IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

NORTHERN CALIFORNIA AGENCY

P. O. BOX 494879

REDDING, CALIFORNIA 96049-4879

April 12, 1991

You are hereby noticed that your name or the name of your minor child has been included on the Hoopa/Yurok Settlement Roll pursuant to Section 5(d)(1) HOOPA-YUROK SETTLEMENT ROLL.

The Hoopa-Yurok Settlement Act requires that the Bureau of Indian Affairs must notify you of your right to select one of three options pursuant to Section 6(a)(1) of the Settlement Act. Furthermore, Section 6(a)(2) requires that the Bureau of Indian Affairs shall provide information about the counseling services to explain the advantages and disadvantages of each of the options. The consultation sessions are scheduled as follows:

Hoopa, CA	Neighborhood Facility	May 6, 1991
Eureka,CA	Jacobs Education Center	May 7, 1991
Crescent City,CA	Cultural/Community Center, 475 5th St.	May 8, 1991
Grants Pass, OR	Riverside Inn Blue Heron Room	May 9, 1991

The sites were selected based on zip code listings showing the largest concentration of eligible applicants on the Settlement Roll. The sessions at all locations will be as follows:

6:00-7:00 PM explanation of options
7:00-8:00 PM questions and answers
8:00-9:00 PM Individual counseling sessions

An 800 telephone number, 1-800-BIA-HYSA, will be in operation by April 29, 1991 for those who may be unable to attend the scheduled meetings, or if there are other questions you may have you concerning the Hoopa/Yurok Settlement Act.

Sincerely,

Karole D. Overberg
Superintendent

Enclosures: Option Election Form
Option Election Notice

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NORTHERN CALIFORNIA AGENCY

P. O. BOX 494879

REDDING, CALIFORNIA 96049-4879

SETTLEMENT OPTION NOTICE

To: All Persons included on the Settlement Roll
Prepared Under the Hoopa-Yurok Settlement Act

Re: Election of Settlement Options

SECTION I. INTRODUCTION.

On October 31, 1988, Congress enacted the Hoopa-Yurok Settlement Act. This notice will refer to that legislation simply as "the Act".

Section 5 of the Act requires the Secretary of the Interior to prepare a roll of all eligible persons (a) who show their eligibility as an Indian of the Reservation; (b) who were living on October 31, 1988; (c) who are citizens of the United States; and (d) who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe. The Settlement Roll was published in the Federal Register on March 21, 1991. Your name, or the name of the child you sponsored, is included on the Settlement Roll.

The Act provides that each person 18 years or older whose name appears on the Settlement Roll must be notified by certified mail of the right to choose one of the settlement options provided for in Section 6 of the Act. This is your notice of your right to choose one of the settlement options.

Section II of this letter states a deadline which is the date by which you must choose a Settlement Act option. Section III summarizes the options. Section IV explains how you may get more information and advice on the options. Section V explains special rules for persons under 18 years of age, and Section VI explains other rules for plaintiffs in the Short cases. Section VII explains each option in detail and finally Section VIII summarizes the notice.

SECTION II. LAST DATE FOR MAKING YOUR ELECTION.

The last date for you to notify the Bureau of Indian Affairs of the option you have chosen is **July 19, 1991.** Your option election form must be postmarked no later than midnight, July 19, 1991.

If you fail to return a written statement of your selection by that date to the Bureau of Indian Affairs, Northern California Agency, P.O. Box 494879, Redding, CA 96049-4879, you will be deemed to have chosen Option 2, Yurok membership. A form is enclosed for your convenience in making your selection. Please be sure to sign and date this form before returning it to the Bureau of Indian Affairs on or before the option election date noted above.

SECTION III. SUMMARY OF OPTIONS UNDER THE ACT.

Option 1 (Act Sec. 6(b):	Hoopa Tribal membership
Option 2 (Act Sec. 6(c):	Yurok Tribal membership
Option 3 (Act Sec. 6(d):	Lump Sum Payment - no Hoopa or Yurok tribal membership.

These three options and the pros and cons of selecting each option are explained in more detail in section VII of this letter. The Act requires that you must select only one of the three options. Any choice you make will be final and cannot be changed after July 19, 1991 which is the final date established by the Secretary for each person on the Settlement Roll to choose an option. Your failure to choose an option within this time limit will lead the Bureau of Indian Affairs to assume that you have chosen Option 2, membership in the Yurok Tribe.

Should you refuse to accept the payment and return it to the Bureau of Indian Affairs, you will not be deemed to have given up any claims you may have to the Hoopa Valley Tribe or Yurok Indian reservations, and you will have preserved your legal right to challenge any of the provisions of the Act. In addition, you will not be deemed to have given permission to the Interim Council to either give up legal claims of the Yurok Tribe arising under the Act or to consent to the payment of escrow monies into the Settlement Fund under the Act. However, in that event, the Act requires that you must file suite on any such claim no later than 120 days after the publication in the Federal Register of the option election date. Failure to file such a lawsuit within the required deadline will result in forfeiture of your legal claims.

SECTION IV. COUNSELING SERVICE AVAILABLE.

The Act provides that the Bureau of Indian Affairs must provide special counseling to you to inform you about the advantages and disadvantages associated with each option. If you wish counseling, please contact Dorson Zunie or Silas Ortley, Northern California Agency, at (916) 246-5141, or 1-800-BIA-HYSA. (this number will be available on April 19,1991) In addition, you may contact the Hoopa Valley Tribal Council or the Yurok transition Team at the addresses listed below:

Yurok Transition Team
517 Third Street, Suite 21
Eureka, CA 95501
(707) 444-0433 or 1-(800)-848-8765

Yurok Transition Team
P.O. Box 218
Klamath, CA 95548
(707) 482-2921 or 1-(800)-334-6689

Hoopa Valley Tribal Council
P.O. Box 1348
Hoopa, CA 95546
(916) 625-4211

If you elect Option 3 - Lump Sum Payment, you must complete and sign a sworn statement that you have been provided with complete information about the effects of choosing Option 3.

SECTION V. SPECIAL PROVISION FOR MINORS WHO WILL NOT BE 18 YEARS OF AGE BY THE DEADLINE DATE TO ELECT OPTIONS.

The Act provides special rules for minors (those persons under 18 years of age) on the Settlement Roll who will not receive this notice and who will not be able to make their own election unless their eighteenth (18th) birthday occurs on or before **July 19, 1991.** If you are a parent or guardian of a minor whose name is on the Settlement Roll and your name is <u>not</u> included on the Roll, this notice is sent to you on behalf of your minor child.

The Act provides that minors on the Settlement Roll will be deemed to have chosen Option 2, membership in the Yurok Tribe, unless (1) you do not wish the child enrolled in the Yurok Tribe, and (2) you furnish proof that is satisfactory to the Bureau of Indian Affairs, that your minor child is already a member of a Federally recognized Indian tribe, <u>and</u> that tribe prohibits its members from enrolling in another tribe. If those special conditions are met, you may choose Options 2 or 3 for the child. If you do not make a choice on behalf of your minor child before **July 19, 1991**, then the child will have been deemed to elect Option 2 - Yurok Tribal membership. In making an election for your minor child, you are entitled to the counseling services provided by the Bureau of Indian Affairs.

If the minor child becomes a member of the Yurok Tribe under the options provided in the Act, the child will be deemed to be a child of a member of the (Yurok) Indian Tribe even though you yourself elect Option 3, Option - Lump Sum Payment. The money to which your child is entitled under the Act will be held in trust by the Bureau of Indian Affairs until the child reaches the age of 18. At that time the Secretary must notify and provide payment directly to your child including all interest earned.

SECTION VI. EFFECT ON SHORT PLAINTIFFS OF MAKING AN ELECTION.

Any payment for damages or other entitlements that a plaintiff may be due under a decision of the United States Claims Court in the Short Cases, meaning the Short, Ackley, Aanstadt, or Giffen litigation is not affected at all by the provisions of the Act or by your choice of any option described in the Act and this notice. Selection of any of the options will not in any way reduce your eligibility, entitlement or right to receive monies that may be due to you as a qualified plaintiff in the Short cases.

SECTION VII. EXPLANATION OF EACH OPTION.

A. Option 1 (Section 6(b)) - Hoopa membership option.

1. General Statement Regarding Option 1.

If you choose this option, it means that you wish to become an enrolled member of the Hoopa Valley Tribe. In order to choose this option your name must be listed on the Settlement Roll and you must meet the enrollment requirements of the Hoopa Valley Tribe set out as Schedule A, Schedule B, or Schedule C in the Short Case. (No one born after October 1, 1949 meets those enrollment requirements) In addition you must have either (1) maintained a residence on the Hoopa Valley reservation at any time between October 31, 1983 and October 31, 1988; or (2) owned an interest in real property on the Hoopa Valley Reservation on October 31, 1988. If you provide satisfactory proof that you meet these requirements, you will be entitled to become an enrolled member of the Hoopa Valley Tribe and the Secretary shall cause you to be so enrolled. The requirements for enrollment with the Hoopa Valley Tribe discussed above will be explained to you in detail at your request before you are required to make a decision.

2. **ADVANTAGES TO CHOOSING OPTION 1 - HOOPA MEMBERSHIP**

a. As a member of the Hoopa Valley Tribe, you will be able to share in tribal rights and interest of the Hoopa Valley Tribe, including any tribal rights in unallotted lands and water of the Hoopa Valley Reservation (as defined in the Act) and other property, resources, or rights within, or appertaining to, the Hoopa Valley Indian Reservation or the Hoopa Valley Tribe. Your rights of membership in the Hoopa Valley Tribe will be exactly the same as the rights of other members of the Hoopa Valley Tribe, and you will be entitled to the same protections. In the past the tribe has made Per Capita payments and if they do, you may be eligible to share as a tribal member. As a member of the Hoopa Valley Tribe you may be entitled to participate in the land assignment/lease program as defined under the Hoopa Valley Tribal Land Assignment/Lease Ordinance.

b. If you choose to become a member of the Hoopa Valley Tribe under Option 1, you will be recognized as an enrolled

member of a Federally recognized tribe and entitled to all of the benefits and services available to such members under federal and state programs, benefits, preferences, and services.

c. If you become a member of the Hoopa Valley Tribe under this Option 1, the Secretary will determine your quantum of "Indian Blood" or "Hoopa Indian Blood", if any, under the requirements established in the March 31,1982 court decision in Short.

3. DISADVANTAGES TO CHOOSING OPTION 1 - HOOPA MEMBERSHIP

a. By choosing the Hoopa membership option, you will not be eligible for or entitled to any payment from the Settlement Fund. Such payment can only be made under the Act to persons who choose either Option 2 or Option 3.

b. If you choose the Hoopa membership option, you will not have any rights or interests whatsoever in the tribal, communal, or unallotted lands, property, resources or rights within, or appertaining to, the Yurok Indian reservation or the Yurok Tribe. For example, you would be unable to fish, hunt or gather on the Yurok Reservation unless that tribe permitted you to do so. You also will not have any rights or interests in the Settlement Fund except to the extent the Hoopa Valley Tribe uses its portion of the Settlement Fund for your benefit.

c. The Hoopa Valley Tribal Council has enacted a resolution waiving any claim of the Hoopa Valley Tribe against the United States arising under the provisions of the Act. Further, the Hoopa Valley Tribal Council has enacted a resolution affirming the Tribe's consent to the contribution of the Hoopa Escrow monies to the Settlement fund and for payment from the fund to the Yurok Tribe and individual Yuroks as provided for in the Act. Since that resolution has already been enacted, choosing this option means that you will no longer have any voice in deciding whether the Hoopa Valley Tribe should challenge the Act or consent to the distribution of Hoopa Escrow monies and the use of the Settlement Fund.

d. If you choose Option 1, your choice becomes final and irrevocable on July 19, 1991. After that date you cannot change your mind and choose another option.

B. OPTION 2 (SECTION 6(c)) - YUROK MEMBERSHIP

1. General Statement regarding Option 2.

Choosing this option means that you wish to become a member of the Yurok Tribe. Under the Act, the Yurok Tribe may adopt a tribal constitution that will establish, among other things, future membership requirements for the Yurok Tribe. If you choose this option you are automatically listed as a base member enrollee of the Yurok Tribe.

As a result, if you are 18 years of age or older you will be eligible to vote in tribal elections or hold office on the tribal council. Any person on the Settlement Roll, regardless of age, may choose Option 2, membership in the Yurok Tribe. As discussed above, persons who fail to make an election by the deadline date for selecting an option will be deemed to have elected the Yurok membership option. Also, as discussed above, persons under 18 years of age whose names are on the Settlement Roll will be deemed to have chosen the Yurok Option unless the minor's parent or guardian can establish to the satisfaction of the Secretary that the minor is already enrolled in another Indian tribe that prohibits dual enrollment. In that case, the parent or guardian may choose option 2 or 3 on behalf of the minor child. Dual enrollment is when a person is enrolled in more than one tribe at a time. Many Indian tribes prohibit dual enrollment and require that you give up your enrollment with the other tribe before you can become a member of the tribe in which you seek membership. Whether or not the Yurok Tribe will prohibit dual enrollment may be decided when the constitution is drafted and accepted by the membership.

2. ADVANTAGES TO CHOOSING OPTION 2 - YUROK MEMBERSHIP

a. As a member of the Yurok Tribe, you will share in the rights and interests of the Yurok Tribe, including any tribal rights in the unallotted lands and waters of the Yurok Reservation and other property, resources or rights within, or appertaining to, the Yurok Indian Reservation or the Yurok Tribe. Your rights of membership in the Yurok Tribe will be exactly the same as the rights of other members of the Yurok Tribe and you will be entitled to the same protections.

b. If you choose to become a member of the Yurok Tribe under Option 2, the Act provides that you will be paid $5,000 if you are under the age of 50 years on **July 19, 1991**, the last day established under this notice to elect an option. If you are 50 years or older on **July 19, 1991**, you will be paid $7,500. These payments will be exempt from all federal and state income taxation. Also these payments cannot be used to affect your eligibility for federal social security Act programs such as SSI, AFDC, etc. However, amounts over $2,000 may be considered by **other** Federal or Federally assisted state programs in determining eligibility or level of benefits. State and private programs can consider the entire amount in determining eligibility for services or benefits.

c. By choosing Yurok membership, you will be included on the base membership roll of the Yurok Tribe and be eligible to vote for the Interim Council, seek office on the Yurok Interim Tribal Council, assist in preparing a new constitution, election ordinance and membership ordinance for the Yurok Tribe, and vote for or against the new Yurok Tribal Constitution. Any individual listed on the base roll of the Yurok Tribe cannot be removed from it. The Act provides, however, that only persons 18 years of age or older who have elected Yurok Tribal membership under this option 2 will be

eligible to participate in the formation of the new tribal government.

d. If you choose to become a member of the Yurok Tribe under Option 2, you will be recognized as an enrolled member of a Federally recognized tribe and entitled to all of the benefits and services available to such members under Federal and State programs, benefits, preferences, and services. Some of these entitlements through the Bureau of Indian Affairs may include educational grants, adult vocational training, direct employment assistance, home improvements, and hiring preferences. Health care and hiring preference are also available through Indian Health Service. If you become a member of the Yurok Tribe, the Secretary will determine your quantum of "Indian blood" under the requirements established in a March 31, 1982 decision in Short. This method of determining your quantum of blood was used in determining your blood for the Settlement Roll.

3. DISADVANTAGES TO CHOOSING OPTION 2 - YUROK MEMBERSHIP

a. If you choose the Yurok Tribe membership option, you will no longer have any rights or interests whatsoever in the tribal, communal or unallotted lands, property, resources, or rights within, or appertaining to, the Hoopa Valley Indian Reservation as defined by the Act (commonly called the Hoopa Square) , or the Hoopa Valley Tribe, or except for the payment described above in Section 2 (d), the Settlement Fund. By choosing Option 2, you give up any such rights and interests.

b. By choosing Option 2, Yurok Membership, you will not be eligible for or entitled to Option 3 Lump Sum Payment. Such payment can only be made to those who choose Option 3. In addition, by choosing Option 2 - Yurok Membership and becoming an enrolled member of the Yurok Tribe, you will not be eligible to receive any per capita payment from the Hoopa Valley Tribe.

c. If you are now a member of an Indian tribe that prohibits membership in another tribe, choosing Option 2, Yurok Membership may require that you give up your membership in the other tribe under that tribe's membership rules or sharing as a member in the assets of another tribe.

d. Under the Act, the selection of Option 2, membership in the Yurok Tribe, also gives the Yurok Interim Council the right to approve a resolution (1) waiving any claim the Yurok Tribe may have against the United States arising out of the Act and (2) granting Yurok tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund and for use of some of these monies as payment to the Hoopa Tribe and to individual Hoopa members as provided for in the Act.(Section 9 (d) (2) (i). This means that the Interim Council of the Yurok Tribe could vote to accept or reject certain monies and legal powers offered by the Act, to give up legal claims or to keep them, and to consent to the use of the Yurok Escrow monies or to refuse to consent to use of the Yurok Escrow

monies, without any further permission or authority from you as a member of the Yurok Tribe. If you choose this option, you will not only grant your proxy or authority to the Interim Council, but also you cannot take back or change this grant of authority to the Interim Council. Of course, how the Interim Council will vote on these matters is unknown at this time.

e. If you choose this option, your choice becomes final and irrevocable on July 19, 1991. That is, once you make your election, you cannot change your mind or choose another option after that date.

f. If you elect Option 1, 2 or 3, you will have given up any claim you may have against the United States arising out of the Act.

C. **OPTION 3 (SECTION 6(D) - LUMP SUM PAYMENT OPTION.**

1. **General Statement Regarding Option 3.**

As a person whose name is included on the Settlement Roll, you may elect to receive a Lump Sum Payment Option from the Settlement Fund of $15,000. The Act requires that if you choose this option, you must complete under oath, a written statement that you have been given the opportunity to receive counseling provided by the Bureau of Indian Affairs. The Bureau of Indian Affairs is required to consult with the Hoopa Valley Tribal Council and the Yurok Transition Team in providing you with this counseling. Counseling will provide you with a complete explanation of the effects of Option 3 on your tribal enrollment rights and the enrollment rights of your children and descendents who may otherwise be eligible for membership in either the Hoopa Valley Tribe or the Yurok Tribe.

If you choose Option 3, Lump Sum Payment you will be giving up all of the rights and interest you may have in the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe and the Yurok Reservation.

This Option 3 is not a termination provision. It has no effect on any ties you may have to Indian tribes other than Hoopa and Yurok. It does not change the Indian status of any person on the Settlement Roll. If you choose this option, it does not end the Federal trust status or restrictions that may exist as to any allotted or restricted lands or resources to which you may hold a beneficial interest.

2. **ADVANTAGES TO CHOOSING OPTION 3 - LUMP SUM PAYMENT**

a. If you choose this option, you will receive a $15,000 cash settlement from the Settlement Fund in exchange for giving up any rights or interests you may have in the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe or the Yurok Reservation. This is a one-time-only payment.

3. **DISADVANTAGES TO CHOOSING OPTION 3 - LUMP SUM PAYMENT.**

a. If you choose this option and accept the $15,000 Lump sum Payment, you will have given up any rights or interests whatsoever in the tribal, communal, or unallotted lands, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe. Also, except for the $15,000 payment, you will have given up any rights or interests you may have in the Settlement Fund.

b. By accepting the $15,000 Lump Sum Payment, you will not be eligible under the Act for enrollment as a matter of right in either the Hoopa Valley Tribe or the Yurok Tribe. Future eligibility for enrollment in either tribe will depend upon each tribe's enrollment requirements as they may exist at the time you may wish to seek enrollment in the future.

c. If you are not eligible for membership in any other Federally recognized Indian tribe and if you elect this option, you may not be able to become an enrolled member of a Federally recognized Indian tribe. Of course, even if you are not now eligible, you may become eligible in the future if a tribe decides to amend its eligibility standards. As a result of choosing Option 3, you may be giving up all of the benefits that could come from such status. This includes benefits that come from the Hoopa and Yurok Tribes, and could also eliminate your eligibility for Federal and State programs, services, preferences and other advantages for which membership or eligibility for membership in a recognized tribe is required. As an additional result, your children and their descendants may also not be eligible for membership in an Indian tribe unless they are also on the Settlement Roll and choose a different option. By way of example, at this time Indian Health Service in California does not require tribal enrollment as proof to receive services. However, there has been talk of imposing that requirement in the future, and Congress could establish that requirement. Also, the Indian Child Welfare Act of 1978 defines "Indian child" by referring to tribal membership and eligibility for membership. Benefits provided by these programs could be affected by choosing Option 3.

d. If you elect this option, your choice becomes final and irrevocable on **July 19, 1991**; that is, once you make your election, you cannot change your mind or choose another option after that date.

e. If you elect Option 1, 2 or 3, you will have given up any claim you may have against the United States arising out of the Act.

f. If you elect the lump sum payment option, the $15,000 is taxable and will be treated as income or financial resource by many Federal, state, or service oriented programs.

SECTION VIII. SUMMARY.

Your name is included on the Settlement Roll prepared by the Secretary of the Interior pursuant to the Hoopa-Yurok Settlement Act. Thus, you are entitled to select one of the options described above no later than July 19, 1991. If you wish to choose Option 1, 2 or 3, you must make your selection to the BIA no later than July 19, 1991. If you choose not to select any of those options you will be considered to have elected Option 2, Yurok Membership. Should you refuse to accept the payment and return it to the Bureau of Indian Affairs, you will not be deemed to have granted a release or to have granted a proxy to the Yurok Interim Council. The Act provides that you are entitled to counseling conducted by the Bureau of Indian Affairs on the advantages and disadvantages of the options described above. In addition, if you choose Option 3, Lump Sum Payment, you will be required to sign a sworn statement that such counseling was made available to you.

As you can see, each of the options have certain advantages and disadvantages to you. The purpose of this notice is to provide you with an unbiased explanation of the options available to you under the Act. If you have any further questions or wish to receive counseling regarding this matter, you may contact the persons at the addresses and telephone numbers indicated in Section IV of this letter.

SETTLEMENT OPTION ELECTION FORM

I am 18 years or older. I hereby select the following option offered pursuant to the Hoopa/Yurok Settlement Act.

CHECK ONE ONLY

[ ] OPTION 1: I choose membership in the Hoopa Valley Tribe.
(must meet requirements in Section VII of the Settlement Option Notice entitled Hoopa Membership)

[ ] OPTION 2: I choose membership in the Yurok Tribe.

[ ] OPTION 3: I choose to receive the lump sum payment (requires completion of sworn affidavit).

Your selection of an option becomes final on July 19, 1991.

I understand that in the event that I do not elect an option, and do not accept any payment under any of the three options I may file a claim pursuant to Section 14, LIMITATION OF ACTIONS: WAIVER OF CLAIMS, within the 120 days from date of the publication of the **Option Election Notice** in the Federal Register.

The Bureau of Indian Affairs has provided me with a Notice of Settlement Options informing me of the rights and benefits of each option presented, the advantages and disadvantages of each option and information on counseling. I understand that this option is irrevocable after July 19, 1991.

_____
SIGNATURE

Please Print: NAME: _____

ADDRESS: _____

_____

PHONE: ( ) _____

If you are signing on behalf of a person under 18 years old, please indicate:

Minor's Name: _____

Address: _____

_____

Please check: [ ] Parent [ ] Guardian

THIS NOTICE MUST BE RECEIVED BY THE BUREAU OF INDIAN AFFAIRS, POSTMARKED NO LATER THAN MIDNIGHT, JULY 19, 1991.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Hoopa-Yurok Settlement Roll

May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is giving notice of the deadline for electing a settlement option under the provisions of section 6 of the Hoopa-Yurok Settlement Act (Settlement Act) of October 31, 1988, Public Law 100-580, as amended. Under section 6 of the Settlement Act, individuals 18 years of age or older who are determined finally eligible to be on the Hoopa-Yurok Settlement Roll prepared under section 5 will be given the opportunity to elect a settlement option from among three options. The three options are: (1) Membership in the Hoopa Valley Tribe if they meet the membership requirements specified in the Settlement Act; (2) membership in the Yurok Tribe; or (3) a lump sum payment in lieu of membership in either tribe. Minors finally determined eligible to be on the Settlement Roll will be deemed to have elected the Yurok membership option unless the parent or guardian of such a minor furnishes proof that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or legal guardian of the minor may elect another settlement option.

DATES: July 19, 1991, is the deadline for electing a settlement option under section 6 of the Hoopa-Yurok Settlement Act.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049-4879; telephone: (916) 246-5141 (FTS 450-5141) or 1-800-BIAHYSA (1-800-242-4972).

Yurok Transition Team, 517 Third Street, suite 21, Eureka, California 95501; telephone: (707) 444-0433 or 1-800-848-8765.

Yurok Transition Team, P.O. Box 218, Klamath, California 95548; telephone: (707) 482-2921 or 1-800-334-6689.

Hoopa Valley Tribal Council, P.O. Box 1348, Hoopa, California 95546; telephone: (916) 625-4211.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Department Manual at 209 DM 8.

Section 5 of the Settlement Act directed the Secretary of the Interior to prepare a Settlement Roll to identify Yurok and other Indians of the Reservation eligible to participate in the settlement. The deadline for filing applications for inclusion on the Settlement Roll was April 10, 1989.

Under section 5(d) of the Settlement Act, once initial determinations of eligibility were made on all applicants, the Secretary was to publish the Settlement Roll in the Federal Register. All initial determinations of eligibility were made and on Thursday, March 21, 1991, the BIA published the names of persons included on the Hoopa-Yurok Settlement Roll in the Federal Register (56 FR 12082)

The Settlement Act further directed the Secretary to develop such procedures and times as may be necessary for the consideration of appeals from applicants who were initially determined ineligible for the Settlement Roll and, as a result of the amendment of the Settlement Act, of appeals by the Hoopa Valley Business Council or the Yurok Transition Team from the initial omission or inclusion of names on the Settlement Roll.

The names of applicants not initially on the Settlement Roll who are finally determined eligible on appeal will be added to the Settlement Roll and those individuals will be given the opportunity to elect a settlement option. Applicants who were initially determined eligible, but who are finally determined ineligible on appeal will not be eligible to participate in the settlement and their names will be removed from the Settlement Roll.

Section 6 of the Settlement Act directs the Secretary to give notice within sixty days of the publication in the Federal Register of the Settlement Roll by certified mail to each person 18 years or older named on the Settlement Roll of their right to elect a settlement option and the deadline for making that election. With respect to minors on the Settlement Roll the notice is to state that minors shall be deemed to have elected the Yurok membership option unless the parent or guardian furnishes satisfactory proof to the Secretary that the minor is an enrolled member of a tribe that prohibits members from enrolling in other tribes. In that case the parent or guardian may elect another settlement option on behalf of the minor. The required notices were mailed to individuals by the Superintendent, Northern California Agency, BIA, on April 12, 1991.

Under section 6 of the Settlement Act, the Secretary is directed to establish a date by which time the election of an option must be made. Section 6 further directs that the date be 120 days from date of publication of the Settlement Roll in the Federal Register.

The Settlement Roll was published in the Federal Register on March 21, 1991. Consequently, the deadline for electing a settlement option is July 19, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-11750 Filed 5-16-91; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Hoopa-Yurok Settlement Act
May 10, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing notice of the statute of limitation for filing certain claims under section 14 of the Hoopa-Yurok Settlement Act of October 31, 1988, Public Law 100–580, as amended. Any claim by a person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, challenging the partition of the joint reservation under section 2 of the Settlement Act or any other provision of the Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be forever barred if not brought by the date determined in accordance with the provisions of section 14.

DATES: Claims challenging the constitutionality of the Hoopa-Yurok Settlement Act by any person or entity, other than the Hoopa Valley tribe or the Yurok Tribe, must be brought by September 16, 1991.

FOR FURTHER INFORMATION CONTACT: Dorson Zunie, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049–4679; telephone: (916) 246–5141 (FTS 450–5141).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Section 14 of the Settlement Act provides that any claim challenging the partition of the joint reservation under section 2 or any other provision as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant to 28 U.S.C. 1491 or 28 U.S.C. 1505, in the United States Claims Court. Section 14 further states that any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 2, or 120 days after the publication in the Federal Register of the option election date under section 6.

On Wednesday, December 7, 1988, a document was published in the Federal Register at 53 FR 49361 providing official notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of section 2 of the Settlement Act. In accordance with section 2, partitioning of the joint reservation was effective with the publication of that notice in the Federal Register. More than 210 days have since passed.

A notice of the deadline for electing a settlement option under section 6 is being published as a separate document in the Federal Register today, May 17, 1991. A date 120 days from today is later than 210 days from the effective date of the partitioning of the joint reservation under section 2. Consequently, any claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, questioning the constitutionality of the Hoopa-Yurok Settlement Act must be brought by September 16, 1991, or be forever barred.

Eddie F. Brown,
Assistant Secretary—Indian Affairs.

[FR Doc. 91–11749 Filed 5–16–91; 8:45 am]
BILLING CODE 4310–02–M

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
505 MARQUETTE N.W. SUITE 700
ALBUQUERQUE, NEW MEXICO 87102

IN REPLY REFER TO:

AUG 2 2 1991

Memorandum

To: Area Director, Sacramento Area Office

From: Director, Office of Trust Funds Management

Subject: Distribution of funds awarded the Hoopas and Yuroks under the Hoopa-Yurok Settlement Act

Effective April 12, 1991, the distribution of the subject funds was made in accordance with Public Law 101-277 and in accordance with your request dated April 4, 1991.

The total value of the fund on April 12, 1991 was $85,979,348.37 derived in the following manner:

Fair Market Value of Investment Securities (Refer to Attachment I and II.)	$74,339,997.14
Cash-Unallotted Balance	139,351.23
Add Back: Hoopa Drawdowns	10,000,000.00
Yurok Drawdowns	1,500,000.00
Total:	$85,979,348.37

Hoopa's share of the fund was calculated using 39.55% as provided in you letter dated April 4, 1991.

