to individually own property, is far less important to the idea of acknowledging what was fixed up for us by our gods in the beginning.

There is no other way to exit this world as a people, other than going out the way the people came into this world. That's what life is really about. The separation of the reservation is only one step toward a greater end. As a people our tribe has further to go.

Joseph Russell Orozco
July 18, 1988

TESTIMONY OF
LORNA (JENKINS) OROZCO
A HOOPA VALLEY TRIBAL MEMBER
TO THE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
ON H.R. 4469
JULY 19, 1988

My name is Lorna (Jenkins) Orozco. I am a Hoopa Valley Tribal member. I was born at my Aunt Jenny's house in Miscet Field, approximately five hundred feet from where I live now. My family is from Tis Cet Village on the south bank of Mill Creek. I moved away from Hoopa when I was a young girl, but I returned home ten years ago. I am in favor of Bill before the House, H.R. 4469, as amended by the Hoopa Valley Business Council.

I believe this Bill will restore our valley and square to a peaceful existance. Ever since money became an issue, the Yuroks wanted our land. My mother told me of how the Yuroks, years ago, sold their Redwood trees and land to outsiders. We, the Hupas, asked for a share of the money they got, but they said no, we are not related to them, we are seperate from them. We said alright.

Not too long ago, maybe ½ years ago, I read in the newspaper that a Yurok family sold some timber from their land along the Klamath River. They did not have to share that money with us either. Even though, the Jessie Short Plaintiffs say the square and extension are one reservation.

I think the Yuroks only want our land to sell us out, the way they sold out their own homeland. If H.R. 4469 will save our land from the control of the Jessie Short and Puzz case plaintiffs, then I recommend that it be approved the way it is amended by the Hoopa Valley Business Council. It is the right thing to do!

TESTIMONY OF CHRISTINA L. PHILLIPS
HOOPA TRIBAL MEMBER
TO THE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
H.R. 4469
JULY 19, 1988

My name is Christina L. Phillips and I am an enrolled member of the Hoopa Valley Tribe and a lifelong resident of Hoopa, California. As an enrolled member of the Hoopa Tribe, I support the Bill H.R. 4469, as amended, by the Hoopa Valley Business Council.

While growing up here on in the Hoopa Valley during the 50's and early 60's there were no Yurok Indians living here in Hoopa at that time. My parents owned and operated a clothing store in Hoopa and what I vividly remember is the Yurok Indians (down the rivers) coming into our store and buying alot of clothing, they seemed to all have large families, because our store was the nearest store between the extension and Eureka. At that time the logging industry in the area was booming because timber was valuable and alot the the down the rivers were selling their timber.

I graduated from High School in 1963 and at that time the Yuroks were bussed to Hoopa from the extension to attend school. Also our family bought fish from Yurok Indians because we didn't fish and the only way we got our winter supply of fish was to buy from the Yuroks.

The Yuroks Indians didn't move to Hoopa until most of their land and timber was sold and then most of the extension people moved to the Coast area. The influx of Yuroks on the square today are mostly offspring of those people that bypassed Hoopa and moved to the coast at the time they had money.

Our history tells us that the Hupa Indians have lived in this valley for thousands of years. In recent years when the soldiers came in and tried to move the Hupa's off their land they hid in the mountains, my great grandfather was in a basket at the time, they stayed in the mountains for a whole year hiding from the soldiers and when my great grandfathers people came out of the mountains he climbed out of his basked and started walking. This is the history of my family.

I despise the non-Hupas who lay claim to our square. How can they claim something that they were never a part of in the beginning. Something that they never fought so bitterly for.
We know our family and tribal history, we know our ancestors fought and won this valley for us and we also know that the Yuroks do not belong here.

Testimony of,
Pearl (Gardener) Randell
A Hoopa Valley Tribal Member
to the
House Interior and Insular Affairs Committee
on
H.R. 4469
July 19, 1988

My name is Pearl Randell. I am a Hoopa Valley Tribal member. I've lived in Hoopa all my life. I know some things most people don't Know. I am in favor of H.R.4469, the way the Hoopa Valley Business Council changed it for the Hoopa Valley Tribe.

