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S. HRG. 107–648

HOOPA-YUROK SETTLEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

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

AUGUST 1, 2002
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

81–636 PDF WASHINGTON : 2003

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CONTENTS

	Page
Statements:	
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, vice chairman, Committee on Indian Affairs	2
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Committee on Indian Affairs	1
Jarnaghan, Joseph, tribal councilman, Hoopa Valley Tribal Council	14
Marshall, Sr., Clifford Lyle, chairman, Hoopa Valley Tribal Council	12
Masten, Sue, chairperson, Yurok Tribe	20
McCaleb, Neal, assistant secretary, BIA, Department of the Interior	3
Schlosser, Thomas, counsel, Hoopa Valley Tribal Council	16

APPENDIX

Prepared statements:	
Jarnaghan, Joseph	29
Marshall, Sr., Clifford Lyle (with attachments)	33
Masten, Sue (with attachments)	62
McCaleb, Neal (with attachments)	82
Schlosser, Thomas	30
Additional material submitted for the record:	
Hoopa-Yurok Settlement Act Funding History	89

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.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL. Thank you.

I think you have explained very well the situation Mr. Chairman but just a couple of minutes for my opening statement. I'd like to broaden it to something that has always bothered me and many others because I was born and raised in California in the foothills among many of the Me-wok Tribes, a small tribe that has a number of bands in the foothills and valley country around Sacramento.

As you alluded, I can tell you that the story of the American Indian in the State of California was one of the most gruesome and bloody chapters in the history of this country. They say before the gold rush, there was about five times more Indian people in California than non-Indian people. It was literally a paradise. The weather was nice in most areas, the production of natural plants, fruits and things was abundant, people ate well, people lived well, they were at harmony with their neighbors and at that time, as I understand there were over 100 tribes in that area. In fact, some estimates say about one-tenth of all American Indians lived in the California area because living was a bit easier.

In 1848 when gold was discovered in a little place now called Coloma on the north fork of the American River, it started a wholesale change in their lifestyle. In fact, there have been documented instances of Indian people in those days being hired by gold miners and when payday came, they would shoot them, throw them in a hole and just get some more Indians to do the work again. So they know what real tragedy is, the people who are descendants of the Native Americans who lived in that area before the gold rush.

Even before that time if you look at California history, as early as the late 1700's when Father Junipero Serra came north from Mexico and developed what was later called the El Camino Real, or the King's Highway, and the chain of missions from San Diego all the way north of San Francisco, almost all those missions were built with indentured Indian labor, if not slave labor. If you visit some of those missions right now, like the mission in Monterey, if you turn the roofing tile over and look under the old, old roofing tile, you can find the skin imprints of Indian people in that clay where they would take the wet clay and bend it over their leg to make that curved feathered kind of roof structure on all the old missions. They were never paid for that and some of them were kept around the missions for so long, many against their will, that some of the smaller tribes in southern California lost their original identity. I can remember when I was a boy many of them were called mission Indians which was a kind of generic name for people who had lost their identity but had been in the servitude of the missions for so long.

There is no question that people who are descendants of the Native peoples of California have a real gripe and a history of mistreatment by both the Federal Government and people that made millions, if not billions of dollars, from the wealth of California. I'm just glad that two of the major tribes are here today, the Hoopa and the Yurok and I know this hearing will focus on their settle-

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

Yurok Tribe, use of Federal properties for establishment of tribal government offices and the ability to obtain Federal grants and contracts. The act ultimately enabled the Yurok Tribe to join the ranks of self-governance tribes. The Yurok Tribal Council could not stand before you today as tribal government officials without this act.

The Settlement Act called for an end to litigation. It provided benefits to the Hoopa Tribe and the Yurok Tribe on the condition that they waive all claims which they might assert against the United States as arising from the act. The Hoopa Tribe accepted that offer. The Yurok Tribe rejected that offer and sued the United States and so the act as applied did not authorize payments to them. As a result, the Yurok Tribe is now clearly prohibited by the act from receiving a portion of the settlement fund. Congress should not now conclude that the act was unfair due to the fact the Yurok Tribe did not receive the benefits of the act. The Yurok Tribe made a conscious decision to sue and thereby chose to forego nearly 13 years of potential development and economic opportunity.

The Hoopa Tribal Council would be remiss in our duties to our members if we did not see return of the timber revenues derived exclusively from the Hoopa Valley Indian Reservation. Over 98 percent of the settlement fund balance comes from Hoopa escrow accounts derived from logging on Hoopa lands. I must respectfully disagree with Secretary McCaleb's referring to this fund as the Yurok account. The act refers to the money as Hoopa escrow moneys.

In 1988, the Hoopa Tribe enacted a resolution authorizing the use of these Hoopa escrow moneys as a settlement offer to end the effects of the litigation leading to the act. That consent was required in the act. The Hoopa Tribe's resolution, however, does not authorize use of these moneys for purposes not provided in the act. The Hoopa Tribe's agreement that the act provided a settlement offer of Hoopa moneys to the Yurok Tribe was withdraw by operation of law when the Yurok Tribe sued the United States.

The answer to the question what happens now to the settlement fund must be found outside the act. Federal law provides for payment of proceeds from logging on tribal lands to the tribe whose reservation was logged. It is clear that the Hoopa Valley Indian Reservation belongs to the Hoopa Tribe and that the Hoopa Tribe is the only governing body concerned with the sale of timber on the unalloted trust land of the Hoopa Reservation.

It simply follows that to the extent money remaining in the settlement fund came from the Hoopa Tribe's Reservation, the Hoopa Tribe is the only tribe entitled to those proceeds. Certainly a party to any other legal dispute which rejected the settlement offer, sued instead and lost could not come back and claim the previously made settlement offer. The Hoopa Tribe should not now be forced to pay for prior injustices that resulted during the allotment era or from the Yurok Tribe's decision to sue.

Using the settlement fund remainder for such purposes forces the Hoopa Tribe to be liable for the Federal Government's actions. Moreover, it would force the Hoopa Tribe to pay for the poor judgment of the Yurok Tribe's decision to litigate. We know of no other situation where Congress has taken resources and resource reve-

nues derived from one reservation and simply given it to another reservation.

Congress was thorough in developing the Settlement Act. Congress considered history, aboriginal territory, demographics and equity. Likewise, Federal courts have held that the Hoopa Valley Indian Reservation was historically the homeland of the Hoopa Tribe as a matter of history and as a matter of law. We know today that the Yurok Tribe would attempt to claim otherwise.

These are not new issues and after 40 years of litigation, the courts have heard and determined this issue and every other possible issue to be raised in regard to this piece of legislation. The litigation is now over. We ask Congress now to respect these judicial decisions and move forward.

In conclusion, the Interior report to Congress is disappointing. Interior concludes that neither tribe is entitled to the fund under the act but recommends that they administer the fund for the benefit of both the Hoopa and Yurok Tribes. This is clearly contradictory. We have long and hard experience with such administration during the *Short* v. *United States era.* As another witness will testify, Interior lacks the legal authority and the competence to carry-out such responsibilities fairly.

We believe the issues now before Congress should be resolved through considered thought and hard work over some period of time, not necessarily years but long enough to ground any new legislation on substance and reason rather than emotion.

We have attempted to negotiate and remain open to negotiation.

Thank you for your time.

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

The CHAIRMAN. Thank you, Mr. Chairman.

Would your councilman and the counsel wish to say something?

Mr. MARSHALL. Yes.

STATEMENT OF JOSEPH JARNAGHAN, COUNCIL MEMBER, HOOPA VALLEY TRIBE

Mr. JARNAGHAN. My name is Joseph Jarnaghan. I thank you for the opportunity to speak before you. I consider it a great honor.

I am a council member of the Hoopa Valley Tribe. Before being elected to the council, I worked for the tribe's timber industry for many years. I have a written statement and request that it be included in the record.

The CHAIRMAN. Without objection, so ordered.

Mr. JARNAGHAN. Our forests are invaluable to our tribe. I want to tell you with the use of some slides why the return of the Hoopa escrow moneys to the Hoopa Valley Tribe is particularly appropriate in this case now that the payment provisions of the act have been exhausted.

The first slide is a map of the roads built on the Hoopa Valley Reservation beginning in the 1940's. There are 550 miles of road on the reservation. These roads are a major source of sediment production and contamination of our waters because the Bureau of Indian Affairs' maintenance of these roads was grossly inadequate.

When the BIA clearcut our forests, which ultimately generated the settlement fund, the BIA was more interested in the volume of

timber going to the mill to create the settlement fund account than it was in the environmental state of our reservation.

Today, the Hoopa Tribe is still faced with the forest resource management and rehabilitation costs that were left undone. As a result, we have been spending $200,000 to $400,000 per year from tribal revenues to fix this road system. This year in the Pine Em Timber Sale, we have over 100 culverts that need to be installed as a result of the job not being done when the BIA harvested our timber between 1972 and 1988. That was 424 million board feet of timber.

The road construction standards the BIA used when harvesting our timber were deplorable and created ongoing problems that we continue to deal with today. The road erosion is devastating to our fisheries, water quality and riparian organisms. As you can see by this slide which shows a log jam that blocks fish passage, you will also notice the unit went right into the creek itself. The BIA logged 33,000 acres of tribal timber before the Settlement Act was passed. Most of the rest of our reservation is difficult to log because of steep slopes and in many cases, it is impossible to log because of ESA and National Marine Fisheries Service restrictions. Most of the easy units were logged to create the settlement fund.

These slides show that the BIA simply clearcut our reservation. This degraded cultural resources and created large areas for the tribe to now rehabilitate. Assistant Secretary McCaleb said Tuesday at the trust reform hearing that most tribes would not clearcut their land and that is a fact but unfortunately, the BIA did clearcut our forest. Timber stand improvements cost us over $500 per acre to treat. At 2 to 3 years old, we grub around trees for conifer release; 10 to 15 years after the harvesting, these clearcuts are invaded by brush and must be brushed by hand because we don't allow herbicide spraying. We do this at increased cost to promote tree growth as well as to ensure water quality.

We have suffered terrible forest fires. The Megram fire of 1999 shown here destroyed 4,500 acres of our reservation, mostly 30 year old stands that had been previously treated at the cost of $1,000 per acre.

Our tribe must not be forced to withstand losing escrow moneys that came from timber cuts on our reservation and having to finance the forest restoration and rehabilitation costs resulting from forest fires or poor BIA timber mismanagement. The settlement fund remainder was generated almost exclusively from timber from our reservation. Our forest has been ravaged by the BIA, our money has been taken from our people to create this fund and we have been forced to fight clear to the Supreme Court to defend our reservation, costing the Hoopa Tribe much money, time and lost opportunity.

Now the Yurok Tribe wants the settlement fund anyway. Is that fair? The fund that was left on the table by the Yurok Tribe's refusal to waive its claim should be returned to us so we can rehabilitate our aboriginal territory and our forests after the damage that was done to them by the BIA clearcutting.

Thank you.

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

The CHAIRMAN. Thank you very much.

Mr. Schlosser.

STATEMENT OF THOMAS SCHLOSSER

Mr. SCHLOSSER. My name is Thomas Schlosser. I thank the committee for the opportunity of submitting testimony on the Secretary's report.

I have been honored to serve as the litigation counsel for the Hoopa Valley Tribe for over 20 years. During that time, I have represented the Tribe in the *Short* litigation and in the litigation concerning the Settlement Act.

I have several points I would like to make. First, the Secretary's report threatens a return to the situation the tribes were in prior to passage of the Settlement Act. The Settlement Act was necessitated by complex litigation among the United States, the Hoopa Valley Tribe and a large number of individual Indians, most of whom but not all, have become members of the Yurok Tribe.

The chairman mentioned the Karuk Tribe and there are a few members of the Karuk Tribe who were involved in the *Short* litigation and were held to be Indians of the reservation. It is a very small fraction of the Karuk Tribe, I would guess less than 10 percent. Whereas of the people who were held to be Indians of the reservation who elected to join the Yurok Tribe in 1991, the base roll of the Yurok Tribe was entirely made up of Indians of the reservation.

There is another large fraction of Indians of the reservation that Mr. McCaleb referred to who chose to disaffiliate from both tribes, the so-called lump sum option under section 6(d). The Secretary's report mistakes the Settlement Act as having primarily been a boundary resolution act and instead suggests that the settlement fund be administered for the mutual benefit of both tribes.

Boundary clarification was only a small part of this act and the efforts to administer the fund for mutual benefit were dramatically unsuccessful prior to the Settlement Act. For years, long proceedings were necessary to get a tribal budget approved. Sometimes the tribal budget would get approved in the last month of the fiscal year because of Interior's inability to adopt standards and to determine whether things affected the reservation fairly. This led to conflicts between rulings in the *Short* case and the *Puzz* case over which kinds of expenditures were permissible.

For example, the *Short* case in 1987 held that money that was distributed to the tribe for tribal governmental purposes did not damage the *Short* plaintiffs, was not an injury to the Indians of the reservation and did not invade their rights. The *Puzz* court, a district court in the Northern District of California, held to the contrary, that funds used by the Hoopa Valley Tribe did damage the Indians of the reservation. So there are insufficient standards and not enough expertise to make that recommendation work well. As George Santayana said, "Those who cannot remember the past are condemned to relive it." There is an error found in Interior's recommendation.

Under the Settlement Act, there are some benefits potentially available to the Hoopa Valley and Yurok Tribes. Only 22 *Short* plaintiffs were adjudicated to be Indians of the reservation in 1973, so the court embarked on a long process which actually is still un-

derway of identifying the eligible Indians of the reservation and their heirs for inclusion in per capita payments.

This ruling precipitated other lawsuits, precipitated administrative actions that brought tribal government to a standstill, jeopardized public health, and made necessary the Hoopa Yurok Settlement Act. The Settlement Act originated in the House and in the House two hearings were conducted, one by the Interior and Insular Affairs Committee and another by the Judiciary Committee, and this committee conducted two hearings on its bill. And as you recall, at least three law firms appeared and participated in the proceedings on behalf of various groups of what have become Yurok tribal members. This included the Faulkner and Wunsch firm which represented most of the *Short* plaintiffs, many who became Yurok tribal members, the Heller, Ehrman White & McAuliffe firm which represented the *Short* plaintiffs, the Jacobsen, Jewitt & Theirolf firm which represented the *Puzz* plaintiffs, and so although the Yurok Tribe had not organized in a fashion to designate its own attorney, its members participated completely and fully.

With the committee's guidance, after all these legal issues were discussed and the equities were considered, the parties came together on a settlement package to be laid before each one of the contestants. At the request of the House, the Congressional Research Service analyzed the House bill to determine whether Congress could lawfully do this or whether it would involve a taking of property. The Congressional Research Service concluded that because of the unique background of this reservation and the litigation, it was possible that a court would conclude that non-tribal Indians, Indians of the reservation, had some vested interest in reservation property.

Ultimately, the courts didn't conclude that but the fact that there was a risk there is part of why the committee and Congress in the Settlement Act went to great pains to offer benefits in exchange for waivers of claims. So the settlement fund, for example, was allocated essentially in three ways, partly to the Hoopa Valley Tribe and the Yurok Tribe, if those tribes waived their claims, and partly to Indians as individuals who qualified as Indians of the reservation and appropriated money was provided which defrayed most of the cost of the lump sum payments.

As Mr. McCaleb correctly said, the appropriated money was not sufficient for the people who disaffiliated from both tribes, so some of the Yurok and Hoopa escrow funds went to that payment.

This act nullified the *Short* rulings. That was the purpose of the act. The act, this committee said in its report, was not to be considered a precedent for individualization of tribal communal assets but rather, sprang from the realization that there were some judicial decisions that were unique and the committee concluded,

> The intent of this legislation is to bring the Hoopa Valley Tribe and the Yurok Tribe within the mainstream of Federal Indian law.

That is in the committee's report on page 2.

The Settlement Act preserved the money judgments that had been won by the individual *Short* plaintiffs, so they ultimately recovered about $25,000 each from the treasury in addition to the payments that were made to them in exchange for claim waivers under section 6 of the act.

The committee said while it didn't believe the legislation was in conflict with the *Short* case, "To the extent there is such a conflict, it is intended that this legislation will govern." The reason that is important now is because it is indisputable that over 98 percent of the remainder in the settlement fund is derived from Hoopa escrow funds, from Hoopa timber sales, trees cut on the Hoopa Square. That proportion in our view belongs to the Hoopa Valley Tribe.

The *Short* case is not to the contrary. The Hoopa Valley Tribe has a right to timber proceeds for trees cut on the Square. As a historical matter, tribes didn't have a right to proceeds for timber sales on reservation until 1910 when Congress passed a general timber statute now enacted in section 407. In 1964, Congress changed the designation of beneficiaries from the 1910 Act which said the proceeds would be used for the benefit of Indians of the reservation. In 1964 that was changed to say that proceeds would be used for the benefit of Indians who are members of the tribe or tribes concerned.

At that time, the Department of the Interior, which advocated that technical correction, explained that Indians of the reservation didn't really describe anyone and that in fact members of the relevant tribe shared in the proceeds of sale of tribal properties. In the *Short* case, the 1983 opinion, the court held to the contrary and said Congress, when it used the term tribe here meant only the general Indian groups communally concerned with the proceeds and not officially organized or recognized tribes.

So another important part of the Settlement Act was correcting the damage done to the general timber statute. A section of the Settlement Act amended section 407 to say the proceeds of sale shall be used as determined by the governing bodies of the tribes concerned.

In the litigation that came after the Settlement Act, the Yurok Tribe and other plaintiffs continued to presume the correctness of some of the rulings in the *Short* case, in particular, the 1891 Executive order. The *Short* case did not support their claim that they had a right to the Hoopa escrow funds generated from timber cut on the Hoopa Square. Instead, in two opinions in 1987, an opinion discussed in this committee's report, and later in 1993, in the sixth published *Short* opinion, the *Short* court held that the plaintiffs there did not have a right to the trust funds, the escrow funds. Instead, the court made very clear that all it held in *Short* was that if money is distributed to individuals, not distributions to tribes but individualization of money, gave rise to a right by Indians of the reservation to share.

The Federal courts rejected this most recently in the litigation concerning the Hoopa Yurok Settlement Act. Without the theories of the *Short* case that as Indians of the reservation, they have some claim to the timber revenues of the Square, without that theory, there is no connection between the Yurok Tribe and the Hoopa escrow moneys. The Hoopa escrow moneys were part of a settlement package and that is the only method by which they could have had access to them.

As the court ruled in the most recent case, *Karuk Tribe of California* v. *United States,* this litigation is the latest attempt by plaintiffs to receive a share of the revenues from timber grown on

the Square. The Settlement Act nullified the *Short* rulings by establishing a new Hoopa Valley Reservation. A necessary effect of the Settlement Act was to assure payment of the timber revenues from the Square exclusively to the Hoopa Valley Tribe.

It was the purpose of the Settlement Act to return these tribes to the mainstream of Federal Indian law. In the mainstream of Federal Indian law, the proceeds of trees cut on a tribe's reservation go to that tribe.

I want to mention one other issue that comes up recurrently and that is the assertion that a portion of the Hoopa Square was actually traditional Yurok Tribe territory or some even say traditional Karuk Tribe territory.

As the chairman pointed out, this is not a new issue, it is an issue that has been litigated specifically and in the just completed litigation concerning the Settlement Act, *Karuk Tribe* v. *United States,* the court's ruling was that both as a matter of history and as a matter of law, the record does not support the Yurok's claim to Indian title to the site of the Square. This issue is adverted to in this committee's report concerning the Settlement Act where the committee pointed out that the Settlement Act's choice of the Bissell Smith Line as the dividing line between the two reservations had the effect of putting a traditional Yurok village into the Yurok Reservation where it might previously have been in the Square.

With that, I would conclude my remarks and would be happy to answer questions.

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

The CHAIRMAN. Thank you.

One of the first issues confronting me as chairman of this committee was this matter. Obviously I knew very little about Indian country or Indian history or relationship. I spent 2 whole days in Sacramento conducting hearings, I visited the Valley, I would never fly back again and I must say that I thought the committee did pretty well.

But this committee was a successor of other committees in the U.S. Senate that felt that all the answers were in Washington, that the answers were in the minds of lawyers and government officials. What we have here today is the product of government officials and lawyers, starting off with deception and based upon the deception coming forth with conclusions and then obviously wanting to justify the deception.

In the years that followed my tenure as chairman beginning in 1987, I have become much more dependent upon the wisdom of Indian country, to tell me and to tell Washington what the solutions should be. We have too often tried to impose our will upon Indian country and this is one example.