Total Value of Fund	$85,979,348.37
	X .39552
Hoopa's Share	$34,006,551.87
Less Hoopa's Drawdowns	10,000,000.00
Less April 15, 1991 Drawdown	9,880,000.00
Balance Due Hoopa Tribe:	$14,126,551.87

The balance due was distributed using a percentage of 21.8679479 derived as follows:

Total Value of Fund	$85,979,348.37
Less Hoopa's Drawdowns	19,880,000.00
Less Yurok's Drawdowns	1,500,000.00
Balance of Fund to be Distributed:	$64,599,348.37

Hoopa's Share of Fund $14,126,551.87 = 0.218679479
Value of Undistributed Fund 64,599,348.37

The 21.867947% was applied to each outstanding investment and recorded to Hoopa's appropriation account 7194.

The balance of the fund is Yurok's share which remained in appropriation account 7193.

Subsequent to the above distributions, an internal transfer was done effective August 1, 1991, to transfer $3,000,000.00 into an escrow account to compensate any potential appeal cases. The amounts contributed are $1,186,560.00 and $1,813,440.00 for the Hoopas and the Yuroks respectively. It is our understanding that both tribes agreed to this arrangement. A separate appropriation (J50 A64 7197) was established for this escrow account.

Trust Funds records in the BIA's Finance System are maintained on a cash basis, therefore, income earned but not yet collected by the BIA is not recorded. Only the actual cash transfers and the cost bases of respective investments are shown in the Summary of Trust Funds reports for the Hoopa Tribe.

If you have any questions, please contact Sarah Yepa at FTS 474-3875 or Commercial (505) 766-3875. If you have questions on the valuation of the securities, please contact Fred Kellerup at FTS 474-2975 or Commercial (505) 766-2975.

Jim R. Parris

Attachments

INVESTED FUNDS IN TIMED CERTIFICATES OF DEPOSIT

HOOPA-YUROK SETTLEMENT
J50 501
AS OF APRIL 12, 1991

DATE	7193 MATURING PRINCIPAL	7193 ACCRUED INTEREST
04/18/91	645,000.00	47,896.45
06/13/91	1,176,000.00	5,985.00
07/11/91	576,500.00	10,874.55
07/22/91	386,306.32	6,010.00
07/23/91	96,548.08	1,495.83
07/29/91	289,729.74	4,108.11
08/05/91	580,494.65	7,102.71
08/08/91	698,719.14	8,476.55
08/12/91	96,802.21	1,054.22
08/15/91	1,494,000.00	15,617.68
08/26/91	96,703.15	819.66
09/05/91	96,500.00	641.73
09/18/91	96,836.24	369.11
09/19/91	828,000.00	38,899.35
10/17/91	1,752,209.61	72,007.74
11/07/91	2,952,553.75	108,522.92
11/14/91	739,096.84	25,139.28
11/15/91	92,378.75	3,090.26
11/19/91	92,378.75	3,006.74
11/21/91	277,143.27	8,949.20
12/12/91	830,500.00	22,640.68
12/31/91	92,753.19	2,025.14
01/14/92	93,076.94	1,669.12
01/16/92	741,500.00	13,947.68
02/13/92	698,719.14	8,924.50
02/19/92	93,621.56	908.71
02/27/92	1,868,000.00	17,224.96
03/03/92	93,294.03	716.53
03/12/92	279,500.00	1,871.67
TOTAL:	17,854,865.36	439,996.08

VALUATION OF GOVERNMENT SECURITIES
AS OF APRIL 12, 1991

G.S.	7193 MARKET VALUE	7193 ACCRUED INTEREST
02/15/92	5,013,812.50	51,243.09
07/25/91	5,489,848.71	87,710.00
08/26/91	1,459,409.71	20,334.96
04/01/91	5,118,125.00	15,812.50
08/15/96	5,104,687.50	66,895.83
08/15/96	5,104,687.50	66,895.83
09/26/91	2,007,429.16	36,216.67
12/20/91	1,976,828.13	35,414.38
06/01/91	1,340,040.97	13,590.68
09/06/91	2,205,383.01	0.00
12/27/91	1,298,528.90	0.00
01/15/92	2,143,234.58	0.00
01/15/92	2,374,293.75	0.00
07/15/92	3,096,890.21	0.00
08/15/97	5,126,585.51	0.00
11/15/91	2,057,570.53	0.00
11/15/91	1,930,533.34	0.00
05/15/91	2,803,132.75	0.00
TOTAL:	55,651,021.76	394,113.94

SUMMARY:

	PRINCIPAL	ACCRUED INTEREST	TOTAL
SUB-TOTAL CD'S	$17,854,865.36	$439,996.08	$18,294,861.44
SUB-TOTAL GOVT. SEC.	55,651,021.76	394,113.94	56,045,135.70
TOTAL FUND:	$73,505,887.12	$834,110.02	$74,339,997.14

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

OCT 24 1991

Memorandum

To: Superintendent, Northern California Agency

Through: Sacramento Area Director

From: Acting Director, Office of Tribal Services

Subject: Issuance of Per Capita Checks from the Hoopa-Yurok Settlement Act Funds

Judge Royce C. Lamberth, in the case of Heller, Ehrman, White & McAuliffe, *et al.* v. Hon. Manuel Lujan, Jr., Civil Action No. 91-2012 signed an order on October 2, 1991, staying his order of payment of attorneys' fees pending consideration for appeal and pending appeal. This order permits the Secretary to withhold the contested amounts from per capita payments to be made under the Hoopa - Yurok Settlement Act. The amount withheld will be maintained in the Settlement Fund as ordered by the Court on October 2, 1991. The withheld funds will continue to be invested in accordance with 25 U.S.C. §162(a) with interest earned for the benefit of the ultimate payee.

The Superintendent, Northern California Agency is instructed to proceed to reprocess the per capita payment to the eligible recipients using the following categories:

1. Jessie Short plaintiffs involved in Jessie Short, *et al.* v. United States (Cl. Ct. No. 102-63) are to have 6.5 percent withheld from the amount due them. Determination of who are Jessie Short plaintiffs is to be made from the list supplied by the attorneys in the Jessie Short case. (see attached)

2. Eligible recipients who are not represented in Cl. Ct. No 102-63 and who are represented in cases Charlene Ackley v. United States (Cl. Ct. No. 460-78); Bret Aanstadt v. United States, (Cl. Ct. No. 146-85L); and Norman Giffen v. United States, (Cl. Ct. No. 746-85L) are not to have any amounts withheld as the Jessie Short attorneys make no claims against them.

3. All other eligible recipients are to have 25 percent withheld from their amount due.

Since the Jessie Short attorneys realize that the Settlement Fund included funds that their firms are not entitled to assess, a joint motion to modify the final judgment was filed and in response the judge has ordered certain funds excluded. Only those funds in 25 U.S.C. §1300i (b) (1) (A) and (B) and a portion of one of the funds, 25 U.S.C. § 1300i (b) (1) (F) is to be assessed. Therefore, before the 6.5 percent or 25 percent is calculated for each eligible individual, the proportional amounts from the accounts identified in 25 U.S.C. § 1300i (b) (1) (C), (D), (E), and (G) and that portion of 25 U.S.C. § 1300i (b) (1) (F) that is agreed to by the Department of Justice and the Jessie Short attorneys are to be excluded and not used in the calculation of the amount which is to be withheld from each eligible recipient.

The procedure is first to determine the total amount of the escrow funds at the date of the creation of the Settlement Act Fund account. (see attachment) Based on the information provided by your office this amount was $66,625,800.39. Then the total amount of the excluded moneys is to be determined. These moneys include the following: Proceeds of Klamath River Reservation, J52-562-7056, $75,616.41; Proceeds of Labor -Yurok Indians of Lower Klamath River, J52-562-7153, $16,626.36; Proceeds of Labor-Yurok Indians of Upper Klamath River, J52-562-7154, $218,837.02; and Klamath River Fisheries, No. 5628000001/Fish, $458,705.18.

Funds in Proceeds of Labor-Hoopa Reservation for Hoopa Valley and Yurok Tribes, Hoopa Yurok Settlement Act designation I.b.I.F, J52-575-7256, $14,344,254.75, are derived from both Hoopa as well as Yurok resources. It is necessary to determine the Yurok share of this account. The total amount in this fund is to be multiplied by one half of one percent, the figure which your office determined as the appropriate Yurok share.

The excluded funds are then totaled and equal, $841,505.97. The percentage of these funds is then calculated by dividing the total amount included in the Settlement Act and this amounts to 1.26303 percent. This amount is not subject to the 6.5 percent or 25 percent lien.

Using this percentage the amount to be excluded from the assessment is to be calculated for the $5000, $7500, or $15,000 that was to be paid to the qualified individuals on the Settlement Roll and, pursuant to §1300i3(d) of the Settlement Act, to the Yurok Tribe.

/S/ CAROL A. BACON

Attachment

cc: Sacramento Area Director

Surname/SOL/400 RF/Chrony-440A/ 216

CALCULATION OF YUROK PER CAPITA PAYMENTS

1. Total Funds at time of creation of Settlement Fund Account $66,625,800.39

2 Total Funds derived from Klamath River portion (see below) $841,505.97

3. Percentage of funds derived from Klamath River portion: .0126303

$$\frac{841,506}{66,625,800} = .0126303$$

4: Examples of the amount on which attorney fees are to be calculated

$15,000 - (.0126303 x 15,000) = 14,810.55
$7,500 - (.0126303 x 7,500) = 7,404.27
$5,000 - (.0126303 x 5,000) = 4,936.85

5. Examples of the calculation for the amounts to be withheld from each payment and the amount of payment for the recipient.

For $15,000:	Amount withheld	Payment to recipient
$15,000 - (.25 x 14,810.55	= 3702.64)	= $11,297.36
$15,000 - (.065 x 14,810.55	= 962.69)	= $14,037.31

For $7,500:

$7,500 - (.25 x 7,405.27 = 1851.32) = $5,648.68
$7,500 - (.065 x 7,405.27 = 481.34) = $7,018.66

For $5,000

$5,000 - (.25 x 4936.85 = 1234.21) = $3,765.79
$5,000 - (.065 x 4936.85 = 320.90) = $4679.10

Funds used in calculating Klamath River Funds

C	Proceeds of Klamath River Reservation	75,616.41
D	Proceeds of Labor (Lower Klamath)	16,626.36
E	Proceeds of Labor (Upper Klamath)	218,837.02
G	Klamath River Fisheries	458,705.18
F	Proceeds of Labor (Hoopa and Yurok) ($14,344,254.75 x .005) =	71,721.00
TOTAL		$841,505.97

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

FEB 3 1992

In reply, please address to:
Main Interior, Room 6456

BIA.IA.1154

Memorandum

To: Area Director, Sacramento Area Office

Through: Director, Office of Tribal Services

From: Assistant Solicitor, Branch of General Indian Legal Activities

Subject: Issues raised at organizational meeting of the Yurok Interim Council held November 25, 26, 1991

This is in response to your informal request for an opinion on a number of issues relating to the interpretation of certain provisions of the Hoopa Yurok Settlement Act, Pub. L. 100-580, 102 Stat. 2924, 25 U.S.C. §§ 1300i et seq. These issues were raised at the organizational meeting of the Interim Council of the Yurok Tribe held in Arcata, California, November 25 and 26, 1991. They are as follows: 1) When does the dissolution of the Interim Council occur under 25 U.S.C. § 1300i-8(d)(5). 2) Whether 25 U.S.C. § 1300i-8(d)(2) requires a single resolution waiving claims against the United States, affirming tribal consent to contribution of Yurok Escrow monies to the Settlement Fund, and authorizing the Interim Council to receive grants and enter into contracts for Federal programs. 3) What are the consequences of refusing to enact a resolution waiving claims against the United States and/or filing a claim under 25 U.S.C. § 1300i-11(a) on the Yurok Tribe's ability to organize or form a government. 4). Whether a tribal resolution waiving claims against the United States is required for purposes of conferring the benefits specified in 25 U.S.C. § 1300i-1(c)(4) notwithstanding the expiration of the statute of limitations in 25 U.S.C. § 1300i-11(b)(3). 5) Whether individuals who receive and cash the payment authorized under the Yurok tribal membership option in 25 U.S.C. § 1300i-5(c) are precluded from filing claims against the United States arising out of the provisions of the Settlement Act. We address these issues seriatim.

1. Dissolution of the Interim Council of the Yurok Tribe

Section 9(d)(5) of the Settlement Act, 25 U.S.C. § 1300i-8(d)(5) provides as follows:

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

The structure of this subsection is confusing because the words "such installation" would normally be construed to refer to the installation of the initial tribe governing body. However, to so construe this subsection makes the words "whichever occurs first" meaningless. It is clear from the legislative history that Congress intended the Interim Council to be dissolved with the installation of the initial tribal governing body, or at the end of two years after the installation of the Interim Council, whichever occurs first. As stated in the Senate Report accompanying the legislation:

> Paragraph (5) provides that the Interim Council shall be dissolved upon election of the initial governing body under such constitution when adopted or at the end of two years after their installation, whichever occurs first. S. Rep. 100-564, 100th Cong., 2d Sess. (September 30, 1988) at 27-28.

Therefore, it is clear that the Interim Council's lifespan is two years from the date of its installation on November 25, 1991, unless a tribal governing body is elected before the expiration of the two-year period, whereupon the Interim Council would be dissolved following such election. If a tribal governing body is not elected within this two-year period, the Interim Council would still be dissolved at the end of the two-year period.

2. Number of Tribal Resolutions Required or Permitted under 25 U.S.C. § 1300i-8(d)(2)

Section 9(d)(2) of the Settlement Act, 25 U.S.C. § 1300i-8(d)(2) provides as follows:

> The Interim Council shall have full authority to adopt a resolution:
> (i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this subchapter, and
> (ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this subchapter, and
> (iii) to receive grants from, and enter into contracts for, Federal programs, including those administered by the Secretary and the Secretary of Health and Human Services, with respect to Federal services and benefits for the tribe and its members.

It is our understanding that at the organizational meeting held November 25 and 26, 1991, the Bureau of Indian Affairs (BIA) indicated that it did not want to restrict the Interim Council by requiring a single resolution addressing all three concerns, and preferred a more permissive interpretation of this subsection if possible. The section-by-section analysis of the Senate Report, S. Rep. 100-564, states the following with respect to this subsection:

> Paragraph (2) provides that the Council shall have full authority to secure the benefits of Federal programs for the tribe and its members, including those administered by the Secretary of the Interior and the Secretary of Health and Human Services and shall have authority to execute the necessary waiver of claims against the United States, and consent to allocation of the escrow funds to the Settlement Fund. Id. at 27.

We believe that the Senate Report language indicates that it is unlikely that Congress intended to tie the award of federal contracts and grants to either the waiver of claims or the contribution of escrow funds. Therefore, we conclude that the statutory language does not preclude the BIA from construing this subsection to permit the Interim Council to enact three separate resolutions at different times.[1]

3. Consequences of Refusing to Pass a Resolution Waiving Claims Against the United States and/or Filing a Claim under 25 U.S.C. § 1300i-11(a) on the Yurok Tribe's Ability to Organize

Section 2(c)(4) of the Settlement Act, 25 U.S.C. § 1300i-1(c)(4) provides as follows:

> The --
> (A) apportionment of funds to the Yurok Tribe as provided in sections 1300i-3 and 1300i-6 of this title;
> (B) the land transfers pursuant to paragraph (2);
> (C) the land acquisition authorities in paragraph (3); and
> (D) the organizational authorities of section 1300i-8 of this title shall not be effective unless and until the Interim Council of the Yurok Tribe has adopted a resolution waiving any claim such tribe may have against the United States arising out of the provisions of this subchapter.

---

[1] Although the statutory language could conceivably be interpreted so as to reach the opposite conclusion, the courts have consistently resolved statutory ambiguities in favor of the Indians, following a traditional canon of construction applicable in Indian law. See Montana v. Blackfeet Tribe, 471 U.S. 759, 766 (1985).

It is clear that should the Interim Council file a claim in the U.S. Claims Court on behalf of the Yurok Tribe pursuant to 25 U.S.C. § 1300i-11(a), the same consequences would follow as if it fails to enact a resolution waiving claims under 25 U.S.C. § 1300i-1(c)(4).

We do not believe that the Settlement Act precludes the Yurok Tribe from having a government if it refuses to waive claims against the United States. The Yurok Tribe's failure to waive claims only affects its authority to organize under the Indian Reorganization Act of 1934 (IRA), 48 Stat. 984, 25 U.S.C. § 461 et seq., pursuant to 25 U.S.C. § 1300i-8. Such an option would be foreclosed without the Settlement Act's specific authorization. Indian tribes, however, are free to form tribal governments independently of the IRA which only provides a certain mechanism for organization, and there are numerous federally recognized Indian tribes presently organized outside of the IRA. See Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 (1985). The legislative history supports our interpretation of this provision of the Settlement Act. The Senate Report states the following with respect to the Yurok Tribe's decision to organize under 25 U.S.C. § 1300i-8:

> It is not intended by this section that the Indian Reorganization Act shall provide the only means by which the Yurok Tribe may be organized. Nor does the Committee intend that the Constitution prepared by the drafting committee pursuant to subsection (e) is the only one upon which the Secretary may conduct an election in the future. S. Rep. 100-564, supra, at 28.

Therefore, it is our conclusion that the Yurok Tribe's failure to enact a resolution waiving claims against the United States does not prevent the tribe from having a tribal government. Clearly, the Settlement Act neither limits the Yurok Tribe to a single organizational method, nor does it compel the Yurok Tribe to organize under its authority.

4. The Requirement for a Tribal Resolution Waiving Claims against the United States Independently of the Statute of Limitations in 25 U.S.C. § 1300i-11(b)(3)

The Interim Council asked whether it would still be required to pass a tribal resolution waiving claims against the United States to obtain the benefits of §§ 2, 4, and 7 of the Settlement Act notwithstanding their failure to file a Fifth Amendment taking claim in the U.S. Claims Court before expiration of the statute of limitations. Their argument is that such a resolution would have become moot since any claim would be time-barred and no longer valid.

Although it is true that the Yurok Tribe's failure to file a timely claim against the United States in the U.S. Claims Court under the provisions of 25 U.S.C. § 1300i-11 may bar such a

claim, the statutory requirement for a tribal resolution waiving claims against the United States in 25 U.S.C. § 1300i-1(c)((4) is independent of the running of the statute of limitations. The statute simply does not authorize the Interim Council to dispense with the resolution requirement in order to be afforded the benefits conferred under specified sections of the Settlement Act for any reason, including the expiration of the statute of limitations in 25 U.S.C. § 1300i-11(b)(3). In addition, courts have held that a statute of limitations is subject to waiver, estoppel and equitable tolling under certain circumstances. See Jarrell v. United States Postal Service, 753 F.2d 1088, 1091 (D.C. Cir. 1985). Therefore, it is conceivable that the Yurok Tribe could file a claim against the United States in the U.S. Claims Court after the expiration of the § 1300i-11(b)(3) period on March 12, 1992, and argue that the court should allow the claim to be litigated notwithstanding the running of the limitations period. Under these circumstances, it would be imprudent to permit the fund transfers, land transfers, land acquisition authorities, and organizational authorities to become effective without securing a waiver resolution from the Interim Council.

5. Effect of Cashing the Payment Authorized under the Yurok Tribal Membership Option on an Individual's Ability to File a Claim under 25 U.S.C. § 1300i-11(a)

It is our position that those individuals who affirmatively elected the Yurok tribal membership option, 25 U.S.C. § 1300i-5(c), effectively waived their right to file a claim under 25 U.S.C. § 1300i-11(a). Thus, their cashing the check they received for the payment authorized under the Yurok tribal membership option has no significance with respect to their right to file a claim under 25 U.S.C. § 1300i-11(a). This conclusion is derived from the statutory language itself. Subsection 25 U.S.C. § 1300i-5(c)(4) provides as follows:

> Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, appertaining to, the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund. Any such person shall also be deemed to have granted to members of the Interim Council established under section 1300i-8 of this title an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this subchapter, and granting tribal consent as provided in section 1300i-8(d)(2) of this title.

As stated in the Senate Report, S. Rep. 100-564, "[this paragraph ...[does] not contemplate that such persons now have any interest, but that, to the extent that they do, it will be automatically relinquished upon an election of one of the options." Id at 23-24.

However, any individual who did not choose an option within the authorized time limit, and who subsequently refuses to accept the payment by refusing to cash the check for it, will not be deemed to have given up any claim he or she may have as a result of the partition, and will have preserved his or her legal right to challenge the provisions of the Act. This interpretation of the Settlement Act is bolstered by the Senate Report language addressing this issue:

> The Committee believes it is important that no person on the Hoopa-Yurok Settlement Roll lose benefits and privileges flowing from Yurok tribal membership and connection with the Yurok Reservation by virtue of inadvertence, failure to receive actual notice, accident or other unforeseeable events. Accordingly, persons failing to act timely will be deemed to have elected Yurok tribal membership if they accept and cash the check representing the payment authorized by subsection (c).
>
> The Committee believes that acceptance of the payment also establishes the consensual release of rights that accompanies the election. On the other hand, one who fails or refuses to make an election and refuses to accept the payment authorized by subsection (c) may not be deemed to have granted a release or to have granted a proxy to the Yurok Interim Council. Thus, refusing to accept the payment is one method by which persons who do not wish to join the Yurok Tribe may avoid becoming members. S. Rep. 100-564, supra, at 23.

Thus, in order for a Yurok enrollee who made no election to avoid the preclusion of claims effect of the Yurok tribal membership option by default, refusal to accept the payment is critical.[2]

In a Notice published on May 17, 1991, in the Federal Register, 56 F.R. 22998, the BIA notified all potential claimants except the Hoopa Valley Tribe and the Yurok Tribe that claims under Section 14 of the Settlement Act, 25 U.S.C. § 1300i-11(a), must be filed by September 16, 1991. As of that date, there were two claims filed in the U.S. Claims Court. The first one was filed by the Karuk Tribe in Karuk Tribe of California v. U.S., No. 90-3993-L, U.S. Cl. Ct; and the second one was filed by 32 individuals as "members of, and on behalf of, an identifiable group of American Indians," in Ammon v. U.S., No. 91-1432 L,

[2]Mere receipt of the check is not enough to trigger the waiver of claims or grant a release or grant a proxy to the Yurok Interim Council. The check must be both accepted and cashed.

U.S. Cl. Ct. It follows from our interpretation of the relevant statutory provisions that any individual who accepts and cashes the check representing the payment authorized under 25 U.S.C. § 1300i-5(c) would be precluded from recovering under Ammon.[3]

Duard R. Barnes

[3]Under our analysis, those individuals who affirmatively selected the Yurok membership option are automatically barred from recovering under Ammon. Therefore, recovery under Ammon, if any, is limited to those individuals for whom the Yurok membership option was selected by default and who subsequently refuse to cash the authorized payment.

IN THE UNITED STATES CLAIMS COURT

YUROK INDIAN TRIBE

v.

UNITED STATES OF AMERICA

No. 92-173 L

JURISDICTION

1. The Claims Court has jurisdiction of this action pursuant to 28 U.S.C. §§1491 and/or 1505, in that plaintiff, a federally-recognized Indian Tribe, asserts claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the Hoopa-Yurok Settlement Act of 1988, 102 Stat. 2924, Pub. Law No. 100-580, 25 U.S.C. §1300i, et seq. (hereinafter, "the Act").

PLAINTIFF

2. Plaintiff is the Yurok Indian Tribe, an American Indian Tribe recognized by the United States of America, located in the State of California and having a governing body duly recognized by the Secretary of the Interior. The Yurok Tribe sues on its own behalf, and upon behalf of its members.

FACTS

3. By the Act of April 8, 1864, 13 Stat. 39, Congress authorized the President, inter alia, to set apart not exceeding four tracts of land within the State of California for the purposes of Indian reservations, at least one of which was to be

in the State's northern district, of such extent as deemed suitable for the accommodation of all of the Indians of the State.

4. On February 18, 1865, the authorized representative of the Secretary of the Interior, the Superintendent of Indian Affairs for the State of California, located an Indian Reservation on a tract of land twelve miles square, described in general terms as beginning at a point where the Trinity River flows into Hoopa Valley and following down said stream, extending six miles on each side thereof, to its junction with the Klamath River. This tract, comprising approximately 89,572 acres, is known and will be referred to herein as "the Square."

5. By an Executive Order dated June 23, 1876, President Grant withdrew the Square from public sale and set it apart for Indian purposes as one of the permanent Indian Reservations authorized by the Act of April 8, 1864, 13 Stats. 39. The Yurok Tribe was one of the Tribes which the President intended should benefit from the establishment of the Square as a Reservation.

6. The setting apart of the Square as a Reservation reserved to the Indian beneficiaries thereof not only beneficial title to the lands, but also the right to hunt, fish, gather and otherwise use and benefit from all of the natural resources and other assets of the Reservation.

7. From its location in 1865 until the present, the Square has been recognized by the federal government as an existing Indian Reservation; its original boundaries were defined by

metes and bounds in President Grant's June 23, 1876 Executive Order.

8. By an Executive Order issued on October 16, 1891, President Harrison extended the boundaries of the Reservation comprising the Square to encompass, "... a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended."

9. The purpose of the October 16, 1891 Executive Order described in Paragraph 8 above was to create an enlarged, single, integrated reservation incorporating without distinction the added and original tracts upon which the Indians populating the newly-added lands should reside on an equal footing with the Indians theretofore resident upon it. Yurok Indians predominated in the lands added to the Reservation by the above-described Executive Order; however, a substantial number of Yurok Indians have resided and continue to reside on the Square itself, and the Indians of the Yurok Tribe have been recognized as being entitled to rights on the Reservation at least equal to those of the Indians of the Hoopa Valley Tribe.

10. The Hoopa-Yurok Settlement Act, P.L. 100-580, 25 U.S.C. §1300i, et seq. (hereinafter, "the Act"), authorized the partition of the Hoopa Valley Reservation and its resources into

separate Yurok and Hoopa Reservations solely upon the consent of the Hoopa Valley Tribe. As partitioned under the Act, the Hoopa Valley Reservation was to consist of the Hoopa Square, the approximately 87,000 acres of unallotted trust land within the Square which would be held in trust by the United States for the exclusive use and benefit of the Hoopa Valley Tribe. As partitioned under the Act, the Yurok Reservation was to consist of the Extension, the approximately 3,500 acres of unallotted trust lands within the Extension which would be held in trust by the United States for the exclusive use and benefit of the Yurok Tribe.

11. The Act created a "Hoopa-Yurok Settlement Fund" consisting of money derived from several different sources, including timber sales on the Square. The money in this fund was to be distributed to the Hoopa Valley Tribe, to persons choosing to join the Yurok Tribe, to persons choosing to join neither the Hoopa Valley nor the Yurok Tribe, and to the Yurok Tribe.

12. Partition of the Reservation under the Act was to extinguish all rights in the unallotted trust lands and other assets of the Square possessed by individual Indians of the Reservation who were not enrolled members of the Hoopa Valley Tribe.

13. The Act conditioned the Yurok Tribe's receipt of financial and other benefits under the Act upon the Yurok Tribe's disclaimer of any rights in the unallotted lands, resources and other assets of the Square, as well as a waiver of any claims

against the United States arising out of the Act.

14. The Hoopa Valley Tribe consented to the partition of the Reservation as contemplated by the Act, and the Reservation was partitioned in the manner authorized by the Act. By reason of that partition, the United States now recognizes the Hoopa Valley Tribe as the exclusive beneficiary of the unallotted trust lands and other assets and natural resources of the Square, and has excluded the Yurok Tribe, the members of the Yurok Tribe and all other Indians of the Reservation who are not enrolled in the Hoopa Valley Tribe from participating in the benefits of such assets and resources.

FIRST CLAIM FOR RELIEF

Uncompensated Taking of Property Rights in the Square

15. Plaintiff hereby realleges each of the allegations contained in paragraphs 1-14 above, and by this reference incorporates each such allegation as if set forth in full.

16. Prior to the partition of the Reservation pursuant to the Act, the Yurok Tribe had no fewer or less valuable compensable property rights in the unallotted trust lands and the natural resources of the Square than did the Hoopa Valley Tribe.

17. By reason of its compensable property rights in the unallotted trust land and natural resources of the Square, the Yurok Tribe was and is entitled to just compensation for the diminishment or extinguishment of those rights.

18. The Hoopa-Yurok Settlement Act extinguished or diminished the Yurok Tribe's compensable property rights in the

unallotted trust land and natural resources of the Square without payment of just compensation.

19. The United States is liable to the Yurok Tribe in an amount equal to the value of the Yurok Tribe's compensable property rights in the unallotted trust land and natural resources of the Square which were diminished or extinguished by the Act and for which just compensation has not been paid, plus interest from the date of taking, said amount to be proven at trial.

WHEREFORE, plaintiff prays that the Court enter judgment awarding the Yurok Tribe just compensation for the taking of its compensable property rights in the Hoopa Valley Indian Reservation in an amount corresponding to proof, plus interest from the date of taking, and that the Court grant such other relief, including an award of reasonable attorneys' fees, expenses and costs, as it may deem just and appropriate.

Dated: March 10, 1992

GEORGE FORMAN
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GARY P. HARRINGTON
Of Counsel

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 16 1992

Honorable Dale Risling, Sr.
Chairman, Hoopa Valley
Tribal Council
P.O. Box 1348
Hoopa, California 95546

Dear Chairman Risling:

Thank you for your letter of March 12, 1992, concerning the Yurok Interim Council's decision to file Yurok Tribe v. United States in the U.S. Claims Court.

The Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-8(d)(2)(i), authorizes the Interim Council to adopt a resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Settlement Act. Section 2(c)(4) of the Settlement Act, 25 U.S.C. § 1300i-1(c)(4), spells out the consequences to the Yurok Tribe of refusing to adopt such a resolution. It provides as follows:

> The --
>
> (A) apportionment of funds to the Yurok Tribe as provided in sections 1300i-3 and 1300i-6 of this title;
>
> (B) the land transfers pursuant to paragraph (2);
>
> (C) the land acquisition authorities in paragraph (3); and
>
> (D) the organizational authorities of section 1300i-8 of this title
>
> shall not be effective unless and until the Interim Council of the Yurok Tribe has adopted a resolution waiving any claim such tribe may have against the United States arising out of the provisions of this subchapter.

