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