In looking at the activities of 1852 and 1864, one must assume that the Indians were well organized with a whole array of lawyers who knew the Constitution inside and out and therefore they had their rights and liabilities all determined and that was not so. The Government of the United States went out of its way to make certain that Indians never got organized. I wish we could start all over and I could tell the Hoopa and the Yuroks why don't you all get together as you did in the old days. In the old days, it was either war and kill each other and decide or you sit down, have a

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?

Ms. MASTEN. We have no problem with that, Senator. We work on many issues together where we have mutual benefit but I would like to say before I do that, we would request the committee's assistance because in our prior negotiations there has been a breach of trust because after our last negotiations, the Hoopa Tribe issued a press release.

The CHAIRMAN. When you have negotiations, I will make certain there is a representative from this committee.

Ms. MASTEN. Appreciate that, Senator. Thank you again.

The CHAIRMAN. If you can keep your rhetoric reasonable and rationale and friendly, I think we can work out something.

Mr. MARSHALL. I'm sorry, Senator. I cannot shake hands after being offended in that way. We did not offend them in the last negotiation and I cannot be that hypocritical.

The CHAIRMAN. I think we should start the process.

With that, this hearing is adjourned.

[Whereupon, at 12:04 p.m., the committee was recessed, to reconvene at 2 p.m. the same day.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF JOSEPH JARNAGHAN, COUNCILMAN, HOOPA VALLEY TRIBE OF CALIFORNIA

My name is Joseph Jarnaghan and I am a member of the Hoopa Valley Tribal Council. Our tribe has lived on and governed its affairs in the Hoopa Valley for over 10,000 years. I testify as a tribal official elected in a democratic process by the tribal membership, and expressing the views of our people.

On behalf of the Hoopa Valley Tribe, I want to thank this committee for the opportunity to be here today and to testify in this oversight hearing. I want to tell you why the return of the Hoopa escrow moneys to the Hoopa Valley Tribe is particularly appropriate in this case, now that the payment provisions of the Hoopa-Yurok Settlement Act have been exhausted.

My first slide is a map of roads built on the Hoopa Valley Indian Reservation beginning in the 1940's. There are over 550 linear miles of road on the reservation. These roads are a major source of sediment production and contamination of our waters because the Bureau of Indian Affairs' maintenance of these roads was grossly inadequate, virtually nonexistent, when it clear-cut timber from our reservation. The Bureau was more interested in getting the trees down and to sale rather than forest resource management and rehabilitation. Now, the Hoopa Valley Tribe spends approximately $200,000 to $400,000 per year from tribal revenue to fix this road system. Simply put, the BIA road construction standards employed in harvesting timber from our reservation created a huge ongoing problem. The roads erosion is devastating to fisheries, water quality and riparian organisms. The tribe continues to rehabilitate old logging roads and landings that are major contributors to sediment production and which thereby affect fish habitat and water quality.

The BIA cut down approximately 33,000 acres of tribal timber before the Hoopa-Yurok Settlement Act was passed. Most of the remainder of the reservation cannot be logged. As the photos illustrate, clear cutting management techniques were practiced by the BIA. This type of harvesting disregarded cultural resources and created large areas that the tribe must now rehabilitate through timber stand improvement projects. Even 10 years after harvesting, clear cuts have led to invasion by brush species, understocked timber regrowth, and unhealthy conditions susceptible to fire or insects. Timber stand improvement costs the tribe over $500 per acre to treat. Thin and release programs conducted by hand produce substantial improvements in growth rates.

Our reservation has also been substantially damaged by forest fires. The Megram fire of 1999 resulted in approximately 4,500 acres being destroyed through fire suppression efforts on the reservation. About one-half of the damage was the result of "back bum" operations. The rest of the damage occurred through creation of a "contingency fire line." The fire line was up to 400 feet wide and approximately 11 miles long.

The Hoopa Valley Tribe must not be subjected to the double hit of losing both the Hoopa escrow moneys derived from timbering activities on our reservation and having to finance the restoration and rehabilitation costs resulting from the BIA's poor

timber harvest projects and forest fires. The potential application of Hoopa escrow funds to settlement costs never came to pass, instead we had to incur tremendous defense costs to protect our reservation. The Hoopa escrow funds from our reservation should be restored to meet the needs of our people.

PREPARED STATEMENT THOMAS P. SCHLOSSER, COUNSEL, HOOPA VALLEY TRIBE OF CALIFORNIA

My name is Thomas P. Schlosser and I am an attorney for the Hoopa Valley Tribe. I thank the committee for the privilege of presenting testimony concerning the report to Congress submitted by the Secretary of the Interior in March 2002, pursuant to § 14(c) of Pub. L. 100–580, as amended, the Hoopa-Yurok Settlement Act.

I have been honored to serve as litigation counsel to the Hoopa Valley Tribe for over 20 years and, during that time, have represented the tribe in the hopelessly misnamed case of *Short* v. *United States,* a suit still pending after 39 years. Along with numerous lawyers representing various sides of the controversy, I participated in the proceedings of the 100th Congress and this Committee that fashioned the landmark Hoopa-Yurok Settlement Act.

1. *The Secretary's Report Threatens a Return to Pre–1988 Conditions.*

The Settlement Act was necessitated by complex litigation between the United States, the Hoopa Valley Tribe, and a large number of individual Indians, most, but not all of whom were of Yurok decent. Those who do not recall the applicable court rulings or the conditions from which the Settlement Act emerged will not fully appreciate the strengths and weaknesses of the Secretary's § 14(c) report. Thus, the Secretary's report mistakes the Settlement Act as having been enacted "with the primary objective of providing finality and clarity to the contested boundary issue," and concludes with the recommendation that the Settlement Fund "would be administered for the mutual benefit of both the Hoopa Valley and Yurok Tribes." The Secretary's report is not all wrong but boundary clarification was only an aspect of the Hoopa-Yurok Settlement Act. If administration of the Fund for the joint benefit of the tribes is the outcome of this process we will have returned to the difficult era between 1974 and 1988 that required passage of the Settlement Act in the first place. As George Santayana said, "those who cannot remember the past are condemned to repeat it." The error of establishing a "Reservation-wide" account is clear from comparing § 1(b)(1)(F) with *Puzz* v. *United States,* 1988 WL 188462, *9 (N.D. Cal. 1988).

Under the Settlement Act there are potential benefits currently unavailable to the Yurok and Hoopa Valley Tribes because of the Yurok Tribe's decision to reject the conditions of the act. The Hoopa-Yurok Settlement Fund is only one of the undistributed assets, and probably not the most valuable one, by comparison to the hundreds of acres of Six Rivers National Forest land within and near the Yurok Reservation, the money appropriated for Yurok land acquisition, the Yurok self-sufficiency plan which was never submitted or funded, and the statutory authority to acquire land in trust for the Yurok Tribe. Thus. a second shortcoming of the Secretary's § 14(c) report is that it focuses myopically on the Hoopa-Yurok Settlement Fund. Nevertheless, because the Settlement Fund is the only asset in which the Hoopa Valley Tribe has a continuing interest, my testimony will focus on it.

2. *The Short Case Was an Aberration From Federal Indian Law.*

The Settlement Act brought to an end a long detour from a correct decision of the Interior Department on February 5, 1958, the Deputy Solicitor's memorandum regarding rights of the Indians in the Hoopa Valley Reservation, California. The Solicitor's opinion found that a group of Indians had been politically recognized as the Hoopa Tribe by the United States in 1851 and were the beneficiaries of administrative actions in 1864 and an Executive order in 1876 setting aside the Hoopa Square for the benefit of any Indians who were then occupying the area and those who availed themselves of the opportunity for settlement therein. (Those Indians were, as this committee found in 1988, primarily Hoopa Indians, but the Hoopa Valley Tribe included other individuals who joined the community and ultimately became enrolled tribal members.) The Solicitor found that Commissioner of Indian Affairs had been correct in recognizing tribal title to the communal lands in the Hoopa Square to be in the Hoopa Valley Tribe. The Federal Government's action a generation later, in 189 1, to append to the Hoopa Valley Reservation the old Klamath River Reservation and the intermediate Connecting Strip, as an aid to the administration of those areas, could not have had any effect on the rights of Indians to property within the Reservation because Hoopa Valley rights attached in 1864 and Klamath River Reservation rights attached in 1855.

Unfortunately for all concerned, the Court of Claims differed with the Interior Department's 1958 view in *Short* v. *United States,* 202 Ct. Cl. 870 (1973), *cert. denied,* 416 U.S. 961 (1974) ("Short 1"). *Short I* ruled that the Secretary violated trust duties to non-Hoopa "Indians of the Reservation," when he excluded them from tribal per capita payments. Nearly 4,000 individuals were plaintiffs in *Short,* and *Short I* found only 22 "Indians of the Reservation" and left a very difficult job (which is still underway) for the courts to perform determining which other "Indians of the Reservation" and their heirs were entitled to damages from Treasury for breach of trust. *Short I* precipitated a series of crises and related lawsuits that jeopardized public health and welfare and nearly destroyed tribal government before Congress stepped in with the Hoopa-Yurok Settlement Act.

The Settlement Act originated in the House as H.R. 4469. The Interior and Insular Affairs Committee and the Judiciary Committee of the House conducted hearings on that bill, in addition to the two hearings conducted by this committee. As you may recall, at least three law firms represented factions of Yurok tribal members at those hearings, including Faulkner & Wunsch, Heller Ehrman White & McAuliffe, and Jacobsen, Jewitt & Theirolf. Many legal issues were argued but, with this committee's guidance, the warring factions came together on a settlement package to lay before all parties.

At the request of the House, the American Law Division of the Congressional Research Service prepared an analysis of H.R. 4469 which pointed out that because of the unique statutory and litigation background, a remote possibility existed that litigation concerning H.R. 4469 could create a new Federal Indian law precedent, holding that if the Reservation was established for non-tribal Indians, Indians of the Reservation would have a vested interest in Reservation property. The courts did not ultimately reach that conclusion, but it is useful to recall that issue now in order to realize how the Secretary's § 14(c) report oversimplifies the Settlement Act as merely a division of assets between the Hoopa Valley and Yurok Tribes. Actually, the Settlement Act initially divided the Hoopa-Yurok Settlement Fund between the Hoopa Valley Tribe and the Yurok Tribe, subject to surrender of claims, and then added appropriated funds to finance lump-sum payments to Indians who did not elect to join the Yurok Tribe or the Hoopa Valley Tribe. Because of the long history of Yurok Short plaintiff opposition to organization of the Yurok Tribe and the wide geographic dispersal of Yurok Indians it was simply unknown how many persons on the Hoopa-Yurok Settlement Roll would elect Yurok tribal membership.

3. *The Settlement Act Nullified the Short Rulings.*

This committee emphasized that the Settlement Act should not be considered an individualization of tribal communal assets and that the solutions in the Settlement Act sprang from a series of judicial decisions that are unique in recognizing individual interests that conflict with general Federal policies and laws favoring recognition and protection of tribal property rights and tribal governance of Indian reservations. The committee concluded: "the intent of this legislation is to bring the Hoopa Valley Tribe and the Yurok Tribe within the mainstream of Federal Indian law." S. Rep. 564, 100th Cong., 2d Sess. (1988) at 2.

The Settlement Act preserved the money judgments won by qualified plaintiffs in the *Short* case, and they ultimately recovered about $25,000 each from the United States Treasury in 1996. They also received the payments provided by § 6 of the Act. But this committee noted that while it did not believe "that this legislation, as a prospective settlement of this dispute, is in any way in conflict with the law of the case in the *Short* cases, to the extent there is such a conflict, it is intended that this legislation will govern." *Id.* at 19.

The interplay of the Settlement Act and the *Short* case is important to allocation of the Settlement Fund now for this reason: is indisputable that over 98 percent of the funds remaining in the Hoopa-Yurok Settlement Fund originated in trees cut from the Hoopa Square, now the Hoopa Valley Reservation. That proportion of the funds belongs to the Hoopa Valley Tribe.

4. *The Hoopa Valley Tribe Has a Right to its Timber Proceeds.*

As an historical matter, Indian tribes did not generally have a right to logging proceeds until Congress, by the Act of June 25, 1910, authorized the sale of timber on unallotted lands of any Indian reservation and provided that "the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct." See 25 U.S.C. § 407. In 1964, Congress changed the identity of the beneficiaries of proceeds in the statute from "Indians of the reservation" to "Indians who are members of the tribe or tribes concerned." As the Interior Department testified in support of that amendment, this was a technical correction because the term "Indians of the reservation" did not describe anybody and actually members of the relevant tribe shared in the proceeds of the sale of tribal property. However, in *Short* v. *United States,* 719 F.2d 1133, 1136 (Fed. Cir. 1983), *cert. de-*

nied, 467 U.S. 1256 (1984) (*"Short III"*), the court rejected that explanation and held that "Congress, when it used the term 'tribe' in this instance, meant only the general Indian groups communally concerned with the proceeds—not an officially organized or recognized Indian tribe—and that the qualified plaintiffs fall into the group intended by Congress." Thus, another important portion of the Settlement Act was the correction to the *Short*—caused distortion of 25 U.S.C. § 407 to provide that "the proceeds of the sale shall be used—(1) as determined by the governing bodies of the tribes concerned and approved by the Secretary——" This amendment restored tribal control over enrollment and use of timber proceeds.

The *Short* case, as explained in some detail in this committee's report, found that no vested Indian rights existed at the time the Hoopa Valley Reservation was extended to include the Connecting Strip and Klamath River Reservation in 1891, and that therefore all Indians of the reservation, as extended, had to be included in per capita distributions from reservation revenues. In the litigation that challenged the Settlement Act as a taking of plaintiffs' vested rights, the Yurok Tribe, its members, and the Karuk Tribe of California logically presumed both the propriety of President Benjamin Harrison's 1891 Executive order and the correctness of the Court of Claim's decision in *Short I.* In other words, those plaintiffs assumed that President Harrison acted lawfully in expanding the Hoopa Valley Reservation to include the Addition, and that the effect of 1891 Executive order was to give all Indians having an appropriate connection to the reservation as so expanded an equal claim to all of the expanded reservation's income. If either of those propositions was incorrect, then the Settlement Act could not be thought to deprive plaintiffs of anything to which they were ever entitled. However, those propositions depended in turn on the assumption that the 1876 Executive order did not confer property rights on the inhabitants of the Hoopa Square, as the reservation was then defted, since if such rights were conferred they would have been taken by the 1891 Executive Order, at least as construed in *Short I.*

Here we are again hearing the Yurok Tribe contend that they have a right to receive timber proceeds from the Hoopa Valley Square. The courts have correctly rejected this, not once, but time after time in *Short IV, Short VI,* and *Karuk Tribe of California.* In *Short IV,* 12 Cl. Ct. 36, 44 (1987), the Court held that the escrow fund did not belong to *Short* plaintiffs but was held in the Treasury subject to the discretion of the Secretary of the Interior. That ruling was reaffirmed in *Short VI,* 28 Fed. Cl. 590, 591, 593 (1993), where the Court recalled that prior to 1987 the *Short* plaintiffs claimed a right to the entire escrow fund but that claim was rejected in *Short IV* and remained the law of the case. The Federal courts rejected plaintiffs continued effort to capitalize on *Short. Karuk Tribe of California, et al.* v. *United States, et al.,* 209 F.3d 1366, 1372 (Fed. Cir. 2000), *cert. denied,* 523 U.S. 941 (2001).

Without the theories of the *Short* case, the Yurok Tribe has no claim to portions of the Settlement Fund derived from Hoopa escrow funds and timber on the Square. As the Court ruled in *Karuk Tribe of California,* "This litigation is the latest attempt by plaintiffs to receive a share of the revenues from timber grown on the Square. . . . [but] the Settlement Act nullified the *Short* rulings by establishing a new Hoopa Valley Reservation. . . . A necessary effect of the Settlement Act was thus to assure payment of the timber revenues from the Square exclusively to the 'Hoopa Valley Tribe.'" 209 F.3d at 1372. It was the purpose of the Settlement Act to return the Yurok and Hoopa Valley Tribes to the mainstream of Federal Indian law. The twisted logic of the *Short* case can have no further effect on these tribes. Under mainstream law, the proceeds of Indian timber sales must go to the tribe whose trees were cut.

TESTIMONY OF CLIFFORD LYLE MARSHALL
CHAIRMAN, HOOPA VALLEY TRIBE OF CALIFORNIA
BEFORE THE
SENATE INDIAN AFFAIRS COMMITTEE
August 1, 2002

Mr. Chairman and Members of this Committee, I am Clifford Lyle Marshall, Chairman of the Hoopa Valley Tribe of California. On behalf of our Tribe, thank you for the opportunity to present the position of our Tribe on the Interior Department's Report on the Hoopa -Yurok Settlement Act.

We express our deepest gratitude to Chairman Inouye, Vice Chairman Campbell and the other Members of this Committee for your leadership in achieving passage of the landmark 1988 Hoopa-Yurok Settlement Act. Obviously, this would have never occurred without your valiant efforts and incisive analysis of the problems that had crippled our reservation and our tribal government for more than 20 years. We also acknowledge and appreciate the hard work of your dedicated staff, some of whom I suspect remember all the details of the issues addressed in 1988 and before.

The years since its passage have demonstrated the outstanding success of the Act. It resolved the complex issues in the long - standing *Jesse Short* case brought by thousands of individuals who sued for timber revenues from the Hoopa Valley Tribe's reservation. It provided a means for those individuals who qualified for Yurok tribal membership to establish a tribal government, adopt a tribal constitution and begin to exercise governmental responsibilities. The Act ended years of frustration and inability of unorganized Yurok individuals to act effectively to benefit the Yurok people. The Yurok Tribal Chair and Council Members could not stand before you today in that capacity without that Act.

The Act also vested rights in each of the tribes to their respective reservations. It established in each tribe clear legal ownership of its reservation. The Act also preserved the political integrity of the Hoopa Valley Tribe by confirming the enforceability of our tribal Constitution. The offer was derived from an agreement reached by the Hoopa Tribe and the Yurok Tribe. The Yurok Tribe chose to reject the offer provided in the Settlement Act which would have finally brought an end to litigation. The Act nevertheless authorized the Yurok Tribe to use properties such as the Yurok Experimental Forest where a tribal government center has been established and to obtain federal grants and contracts. The Act ultimately made it possible for the Yurok Tribe to join the ranks of tribes with self-governance compacts.

Most importantly, the Settlement Act called for an end to litigation. In its attempt to accomplish that goal, the Act provided benefits to the Hoopa Valley Tribe and the Yurok Tribe, on the condition that they waive all claims which they might assert against the United States as arising from the Act. The Act specifically preserved claims of the Yurok Indians and other individual Indian claims in the *Jesse Short* case. Damages to individual Indians were determined in 1993 in *Short* and payments made in 1996.

During the era of the *Short* case, in the 1970's and 80's, the Bureau of Indian Affairs placed timber revenues from the Hoopa Valley Indian Reservation into a special escrow fund. The Hoopa Tribe was allowed to use up to 30 percent of those revenues for governmental purposes. The Court of Claims made a number of decisions about this fund. It held that the individual plaintiffs had no claim to these funds and that they could not be used to pay for damages to the plaintiffs caused by the United States.[1] With the agreement of the Hoopa Tribe, Congress provided for use of this fund in the Settlement Act for the benefit of the Hoopa Tribe and the to-be-organized Yurok Tribe.

The Settlement Act was in fact exactly what its title implies. It was an offer to both the Hoopa Tribe and the to-be-organized Yurok Tribe to receive substantial monetary payments from this fund if they would forego suing the United States for any claims they might assert arose from passage of the Act. The Hoopa Tribe accepted that offer. The Yurok Tribe did not. The Yurok Tribe refused to waive any possible claims and instead chose to wage a long and expensive legal battle against the United States and also our Tribe.[2] That legal battle cost our Tribe more than $1 million dollars and years of anguish and uncertainty. Since 1988, we have defended the Act, which has been a great benefit to all Indians of the reservation and to both tribes.

Section 2(a) of the Act is the provision regarding use of the timber revenues which had been placed in escrow. The resolution our Tribe enacted, as required by that section, authorized the use of Hoopa escrow monies as payments to the Yurok Tribe, and to individual Yuroks, as provided in the Hoopa-Yurok Settlement Act.[3] All Yurok tribal members, and other Indians who

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[1] *Short IV*, 12 Cl. Ct. 36, 44 (1987).

[2] The Yurok Tribe's contention that their suit was not against the Hoopa Valley Tribe, but solely against the United States was rejected in court. The Court of Federal Claims ruled that their suit threatened the Hoopa Valley Tribe's exclusive rights within its Reservation and that the Hoopa Valley Tribe was properly a defendant.