It is clear that the Interim Council's decision to file the above-referenced claim in the U.S. Claims Court means that the same consequences follow as if it fails to enact a resolution waiving claims against the United States. Therefore, unless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will neither have access to its portion of the Settlement Fund, nor will title to all national forest system lands within the Yurok Reservation, and to the portion of the Yurok Experimental Forest described in the Settlement Act, be taken in trust for the Yurok Tribe. In addition, the Secretary will be unable to proceed with acquisition of any lands or interests in land for the Yurok Tribe, or with spending any appropriated funds for this purpose.

At this time, we cannot grant your request to establish Hoopa tribal access to the funds that remain in the Hoopa-Yurok Settlement Fund as a result of the filing of Yurok Tribe v. United States. We have not made a final determination concerning the legal status of these funds in the absence of a Yurok tribal resolution waiving claims against the United States, and this issue will be referred to the Solicitor's Office for an opinion. We will advise you of our determination once the legal evaluation is completed.

Please let us know if we can be of any further assistance in this matter.

Sincerely,

Assistant Secretary - Indian Affairs

APR 15 1992

Honorable Richard Haberman
Chairman, Interim Council
of the Yurok Tribe
517 Third, Suite 21
Eureka, California 95501

Dear Chairman Haberman:

Thank you for your letter of March 16, 1992, enclosing your submitted testimony before the Subcommittee on Interior and Related Agencies of the Appropriations Committee, the complaint in Yurok Indian Tribe v. United States, and a proposed amendment extending the statute of limitations in Section 14 of the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i-11(b)(3).

Although we fully understand your reasons for filing a claim in the U.S. Claims Court and for seeking to amend the Hoopa-Yurok Settlement Act to extend the limitations period in Section 14 of the Settlement Act, as you are well aware, the Department of the Interior cannot commit the Administration to support any legislative proposal which has yet to be formally introduced.

We agree with your statement that it is inappropriate for any tribal entity other than the Yurok Interim Council to involve itself in the internal affairs of the Yurok Tribe, and assure you that the Bureau of Indian Affairs will not tolerate any pressure to foster outside interests at the expense of those of the Yurok Tribe.

We also agree with your assessment of the consequences to the Yurok Tribe of failing to pass an ordinance waiving claims against the United States, and filing a claim in the U.S. Claims Court. Unless and until the Interim Council waives the Tribe's claims and dismisses its case against the United States, it will neither have access to its portion of the Settlement Fund, nor will title to all national forest system lands within the Yurok Reservation, and to the portion of the Yurok Experimental Forest described in the Settlement Act, be taken in trust for the Yurok Tribe. In addition, the Secretary will be unable to proceed with acquisition of any lands or interests in land for the Yurok Tribe, or with spending any appropriated funds for this purpose. Finally, the Yurok Tribe will be unable to organize under the Indian Reorganization Act (IRA). However, we agree with you that your decision to file a claim in the U.S. Claims Court does not

affect your access to appropriated funds which may be provided for the Interim Council's operations, grants and contracts, and the economic planning activity.[1] In addition, as stated in the Assistant Solicitor's opinion dated February 3, 1992, the Settlement Act does not restrict the Tribe to organizing under the IRA, and you may therefore organize outside of its provisions.

Finally, we have not made any final determination concerning the legal status of the funds that remain in the Hoopa-Yurok Settlement Fund, and what will happen to them in the absence of a Yurok tribal resolution waiving claims against the United States. We certainly have not agreed to allow the Hoopa Valley Tribe to access these funds. This issue will be referred to the Solicitor's Office for an opinion, and we will advise you of our determination once the legal evaluation is completed.

Please let us know if we can be of any further assistance in this matter.

Sincerely,

(sgd) William D. Bettenberg

Acting Assistant Secretary - Indian Affairs

cc: Sacramento Area Director
Supt., Northern California Agency

[1]The Settlement Act does require the adoption of a resolution "to receive grants from, and enter into conracts for, Federal programs including those administered by the Secretary and the Secretary of Health and Human Services, with respect to Federal services and benefits for the tribe and its members." 25 U.S.C. § 1300i-8 (d)(2)(iii). As stated in the Assistant Solicitor's opinion of February 3, 1992, such a resolution may be adopted independently of the resolution waiving claims against the United States.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

NOV 2 3 1993

Ms. Susie L. Long
Vice Chairman, Yurok Interim Council
517 Third, Suite 18
Eureka, California 95501

Dear Ms. Long:

Thank you for your letter of October 26, 1993, informing us of the decision of the Yurok Tribe (Tribe) to contract with an independent C.P.A. firm to conduct and certify the ratification election for the proposed Constitution of the Yurok Tribe, and forwarding us a copy of the draft constitution, dated October 22, 1993.

Please be assured of our support in your transition to a fully operational self-governing Tribe. We are prepared to recognize the proposed Constitution of the Yurok Tribe as the Tribe's governing document if such document is duly ratified by the membership of the Tribe in an election after adequate notice and a fair opportunity for all tribal members to participate. In addition, following ratification of the proposed constitution by the Yurok membership, and pursuant to Article XIV of the proposed Constitution of the Yurok Tribe, we will continue to recognize the current members of the Yurok Interim Council as the lawful representatives of the Tribe pending the election and installation of the Yurok Tribal Council.

However, it should be clearly understood that after November 25, 1993, the current members of the Yurok Interim Council will no longer derive their authority to represent the Tribe from powers vested in the Interim Council by the Hoopa Yurok Settlement Act, but from the newly adopted Constitution of the Yurok Tribe. Under section 9(d) of the Act, the Interim Council created under the authority of the Act will be dissolved on November 25, 1993. In that respect, the authority vested in the Interim Council by section 2(c)(4) of the Act to waive claims against the United States will expire on November 25, 1993. Any subsequent waiver of claims by the Tribe will be legally insufficient to effectuate the apportionment of funds to the Tribe as provided in sections 4 and 7 of the Act, the land transfers and land acquisition authorities under section 2 of the Act, or the organizational authorities of section 9 of the Act.

We look forward to working with you and offer our assistance in helping the Tribe organize and exercise its powers of self-government through the establishment of a tribal governmental structure for the Tribe.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

APR 0 4 1994

Ms. Susie L. Long
Chair, Interim Tribal Council
Yurok Tribe
517 Third, Suite 18
Eureka, California 95501

Dear Ms. Long:

Thank you for your letter of November 24, 1993, transmitting Resolution No. 93-61, approved November 24, 1993, by the Yurok Tribe Interim Council, regarding the waiver of claims against the United States by the Yurok Tribe arising out of the provisions of the Hoopa-Yurok Settlement Act, 25 U.S.C. § 1300i et seq. For the following reasons, we conclude that Resolution No. 93-61 is not a resolution "waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act," within the meaning of 25 U.S.C. § 1300i-1(c)(4) or 25 U.S.C. § 1300i-8(d)(2).

Three provisions of the Hoopa-Yurok Settlement Act are relevant. Section 9(d)(2), 25 U.S.C. § 1300i-8(d)(2), provides in part:

> (2) The Interim Council shall have full authority to adopt a resolution -
>
> (i) waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act, and
>
> (ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this Act ...

Substantially identical language appears in Section 2(c)(4), 25 U.S.C. § 1300i-1(c)(4). In addition, Section 14, 25 U.S.C. § 1300i-11, provides in part:

> (a) Any claim challenging the partition of the joint reservation pursuant to Section 2 or any other provision of this Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant 1 to section 1491 or 1505 of Title 28, in the United States Court of Federal Claims ...

(b) ...

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

It is clear to us that the waiver referred to in the above-referenced provisions of the Hoopa-Yurok Settlement Act is a waiver of claims that would challenge the partition of the Joint Reservation or another provision of the Settlement Act as having effected a taking or as otherwise having provided inadequate compensation.

Among other things, Resolution No. 93-61 recites that:

> [T]he Interim Council believes that the Act's purported partition of the tribal, communal or unallotted land, property, resources, or rights within, or appertaining to the Hoopa Valley Reservation as between the Hoopa and Yurok Tribes was effected without any good-faith attempt to define, quantify or value the respective rights therein of the Indians of the Reservation or the Hoopa and Yurok Tribes, and so grossly and disproportionately favored the interest of the Hoopa Tribe over those of the Yurok Tribe as to constitute an act of confiscation rather than guardianship; and
>
> [T]he Interim Council does not believe that the Constitution of the United States would allow the federal government simply to confiscate vested Tribal or individual property rights in Reservation lands, resources or other assets without just compensation, or to condition participation in or receipt of federal benefits or programs and enjoyment of tribal property, assets and resources upon acquiescence in an unconstitutional statute.

Following the recitals, the Yurok Interim Council resolved as follows:

> 1. To the extent [to] which the Hoopa-Yurok Settlement Act is not violative of the rights of the Yurok Tribe or its members under the Constitution of the United States, or has not effected a taking without just compensation of vested Tribal or individual resources, or rights within, or appertaining to the Hoopa Valley Reservation, the Yurok Tribe hereby waives any claim which said Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act;

> 2. To the extent [to] which the determination of the Yurok Tribe's share of the Escrow monies defined in the Hoopa-Yurok Settlement Act has not deprived the Tribe or its members of rights secured under the Constitution of the United States, the Yurok [Tribe] hereby affirms its consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in the Hoopa-Yurok Settlement Act.

It is quite clear that Resolution No. 93-61 specifically preserves, rather than waives, the Yurok tribe's taking claim against the United States. Indeed, the Yurok Tribe has filed a claim in the U.S. Court of Federal Claims asserting that the Hoopa-Yurok Settlement Act effected a taking under the Fifth Amendment of the United States Constitution. See Yurok Indian Tribe v. United States, No. 92-173-L. On February 3, 1992, the Assistant Solicitor, Branch of General Indian Legal Activities, issued a memorandum to the Area Director, Sacramento Area Office, regarding issues raised at the organizational meeting of the Yurok Interim Council held November 25, 26, 1991. That memorandum discussed several aspects of the claim waiver resolution issue. The Assistant Solicitor stated:

> It is clear that should the Interim Council file a claim in the U.S. Claims Court on behalf of the Yurok Tribe pursuant to 25 U.S.C. § 1300i-11(a), the same consequences would follow as if it fails to enact a resolution waiving claims under 25 U.S.C. § 1300i-1(c)(4).

Accordingly, it follows that Resolution No. 93-61 is not a resolution "waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act," within the meaning of 25 U.S.C. § 1300-1(c)(4) or 25 U.S.C. § 1300-8(d)(2). Our conclusion is consistent with your statement to the Assistant Secretary - Indian Affairs, in a letter dated August 20, 1993, that the Interim Council would not provide any such waiver during its term.

Our determination that Resolution No. 93-61 fails to meet the requirements of 25 U.S.C. § 1300-1(c)(4) means that the Yurok Tribe will be unable to enjoy the benefits conferred under Section 2 and 9 of the Hoopa-Yurok Settlement Act upon the passage of a legally sufficient waiver of claims, including the Yurok Tribe's share of the Settlement Fund under Sections 4 and 7 of the Act, the

$5 million appropriated under the Snyder Act for the purpose of acquiring lands within or outside the Yurok Reservation, ownership of all Six Rivers National Forest lands within the boundaries of the old Klamath River Reservation or the Connecting Strip, and ownership of and reservation status for the Yurok Experimental Forest lands and buildings.

Sincerely,

/S/ Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

cc: Area Director, Sacramento Area Office
Superintendent, Northern California Agency

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

3/14/95

Honorable Susie L. Long
Chairperson
Yurok Tribal Council
517 Third, Suite 18
Eureka, California 95501

Dear Chairperson Long:

This is in response to the Yurok Tribal Council's letter of August 30, 1994, requesting reconsideration and clarification of certain aspects of our decision of April 4, 1994, that Resolution 93-61, adopted November 24, 1993, by the Interim Council of the Yurok Tribe (Tribe), is not a resolution "waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act (Act)," within the meaning of 25 U.S.C. § 1300i-1(c)(4) or 25 U.S.C. § 1300i-8(d)(2).

Having considered the arguments presented in your August 30, 1994, letter, we reaffirm our decision of April 4, 1994. In our opinion, there can be no question that the waiver of claims against the United States required under 25 U.S.C. § 1300i-1(c)(4) and 25 U.S.C. § 1300i-8(d)(2) must necessarily include a waiver of any taking claim the Tribe may have against the United States arising out of the provisions of the Act. In fact, as the legislative history of the Act indicates, potential taking claims against the United States were precisely the type of claims Congress was most concerned about. That is why, in our opinion, Congress made the waiver of such taking claims by both the Hoopa Valley and Yurok Indian Tribes the essential elements to triggering key provisions of the Act.

In your August 30, 1994, letter, you argue that construing the Act's requirement of a Yurok tribal waiver of claims as extending even to claims for lack of adequate compensation clearly would violate the doctrine of unconstitutional conditions. As a matter of law, we do not believe that the statutory scheme in the Act, requiring a waiver of claims including any taking claim, against the United States in exchange for valuable property rights, triggers the doctrine of unconstitutional conditions. However, even assuming, for the sake of argument, that this doctrine could be invoked, we would not be in a position to cure this potential defect by ignoring what we believe to be the clear requirements of the Act.

In addition, it is our opinion that the statutorily required waiver of taking claims against the United States in exchange for valuable property benefits is rationally tied to the Act's purpose to resolve long standing litigation between the United States and various Indian interests and to promote effective management of the Hoopa Valley and Yurok Indian reservations by their

respective tribal governments. As such, the statutory requirements in the Act meet the tied rationally test used by the courts in reviewing the constitutionality of Indian legislation. See e.g., Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73 (1977).

You also seek clarification of our April 4, 1994, letter with respect to the Tribe's option to cure the perceived deficiencies in Resolution 93-61 by subsequent tribal action or the final resolution of the Tribe's lawsuit in the U.S. Court of Federal Claims. It is our position that the Yurok Tribal Council could cure the deficiencies in the Resolution if it is so desired. As you point out in your letter, under tribal law the authority of the former Interim Council was transferred to the Tribal Council, and with that transfer goes the authority to amend Resolution 93-61, albeit subject to a referendum of the Yurok membership. The exercise of this authority by the Tribal Council is consistent with the provisions of the Act.

An amendment to Resolution 93-61 to cure the deficiencies relating to the waiver of claims against the United States, however, must be accompanied by a dismissal with prejudice of the Tribe's taking claim currently being litigated before the U.S. Court of Federal Claims in Yurok Tribe v. United States. In our opinion, the Tribe's decision to prosecute its claim in this litigation is inconsistent with the waiver of claims required under the Act. Were there to be a settlement of the lawsuit, it would have to be accomplished before the case has proceeded to a determination on the merits. This is necessary both to save time, energy and money on costly legal proceedings and because a settlement will not be possible if the Court has ruled on any portion of the merits.

Therefore, I propose that you immediately seek a stay of proceedings in Yurok Tribe v. United States for at least one hundred and twenty days in order to conduct your referendum of the Yurok membership, undertake settlement negotiations and to permit you to amend Resolution 93-61 to cure existing deficiencies. In this regard, members of the Bureau of Indian Affairs staff and the Office of the Solicitor staff will be made available to you and your attorneys for purposes of providing technical assistance with respect to what the Government believes must be included in the tribal resolution in order for the Tribe to obtain the benefits available under Sections 2 and 9 of the Act.

Finally, as requested in your letter, please find enclosed a copy of the February 3, 1992, memorandum from the Assistant Solicitor, Branch of General Indian Legal Activities, to the Bureau of Indian Affairs' Sacramento Area Director. It is our sincere hope that we can resolve this matter to our mutual satisfaction.

Sincerely,

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 2002

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Pursuant to Section 14(c) of the Hoopa-Yurok Settlement Act, Public Law 100-580, I respectfully submit the attached report. The Report includes a general history of the Hoopa-Yurok Settlement Act, and recommendations of the Department in this regard.

The Act requires that a "Report to Congress" be submitted, following the resolution of any claims brought against the United States which would challenge the constitutionality of the Act. After nearly a decade of litigation on the matter, claims filed by the Yurok Tribe of California, were decided earlier this year in favor of the United States. The conclusion of this litigation now triggers the requirement of the Act that this "report" be submitted to Congress. These matters are discussed more fully within the enclosed "report."

Should you have further questions on this matter, please feel free to contact me.

Sincerely,

Neal A. McCaleb

Assistant Secretary - Indian Affairs

Enclosure

REPORT TO CONGRESS

HOOPA-YUROK

Pursuant TO Section 14(c), Public Law 100-580

Submitted by the Secretary of the Interior
March 2002

REPORT TO CONGRESS
HOOPA-YUROK, Pursuant to Section 14(c) Public Law 100-580
Submitted by the Secretary of the Interior, February 2002

TABLE OF CONTENTS:

Introduction

This report is submitted pursuant to Section 14(c) of the Hoopa-Yurok Settlement Act of 1988 (Public Law 100-580, October 31, 1988) ("Act"). The major purpose of the Act was to establish definitive boundaries for the Hoopa Valley Reservation and the Yurok Reservation. Section14(c) of the Act directs the Secretary of the Interior to prepare and submit to Congress a report describing the final decision in any claim brought pursuant to subsection Section 14(b) against the United States, its officers, agencies, or instrumentalities. The Act further directs the Secretary to include within the report any recommendations of the Secretary for action by Congress. The Act provides that the Secretary shall submit the report to Congress within 180 days of the final judgment of any claim brought pursuant to the Act. Subsequent to the passage of the Act, the Yurok Tribe filed a "takings claim" against the United States. The Yurok claim was initially denied by the United States Court of Federal Claims, and was later denied a Petition for Writ of Certiorari by the U.S. Supreme Court on March 26, 2001.

History

In August of 1988, Senator Cranston introduced S. 2723, a bill to partition certain reservation lands between the Hoopa Valley Indian Tribe and the Yurok Tribe in the northern California. Introduction of the legislation followed a long history of contention and confusion surrounding the establishment and boundaries of the Hoopa Valley Reservation, created in 1891 by an executive order of President Harrison("1891 Reservation"). The 1891 Reservation included areas of land inhabited primarily by Yuroks, areas of land inhabited primarily by Hoopas, and a 25-mile strip of land that connected the two areas. The Hoopa-Yurok Settlement Act was enacted with the primary objective of providing finality and clarity to the contested boundary issue.

The Act concluded that no constitutionally protected rights had vested in any tribe or individual, to the communal lands and other resources of the 1891 Reservation, and provided for a fair and equitable resolution of disputes relating to ownership and management of the 1891 Reservation. Pursuant to and in accordance with the Act the 1891 Reservation was partitioned between the Hoopa Valley Tribe and the Yurok Tribe. The section of the 1891 Reservation known as "the Square" was established as the Hoopa Valley Reservation, and the section known as "the Extension" was established as the Yurok Reservation. The Act also created a Settlement Fund initially comprised of funds derived from economic activity occurring on the 1891 Hoopa Valley Reservation and supplemented by additional funds appropriated by Congress. Particular benefits of the Act, i.e., the provisions related to the partitioning of the Reservation, potential expansion of the newly formed reservations, and participation in the Settlement Fund, were conditioned upon the tribes adopting individual tribal resolution's granting their consent to the partition of the 1891 Reservation and waiving potential claims the tribes may have against the United States.

Subsequent to enactment of the Act, the Hoopa Valley Tribe executed and adopted such a resolution. The Yurok Tribe executed what they have described as a "conditional waiver" which they adopted by resolution.

Yurok "Conditional Waiver"

In November of 1994, the Yurok Tribe submitted documentation to the Department concerning the claims waiver requirement of the Act. This material included Tribal Resolution No. 93-61, which purported to waive claims of the Tribe pursuant to and in accordance with the Act. The Resolution states in relevant part, "[T]o the extent which the Hoopa-Yurok Settlement Act is not violative of the rights of the Yurok Tribe or its members under the Constitution of the United States, or has not effected a taking without just compensation of vested Tribal or individual resources, or rights within, or appertaining to the Hoopa Valley Reservation, the Yurok Tribe hereby waives any claim which said Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act." In a letter dated April 4, 1994, it was communicated to the Yurok Tribe by Assistant Secretary for Indian Affairs, Ada E. Deer, that Resolution No. 93-61 did not effectively waive any Tribal claims as required by the Act, but in fact acted to preserve any such claims.

Entitlement to the Hoopa-Yurok Settlement Fund/Benefits of the Act

In 1988 the Hoopa Valley Tribe executed a waiver of claims, pursuant to the Act, and as a result, received their portion of the benefits as enumerated within the Act. Accordingly, it is the position of the Department that the Hoopa Valley Tribe is not entitled any further portion of funds or benefits under the existing Act.

In 1993, the Yurok Tribe submitted to the Secretary a tribal resolution which according to the tribe, purports to waive potential claims against the United States as required within the Act. As previously stated, the Department responded to Yurok submission with a letter stating that the Department could and would not accept the resolution as a valid waiver within the confines of the Act. The Yurok Tribe subsequently filed a "takings" claim, *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Fed. Cl.), *Karuk Tribe of California v. United States*, 28 Fed. Cl. 694 (1993), *Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (Aug. 6, 1998), and *Karuk Tribe of California v. Ammon*, 209 F. 3d 1366 (Fed. Cir. 2000), that lasted nearly a decade. In briefings before the U.S. Supreme Court, the Yurok claimed that this was, "the most important Indian-lands takings case to come before the courts in this generation". Possible exposure to the U.S. Treasury was estimated close to $2 billion. The question for the Court was whether the Yuroks had a compensable interest in the 1891 Reservation under the 5th Amendment. In 1864, Congress had authorized the President, "at his discretion", to set apart land, "to be retained by the United States for purposes of Indian Reservations" (Act of 1864, 13

Stat. 39). Both trial and appellate courts held, in two-to-one decisions, that the executive order that created the reservation allowed permissive, not permanent, occupation. The U.S. Supreme Court denied certiorari. Accordingly, it is the position of the Department that the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act.

Following a request from the Department, each of the interested tribes submitted their written position regarding future actions of the Department with respect to the Settlement Fund, and the Section 14(c) "Report to Congress", required under the Act.The Department has consulted tribes on this report and reviewed information describing both the Hoopa and Yurok Tribes submitted as appendices to this report. Also, attached as appendices to this report, is the historical account information and supplemental present earning potential of the fund.

Recommendations of the Department

Notwithstanding the factual legal standing regarding tribal entitlement to the settlement fund under the existing Act, the Department recognizes that a financial and economic need currently exists within both Tribes and their associated reservations. The presence and extent of this need, combined with the historical difficulties in the administration of the provisions of the Act, make predominant the necessity to take further measures to accomplish the original intent of the Act. Further, it is the opinion of the Department that to withhold funds/benefits of the Act in their entirety, or to allow any accrued funds to revert to the Treasury, would not be an effective administration of the overall intent of Act and would, in effect be in direct opposition to the spirit of the Act. In this regard, it is the opinion of the Department that in addition to partitioning the 1891 Reservation, Congress intended the Act to provide the respective tribes and their reservations with the means to acquire a degree of financial and economic benefit and independence which would allow each tribe to prosper in the years to come.

Therefore, it is the recommendation of the Department that:

I. No additional funds be added to the current HYSA Settlement Fund;

II. Funds comprising the current HYSA Settlement Fund would not revert to the general fund of the Treasury, but would be retained in trust account status by the Department pending future developments;

III. There would be no general "distribution" of the HYSA Settlement Fund dollars to any particular tribe, tribal entity, or individual. But rather, the Fund dollars would be administered for the mutual benefit of both the Hoopa Valley and Yurok tribes, and their respective reservations, taking into consideration benefits either tribe may have heretofore received from the HYSA Settlement Fund;

IV. That Congress in coordination with the Department, and following consultation with the Hoopa and Yurok Tribes, fashion a mechanism for the future administration of the HYSA Settlement Fund;

V. That Congress, in order to accomplish the underlying objective of the HYSA, resolving any future issue of entitlement, give serious consideration to the establishment of one or more new Act(s) that provide the Secretary with all necessary authority to establish two separate permanent Fund(s) with the balance of the current HYSA Fund, for the benefit of the Hoopa and Yurok Tribes in such a manner as to fulfill the intent of the original Act in full measure.

APPENDIX:

I. Financial information on Hoopa-Yurok Settlement Fund
II. Informational submittal of Yurok Tribe
III. Informational submittal of Hoopa Tribe

FINANCIAL INFORMATONAL SHEET – "HYSA" FUND

The Hoopa/Yurok Settlement Fund was established in 1988, pursuant to Public Law 100-580, the Hoopa-Yurok Settlement Act.
The Act was intended to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Tribe, and to clarify the use of timber proceeds from the Hoopa Valley Reservation established originally in 1864.
Recognizing the Federal role in the creating of the problems then associated with the Hoopa Valley Reservation, the Act authorized the appropriation of $10,000,000 in federal funds, to be added to the corpus of the HYSA Fund.
The remainder of the settlement fund was made up of funds held as "Escrow funds" by the federal government, which were derived from the use/resources of the "joint reservation". These funds were held by the Secretary in accounts benefiting both the Hoopa and Yurok tribes, individually.
The Act was intended to settle any dispute over any/all such "Escrow funds".
The original principal balance of the fund was $66,978,335.93

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
OFFICE OF TRUST FUNDS MANAGEMENT
505 MARQUETTE N.W. SUITE 700
ALBUQUERQUE, NEW MEXICO 87102

IN REPLY REFER TO:

ASST A
ASST AD ADMIN
ROUT
RESPO
DUE DATE
MEMO
TELE OTHER

AUG 22 1991

Memorandum

To: Area Director, Sacramento Area Office

From: Director, Office of Trust Funds Management

Subject: Distribution of funds awarded the Hoopas and Yuroks under the Hoopa-Yurok Settlement Act

Effective April 12, 1991, the distribution of the subject funds was made in accordance with Public Law 101-277 and in accordance with your request dated April 4, 1991.

The total value of the fund on April 12, 1991 was $85,979,348.37 derived in the following manner:

Fair Market Value of Investment Securities (Refer to Attachment I and II.)	$74,339,997.14
Cash-Unallotted Balance	139,351.23
Add Back: Hoopa Drawdowns	10,000,000.00
Yurok Drawdowns	1,500,000.00
Total:	$85,979,348.37

Hoopa's share of the fund was calculated using 39.55% as provided in you letter dated April 4, 1991.

Total Value of Fund	$85,979,348.37
	X .39552
Hoopa's Share	$34,006,551.87
Less Hoopa's Drawdowns	10,000,000.00
Less April 15, 1991 Drawdown	9,880,000.00
Balance Due Hoopa Tribe:	$14,126,551.87

The balance due was distributed using a percentage of 21.8679479 derived as follows:

Total Value of Fund	$85,979,348.37
Less Hoopa's Drawdowns	19,880,000.00
Less Yurok's Drawdowns	1,500,000.00
Balance of Fund to be Distributed:	$64,599,348.37

Hoopa's Share of Fund $14,126,551.87 = 0.218679479
Value of Undistributed Fund 64,599,348.37

The 21.867947% was applied to each outstanding investment and recorded to Hoopa's appropriation account 7194.

The balance of the fund is Yurok's share which remained in appropriation account 7193.

Subsequent to the above distributions, an internal transfer was done effective August 1, 1991, to transfer $3,000,000.00 into an escrow account to compensate any potential appeal cases. The amounts contributed are $1,186,560.00 and $1,813,440.00 for the Hoopas and the Yuroks respectively. It is our understanding that both tribes agreed to this arrangement. A separate appropriation (J50 A64 7197) was established for this escrow account.

Trust Funds records in the BIA's Finance System are maintained on a cash basis, therefore, income earned but not yet collected by the BIA is not recorded. Only the actual cash transfers and the cost bases of respective investments are shown in the Summary of Trust Funds reports for the Hoopa Tribe.

If you have any questions, please contact Sarah Yepa at FTS 474-3875 or Commercial (505) 766-3875. If you have questions on the valuation of the securities, please contact Fred Kellerup at FTS 474-2975 or Commercial (505) 766-2975.

Jim R. Parris

Attachments

HOOPA-YUROK SETTLEMENT FUND, ESTABLISHED 12/9/88 AS J50/501/7193

DATE	BEGINNING FY BALANCE	FISCAL YEAR END BALANCE	DIFFERENCE			
FY 1989	66,978,335.93	69,982,201.01	3,003,865.08			
FY 1990	69,982,201.01	71,799,321.72	1,817,120.71			
FY 1991	71,799,321.72	48,940,123.38	(22,859,198.34)			
FY 1992	48,940,123.38	37,819,371.79	(11,120,751.59)			
FY 1993	37,819,371.79	39,700,898.45	1,881,526.66			
FY 1994	39,700,898.45	40,600,210.26	899,311.81			
FY 1995	40,600,210.26	42,916,637.49	2,316,427.23			
FY 1996	42,916,637.49	45,103,786.42	2,187,148.93			
FY 1997	45,103,786.42	50,708,006.06	5,604,219.64			
FY 1998	50,708,006.06	53,748,146.46	3,040,140.40			
FY 1999	53,748,146.46	56,912,744.76	3,164,598.30			
FY 2000	56,912,744.76	61,207,883.29	4,295,138.53			
FY 2001	61,207,883.29	64,824,655.61	3,616,772.32			

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(1) the date the fund was established,

The Hoopa-Yurok Settlement Fund was established in the BIA's Finance System 12/9/88.

(2) the original principal amount of the fund,

The original principal balance amount of the Fund was **$66,978,335.93.**

(3) the date and amount of the Hoopa disbursement (principal and interest),

Effective April 12, 1991, Hoopa's share of the fund was determined to be **$34,006,551.87.**

Deduction of $19,880,000 for previous drawdowns and Hoopa's per capita payment left a final balance due of **$14,126,551.87.**

which was distributed to Hoopa April 12, 1991.

(4) the breakdown between principal and interest and gain if any, on the balance remaining after the Hoopa disbursement,

The FY 91 year end balance for the account, which was determined to be Yurok's share, was **$48,940,123.38**

According to the Act, a separate account for Yurok should have been established and this amount transferred.

(5) the projected yearly interest on these two amounts.

