RIGHTS OF INDIANS IN THE HOOPA VALLEY RESERVATION, CALIFORNIA

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Indian Tribes: Tribal Government

The Commissioner of Indian Affairs has been correct, as a matter of law, in recognizing tribal title to the communal lands of the 12 miles square executive order reservation in the Hoopa Valley Tribe. The Commissioner has been further correct in paying out per capita payments as authorized generally by the act of March 2, 1907, 34 Stat, 1221, to enrolled members of the Hoopa Valley Tribe only.

Indian Lands: Tribal Lands: Generally—Indian Tribes: Tribal Government

Nothing in the Order of October 16, 1891 indicates an intent to confer upon the Klamath River Indians an interest in the realty of the original Hoopa Valley Reservation. Despite the enlargement of the original Hoopa Valley Reservation, the Klamath River Tribe was never merged with nor absorbed into the Hoopa Valley Tribe. Therefore, the fact that the Hoopa Valley Tribe limited the scope of its jurisdiction under its 1949 Constitution does the Klamath River Indians no injustice. As an independent tribal group, neither the Klamath River Indians nor their successors, the Yuroks, have any property right in the original twelve mile square.

Indian Lands: Possessory Rights

It would be an unconstitutional taking to permit the Klamath River (Yurok) Indians to diminish the value of the right of occupancy in Hoopa Valley by paying to them a part of the proceeds of the resources taken therefrom. The Hoopa Indians have occupied this part of the reservation since 1865 and the benefits of such occupancy belong to them.

Indian Tribes: Reservations

Inasmuch as the Indian Reorganization Act provided a method of uniting the Hoopa and Klamath River tribes, and both tribes rejected such a plan, it is our opinion that these groups remain and must be recognized as independent tribal groups until such time as they affirmatively and voluntarily form a consolidated governmental body having jurisdiction over the total reservation both as to government and as to economic resources. Such a confederation or consolidation has not taken place.

Memorandum

To: Commissioner of Indian Affairs
From: Deputy Solicitor
Subject: Rights of Indians in the Hoopa Valley Reservation, California

This opinion is given in response to your request for a determination of the legality of recent per capita distributions to members of the Hoopa Valley Tribe of California. The per capita payments were made by request of the recognized governing body of the Hoopa Valley Reservation. Recipients are those persons whose names appear on the tribal membership roll approved by the Commissioner on March 25, 1952. The official membership roll approved October 1, 1949, contains the names of allottees, their descendants, unallotted residents of the twelve mile square area of Hoopa Valley who were eligible to receive allotments at the time the allotments were made, and other persons made members of the tribe by adoption.[1]

It has been contended on behalf of certain members of the Yurok tribe that Indians and their descendants who were allotted on lands formerly known as the Klamath River Reservation and on that portion of the enlarged Hoopa Valley Reservation commonly referred to as the "Connecting Strip" or "Extension" are entitled to share equally in the payments from the proceeds of timber sales on the area comprising the original Hoopa Valley Reservation. It is further alleged that the Bureau of Indian Affairs improperly authorized the disbursal of per capita payment money at the request of the Hoopa Valley Business Council because the Hoopa Valley Tribal Constitution under which it acts is invalid.

A group of Indians had been politically recognized as a Hoopa tribe by the United States as early as 1851 when a treaty was negotiated with the "Hoo-pah" or, as they were sometimes otherwise called, the Trinity River Indians. Although this treaty was never ratified, it is convincing evidence of the existence of a Hoopa tribal group. Later, this tribal group exercised the rudiments of community government over the Indians of an area

[1] Constitution and By-laws of Hoopa Valley Tribe. Article IV. Membership. Approved September 4, 1952. Appendix I. Cf. also letter of Superintendent Boggess to Commissioner on January 13, 1947, re Hoppa Business Council resolution declaring all lands and resources of 12 miles square to be property of Hoopa Valley Indians alone.

comprising the twelve mile square original Hoopa Valley reservation and were thus qualified for political recognition as a tribe occupying the reserved area. We have seen no evidence, or contention, that any other tribal group claimed, at that time any governmental or economic jurisdiction over the twelve mile square area of the original Hoopa Valley Reservation.