[3] See, 53 Fed. Reg. 49361, 49362 (Dec. 7, 1988).

qualified for the Hoopa-Yurok Settlement Roll, executed claim waivers and received payments offered by the Act. But the Yurok Tribe did not waive, and so the Act, as applied, did not authorize payments to them. The Yurok Tribe is clearly prohibited by the Settlement Act from now receiving a portion of the Settlement Fund.[4] Further, our resolution does not authorize use of Hoopa escrow monies for purposes not provided in the Hoopa-Yurok Settlement Act. The monies were set forth as a settlement offer to end the effects of the litigation leading up to the Act. The Yurok Tribe rejected that offer. The Hoopa Valley Tribe's agreement that the Act provide an offer of Hoopa monies to the Yurok Tribe was withdrawn by operation of law.

Over 98 percent of the balance of the Hoopa-Yurok Settlement Fund comes from the Hoopa escrow accounts and is derived from logging on Hoopa Valley Indian Reservation lands. Since passage of the general timber statutes in 1910, federal law has provided for payment of proceeds from logging on tribal lands to the tribe whose reservation was logged. These timber statutes govern the Hoopa-Yurok Settlement Fund. The Settlement Act funds held in escrow were derived from timber cut on the Hoopa Valley Tribe's Reservation, timber that is only harvestable under the authority of the Secretary of the Interior pursuant to 25 U.S.C. § 407. That statute declares that "the proceeds of the sale shall be used as determined by the governing bodies of the Tribes concerned and approved by the Secretary." It is clear that the Hoopa Valley Tribe is the only governing body concerned with the sale of timber on unallotted trust land of the Hoopa Valley Reservation.

Congress was thorough in developing the Hoopa Yurok Settlement Act. The legislative history shows that Congress considered the history, aboriginal territory, demographics, and equity.[5] Likewise, the courts, after 40 years of litigation have heard and determined every

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[4] The Secretary of the Interior's Report to Congress states that, "it is the position of the Department that the Yurok Tribe did not meet the waiver conditions of the Act and is therefore not entitled to the benefits enumerated within the Act." Report at 3. Their only opportunity to receive a settlement payment expired when they lost in the courts.

[5] The Committee Report states: S. 2723, as reported by the Committee, "is a fair and equitable settlement of the dispute relating to the ownership and management of the Hoopa Valley Reservation . . . . The Committee intends to deal fairly with all the interests in the Reservation, and believes it has done so." S. Rep. 564, 100th Cong., 2d Sess. at 14 (1988). The Committee Report compared incomes from the Reservations and also noted:

> [T]he Committee is acting out of concern that the Hoopas have intended to live on the reservation and that their government be accorded sufficient resources to provide the services necessary to sustain their habitation. Indeed, the majority of

possible issue to be raised in regard to this piece of legislation. *Yurok Tribe v. United States* is over and upheld by the United States Supreme Court. We ask Congress now to respect those prior decisions and move forward. It is clear that to the extent money remaining in the Settlement Fund came from the Hoopa Valley Tribe's reservation, the Hoopa Valley Tribe is the only tribe entitled to those proceeds. The Hoopa Valley Tribal Council would be remiss in our duties to our tribal members if we did not today seek the return of these timber revenues derived exclusively from the Hoopa Valley Indian Reservation.

The Interior Department's report to Congress pursuant to Section14(c) of the Act is disappointing. Interior's chief recommendation appears to be that no additional federal funding be provided, despite the fact that Section 14(c) specifically requests "any supplemental funding proposals necessary to implement" the Act.[6] Moreover, Interior recommends that it administer the Settlement Fund previously offered to the Yurok Tribe for the benefit of the Hoopa Valley and Yurok Tribes. We have long and hard experience with such administration in the past, prior to passage of the Settlement Act. As our other witness will testify, Interior lacks the legal authority and competence to carry out such responsibilities fairly.

Further, if it is found that the Yurok Tribe has suffered injustices, which we believe it has along with all other tribes in Northern California, and that the Federal Government wants to address these injustices and fulfill its current economic development and other needs, we adamantly argue that such needs should be addressed, but they must be addressed with funding appropriated by Congress. In 1988 Congress passed this bipartisan bill to end over 30 years of protracted litigation that resulted in judicial decisions which threatened the existence the Hoopa Valley Tribe, and would have had far reaching ramifications throughout Indian Country.

The Hoopa Tribe was not unfeeling in 1988 about the plight of the Yurok people due to past wrongful actions of the United States and due also to the Yuroks' decision to litigate rather

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> the Indians living on the combined reservation live on the "Square." The record shows that the Hoopa Valley Business Council is the only full-service local governmental organization on the combined reservation, and has been the major government service provider in the extremely isolated eastern half of Humboldt County.

Id. at 15.

[6] 25 U.S.C. § 1300i-11(c).

than accept the Settlement Act's offer and move forward with effective tribal governance. We are not unfeeling now. The Hoopas, however, are not the cause of that plight and have been damaged by the United States' past actions and by the Yuroks' decision.

The Hoopa Tribe should not be forced to pay for such injustices and poor judgment. We want the Yurok Tribe to prosper as we want all tribes to prosper. The point, however, is clear - - the injustices resulted from Federal Government actions. The Federal Government should compensate. Using the Settlement Fund remainder for such purposes forces the Hoopa Tribe to be liable for the Federal Government's actions and the poor judgment of the Yurok Tribe's decision to litigate. This would be unacceptable.

Based on our experience in reaching agreement in 1988, we believe that the issues now before Congress should be resolved through considered thought and hard work over some period of time - - not necessarily years, but at least enough time to ground any new legislation on considered analysis and due diligence.

Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594

Clifford Lyle Marshall, Sr.
Chairman

August 29, 2002

The Honorable Daniel K. Inouye
Chairman
U.S. Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Re: Supplemental Testimony for the August 1, 2002, Oversight Hearing on the Interior Secretary's Report on the Hoopa-Yurok Settlement Act

Dear Senator Inouye:

On behalf of the Hoopa Valley Tribe, thank you for holding the August 1, 2002, hearing on the Interior Secretary's Report on the Hoopa-Yurok Settlement Act. We truly appreciate your time and dedication to this issue. The hearing was a good opportunity for interested parties to voice their views on the Secretary's Report, the Act, events since its enactment, and how we move forward from here.

I make detailed points in this letter to address issues raised in the hearing and ask that this letter along with the attached briefing papers and slides which were displayed during the hearing be admitted to the record as supplemental testimony. I would like to reiterate the opening point of my oral testimony. The Hoopa Tribe is grateful for your valiant efforts over these many years, and I want you to know that the Hoopa Tribe stands ready to work with you, the Committee, and the Yurok Tribe to move toward complete resolution of this complex matter. We believe that the Hoopa Tribe in the past and the present has acted with the utmost integrity, forthrightness and good faith toward the Yurok Tribe to resolve the issues resulting from the Yurok litigation. Our leaders have never broken a promise made to the Yurok Tribe and we plan to continue our good faith dealings so that together we can return to your Committee next Congress.

The following touches on specific issues discussed in the hearing.

Treatment of the Hoopa Valley Reservation and the Yurok Reservation

As you mentioned in your opening statement, the history of California tribes is a sad one, based on the United States' rejection of the treaties signed with the tribes, but not telling the tribes of this until forty-five years later. The Hoopa leaders signed such a treaty in April 1864. Although the treaty was not ratified, the Hoopa Valley Indian Reservation was established by Executive Order in August 1864. Secret correspondence from the Interior Department advised not telling the Hoopa that their treaty was not ratified, stating that as long as the Hoopa believed they had an agreement they would be peaceful. For over 100 years the Hoopa Valley Indian Reservation was recognized by the United States as the property of the Hoopa Valley Tribe.

In 1891, via an Executive Order, the reservations of the Hoopa and Yurok Tribes were joined to abide by the 1864 Act of Congress authorizing only four reservations in California and to protect the 25,000 acre Yurok Reservation that was established in 1855, the validity of which was questioned in federal court cases in

1888 and 1889. The 1891 Executive Order joined the Yurok Reservation to the Hoopa Valley Reservation with a connecting strip of 33,168 acres which ran one mile wide on each side of the stretch of the Klamath River that flows between the two reservations (ultimately, this connecting strip became part of the Yurok Reservation). This joined reservation, the new Hoopa Valley Reservation, however, was administered, for many reasons, as two reservations with two separate tribes until the decisions in the Jesse Short cases began to detour the treatment of the Hoopa and Yurok Tribes away from mainstream federal Indian law.

The intent of the Settlement Act, in part, was to correct the confusion that arose over the rights of each tribe to their respective reservations and to rein the treatment of the Hoopa and Yurok Tribes back into the mainstream of federal Indian law. S. Rep. No. 564, 100th Cong., 2d Sess. 2 (1988). The Hoopa-Yurok Settlement Act essentially, and finally, honored the promise made by the United States to the Hoopa in 1864 when it originally established the Hoopa Valley Reservation. The Act vested rights in each of the tribes to their respective reservations.

In the hearing, you asked why the two reservations were treated so differently that one would end up decimated and one would remain primarily intact. I want to try to answer your question. The Yurok leadership presented a map showing only 3,000 of the original 58,168 acres remaining on the Yurok reservation. Between 1900 and 1934, Yurok Indians received 40 to 160 acre allotments of valuable redwood timber highly desired by local lumber companies and accessible by road. The Yuroks sold nearly all of their reservation lands by 1955. That is truly unfortunate.

The Hoopa Valley Indian Reservation, on the other hand, had none of the valued redwood timber and roads were inadequate until the 1930's when they were widened and upgraded. During the allotment era, the Hoopa people chose agricultural allotments for farms and livestock grazing rather than timberland. Hoopa timberlands matured and became accessible for harvest after the allotment era ended. The Tribe was not decimated by the gold rush, nor destroyed by the Catholic mission system. It remained intact, its culture and traditional ceremonies continually practiced since the beginning of time. The Hoopa Tribe has always been a cohesive community protective of its lands, the timber lands of which were not targeted until after redwood became scarce. This is the reason for the different treatment.

Clarifying Points Raised in the Yurok Tribe's Testimony

The Yurok Tribe's testimony and request to revisit the Settlement Act hinges on assertions that Congress was misled in 1988. The Hoopa Tribe does not believe this is true. Because we want, and have always wanted, the record to be complete and interested parties fully informed, we feel obligated to clarify and address some of the statements made in the Yurok Tribe's written testimony.

The following identifies and responds to statements in the written testimony submitted by Susan Masten, Chair of the Yurok Tribe, on August 1, 2002, that merit correction to ensure an accurate record. The text follows the pagination and paragraphs of the Chairperson's testimony.

P. 2, Para. 1 Here, as well as at page 3, paragraph 3, Chairperson Masten asserts that most Yurok members live on or near their Reservation. "Near" is a relative term and, if very broadly defined, could make the Chairperson's statement correct. At best, however, the statement is misleading. The Yurok Tribe consists of a widely dispersed group. The Yurok Tribe's base roll consists of 2,976 persons who in 1991 selected Yurok membership under the Settlement Act. Of those, 401, or 14 percent, gave their home address as outside the State of California. An additional 992, or 33 percent, gave their home address as within California, but more than 50 miles away from the Yurok Reservation. Thus, about 47 percent of the members lived more than 50 miles from their Reservation. Since the Settlement Act, the Yurok Tribe has changed its membership standards to reduce the degree of Indian blood required for

enrollment. It is unlikely that that change had the effect of increasing the portion of their tribal membership population within a radius of 50 miles of their Reservation. Unlike the dispersed members of the Yurok Tribe, the Hoopa tribal community is concentrated on the Hoopa Square.

P. 2, Para. 3 The objectives of Pub. L. 100-580 were far more complex than simply "to achieve relative equity for both the Hoopa Valley Tribe and the Yurok Tribe," as Chairperson Masten asserts. Many "Indians of the Reservation" as defined in the *Short* cases demanded lump sum awards and opposed the organization of the Yurok Tribe. This Committee recognized that Hoopa tribal members "tended to live on the Reservation," and that the Hoopa Valley Tribe was "the only full-service local governmental organization on the combined Reservation." S. Rep. 564 at 15. The Committee did not propose an equal distribution of assets between the two tribes, noting that "the judgment of the Committee [is] that a functioning tribal government fulfilling the Congress' and the Executive's policy of self-determination merits a certain financial deference over a group of Indians which has previously elected not to have a functioning tribal government." *Id.*

P. 2, Para. 5 Chairperson Masten refers here and at page 6, paragraph 4, to the belief that "the Yuroks' historic presence on the Square was minimized or ignored." She believes that "the Square is part of the ancestral homelands of the Yurok people." The evidence is to the contrary. For example, the final court opinion on the Hoopa-Yurok Settlement Act stated: " Plaintiff Yuroks also argue . . . their tribe's continuous occupancy and use of the joint reservation . . .. Both as a matter of history and as a matter of law, the record does not support the Yuroks' claim, by 'immemorial occupancy,' to Indian title to the Hoopa Valley itself, site of the Square." *Karuk Tribe of California, et al. v. United States, et al.*, 209 F.3d 1366, 1378-79 (Fed. Cir. 2000), *cert. denied*, 121 S. Ct. 1402 (2001). That same court also noted: "Therefore, the Square now the Hoopa Valley Indian Reservation was historically the homeland of the Hoopas. The Addition was the homeland of the Yuroks." *Id.* at 1371. Furthermore, this Committee's report noted that the chosen boundary line between the Hoopa Valley and Yurok Reservations under the Settlement Act moved into the Yurok Reservation a tiny Yurok settlement formerly located on the Square: "Use of the Bissel-Smith survey for purposes of defining the Hoopa Valley Indian Reservation results in the addition of lands to the Yurok Reservation in the upper reaches of the extension near the junction of the Klamath River with the Trinity River. The transition village known as Peekta Point, claimed by the Yurok Tribe, now apparently becomes part of the Yurok Reservation." S. Rep. 564 at 18.

P. 3, Para. 2 Chairperson Masten correctly notes that at the time of the Settlement Act "barely 400 Indians remained on what would become [the Yurok] Reservation." The *Short* proceedings closely examined the residences of the "Indians of the Reservation;" few were found on the Extension.

P. 3, Para. 3 While it is true that the Yurok Reservation straddles a river gorge, Chairperson Masten does not reveal that the downstream end of the Reservation is crossed by a major interstate highway, U.S. 101. That portion of the Yurok Reservation provides potentially lucrative tourist traffic. Chairperson Masten, in this paragraph also invokes an expansive use of "near" the Reservation when discussing the residences of Yurok Indians. This misleading use of language is discussed above on page 3, herein, where the actual residences of the Yurok tribal members are clarified.

P. 3, Para. 4 It was never true that as many Yuroks as Hoopas were on the Hoopa Valley Indian Reservation. As this Committee's report noted, "the Committee is acting out of concern that

the Hoopas have tended to live on the reservation and that their government be accorded sufficient resources to provide the services necessary to sustain their habitation." S. Rep. 564 at 15. Most of the Hoopa Valley Tribe still lives on the Reservation.

P. 4, Para. 1 Chairperson Masten notes that "commercial fishing income, if any, went predominantly to" individual fishermen. That reflects a choice made by the Yurok Tribe. It is also true that some anadromous fish runs in the Klamath River basin have become depressed. The Hoopa Valley Tribe has fought hard to improve habitat and management conditions for fish. S. Rep. 564 at 14. We obtained extra authority by inclusion of Section 3406(b)(23) of Pub. L. 102-575, the Central Valley Project Improvement Act. The Hoopa Valley Tribe has aggressively litigated suits to increase Indian fish harvest. Regrettably, the Hoopa Valley Tribe's efforts to improve water flows and fish returns have not been fully successful nor matched by an equal effort by the Yurok Tribe on the main stem of the Klamath River itself.

P. 4, Para. 3 The acreage of tribal trust land on the Yurok Reservation is much less now than that on the Hoopa Valley Reservation. This is mostly a result of the sale of land by individual Yurok members who received allotments of tribal land in the 1890s, and subsequently sold them. Approximately 28,000 acres were allotted to and sold by Yurok Indians on the Yurok Reservation. The Hoopa Valley Tribe received nothing from the allotments or sales. The statement that the Hoopa Tribe received the 'timber rich Square' while the Yuroks received 'a narrow strip along the Klamath' is clearly a slanted representation of the facts. The Yuroks received their original reservation of 25,000 acres, established in 1855 and the connecting strip consisting of 33,168 acres that connected the Yurok Reservation to the Hoopa Reservation in 1891. This is not a "narrow strip;" the Yurok Reservation is two miles wide and over forty miles long, totaling over 58,168 acres and encompassing the heart of the Klamath River basin from Weitchpec to the mouth of the Klamath River. As such, it is the second largest reservation in California next to Hoopa. This Reservation was once the most valuable "timber rich" portion of the joined reservations because it consisted of virgin redwood timberland. Douglas Fir that grows on the Square became targeted by loggers only after redwood became scarce. The Hoopa Tribe, however, did not benefit from the Yurok allotments, their sales or the harvesting of the redwood timber.

P.4, Para. 4 The claim that timber income of the Square since 1988 has been $64,000,000 is utterly unsupported and completely wrong. Even gross revenues prior to expenses of logging and reforestation would not reach that figure.

P. 5, Para. 2 It is misleading for Chairperson Masten to assert that the Yurok Tribe had "no lawyers, no lobbyists, and no historians" to gather information and present facts in 1988 concerning the Hoopa-Yurok Settlement Act. Factions of the Yurok Tribe were well represented and presented hundreds of pages of testimony in a highly organized fashion. The key term in Chairperson Masten's statement is that the Yurok Tribe was "not formally organized." That belies the organization led by three major Yurok families, Quinn, Jones, and Williams, and represented by the two major law firms representing over 3,700 plaintiffs in the *Short* case: Faulkner, Sheehan & Wunsch and Heller, Ehrman, White & MacAuliffe. An additional major Williams family faction of Yurok Indians was represented by Richard B. Theirolf, Yurok plaintiffs' counsel in *Puzz v. United States*. Congress conducted four hearings on the bills that later became the Hoopa-Yurok Settlement Act and Yurok interests testified at every one and identified themselves as speaking for Yurok people. See Hearing Before the Committee on Interior and Insular Affairs, H.R. Serial No. 100-75, 100th Cong., 2d Sess. (1988); Hearing Before the Select Committee on Indian Affairs, Oversight Hearing on Hoopa-Yurok Indian Reservation, S. Hrg. 100-946, 100th Cong., 2d Sess. (1988); Hearing

Before the Select Committee on Indian Affairs, H. Hrg. 100-949, 100th Cong., 2d Sess. (1988); Hearing Before the Subcommittee on Administrative Law and Governmental Relations of the Committee of the Judiciary, Serial No. 77, 100th Cong., 2d Sess. (1988). That the Yurok Tribe's governing group had not been approved by the BIA does not mean Yurok interests were absent, not adequately represented in the hearings, or unorganized.

P. 5, Para. 3 — The assertion that "none of the traditional tribes of our area were organized before 1950" is simply wrong. In 1958, the Interior Department ruled that we had been politically recognized as a Hoopa Tribe by the United States as early as 1851 when a treaty was negotiated. Rights of Indians in the Hoopa Valley Reservation, California, 65 I.D. 59, M-36450, II Ops. Sol. Interior 1814 (Feb. 5, 1958). The Settlement Act itself notes that the Hoopa Valley Tribe was organized under a Constitution approved by the Secretary on November 20, 1933. *See* 25 U.S.C. Section 1300i(b)(4). This Committee's report notes that after the reservations were combined in 1891, " 'Indians of the Square' later formally organized a tribe and tribal government as the Hoopa Valley Tribe." S. Rep. 564 at 7. Indeed it is clear that a Hoopa Tribal Council existed prior to 1933, particularly in 1916, during the allotment era. *Short v. United States*, 202 Ct. Cl. 870, 943-44 (1973) (*Short I*). It is simply false to assert that the Interior Department "assisted in organizing" the Hoopa Valley Tribe simply "for the purpose of selling timber." Also misleading is the omission of the fact that Yurok plaintiffs in the *Short* case adamantly opposed tribal organization and successfully sued to prevent the organizational efforts of the Interior Department following the initiative of Assistant Secretary Forrest Gerrard. See *Short v. United States*, 661 F.2d 150, 153 (Ct. Cl. 1981) (*Short II*).

P. 6, Para. 2 — Chairperson Masten decries the failure to use "referenda" about organization omitting that the suit by Yurok plaintiffs in *Beaver v. Secretary of the Interior*, Civ. No. 79-2925 (N.D. Cal. Feb. 11, 1980), involved precisely such a referendum. In that referendum, 1,909 *Short* plaintiffs voted against establishment of an interim Yurok governing committee and 65 in favor. *See Short II*, 661 F.2d at 153.