At 6%, $3,889,479, and at 2%, $1,296,493

S. HRG. 107–648

HOOPA-YUROK SETTLEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE DEPARTMENT OF THE INTERIOR SECRETARY'S REPORT ON THE HOOPA YUROK SETTLEMENT ACT

AUGUST 1, 2002
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

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HOOPA-YUROK SETTLEMENT ACT

THURSDAY, AUGUST 1, 2002

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

The committee met, pursuant to other business, at 10:18 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Campbell, and Reid.

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

The CHAIRMAN. This is the oversight hearing on the Department of Interior Secretary's report on the Hoopa Yurok Settlement Act submitted to the Congress in March 2002 pursuant to Section 14 of Public Law 100–580.

As with almost all matters in Indian affairs, there is a long history that preceded enactment of the legislation the Secretary's report addresses. It is a history of deception, I am sad to say, of a Senate that apparently met in secret session in 1852 and rejected the treaties that had been negotiated with California tribes, and didn't disclose their action for another 43 years.

In the interim, the California tribes proceeded in good faith, relying upon their contracts with the U.S. Government. In 1864, the Congress enacted legislation to establish four reservations in the State of California with the intent that these reservations would serve as the new homeland for tribes that had no cultural, linguistic, or historical ties to one another. The Hoopa Valley Reservation was one such reservation that was established for "the Indians of the Reservation."

Litigation later spawned a series of a series of court rulings, which while resolving the issues before each court, engendered considerable uncertainty into the daily lives of those who resided on the reservation, and soon,, the Congress was called upon to bring some final resolution to the matter.

Today, as we receive testimony on the Secretary's report, it is clear that a final resolution was not achieved through the enactment of the Hoopa-Yurok Settlement Act in 1988, and that the Congress will once again have to act. Accordingly, we look forward to the testimony we will receive today so that the committee and members of Congress may have a strong substantive foundation upon which to construct a final solution.

May I call upon the vice chairman.

ment but I wanted to put that in the record of my own personal experiences in California.

The CHAIRMAN. I'm glad that your remarks were made for the record because though it is rather sad, we who are the successors to the Senators two centuries ago must remember that our predecessors were a part of this terrible conspiracy.

With that, may I call upon the Assistant Secretary of the Bureau of Indian Affairs, Department of the Interior, Neal McCaleb. It's always good to see you, sir.

STATEMENT OF NEAL A. MCCALEB, ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MCCALEB. Thank you, Chairman Inouye. I am pleased to be here this morning to bring to you a report pursuant to section 14 of the Settlement Act.

Although I will not read my introductory background remarks because you did such an excellent job of presenting the history, I would have my entire testimony become a part of the record.

The CHAIRMAN. Without objection, so ordered.

Mr. MCCALEB. Prior to the Settlement Act, legal controversies arose over the ownership and management of the Square, that being the 12 square miles that were provided by the United States Government for the Indians of California, that ultimately became the Hoopa Reservation and its resources. Although the 1891 Executive order joined the separate reservations into one, the Secretary had generally treated the respective sections of the reservation separately for administrative purposes. A 1958 Solicitor's Opinion also supported this view.

In the 1950's and 1960's, the Secretary distributed only the timber revenues generated from the Square to the Hoopa Valley Tribe and its members. All the revenues from the Square were allocated to the Hoopa Valley Tribe. In 1963, Yurok and other Indians, eventually almost 3,800 individuals, challenged this distribution and the U.S. Court of Claims subsequently held that all Indians residing within the 1891 reservation were Indians of the reservation and were entitled to share equally in the timber resources proceeds generated from the Square. *Short* v. *United States* was the embodiment of that litigation.

Following the decision, the Department began allocating the timber proceeds generated from the Square between the Yurok Tribe, approximately 70 percent, and the Hoopa Valley Tribe, 30 percent. The 70/30 allocation was based upon the number of individual Indians occupying the joint reservation that identified themselves as members of either the Yurok or the Hoopa Valley Tribe respectively.

Another lawsuit challenged the authority of the Hoopa Valley Business Council to manage the resources of the Square among other claims. These and related lawsuits had profound impacts relating to the tribal governance and self determination, extensive natural resources that compromised the valuable tribal assets and the lives of thousands of Indians who resided on the reservation.

In order to resolve longstanding litigation between the United States, Hoopa Valley, Yurok, and other Indians regarding the own-

ership and management of the Square, Congress passed the Hoopa-Yurok Settlement Act in 1988. This act did not disturb the resolution of the prior issues through the *Short* litigation. Rather, the act sought to settle disputed issues by recognizing and providing for the organization of the Yurok Tribe by petitioning the 1891 Yurok joint reservation between the Hoopa Valley and the Yurok Tribes and by establishing a settlement fund primarily to distribute moneys generated from the joint reservation's resources between the tribes.

Section 2 of the act provided for the petition of the joint reservation. Upon meeting certain conditions of the act, the act recognized and established the Square, the original 12 square miles, as a Hoopa Valley Reservation to be held in trust by the United States for the benefit of the Hoopa Valley Tribe. The act recognized and established the original Klamath River Reservation and the connecting strip as the Yurok Reservation to be held in trust by the United States for the benefit of the Yurok Tribe.

In accordance with the conditions set in section 2(a), the Hoopa Valley Tribe passed a resolution, No. 88–115 on November 28, 1988 waiving any claims against the United States arising from the act and consenting to the use of the funds identified in the act as part of the settlement fund. The BIA published a notice of the resolution in the Federal Register of December 7, 1988. These actions had the effect of partitioning the joint reservation.

As for the settlement fund itself, section 4 of the act established a settlement fund which placed the moneys generated from the joint reservation into an escrow account for later equitable distribution between the Hoopa Valley and Yurok Tribes according to the provisions of the act. The act also authorized $10 million in Federal contribution to the settlement fund primarily to provide lump sum payments to any Indian on the reservation who elected not to become a member of either tribe. It allocated about $15,000 to any individual Indian who elected not to claim tribal membership of either tribe.

As listed in section 1(b)(1) of the act, the escrow funds placed in the settlement fund came from moneys generated from the joint reservation and held in trust by the Secretary in seven separate accounts, including the 70 percent Yurok timber proceeds account and the Hoopa 30 percent timber proceeds account. The Secretary deposited the money from these accounts into the Hoopa-Yurok Settlement Fund upon the enactment of the act. The settlement fund's original balance was nearly $67 million. At the beginning of fiscal year 2002, the fund contained over $61 million in principle and interest.

Even with the previous distributions as described below, appendix I to the report provides the relevant figures from the fund. The act sought to distribute the moneys generated from the joint reservation and placed in the settlement fund on a fair and equitable basis between the Hoopa Valley and Yurok Tribes. The Senate committee report briefly described what was then believed to be a rough distribution estimate of the fund based upon the settlement role, distribution ratios established in the act. Twenty-three million, roughly one-third of the fund would go to the Hoopa Valley Tribe pursuant to Section 4(c); a similar distribution to the Yurok

Tribe under Section 4(d) as described below assuming roughly 50 percent of those on the settlement roll would accept Yurok tribal membership; and the remainder to the Yurok Tribe after individual payments discussed below.

Substantial distributions have already been made from the settlement fund in accordance with the act. The Department disbursed to the Hoopa Valley Tribe just over $34 million between passage of the act and April 1991. The total amount determined by the BIA to be the tribe's share under 4(c) of the act. The Department also distributed $15,000 to each person on the settlement roll who elected not to become a member of either tribe under the act. Approximately 708 persons chose the lump sum payment option for a total distribution for this purpose in the amount of approximately $10.6 million, exceeding the $10 million Federal contribution authorized by the act for this payment.

Section 4(d) of the act provided the Yurok Tribe's share of the settlement fund similar to the determination of the Hoopa Valley share under section 4(c). Section 7(a) further provided the Yurok Tribe would receive the remaining moneys in the settlement fund after distributions were made to individuals in accordance with the settlement membership options under section 6 and to successful appellants left off the original settlement roll under section 5(d).

Under section 1(1)(4), the condition that the Hoopa Valley Tribe and Yurok Tribe received these moneys requiring the tribes adopt a resolution waiving any claim against the United States arising from the act. The Hoopa Valley Tribe adopted such a resolution but the Yurok Tribe did not. In November 1993, the Yurok Tribe passed Resolution 93–61 which purported to waive its claims against the United States in accordance with section 2(c)(4). The tribe, however, also brought a suit alleging that the act affected a constitutionally prohibited taking of its property rights as described below. In effect, the tribe sought to protect its rights under section 2 of the act to its share of the settlement fund and other benefits while still litigating the claims as contemplated in section 14 of the Act.

By a letter dated April 4, 1994, the Department informed the tribe that the Department did not consider the tribe's conditional waiver to satisfy the requirements of the act because the waiver acted to preserve rather than waive its claims. Instead of waiving its claims as the Hoopa Valley Tribe did, the Yurok Tribe as well as the Karuk Tribe and other individual Indians brought suit against the United States alleging the act constituted a taking of their vested property rights in the lands and resources of the Hoopa Valley Reservation contrary to the Fifth Amendment of the U.S. Constitution.

In general, the complaints argued that the 1864 Act authorizing Indian reservations in California and other acts of Congress vested their ancestors with compensable rights in the Square. Alternatively, plaintiffs argued that their continuous occupation of the lands incorporated into the reservation created compensable interest. Potential exposure to the U.S. Treasury was once estimated at close to $2 billion. This litigation began in the early 1990's and was only recently ended.

The U.S. Court of Federal Claims and the Federal Circuit Court of Appeals disagreed with the positions of the Yurok and other plaintiffs. The Federal courts generally followed the reasoning provided in the committee reports of the bills ultimately enacted as the Settlement Act. Unless recognized as vested by some Act of Congress:

> Tribal rights of occupancy and enjoyment, whether established by Executive order or statute may be extinguished, abridged or curtailed by the United States at any time without payment of just compensation.

The courts concluded that no act of Congress established vested property rights and the plaintiffs or their ancestors in the Square. Rather the statutes and Executive orders creating the reservation allowed permissive, not permanent occupation. Thus, the courts held the act did not violate the takings clause. Plaintiffs petitioned the U.S. Supreme Court for a writ of certiorari to review the lower court decision and on March 26, 2001, the Court denied certiorari thereby concluding the litigation.

On the Department's report, section 14 of the act provides:

> The Department shall submit to Congress a report describing the final decision that an illegal claim challenging the act as affecting a taking of property rights contrary to the Fifth Amendment to the U.S. Constitution or as otherwise providing inadequate compensation.

The Court's denial of the certiorari triggered this provision. The Department solicited the views of the Hoopa Valley and Yurok Tribes regarding future actions of the Department with respect to the settlement fund as required under the act. The report briefly describes issues both leading up to the subsequent act, attaches the written positions of the tribes and provides recommendations of the Department for further action with respect to the settlement fund.

In July 2001, the Hoopa Valley Tribe submitted its proposed draft report for consideration by the Department. After describing the history of the disputes, the Settlement Act and subsequent actions, the Hoopa Valley Tribe provided various recommendations and observations. The Hoopa submission noted that the separate lawsuit determined that only 1.26 percent of the settlement fund moneys were derived from the Yurok Reservation, with the remainder of the moneys derived from the Hoopa Reservation.

The Hoopa Valley Tribe has continued to assert its right to a portion of the benefits offered to and rejected by the Yurok Tribe. Prior to its July submission, the tribe previously requested the Department recommend the remaining funds from the Hoopa Square be returned to the Hoopa Valley Tribe. The Hoopa submission ultimately suggested the following recommendations.

First, the suspended benefits under the act, including the land transfer and land acquisition provisions for the Yurok Tribe and the remaining moneys in the settlement fund be valued and divided equally between the two tribes.

Second, the economic self-sufficiency plan of the Yurok Tribe be carried forward, including any feasibility study concerning the cost of the road from U.S. Highway 101 to California Highway 96 and other objectives of the self sufficiency plan.

Third, that additional Federal lands adjacent to or near the Yurok and Hoopa Valley Reservation be conveyed to and managed by the respective tribes.

The Yurok position. In August 2001, Counsel for the Yurok Tribe submitted the tribe's position and proposed a draft report. The Yurok Tribe submission similarly outlined the history of the dispute and other considerations in its recommendations for the Department to consider. In general, the Yurok Tribe takes the position, among others, that its conditional waiver was valid and became effective upon the Supreme Court's denial of certiorari in the taking litigation.

The Yurok submission discusses the tribe's concern with the process leading up to and ultimately resulting in the passage of the Settlement Act. In the tribe's view, the act nullified a large part which allowed all Indians of the reservation to share equally in the revenues and resources of the joint reservation. "The tribe, not formally organized at the time, was not asked and did not participate in this legislative process" and had the act imposed on the Yurok who were left with a small fraction of their former land resources.

In its view, the act divested the Yurok Tribe of its communal ownership in the joint reservation lands and resources and relegated that much larger tribe to a few thousand acres left in trust along the Klamath River with a decimated fishery, while granting to the Hoopa Tribe nearly 90,000 acres of unallotted trust land and resources including the valuable timber resources thereon.

With respect to the waiver issue, the Yurok submission considers the Department's view discussed above as erroneous. The tribe references a March 1995 letter from the Department in which the Assistant Secretary of Indian Affairs indicated the tribe could cure the perceived deficiencies with its conditional waiver by "subsequent tribal action or final resolution of the tribes lawsuit in the U.S. Court of Federal Claims."

The tribe takes the position that it made a reasonable settlement offer and would have dismissed its claim with prejudice but the Department never meaningfully responded. Now the tribe considers the Supreme Court's denial of certiorari as a final resolution suggested as curing the waiver. As a support for its position, the tribe states, "The text of the Act and the intent of Congress make clear that filing a constitutional claim and receiving the benefits of that act are not mutually exclusive." The tribe suggests that principles of statutory construction, including the canon ambiguities be resolved in favor of the tribes and that the provisions within the statute should be read so as not to conflict or be inconsistent requires that a broader reading of the waiver provision in section 2(c)(4) in light of the act's provision allowing a taking claim to be brought under section 14.

The tribe considers the Department's reading of the statute to be unfair and unjust. For these and other reasons, the tribe is of the view that it is now entitled to its benefits under the act.

Because the Yurok Tribe litigated its claims against the United States based on the passage of the Act rather than waiving those claims, the Department is of the view that the Yurok Tribe did not meet the conditions precedent to the establishment of section 2(c)(4) of the act for the tribe to receive its share of the settlement fund or other benefits.

The Department is also of the view that the Hoopa Valley Tribe has already received its portion of the benefits under the act and

is not entitled to further distributions from settlement funds under the provisions of the act.

Ultimately, this situation presents a quandary for the Department and for the tribes. We believe the act did not contemplate such a result. The moneys remaining in the settlement fund originated from seven trust accounts which held revenues generated from the joint reservation. Thus, the moneys remaining in the settlement fund should be distributed to one or both tribes in some form. Moreover, the Department recognizes that substantial financial and economic needs currently exist within both tribes and their respective reservations. Given the current situation, the report outlines five recommendations of the Department to address these issues.

First, no additional funds need be added to the settlement fund to realize the purpose of the Act.

Second, the remaining moneys in the settlement fund should be retained in a trust account status by the Department pending further considerations and not revert to the General Fund of the U.S. Treasury.

Third, the settlement fund should be administered for the mutual benefit of both tribes and their respective reservations taking into consideration prior distributions to each tribe from the fund. It is our position that it would be inappropriate for the Department to make any general distribution from the fund without further action of Congress.

Fourth, Congress should fashion a mechanism for the further administration of the settlement fund in coordination with the Department and in consultation with the tribes.

Fifth, Congress should consider the need for further legislation to establish a separate permanent fund for each tribe from the remaining balances of the settlement fund in order to address any issue regarding entitlement of the moneys and fulfill the intent and spirit of the Settlement Act in full.

This concludes my testimony and I will be happy to respond to any questions at the appropriate time. We have attached a schematic for the committee with a flow chart of the funds and the dates funds were disbursed pursuant to the short litigation in the 1988 Act.

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

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

The chart you speak of, entitled "Hoopa-Yurok Settlement Act Funding History," received by the committee yesterday will be made a part of the record.

[The information appears in appendix.]

The CHAIRMAN. At this juncture, there will be a recess for 10 minutes.

[Recess.]

The CHAIRMAN. We will resume our hearings.

The vice chairman of the committee has a very urgent matter to work on this afternoon, so he will have to be leaving us in about 10 minutes, so may I call upon him for his questions.

Senator CAMPBELL. Thank you. I apologize for having to leave, we have some terrible wildfires out west and some of them are in Colorado, so I'm doing a joint event with some of the other Colo-

rado delegation on our fire problem. It just closed Mesa Area in our part of the State which is a big tourist attraction, so I probably won't be able to ask the representatives from the two tribes questions. I'll submit those in writing if they can get those back to me.

This is a very tough one for me because to me this is like refereeing a fight among family. Some folks on both sides of this issue I've known for years and years and am real close to from my old California days. Let me ask you just a couple.

We have two reservations, one allotted, one not allotted, and this is certainly a sad history but the Yurok land and resources were allotted and dissipated. The Hoopa lands and resources remain in tact. Why were they treated so differently when they are so geographically close in our history? Do you happen to know that?

Mr. MCCALEB. I don't have personal knowledge of that, Senator. Let me get that information and respond in writing to you. I have an impression but I don't have a real factual answer to that.

Senator CAMPBELL. Let me ask another general question. We've been through a lot of disagreements between tribes and it seems to me those that can settle their issues without intervention from the courts are a lot better off than the ones who are not. I have no problem with the legal profession but let me tell you, the attorneys end up getting paid very well from the Indians that are fighting with each other. In keeping with the spirit of the settlement in 1988, shouldn't we try to bring this to a conclusion that both tribes can live with without fighting it out in courts?

Mr. MCCALEB. That would certainly be my desire, Senator Campbell.

Senator CAMPBELL. Have you personally tried to impress on both sides your sentiments?

Mr. MCCALEB. I have met with representatives of both sides, yes, and made those kinds of suggestions.

Senator CAMPBELL. I understand there is a lot of money involved. Let me ask about the account balance. What is the balance of revenues of the settlement fund and can you trace where the moneys from the fund came from?

Mr. MCCALEB. Aside from interest that had accrued over time, the source of all the funds was timber sale proceeds.

Senator CAMPBELL. Did they come primarily from Hoopa or Yurok lands or both?

Mr. MCCALEB. I'm advised a little over 98 percent of the funds derived from the Square, are on Hoopa land.

Senator CAMPBELL. Before they were put in the settlement fund, was there any audit performed to verify the accuracy of the transactions?

Mr. MCCALEB. I'm not aware of that but I will investigate that and reply in writing to you.

Senator CAMPBELL. In the Secretary's report, I read part of it and the staff read all of it, but they make two key findings, that the Hoopas have been made whole and have no claims against the United States and that because the Yuroks failed to provide necessary waivers, they are not entitled to benefits under the act.

My question is, with a multimillion dollar fund sitting in the Treasury, how should it be divided?

Mr. MCCALEB. Senator, I was hoping you'd have some suggestion for me on that. I don't mean to be flip about it but it is a very difficult answer. The two extreme positions of the tribes are the Hoopas want half of all the proceeds and the Yuroks think they should have all of the funds.

Senator CAMPBELL. Would you recommend some kind of development fund for both tribes be established?

Mr. MCCALEB. I think that would be a good solution. As opposed to per capita payments, you mean?

Senator CAMPBELL. Yes.

Mr. MCCALEB. Yes; I almost always favor that kind of investment as opposed to per capita payments.

Senator CAMPBELL. Thank you, Mr. Chairman. I have no further questions. I appreciate you giving me that time.

The CHAIRMAN. Thank you.

Mr. Secretary, I have a few questions for clarification. Do the funds in the settlement fund represent revenues derived from the sale of timber located on the Square?

Mr. MCCALEB. Over 98 percent. According to the facts furnished to me, only about 1.26 percent were not derived from timber on the Square.

The CHAIRMAN. Were those revenues generated from the Square while members of the Yurok and Karuk Tribes were still considered "Indians of the reservation"?

Mr. MCCALEB. The money in the settlement fund is there pursuant to the *Short* litigation that was resolved in 1974 and the subsequent timber cuttings. Would you restate your question so I can make sure I understand it?

The CHAIRMAN. Were those revenues generated from the Square while members of the Yurok and Karuk Tribes were still considered "Indians of the reservation"? That is the phrase in the statute.

Mr. MCCALEB. Yes.

The CHAIRMAN. So they were Indians in the reservation at the time the revenues were generated in the Square?

Mr. MCCALEB. Yes; that's my understanding.

The CHAIRMAN. Because the *Short* case instructs us that if there is to be a distribution of revenues, the distribution must be made to all Indians of the reservation. Would that mean Hoopa, Yurok, Karuk?

Mr. MCCALEB. Yes, sir.

The CHAIRMAN. The Hoopa Valley Tribe contends it is the only tribe entitled to the funds in the settlement fund, so your response does not agree with that?

Mr. MCCALEB. No; for the reasons you just said. The *Short* case is, I think, specific on that point.

The CHAIRMAN. So it seems it may be critical to the resolution of the competing claims of entitlement to funds in the settlement fund to know whether the timber revenues that were placed in the fund were generated after the reservation was partitioned or whether they were generated while there were three tribal groups making up the "Indians of the reservation," isn't that correct?

Mr. MCCALEB. The revenues that make up the original amount, almost $17 million in the chart, were generated prior to the partitioning of the reservation, while other revenues were generated

from the timber fund after 1988, the partitioning actually occurred in 1988 by act of Congress.

The CHAIRMAN. There are two time periods?

Mr. MCCALEB. Yes; there are.

The CHAIRMAN. Can you tell the committee what disbursements have been made from the settlement fund, when the disbursements were made and to whom these disbursements were made?

Mr. MCCALEB. From the settlement fund, $15 million was disbursed to individual Indians who elected to become Yurok. There was another $10.6 million distributed to individual Indians who elected to buy out. That $10.6 million was offset by a $10-million direct appropriation of Congress. There has been another $1.5 million distributed to the Yurok Tribe since 1991 given they were provided about $500,000 a year for 3 years to help them in the process of establishing their tribal government.

The CHAIRMAN. Anything distributed to the Karuk Tribe?

Mr. MCCALEB. None directly to the Karuk to my knowledge. There was another $34 million distributed to the Hoopa Tribe, $34,651,000 pursuant to their signing their waiver in keeping with the act.

The CHAIRMAN. Given the Department's position as set forth in the Secretary's report that neither the Hoopa Valley Tribe nor the Yurok Tribe is entitled to the balance of the funds remaining in the HYSA fund, what benefits of the act or activities authorized in the act does the Department envision should be carried out and funded by the recommended two separate permanent funds to fulfill the intent of the original Act in full measure?

Mr. MCCALEB. I think all the funds should be distributed that are in the settlement fund. I don't think there is much debate over that. I think the issue is over the distribution, how the money should be distributed.

The CHAIRMAN. How shall the distribution be made?

Mr. MCCALEB. I guess if you go to our third recommendation, it touches as closely as anything on that:

> The settlement fund should be administered for the mutual benefit of both tribes and the reservations taking into consideration prior distributions to each tribe from the fund.

If you assume that 30–70 percent distribution was appropriate originally and take into consideration the prior distribution of the funds, that would provide some guidance in that area.

The CHAIRMAN. In your opinion, were all the provisions of the Act benefiting the Hoopa Valley Tribe implemented?

Mr. MCCALEB. Yes.

The CHAIRMAN. Would you say the same of the act benefiting the Yurok Tribe implemented?

Mr. MCCALEB. No; that's not correct.

The CHAIRMAN. So the Hoopa Valley got all the benefits, Yurok did not?

Mr. MCCALEB. One of the provisions was the partitioning of the tribal lands. That was done, that was accomplished but the Yuroks got none of the money except for the $1.5 million I indicated. There were other provisions for economic development that were supposed to be carried out pursuant to an economic development plan submitted by the Yuroks. The plan was never submitted, so it was

never implemented. For example, there was some roadbuilding to be done pursuant to that economic development plan that has never been done. The Yurok only received a partitioning of tribal lands plus the $1.5 million.

The CHAIRMAN. Because of the obvious complexities, may we submit to you questions of some technicality that you and your staff can look over and give us a response?

Mr. MCCALEB. I would appreciate that because I really need to rely on the historical and technical views of the staff to answer the meaningful questions that are attendant to this really sticky issue.

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

Mr. MCCALEB. May I be excused at this point?

The CHAIRMAN. Yes; and thank you very much, sir.

The second panel consists of the chairman of the Hoopa Valley Tribal Council of Hoopa, California, Clifford Lyle Marshall, Sr., accompanied by Joseph Jarnaghan, tribal councilman, Hoopa Valley Tribal Council and Thomas Schlosser, counsel, Hoopa Valley Tribal Council and Sue Masten, chairperson, Yurok Tribe, Klamath, CA.

STATEMENT OF CLIFFORD LYLE MARSHALL, SR., CHAIRMAN, HOOPA VALLEY TRIBAL COUNCIL, ACCOMPANIED BY JOSEPH JARNAGHAN, TRIBAL COUNCILMAN, HOOPA VALLEY TRIBAL COUNCIL AND THOMAS SCHLOSSER, COUNSEL

Mr. MARSHALL. I am Clifford Lyle Marshall, chairman of the Hoopa Valley Tribe.

At this time, I ask that our written testimony be included in the record.

The CHAIRMAN. Without objection.

Mr. MARSHALL. Thank you for this opportunity to present the Hoopa Tribe's position on the Interior Report on the Hoopa Yurok Settlement Act. I am here today with council member Joseph Jarnaghan and attorney Tom Schlosser.

First, let me express the Hoopa Tribe's deepest gratitude to Chairman Inouye, Vice Chairman Campbell and the other members of this committee for the leadership in achieving passage of the landmark Hoopa Yurok Settlement Act. We also acknowledge and appreciate the hard work of your dedicated staff. This act could not have occurred without your decision to resolve the complex problems that had crippled our reservation and tribal government for more than 20 years.

The years since its passage have demonstrated the outstanding success of the Settlement Act. It resolved the complex issues of the longstanding *Jesse Short* case, the act vested rights and established clear legal ownership in each of the tribes to the respective reservations. It also preserved the political integrity of the Hoopa Tribe by confirming the enforceability of our tribal constitution.

The Hoopa Tribe waived its claims against the United States and accepted the benefits provided in the act and since then we have accomplished a number of tribal objectives. We immediately embarked on a strategy to reestablish control of our small Indian nation and were one of the self-governance tribes. We believe that tribal self-governance is the true path to trust reform.

Although the Yurok Tribe rejected the settlement offer provided in the act, it nevertheless provided a means for organization of the

big conference. In some places they smoked tobacco or exchanged gifts. Maybe the time has come for the restoration of the old method because as certain as I sit here if the Congress of the United States should come forth with Settlement Act No. 2, we will be back here in about 20 years trying to draw up Settlement Act No. 3.

I have a series of technical questions but those are all legal questions. It is good to know the history but I was trained to be a lawyer myself and when one presents his case, you make certain you don't say good things about the other side, you speak of the good things about your side. That is what you are paid for. I would expect lawyers to do the same.

With that, I will be submitting questions of a technical nature for the record.

May I thank you, Mr. Chairman and your staff.

Our next witness is the most distinguished member of Indian country, the chairperson of Yurok Tribe of Klamath, California, Sue Masten.

STATEMENT OF SUE MASTEN, CHAIRPERSON, YUROK TRIBE

Ms. MASTEN. Good morning.

I have the distinct honor to serve as the chairperson of the Yurok Tribe. The Yurok Tribe is the largest tribe in California with over 4,500 members of which 2,800 members live on or near the reservation.

Thank you for holding this hearing. We appear today with deep resolve and a commitment to working hard toward addressing the issues before you.

I know you can appreciate that the issues here run deep and are heart felt. I also know that when the act was passed Congress believed that the act reached equity for both tribes. Thank you for your willingness to hear our concerns that those goals were not achieved.

We especially thank you, Chairman Inouye, for taking this very significant step toward addressing our concerns for equity under the Hoopa Yurok Settlement Act to look at what has been achieved or not achieved during the last 14 years and for asking what now may need to be done.

We are deeply appreciative of your October 4, 2001 letter where you invited both tribes to step beyond the act to address current and future needs. We know this committee sought to achieve relative equity for both the Hoopa Valley Tribe and the Yurok Tribe in 1988.

During the course of our many meetings with members of Congress and their staff, we have been asked why Congress should look at this matter again. The answer to this question is clear, the act has not achieved the full congressional intent and purpose and Congress often has to revisit issues when its full intent is not achieved.

Additionally, we believe that the Departments of the Interior and Justice did not completely or accurately inform Congress of all the relevant factors. Congress did not have the full assistance from the departments that you should have had.

In reviewing the Department's testimony and official communications, we were appalled that the Yurok historic presence on the Square was minimized or ignored and that the relative revenue and resource predictions for the tribe were also wrong. Furthermore, we are also concerned about the significant disparity of actual land base that each tribe has received.

Can you imagine in this day and age an Assistant Secretary addressing a serious dispute between tribes by describing one tribe as a model tribe and dismissing the other, as some sort of remnant who would only need 3,000 acres because only 400 Indians remain on what would become their reservation.

Interior also told Congress that the income of the tribes was comparable. The Hoopa Tribe would earn somewhat over $1 million a year from timber resources and the Yuroks had just had $1 million plus fishery the year before. Here are the real facts.

Several thousand Yuroks lived on or near the reservation, on or near is the legal standard for a tribe's service district. There is a serious lack of infrastructure, roads, telephones, electricity, housing on the Yurok Reservation and we have 75 percent unemployment and a 90-percent poverty level. Further, there is a desperate need for additional lands, particularly lands that can provide economic development opportunities, adequate housing sites and meet the tribal subsistence and gathering needs.

The Department gave the impression that the *Short* plaintiffs who were mostly Yurok had left our traditional homelands, were spread out over 36 States, were perhaps non-Indian descendants and were just in the dispute for the dollars. This impression was highly insulting to the Yurok people and a disservice to Congress.

There are at least as many Yuroks on or near the reservation as are Hoopas. With respect to the relative income or resource equity projected for the new reservations, it is true there was a commercial fishery shortly before the act, true but also very misleading. Commercial fishing income, if any, went predominantly to the Hoopa and Yurok fishermen. The fact was that in most years, there was no commercial fishery and in many years, we did not meet our subsistence and ceremonial needs.