Before the reservation was bigger, it included the Trinity Summits. Now that belongs to someone else, we have to get permission to use it.

We had names for all our places. We had names for Willow Creek and Burnt Ranch. Those people down the Klamath, the Yuroks and the Karoks up the Klamath River, they had names for their places there.

I always said, why didn't we get money when those Indians in Oregon got money for the land. We didn't belong there, that's why.

These Jessie Short people, Williams and Haberman don't belong here. They never been here. They don't know the half.

I went down river with some lady years ago, she said she would show me where the Hoopa boundary is. She showed me where there is a sign by the bridge with the bears sitting on it. (highway 101 at the mouth of the Klamath) I said I should have brought an axe with me to chop down that sign and throw it in the water. I never knew our boundary to be by the ocean.

The government thinks that if they give the Yuroks top money, they will make this all one reservation. But the Yuorks will only make fools of themselves.

We've been separate way for years. They can have what we have here, on their own land. They didn't want Hoopa before, because they thought it was no good. Too isolated. You can't do anything here. But now they want everything. We don't want what is theirs, we only want our land for our children and grandchildren.

Some of our young people don't have land here and now they talk about putting more people from the outside here, giving them land. That's not right.

I think you should approve H.R. 4469, with the corrections by the Hoopa Valley Business Council, because it will put things back the way they used to be.

Testimony of
MARY ANGELA SAIS
Hoopa Tribal Member
to the
House Interior and Insular Affairs Committee
for
H.R. 4469
July 19, 1988

As an enrolled member of the Hoopa Valley Tribe, I strongly support H.R. 4469, as amended by the Hoopa Valley Business Council, because;

On June 30, 1988, I attended the demonstration on behalf of my Tribe, in Sacramento, and I knew only one Yurok when I entered the hearing room. For the lies that the Yuroks are telling, that they belong here, I knew only one Yurok in attendance that day! What's their point?

The truth is, that wethe Hupas, and them, the Yuroks, do not all live on the reservation,

The truth is, that we do marry into other tribes, and to nonIndians,

The truth is, that it is the only connection to our homeland the Yuroks have and the point is mute,

Because Hoopas abide by law both Whiteman and Indian traditional,

Because we choose to identify primarily as Hupathrough bloodline and heritage of our ancestors;

Because we have organizedsetting up a democratic ruling, that we have survived to this day!

And we will never give up our land!

We will never give up our rights!

We will never settle for 'PEANUTS'!

We will always attain our atonomy as a Tribe!

WE WILL, AND HAVE ALWAYS SURVIVED.

Testimony of
Herman Sherman, Sr.
Hoopa Tribal Member
to the
House of Interior and Insular Affairs Committee
H.R. 4469
July 20, 1988

My name is Herman Sherman, Sr. I lived here all my life. I was born in 1909 and am 79 years old.

Dances have been here ever since I can remember that Hupa's have put on, and that I have participated in.

Our dances are prayer for us for health, wealth and goodness--like welfare. We put on these dances. They come as quests.

This is our home!

No way they have ever been around here.

Our language is different--a lot different! <u>All the old people down on the Klamath know that!</u>

RESOLUTION

In Support of H. R. 4469

We the undersigned, commend and support Congressman Doug Bosco for introducing H.R. 4469, which would, among other things, partition reservation lands between the Hoopa Valley Tribe and the Yurok Indians and clarify the use of Tribal timber proceeds.

Name/Tribe	Address	Date
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Helene Colby	P.O. Box 1075 Hoopa Calif	06-20-88
Grace R Rhody	265 Cambridge Dr. Watsonville, Ca.	6-20-88
Laura Fortune	P.O. Box 1393 Hoopa, Calif 95546	6-20-88
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Liz Fortune	Orosta, Calif	6-20-88
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Alberta Susie Sanchez	P.O. Box 375 Hoopa, Ca 95546	6-21-88
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William Gray	Box 743 Hoopa, CA. 95546	

R E S O L U T I O N

In Support of H. R. 4469

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Name/Tribe	Address	Date
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