P. 7, Para. 1 — The fact statement not contested in *Yurok Tribe v. United States* merely said that "Yurok people were aboriginal residents of the Square." This is true of Yurok individuals, such as Chairperson Masten, herself, who resides on the Square because she is married to a member of the Hoopa Valley Tribe. That does not suggest that the Square was traditional territory for the Yurok Tribe. As noted above, the courts have consistently rejected the Yurok territorial claims except as to the "transition village," now part of the Yurok Reservation. *See* S. Rep. 564 at 18. Similarly, it is no surprise that "over 50% of the students at Hoopa High School were not members of the Hoopa Valley Tribe," as Chairperson Masten recalls. The Hoopa High School is a public school operated by the Klamath-Trinity Joint Unified School District. Many of its students are non-Indians, not members of any tribe.

P. 7, Para. 5 — It is true that little of the Yurok Reservation is now held in tribal trust status. This is primarily because the Yurok Tribe refused the Settlement Act's offer which would have conveyed hundreds or thousands of acres of Six Rivers National Forest land within the Yurok Reservation to the Yurok Tribe and would have expanded the Yurok Reservation to include additional acreage and buildings along U.S. Highway 101. The Act also provided appropriations for land acquisition and authority to acquire additional property for the Yurok Tribe in trust. These valuable lands were refused by 1992 and 1993 votes of the Yurok Interim Council.

P. 8, Para. 3 — The "outline of an economic development and land acquisition plan" evidently submitted to

the Committee is long overdue. 25 U.S.C. Section 1300i-9 called for submission of a Yurok plan for economic self-sufficiency not later than two years after the date of enactment of the 1988 Act. The Settlement Act called for that plan to facilitate the rebuilding of a Yurok land base and homeland economy. That the plan has been submitted 12 years late is not a fault of the Hoopa Valley Tribe or the Committee's judgment in designing the Settlement Act in 1988.

P. 8, Para. 6 The Hoopa Valley Tribe did not understand the Committee's August 1, 2002, oversight hearing as one simply addressing the disposition of "the balance of the Hoopa-Yurok Settlement Fund." The Hoopa Valley Tribe has a strong interest in those funds since they are overwhelmingly derived from Hoopa escrow monies and the clear cutting of our Reservation. The Committee's review of the Secretary's report should include the other major, perhaps more valuable, benefits withheld from the Yurok membership by the decision of the Yurok Interim Council to reject settlement. As noted above, the proffered benefits included Six Rivers National Forest lands within the Yurok Reservation, the Yurok Experimental Forest land and buildings along Highway 101, $5,000,000 in appropriations for land acquisition, authority to take land into trust for the Yurok Tribe, and other organizational benefits.

P. 9, Para. 1 The balance of the Settlement Fund is not "held in the Yurok Trust Fund." Nor was "the key point of the cases" cited that the revenues belonged to the Yuroks. Indeed the opposite is true: the courts refused Yurok access to the funds, holding the funds did not belong to the Yuroks. As explained by the *Short* court:

> [P]laintiffs have previously argued that they are entitled to the entire escrow fund. It is true that, prior to 1987, the plaintiffs claimed a right to the entire escrow fund. This Court rejected that claim in 1987. *Short IV*, 12 Cl. Ct. at 44.* As the law stood . . . in August 1991, the plaintiffs were not entitled to the escrow fund. The law remains the same today. [FN*] In *Short IV*, the Court held that plaintiffs were entitled to damages from the United States government, not to the escrow fund itself. 12 Cl. Ct. at 44.

Short VI, 28 Fed. Cl. 590, 593 (1993). Chairperson Masten believes she "should not have to re-argue what Yuroks won in the *Short* cases." But while the *Short* cases' one-Reservation theory provided the Yurok Tribe's only connection to the lands of the Square (prior to the Settlement Act), those cases themselves do not support the Yurok Tribe's claims, as illustrated by the ruling in *Short VI*. *Short VI* was affirmed on appeal, *Short v. United States*, 50 F.3d 994, 997, 1001 (Fed. Cir. 1995) (*Short VII*). The *Short* cases were, in any event, intentionally superseded by the Settlement Act itself. As this Committee noted, "to the extent there is such a conflict [with the law of the case in the *Short* cases], it is intended that this legislation will govern." S. Rep. 564 at 19. The governing provisions of the Settlement Act do not provide for payments from the Settlement Fund to groups or individuals who refused to halt litigation and enact claim waivers.

P. 9, Para. 2 The assertion that the Interior Department has advised the Committee that the Hoopa Valley Tribe received approximately $19,000,000 between 1974 and 1988, is unfounded. The chart entitled *Hoopa-Yurok Settlement Act Funding Hisiory*, submitted with the written testimony of Assistant Secretary Neal McCaleb, makes no such claim.

P. 10, Para. 1 The assertion that *Short* plaintiffs received no damages for the years beyond 1974 is wrong. The opinion in *Short IV* devotes a section to plaintiffs' damages based on per capita distributions after 1974. It holds "Per capita distributions were made before and after 1974,

but the plaintiffs were denied participation. Hence, they are entitled to recover." *Short IV*, 12 Cl. Ct. 36, 41 (1987). The *Short* court emphatically did not rule that if revenues were distributed to one group, the other group was entitled to its fair share. Instead, *Short IV* held:

> [P]laintiffs arguably were not benefited by tribal services that they were ineligible to receive because they were not enrolled Hoopas. . . . . Just as an enrolled Hoopa could not claim a 'share' of monies used by the Hoopa Valley Tribe as a government, plaintiffs may not recover a portion of monies distributed to the Tribe. . . . . To mandate that the Secretary distribute monies dollar-for-dollar between an organized tribal government and a group of individual Indians could hinder the Secretary's implementation of the Congress' and Executive's policy of strengthening tribal governance and self-determination.

Short IV, 12 Cl. Ct. 36, 42. In other words, although revenues were distributed only to the Hoopa Valley Tribe throughout the period at issue in *Short*, and used for tribal governmental purposes, neither the plaintiffs nor the Yurok Tribe were entitled to a share of those revenues under the *Short* court rulings.

P. 11, Para. 1 Chairperson Masten's figures for timber revenues and amounts received by the Hoopa Valley Tribe are unsupported by evidence. The chart submitted with Assistant Secretary McCaleb's written testimony shows total Reservation timber proceeds in 1974-79 of approximately $17,000,000 and in 1980-88 of approximately $15,300,000, for a total of $32,300,000. Most of that amount did not go to the Hoopa Valley Tribe.

P. 12, Para. 1 The "conditional waiver" resolution enacted by the Yurok Interim Council could not rationally have been considered sufficient to meet the conditions of a valid waiver, as Chairperson Masten now contends. The resolution expressly permitted the Yurok Tribe to maintain its lawsuit against the United States. The Yurok Tribe proceeded to litigate vigorously until the final decision of the Supreme Court in 2001. To call that litigation campaign a "waiver of claims" would be to make a mockery of the language used by this Committee in the Settlement Act's provisions and the Settlement Act's purpose of inducing all tribes and groups to lay down their lawsuits and build a new community.

P. 12, Para. 4 Chairperson Masten suggests that the Yurok Tribe's action in 1996 led to the Hoopa Valley Tribe receiving some 2,600 acres of trust land. The truth is that Congress corrected a surveying error by Pub. L. 105-79 and 105-256 which restored to Hoopa ownership lands wrongfully omitted in 1876. The land lost to the Hoopa Valley Tribe in 1876, and restored in 1998, was never held by or subject to the claims of the Indians of the Addition or the Yurok Tribe. While the Yurok Tribe asked the Hoopa Valley Tribe to waive "all rights to said account" [the remaining Settlement Fund] as a condition for Yurok's nonopposition to the proposed Hoopa legislation, the Hoopa Valley Tribe refused to do so or go beyond its support for settlement of the lawsuit. The extent of the Yurok Tribe's participation in the 1997-98 congressional proceedings was the submission of a one-sentence letter indicating they did not oppose the Act. Despite the Hoopa Valley Tribe's 1996 support for the Yurok Tribe's settlement negotiations, the Yurok Tribe chose not to settle or to waive its claims then or subsequently.

The History from 1988 to the Present and How to Proceed

We spoke to you during the hearing about the hardships our Tribe has been forced to endure as a result of the United States' actions toward our reservation and over forty years of litigation defending our

rights. We are attaching the slides shown during the hearing that display the egregious timber mismanagement and environmental damage done to our Square. We trusted that the Hoopa-Yurok Settlement Act brought an end to the long, destructive litigation and because of that we made a considered decision to waive our legal claims under the Act. Unfortunately, the Act did not end the litigation because the Yurok Tribe chose not to waive its future legal claims and continued litigating for another decade, imposing expense and burdens on the Hoopa Valley Tribe.

The Senate Committee did not act precipitously in 1988. It took into consideration the history of actions affecting our reservation and tribal government before 1988. Moreover, we fervently believe that the provisions of the Act cannot be ignored and that the history from 1988 until today cannot be forgotten as we move forward. The Act required a waiver of claims for a tribe to its benefits. The Yurok Tribe did not waive and, therefore, does not have a right to claim the benefits of the Act.

We support meeting the needs of the Yurok Tribe for economic development and assistance, but such needs arose from actions by the Federal Government - - not the Hoopa Valley Tribe. We cannot now move forward in a manner that will break the promises made in 1988 to the Hoopa Valley Tribe.

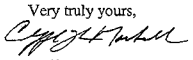
We propose, as we did in the hearing, returning the timber monies to the place from which they were derived. They were derived from the Hoopa Square. They should be returned to the Hoopa Tribe. Although the history of Yurok Reservation is tragic, the Hoopa Valley Tribe should not be forced to pay for wrongs committed by the United States.

We have made every attempt to initiate negotiation with the Yurok Tribe and have actively sought to work with its leaders to resolve these issues. Our offer to divide the timber escrow funds equally with the Yurok Tribe is documented in the testimony of the Department of the Interior. The Hoopa Tribe made that offer even though under the Act the Yurok Tribe is not entitled to those funds. The Yurok Tribe rejected that offer outright and demanded all of the escrow funds.

The Hoopa Tribe is willing to negotiate a division of the escrow funds from the Hoopa Square that are part of the Act's undistributed benefits. We remain open to negotiation, as we are anxious for the return of our timber revenues. We want to be sure that you understand this, and ask that you reinforce this truth with Chairperson Masten.

We will work with the Yurok Tribe and look forward to continuing to work with you on this significant matter.

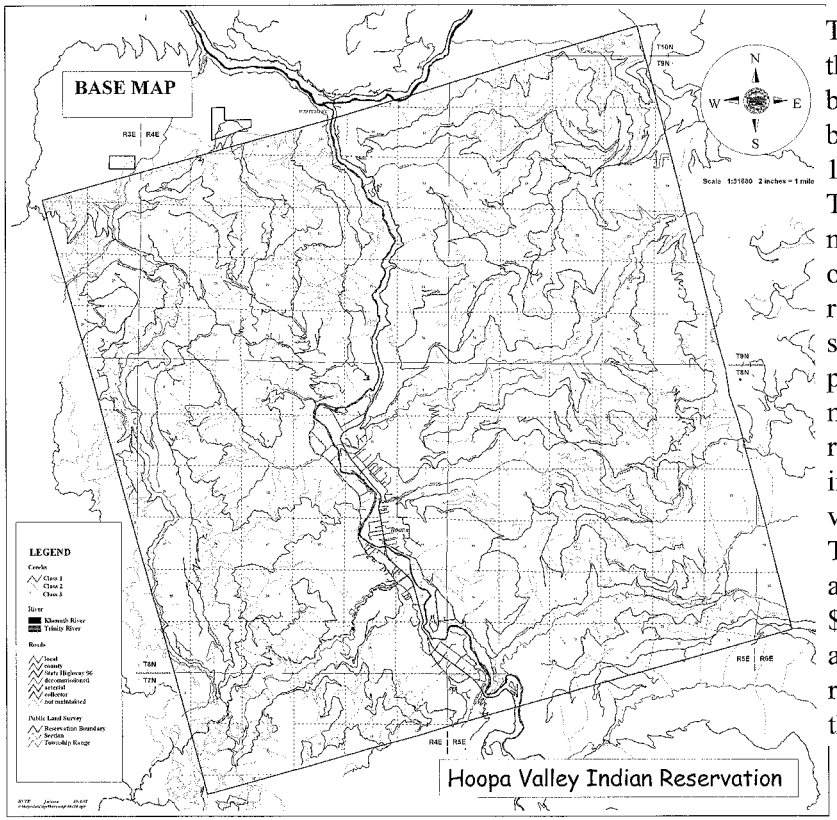
Very truly yours,



Clifford Lyle Marshall
Chairman

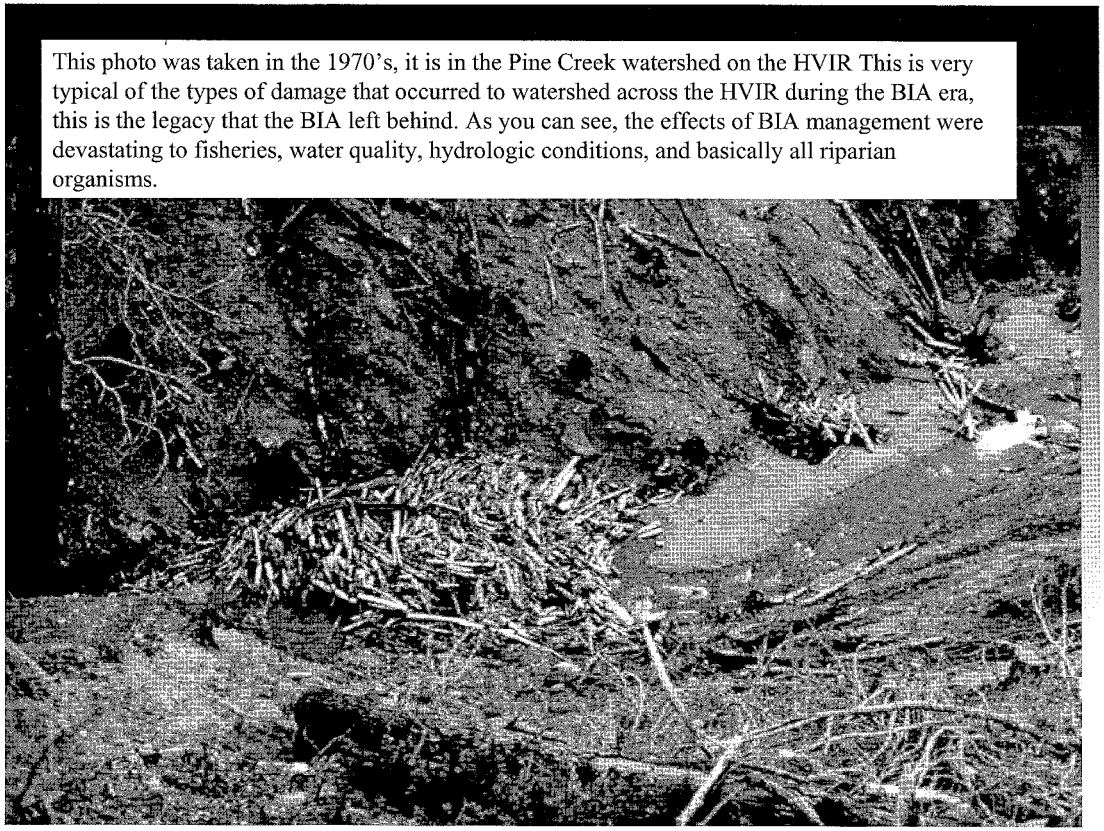
cc: The Honorable Ben Nighthorse Campbell, Vice-Chairman, U.S. Senate Committee on Indian Affairs
Ms. Patricia Zell, Majority Staff Director, Committee on Indian Affairs
Mr. Paul Moorehead, Minority Staff Director, Committee on Indian Affairs

enclosures



This map illustrates the roads that were built on the HVIR beginning in the 1940's thru 1980's. There are over 550 miles of linear roads on the HVIR. These roads are a major source of sediment production. The BIA maintenance of these roads is grossly inadequate, and virtually non-existent. The Tribe spends approximately $200,000 to $400,000 annually from tribal revenue to rehabilitate this road system.

This photo was taken on the HVIR, it is an example of the sedimentation problems associated with the poor BIA road systems construction standards and lack of maintenance.



This photo was taken in the 1970's, it is in the Pine Creek watershed on the HVIR This is very typical of the types of damage that occurred to watershed across the HVIR during the BIA era, this is the legacy that the BIA left behind. As you can see, the effects of BIA management were devastating to fisheries, water quality, hydrologic conditions, and basically all riparian organisms.

The BIA harvested approximately 33,000 acres of Tribal Lands beginning in the 1940's thru the late 1980's. The photos below illustrates the types of "clearcutting" management techniques that were practiced by the BIA. This type of harvesting was devastating to cultural resources, and created larges tracts of land that the Tribe is now in the process of rehabilitating, through stand improvement projects.