Since the act, Klamath River coho salmon have been listed as an endangered species and other species are threatened to be listed. In fact, the Klamath River is listed as one of the 10 most threatened rivers in the Nation and has lost 80 to 90 percent of its historic fish populations and habitat. Today, the fish runs we depend on are subject to insufficient water flows and in spite of our senior water right and federally recognized fishing right, we continue to have to fight for water to protect our fishery.

The average annual income of the Yurok Tribe from our salmon resource was and is nonexistent. To be fair, we should note that since the Settlement Act, the Yurok Tribe has had a small income from timber revenues, averaging about $600,000 annually. With respect to the land base, the Yurok Tribe's Reservation contains approximately 3,000 acres of tribal trust lands and approximately 3,000 acres of individual trust lands. The remainder of the 58,000 acre reservation is held in fee by commercial timber interests.

The Hoopa Tribe Reservation has approximately 90,000 acres with 98 percent in tribal trust status. Regarding the $1 million

plus in timber revenues projected for the Hoopa Tribe, testimony of the Hoopa tribal attorney in 1988 indicated the annual timber revenue from the Square was approximately $5 million. Since the act, the Hoopa timber revenues have been $64 million. The point is the projected revenue comparison that should have been before the committee in 1988 was zero fisheries income for the Yurok Tribe and more than $5 million in annual timber and other revenues from the Square for the Hoopa Valley Tribe, not the comparable $1 million or so for each tribe the committee report relied upon.

This disparity of lands, resources and revenues continues today and hinders our ability to provide services to our people. Unfortunately, the Yurok Tribe in 1988 unlike today was unable to address misleading provisions of key information. The Yurok Tribe, although federally recognized since the mid-19th century, was not formally organized and had no funds, lawyers, lobbyists or other technical support to gather data or analyze the bill, to present facts and confront misinformation.

It is important to acknowledge the positive provisions of the Act which provided limited funds to retain attorneys and others to assist us in the creation of the base roll, the development of our constitution and the establishment of our tribal offices. We also appreciated the Senate committee report recognized and acknowledged that the tribe could organize under our inherent sovereignty which we did.

Had we been an organized tribe, we would have testified before you in 1988 and we would have pointed out that while it is true the Square is part of the Hoopa peoples' homeland, it is also true that the Square is part of the ancestral homelands of the Yurok people.

Almost without fail throughout the testimony received in 1988, the Square is described as Hoopa and the addition is described as Yurok. The Yurok ancestral map provided to you shows that our territory was quite large and included all the current Yurok Reservation, 80 percent of Redwood National Park, as well as significant portions of the U.S. National Forest.

Yurok villages existed in the square and these sites have been verified by anthropologists. This fact should not be a matter of dispute. The Justice Department and the Hoopa Valley Tribe in *Yurok* v. *United States* agreed in a joint fact statement that the Yuroks were always inhabitants of the Square. We are not claiming that we had Indian title to the whole square but that we have always been a part of the Square. The *Short* cases reached that same determination.

We think these different perspectives are important as we consider today's issues. However, it is critical for everyone to understand that we are not asking Congress to take back anything from the Hoopa Valley Tribe that they received under the Settlement Act. What we do want is for the committee to look at the relative equities achieved under the act, understanding the Yuroks have always been inhabitants of the Square and have never abandoned our connection to our territories, our culture and traditions.

We have already noted the significant disparities between the tribes in income, resources, land base and infrastructure after the

act. The data provided by Interior Department today supports our position. To reiterate, the Hoopa Valley Tribe received a 90,000-acre timbered reservation of which 98 percent is held in tribal trust. The Yurok Tribe received a 58,000-acre reservation with 3,000 acres in tribal trust, containing little timber. The map we have provided to you shows this extreme disparity.

We have already noted that the projected income for the tribes were incorrect. Time has verified that the predictions of a bountiful or restored Yurok fishery has not happened. It is also a fishery that we share with the non-Indians as well as Hoopa. Hoopa timber resources however have produced substantial income exceeding the 1988 predictions as reflected in the Interior Department's records. In addition, as this committee is aware from your recent joint hearing on telecommunications, infrastructure on the Yurok Reservation is virtually nonexistent.

In our response to Senator Inouye's letter of October 4, 2001, we have submitted an outline of an economic development and land acquisition plan to you and the Department of the Interior. The plan is based on our settlement negotiations with the Department in 1996 and 1997. We would like to request from you today the creation of a committee or a working group composed of tribal administration and congressional representatives and hopefully, under your leadership, Senator.

We recommend that the committee's responsibility be to develop legislation that would provide a viable self sufficient reservation for the Yurok people as originally intended by the Settlement Act. As you can see, our issues are broad based and focus on equity for the Yurok Tribe. The Department's report has prompted this hearing to address access by the Yurok Tribe to the Yurok Trust Fund. The Interior Department has said that neither tribe has legal entitlement to the Yurok Trust Fund. Our view is simple.

The financial equities and the actual distributions of timber revenues from 1974 to 1988 clearly demonstrate that the Yurok Tribe should receive its share of the settlement fund as the act intended. Arguments based on where the revenue came from on the joint reservation are wrong. These revenues belonged as much to the Yuroks of the Square and the Yuroks of the extension as they did to the Hoopas of the Square. This is the key point of the cases both tribes lost in the Claims Court.

The point is that prior to 1988, the Hoopa Valley Reservation was a single reservation intended for both tribes and whose communal lands and income were vested in neither tribe. *Short* also means that the Department could not favor one tribe above the other in the distribution of assets. These are pre-1988 moneys. We should not have to reargue what Yuroks won in the *Short* cases.

After the final 1974 decision in *Short* I, the Department ceased to distribute timber revenues only to the members of the Hoopa Valley Tribe and began to reserve 70 percent of the timber revenues for the *Yurok* plaintiffs. The remaining 30 percent of the revenues were for Hoopa and were placed in a separate escrow account which the Department disbursed to the Hoopa Valley Tribe. When we discussed the 1974–88 timber revenues with the Hoopa Tribal Council, they asserted that all of the timber revenues should have been theirs. Legally as the committee knows, that is not what the

courts have said. No Indian tribe, before 1988, had a vested right to the Square or its assets. In 1974, the Federal courts had finally determined that the Secretary had since 1955 wrongfully made per capital distributions to only Hoopa tribal members and the plaintiffs, mostly Yurok, were entitled to damages against the United States. Damages were eventually provided to the plaintiffs for the years 1955–74 but not for 1974–88. The point is that neither tribe had title to timber or a constitutional right to the revenues from 1974–88. If the revenues were distributed to one group, the other group was entitled to its fair share. It did not matter what percentage of the timber proceeds came from the square or came from the addition because according to the Federal courts, neither revenues were vested in either tribe.

In 1974–88, revenues were distributed to the Hoopa Tribe, first under the 30 percent Hoopa share totaling $19 million and second under the Settlement Act. As you are aware, the Settlement Act placed the 70 percent escrow account which was $51 million, the small balance of the Hoopa 30 percent escrow account, some smaller joint Hoopa Yurok escrow accounts, Yurok escrow accounts, as well as the $10 million Federal appropriation all in the settlement fund.

In 1991, the Department split the settlement account between the two tribes based on our enrollments. The Hoopa Valley Tribe was allocated 39.5 percent of the settlement fund or $34 million. Because the Hoopa Valley Tribe had executed its waiver, the Department provided these funds to the tribe. The Yurok Tribe was allocated $37 million and it was put in a Yurok trust account and was not provided to us.

From 1974 to 1988, timber revenues and interest was approximately $64 million of which the Hoopa Tribe received a total of $53 million or 84.2 percent of this total. Also in 1991, the claims attorneys for the Short cases sued the United States to try to recover attorneys fees from the settlement account. Two other Yuroks and I intervened in this case as co-defendants to protect the Yurok share of the settlement funds. The United States approved this intervention and the Justice Department attorneys encouraged our participation and we won this case.

As you are aware, in 1993, the Yurok Tribe sued the United States for a takings claim under the Settlement Act. We lost this case in 2001 when the Supreme Court declined to review a 2 to 1 decision by the Federal Court of Appeals. We lost this case for the same reason that the Hoopa Tribe lost all of their pre-1988 cases. No part of the pre-1988 Hoopa Valley Reservation was vested to any Indian tribe and none of us had title against the United States. We could argue that the case was unfair and historically blind and that it is outrageous to use colonial notions of Indian title in these modern times but it doesn't matter. We lost, as the Hoopa Tribe lost before us, and in this legal system, the only appeal we have left is an appeal to equity and justice before Congress to fix these wrongs.

At the same time in 1993, we adopted the conditional waiver which provided that our waiver was effective if the Settlement Act was constitutional. The courts have determined that the act is constitutional. That determination should have been sufficient to meet

the condition of our waiver but the Department held that our waiver was not valid. Although we disagree, we have not challenged the Department's judgment in the court and will not take the committee's time to debate it today.

The Department determined that the Hoopa waiver was effective and they received their funds under the Act. Therefore, they have no legal right to additional funds. The Department has reported to Congress that you should resolve this issue. Among other things, the Department sees itself as the administrator of the funds for both tribes. In resolving these issues, the report indicates that Congress should consider funds already received and focus on the purpose of the act to provide for two self sufficient reservations. A better solution would be to permit the Yurok Tribe to manage our own funds. We, of course, would be willing to submit a plan for review and approval. In fact, our constitution mandates that a plan be developed and approved by our membership before any of these funds are spent.

As we have stated, a complete review of the record indicates that almost all of the trust lands, economic resource and revenues of the pre-1988 joint reservation have to date been provided almost exclusively to the Hoopa Valley Tribe. A final point to consider is that in 1996, we negotiated an agreement with the Hoopa Valley Tribe to support H.R. 2710 in return for their support of our settlement negotiation issues specifically the balance of the settlement funds. Apparently the Hoopa Valley Tribal Council now believes that its end of the deal ended with the collapse of our settlement negotiations. We lived up to our end of the bargain and the Hoopa Valley Tribe received an additional 2,600 acres of trust land. This almost equals the total tribal trust lands we received under the act. Copies of both of our 1996 commitment letters have been provided with our written testimony.

In closing, back home our people are preparing for our most sacred ceremonies, the White Deer Skin dance and the Jump dance. These ceremonies are prayers to the Creator to keep balance in our Yurok world. When our people are in balance, we are strong, our children's futures are bright, life is as it should be, good. When our people are not in balance, we are weakened, our people are disheartened and we worry about what will become of our children. Life is not good.

In a way, this hearing is a kind of ceremony. We come seeking balance for our people, we come seeking strength, we come seeking a stable future for our children, we come seeking a good life for our tribe. Sadly, our people are not now in balance. Though our dances help our spiritual well being, the resources given to us by the Creator so that we would never want for anything have been taken from us. Once we were a very wealthy people in all aspects in our Yurok world, in our spirituality, in our resources and in our social-economic affairs. The sad irony is that because of our great wealth, we were targeted heavily by the Government's anti-Indian policies for termination and assimilation. Many of our elders have passed on never having received the benefits they were entitled to under *Short* and under the Hoopa Yurok Settlement Act. We hope Congress will not let more pass on without benefiting from the settlement fund.

Be that as it may, we pray Congress will use its power to bring balance back to our people, that it will relieve our fears about our children's futures and make us strong once again, that it will make our lives good as they should be.

Once more, Senator, thank you for the honor of appearing before the committee today and would welcome any of your questions.

[Prepared statement of Ms. Masten appear in appendix.]

The CHAIRMAN. Thank you very much.

If the Congress is called upon to resolve this matter, I can assure you that the Congress can and will do so but I would hope that all of you assembled here would realize under what circumstances these decisions would be made. Here I sit alone before you. This is a committee of 15 members. The vice chairman unfortunately had to leave because of other commitments and other issues. As a general rule, we are the only two who sit through all of these hearings.

Second, I think you should take into consideration that the sanctuary that Indian country once held in the Supreme Court may not be available. Supreme Court decisions of recent times have indicated that they are not too favorably inclined as to the existence of Indian sovereignty. I need not remind you of *Nevada* v. *Hicks* and the *Atkins* on Trading Post cases. Keeping that in mind, I wasn't being facetious when I said if you left it up to us for Settlement Act No. 2, you may get it but it may be worse than Settlement Act No. 1.

Solutions for Indian problems coming from Indian country are always the best and I know you have attempted to sit together in the past but it has not succeeded but I would hope you can do so and come forth with a joint recommendation that both of you can approve and support because if we do it, somebody is going to get hurt. I have no idea who is going to get hurt but I can guarantee you somebody is going to get hurt.

If you have the patience and the wisdom to get together and sit down, have negotiations and discussions and if you want to have the help of this committee to some mediation, we are happy to do so but to try to do this legislatively at this stage, I don't think is a wise thing because the foundation is shaky to begin with and this is not the kind of solution that lawyers can make, only Indians can make it. I would hope that you can sit together, begin a process. We would be very happy to help you and hopefully come forth in the not too distant future, maybe 6 months from now, with some solution. I can assure you that I will act speedily and expeditiously.

The way it is now, I am the only one sitting here but this is the way the Congress of the United States acts unfortunately. If you want people who have no knowledge, no idea of your issues acting upon your case, you can have it but I think that's the wrong way.

I will not ask you any questions at this time. We will just confuse it and maybe anger people further and that's not my mission here, to anger Indians. I think the time has come for Indians to get together. You have big problems ahead of you. If you can't solve the immediate problems at home, then you will have real problems on the big ones.

With that, Chairperson Masten and Chairman Marshall, just for us, would you please stand up and shake hands?

Table I. Comparison of assets and resources received under the HYSA.

	Yurok Tribe	**Hoopa Tribe**
Land	3000 acres of Tribal trust	89,000 acres of Tribal trust
Funds	1974-1988: 0 1988-1991: $1.5 million	1974-1988: $ 19 million 1988-1991: $34 million
1998 – Present Resources Income	Fishery: 0 Timber: $9 million	Fishery: 0 Timber: $64 million
Other	Organizing Assistance	Recognition of governing Authority over territory
Provided to Yurok Tribe But not received	1) $37 million ($76 million with 11 years of interest) 2) Assorted Land parcels 3) $2.5 million land purchase appropriations	

Testimony of
Neal A. McCaleb
Assistant Secretary for Indian Affairs
before the Committee on Indian Affairs
United States Senate
on the
Hoopa-Yurok Settlement Act
August 1, 2002

Good morning. I am Neal McCaleb, and I serve as the Assistant Secretary of Indian Affairs for the Department of the Interior. I am pleased to be here before you today to report on the status of events subsequent to the passage of the Hoopa-Yurok Settlement Act (Settlement Act or Act) in 1988, Public Law 100-580, 25 U.S.C. section 1300i *et seq.*, as amended. Earlier this year, the Department submitted its Report to Congress (Report) pursuant to section 14 of the Act (25 U.S.C. § 1300i-11(c)).

Background

Establishment of Reservations

As recognized in the legislative history of the Act, the attachments to the Report, and numerous other documents, the federal government set aside lands bisected by the Trinity and lower Klamath Rivers in the mid- to late-1800s, in accordance with statutes and executive orders, to establish what are known today as the Hoopa Valley and Yurok Indian Reservations. Based on an 1853 Act of Congress, President Pierce set aside the Klamath River Reservation by executive order in 1855. The reservation extended approximately 20 miles up the Klamath River from the Pacific Ocean and including lands one mile in width on either side of the river. Based on an 1864 Act of Congress and an 1864 proclamation by the Department, President Grant issued an executive order in 1876 which formally set aside the original Hoopa Valley Reservation, a 12-mile square reservation (the "Square") bisected by the Trinity River and extending upstream from the Klamath-Trinity River confluence.

Because of some confusion about the effect of the two separate congressional acts and concern regarding the status of the original Klamath River Reservation, President Harrison issued another executive order in 1891 forming the extended or "joint" Hoopa Valley Reservation. The extended reservation, termed the "1891 Reservation" in the Report, encompassed the original Hoopa Valley Reservation, the Klamath River Reservation, and an additional strip of land down the Klamath River from the Klamath-Trinity confluence which connected the two reservations ("connecting strip"). Pursuant to section 2 of the Settlement Act, Congress partitioned the extended reservation between the two tribes.

Legal claims to the Reservation

Prior to the Settlement Act, legal controversies arose over the ownership and management of the Square and its resources. Although the 1891 executive order joined the separate reservations into one, the Secretary had generally treated the respective sections of the reservations separately for administrative purposes. A 1958 Solicitor's opinion also supported this view. 62 I.D. 59, 2 Op. Sol. Int. 1814 (1958). In the 1950s and 1960s, the Secretary thus only distributed timber revenues generated from the Square to the Hoopa Valley Tribe and its members.

In 1963, Yurok and other Indians (eventually almost 3800 individuals) challenged this distribution, and the United States Court of Claims subsequently held that all Indians residing within the 1891 Reservation were "Indians of the Reservation" and were entitled to share equally in the timber proceeds generated from the Square. *Short v. United States*, 486 F.2d 561 (Ct. Cl. 1973) (per curiam), *cert. denied*, 416 U.S. 961 (1974). Following this decision, the Department began allocating the timber proceeds generated from the Square between the Yurok Tribe (70%) and the Hoopa Valley Tribe (30%). The 70/30 allocation was based upon the number of individual Indians occupying the Joint Reservation that identified themselves as members of either the Yurok Tribe or Hoopa Valley Tribe, respectively. Another lawsuit (*Puzz*) challenged the authority of the Hoopa Valley Business Council to manage the resources of the Square, among other claims. These and related lawsuits had profound impacts relating to tribal governance and self-determination, extensive natural resources that comprise valuable tribal trust assets, and the lives of thousands of Indians who resided on the Reservation.

1988 Settlement Act

In order to resolve longstanding litigation between the United States, Hoopa Valley Tribe, and Yurok and other Indians regarding the ownership and management of the Square, Congress passed the Hoopa-Yurok Settlement Act in 1988. The Act did not disturb the resolution of prior issues through the *Short* litigation; rather, the Act sought to settle disputed issues by recognizing and providing for the organization of the Yurok Tribe, by partitioning the 1891 Joint Reservation between the Hoopa Valley and Yurok Tribes, and by establishing a Settlement Fund primarily to distribute monies generated from the Joint Reservation's resources between the Tribes. The testimony below discusses relevant sections of the Act with respect to current issues.

Partition

Section 2 of the Act provided for the partition of the Joint Reservation. Upon meeting certain conditions in the Act, the Act recognized and established the Square as the Hoopa Valley Reservation, to be held in trust by the United States for the benefit of the Hoopa Valley Tribe; and the Act recognized and established the original Klamath River Reservation and the

connecting strip (the "extension") as the Yurok Reservation, to be held in trust by the United States for the benefit of the Yurok Tribe.

In accordance with the conditions set in section 2(a), the Hoopa Valley Tribe passed Resolution No. 88-115 on November 28, 1988, waiving any claims against the United States arising from the Act and consenting to use of the funds identified in the Act as part of the Settlement Fund. The BIA published notice of the resolution in the Federal Register on December 7, 1988 (53 Fed. Reg. 49361). These actions had the effect of partitioning the joint reservation.

Settlement Fund

Section 4 of the Act established a Settlement Fund which placed the monies generated from the Joint Reservation into an escrow account for later equitable distribution between the Hoopa Valley and Yurok Tribes according to the provisions of the Act. The Act also authorized a $10 million federal contribution to the Settlement Fund, primarily to provide lump sum payments to any "Indian of the Reservation" who elected not to become a member of either Tribe.

As listed in section 1(b)(1) of the Act, the escrow funds placed in the Settlement Fund came from monies generated from the Joint Reservation and held in trust by the Secretary in seven separate accounts, including the Yurok 70% timber proceeds account and the Hoopa 30% timber proceeds account. The Secretary deposited the monies from these accounts into the Hoopa-Yurok Settlement Fund upon enactment of the Act. The Settlement Fund's original balance was nearly $67 million. At the beginning of Fiscal Year 2002, the Fund contained over $61 million in principal and interest, even with previous distributions as described below. Appendix I to the Report provides relevant figures from the Fund.

Distribution of Settlement Fund

The Act sought to distribute the monies generated from the Joint Reservation and placed into the Settlement Fund on a fair and equitable basis between the Hoopa Valley and Yurok Tribes. The Senate Committee Report briefly described what was then believed to be the rough distribution estimates for the Fund based on the settlement roll distribution ratios established in the Act: $23 million (roughly 1/3 of Fund) would go to the Hoopa Valley Tribe pursuant to section 4(c); a similar distribution to the Yurok Tribe under section 4(d), as described below, assuming roughly 50% of those on the settlement roll would accept Yurok tribal membership; and the remainder to the Yurok Tribe after individual payments discussed below. *See* S. Rep. No. 564, 100th Cong., 2d Sess. 20, 25 (1988).

Substantial distributions have already been made from the Settlement Fund in accordance with the Act. The Department disbursed to the Hoopa Valley Tribe just over $34 million between passage of the Act and April 1991, the total amount determined by the BIA to be the Tribe's share under section 4(c) of the Act. The Department also distributed $15,000 to each person on the settlement roll who elected not to become a member of either Tribe under section 6(d) of the Act. Approximately 708 persons chose the "lump sum payment" option for a total distribution

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for this purpose of approximately $10.6 million, exceeding the $10 million federal contribution authorized under the Act for this payment.

Section 4(d) of the Act provided for the Yurok Tribe's share of the Settlement Fund, similar to the determination of the Hoopa Valley Tribe's share under section 4(c). Section 7(a) further provided that the Yurok Tribe would receive the remaining monies in the Settlement Fund after distributions were made to individuals in accordance with the settlement/membership options in section 6 and to successful appellants left off the original settlement roll under section 5(d). Section 1(c)(4), however, conditioned the Hoopa Valley Tribe's and Yurok Tribe's receipt of these monies, requiring the Tribes to adopt a resolution waiving any claim against the United States arising from the Act. The Hoopa Valley Tribe adopted such a resolution but the Yurok Tribe did not.

In November 1993, the Yurok Tribe passed Resolution 93-61 which purported to waive its claims against the United States in accordance with section 2(c)(4). The Tribe, however, also brought suit alleging that the Act effected a constitutionally prohibited taking of its property rights, as described below. In effect, the Tribe sought to protect its rights under section 2 of the Act to its share of the Settlement Fund and other benefits while still litigating its claims as contemplated in section 14 of the Act. By letter dated April 4, 1994, the Department informed the Tribe that the Department did not consider the Tribe's "conditional waiver" to satisfy the requirements of the Act because the "waiver" acted to preserve, rather than waive, its claims.

Takings Litigation

Instead of similarly waiving its claims as the Hoopa Valley Tribe did, the Yurok Tribe--as well as the Karuk Tribe and individual Indians--brought suit against the United States alleging that the Act constituted a taking of their vested property rights in the lands and resources of the Hoopa Valley Reservation contrary to the 5th Amendment to the U.S. Constitution. In general, the complaints argued that the 1864 Act authorizing Indian reservations in California or other Acts of Congress vested their ancestors with compensable rights in the Square. Alternatively, plaintiffs argued that their continuous occupation of the lands incorporated into the Reservation created compensable interests. Potential exposure to the U.S. Treasury was once estimated at close to $2 billion. This litigation began in the early 1990s and only recently ended.

The United States Court of Federal Claims and the Federal Circuit Court of Appeals disagreed with the positions of the Yurok Tribe and other plaintiffs. *Karuk Tribe et al. v. United States et al.*, 41 Fed. Cl. 468 (Fed. Cl. 1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000) (2-1 decision). The federal courts generally followed the reasoning provided in the Committee Reports to the bills ultimately enacted as the Settlement Act. *See* S. Rep. No. 564, *supra*, at 9-11; H.R. Rep. No. 938, 100th Cong., 2d Sess. 15-16 (1988). "Unless recognized as vested by some act of Congress, tribal rights of occupancy and enjoyment, whether established by executive order or statute, may be extinguished, abridged, or curtailed by the United States at any time without payment of just compensation." *Karuk Tribe et al. v. United States et al.*, 41 Fed. Cl. at 471 (citing, *inter alia*, *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 278-79 (1955) and *Hynes v. Grimes Packing*

Co., 337 U.S. 86, 103-04 (1949)); *see also* 209 F.3d at 1374-76, 1380. The courts concluded that no Act of Congress established vested property rights in the plaintiffs or their ancestors to the Square; rather the statutes and executive orders creating the Reservation allowed permissive, not permanent, occupation. Thus, courts held the Act did not violate the Takings Clause.

Plaintiffs petitioned the U.S. Supreme Court for a writ of *certiorari* to review the lower court decisions. On March 26, 2001, the Court denied *certiorari*, thereby concluding this litigation. 532 U.S. 941 (2001).

Departmental Report

Section 14(c) of the Act provides that the Department shall submit to Congress a Report describing the final decision in any legal claim challenging the Act as effecting a taking of property rights contrary to the 5th Amendment to the U.S. Constitution or as otherwise providing inadequate compensation. The Supreme Court's denial of *certiorari* triggered this provision.

The Department solicited the views of the Hoopa Valley and Yurok Tribes regarding future actions of the Department with respect to the Settlement Fund and the Report required under the Act. The Report briefly describes issues both leading up to and subsequent to the Act, attaches the written positions of the Tribes, and provides recommendations of the Department for further action with respect to the Settlement Fund.

Hoopa Position

In July 2001, the Hoopa Valley Tribe submitted its proposed draft report for consideration by the Department. After describing the history of the disputes, the Settlement Act, and subsequent actions, the Hoopa Valley Tribe provided various recommendations and observations.

The Hoopa's submission noted that a separate lawsuit determined that only 1.26303 percent of the Settlement Fund monies were derived from the Yurok Reservation, with the remainder of the monies derived from the Hoopa Reservation. "The Hoopa Valley Tribe has continued to assert its right to a portion of the benefits offered to and rejected by the Yurok Tribe." *Id.* at 16. Prior to its July submission, the Tribe previously requested that the Department recommend "that the remaining funds from the Hoopa Square be returned to the Hoopa Valley Tribe." *Id.*

The Hoopa's submission ultimately suggested the following recommendations:

> –that the "suspended benefits" under the Act–including the land transfer and land acquisition provisions for the Yurok Tribe and the remaining monies in the Settlement Fund–"be valued and divided equally between the two tribes";
>
> –that the economic self-sufficiency plan for the Yurok Tribe be carried forward, including "any feasibility study concerning the cost of a road from U.S. Highway 101 to California Highway 96 . . . and other objectives of the self-sufficiency plan";

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–that additional federal lands adjacent to or near the Yurok and Hoopa Valley Reservations be conveyed to and managed by the respective Tribes.

Yurok Position

In August 2001, counsel for the Yurok Tribe submitted the Tribe's positions and proposed draft report. The Yurok Tribe's submission similarly outlined the history of the dispute, other considerations, and its recommendations for the Department to consider. In general, the Yurok Tribe takes the position, among others, that its "conditional waiver" was valid and became effective upon the Supreme Court's denial of *certiorari* in the takings litigation.

The Yurok's submission discusses the Tribe's concerns with the process leading up to and ultimately resulting in passage of the Settlement Act. In the Tribe's view, the Act "nullified in large part the *Short* ruling" which allowed all "Indians of the Reservation" to share equally in the revenues and resources of the Joint Reservation. The Tribe, not formally organized at the time, "was not asked and did not participate in the legislative process" and had the Act "imposed on the Yuroks who . . . were left with a small fraction of their former land and resources." In its view, the Act divested the Yurok Tribe of its "communal ownership" in the Joint Reservation's lands and resources and "relegated the much larger" Tribe to a few thousand acres in trust along the Klamath River with a decimated fishery while granting to the Hoopa Valley Tribe nearly 90,000 acres of unallotted trust land and resources, including valuable timber resources.

With respect to the waiver issue, the Yurok's submission considers the Department's view, discussed above, as erroneous. The Tribe references a March 1995 letter from the Department in which the Assistant Secretary-Indian Affairs indicated that the Tribe could cure the "perceived deficiencies" with its "conditional waiver" by "subsequent tribal action or the final resolution of the Tribe's lawsuit in the U.S. Court of Federal Claims." The Tribe takes the position that it made a reasonable settlement offer and would have dismissed its claim with prejudice, but that the Department never meaningfully responded. Now, the Tribe considers the Supreme Court's denial of *certiorari* as the "final resolution" suggested as curing the waiver.

As support for its position, the Tribe states: "The text of the Act and the intent of Congress make clear that filing a constitutional claim and receiving the benefits of the Act are not mutually exclusive." The Tribe suggests that principles of statutory construction, including the canon that ambiguities be resolved in favor of tribes and that provisions within a statute should be read so as not to conflict or be inconsistent, requires a broader reading of the waiver provision in section 2(c)(4) in light of the Act's provision allowing a taking claim to be brought under section 14. The Tribe considers the Department's reading of the statute to be unfair and unjust. For these and other reasons, the Tribe is of the view that it is now entitled to its benefits under the Act.

Departmental View

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Because the Yurok Tribe litigated its claims against the United States based on passage of the Act rather than waiving those claims, the Department is of the view that the Yurok Tribe did not meet the condition precedent established in section 2(c)(4) of the Act for the Tribe to receive its share of the Settlement Fund or other benefits. But, the Department is also of the view that the Hoopa Valley Tribe has already received its portion of the benefits under the Act and is not entitled to further distributions from the Settlement Fund under the provisions of the Act. Ultimately, this situation presents a quandary for the Department and for the Tribes, as we believe the Act did not contemplate such a result. The monies remaining in the Settlement Fund originated from the seven trust accounts which held revenues generated from the Joint Reservation. Thus, the monies remaining in the Settlement Fund should thus be distributed to one or both Tribes in some form. Moreover, the Department recognizes that substantial financial and economic needs currently exist within both Tribes and their respective reservations.