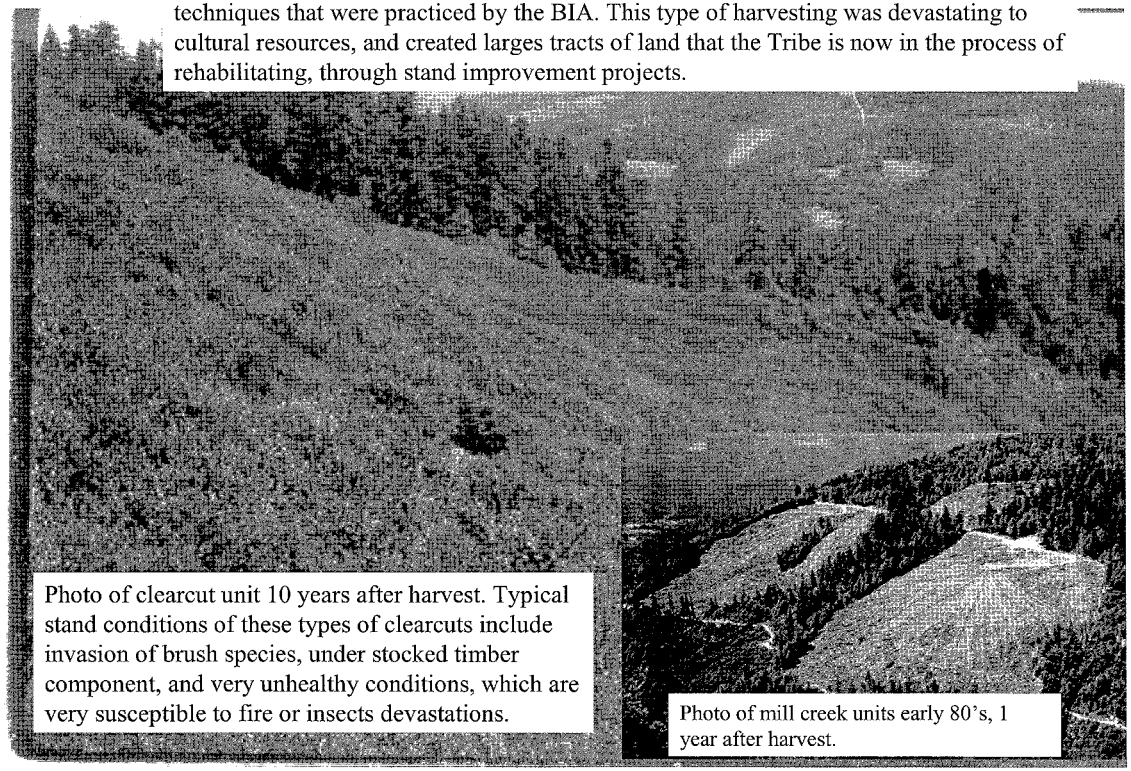
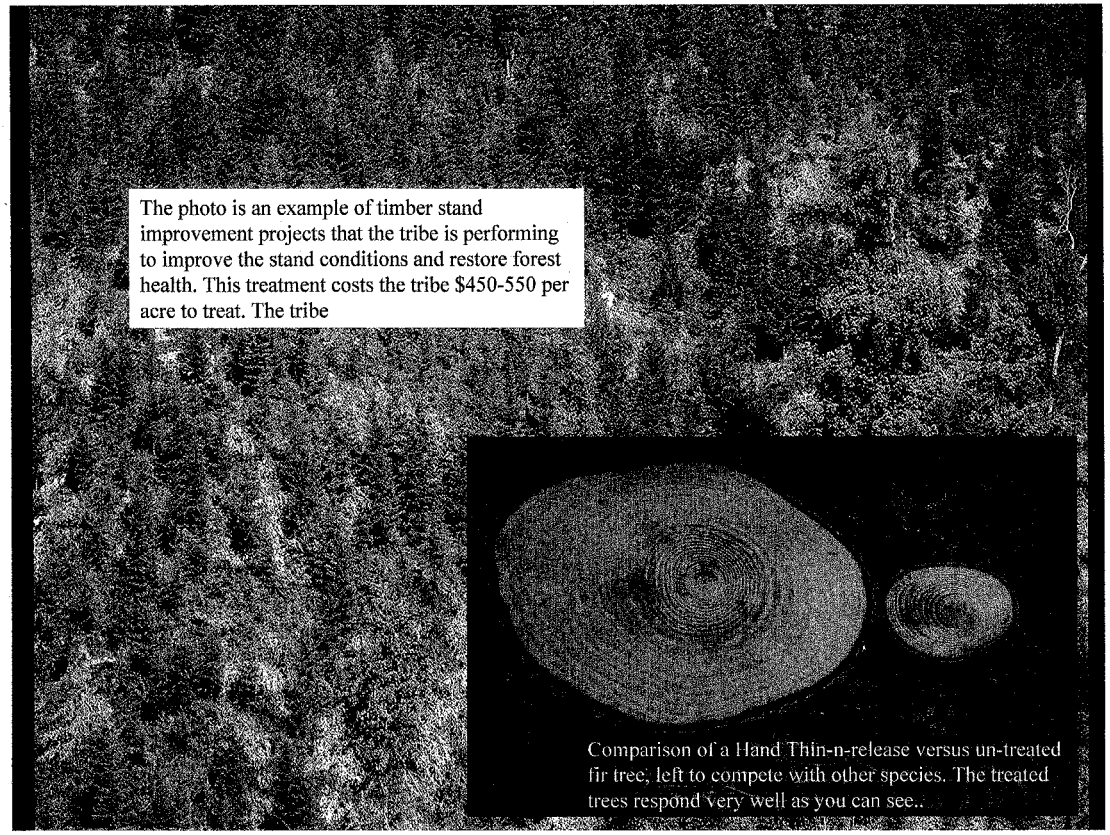
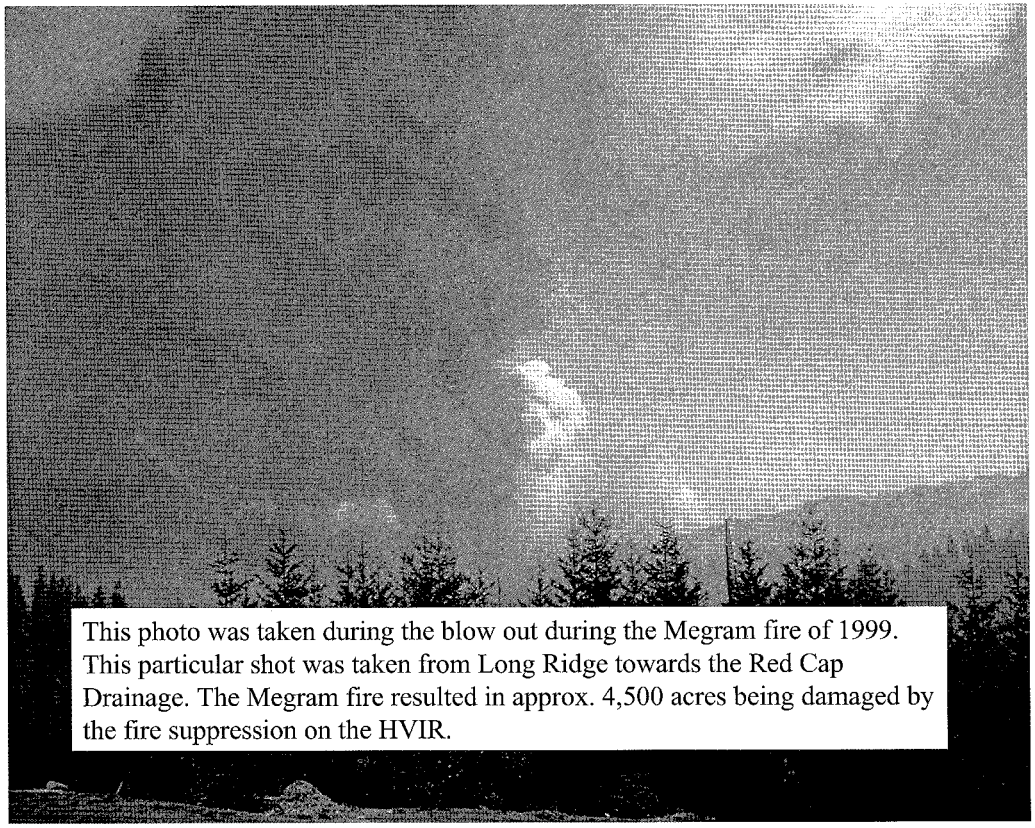


Photo of clearcut unit 10 years after harvest. Typical stand conditions of these types of clearcuts include invasion of brush species, under stocked timber component, and very unhealthy conditions, which are very susceptible to fire or insects devastations.

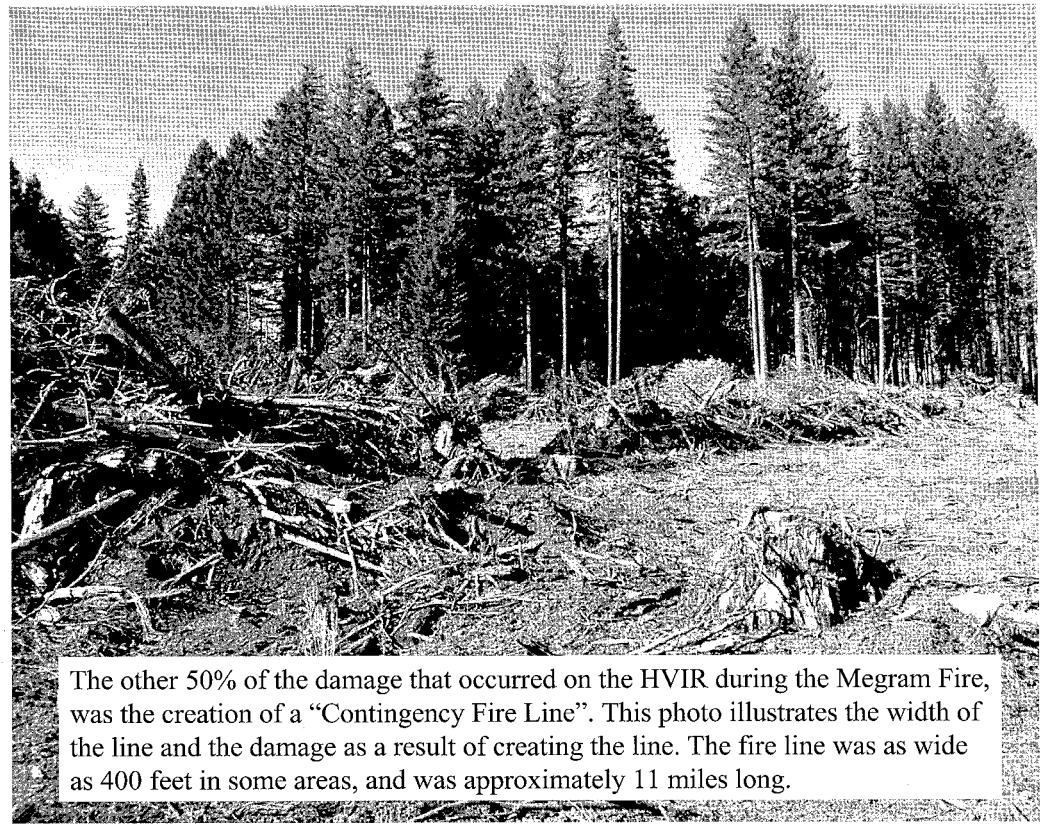
Photo of mill creek units early 80's, 1 year after harvest.


The photo is an example of timber stand improvement projects that the tribe is performing to improve the stand conditions and restore forest health. This treatment costs the tribe $450-550 per acre to treat. The tribe
Comparison of a Hand Thin-n-release versus un-treated fir tree, left to compete with other species. The treated trees respond very well as you can see..



This photo was taken during the blow out during the Megram fire of 1999. This particular shot was taken from Long Ridge towards the Red Cap Drainage. The Megram fire resulted in approx. 4,500 acres being damaged by the fire suppression on the HVIR.

This photo was taken after the Backburn during the Megram Fire. Prior to this photo, this plantation was fully stocked. These plantations were generally the only areas blackened on the HVIR during the Megram Fire.



The other 50% of the damage that occurred on the HVIR during the Megram Fire, was the creation of a "Contingency Fire Line". This photo illustrates the width of the line and the damage as a result of creating the line. The fire line was as wide as 400 feet in some areas, and was approximately 11 miles long.

HOOPA-YUROK SETTLEMENT FUND
BEFORE AND AFTER
ENACTMENT OF PUB. L. 100-580 (Oct. 31, 1988)

The Hoopa-Yurok Settlement Fund (HYSF) is a pool of Indian monies that Congress tapped to achieve the landmark Hoopa-Yurok Settlement Act (HYSA) in 1988. Because a portion of the settlement was rejected by the Yurok Tribe, the HYSF, now approximately $65 million, constitutes most (but not all) of the assets to be distributed by Congress in amending the HYSA pursuant to § 14(c) of that Act, 25 U.S.C. § 1300i-11(c).

The Secretary of the Interior collects Indian monies into trust accounts pursuant to a variety of statutes, enacted since the 1880s, which authorize the Secretary to conduct logging on Indian tribal land, lease tribal or individual lands held in trust status, or otherwise market Indian resources. About $86 million was available to Congress in fashioning the HYSA. Nearly all of the money came from specific "escrow funds" itemized in § 1(b)(1) of the HYSA. Of the seven Indian trust funds itemized as "escrow funds," over 98 percent of the funds were derived from logging on Hoopa Indian Reservation trust lands, the portion called the Hoopa Square, which was established as a reservation in 1864.[1]

Section 4 of the HYSA, 25 U.S.C. § 1300i-3, established the HYSF. It directed the Secretary to cause "all of the funds in the escrow funds, together with all accrued interest thereon, to be deposited into the Settlement Fund." Thereafter, the HYSA called for dividing the HYSF into three portions, based upon the number of qualified Indians in three categories: (1) Hoopa Valley tribal members; (2) Yurok tribal members; and (3) qualified Indians who chose the lump sum option and disaffiliated from the Hoopa and Yurok tribes. All three groups of qualified individual Indians received payments from the HYSF, in varying amounts, commencing in 1991.

Monies in the HYSF that were left over after making the payments to individual Indians became available to the Hoopa Valley Tribe and the Yurok Tribe if those tribes agreed to surrender their possible legal claims against the United States relating to the HYSA, and halt litigation. The Hoopa Valley Tribe chose that option and received a portion of the HYSF, but the Yurok Tribe rejected the option and waged a long litigation battle which culminated in defeat in 2001. *See Karuk Tribe of California, et al. v. Ammon*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 121 S. Ct. 1402 (2001).

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[1] The Secretary of Interior was forced to determine the origin of monies in the seven itemized escrow funds in response to a claim by attorneys for some of the Yurok Indians filed in *Heller, Ehrman, White & McAuliffe v. Lujan*, Civ. No. 91-2012 (U.S.D.C. D.C. 1991). The *Heller* plaintiffs did not seek fees based on funds derived from the Yurok Reservation. The Secretary determined that exemption shielded 1.26303 percent of the settlement fund because 98.74 percent of the escrow funds were derived from the Hoopa Square.

The Hoopa Valley Tribe brought its resources to bear in defending the HYSA, alongside the Interior Department, and was successful after an expensive ten-year lawsuit. The HYSA prohibits award of HYSF funds to individual Indians or tribes who refused the settlement. As a result, unexpended money remains in the HYSF. These funds should now be returned to the beneficial owners of the lands that were logged or leased to generate the original monies placed in the escrow accounts.

ABORIGINAL TITLE WITHIN THE HOOPA SQUARE HAS ALREADY BEEN RESOLVED

Issue: The Yurok Tribe argued[1] that it had substantial aboriginal territory in the Hoopa Valley Reservation ("the Square") in an attempt to influence any legislation arising out of the Department of the Interior's Section 14 (c) Report on the Hoopa-Yurok Settlement Act

Hoopa Position:

Congress and the courts have already resolved the issue of which tribe held aboriginal title where. There should be no further discussion to determine aboriginal title. It has already been determined.

The Yurok Tribe's statement about aboriginal title is incorrect.

- The Hoopa-Yurok Settlement Act partitioned the Hoopa Valley Reservation into the Square for the Hoopa Tribe and the Addition for the Yurok Tribe. The legislation was enacted to end decades of litigation between the United States and thousands of Indian individuals. Congress believed it dealt fairly with all the interests in the reservation and that the Act was a fair and equitable settlement of the dispute relating to the ownership and management of the Hoopa Valley Reservation[2]. Aboriginal title of the Hoopa Tribe and the Yurok Tribe was an important factor that Congress took into consideration when developing and enacting the Act. The Senate Committee on Indian Affairs reported:

> "The aboriginal lands of the Yurok of Klamath Indians were generally centered on the drainage of the valley of the Klamath River from the Pacific Ocean to its fork with the Trinity River. These lands lay northward from that fork and westward to the Pacific. ...
>
> The aboriginal lands of the Hupa or Hoopa Indians were centered on the drainage of the Hoopa Valley of the Trinity River southward from its fork with the Klamath. ..."[3]

The land partitioned to the Hoopa Tribe is only that land centered on the Hoopa Valley of the Trinity River, South of the Klamath River confluence. The Senate Committee reported further that:

> "... Although some scholars disagree, the U.S. Court of Claims noted in the case of *Jessie Short et al. v. The United States* (202 Ct. Cl. 870, 886):
>
> > ' The Indian tribes of Northern California were not organized or large entities; Indians resident on a particular river or fork were a "tribe". Tribal names were often applied inexactly and usually meant only a place of residence. To call an Indian a "Hoopa" or Trinity Indian meant he was an Indian resident in the valley of the Trinity called Hoopa. The names "Yurok" and "Karok" * * * also meant a place of residence. '"[4]

For this reason, Indians residing on the Square, and allotted land there, became Hoopa Tribe members regardless of their ancestral associations. The Committee reiterated its consideration of aboriginal title in developing the legislation. It stated:

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[1] Yurok President Sue Masten included this in her testimony before the SCIA and Senate Commerce Committee on May 14, 2002, at the oversight hearing on telecommunications service in Indian Country.
[2] Senate Report 100-564 at 14.
[3] Senate Report 100-564 at 3.
[4] Senate Report 100-564 at 3.

> "As noted elsewhere in this report, the proposed partition is also consistent with the aboriginal territory of the two named tribes involved, particularly since the Hoopa Valley Tribe formally organized in way encompassing all Indian allotted land on the Square." [5]

- The Yurok Tribe along with the Karuk Tribe and individual Indians filed suit against the United States claiming that the Hoopa-Yurok Settlement Act constituted a Fifth Amendment taking of their property interests. The U.S. Court of Appeals for the Federal Circuit ruled that the plaintiffs did not possess compensable vested property interest in the reservation in 1988 and, thus, the partition of the reservation was not an unconstitutional taking.[6] In ruling, the court considered aboriginal title of the tribes and stated:

> "Historically, the Yuroks resided along the lower Klamath, in what became the addition, while the Karuks resided along the upper Klamath, an area outside any reservation . . . The Hoopa Valley Indians lived in the Hoopa Valley along the Trinity River. Therefore, the square – now the Hoopa Valley Reservation – was historically the homeland of the Hoopas. The addition was the homeland of the Yuroks. Weitchpec, on the square's northern boundary, was originally a Yurok settlement."[7]

The issue of aboriginal title has been resolved. Further discussion on this issue with regard to the Department of the Interior's Section 14 (c) Report or otherwise is misguided and irrelevant.

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[5] Senate Report 100-564 at 15

[6] *Karuk Tribe of California v. Ammon*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941(2001).

[7] *Karuk Tribe of California v. Ammon*, 209 F.3d at 1370-1371, *cert. denied*, 532 U.S. 941(2001) (emphasis added).

THE YUROK TRIBE DID NOT WAIVE ITS CLAIMS UNDER THE HOOPA-YUROK SETTLEMENT ACT

The Hoopa-Yurok Settlement Act (HYSA) withheld benefits of the settlement from both the Hoopa Valley Tribe and the Yurok Tribe unless each waived potential legal claims against the United States.[1]

Issue: The Yuroks contend that Resolution 93-61 enacted by the Yurok Interim Council constituted a waiver under the Hoopa-Yurok Settlement Act that should now be given effect.

Response: The Yurok Tribe did not meet the waiver requirements under the Act and is, therefore, not entitled to receive the Settlement Fund or other benefits under the Act. The Hoopa Valley Tribe provided the required waiver of claims in 1988 by executing and adopting a tribal resolution, which was published in the Federal Register. The Yurok Tribe, however, refused to waive its claims. Instead, it filed an unsuccessful lawsuit against the United States challenging the constitutionality of the Act. The Supreme Court ultimately denied certiorari of the case in 2001, 13 years after passage of the Act. The Yurok Tribe enacted what it called a "conditional waiver" in 1993, but this action did not meet the waiver requirements under the Act and cannot be given effect now.

- *The Yurok Interim Council's Resolution 93-61 did not constitute a waiver.* A 1994 decision of then Assistant Secretary–Indian Affairs Ada Deer declared that Resolution No. 93-61 did not effectively waive any tribal claims as required in the Act, but, in fact, acted to preserve any such claims.[2] The Yurok Tribe failed to challenge this final agency decision before the time limitation for doing so expired

- *Resolution 93-61 has no effect.* The Department of the Interior made this determination in 1994, as noted above, and it was conveyed to the Yurok Tribe in writing. The Yurok Tribe argues that the resolution was a conditional waiver that should now be given effect because the condition to its effectiveness has been removed. The Act, however, clearly required the tribe to stop its court challenges to the settlement in order to receive the benefits. A waiver of all potential legal claims *conditioned on being allowed to pursue legal claims* is illogical and certainly not within the intent of the HYSA.

- *The Yurok Tribe wants a second chance.* The Yurok Tribe made a fully considered choice between 1988 and 1993 to pursue legal claims rather than waive them. It litigated its claim all the way to the Supreme Court and lost. It is now returning to try to claim a share of the unexpended settlement funds - - which was available to them up until 1993 *if* they settled. The Yuroks made a decision then; they cannot now, with the hindsight of their legal defeat, try to turn back time and start anew. Resolution 93-61 did not meet the waiver requirements under the Act in 1993 and it certainly cannot be given effect now. There is nothing left for the Yurok Tribe to waive; their claim is barred by final judgment.

- *The Department of the Interior's position does not support the Yurok claim to the HYSA benefits.* The Section 14 (c) Report clearly states that "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.[3]"

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[1] 25 U.S.C. Sec 1300i-1(a)(2)(A); 25 U.S.C. Sec. 1300i-1(c)(4).
[2] Section 14 (c) Report at 2.
[3] Section 14 (c) Report at 3.

HOOPA TRIBE'S 1996 SUPPORT FOR YUROK TRIBE'S PROPOSED SETTLEMENT HAS NO PRESENT DAY EFFECT

Issue: The Yurok Tribe has incorrectly stated that the Hoopa Valley Tribe agreed to waive all rights to the Settlement Fund and declared that those funds should be made available to the Yurok Tribe to obtain the Yurok Tribe's support for legislation to convey Forest Service lands in the southeast corner of the Square to the Hoopa Tribe.

Response: In 1996, the Hoopa Tribe did agree to support the Yurok Tribe's proposal to settle its lawsuit, *Yurok Tribe v. United States*, in a manner that included the Yurok Tribe obtaining the remainder of the Settlement Fund. Yet, the Hoopa Tribe did so only to obtain the commitment of the Yuroks to stop opposing the South Boundary Correction Act - - and it did so on the condition that the Yuroks obtain the Settlement Fund remainder only as part of a proposed settlement of its lawsuit. The Yurok Tribe, however, never negotiated a settlement.

The following summarizes the events that occurred in 1996—

- On July 29, 1996, then Yurok Chairwoman Long wrote to then Hoopa Tribe Chair Risling offering to support the South Boundary Correction Act[1] on the conditions that: the benefits of the Settlement Act be made available to the Yurok Tribe, and the Hoopa Tribe support the Yurok Settlement proposal in *Yurok v. United States*.

- At a meeting arranged by Senator Boxer's office, the Yurok Tribe provided a draft resolution for the Hoopa Tribe's approval. The draft stated, in part, that the Hoopa Tribe supported the Yuroks' efforts to settle *Yurok v. United States* and would support the Yuroks obtaining the Settlement Fund remainder. The draft resolution also contained a new provision not previously discussed stating that the "Hoopa Valley Tribe acknowledges the Yurok Tribe's right to the remaining Settlement Fund, and reaffirms that the Hoopa Valley Tribe has waived and does waive whatever all rights to said account it may have or had." The Hoopa Tribe refused to enact the proposed resolution and the new provision was never incorporated into Hoopa Valley Tribe documents.

- The Hoopa Tribe agreed to support the Yurok Tribe to obtain the Settlement Fund remainder if it was part of a settlement of its lawsuit, *Yurok v. United States*. The settlement, however, never occurred. Instead, the Yurok Tribe continued to litigate - - all the way to the Supreme Court and lost its challenge that the Hoopa-Yurok Settlement Act constituted an unconstitutional taking.

- The Yurok Tribe asked the Hoopa Tribe to permanently waive its claims to the Settlement Fund remainder, but the Hoopa Tribe refused to do so.

- The Hoopa Tribe's agreement to support an unconsummated lawsuit settlement in 1996 has no effect in 2002. The conclusion in the *Yurok v. United States* lawsuit makes it impossible to consider further settlement of the suit.

The Hoopa Tribe's agreement in 1996 to support the Yurok Tribe in their efforts to negotiate a settlement in *Yurok v. United States* has no relevance for 2002 events and current discussions about the Hoopa-Yurok Settlement Act and the Department of the Interior's Section 14 (c) Report.

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[1] The *South Boundary Correction Act* was legislation enacted in 1996 to convey to the Hoopa Valley Tribe Forest Service lands in the southeastern portion of the Square that were taken from Hoopa ownership in the 1800s, before the joint reservation was created.

BRIEFING PAPER ON THE HOOPA-YUROK SETTLEMENT ACT
Hoopa Valley Tribe
June 21, 2002

The 1988 Hoopa-Yurok Settlement Act of the 100th Congress ("HYSA" or "Act")[1] divided federal reservation lands between two American Indian tribes in Northern California, the Hoopa Valley Indian Tribe and the Yurok Tribe. The Act was a landmark for California Indians, made necessary by decades of litigation between the United States and thousands of individuals. The courts held that prior to the Act that neither tribe had vested rights in the reservation. The Act partitioned the Hoopa Valley Reservation into the Square and the Extension and vested rights to the Square in the Hoopa Valley Tribe and rights to the Extension in the Yurok Tribe.

Section 14 of the Act[2] required the Secretary of Interior to report to Congress at the end of any litigation that arose out of the Act. The cases brought by the Yurok Tribe challenging the Act ended in March 2001 with a dismissal of the challengers' claims and denial of certiorari by the United States Supreme Court.[3] The Secretary's Section 14(c) report went to the President of the Senate and the Speaker of the House on March 15, 2002.

The Secretary's Report Recommends Continued Interior Department Administration of the HYSA Settlement Fund.

The Secretary's March 15, 2002, report is very brief; it recommends (1) no additional Congressional funds; (2) the HYSA Settlement Fund be retained in trust status (as current law requires); (3) Interior administer the fund for the benefit of both the Hoopa Valley and Yurok Tribes; (4) Congress consult with the Interior Department and the Tribes to fashion a mechanism for administration of the HYSA Settlement Fund; and (5) Congress consider dividing the Settlement Fund into two separate permanent funds. The Secretary's report notes that neither Tribe had a constitutionally-protected right to the money placed in the fund, and that, because of the waiver provisions of the HYSA, neither Tribe can force the United States to distribute further benefits to it.[4]

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1 Codified in part at 25 U.S.C. § 1300i – 1300i-11 (2001).

2 25 U.S.C. § 1300i-11(c). ("The Secretary shall prepare and submit to the Congress .. any recommendations of the Secretary for action by Congress, including, but not limited to, any supplemental funding proposals necessary to implement the terms of [the Act] and any modifications to the resource and management authorities established by [the Act].").

3 *Shermoen v. United States*, 982 F.2d 1313 (9th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993), and *Karuk Tribe of California v. Ammon*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

4 *Karuk Tribe of California v. Ammon*, 209 F.3d 1366 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

The Hoopa Valley Tribe opposes the Interior Department's continued management of the fund and believes it should manage the fund itself in light of Interior's failure to manage trust funds for tribes and individuals.

2. The Settlement Fund Remainder Should Be Distributed Between the Hoopa Valley and Yurok Tribes Based on the Same Proportions as the Funds were Derived.

Section 2 of the Settlement Act,[5] withheld the benefits of the settlement from both the Hoopa Valley and Yurok Tribes unless both tribes promptly waived potential legal claims against the United States. Claim waivers were essential to end the generations of litigation among the U.S. and the Indians that had established that the Indians were merely occupying federal property. (That litigation also produced over $50 million for the Indian plaintiffs in the *Jessie Short* cases[6], and the Act did not disturb that judgment. The Act also authorized additional cash payments to various Indian individuals.)

The Hoopa Valley Tribe enacted the required waiver resolution in 1988. However, the Yurok Tribe refused to waive[7] and sued the United States (and the Hoopa Valley Tribe) in the case recently won by the defendants. The Yurok suit left millions of dollars of money and other benefits unclaimed; these are still held by the United States as the Secretary's report concedes.

The Hoopa Valley Tribe believes that the unclaimed settlement funds should be paid to the Hoopa and Yurok Tribes in the same proportions as the funds were derived from resources of what became the Hoopa Valley Reservation and the Yurok Reservation. Federal law other than the HYSA supports the Tribe's position.

Over 98% of the unclaimed money came from logging on the Hoopa Valley Tribe's Reservation.[8] Only 1.26303 percent of the funds were derived from resources of what became the Yurok Reservation under the Act. The logging that produced the funds is authorized by 25 U.S.C. Sec. 407, which requires that the money be used for the benefit of the Indians who are members of the tribe or tribes concerned. The only tribe concerned with the logging on the unallotted trust land of the Hoopa Valley Reservation is the Hoopa Valley Tribe and, therefore, the revenues from this logging (98.7% of the settlement fund) should be used to benefit the members of the Hoopa Valley Tribe.

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5 25 U.S.C. § 1300i-1.

6 *See*, e.g., *Short v. United States*, 486 F.2d 561 (Ct.Cl 1973)("*Short I*") and *Short v. United States*, 28 Fed. Cl. 590 (1993)(*Short VI*").

7 Letter of Ada E. Deer, Assistant Secretary – Indian Affairs, to Susie L. Long, Chair, Interim Tribal Council, Yurok Tribe (April 4, 1994).

8 Memorandum from Acting Director, Office of Tribal Services, to Superintendent, Northern California Agency, Re: Issuance of Per Capita Checks from the Hoopa-Yurok Settlement Act Funds (October 24, 1991).

Further, other federal laws concerning forestry practices on Indian lands acknowledge the trust responsibility toward Indian forest lands and require that Indian forest land activities undertaken by the Secretary not only use sound silvicultural and economic principles but also use sale proceeds to rehabilitate Indian forests.[9] The Interior Department clear-cutting at Hoopa that produced nearly all of the money deposited in the HYSA settlement fund removed far more trees and vegetation than modern forestry standards permit. That logging left forest rehabilitation needs, washed-out roads, inadequate culverts, and extreme erosion and siltation problems for which the Hoopa Valley Tribe is now the responsible party. Silt in the Trinity River is a major obstacle to fisheries restoration efforts. The Hoopa Valley Tribe's timber harvest funds should be repatriated to the Hoopa Valley Tribe to address these local needs.

The Section 14(c) Report does not advocate weighing "equities." Any argument about equity in the ultimate distribution of the Settlement Fund is misguided. The equities were weighed in 1988 when developing the Hoopa-Yurok Settlement Act. It would be unwise for Congress to reexamine the approach chosen in the Act to encourage settlement.

The Act, not equity, is the proper basis for distributing the unexpended funds. However, if it were the basis, equity is on the side of the Hoopa Valley Tribe. The Yurok Tribe refused to enact the required waiver resolution in 1988 under the Act. Instead, the Yurok Tribe took its chances and litigated all the way to the Supreme Court and lost. It is now returning to try to claim a share of the unexpended funds - - which was available to them in 1988 *if* they waived their claims. Equity also sides with the Hoopa Valley Tribe since the source of 98.7% of the settlement funds is from Hoopa and the forest resource management needs created by the overharvest of tribal timber exists at Hoopa. Further, Hoopa not only abided by the Act but also played a lead role in the defense of the settlement.

3. Other Benefits Withheld from the Yurok Tribe due to its Refusal to Waive.

Although the Yurok failure to enact the waiver caused the other valuable benefits of the HYSA to be withheld, the Yurok Tribe is not seeking them. These benefits include national forest system lands within the Yurok Reservation, the improved properties located in the former Yurok Experimental Forest, the $5 million appropriated for land acquisition on and near the Yurok Reservation, and a plan for economic self-sufficiency.

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[9] See, National Indian Forest Resources Management Act, 25 U.S.C. Sec. 3101-3120.

TESTIMONY OF SUSAN MASTEN

CHAIR, THE YUROK TRIBE

BEFORE

THE UNITED STATES SENATE COMMITTEE

ON INDIANS AFFAIRS

ON

THE DEPARTMENT OF THE INTERIOR'S REPORT

ON THE HOOPA-YUROK SETTLEMENT ACT.

AUGUST 1, 2002

1

Good morning, I am Susan Masten, Chairperson of the Yurok Tribe. As you may be aware, the Yurok tribe is the largest Tribe in California with approximately 4528 members, of whom 2579 live on or near our Reservation.

Thank you for holding today's hearing. We consider it a most important hearing for the Yurok people. In particular, thank you, Chairman Inouye for taking this very significant step toward addressing our concerns for equity under the Hoopa-Yurok Settlement Act (Act); and that is to look at what has been achieved or not achieved in the 14 years since the Act was passed and asking what now may need to be done. We are deeply appreciative of your letter of October 4, 2001, in which you invited both Tribes to step beyond the existing Act and address current and future needs.

We know that this Committee, as is reflected in your Report on the Act in 1988, sought to achieve relative equity for both the Hoopa Valley Tribe and the Yurok Tribe. 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. After all, the local congressman introduced the bill; both California Senators supported the bill; as did the Administration.

The answers to these questions are clear. The Act has not achieved the full congressional intent and purpose and congress often has had 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 adequately advise Congress of all relevant factors that were necessary to achieve equity.

The Departments had battled the Yuroks over numerous issues during the twenty-five year period preceding the Act. Because of lingering animosity over Short and fishing issues, it appears that Congress may have been misled. Congress did not have the full assistance from the Departments that you should have had. In reviewing the testimony and official communications from the Department, we were appalled that the Yuroks historic presence on the Square was minimized or ignored, and that the relative revenue and resource predictions for the Tribes were erroneous. Furthermore, We are also concerned about the significant disparity in actual land base that each Tribe received after the partition.

We understand that an unspoken but significant

motivation for the Departments, was to keep Puzz, (which held that the Hoopa Valley Tribal Council did not have exclusive governing authority over the multi-tribal Reservation), from subjecting the United States to significant fiscal liability for mistreating so-called "minority" interest tribes or their descendants on multi-tribe Reservations. While the Committee correctly focused on the sovereignty implications of Puzz, the Departments focused on their liability - (reminiscent of Cobell, today). Also, and perhaps, more important, apparently the Department was not cognizant that the United States also had a trust responsibility to the Yurok Tribe and the Yurok people.

Can you imagine in this day and age, an Assistant Secretary addressing a serious dispute between tribes by describing one side as "a model Indian tribe" and then dismissing the other tribe as some sort of remnant whose members needed no more than 3000 acres, because barely 400 Indians remained on what would become their Reservation? This same Interior Department that told Congress that the income of the Tribes would be reasonably equivalent; the Hoopa Valley Tribe would earn somewhat over a million dollars a year from timber resources and that the Yuroks had just had a million dollar plus commercial fishing year.

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 population. As the Committee is aware, the Yurok Reservation straddles a River Gorge and has a severe lack of infrastructure - lack of roads, telephones, electricity, and housing, as well as significant unemployment and poverty levels. Further, there is a desperate need for additional lands - particularly lands that can provide economic development opportunities, that provide adequate housing sites and that meet tribal subsistence and gathering needs.

The Department gave the impression that the predominantly Yurok Short plaintiffs had abandoned their traditional homelands; that they were spread out in over 36 states; that they were predominately absentee; perhaps non-Indian descendants and were just in the dispute for the dollars, was highly insulting to the Yurok people and a disservice to Congress. There were at least as many Yuroks on or near the Reservation as there were Hupas. And as noted above we still have significant land and resource needs that have not been met.

With respect to the relative income or resource equivalency status projected for the partitioned

Reservations, which was so critical to Congress' intent to provide an equitable partition; it is true over the past three decades there has been a couple of commercial fishing years that were viable and there was one such year shortly before the HYSA was enacted. True, but also very misleading. First of all, commercial fishing income, if any, went predominately to Hoopa and Yurok fishermen. Moreover, the fact was that in most years there was no commercial fishery whatsoever; in many years there were not enough fish for subsistence and ceremonial purposes.

Since the Act, in the Klamath River system, COHO salmon have been listed as an endangered species and some other Klamath River fish are threatened to be listed. Other Klamath River fish species have become extinct. The causes are multiple. However, recently the fish runs we depend on are subject to fragile water flows. Although we have the senior water right and a judicially recognized and protected fishing right, we have to fight for water with the Department of the Interior's Bureau of Reclamation almost every year to protect our "fishery" resource. In short, the average annual income of the Yurok Tribe from our salmon resource was and is non-existent. Since the Settlement Act, the Yurok Tribe has had a small income from timber revenues, averaging $600,000 annually.

With respect to land base, the Yurok Tribe's Reservation contains approximately 3000 acres of tribal trust lands and approximately 3000 acres of individual trust lands. The remainder of the 58,000 acre Reservation is held in fee title and mostly by commercial timber interests. The Hoopa Valley Reservation contains approximately 90,000 acres, 98% in tribal trust status.

With respect to the million plus dollars in timber revenues projected for the Hoopa Valley Tribe, written testimony of the Hoopa Tribal attorney in 1988, indicated that at the time of the Act, the annual timber revenue income from the Square was around 5 million dollars. In the 14 years since the Act, the timber revenue has been 64 million dollars. Additionally, the new Hoopa Valley Reservation has considerable mining resources (aggregate) that were known at the time of the Act. Our understanding is that aggregate mining currently produces a substantial income.

The point is, that the projected revenue comparison that should have been before the Committee was zero fisheries income and more than 5 million dollars in annual timber and

other revenues from the Square, and not the nearly equivalent million or so dollars for each Tribe that the Committee Report relied upon. This inequality of lands, resources, and revenues continues today and significantly hinders the Yurok Tribe's ability to provide services to its people.

Unfortunately, the Yurok Tribe in 1988, unlike today, was unable to address this misleading provision of key information. The Yurok Tribe, although federally recognized since the mid-nineteenth century, was not formally organized and had no funds, no lawyers, no lobbyists, no historians, no anthropologists, etc. to gather data to analyze the bill to present facts and confront misinformation. Individual Indians did testify, albeit ineffectively, during field and D.C. hearings of relevant Committees. Some of these witnesses were exceedingly hostile to Congressman Bosco and his bill; some witnesses seemed to support the legislation; while others appeared to support aspects of the legislation such as the organizing provisions for the Yurok Tribe. Today, some of these witnesses are Yurok Tribal members, some took the buy-out option and others became members of near-by rancherias. However, they were not the Yurok Tribe.

In some ways the lack of formal organization of the Yurok Tribe seemed to have hamstrung the Yurok people. As noted in our chronology, attached hereto, none of the traditional tribes of our area were organized before 1950, and in spite of that fact, they managed to negotiate treaties, survive the gold rush and periodically go into federal court to protect their fishing and cultural rights. It was the Interior Department that assisted in organizing some Hoopa Valley residents as the Hoopa Valley Business Council for the purpose of selling timber. The Interior Department did not attempt to organize the other tribal Indians of the Reservation or near-by communities. At that time, the Interior Department was busy illegally terminating 110 other tribes in California at the height of the "termination era." There was no political or economic imperative to organize Indian tribes in our area. By the time the Short plaintiffs again went to Court to vindicate their rights, the Department had so polluted Indian relations on the Joint Reservation that any organizing efforts were tainted by distrust.

It is also our view that before the passage of the Settlement Act, the Interior Department did not do enough to pursue Yurok tribal input. There were things they could have done in the years following the Short decision. For example, they could have utilized the General Council of the

Yurok Tribe which then existed, to address land and governance issues. The General Council was after all the entity that authorized the Yurok Tribe v. United States lawsuit and the "conditional" waiver. Lack of formal organization is not a complete bar to governing. We are aware that other Tribes in California are currently not formally organized and operate by General Council, including running 100 million-dollar plus casinos.

Other devices and approaches were also available other than partition. Where for example was the use of Reservation wide referenda; a tool widely used in restoration and recognition processes? Although Congressman Campbell inquired about the Wind River model in House hearings, the Department did not appear to have considered this pertinent model for multi-tribe Reservations where each Tribe retains its sovereignty and some territorial jurisdiction. There are other models that come readily to mind, that also did not appear to have been considered. There are many tribally consolidated Reservations in the northwest, such as the Quinault Indian Reservation where membership in 8 historic Indian tribes is the basis for membership in the Quinault Indian Nation. These approaches do not appear to have been considered. Did the advice Congress received have to be limited to partition?

It is important to acknowledge that from a Yurok perspective a positive result of the HYSA was that it helped develop the preliminary Yurok tribal Roll and provided us with limited funds to retain attorneys and others to assist us in the creation of this base Tribal Roll and the development of the Yurok Constitution. We also appreciate that the Senate Committee report recognized and acknowledged that the Tribe could organize under its inherent sovereignty.

Had we been a formally organized Tribe with even limited financial and technical resources and testified before you in 1988, we would have pointed out that while it is true that the Square (Hoopa Valley) is part of the homelands of the Hupa people, it is also true that the Square is part of the ancestral homelands of the Yurok people. Almost without fail throughout the testimony you received in 1988, the Square is described as Hoopa and the Addition is described as Yurok. As the Ancestral Map that you see here indicates, Yurok ancestral territory was quite large, encompassing all of the current Yurok reservation and 80% of what is now Redwood National Park as well as significant portions of the U.S. national Forest. You should note that a portion of the Square has always been

part of Yurok ancestral territories. Yurok Villages existed in the Square and their sites have been verified by anthropologists. This fact is not a matter of dispute. The United States Department of Justice and the Hoopa valley Tribe in the Yurok Tribe v. United States litigation agreed in the joint fact statement that the Yuroks were always inhabitants of the Square. (Statement provided for the record) We are not claiming that we had Indian title to the whole Square, but that we have always been part of the Square. The Short cases made the same determination.(See attached summary of Short) At the time of your 1988 hearings, there were 400-500 Yuroks living on the Square. As one of the individual Yurok witnesses noted, over 50% of the students at Hoopa High School were not members of the Hoopa valley Tribe. Today, some 800 Yuroks live on the Square. The Square is included in one of the largest Yurok Council districts population-wise and the Yuroks living there elect one Yurok Council member from that District. I in fact live there.

We think that these different perspectives are important as we consider today's issues, however, it is critical for everyone to be aware that the Yurok Tribe has not, will not and is not asking Congress to take back anything from the Hoopa Valley Tribe that it received under the Act. We have no current legal interest in the land or resources the Hoopa Valley Tribe received from the Act

What we do want is the Committee to look at are the relative equities achieved under the Act understanding that the Yuroks have always been inhabitants of the Square and have never abandoned our connection to our territories, our culture, and our traditions.

We have already noted that there is a significant disparity in income, resources, land base, and infrastructure as a result of the Settlement Act. The data provided by the Interior Department today supports our positions. I need to acknowledge that Interior Department officials today treat the Yurok Tribe in a fairer manner than previously and for that we are appreciative.

The Hoopa Valley Tribe received a 90,000 acre timbered Reservation, of which 98% are held in tribal trust status. The Yurok Tribe received a Reservation whose boundaries contained 58,000 acres, however, only 3000 acres were in tribal trust and only a small portion of those acres contained harvestable timber. If you look at the Map that we have provided showing the two Reservations and trust and fee lands, you can visualize the extreme disparity.

We have already noted that the income projections for the respective Tribes were erroneous. Time has verified that the predictions of a bountiful or restored fishery have not come to pass and that the fishery infrequently produces any income. It is also a resource that we share with non-Indians, as well as the 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 dismal. This in part is due to the fact that it is difficult to develop a remote River Gorge. The lack of infrastructure is also due to the fact that the B.I.A.'s agency office was on the Square. The B.I.A. provided some infrastructure to the Square, but it totally neglected the "Addition".