Given the current situation, the Report outlines five recommendations of the Department to address these issues:

> First, no additional funds need to be added to the Settlement Fund to realize the purposes of the Act;
>
> Second, remaining monies in the Settlement Fund should be retained in trust account status by the Department pending further considerations and not revert to the general fund of the U.S. Treasury;
>
> Third, the Settlement Fund should be administered for the mutual benefit of both Tribes and their respective reservations, taking into consideration prior distributions to each Tribe from the Fund. It is our position that it would be inappropriate for the Department to make any general distribution from the Fund without further instruction from Congress;
>
> Fourth, Congress should fashion a mechanism for the future administration of the Settlement Fund, in coordination with the Department and in consultation with the Tribes; and,
>
> Fifth, Congress should consider the need for further legislation to establish a separate, permanent fund for each Tribe from the remaining balance of the Settlement Fund in order to address any issue regarding entitlement to the monies and to fulfill the intent of the Settlement Act in full.

This concludes my testimony. I would be happy to respond to any questions you may have.

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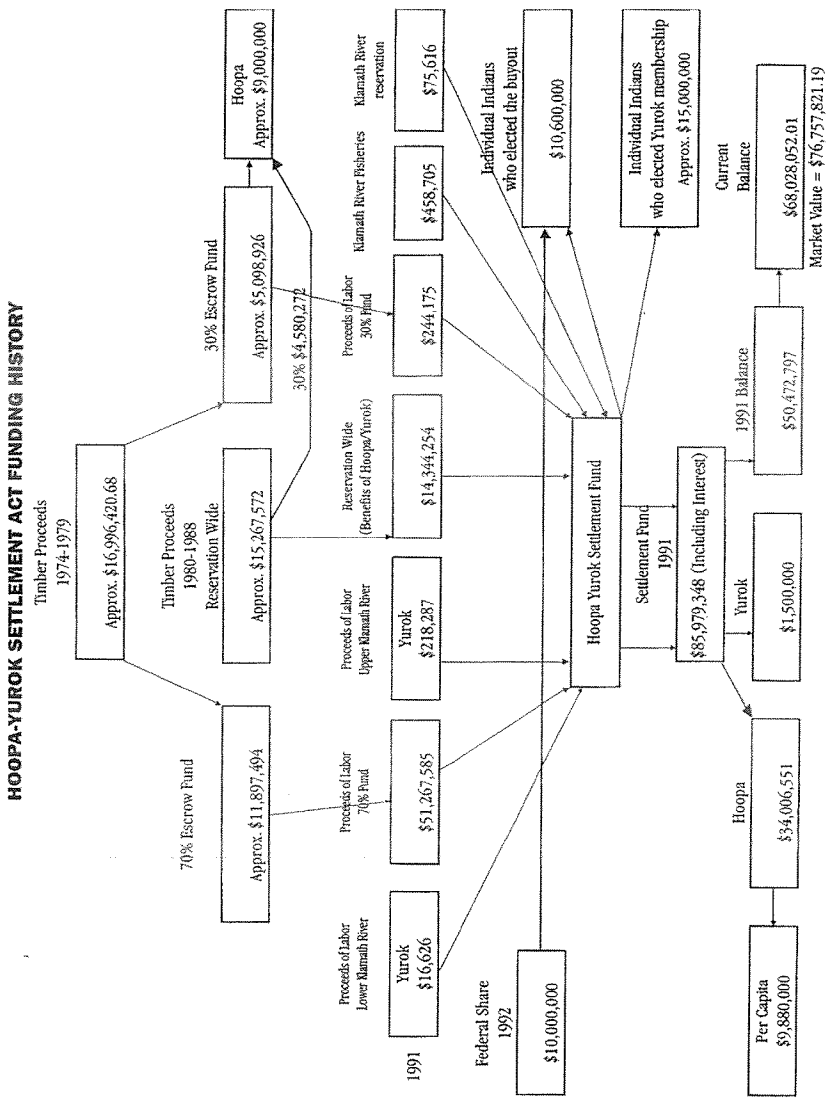
HOOPA-YUROK SETTLEMENT ACT FUNDING HISTORY
Timber Proceeds
1974-1979
Approx. $16,996,420.68
70% Escrow Fund
Approx. $11,897,494
30% Escrow Fund
Approx. $5,098,926
Timber Proceeds
1980-1988
Reservation Wide
Approx. $15,267,572
Hoopa
Approx. $9,000,000
30% $4,580,272
Proceeds of Labor
70% Fund
$51,267,585
Proceeds of Labor
Lower Klamath River
Yurok
$16,626
1991
Proceeds of Labor
Upper Klamath River
Yurok
$218,287
Reservation Wide
(Benefits of Hoopa/Yurok)
$14,344,254
Proceeds of Labor
30% Fund
$244,175
Klamath River Fisheries
$458,705
Klamath River
reservation
$75,616
Individual Indians
who elected the buyout
$10,600,000
Federal Share
1992
$10,000,000
Hoopa Yurok Settlement Fund
Settlement Fund
1991
$85,979,348 (Including Interest)
Individual Indians
who elected Yurok membership
Approx. $15,000,000
Current
Balance
$68,028,052.01
Market Value = $76,757,821.19
1991 Balance
$50,472,797
Yurok
$1,500,000
Hoopa
$34,006,551
Per Capita
$9,880,000

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

KARUK TRIBE OF CALIFORNIA, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	No. 90-3993L Judge Lawrence S. Margolis
CAROL AMMON, et al., Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	No. 91-1432L Judge Lawrence S. Margolis
YUROK INDIAN TRIBE, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	No. 92-173L Judge Lawrence S. Margolis

UNITED STATES' AND HOOPA VALLEY TRIBE'S JOINT STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS OF UNCONTROVERTED FACT OFFERED IN OPPOSITION TO THE CROSS-MOTIONS OF THE YUROK TRIBE RELATING TO THE DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES, UNCONTROVERTED FACTS, AND PROPOSED SUPPLEMENTAL FINDINGS
1. The Yurok people were aboriginal residents of the Square. (Short I, 486 F.2d at 565).	UNCONTROVERTED.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
2. The Yuroks were beneficiaries of the 1864 Treaty (never ratified) that called for the creation of the Reservation (Short I, 486 F.2d at 565).	UNCONTROVERTED.
3. Congress established the Hoopa Reservation in part for the Yuroks (Short I, 486 F.2d at 565).	UNCONTROVERTED.
4. Congress in 1864 intended that the Reservation be the solution to the problem of Indian/white conflict in Northern California. (Short I, passim; Comments of Sen. Doolittle, March 21, 1864 Hearing, Cong. Globe at 1209; Beckham Decl. at 36-47 (April 30, 1993)).	UNCONTROVERTED.
5. The 1891 Executive Order adding the Addition created an enlarged, single Reservation (Short I, 486 F.2d at 567-68).	UNCONTROVERTED.
6. The expansion put the Yurok Indians of the Addition on equal footing with the Hoopa Indians of the Square, such that the Hoopas did not enjoy any exclusive rights to the Square (Short I at 486 F.2d at 567-68, and passim).	UNCONTROVERTED.
7. Individual Yurok Indians of the Reservation were entitled to a per capita share of the Joint Reservation resources. (Short I at 561, 568, passim).	CONTROVERTED. Defs.' Proposed Fdg 61 in Defs.' Comprehensive Table.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
8. Numerous Interior Department administrative opinions subsequent to the 1891 Extension confirmed that the Yuroks of the Reservation "were entitled to rights on the reservation." (Short I at 567-68).	UNCONTROVERTED. Defs.' Proposed Fdg 26 in Defs.' Comprehensive Table.
9. Both the Square and the Extension are "recognized" Reservations. Watts v. Arnett, 412 U.S. 481, 494, 505 (1973).	CONCLUSION OF LAW; CONTROVERTED. Defs.' Proposed Fdgs 18-22 in Defs.' Comprehensive Table.
10. Between enactment of the 1864 Act and the enactment of the Hoopa-Yurok Settlement Act ("HYSA") in 1988, no act of Congress or Executive Order purported to expel Yuroks or the Yurok Tribe from the Square.	UNCONTROVERTED.
11. Between enactment of the 1864 Act and the enactment of the HYSA in 1988, no act of Congress or Executive Order purported to divest Yuroks or the Yurok Tribe of their rights to the land or resources of the Square.	CONTROVERTED. Defs.' Proposed Fdgs 27-35 in Defs.' Comprehensive Table.
12. Between enactment of the 1864 Act and the enactment of the HYSA in 1988, no act of Congress or Executive Order purported to put Yuroks or the Yurok Tribe on notice that they had no right to consider the Reservation their permanent home.	IMMATERIAL; CONTROVERTED. Defs.' Proposed Fdgs 27 in Defs.' Comprehensive Table.
13. Since 1891 the Yurok people have considered the Joint Reservation to be their	IMMATERIAL; CONTROVERTED. Defs.' Proposed Fdg 157 in Defs.' Comprehensive Table.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
permanent home. See generally Matts v. Arnett, supra; Donnelly v. United States, 228 U.S. 243 (1913); Mattz v. Superior Court, 46 Cal.3d 355 (1988); People v. McCovey, 36 Cal.3d 517, 205 Cal. Rptr. 643, 685 P.2d 687 (1984); United States v. Eberhardt, 789 F.2d 1354 (9th Cir. 1986); Pacific Coast Fed. v. Secretary of Commerce, 494 F. Supp. 626 (N.D.Cal. 1980); Blake v. Arnett, 663 F.2d 906 (9th Cir. 1981); Elser v. Gill Net Number One, 246 Cal.App.3d 30, 54 Cal.Rptr. 568 (1966); Arnett v. Five Gill Nets, 48 Cal.App.3d 454, 121 Cal. Rptr. 906 (1975); Donahue v. Justice Court, 15 Cal.App.3d 557, 93 Cal.Rptr. 310 (1971).	
14. Since 1891 the Yurok people have centered their cultural and social life in and around the Joint Reservation. See generally the cases cited in Paragraph 13 above.	IMMATERIAL; UNCONTROVERTED.
15. Since 1891 many of the Yurok people have earned their living in whole or in part from the resources of the Joint Reservation. See generally the cases cited in Paragraph 13 above.	IMMATERIAL; UNCONTROVERTED.
16. The Yuroks "rely in their daily lives" on the expectation that they have a permanent home on the Reservation. See generally the cases cited in Paragraph 13 above.	IMMATERIAL; UNCONTROVERTED.

THE YUROK TRIBE'S STATEMENT OF UNCONTROVERTED FACT	DEFENDANTS' STATEMENT OF GENUINE ISSUES AND PROPOSED SUPPLEMENTAL FINDINGS
17. The Yurok Tribe is the duly organized representative of the Yurok people. 25 U.S.C. § 1300i(b)(16), 13001-8; Letter from Assistant Secretary Indian Affairs re recognition of ratification of Tribal Constitution (Exhibit A to Yurok Memorandum).	UNCONTROVERTED.

DATED this 12th day of September, 1994.

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12/03/03

Proposed Amendments to the Hoopa-Yurok Settlement Act Developed jointly by the Hoopa Valley Tribe and the Yurok Tribe in Formal Mediation

Title I. YUROK

Section A. Lands.

1. Notwithstanding any provision of law, there is hereby authorized from the Bureau of Indian Affairs of the $2,500,000 previously appropriated under Pub. L. 100-580 such amounts as may be necessary for use in conducting purchase, appraisals, surveys, and other requirements needed to acquire privately owned lands, excluding lands within the boundaries of the Hoopa Valley Reservation.

2. Within one year of enactment, the Secretaries of the Department of Interior and Agriculture shall identify 238,433 acres of federal and private lands and the Yurok Tribe and the United States shall from these lands mutually determine an adequate land base for the Yurok Tribe and shall transfer such land base, including the acquisition of private lands from willing owners, by land trade or purchase, to the Yurok Tribe and to adjust the Yurok Reservation boundaries to reflect such transfer. Such Reservation shall be identified from 67,564 acres of private lands, 155,210 acres of USFS lands, 300 acres of BLM, 13,647 acres of other lands and 1,712 acres of RNPS lands. Within the identified lands 46,080 acres shall be set aside as cultural districts protected from all management activities not consistent with the religious and ceremonial interests of the Yurok Tribe. The purposes of this subsection are to establish a land base for the Yurok Tribe that is economically viable for commercial timber harvest of approximately 11,000,000 board feet annually on a sustained yield basis, and to meet the subsistence and other cultural needs of the Yurok Tribe. All land acquired by trade or by direct transfer shall be held in trust.

3. As part of subsection A (2) above, there is hereby transferred to the Yurok tribe in trust all federal lands within the Yurok Reservation established under the Act

that are now under the jurisdiction of the National Park Service, Forest Service and/or Bureau of Land Management. These lands are included in the acreage described in subsection 2, above.

4. The U.S. Court of Federal Claims is authorized to hear and determine all claims of the Yurok Indian Tribe and its members arising from the loss of lands from Indian ownership, sold, homesteaded or otherwise lost without the consent of the tribe, from the Klamath River Reservation or Connecting Strip. The statute of limitations is expressly waived.

Section B. Jurisdiction.

1. Notwithstanding Pub. L. 83-280, federal law enforcement and tribal court funds and programs shall be made available to the Yurok and Hoopa Valley Tribes on the same basis as they are available to tribes located in non-Pub. L. 83-280 States. There is hereby authorized to be appropriated not less than $1,000,000 annually for Yurok Tribal Court and law enforcement programs to be provided in the Department of Justice or Bureau of Indian Affairs budgets.

2. The authority of the Yurok Tribe over the territories as provided in the Constitution of the Yurok Tribe as of the date of enactment of this Act are ratified and confirmed on the same basis as such provisions of the Hoopa Valley Tribe's Constitution were ratified in Section 8 of Pub. L. 100-580, insofar as it relates to the jurisdiction of the Yurok Tribe over persons and lands within the boundaries of the Yurok Reservation.

3. The Secretaries of the Departments of Interior and Agriculture shall enter into stewardship agreements with the Yurok Tribe with respect to management of Klamath River Basin fisheries and water resources. Nothing herein shall be interpreted as providing the Yurok Tribe with any jurisdiction within the Hoopa Valley Reservation.

4. There is hereby granted co-management of all natural resources, sacred and cultural sites of the Yurok Tribe within its usual and accustomed places within Yurok aboriginal territories that are on lands remaining under the jurisdiction of the National Park Service, Forest Service and/or Bureau of Land management. Co-management shall be defined as joint decision making responsibility regarding subject resources requiring concurrence of the Tribe.

5. There is hereby granted access for subsistence hunting, fishing, and gathering rights for members of the Yurok Tribe over all lands within its aboriginal territory that remain under the jurisdiction of the Yurok Tribe, National Park Service, Forest Service and/or Bureau of Land Management. All subsistence related activities shall be conducted pursuant to proper management plans developed by the Yurok Tribe.

Section C. Base Funding.

There is hereby authorized to be appropriated from New Tribes Funding an adjustment in the base funding for the Yurok Tribe based upon the actual enrollment of the Yurok Tribe at the time of the enactment of this Amendment.

Section D. Yurok Infrastructure Development.

There is hereby authorized to be appropriated from existing appropriations as they may be made, from year to year:

1. $20,000,000 for the upgrade and construction of BIA and tribal roads on the Yurok Reservation;
2. $500,000 per year for the operation of a road maintenance program for the Yurok Tribe;
3. $3,500,000 is authorized to be appropriated as a one time cost for purchase of equipment and supplies for the Yurok Tribe road maintenance program;
4. $7,600,000 for the electrification of the Yurok Reservation;
5. $2,500,000 for telecommunication needs on the Yurok Reservation;
6. $18,000,000 for the improvement and development of water and wastewater treatment systems on the Yurok Reservation;
7. $6,000,000 for a residential care, drug and alcohol rehabilitation and recreational complex near Weitchpec;
8. $7,000,000 for the building of a Cultural Center for the Yurok Tribe;
9. $4,000,000 for a Tribal Court, Law Enforcement and detention facility in Klamath;
10. $10,000,000 for the construction of 50 homes for Yurok Tribe elders.
11. $3,200,000 for the development and initial start up cost for a Yurok School District;
12. $800,000 to supplement Yurok Tribe higher education need.

Congress recognizes the unsafe and inadequate condition of roads and major transportation routes on and to the Yurok Reservation. As such, the Congress identifies a priority that these transportation systems be upgraded and brought up to the same standards as transportation systems throughout the State of California.

Section E. Yurok Economic Development

There is hereby authorized to be appropriated from existing appropriations as they may be made, from year to year, from the Departments of HUD, Commerce, and Agriculture:

1. $20,000,000 for the construction and associated costs required to build an eco lodge;
2. $1,500,000 for the purchase of equipment to start a gravel operation;
3. $6,000,000 for the purchase and improvement of RV and fishing resorts

on the Yurok Reservation.

Section F. BLM Lands

Certain BLM lands within Yurok aboriginal territory are hereby transferred to the Yurok Tribe, to wit: T.9N., R.4E, HUM, Section 1, T.9N., R.4E, Section 7, T.9N., R.4E., Section 8, Lot 3, T.9N., R.4E., Section 9, Lots 19&20, T.9N.,R.4E., Section 17, Lots 3-6, T.9N., R4E., Section 18, Lots 7&10, T.9N., R.3E., Section 13, Lots 8&12, T.9N., R3E, Section 14, Lot 6.

Certain BLM lands along the western boundaries of the Hoopa Valley Reservation are hereby transferred to the Hoopa Valley Tribe, to wit: T.9N, R.3E., Section 23, Lots 7&8, T.9N., R.3E., Section 26, Lots 1-3, T.7N., R.3E., Section 7, Lots 1&6, Section 1.

Title III. Hoopa-Yurok Settlement Act Provisions

Section A. Within one year and ninety days following enactment of this Amendment, the Secretary of the Interior, in consultation with Secretary of Agriculture relative to the establishment of an adequate land base, shall prepare and submit to the Congress a report describing the establishment of an adequate land base for the Yurok Tribe and implementation of Title I of this amendment. The report shall also describe: the sources of funds remaining in the Settlement Fund, including the statutory authority for such deposits and the activities, including environmental consequences, if any, which gave rise to such deposits; disbursements from such deposits; the provision of resources, Reservation lands, trust lands, and income producing assets including, to the extent available (including data provided by the Tribes) the environmental condition of such lands and income producing assets, infrastructure and other valuable assests, including financial distributions to each Tribe pursuant to the Settlement Act This amendments, and otherwise; and to the extent available (including data provided by the Tribes) the unmet economic, infrastructure and land needs of each Tribe, at the time of the Report No expenditure from the Settlement Fund shall be made prior to submission of the report, and Congressional action upon such report, except as may be agreed upon by the Hoopa Valley and Yurok Tribes pursuant to their constitutional requirements.

Section B. Subsections of the HYSA that conditioned certain provision on a Yurok Council waiver resolution, found in P.L. 100-580, Section 2(c)(4)(B),(C) and (D) (relating to land transfers, land acquisition and organizational authorities), are hereby repealed.

Section C. The provisions of the Klamath River Basin Fisheries Restoration Act of 1986, Pub. L. 99-552 creating the Klamath Fisheries Management Council are hereby amended to provide a voting member to be appointed by the Yurok Tribe to replace the non Hoopa Indian voting member.

Section D. Section 10 of the HYSA is amended by deleting subsection 10 (a) and inserting in lieu thereof: Section 10 (a) Plan for Economic Self-Sufficiency -There is authorized to be appropriated no less than 3 million dollars for the Yurok Self Sufficiency Plan.

1. The Secretary shall enter into negotiations with the Yurok Tribe in order to establish a plan for the economic self-sufficiency of the Tribe, which shall be completed within eighteen months of the enactment of this amendment;

2. Upon the approval of such Plan by the Yurok Tribe, the Secretary shall submit such Plan to the Congress.

Respectfully submitted,

Clifford Lyle Marshall, Chairman
Hoopa Valley Tribal Council

Howard D. McConnell, Chairman
Yurok Tribal Council

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108TH CONGRESS
2D SESSION

S. 2878

To amend the Hoopa-Yurok Settlement Act to provide for the acquisition of land for the Yurok Reservation and an increase in economic development beneficial to the Hoopa Valley Tribe and the Yurok Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2004

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

---

A BILL

To amend the Hoopa-Yurok Settlement Act to provide for the acquisition of land for the Yurok Reservation and an increase in economic development beneficial to the Hoopa Valley Tribe and the Yurok Tribe, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hoopa-Yurok Settlement Amendment Act of 2004".

SEC. 2. ACQUISITION OF LAND FOR THE YUROK RESERVATION.

Section 2(c) of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–1(c)) is amended by adding at the end the following:

"(5) LAND ACQUISITION.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary and the Secretary of Agriculture shall—

"(i) in consultation with the Yurok Tribe, identify Federal and private land available from willing sellers within and adjacent to or in close proximity to the Yurok Reservation in the aboriginal territory of the Yurok Tribe (excluding any land within the Hoopa Valley Reservation) as land that may be considered for inclusion in the Yurok Reservation;

"(ii) negotiate with the Yurok Tribe to determine, from the land identified under clause (i), a land base for an expanded Yurok Reservation that will be adequate for economic self-sufficiency and the maintenance of religious and cultural practices;

"(iii) jointly with the Yurok Tribe, provide for consultation with local governments, and other parties whose interests are directly affected, concerning the potential sale or other transfer of land to the Yurok Tribe under this Act;

"(iv) submit to Congress a report identifying any parcels of land within their respective jurisdictions that are determined to be within the land base negotiated under clause (ii); and

"(v) not less than 60 days after the date of submission of the report under clause (iv), convey to the Secretary in trust for the Yurok Tribe the parcels of land within their respective jurisdictions that are within that land base.

"(B) ACCEPTANCE IN TRUST.—The Secretary shall—

"(i) accept in trust for the Yurok Tribe the conveyance of such private land as the Yurok Tribe, or the United States on behalf of the Yurok Tribe, may acquire from willing sellers, by exchange or purchase; and

"(ii) provide for the expansion of the Yurok Reservation boundaries to reflect the conveyances.

"(C) FUNDING.—Notwithstanding any other provision of law, from funds made available to carry out this Act, the Secretary may use $2,500,000 to pay the costs of appraisals, surveys, title reports, and other requirements relating to the acquisition by the Yurok Tribe of private land under this Act (excluding land within the boundaries of the Hoopa Valley Reservation).

"(D) REPORT.—

"(i) IN GENERAL.—Not later than 90 days after the date of submission of the report under subparagraph (A)(iv), the Secretary, in consultation with the Secretary of Agriculture relative to the establishment of an adequate land base for the Yurok Tribe, shall submit to Congress a report that describes—

"(I) the establishment of an adequate land base for the Yurok Tribe and implementation of subparagraph (A);

"(II) the sources of funds remaining in the Settlement Fund, including the statutory authority for such deposits and the activities, including environmental consequences, if any, that gave rise to those deposits;

"(III) disbursements made from the Settlement Fund;

"(IV) the provision of resources, reservation land, trust land, and income-producing assets including, to the extent data are available (including data available from the Hoopa Valley Tribe and the Yurok Tribe), the environmental condition of the land and income-producing assets, infrastructure, and other valuable assets; and

"(V) to the extent data are available (including data available from the Hoopa Valley Tribe and the Yurok Tribe), the unmet economic, infrastructure, and land needs of each of

the Hoopa Valley Tribe and the Yurok Tribe.

"(ii) LIMITATION.—No expenditures for any purpose shall be made from the Settlement Fund before the date on which, after receiving the report under clause (i), Congress enacts a law authorizing such expenditures, except as the Hoopa Valley Tribe and Yurok Tribes may agree pursuant to their respective constitutional requirements.

"(6) CLAIMS.—

"(A) IN GENERAL.—The Court of Federal Claims shall hear and determine all claims of the Yurok Tribe or a member of the Yurok Tribe against the United States asserting that the alienation, transfer, lease, use, or management of land or natural resources located within the Yurok Reservation violates the Constitution, laws, treaties, Executive orders, regulations, or express or implied contracts of the United States.

"(B) CONDITIONS.—A claim under subparagraph (A) shall be heard and determined—

"(i) notwithstanding any statute of limitations (subject to subparagraph (C)) or any claim of laches; and

"(ii) without application of any setoff or other claim reduction based on a judgment or settlement under the Act of May 18, 1928 (25 U.S.C. 651 et seq.) or other laws of the United States.

"(C) LIMITATION.—A claim under subparagraph (A) shall be brought not later than 10 years after the date of enactment of this paragraph.".

SEC. 3. JURISDICTION.

(a) LAW ENFORCEMENT AND TRIBAL COURT FUNDS AND PROGRAMS.—Section 2(f) of the Hoopla-Yurok Settlement Act (25 U.S.C. 1300i–1(f)) is amended—

(1) by striking "The Hoopa" and inserting the following:

"(1) IN GENERAL.—The Hoopa";

(2) by striking the semicolon after "Code" the first place it appears and inserting a comma; and

(3) by adding at the end the following:

"(2) LAW ENFORCEMENT AND TRIBAL COURT FUNDS AND PROGRAMS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), Federal law enforcement and tribal court funds and programs shall be made available to the Hoopa Valley Tribe and Yurok Tribe on the same basis as the funds and programs are available to Indian tribes that are not subject to the provisions of law referred to in paragraph (1).

"(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for Yurok law enforcement and tribal court programs $1,000,000 for each fiscal year.".

(b) RECOGNITION OF THE YUROK TRIBE.—Section 9 of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–8) is amended by adding at the end the following:

"(f) RECOGNITION OF THE YUROK TRIBE.—The authority of the Yurok Tribe over its territories as provided in the constitution of the Yurok Tribe as of the date of enactment of this subsection are ratified and confirmed insofar as that authority relates to the jurisdiction of the Yurok Tribe over persons and land within the boundaries of the Yurok Reservation.".

(c) YUROK RESERVATION RESOURCES.—Section 12 of the Hoopa Yurok Settlement Act (102 Stat. 2935) is amended by adding at the end the following:

"(c) KLAMATH RIVER BASIN FISHERIES.—

"(1) IN GENERAL.—The Secretary and the Secretary of Agriculture shall enter into stewardship agreements with the Yurok Tribe with respect to management of Klamath River Basin fisheries and water resources.

"(2) EFFECT OF PARAGRAPH.—Nothing in paragraph (1) provides the Yurok Tribe with any jurisdiction within the Hoopa Valley Reservation.

"(d) MANAGEMENT AUTHORITY.—

"(1) DEFINITION OF COMANANGEMENT AUTHORITY.—In this subsection, the term 'management authority' means the right to make decisions jointly with the Secretary or the Secretary of Agriculture, as the case may be, with respect to the natural resources and sacred and cultural sites described in paragraph (2).

"(2) GRANT OF MANAGEMENT AUTHORITY.—There is granted to the Yurok Tribe management authority over all natural resources, and over all sacred and cultural sites of the Yurok Tribe within their usual and accustomed places, that are on land remaining under the jurisdiction of the National Park Service, Forest Service, or Bureau of Land

Management within the aboriginal territory of the Yurok Tribe.

"(e) SUBSISTENCE.—

"(1) IN GENERAL.—There is granted access for subsistence hunting, fishing, and gathering rights for members of the Yurok Tribe over all land and water within the aboriginal territory of the Yurok Tribe that remain under the jurisdiction of the Yurok Tribe or the United States, excluding any land within the Hoopa Valley Reservation.

"(2) CONDITION.—All subsistence-related activities under paragraph (1) shall be conducted in accordance with management plans developed by the Yurok Tribe.".

SEC. 4. BASE FUNDING.

From amounts made available to the Secretary for new tribes funding, the Secretary shall make an adjustment in the base funding for the Yurok Tribe based on the enrollment of the Yurok Tribe as of the date of enactment of this Act.

SEC. 5. YUROK INFRASTRUCTURE DEVELOPMENT.

(a) IN GENERAL.—There are authorized to be appropriated—

(1) $20,000,000 for the upgrade and construction of Bureau of Indian Affairs and tribal roads on the Yurok Reservation;

(2) for each fiscal year, $500,000 for the operation of a road maintenance program for the Yurok Tribe;

(3) $3,500,000 for purchase of equipment and supplies for the Yurok Tribe road maintenance program;

(4) $7,600,000 for the electrification of the Yurok Reservation;

(5) $2,500,000 for telecommunication needs on the Yurok Reservation;

(6) $18,000,000 for the improvement and development of water and wastewater treatment systems on the Yurok Reservation;

(7) $6,000,000 for the development and construction of a residential care, drug and alcohol rehabilitation, and recreational complex near Weitchpec;

(8) $7,000,000 for the construction of a cultural center for the Yurok Tribe;

(9) $4,000,000 for the construction of a tribal court, law enforcement, and detention facility in Klamath;

(10) $10,000,000 for the acquisition or construction of at least 50 homes for Yurok Tribe elders;

(11) $3,200,000 for the development and initial startup cost for a Yurok School District; and

(12) $800,000 to supplement Yurok Tribe higher education need.

(b) PRIORITY.—Congress—

(1) recognizes the unsafe and inadequate condition of roads and major transportation routes on and to the Yurok Reservation; and

(2) identifies as a priority that those roads and major transportation routes be upgraded and brought up to the same standards as transportation systems throughout the State of California.

SEC. 6. YUROK ECONOMIC DEVELOPMENT.

There are authorized to be appropriated—

(1) $20,000,000 for the construction of an ecolodge and associated costs;

(2) $1,500,000 for the purchase of equipment to establish a gravel operation; and

(3) $6,000,000 for the purchase and improvement of recreational and fishing resorts on the Yurok Reservation.

SEC. 7. BLM LAND.

(a) CONVEYANCE TO THE YUROK TRIBE.—The following parcels of Bureau of Land Management land within the aboriginal territory of the Yurok Tribe are conveyed in trust status to the Yurok Tribe:

(1) T. 9N., R. 4E, HUM, sec. 1.

(2) T. 9N., R. 4E, sec. 7.

(3) T. 9N., R. 4E., sec. 8, lot 3.

(4) T. 9N., R. 4E., sec. 9, lots 19 and 20.

(5) T. 9N., R. 4E., sec. 17, lots 3 through 6.

(6) T. 9N., R. 4E., sec. 18, lots 7 and 10.

(7) T. 9N., R. 3E., sec. 13, lots 8 and 12.

(8) T. 9N., R. 3E, sec. 14, lot 6.