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 the Committee. (See attached Plan.) We have provided copies of our Proposed Plan to the Department of the Interior. The Plan is based in large part on the Settlement negotiations that occurred with the Department in 1996 and 1997.

What we would like to see as a result of this hearing is the creation of a Committee or a working group composed of Tribal, Administration, and Congressional representatives. We would also hope the Committee would be under the leadership of Chairman Inouye. This committee would have as its task the development of legislation that would provide to Yurok people the viable self-sufficient Reservation that was the original intent of this Committee in its effort to achieve equity.

If there are issues that the Hoopa Tribe wishes to address for the same end for its Reservation, we would support a separate working group for them.

Although as you can see our issues are broad based and focused on full equity for the Yurok Tribe, the immediate concern that prompted the Department's Report and this hearing is the balance of the Hoopa-Yurok Settlement Fund.

The Interior Department has said that neither Tribe is legally eligible to receive the balance of the Fund and that Congress should address the issue. Our view is simple, the

financial equities and the actual distributions of timber revenues from 1974 to 1988 clearly demonstrate that the balance of the Fund should be made available to the Yurok Tribe as the Act clearly intended. In fact the monies are held in the Yurok Trust Fund. Arguments that the assets are from the Hoopa Reservation, or that most of the income came from the Square, are misplaced. These revenues belonged as much to the Yuroks of the Square and Yuroks of the Addition as they did to the Hupas of the Square. This is the key point of the cases we both lost in the Claims court, Short v. United States, Hoopa Valley Tribe v. United States, and Yurok v. United States. The point being 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 the assets. These are pre-1988 monies; we should not have to re-argue what Yuroks won in the Short cases.

As noted in our Annotated Chronology, the Department of the Interior, after the final decision in Short I in 1974, ceased to distribute timber revenues exclusively to members of the Hoopa Valley Tribe and began to reserve 70% of the timber revenues for the Yurok plaintiffs. The remaining 30% of the revenues were reserved for Hoopa in a separate escrow account. The proportionate allocation was based on the Hoopa Valley tribe having a population of 1500 members and the Short plaintiffs numbering 3800 persons.(See, Hoopa Valley Tribe v. United States.) For 14 years from the final decision in Short until the passage of the Settlement Act, the Department provided almost all of the 30% of the annual timber revenues reserved to the Hoopa Valley Tribe and retained the other 70% in an escrow account for the Yurok plaintiffs. I believe the Department has provided the Committee with the amount of $18,955,885, of the $19,000,000 reserved as the amount received by the Hoopas for that 14 year period.

When we have discussed the timber revenues from 1974 to 1988 with our colleagues on the Hoopa Tribal Council, they assert that 100% the revenues were theirs or should have been theirs. Legally, as the Committee knows, that was not the determination of the federal courts. No Indian tribe before 1988 had a vested right to the Square or its assets. The Hoopa Tribe even made this same argument in Yurok v. United States. As we have noted several times, both Hupas and Yuroks were aboriginal inhabitants of the Square. The 1876 and 1891 Executive Orders had created a single Reservation of some 155,000 acres in which neither Tribe had

vested property rights.

In 1974, the federal courts had determined that the Secretary had since 1955 wrongfully made per capita revenue distributions to only Hoopa Tribal members and that the plaintiffs (mostly Yurok Indians) were entitled to damages against the United States. Damages were eventually provided to the plaintiffs for the years 1955 through 1974, but not for 1974 through 1988. So the point is that the legal status of the 1974 to 1988 timber revenues was, although neither Tribe had title to timber or a constitutional right to the revenues, if the revenues were distributed to one group, the other group was entitled 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.

The 1974 to 1988 revenues were distributed to the Hoopa Tribe and paid out in per capita payments. First under the 30% Hoopa share or $19,000,000 payments and second, under the transformation of the 70% Escrow Account (established for Yurok Plaintiffs) effected by the Settlement Act.

As you are aware, the Settlement Act created a Settlement Fund from the 70% Escrow account ($51,000,000), the small balance of the Hoopa 30% Escrow account, and some smaller joint Hoopa/Yurok, and Yurok escrow accounts, as well as a 10 million dollar federal appropriation. When the 1988 Base Membership Roll of the Yurok Tribe was established in 1991 and the 1991 Membership Roll of the Hoopa Valley Tribe was verified, the Settlement Account was proportionately allocated between the two Tribes based on tribal membership.

The Hoopa Valley Tribe was allocated 39.5% of the Settlement Fund or $34,006,551. Because the Hoopa Valley Tribe had executed a waiver of its rights to challenge the Act for any unconstitutional taking,(in 1988 and the waiver was published by the Department,) the Department provided these funds to the Hoopa Valley Tribe.

Technically because the Act had allowed the Hoopa Valley Tribe to draw down 3.5 million dollars a year from the Settlement Fund and provided for a $5000 per capita payment directly to members of the Hoopa Valley Tribe, the Tribe was provided with the adjusted balance of its 34 million dollar share. Some observers have confused the subtractions from the 1991 payments as adjustments for the 30% payments made from 1974 through 1988; they were not. The Act did not call for adjusting or accounting for these

30% payments and no adjustment was made.

In total, from the 1974 to 1988 timber revenues and interest of approximately $64 million, in 1991 the Hoopa Valley Tribe (39.5% of the then population) received a cumulative total of 53 million dollars or 84.2% of the total amount timber revenues of the period.

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 the case as co-defendants, with the approval of the United States, to protect the Yurok share of the Settlement Account. With the active encouragement of the Justice Department attorneys, (they were very pleased to have us as co-defendants), we won the case and protected the Account.

After the withdrawal of Revenues for the Hoopas, the remainder of the Settlement Fund was then deposited in a Yurok Trust Account. Payments authorized by the Act to persons who enrolled in the Yurok Tribe or who took the buy-option were also deducted from the Yurok balance of the Fund. We should note as the Interior Departments data confirms, these payments to individuals exceeded the $10,000,000 federal contribution provided by the Act. In 1993, when all the withdrawals were accounted for in the Settlement Fund Statement, (See attachments to Interior March 2002 Report, the Yurok Trust Fund had a balance of $37,819,371.79. We have been provided with statements of the Account's balance every month since and our advice has been consistently solicited with respect to investments.

As you are aware in 1993 the Yurok Tribe, as instructed by its General Council brought suit against the United States for a taking claim under the Act. We lost this case in 2001 when the United States Supreme Court declined to review a 2-1 decision of the Federal Court of Appeals. We lost this case on the same basis 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 antiquated and colonial notions of Indian title in modern times, as the dissenting federal judge did. 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 the Congress; the Congress that has plenary power to fix these wrongs.

In 1993, we also adopted the "conditional waiver" which provided that our waiver was only effective if the Settlement Act was constitutional; which as I noted a few moments ago, the courts have determined that the Act is not unconstitutional. That determination should have been sufficient to meet the condition of our waiver. The Department of the Interior, however, determined that our waiver was not effective. Although we disagree, we have not challenged its determination in court and will not take up the Committee's time to debate it today.

The Department, as noted earlier, determined that the Hoopa waiver was effective and that the Hoopa Valley Tribe received what it was entitled to under the Act and it has no addition legal right to the Settlement Fund. In its view the Department cannot disperse the balance of the Settlement Act to either Tribe. The Department has now reported to Congress that you should, consistent with its recommendations, resolve the balance of the Fund issue. Among other things, the Department sees itself as the Administrator of the fund for both Tribes. It indicates that you should take into account funds already received and be cognizant to the purpose of the Settlement Account to provide two self-sufficient Reservations.

We think a better solution would be to permit the Yurok Tribe to administer its own trust fund with the balance of the Settlement Account. We of course, would be willing to submit a Utilization Plan for review and approval. Our Constitution, in any event, requires us to provide a Plan for the approval of our membership. As we have indicated a complete review of the record does indicate that the almost all of the trust lands, economic resources, and revenues of the joint Reservation that existed prior to 1988, when neither Tribe had more legal or historic rights to these resources than the other, have to date been provided almost exclusively to the Hoopa Valley Tribe.

A final point in these prepared remarks, in 1996, we struck a deal with the Hoopa Valley Tribe whereby we supported H.R. 2710 and they supported our settlement negotiation issues, specifically turning over the balance of the Settlement Fund to the Yurok Tribe. Apparently the Hoopa Valley Tribal Council now believes that its end of the deal ended with the collapse of the Settlement negotiations. We lived up to our end of the bargain and the Hoopa Valley Tribe received some 2600 acres of trust lands to "square" off the Square. Copies of both of our 1996 commitment letters have been provided with our written testimony.

I again thank the Committee for the opportunity to appear today and will be very happy to answer any questions you may have.

ATTACHMENT TO THE TESTIMONY OF THE YUROK TRIBE

HEARING BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE

AUGUST 1, 2002

ANNOTATED CHRONOLOGY

Pre-Contact with Non-Indians: Yurok aboriginal territories, which were extensive, included the northern third of the Hoopa Valley (the square). Hoopa aboriginal territory included the southern two-thirds of the Square. "The Yurok people were aboriginal residents of the Square." Short I, 486 F.2d at 565, and Yurok v. United States, Uncontroverted Statement of Facts of the United States and the Hoopa Valley Tribe (hereinafter "Uncontroverted Facts").

1848: Discovery of gold in Northern California, followed by the "Gold Rush".

1850: California became the 31st State on September 4, 1851.

1851: Representatives of the U.S. negotiated a Treaty of Peace and Friendship with the Yuroks (Poh-lik), the Karuks (Pen-tsick) and the Hupa (Hoo-pah) whereby the tribes were to maintain peace with the U.S. and each other, and the U.S. was to provide a Reservation and related services. The treaty, like all other California Indian treaties, was not ratified.

1855: The President created the Klamath River Military Reserve by the Executive Order of November 16, 1855, under the authority of 10 Stat. 226, 238 (1853, as Amended (1855). This Reserve which ran from the Pacific Ocean at the mouth of the Klamath River a mile on each side of the River for 20 miles, was a small portion of the aboriginal territories of the Yuroks.

1864: Congress enacted legislation that authorizes the President to establish 4 Reservations in California, 13 Stat. 39 (1864).

1864: Indian Superintendent Wiley negotiated a "treaty" with Hupa and other tribes to establish a Reservation that encompassed the Square. This "treaty" was never submitted to Congress and was never ratified. Nevertheless "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 and Uncontroverted Facts.

1876: The President by Executive Order established the Hoopa Valley Reservation, which encompasses the Square, and was established "in part for the Yuroks" Short I, 486 F.2d at 565 and Uncontroverted Facts.

1891: The President by Executive Order added the Klamath River Military Reserve and a connecting strip (Yurok Aboriginal territory) to the Hoopa Valley Reservation creating an enlarged single Reservation of approximately 155,000 acres. Short I, 486 F.2d at 567-68 and Uncontroverted Facts.

1892: Congress enacted the first of the allotment statutes (27 Stat. 52) affecting only the former Klamath reserve portion and the Addition of the Reservation. As with allotment elsewhere in Indian Country, allotment was a disaster along the Klamath River; vast quantities of redwood timber lands were removed from communal ownership and then from predominantly Yurok individual ownership. By the time allotment was ended under the reforms of the IRA in 1934, over 50,000 acres were removed from Indian ownership.

1950: With the assistance of the B.I.A., some Hupas organized as the Hoopa Valley Business Council. Prior to this time, from time immemorial, none of the Indian Tribes of the area had been formally organized previously.

1952: The Secretary of the Interior approved the Hoopa Valley Tribe's Constitution and by-laws.

1955: The B.I.A. approveed timber sales for communally held timber in the Square and at the request of the Hoopa Valley Business Council, the B.I.A. begins disbursing per capita payments to individual Hoopa Valley tribal members.

1958: Solicitor's opinion provided that it is legal to distribute revenues from the unalloted trust timberlands of the Square in per capita payments to Hoopa Tribal members. (This opinion is determined to be erroneous in Short).

1963: A group of Indians, many of whom were Yuroks, sued the United States in Claims Court for damages alleging that they too were entitled to share in the communal timber sales in the Square. Jesse Short, et al v. United States.

1972: After extensive hearings and briefs, the Trial Commissioner found for the plaintiffs in Short v. United States. Per Capita payments to Hoopa Valley Tribal members continue uninterrupted.

1973: Mattz v. Arnett, 412 U.S. 481 (1973), was decided; it upheld the "Indian Country" status of the Reservation. The case involved the State of California trying to assert jurisdiction to regulate Indian fishers on the Klamath River; The court determined that California had no such jurisdiction.

1973: The U.S. Court of Claims in an extensive decision upheld the decision of the Trial Commissioner, and determines:

*The Hoopa Valley Reservation established by executive orders in 1876 and 1891 was a single Indian Reservation

*No Indian Tribe had a vested right to the Reservation or its assets

*The Secretary of the Interior had wrongfully paid per capita revenue distributions to Hoopa Valley Tribal members to the exclusion of the plaintiffs

*Indians "connected" to the Reservation were entitled to damages from the United States.

1974: The U.S. Supreme Court declined to review Short v. United States. 486 F.2d 561, 202 Ct. Cl. 870 (1979) *cert. denied,* 416 U.S.961 (1974).

1974: The Short court embarks on the task of determining which of the 3800 plaintiffs are bona fide Indians of the Reservation and therefore individually entitled to damages. The U.S. and the Hoopa Valley Tribe vigorously contest the status of many of the plaintiffs and litigation continued for two decades. Eventually, in 1994 plaintiffs were certified and received Treasury checks for damages for the period of 1955 to 1974.

1974: The Secretary of the Interior established the 70% escrow account for timber revenues. "Upon the denial of certiorari to this court's decision . . . The Secretary of the Interior ceased to distribute revenues exclusively to members of the Hoopa Valley Tribe. On the theory that all of the 3,800 plaintiff's could eventually be entitled to 70 percent of the revenues and the 1,500 members of the Hoopa Valley tribe entitled to 30 percent, the Secretary put 70 percent of annual timber revenues in escrow pending a final decision on the number of plaintiffs in Short qualifying as Indians of the Reservation entitled to per capita distributions of timber revenues." Hoopa Valley Tribe v. United States, 596 F.2d 435, 440 (1979).

1979: The Hoopa Valley Tribe's suit for damages against the United States for breach of trust and otherwise for failing to protect the Hoopa Valley Reservation was decided adversely to the Tribe. Hoopa Valley Tribe v. United States.

1974 - 1987: The Hoopa Valley Tribe unsuccessfully urged Congress to over-turn Short.

1988: A federal district court decided in Puzz V. United States,No. C 80 2988 THE (D.N.Cal. 1988) that the Department of the Interior can no longer recognize the Hoopa Valley Tribe as the exclusive government of the Hoopa Valley Reservation.

1988: Congress enacted the Hoopa-Yurok Settlement Act, which partitioned the then Hoopa Valley Reservation into: the Yurok Reservation, consisting of the former Klamath River Military Reserve and the Addition, and a new Hoopa Valley Reservation, consisting of the "Square." The Act also provided a system for enrolling eligible Indians in either the Yurok Tribe, the Hoopa Valley Tribe, or forfeiting membership in either Tribe (buy-out). The Short escrow accounts, plus some small Yurok escrow accounts, are transformed into a Hoopa Yurok Settlement Fund; and a ten million dollar federal contribution to the Settlement fund was authorized (and appropriated). The Yurok Tribe, subject to adopting a waiver of claims, was given several small land tracts, the authority to organize, and an authorization of not less than 5 million dollars for land purchases. The Settlement Fund was to

be allocated to the Hoopa Tribe and the Yurok Tribe based on their relative enrolled populations at time of distribution. Both Tribes were to provide waivers of claims against any takings of lands or assets effected by the Act.

1988: The Hoopa valley Tribe by resolution waived any claims against the United States pursuant to the Act.

1991: In Heller, Ehrman v. Lujan, 992 F.2d 360 (D.C.Cir. 1993), the Short claims attorneys sued the Secretary of Interior for attorneys fees of up to 25% of the Settlement Fund. They asserted that the 70% escrow account was derived from their litigation efforts and that the Settlement Fund was in fact the escrow account. Yuroks, Jesse Short, Susan Masten, and Valerie Reed intervened as co-defendants with the consent of the United States to protect the Settlement Fund. The Yurok and United States defendants were successful when the federal court of appeals determined that the plaintiffs could not sue the United States for money damages in federal district court.

1991: The Department of the Interior allocated the Hoopa Yurok Settlement Fund based on Hoopa and Yurok tribal enrollments. From the $85,979,348.37 Fund balance, the Hoopa Tribe's share is determined to be 39.5% or $34,006,551.87. This amount has been provided to the Hoopa Valley Tribe. The balance of the Fund, after withdrawals for payments for buy-outs, and enrollments are made, was placed in a Yurok Tribe Trust Fund. The balance after the Hoopa withdrawals and the individual buy-out and enrollment (payment) withdrawals in 1991-93 in the Yurok Trust Account was $37,819,971.79. Each individual Yurok who received an enrollment check had to waive his/her rights to sue the United States for money damages for a unconstitutional taking under the Settlement Act.

1991 - Present: The Yurok Tribe has been provided monthly accountings on the Yurok Trust Fund and the Tribe's advice has been solicited on investments.

1992: The federal courts dismissed a constitutional challenge to the Hoopa-Yurok Settlement Act brought by individual Yuroks finding that the Hoopa Valley Tribe was an indispensable party to the litigation and could not be joined without its consent. Shermoen v. United States, 182 F.2d 1312 (9th Cir.1992)

1993: A General Council meeting of the Yurok Tribe was convened and the Yurok Tribe authorized its attorneys to sue the United States under the 5th amendment's due process clause for a taking without adequate compensation. Yurok Tribe v. United States, No. 92 -CV- 173 (Fed. Cl.) was filed in federal Claims Court. The General Council also authorized a "conditional waiver" whereby the Yurok Tribe provided the statutorily required waiver, but only as long as the taking was constitutional. The Interim Council adopted the Conditional Waiver by Resolution 93-61 and submitted it to the Department of the Interior on November 24,

1993:

"To 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 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."

1993: The Hoopa Valley Tribe voluntarily intervened as a defendant in Yurok Tribe v. United States.

1993: The Yurok Tribe formally organized and adopted a Constitution under its inherent powers of self-governance. The Department of the Interior recognized the Constitution and the Yurok Tribal Council as the governing body of the Yurok Tribe.

1994: In an April 4, 1994 letter to Tribe, the Department of the Interior rejected the Yurok Tribe's "conditional" waiver.

1995: Upon the request of the Yurok Tribe of August 30, 1994, to reconsider its decision, the Department in a letter dated March 14, 1995 affirmed its rejection of the conditional waiver, but noted that the waiver had been received on a timely basis and could be amended. Assistant Secretary Deer urged negotiations instead of pursuing litigation.

1996: Various efforts to create Settlement negotiations stall until February 13, 1996 when the Department of Justice requested a settlement proposal with "reasonable expectations for settling this litigation" from the Yurok's counsel. The Yurok Tribe provided a settlement proposal. The Interior Secretary appointed a special negotiator and serious Settlement negotiations were undertaken. Justice notified the trial Judge that the Interior Department was seriously looking at the Yurok Tribe's Settlement proposal and Judge Margolis granted a six-month delay in the proceedings. Interior and Yurok negotiators tentatively agreed on concepts for settlement and the Yurok Tribe was to receive a counter-proposal from the United States.

1996: The Hoopa Valley Tribe sought an additional 2600 acres "boundary correction" to its Reservation in H.R. 2710; the Yurok Tribe opposed the bill and H.R.2710 stalled. The Yurok Tribal Council and the Hoopa Tribal Council met at Senator Boxer's San Francisco's offices at her request to try to resolve their positions on H.R.2710. The Yurok Tribe agreed to withdraw its opposition to H.R.2710 and the Hoopa Valley Tribe agreed to support Yurok positions in Settlement negotiations and specifically to support:

*Providing Yurok the Trust Fund (the balance of the Settlement Fund to the Yurok Tribe

*Providing a 2.5 million dollar land acquisition appropriation to the Yurok Tribe

*Providing section 2 C (2) (A) & (B) lands to the Yurok Tribe.

Hoopa Chairman Risling signed a commitment letter and the Yurok Tribe notified the Legislative Committees of its support of H.R. 2710. This bill passed and the Hoopa Valley Tribe received the additional 2,600 acres of trust lands.

1996: Hoopa Valley Chairman Sherman in a September 13, 1996 letter to the Yurok Chair confirmed former Hoopa Chairman Risling's commitment.

1997: The Department of Justice informed the Yurok Tribe in a November 11, 1997, letter that "no settlement offer will be forthcoming." Court proceedings activated.