(b) CONVEYANCE TO THE HOOPA VALLEY TRIBE.—The following parcels of Bureau of Land Management land along the western boundaries of the Hoopa Valley Reservation are conveyed in trust status to the Hoopa Valley Tribe:

(1) T. 9N, R. 3E., sec. 23, lots 7 and 8.

(2) T. 9N., R. 3E., sec. 26, lots 1 through 3.

(3) T. 7N., R. 3E., sec. 7, lots 1 and 6.

(4) T. 7N., R. 3E., sec. 1.

SEC. 8. REPEAL OF OBSOLETE PROVISIONS.

Section 2(c)(4) of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–1(c)(4)) is amended by striking "The—" and all that follows through "shall not be" and inserting

"The apportionment of funds to the Yurok Tribe under sections 4 and 7 shall not be".

SEC. 9. VOTING MEMBER.

Section 3(c) of the Klamath River Basin Fisheries Restoration Act (16 U.S.C. 460ss–2(c)) is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6); and

(2) by striking paragraph (3) and inserting the following:

"(3) A representative of the Yurok Tribe who shall be appointed by the Yurok Tribal Council.

"(4) A representative of the Department of the Interior who shall be appointed by the Secretary.".

SEC. 10. ECONOMIC SELF-SUFFICIENCY.

Section 10 of the Hoopa-Yurok Settlement Act (25 U.S.C. 1300i–9) is amended by striking subsection (a) and inserting the following:

"(a) PLAN FOR ECONOMIC SELF-SUFFICIENCY.—

"(1) NEGOTIATIONS.—Not later than 30 days after the date of enactment of the Hoopa-Yurok Settlement Amendment Act of 2004, the Secretary shall enter into negotiations with the Yurok Tribe to establish a plan for the economic self-sufficiency of the Yurok Tribe, which shall be completed not later than

18 months after the date of enactment of the Hoopa-Yurok Settlement Amendment Act of 2004.

"(2) SUBMISSION TO CONGRESS.—On the approval of the plan by the Yurok Tribe, the Secretary shall submit the plan to Congress.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $3,000,000 to establish the Yurok Tribe Self-Sufficiency Plan.".

SEC. 11. EFFECT OF ACT.

Nothing in this Act or any amendment made by this Act limits the existing rights of the Hoopa Valley Tribe or the Yurok Tribe Tribe.

○

HOGAN & HARTSON
L.L.P.

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MEMORANDUM

October 21, 2005

TO: Hon. Sue Ellen Wooldridge

FROM: Hogan & Hartson, L.L.P.

RE: Critical Issues Facing the Yurok Tribe

On behalf of the Yurok Tribe and us at Hogan & Hartson, thank you very much for your continued willingness to understand the Tribe's concerns and for all your efforts in addressing those concerns. We appreciate also the work of Scott Bergstrom on matters of importance to the Tribe.

In anticipation of a possible meeting on or discussion of these issues with you soon, we wanted to be sure that we have accurately expressed to you the Tribe's clear priorities. The most urgent matter for the Yurok Tribe is to obtain a speedy release of the $3 million for land acquisition and associated expenses as mandated by the Hoopa-Yurok Settlement Act of 1988 ("the Act"). *See* 25 U.S.C. § 1300i-1(c)(3)(B). As you are aware, the land acquisition monies have already been appropriated[1] and the Tribe's claim to those monies is undisputed. The distribution of the monies intended for the Tribe under the Act and currently being held in the Settlement Fund also is important to the Tribe. However, due to the immediate need that the Tribe has for the land acquisition monies and the fact that those monies will serve as a first step to helping the Tribe address its urgent priorities, including a pending transaction to acquire substantial additional forested acreage, the Tribe considers its request for prompt release of this $3 million to be its most urgent current claim.

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1 We understand from Bureau of Indian Affairs staff that two separate appropriations have been made: one for $2.5 million and another for $500,000.

The Tribe's strong preference is to find an acceptable arrangement by which the $3 million for land acquisition could be provided to the Tribe administratively, without need of further intervention by the Congress. By this we mean that the Tribe is eager to learn what waivers or other conditions the Department of the Interior ("the Department") would require the Tribe to meet in order to receive the $3 million for land acquisition and the basis for any such conditions. The Tribe strongly urges the Department to look to such an administrative resolution. As explained below, the Tribe believes that: (1) it is clear that the Department has legal authority for administrative resolution of such matters; 2) such administrative resolution would effectuate the clearly-expressed intention of Congress; and (3) no further expression of Congressional intent is required.

The Department Has Authority Under the Law to Make Such Distribution Once the Yurok Tribe Meets Interior's Conditions

While the Act may provide for certain minimal conditions that must be met by the Tribe, such as execution of a complete waiver of claims arising under the Act and certain organizational requirements, the Act clearly provides the Department with the discretion and authority to disburse funds to the Tribe once those conditions are met. Indeed, as we understand it, the Department maintains the Yurok's portion of the funds and manages them on behalf of the Yurok with the expectation that they will ultimately be disbursed for the Tribe's benefit.

The Department is still entitled to rely upon the provisions of the Act, notwithstanding what has transpired since its enactment, including the initiation and resolution of litigation. The settlement of litigation pertaining to takings claims against the United States was not the primary purpose of the Act. Rather, the primary purposes of the Act were to establish an adequate land base for the Yurok, settle ongoing disputes between the Hoopa and Yurok pertaining to land distribution and equitably distribute the Settlement Funds to the Tribes and their members. Indeed, the Act itself anticipates the possibility of a takings claim arising from the Act and specifically provides for it. *See* 25 U.S.C. § 1300i-11. The final judgment against the Yurok's claim completes a cycle of events specifically contemplated by the Act and allows the Yurok and the Department now to proceed with accomplishing the underlying purposes of the Act, including the disbursement of the Yurok's portion of the funds to the Tribe.

The Act neither states nor implies that additional Congressional direction is necessary for disbursement of funds under the Act. Specifically, Section

14(c) of the Act, requiring a report to Congress following the final judgment of a takings claim against the United States, does not diminish the Department's discretion nor require the Department to seek Congressional approval before acting within its authority to disburse the funds. As evidenced by the legislative history and plain language of the Act, the intent of Section 14(c) was to provide Congress with recommendations if additional funds or management authorities were needed and, most importantly, to afford time for Congress to correct the language of the Act to avoid having to pay a final judgment in the event the claims were successful. *See* 25 U.S.C. § 1300i-11(c)(2); S. Rep. 100-564, at 30, 40 (1988).

Finally, the Act does not specify a time-certain in which the waiver conditions must be met. Nor does the Act indicate that pursuit of a takings claim against the government would nullify the Tribe's ability to obtain, or the Department's obligation to provide, the funds authorized by Congress. Instead, as noted above, the Act specifically contemplates the filing of a takings claim. As evidenced by other settlement acts with other tribes employing much stronger language in their waiver provisions, Congress certainly knew how to limit the Tribe's ability to obtain access to its portion of the funds, if that is what Congress so intended. It is not. According to the plain language of the Act, Congress intended for the Department to handle the details of disbursement of the Yurok's portion of the funds under the Act once the Tribe met certain conditions.

Distributing the Funds Is Consistent with Congressional Intent

The intent of Congress in enacting the Hoopa-Yurok Settlement Act was to deal fairly with the interests of both of the Tribes. As time has passed, however, the inequities of the Yurok's treatment under the Act have become apparent. Nevertheless, Congressional intent that the Yurok be entitled to certain funds under the Act is plain. The Department's disbursement of those funds, in particular the land acquisition funds and the remainder of the Settlement Fund, would be consistent with that intent.

The $3 million of land acquisition funds has already been authorized and appropriated in two installments to the Department for disbursement solely to the Yurok. No other party has any rightful claim to those funds.

With regard to the remainder of the Settlement Fund, the Tribe recognizes its own role in contributing to the delay of the Fund's disbursement. However, to deny the Yurok Tribe access to the Settlement Fund now would be in direct opposition to clear Congressional intent. Even though portions of the

Settlement Fund were derived from Yurok tribal members' settlement of previous litigation and the Yurok's portion of the joint reservation (i.e., the Yurok Escrow funds), the Tribe has yet to receive its distribution as provided for by Congress. *See* 25 U.S.C. § 1300i-3(d). Conversely, the Hoopa have already received their portion of the funds under the Act. In its Section 14(c) Report, the Department acknowledged the Hoopa's receipt of their benefits under the Act[2] and stated that "it is the position of the Department that Hoopa Valley Tribe is not entitled [to] any further portion of funds or benefits under the existing Act." DOI Report to Congress at 2 (2002).

Finally, no one but the Yurok Tribe is prejudiced by the passage of time that has occurred between enactment of the Act, the disbursement of the Hoopa's portion of funds, and, what can hopefully be, a final disbursement of the Yurok's funds. The Yurok's delay in executing what the Department considers a complete waiver does not somehow negate Congress' intent that the Yurok receive their portion of the funds specifically provided for the Tribe under the Act. As stated in the original legislative history of the Act, Congress did not intend that the waiver conditions would prevent the tribes from enforcing rights or obligations created by the Act. *See* S. Rep. 100-564 at 17 (1988). Once the waiver conditions of the Act are met, the Department is free to distribute the funds to which the Yurok are entitled as intended by Congress and clearly expressed in the original Act. The Hoopas' claim to Settlement Funds having been met, and their waiver to further claims against the United States having been executed, a distribution of the Yuroks' share remains the principal unfinished business of the Department under the Act.

No Further Action by Congress Is Required

The Act was a landmark piece of legislation that took an important first step in addressing Congress' concerns regarding the Yurok and Hoopa tribes. Owing to the inequities noted above, the Congress has since recognized that it must do more (i.e., S.2878, proposed amendments to the Act, introduced in the 108th Congress). Similar legislation is being considered by Members of the 109th Congress. However, before the Congress can take further action it is necessary for the U.S. government and the parties involved to allow the already-expressed intention of Congress to be fully realized. It is not necessary for the Department to seek to obtain additional Congressional guidance before distributing the funds clearly intended by Congress to be received by the Yurok Tribe. Additional issues yet to be addressed include

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2 The Department also noted that the Hoopa had executed a tribal resolution "waiving any claim such tribe may have against the United States arising out of the provisions of the Act." 53 Fed. Reg. 49,361 (1988) (emphasis added).

expansion of the Reservation boundaries, acquisition of land, public and private, within the expanded boundaries, and authorization of infrastructure improvements on the Reservation.

Furthermore, although Congressional guidance *may* have been necessary during the period when the Yurok Tribe's waiver was not considered complete, such guidance would not be necessary today if the Yurok were to execute a complete waiver that met the Department's conditions. Similarly, if the Yurok had succeeded in their claim against the government a case might be made for the necessity of further Congressional guidance. However, the Yurok's claim was not successful and the Tribe is now willing seriously to consider promptly meeting the Department's conditions. The Tribe is eager to move forward in cooperation with the Department to help achieve both the Department's and the Tribe's goals. Such cooperation is a very high priority for the Yurok's new leadership. To that end, the Tribe looks forward to a constructive discussion, and hopefully quick resolution, of these matters with the Department.

We look forward to discussing these matters with you as your schedule permits.

Hogan & Hartson, L.L.P.

cc: Scott Bergstrom

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MEMORANDUM

TO: David Bernhardt, Solicitor

FROM: Thomas P. Schlosser

DATE: March 23, 2006

RE: Can the Yurok Interim Council's Failure to Satisfy 25 U.S.C. § 1300i-1(c)(4) be Cured?

This memorandum examines whether the Yurok Tribe or its current governing body can now satisfy the requirements of section 2(c)(4) of the Hoopa-Yurok Settlement Act by curing the failure of the Interim Council of the Yurok Tribe to adopt a resolution "waiving any claims such tribe may have against the United States arising out of the provisions of this Act." Briefly, the answer is "no."

This memorandum reviews the Act, Interior Department rulings concerning the Interim Council of the Yurok Tribe, the litigation initiated by the Interim Council and pursued by the Yurok Tribe's governing body, and the effect of *res judicata* and the concept of bar.

1. The Hoopa-Yurok Settlement Act Waiver Requirement

The Hoopa-Yurok Settlement Act, Pub. L. 100-580, *codified as amended at* 25 U.S.C. § 1300-i *et seq.*, offered monetary awards in exchange for claim waivers by individuals qualified for a Settlement Roll, the Hoopa Valley Tribe, and the Interim Council of the Yurok Tribe. The tribal claim waiver provisions appear in sections 2 and 9 of the Act. The waiver provisions arose from concerns by the United States Department of Justice that a taking of property protected by the Fifth Amendment could be found by a court reviewing the Act. The statement of Rodney R. Parker, for the Justice Department, expressed the understanding that waiver language in the Senate bill as introduced already evidenced tribal consent but he requested "a provision requiring express tribal consent [which] could provide a clearer acknowledgment by the tribal government that no taking has occurred." S. Rep. 100-564 at 40 (1988). Accordingly,

the final version of the bill expanded the claim waiver requirements of sections 2(a), 2(c)(4) and 9(d)(2) of the Act. The Senate Report explains that the authority for certain transfers of funds and lands:

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

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

2. Application of the Waiver Requirement

On December 7, 1988, the Interior Department published a notice that the Hoopa Valley Tribe had adopted a valid resolution which met the requirements of section 2(a)(2)(A) of the Act. 53 Fed. Reg. 49361.[1] Pursuant to the Act, a roll of eligible Indians was prepared and approximately 3,000 persons selected the option of membership in the Yurok Tribe. Pursuant to section 6(c)(4), persons electing Yurok membership waived their individual claims and also granted to members of the Interim Council a proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the Act and granting necessary tribal consent. Under section 9(c), the Secretary of the Interior prepared a voter list for adults who elected the Yurok tribal membership option, convened a General Council meeting of the eligible voters, and conducted an election of a five-member Interim Council.

On November 19, 1991, Acting Associate Solicitor, Division of Indian Affairs, Scott Keep wrote to congressional aide Jason Conger concerning individuals who accepted the payments authorized to be made under section 6(c) of the Act ($5,000 or $7,500 each). He held they were "legally bound by the terms of the Act to accept the privileges and limitations associated with Yurok tribal membership," although certain amounts had been withheld from the payments for attorney fees.

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

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

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[1] The approved resolution noted that "the waiver required by the Act does not prevent the Hoopa Valley Tribe "from enforcing rights or obligations created by this Act," S. Rep. 100-564 at 17." *Id.*

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

(3) Refusal to pass resolution waiving claims against the United States and/or filing a claim would prevent the Yurok Tribe from receiving the apportionment of funds, the land transfers, and the land acquisition authorities provided by various sections of the Settlement Act, but would not preclude the Yurok Tribe from organizing a tribal government;

On March 11, 1992, the Yurok Interim Council filed *Yurok Indian Tribe v. United States*, No. 92-CV-173 (Fed. Cl.). The complaint asserted "claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the Hoopa-Yurok Settlement Act of 1988." *Id.*, ¶ 1.

On April 13, 1992, Assistant Secretary-Indian Affairs Eddie F. Brown wrote to the Chairman of the Hoopa Valley Tribe indicating that the Yurok Interim Council's decision to file the claims in *Yurok Tribe v. United States* "means that the same consequences follow as if it fails to enact a resolution waiving claims against the United States." Mr. Brown deferred responding to the Hoopa Valley Tribe's request for access to the funds remaining in the Hoopa-Yurok Settlement Fund as a result of the filing of *Yurok Tribe v. United States*.

On November 23, 1993, Assistant Secretary-Indian Affairs Ada E. Deer wrote to the Vice-Chairman of the Yurok Interim Council expressing willingness to accept the decision of the Yurok Tribe to organize outside the authority offered by the Settlement Act. Ms. Deer cautioned that the Yurok Interim Council would, on November 25, 1992, lose the legal powers vested in it by the Settlement Act. She said, "the authority vested in the Interim Council by section 2(c)(4) of the Act to waive claims against the United States will expire on November 25, 1993." Ms. Deer pointed out that "[a]ny subsequent waiver of claims by the Tribe will be legally insufficient."[2]

On April 4, 1994, Assistant Secretary-Indian Affairs Ada E. Deer wrote to the Chair of the Interim Tribal Council of the Yurok Tribe determining that Resolution No. 93-61, approved November 24, 1993, did not meet the requirements of the Act. She stated:

> It is quite clear that Resolution No. 93-61 specifically preserves, rather than waives, the Yurok tribe's taking claim against the United States. Indeed, the Yurok Tribe has filed a claim in the

[2] The Yurok Tribe could have challenged the Assistant Secretary's determination that any waiver after November 25, 1993, would be legally insufficient, but failed to do. The claim is now barred by the applicable six-year statute of limitations.

> U.S. Court of Federal Claims asserting that the Hoopa-Yurok Settlement Act effected a taking under the Fifth Amendment of the United States Constitution.

Id. at 3. The Assistant Secretary reaffirmed the February 3, 1992 Solicitor's Opinion conclusion that filing suit in the Claims Court would produce the same results as would the Interim Council's failure to enact a resolution waiving claims under the Act.[3]

On March 14, 1995, Assistant Secretary-Indian Affairs Ada E. Deer wrote the Chairperson of the Yurok Tribal Council rejecting the Tribal Council's request for reconsideration of her decision of April 4, 1994. Ms. Deer explained that the legislative history of the Act indicates that potential taking claims against the United States were precisely the type of claims Congress was most concerned about, which explained why waiver of such claims were essential elements to triggering key provisions of the Act. She stated:

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

Ms. Deer urged the Yurok Tribe to seek a stay of proceedings in *Yurok Tribe v. United States* in order to conduct a referendum and undertake settlement negotiations. The Yurok Tribe made no such motion nor did it conduct a referendum.

After another year, on May 17, 1996, the parties to *Yurok Tribe v. United States* (which had been consolidated with other claims under the heading of *Karuk Tribe of California, et al. v. United States, et al.*, No. 90-CV-3993), filed a joint motion to postpone oral argument on cross-motions for summary judgment on the merits. The court granted that motion, and related motions, delaying oral argument on the motions for summary judgment until January 29, 1998. Subsequently, on August 6, 1998, the court denied plaintiffs' motions for summary judgment and granted the cross-motions for summary judgment of the United States and the Hoopa Valley Tribe, and directed the clerk to dismiss the complaints. *See Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

During the period 1995-2001, the Yurok Tribe and the United States engaged in settlement negotiations concerning its claims. Indeed, the March 14, 1995 letter of Assistant Secretary-Indian Affairs Ada E. Deer, states a settlement position advanced by

[3] The 1994 decision of the Assistant Secretary also could have been challenged, but was not, and that claim is barred by the statute of limitations.

the United States, which was that the Yurok Tribal Council could cure the deficiencies in Resolution No. 93-61 of the Interim Council, even at that late date, if a settlement was accomplished before a final determination on the merits. The Hoopa Valley Tribe made similar proposals and urged the settlement of the case. Defendants were concerned that unless the Act's benefits could be made available there would be little incentive for the Yurok Tribe to settle. Defendants explored every option to bring the matter to a close. However, no settlement offer was accepted and the litigation was concluded on the merits by the U.S. Supreme Court's Order of March 26, 2001. Defendants' proposals, including the suggestion in the Assistant Secretary's March 14, 1995 letter, cannot change the requirements of the Act. Also, conduct or statements of this kind that were made in settlement negotiations during this period have no evidentiary value. *See* Fed. R. Evid. 408.

3. Res Judicata and the Concept of Bar

The takings claim that was to be waived by the Yurok Interim Council under the HYSA was instead litigated and lost by the Tribe. As explained below, the takings claim has been extinguished by the previous litigation and judgment on the merits in favor of the United States. As a matter of law, the Tribe no longer has a takings claim to waive.

Under the doctrine of claim preclusion, a party that litigates a claim to final judgment is forever barred from subsequent litigation of that same claim. *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (stating "[r]es judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action"); *Cromwell v. County of Sac.*, 94 U.S. 351, 352 (1876) (holding "[T]he judgment, if rendered upon the merits, constitutes an absolute bar to the subsequent action. It is finality as to the claim or demand in controversy . . ."); *see also* 18 Moore's Federal Practice (3d. ed), § 131.01 (2005) (stating "[I]f the plaintiff loses the litigation, the resultant judgment acts as a *bar* to any further actions by the plaintiff on the same claim, with limited exceptions") (emphasis in original). The doctrine of claim preclusion is applicable whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *See Glickman*, 123 F.3d at 1192. When claim preclusion applies, as it does here, a party's claim is extinguished upon final judgment. *Hornback v. United States*, 405 F.3d 999, 1001 (Fed. Cir. 2005). Thus, a purported waiver of a claim that has been extinguished by a prior final judgment is void *ab initio*.

Claim preclusion, and the concept of "bar" prevents a party who loses in litigation from bringing a subsequent action based on the same transaction or series of transactions by simply asserting additional facts or proceeding under a different legal theory. *Skillsky v. Lucky Stores, Inc.*, 893 F.2d 1088, 1095 (9th Cir. 1990) (stating that claim preclusion precludes relitigation of all grounds supporting recovery regardless of whether they were asserted or determined in the prior proceeding); *Kasper Wire Works, Inc. v. Leco Eng'g & Mach., Inc.*, 575 F.2d 530, 535 (5th Cir. 1978) (concluding that when defendant obtains favorable judgment, it acts as a "bar" to subsequent litigation on same claim by

plaintiff); Restatement 2d of Judgments §§ 19, 24 (1982). A valid judgment, even if erroneous, that is final and rendered on the merits can form the basis for claim preclusion. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). The judgment "puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever . . ." *Comm'r v. Sunnen*, 333 U.S. 591, 597 (1948).

4. Claim Preclusion Extinguishes the Claim

The doctrine of claim preclusion not only prohibits subsequent litigation of claims, but it wholly *extinguishes* the claim and any rights that a plaintiff has in the claim after final judgment is rendered. *Hornback*, 405 F.3d at 1001 (Fed. Cir. 2005) (holding that claim preclusion "extinguishes all rights of the plaintiff . . . with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose); *Gonzales v. Hernandez*, 175 F.3d 1202, 1205 (10th Cir. 1999) (stating that a final judgment extinguishes plaintiff's claims); *Kotsopoulos v. Asturia Shipping Co., S.A.*, 467 F.2d 91, 95 (2d. Cir. 1972) (stating "once a claim is reduced to judgment, the original claim is extinguished and merged into the judgment"); *see also* Restatement 2d of Judgments § 24(1) (1982) ("When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of [res judicata], the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose"). Thus, once a plaintiff litigates a claim to final judgment on the merits, as the Yurok Tribe did in litigation, the plaintiff no longer possesses a legal claim - - the plaintiff's claim is extinguished by the prior judgment.

The United States Supreme Court has emphasized that the doctrine of claim preclusion is more than a matter of procedure, it ensures that "rights once established by the final judgment of a court of competent jurisdiction shall be recognized by those who are bound in it in every way." *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). Extinguishing claims via the claim preclusion doctrine provides finality and a conclusive end to litigation, promotes judicial economy, and fosters reliance on court judgments. 18 Moore's Federal Practice (3d ed.), § 131.12 (2005).

Applying these well-established principles here, it is plain that the Yurok Tribe's takings claim against the United States arising out of the Act has been adjudicated in a final decision on the merits, is extinguished, and thus can no longer be "waived." *Karuk, et al.*, 209 F.3d at 1366. The Tribe's Complaint against the United States, filed in March 1992, states that "plaintiff, a federally recognized Indian Tribe, asserts claims for just compensation under the Fifth Amendment to the Constitution of the United States for the taking of compensable property and property rights of the Yurok Tribe by the United States under the [HYSA of 1988]." The Tribe's Complaint requested the Court to enter "judgment awarding the Yurok Tribe just compensation for the taking of its compensable property rights . . . ." This takings claim was the claim that was to be waived by the Interim Council prior to November 25, 1993. 25 U.S.C. §§ 1300i-1(c)(4) and 1300i-11(a). Congress chose the term "claim," which has a well-recognized legal

meaning. The use of the term must be given its purposeful effect. *Russello v. United States*, 464 U.S. 16, 23 (1983).

Instead of waiving its takings claims against the United States in accordance with the Act, the Yurok Tribe opted to litigate. Having been determined with finality on the merits against the Yurok Tribe, the takings claim that was the subject of the litigation has been extinguished. Accordingly, as a matter of law, the takings claim arising out of the Act no longer exists. Because the claim that was to be waived in 1993 no longer exists, it simply cannot be waived now, even if the Interim Council purported to do so.

5. Conclusion

The Settlement Act conditioned some benefits upon waiver of precisely the claim that the Yurok Tribe litigated on the merits from 1992 through 2001 and lost. The Act authorized certain persons to elect a five-member Yurok Interim Council, a Council that would exercise specific statutory powers for a two-year period and then go out of existence. During the two-year lifespan of the Yurok Interim Council, it was also hoped that the Yurok Tribe would adopt a constitution and choose a governing body. In fact, it did that, although the Tribe was unable to use the Indian Reorganization Act authority which was also offered as a Settlement Act benefit, but conditioned upon waiver.

After filing *Yurok Indian Tribe v. United States* in 1992, the Yurok Interim Council managed that litigation for approximately 20 months before it ceased to exist on November 25, 1993. Thereafter, the Yurok Tribal Council assumed the reins and managed the litigation to its bitter end in 2001. There is no action that the Yurok Tribe can take today that could resuscitate the extinguished taking claim against the United States that arose out of this Act. Any attempt at a new or amended waiver by the Yurok Tribal Council would be legally insufficient, as the Department has repeatedly ruled. A new waiver would be void *ab initio* because having been litigated and extinguished, there is no claim to be waived now, nor does the Yurok Interim Council exist to take action. There can be no waiver of a claim that no longer exists. The Department of the Interior correctly concluded in its March 15, 2002 report to Congress pursuant to section 14(c) of the Act that "the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act." The Department should adhere to that conclusion.

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United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

March 1, 2007

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairman Marshall and Chairperson Tripp:

As you both know too well, issues related to the 1988 Hoopa-Yurok Settlement Act (Act), including the establishment and distribution of the Hoopa-Yurok Settlement Fund (Fund), have a long history. Notwithstanding resolution of decades of disputed issues between the two Tribes and their members, one final issue remains to be resolved nearly twenty years after the Act's passage: distribution of funds still held by the Department pursuant to the Act.

At the request of both the Hoopa Valley Tribe and the Yurok Tribe, as well as the Tribes' Congressional delegation, the Department has evaluated whether authority still exists to distribute these funds administratively or whether the parties must resolve this matter through the courts or Congress. As explained below, the Department has concluded it can distribute these funds to the Yurok Tribe administratively, consistent with the provisions of the Act, if the Yurok Tribe were to submit a new waiver of claims as required by the Act.

Discussion and Analysis

Pursuant to the Act, the Department placed into escrow monies from seven Indian trust fund accounts, representing the proceeds still held in trust by the Department from the resources of the former Joint Reservation, to establish the Fund. The Act envisioned three specific distributions of the Fund: certain individual payments based on tribal membership elections; distribution to the Hoopa Valley Tribe of roughly one-third of the Fund; and distribution to the Yurok Tribe of roughly one-third of the Fund plus the Fund's remainder once the individual payments were made. The Hoopa Valley Tribe received over $34 million between 1988 and 1991, its designated share under the Act. The Department continues to hold the remaining balance, representing the share set aside in 1991 for the benefit of the Yurok Tribe (roughly $37 million), with interest accrued over the past fifteen years (now totaling roughly $90 million), as well as funds authorized by the Act specifically for the Yurok Tribe (roughly $3.1 million).

The Department has not previously distributed these remaining funds because the Yurok Tribe did not provide the waiver required by the Act in order to receive benefits.

Although purporting to waive claims, the Department interpreted the 1993 Yurok Resolution to preserve the Tribe's claims and thus failed to satisfy the Act's waiver requirement. The Yurok Tribe brought a takings claim, which led to the decision rendered in *Karuk Tribe v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

Conclusion of this litigation triggered the Secretary's obligation under the Act to issue a Report to Congress. The Secretary, through the Bureau of Indian Affairs, submitted the Report in March 2002, and the Senate Indian Affairs Committee held a hearing in August 2002, in which the Department and both Tribes participated.

The Department stated then that, because the Yurok Tribe litigated its takings claims rather than waiving them, the Yurok did not meet the Act's condition precedent for the Yurok to receive its share of the Fund or other benefits. The Department stated also the Hoopa Valley Tribe had already received its benefits under the Act and was not entitled to further distributions. Based on those factors, the Department recommended, *inter alia*, that it would be inappropriate to make any general distribution without further instruction from Congress and that Congress should consider the need for additional legislation to address any issue regarding entitlement and to fulfill the Act's intent. Congress has not acted on the Department's recommendations to date.

The Yurok Tribe proposes now to provide the Department with a new, unconditional waiver of claims, a concept not proposed at the time of the 2002 hearing. The Hoopa Valley Tribe argues, in essence, that the Act's authority no longer remains viable and that the fully-litigated takings claim precludes the Yurok Tribe from providing a new waiver. After careful review of all the issues, the Department concludes that the Yurok Tribe can tender a new, unconditional waiver and that the Act provides authority to the Department to act administratively to distribute the remaining funds to the Yurok Tribe upon receipt of such a waiver if it otherwise comports with the waiver requirements under the Act.

Neither the Act nor its legislative history specifies whether proceeding under one provision would preclude the Yurok Tribe from proceeding under the other, *i.e.*, whether bringing a takings claim and providing a waiver, actions both authorized under the Act, were mutually exclusive. For a number of reasons, we conclude that the takings litigation in *Karuk Tribe* did not result in the Yurok Tribe's forfeiting the benefits established in the Act. For example, the Act does not specify a time limitation, like the limited period to bring a constitutional challenge, on the ability to provide a waiver. Moreover, the Act's Yurok waiver provision is not limited solely to the constitutionally-based property claims authorized by the Act and litigated by the Yurok Tribe. The Act did not provide any contingent distribution arrangements if the Yurok Tribe chose to assert a takings claim. Fundamentally, nothing in the Act states that the Yurok Tribe's choosing to litigate its takings claim would cause the Tribe to forfeit the benefits under the Act.

Because Congress acted as a trustee in passing the Act and because the Hoopa Valley Tribe received already all of its benefits established by the Act, including its designated

share of the Fund, we believe that any ambiguity in the Act should be read in favor of providing the other beneficiary, the Yurok Tribe, with its benefits established by the Act. Because the Act specifically authorized either Tribe to bring certain claims against the United States yet did not provide for an alternative distribution of benefits if a Tribe took such an action, we further believe that an interpretation of the Act that avoids penalizing a beneficiary for taking an authorized action and that avoids potentially troublesome constitutional issues to be necessary here. Thus, we believe that it would be unreasonable to read the Act to work a forfeiture of the Yurok's right to receive the monies from the Fund, and we decline to do so.

The Act authorized the Yurok Interim Council, an entity that ceased to exist in 1993, to provide the requisite waiver under the Act. The Act did not preclude or otherwise divest power from the permanent Yurok Council also to waive claims. Both the Department and the Hoopa Valley Tribe subsequently acknowledged that the Yurok Tribe, after the expiration of the Interim Council, could "cure" its conditional waiver. Therefore, we also conclude that the current governing body of the Yurok Tribe can submit the waiver required by the Act.

Conclusion

After careful consideration and for the reasons set out briefly above, the Department has concluded that, through administrative action, the remaining funds set aside pursuant to the Act can still be distributed to the Yurok Tribe. The better reading of the Act and the underlying circumstances is to allow the Yurok Tribe to submit an unconditional waiver and to authorize the Department to distribute these funds to the Yurok Tribe upon that proper submission.

The Department appreciates that the underlying issues of this dispute have been argued between the two Tribes (and others) for over 40 years. Both Tribes have argued vigorously and persuasively for their respective positions. In recognition of these divergent views, the Department will not take action on this final decision and distribute the remaining funds until thirty days after the Department has received an unconditional waiver from the Yurok Tribe consistent with the Act.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

March 21, 2007

SENT VIA FACSIMILE

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairman Marshall and Chairperson Tripp:

I received today a copy of Yurok Tribal Council Resolution 07-037. This resolution provides an unconditional waiver of claims that the Yurok Tribe may have against the United States arising out of the provisions of the 1988 Hoopa-Yurok Settlement Act.

Upon review, I find that the resolution meets the requirements of the Act. Therefore, the Department intends to distribute to the Yurok Tribe the funds still held by the Department pursuant to the Act, including the remaining balance of the Hoopa-Yurok Settlement Fund, based on my decision letter dated March 1, 2007.

As noted in the March 1 letter, however, the Department will not distribute the remaining funds to the Yurok Tribe until thirty days after the Department received the waiver required by the Act. Accordingly, the Department will not take further action consistent with this decision until April 20, 2007.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

RESOLUTION
of the
YUROK TRIBAL COUNCIL

RESOLUTION NO.: 07-037

DATE APPROVED: March 21, 2007

SUBJECT: **Waiver of Certain Claims and Consent to Uses of Tribal Funds Pursuant to the Hoopa-Yurok Settlement Act**

WHEREAS: The Yurok Tribe is a Federally recognized Indian Tribe pursuant to a determination by the Bureau of Indian Affairs that was published in the *Federal Register* (60 Fed. Reg. 9,249 (February 16, 1995)), eligible for all rights and privileges afforded to Federally recognized tribes, including, but not limited to, the rights and privileges afforded under the Hoopa-Yurok Settlement Act, and the Yurok Tribal Council is the governing body of the Yurok Tribe under the authority of the Yurok Constitution of 1993; and,

WHEREAS: On April 26, 1988, Representative Doug Bosco introduced H.R. 4469, a version of which was enacted as the Hoopa-Yurok Settlement Act (the "Act") on October 31, 1988; and,

WHEREAS: Section 2(c) of the Act provides for certain benefits to the Yurok Tribe, including apportionment of funds, certain land transfers, and certain land acquisition authorities, provided that the Yurok Tribe adopt a resolution waiving certain claims, as required by the Act; and,

WHEREAS: The Senate Report accompanying the Act states that the waiver required by the Act does not prevent the Yurok Tribe "from enforcing rights or obligations created by this Act," S. Rep. 100-564 at 17; and,

WHEREAS: The Yurok Tribal Council has fully considered the claims to be waived under the Act and the consent to be granted and has balanced them against the benefits identified and mandates to the Yurok Tribe under the Act and has concluded that the Tribe would best be served by complying with the mandates identified in the Act; and,

WHEREAS: The Act provided for the establishment of the Yurok Interim Tribal Council, which on March 9, 1992 was authorized to submit the Waiver of Claims described in the Act; the permanent Yurok Tribal Council now has the authority originally granted by the Act to the Yurok Interim Tribal Council; and,

Phone: (707) 482-1350 • Fax: (707) 482-1377

WHEREAS: The Yurok Tribal Council has carefully considered the Tribe's Constitution and other Tribal law and custom concerning the method by which the resolution called for by the Act should be enacted; and,

NOW THEREFORE BE IT RESOLVED: That the Yurok Tribal Council has the authority and responsibility under the Constitution and Bylaws of the Yurok Tribe to approve, certify, and enact the resolution required by the Hoopa-Yurok Settlement Act; and,

BE IT FURTHER RESOLVED: That this Resolution is not intended, and shall not be construed, so as to prevent the Yurok Tribe from enforcing its rights and the obligations of the United States created by the Hoopa-Yurok Settlement Act, see S. Rep. 100-564 at 17; and,

BE IT FURTHER RESOLVED: That the Yurok Tribe hereby waives any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act; and,

BE IT FURTHER RESOLVED: That the Yurok Tribe affirms tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, such contribution having already been made as provided in Section 4(a) of the Act, and for their use as payments to the Hoopa Tribe, such payments having already been made as provided in Section 4(c) of the Act, and to individual Yuroks, such payments having already been made as provided in Section 6(c)(3) of the Hoopa-Yurok Settlement Act; and,

BE IT FURTHER RESOLVED: That the Chairperson and Secretary of the Yurok Tribal Council are hereby authorized, directed and empowered to sign the resolution for and on behalf of the Yurok Tribe as its act and deed.

CERTIFICATION

This is to certify that this **Resolution No. 07-037** was approved at a duly called meeting of the Yurok Tribe on **March 21, 2007,** at which a quorum was present and that this **Resolution No. 07-037** was adopted by a vote of **6** for and **0** opposed and **0** abstentions. This **Resolution No. 07-037** has not been rescinded or amended in any way.

DATED THIS 21ST DAY OF MARCH, 2007

Maria Tripp, Chair

ATTEST:

Cynthia McKernan

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

HOOPA VALLEY TRIBE, Appellant,	:	Order Docketing and Dismissing Appeal
v.	:	
SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR, Appellee.	:	Docket No. IBIA 07-90-A
	:	March 27, 2007

On March 26, 2007, the Board of Indian Appeals (Board) received a notice of appeal from the Hoopa Valley Tribe (Hoopa Tribe), seeking review of decisions dated March 1, 2007, and March 21, 2007, issued by the Special Trustee for American Indians, Department of the Interior (Special Trustee; Department). 1/ In the March 1 decision, the Special Trustee announced that the Department has concluded that it could distribute remaining funds from the Hoopa-Yurok Settlement Fund (Settlement Fund) to the Yurok Tribe administratively, if the Yurok Tribe were to submit a new waiver of claims pursuant to the 1988 Hoopa-Yurok Settlement Act, 25 U.S.C. §§ 1300i to 1300i–11 (Settlement Act). In the March 21 decision, the Special Trustee accepted a resolution from the Yurok Tribal Council as a waiver of claims that meets the requirements of the Settlement Act, and stated that the Department intends to distribute to the Yurok Tribe the funds still held by the Department pursuant to the Act, including the remaining balance of the Settlement Fund.

We docket this appeal but dismiss it because the Board lacks jurisdiction to review these decisions of the Special Trustee.

The Hoopa Tribe's notice of appeal relies on three separate regulatory provisions as grounds for invoking the Board's jurisdiction to review the Special Trustee's decisions:

1/ Each decision is addressed jointly to the Chairman of the Hoopa Tribe and the Chairperson of the Yurok Tribe.

(1) 43 C.F.R. § 4.2(b)(2)(ii), which is one of the provisions in the regulations of the Office of Hearings and Appeals describing the Board's jurisdiction to review certain matters; (2) 25 C.F.R. § 2.4(e), which describes the Board's jurisdiction over decisions by officials of the Bureau of Indian Affairs (BIA) and within the Office of the Assistant Secretary - Indian Affairs; and (3) 25 C.F.R. Part 1200, which provides the Board with jurisdiction over the denial of a tribe's request under Section 202 of the American Indian Trust Fund Management Reform Act of 1994 (Reform Act), 25 U.S.C. § 4022, to withdraw funds currently held in trust by the Department and to remove them from Federal trust status. We address each ground in turn, but conclude that none provides a basis for our jurisdiction over this appeal.

Subsection 4.2(b)(2)(ii) of 43 C.F.R. describes the Board's jurisdiction to include, in relevant part for this case, "such other matters pertaining to Indians as are referred to it by the Secretary, the Director of the Office of Hearings and Appeals, or the Assistant Secretary - Indian Affairs for exercise of review authority of the Secretary." None of these officials has purported to refer this matter to the Board. Nor (assuming he has delegated authority to do so) has the Special Trustee referred it: the Special Trustee's decisions contain no language granting a right of appeal to the Board. Therefore, subsection 4.2(b)(2)(ii) does not serve as a basis for the Board's jurisdiction over the Hoopa Tribe's appeal.

Subsection 2.4(c) of 25 C.F.R. provides that the Board has jurisdiction over appeals from decisions made by an Area (now Regional) Director or a Deputy to the Assistant Secretary - Indian Affairs, other than the Deputy to the Assistant Secretary - Indian Affairs for Indian Education Programs. The Special Trustee falls within none of the categories of officials over whose decisions the Board has jurisdiction under subsection 2.4(e). The Special Trustee reports directly to the Secretary of the Interior. 25 U.S.C. § 4042(a).

The Hoopa Tribe notes that the Board has exercised jurisdiction over a dispute involving the Office of the Special Trustee, citing California Trust Reform Consortium v. Director, Office of Trust Funds Management, Office of the Special Trustee for American Indians, 33 IBIA 257 (1999). That case, however, arose under the Indian Self-Determination and Education Assistance Act (ISDA). The ISDA regulations do expand the Board's jurisdiction to include certain ISDA decisions made by officials outside of BIA or the Office of the Assistant Secretary - Indian Affairs, see 25 C.F.R. Parts 900 and 1000. But the Special Trustee's decisions at issue here were not made pursuant to ISDA, nor does the Hoopa Tribe contend that they were, and thus neither California Trust Reform Consortium nor the ISDA regulations provide grounds for our jurisdiction.

Finally, the Hoopa Tribe's notice of appeal identifies 25 C.F.R. Part 1200 as a basis for the Board's jurisdiction. We disagree. Part 1200 was promulgated to implement a provision in the Reform Act that allows a tribe to withdraw from Federal trust status tribal funds that are held and administered by the Department in trust for a tribe. Part 1200 does afford a right of appeal to the Board from a denial of a request or failure by the Secretary or his designee to approve a tribe's application to withdraw its funds from Federal trust status. See 25 C.F.R. § 1200.21; see also id. § 1200.3(b) (describing Reform Act provisions implemented by Part 1200). The Special Trustee's decisions, however do not purport to be taken pursuant to 25 C.F.R. Part 1200, nor do we think they can be so characterized.

Instead, what the two decisions and the notice of appeal and supporting documentation indicate, and what the Hoopa Tribe itself acknowledges, is that the Special Trustee's decisions were made pursuant to the Department's administration of the Settlement Act, and constitute a determination that the Yurok Tribe is entitled to the remaining monies in the Settlement Fund. See Notice of Appeal at 44 (Special Trustee "purport[ed] to unilaterally and administratively allocate the balance of the Settlement Fund" and distribute it to the Yurok Tribe). The fact that the Hoopa Tribe at one time may have suggested an allocation of the remaining funds by dividing them equally between the Hoopa Tribe and the Yurok Tribe, id. at 3, does not mean, as the Hoopa Tribe apparently contends, that the Special Trustee's decision to distribute all of the remaining funds to the Yurok Tribe amounts to a "denial" of the Hoopa Tribe's request to withdraw funds currently held in trust on its behalf from Federal trust status. None of the documents submitted with the notice of appeal suggest that the Special Trustee was acting, or failing to act, on an application submitted by Hoopa Tribe pursuant to 25 C.F.R. § 1200.13, to remove its funds from Federal trust status pursuant to the Reform Act. This fact is underscored by the Hoopa Tribe's assertion that in this appeal it does not seek a share of the remainder of the Settlement Fund. Notice of Appeal at 5-6. Thus, we conclude that 25 C.F.R. Part 1200 does not provide grounds for the Board to assert jurisdiction over this appeal. 2/

2/ The notice of appeal also contends that the Special Trustee did not have authority to issue a final decision for the Department. Whether or not that is the case, it does not affect our jurisdictional analysis. For decisions that are subject to the Board's review, such as those of a BIA Regional Director, the decision maker cannot make his or her decision final for the Department simply by declaring it so. Citation Oil & Gas, Ltd. v. Acting Billings Area Director, 21 IBIA 75, 85 n.14 (1991). But it does not follow that the absence of authority by an official to render a final decision for the Department necessarily vests the Board with review authority. We must still look to some regulatory provision or referral as the source of our jurisdiction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dockets but dismisses this appeal for lack of jurisdiction. 3/

I concur:

Steven K. Linscheid
Chief Administrative Judge

Debora G. Luther
Administrative Judge

3/ Because we lack jurisdiction over this appeal, we do not consider the Hoopa Tribe's Petition for Stay Pending Appeal, which was filed with its notice of appeal.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET, SUITE 300
ARLINGTON, VA 22203

HOOPA VALLEY TRIBE, Appellant, v. ROSS SWIMMER, SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF INTERIOR, Appellee.	Docket No. IBIA 07-90-A **PETITION FOR RECONSIDERATION** April 17, 2007

1. Introduction

On March 27, 2007, the Board of Indian Appeals ("Board") docketed and dismissed the Hoopa Valley Tribe's Notice of Appeal and Statement of Reasons which the Board received the previous day. Pursuant to 43 C.F.R. § 4.315, the Hoopa Valley Tribe ("Tribe") respectfully petitions for reconsideration of the Board's decision, which is reported at 44 IBIA 210, and requests that the Board stay the effectiveness of the Special Trustee's decision subject to this appeal until the Board rules on the instant Petition.

As explained below, reconsideration should be granted and jurisdiction found to hear this appeal for the following reasons: (1) the Board has jurisdiction because this is a "dispute" within the meaning of 25 C.F.R. pt. 1200 and the related provisions in 25 C.F.R. pt. 115, subpart G; and (2) review by the Board, before the release of tribal trust funds in violation of federal law, is in the interests of justice because it might prevent substantial money damages liability for the United States for breach of trust. In addition, the Board may hear this appeal pursuant to

YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

RESOLUTION
of the
YUROK TRIBAL COUNCIL

RESOLUTION NO: 07-41

DATE APPROVED: April 19, 2007

SUBJECT: Direction and Authorization to Distribute Yurok Assets Held in Trust by the Office of the Special Trustee for American Indians of the Department of the Interior

WHEREAS: The Yurok Tribe is a Federally recognized Indian Tribe pursuant to a determination by the Bureau of Indian Affairs that was published in the *Federal Register* (60 Fed. Reg. 9,249 (February 16, 1995)), eligible for all rights and privileges afforded to Federally recognized tribes, including, but not limited to, the rights and privileges afforded under the Hoopa-Yurok Settlement Act, and the Yurok Tribal Council is the governing body of the Yurok Tribe under the authority of the Yurok Constitution of 1993; and,

WHEREAS: Section 2(c) of the Hoopa-Yurok Settlement Act (the "Act") provides for certain benefits to the Yurok Tribe, including apportionment of funds, certain land transfers, and certain land acquisition authorities, provided that the Yurok Tribe adopt a resolution waiving certain claims, as required by the Act; and,

WHEREAS: The Yurok Tribe did on March 21, 2007 waive any claim the Yurok Tribe may have against the United States arising out of the provisions of the Hoopa-Yurok Settlement Act, and thereby came in full compliance with the requirements of the Act; and;

WHEREAS: On March 21, 2007, the Office of the Special Trustee for American Indians reviewed the Yurok Tribe's March 21, 2007 waiver and found that "the resolution meets the requirements of the Act"; and,

WHEREAS: In its March 21, 2007 letter the Office of the Special Trustee for American Indians stated that it would "distribute to the Yurok Tribe the funds still held by the Department of the Interior pursuant to the Act, including the remaining balance of the Hoopa-Yurok Settlement Account" on or after April 20, 2007; and,

Phone: (707) 482-1350 • Fax: (707) 482-1377

NOW THERFORE BE IT RESOLVED: The Yurok Tribal Council hereby authorizes and directs the Department of the Interior to Free Deliver as soon as possible all assets in Hoopa-Yurok Settlement Accoun Ex. 4 to the Custodian listed below:

CUSTODIAN

Money Market Accounts to:
ABA# Ex. 4
Bank: Citibank, New York
For the Benefit of Morgan Stanley & Co., Incorporated
Beneficiary Account: Ex. 4
For further credit to # Ex. 4 , Yurok Tribe Tribal Reserve

Securities to:
DTC Clearing Number Ex. 4
FBO Yurok Tribe Tribal Reserve
A/C#
Ex. 4

BE IT FURTHER RESOLVED: That the Chairperson is hereby authorized to sign this resolution and to negotiate all matter pertaining hereto and that the Recording Secretary is authorized to attest.

C*E*R*T*I*F*I*C*A*T*I*O*N

This is to certify that this Resolution Number 07-41 was approved at a duly called Special Meeting of the Yurok Tribe on April 19, 2007 at which a quorum was present and that this resolution Number 07-41 was adopted by a vote of 6 for and 0 opposed and 0 abstentions. This resolution Number 07-41 has not been rescinded or amended in any way.

DATED THIS 19TH DAY OF APRIL, 2007

Maria Tripp

Maria Tripp, Chair

ATTEST:

Cynthia McKernan, Executive Assistant

United States Department of the Interior

OFFICE OF THE SOLICITOR
1849 C STREET N.W.
WASHINGTON, DC 20240

APR 20 2007

SENT VIA FACSIMILE

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Dear Chairman Marshall:

On behalf of Secretary Kempthorne, this letter responds to your April 9, 2007 letter, in which you request the Secretary to refer decisions dated March 1 and March 21, 2007, by the Special Trustee for American Indians to the Interior Board of Indian Appeals (IBIA). These decisions addressed the distribution of funds still held by the Department of the Interior pursuant to the 1988 Hoopa-Yurok Settlement Act (Act).

As your letter notes, the IBIA has already dismissed the Tribe's appeal of this matter, concluding that it did not have jurisdiction. *Hoopa Valley Tribe v. Special Trustee for American Indians*, 44 IBIA 210 (March 27, 2007). Likewise, the Assistant Secretary – Indian Affairs, in a response dated April 6, 2007, declined to refer the matter to the IBIA as you requested pursuant to 43 C.F.R. § 4.2(b)(2)(ii).

As expressed in the Assistant Secretary's letter, the Special Trustee can render final decisions for the Department, and the March 1 and March 21 decisions present the final decision of the Department on this matter. Referral to the IBIA would not be appropriate.

As noted in the Special Trustee's decisions and the Assistant Secretary's response, the Department will not take further action consistent with those decisions before April 20, 2007. The 30-day period established in the Special Trustee's decisions provides the Tribe an opportunity to explore further steps that you may want to take. From the Department's perspective, however, the Special Trustee has rendered a final decision.

Sincerely,

Lawrence J. Jensen

Lawrence J. Jensen
Deputy Solicitor

RMM

cc: Special Trustee
Assistant Secretary – Indian Affairs
Chairperson, Yurok Tribe

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

April 20, 2007

SENT VIA FACSIMILE

Honorable Clifford Lyle Marshall
Chairman, Hoopa Valley Tribe
P.O. Box 1348
Hoopa, California 95546

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairman Marshall and Chairperson Tripp:

As I noted in letters to you dated March 1 and March 21, 2007, the Department has concluded that authority exists under the 1988 Hoopa-Yurok Settlement Act (Act) to distribute funds still held by the Department pursuant to the Act to the Yurok Tribe upon the submission of a new waiver of claims by the Yurok Tribe. The Department has received the waiver of claims, adopted as Yurok Tribal Council Resolution 07-037, which meets the requirements of the Act.

As I also noted in those letters, the Department would not take further action consistent with this decision before April 20, 2007, in recognition of the fact that issues involving the Act have had a long and disputed history and that the Tribes may want to explore further steps in light of this decision. The Hoopa Valley Tribe filed a notice of appeal with the Interior Board of Indian Appeals (IBIA), but the IBIA dismissed the appeal because it did not have jurisdiction. *Hoopa Valley Tribe v. Special Trustee for American Indians*, 44 IBIA 210 (March 27, 2007). The Hoopa Valley Tribe recently filed a motion for reconsideration before the IBIA; the applicable regulations provide, however, that the initial IBIA decision is final and that petitions for reconsideration do not stay the effect or otherwise affect the finality of any decision unless so ordered by the IBIA. 43 CFR §§ 4.312, 4.315. Moreover, as confirmed in Assistant Secretary Artman's April 6, 2007 response to Chairman Marshall, the decision in this matter represents the final decision of the Department and thus is not subject to review by the IBIA.

Accordingly, nothing precludes me from taking action consistent with the decision in this matter. As of 10:00 a.m. Eastern Daylight Time today, I have advised the custodian of the account holding the remaining balance of the Hoopa-Yurok Settlement Fund that its ownership has been transferred solely to the Yurok Tribe.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Albuquerque, NM 87109

TAKE PRIDE IN AMERICA

APR 2 0 2007

SEI Private Trust Company
Attn: Tim Cienkowski
Asset Movement
Hillside 2nd Floor
One Freedom Valley Drive
Oaks, Pennsylvania 19456

Ex. 5

Fax: 610-676-2115; Phone: 610-676-1337

Re: Hoopa/Yurok Settlement -7193

Gentlemen:

Please take this letter as authorization for SEI Private Trust Company to free deliver, as soon as possible, the assets in the following account to the recipient custodian listed below.

Account:	Hoopa/Yurok Settlement-7193
Account No:	Ex. 2
Custodian:	Morgan Stanley; DTC # Ex. 4
FBO TO:	York Tribe Tribal Reserve
Account No:	Ex. 4

Delivery request documents and transfer instructions are enclosed.

If you have questions, please call Richard Zakrzewski at (505) 816-1112.

Sincerely,

Robert J. Winter
Deputy Special Trustee-Trust Services

Margaret Treadway
Chief of Staff

Enclosure

4400 Masthead N.E.

DELIVERY REQUEST FORM – DTCC / FED / Mutual Fund / Physical / Gifting (PAGE 1)						1. Date:	APRIL 20, 2007
5. Trust A/C#:	Ex. 2					2. Contact Info:	RICHARD ZAKRZEWSKI
6. Trust A/C Name:	YUROK Settlement					3. Bank Name:	0428-OST
7. Explanation (50 char max):	FREE - IN KIND DELIVERY					4. Phone:	505-816-1112
8. Transfer Type:	FULL: ☒	PARTIAL (Include Asset Specifics Below): ☐					
9. Delivery Type:	(DTCC:) ☒	FED: ☐	Mutual Fund: ☐	Physical: ☐	Gift (Same Day/CASH): ☐	Disclose Donor Info? Y☐ N☐	

- Use this section below to detail positions

	CUSIP_ID	Asset_Short_Nm	Par Value	Market Value	Federal Cost
1	31331TYF2	FFCB 2.625% 9/17/07	$5,000,000.00	$4,948,450.00	$4,987,800.00
2	3133XCXL2	FHLB 5.000% 3/07/08	$4,000,000.00	$3,995,000.00	$4,030,560.00
3	31315PFU8	FAMCA 3.950% 9/02/08	$7,000,000.00	$6,905,290.00	$7,000,000.00
4	3128X3WY5	FHLMC 4.000% 9/22/09	$3,000,000.00	$2,942,190.00	$2,986,680.00
5	31358C6W1	FNMA Z-CPN 11/15/09	$15,000,000.00	$13,266,450.00	$12,480,675.00
6	3128X1LH8	FHLMC 3.380% 9/30/10	$5,000,000.00	$4,769,600.00	$5,000,000.00
7	3133XDDP3	FHLB CMO 00-0582 H 4.750% 10/25/10	$2,674,247.38	$2,643,333.08	$2,665,890.36
8	3136F62L2	FNMA 1XC 4/25/08 5.000% 4/25/11	$1,500,000.00	$1,489,215.00	$1,500,000.00
9	3128X5EX2	FHLMC 1XC 7/20/09 5.750% 7/20/11	$1,000,000.00	$1,015,550.00	$1,000,000.00
10	31359M3Y7	FNMA 1XC 1/12/09 5.250% 1/12/12	$1,000,000.00	$1,000,000.00	$999,750.00
11	3128X1LF2	FHLMC CC 6/19/07 3.890% 6/19/13	$5,000,000.00	$4,710,300.00	$5,000,000.00
12	3136F73C9	FNMA 1XC 10/18/10 5.250% 10/18/13	$1,000,000.00	$1,000,310.00	$999,850.00
13	3128X4W72	FHLMC 1XC 3/28/11 5.500% 3/28/16	$1,000,000.00	$1,005,940.00	$1,000,000.00
14	3128X5BT4	FHLMC 1XC 6/6/11 5.800% 6/06/16	$10,000,000.00	$10,202,200.00	$10,000,000.00
15	31359MB69	FNMA 1XC 4/26/10 5.000% 4/26/17	$5,000,000.00	$4,892,200.00	$4,900,000.00
16	3136F3YS9	FNMA CQ 10/2/06 5.000% 7/02/18	$5,000,000.00	$4,818,750.00	$5,000,000.00
17	3128X2K46	FHLMC 1XC 3/5/09 5.200% 3/05/19	$500,000.00	$490,625.00	$487,590.00
18	3133X8U75	FHLB CC 4/15/05 5.750% 10/15/19	$5,000,000.00	$4,937,500.00	$4,999,750.00
19	31331SQM8	FFCB CC 2/24/10 5.230% 2/24/20	$5,000,000.00	$4,843,750.00	$4,975,000.00
20	3128X4TP6	FHLMC CS 11/16/07 6.080% 11/16/20	$500,000.00	$496,650.00	$500,000.00
21	3128X4G62	FHLMC CS 2/23/09 6.000% 2/23/21	$1,000,000.00	$990,530.00	$1,000,000.00
22	31359MM34	FNMA 1XC 4/28/11 6.000% 4/28/21	$1,000,000.00	$1,017,810.00	$998,750.00
23	31331VX92	FFCB CC 8/16/13 5.875% 8/16/21	$1,000,000.00	$1,015,940.00	$997,500.00

Morgan Stanley
Harborside Financial Center
Plaza 3, 6th Floor
Jersey City, NJ 07311
Attn: Banking and Cash Services

02194

PO BOX 141
HOOPA, CA 95546-0141

Pursuant to client instructions, we have issued to you the attached check in the amount of $15,652.89. Please direct any inquiries concerning this transaction to our Customer Interaction Center at 1-800-869-3326.

Check Date: 01/15/2008
Check Number: 902822132
Payable to:

SETTLEMENT

PLEASE DETACH AND RETAIN THIS PORTION FOR YOUR RECORDS.

ORIGINAL CHECK HAS A COLORED BACKGROUND WITH A MICRO PRINTED WARNING BAND

Morgan Stanley
Banking and Cash Services
Jersey City, NJ 07311

Bank of America
Community Development Bank
WALNUT CREEK, CALIFORNIA 94596
920

902822132
90-4182/1211

ACCOUNT NUMBER: 169-033778-0

DATE: 01/15/2008

PAY FIFTEEN THOUSAND SIX HUNDRED FIFTY TWO DOLLARS AND 89 CENTS $ **15,652.89

TO THE ORDER OF PO BOX 141
HOOPA, CA 95546-0141

Morgan Stanley

VOID 180 DAYS AFTER ISSUE DATE

EXPLANATION OF ADDITIONAL SECURITY FEATURES INDICATED ON REVERSE SIDE

⑈902822132⑈ ⑆121141822⑆ 73138001621⑈

United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Washington, D.C. 20240

December 16, 2008

Honorable Maria Tripp
Chairperson, Yurok Tribe
190 Klamath Boulevard
Klamath, California 95548

Dear Chairperson Tripp:

I met with the Yurok Tribe's counsel from Hogan & Hartson, at their request, regarding the treatment of the per capita amounts that the Yurok Tribe distributed to its members earlier this year from the amounts that the Tribe received in 2007 from the Hoopa-Yurok Settlement Fund. They asked the Department to confirm that the per capita payments were made by the Tribe pursuant to a plan approved by the Department for purposes of section 117a and 1407 of Title 25 of the United States Code. Section 117a applies the exemption from Federal and state income taxes in 25 U.S.C. 1407 to such payments.

Per capita distributions by the Tribe were contemplated by the 1988 Hoopa-Yurok Settlement Act. The Department did not impose any restrictions on the distributions. Procedures for making the distributions were set forth in the Yurok Tribal Constitution, including the requirement that a plan for distribution be approved by members, which was reviewed by the Department. The distributions were approved in accordance with the Yurok Tribal Constitution, and provisions were made for handling distribution to minors.

Accordingly, I find that the per capita distributions were made by the Tribe pursuant to the Settlement Act that constituted the use and distribution plan for the money received by the Yurok Tribe.

Sincerely,

Ross O. Swimmer
Special Trustee for American Indians

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2009, that 12 copies of the Joint Appendix were filed with the U.S. Court of Appeals for the Federal Circuit, via First-Class Mail to:

Clerk of the Court
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

I further certify that two copies of the Joint Appendix were mailed USPS next day delivery to:

Jonathan L. Abrahm
Hogan & Hartson, LLP
555 13th Street, NW
Washington, DC 20004-1109

Mary G. Sprague
P.O. Box 23795
L'Enfant Plaza Station
Washington, DC 20026-3795

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

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nmc:7/15/09