1998: U.S. Court of Claims dismissed the Yurok Tribe's complaint because it determined that the Tribe had no vested property right as against the United States in the pre-1988 Hoopa Valley Reservation upon which to base a 5th amendment claim.

2000: U.S Court of Appeals for the Federal Circuit affirmed the Court of Claims in a 2 to 1 opinion.

2001: U.S. Supreme Court declined to review Yurok Tribe v. United States, 41 Fed Cl 468 (1998), 209 F. 3d 1366 (Fed. Cir. 2000) *cert. denied* 121 S. Ct. 1402 (2001).

2001: Senator Inouye In an October 4, 2001 letter, anticipated the Interior Department's report, invited the Hoopa valley Tribe and the Yurok Tribe to address the issue of the Settlement Fund Balance, and other matters such as land acquisitions, boundaries, resources, infra-structure relative to the Settlement Act.

2002: On March 15, 2002, the Interior Department filed its required report recommending that Congress address the disposition of the Settlement fund and allow the Department to administer the Fund for the benefit of the Tribes taking into account disbursements previously made, and the objective of achieving equity.

2002: Two meetings between the Hoopa Valley Tribal Council and the Yurok Tribal Council failed to reach agreement on the disposition of the Settlement fund balance. The Hoopa Chairman informed the Yurok Tribal Council that the Hoopa Valley Tribal Council believes that its 1996 commitment (e.g., to support turning over the balance of the Fund to the Yuroks) was only relevant while settlement negotiations were under way and did not survive the failure of 1996-1997 settlement negotiations.

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	

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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

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";

–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

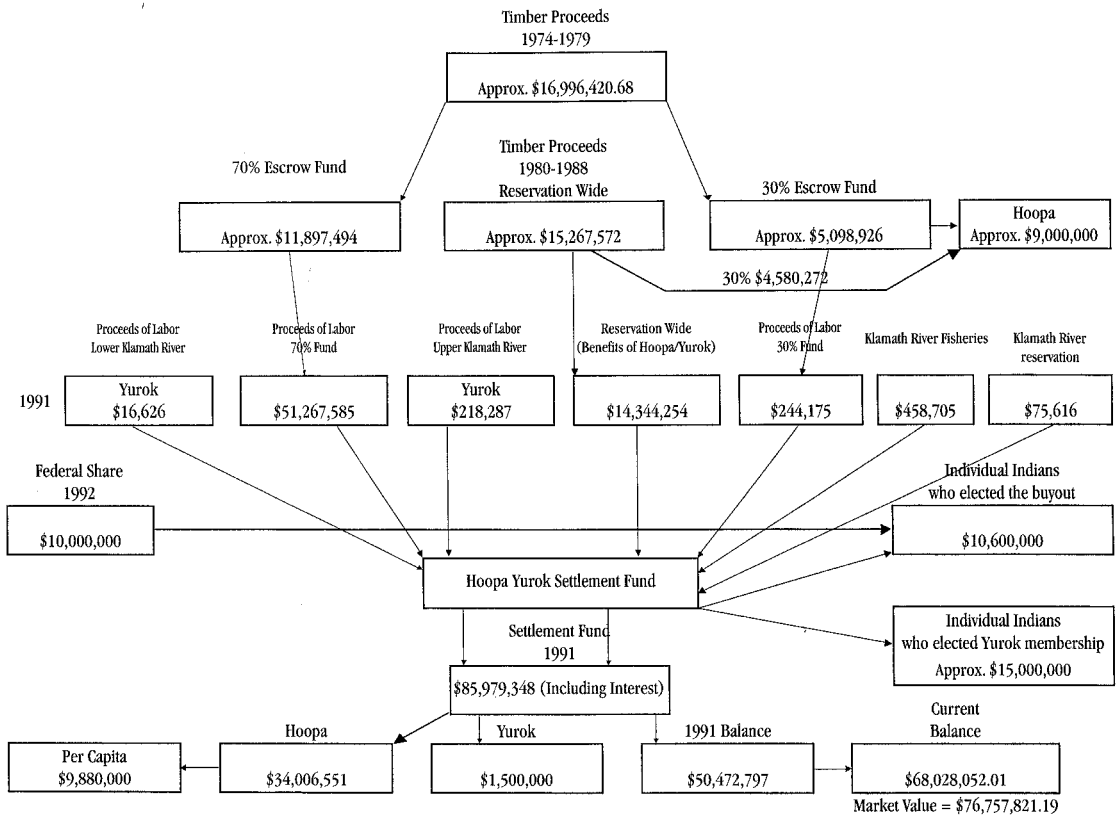
Because the Yurok Tribe litigated its claims against the United States based on passage of the Act rather than waiving those claims, the Department is of the view that the Yurok Tribe did not meet the condition precedent established in section 2(c)(4) of the Act for the Tribe to receive its share of 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.

HOOPA-YUROK SETTLEMENT ACT FUNDING HISTORY



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 567-58, 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. Mattz 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 27-36 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 Mattz 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. 1985); 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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Printed: September 8, 1994

CERTIFICATE OF SERVICE

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ATTACHMENT TO THE TESTIMONY OF THE YUROK TRIBE

Issues for Congress

The items below are issues identified by the Tribal Council. They are broken out by categories identified in Senator Inouye's letter to Chairperson Masten, October 4, 2001. These items reflect the fact that at the time of the Hoopa-Yurok Settlement Act, the Hoopa Tribe had a significant income base, infrastructure that met power, water and telecommunication needs, and economic and community infrastructure (e.g. hotel, gas station, recreational facilities, library etc.).

Disposition of the Settlement Fund

The Yurok Tribal Council has prepared a draft plan for disposition of the Settlement Fund. The plan recognizes the opportunity to address long-standing need for the Yurok Tribe. A highlight of this plan is the proposition that interest from the fund be utilized for various needs. The principle would remain untouched and grow each year.

Acquisition of Lands

This item is closely related to the clarification of boundaries item below. The Tribe currently lacks a cohesive land base sufficient to support subsistence and economic activities. Additionally, ceremonial and religious sensitive lands are a priority for the Tribe. The following list represents lands that the Tribe has identified that it would like to acquire:

1. All Federal Lands and facilities within Yurok Reservation boundaries including BLM, USFS, RNP and any other Federal lands;
2. Redwood National Park "dog leg" located at the north side of the current Reservation;
3. 55,000 acres owned by Simpson Timber Co. within current Reservation boundaries and as much land as possible beyond that within the Lower Klamath River Basin. Lands to be purchased or traded for USFS lands yet to be identified;
4. All USFS lands within the Blue Creek watershed. These lands to be managed as a Cultural district;
5. Lands, both within Simpson Timber Company and U.S. Forest Service, identified as a cultural district above Weitchpec, in Blue

Creek and Cappell watersheds. Management of these lands will be in accordance with cultural objectives and traditional values. No timber harvest activities will be conducted in these areas;

6. All USFS lands within Yurok Tribe ancestral territory. These lands to provide for timber harvest and subsistence activities. Tribal management will be at least as conservative as current management.

The above lands should be obtained through a land acquisition plan.

Clarification of Boundaries

The Yurok Tribe proposes that current Reservation boundaries be extended. While the amount of proposed land is based on the above, and acreage may be greater than acreage lost due to the Hoopa-Yurok Settlement Act, more acreage is needed to accomplish Tribal objectives due to constraints the Tribe is willing to place on various management activities. Additionally, funds necessary to survey current and proposed reservation lands/boundaries need to be appropriated.

Amendments to other Federal Statutes

Federal statutes need to be clarified that provided for various access, vehicle included, by Tribal members for hunting, fishing, and gathering subsistence activities. It is essential that unfettered cultural access for these and other activities should be provided for. Access and resource use will be provided through sound management plans developed by the Tribe. This need includes:

1. Access to all RNP lands for subsistence activities. Access includes all coastal and other areas within Yurok ancestral territories;
2. Provisions that require the Park Service to recognize Tribal management plans;
3. Provisions that require the National Park Service to cooperatively manage Park lands within Yurok ancestral territories. The Park Service should be required to recognize Tribal co-management in all agreements developed with other agencies/organizations;
4. Provisions that recognize the Yurok Tribe's ocean fishing rights.

Protection of Fishery resources

The protection and restoration of fisheries resources in the Klamath River Basin has been and continues to be a priority of the Tribe. The Tribe has

invested considerable resources in these activities. Adequate protection includes:

1. Legislative language that reaffirms the Tribe's interest and role in water and fisheries management within the Klamath River Basin, including the Trinity River;
2. Sufficient funding to support scientific research and restoration needs of the Tribe;
3. Legislative language that requires implementation of the ROD for the Trinity River.

Programs to address Infrastructure Needs

There is a tremendous infrastructure need for the Yurok Tribe. The following list represents those needs. Please note that there is much more need than identified here:

1. $ 40 million for Bald Hills road improvement;
2. $ 15 million for Highway 169 road improvement;
3. $ 11.25 million for electricity needs;
4. $ 9.5 million for telecommunication needs.

The Tribe has prepared a comprehensive list of infrastructure needs.

Economic Need

The Yurok Tribe has very little in place to address economic needs. Key here is the need to acquire properties for economic development purposes.

1. $ 30 million for economic development. These funds will go to priority areas for economic development
2. Specific properties necessary for economic development. These properties will be developed based upon an economic plan.

Hoopa Valley Tribal Council

P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

Dale Risling, Sr.
Chairman

COPY

HOOPA VALLEY TRIBE

September 16, 1996

Honorable Susie Long
Chairperson, Yurok Tribe
1034 6th Street
Eureka, CA 95501

Dear Ms. Long:

The Hoopa Tribal Council has studied the proposals you presented in your July 29, 1996 letter and is supportive of them. Your proposals are as follows:

1. The Yurok portion of the Hoopa-Yurok Settlement Fund (approximately 47 million dollars) be made available to the Yurok tribe;

2 The 2.5 million dollars appropriated by Congress after passage of the Act for land purchase be made available to the Yurok tribe;

3. The National Forest System and Yurok Experimental Forest lands identified in sec. 2(c)(2)(A) and (B) of the Hoopa-Yurok Settlement Act be made available to the Yurok tribe;

4. The Hoopa tribe will support the Yurok Settlement proposal in Yurok v. United States or, as an alternative, would agree not to oppose the Yurok settlement.

We pledge to proceed cooperatively with you on these issues in the new Congress. We appreciate your stated willingness to support enactment of H.R. 2710 at this time.

It is in the interests of both of our tribes to have a comprehensive settlement of the legal issues affecting our reservations, and we have so advised the court in Yurok Tribe v. United States case. As soon as your settlement proposal is available we would like to review its details with you.

Sincerely,

/S/

Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594

Duane J. Sherman, Sr.
Chairman

October 22, 1997

The Honorable Susie Long, Chairperson
Yurok Tribe
1034 6th Street
Eureka, California 95501

Dear Ms. Long:

Since my election to succeed Dale Risling as Chairman of the Hoopa Valley Tribe, you and I have had the opportunity to speak on a number of occasions about continuing our commitment to building a constructive relationship between our Tribes. One issue that you have raised with me is support of the Hoopa Valley Tribe for the Yurok Tribe's efforts to settle the litigation in Yurok Tribe v. United States. The purpose of this letter is to assure you that the Hoopa Valley Tribe's pledge to proceed cooperatively with you on the issues in that litigation which the Tribe made in its letter of September 13, 1996, to you remains in effect. As soon as your settlement proposal is available we would like to review its details with you.

Sincerely,

Duane Sherman, Sr., Chairman
Hoopa Valley Tribal Council

YUROK TRIBE

15900 Hwy 101 N. • Klamath, CA 95548
(707) 482-2921
FAX (707) 482-9485

1034 8th Street • Eureka, CA 95501
(707) 444-0433
FAX (707) 444-0437

September 19, 1996

Honorable John McCain
Chairman, Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Attention: Michael Jackson

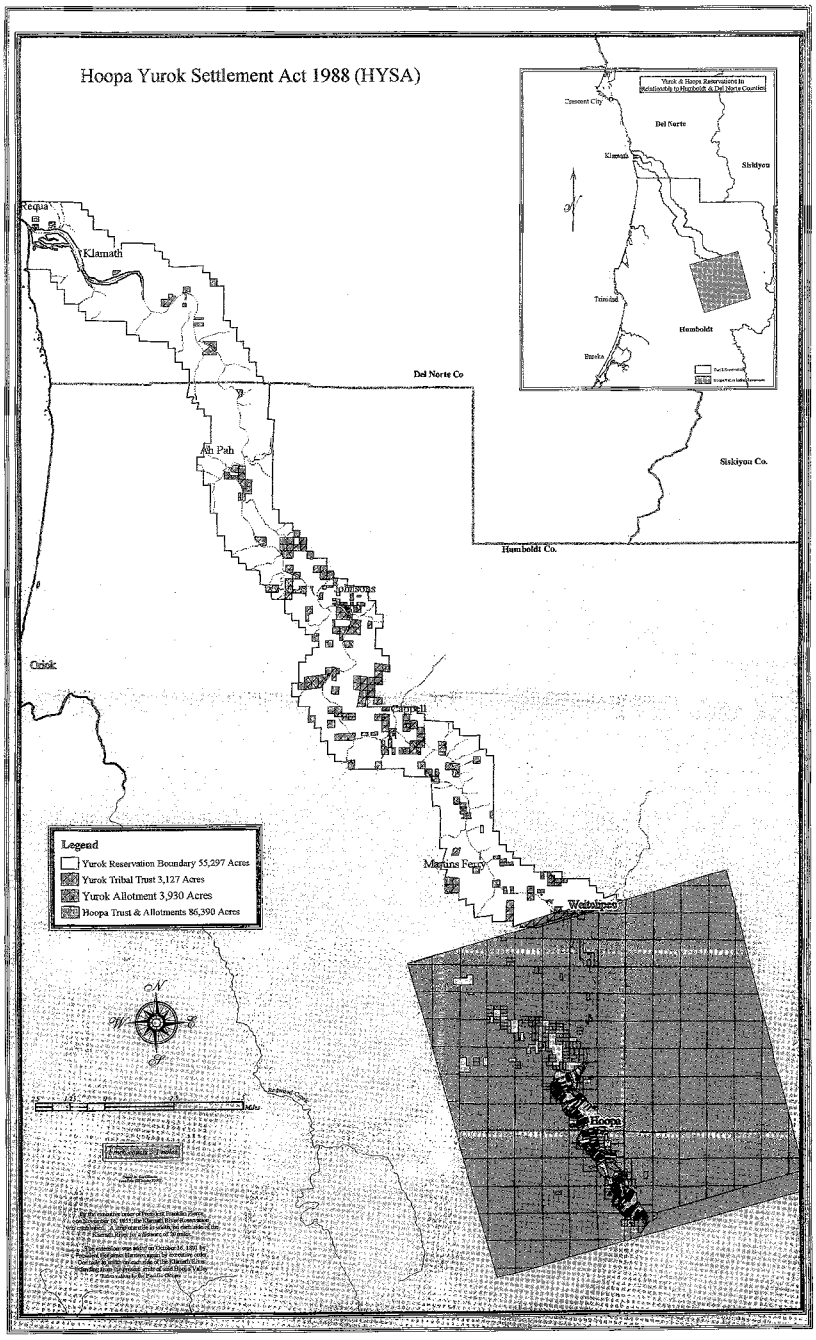
Dear Senator McCain:

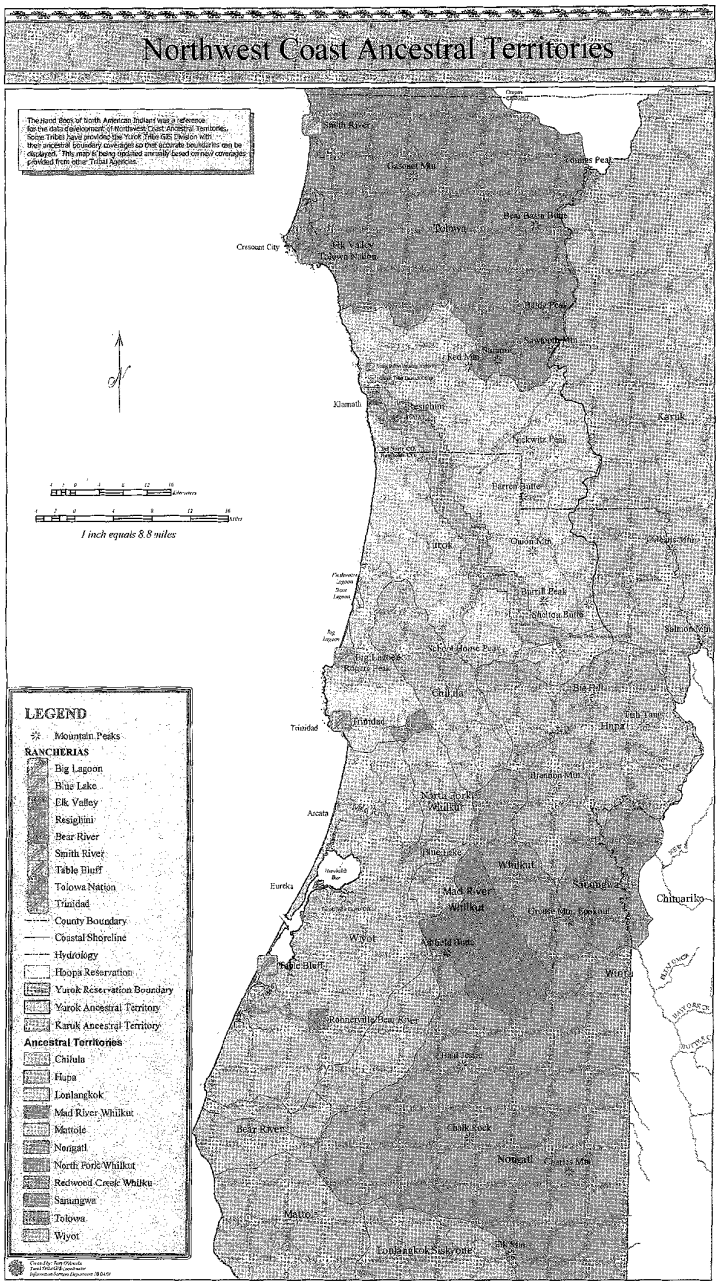
This letter is to confirm our September 16, 1996 telephone message to your staff indicating that the Yurok Tribe had no objection to the enactment of H.R. 2710, the Hoopa Valley Reservation Boundary Adjustment Act.

Thank you for your continued support of Indian country.

Sincerely,

Susie L. Long
Chairperson


Hoopa Yurok Settlement Act 1988 (HYSA)
Yurok & Hoopa Reservations in Relationship to Humboldt & Del Norte Counties
Del Norte
Siskiyou
Humboldt
Trinidad
Eureka
Del Norte Co
Siskiyou Co.
Humboldt Co.
Requa
Klamath
Ah Pah
Orleans
Orick
Campbell
Martins Ferry
Weitchpec
Hoopa
Legend
Yurok Reservation Boundary 55,297 Acres
Yurok Tribal Trust 3,127 Acres
Yurok Allotment 3,930 Acres
Hoopa Trust & Allotments 86,390 Acres


Northwest Coast Ancestral Territories
The hand book of North American Indians was a reference for the data development of Northwest Coast Ancestral Territories. Some Tribes have provided the Yurok Tribe GIS Division with their ancestral boundary coverages so that accurate boundaries can be displayed. This map is being updated annually based on new coverages provided from other Tribal Agencies.
Smith River
Gasquet Mtn
Young Peak
Bear Basin Buttes
Tolowa
Crescent City
Elk Valley
Tolowa Nation
Blue Peak
Red Mtn
Klamath
Resighini
Karuk
Sickewitz Peak
Barron Butte
Orleans
Trinity
Chimney Rock
Salmon Mtn
Big Lagoon
Chilula
Big Foot
Trinidad
Hupa
Arcata
Mad River
Whilkut
Eureka
Samangwa
Chimariko
Wiyot
Table Bluff
Bear River
Chalk Rock
Nongatl
Mattole
Lonlangkok
LEGEND
Mountain Peaks
RANCHERIAS
Big Lagoon
Blue Lake
Elk Valley
Resighini
Bear River
Smith River
Table Bluff
Tolowa Nation
Trinidad
County Boundary
Coastal Shoreline
Hydrology
Hoopa Reservation
Yurok Reservation Boundary
Yurok Ancestral Territory
Karuk Ancestral Territory
Ancestral Territories
Chilula
Hupa
Lonlangkok
Mad River Whilkut
Mattole
Nongatl
North Fork Whilkut
Redwood Creek Whilku
Samangwa
Tolowa
Wiyot
1 inch equals 8.8 miles