Subsequent to the admission of California as a state, the announced intent of Congress was to collect the various groups of Indians in California and to locate them on reservations set aside to afford protection against the encroachment of white settlers. On April 8, 1864 (13 Stat. 39) Congress authorized the President, in his discretion, to set aside not more than four tracts of land in California to be retained by the United States as Indian reservations, suitable in extent to accommodate the Indians in that State. The lands were to be located as remote from white settlements as possible, having due regard for their adaptability for the purpose for which they were intended. The act further provided that at least one of the reservations be located in what had theretofore been known as the "Northern District." Pursuant to this act, the Hoopa Valley Reservation was established as one of the four reservations contemplated by the legislation.

Administrative actions looking toward the setting aside of this area as an Indian reservation were begun on August 21, 1864; and by 1865 a number of Hoopa Indians had already been located in Hoopa Valley which was formally reserved by Executive Order in 1876.

The Executive Order establishing the Hoopa Valley Reservation provided:

> "EXECUTIVE MANSION, June 23, 1876. It is hereby ordered that the south and west boundaries and the portion of the north boundary west of Trinity River, surveyed in 1875 by C. T. Bissel, and the courses and distances of the east boundary, and the portion of the north boundary east of Trinity River reported but not surveyed by him, viz: Beginning at the southeast corner of the reservation at a post set in mound of rocks, marked 'H.V.R., No. 3,' thence south 17½° west 905.15 chains to southeast corner of the reservation; thence south 72° west 480 chains to the mouth of Trinity River, be, and hereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and the land embraced therein, an area of 89,752.43 acres, be, and hereby is, withdrawn from public sale, and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart in California by act of Congress approved April 8, 1864. (13 Stat., p. 39) U.S. GRANT."

It should be noted that this Executive Order designates no particular tribe or class of Indians as the inhabitants of the area set aside. The order, therefore, must be construed as setting aside the reserve for the benefit of any Indians who were then occupying the area and those who availed themselves of the opportunity for settlement which the reservation presented from time to time. When the President formally set the boundaries of the Hoopa Valley Reservation on June 23, 1876, a "Hoopa Tribe," composed of remnants of the Hunstang, Hupa, Redwood, Saiaz, Sermalton, Miskut, and Tish-tang-a-tan bands of Indians, was already well established thereon. This tribe became stabilized in the area and somewhere along the line adopted a constitutional form of government and ever since has maintained its local integrity. The records of the Indian Bureau show that by 1916 the group was well organized with a representative tribal council.

> "This [Hoopa] council is composed of Indians living on the Hoopa Valley Reservation proper and represents all of the tribes not now extinct enumerated in the Act of Congress and presidential proclamation setting aside this as an Indian Reservation * * *. The Hoopa Council are the duly authorized representatives of the Indians in Hoopa Valley Reservation." [2]

The "Hoopa Valley Tribe" has continually exercised tribal governmental functions within the confines of the Hoopa Valley Reservation as established by the Executive Order of June 23, 1876, and is the proper organization for carrying on the functions of administering and managing whatever communal property or land may be owned or beneficially held by that tribe. We note that the tribe in 1949 adopted a written constitution which apparently fairly included as members all persons enrolled on the official roll of the Hoopa Valley Tribe and all children of at least one-quarter Indian blood, born to such members.

We conclude, therefore, that as a matter of law the Commissioner of Indian Affairs has been correct in recognizing tribal title to the communal lands in the twelve mile square reservation to be in the Hoopa Valley Tribe. Cf. *Spalding* v. *Chandler*, 160 U.S. 394, 34 Op. A.G. 181, 1924. The superior

[2] Letter from Superintendent Morsdolf to Commissioner of Indian Affairs, June 19, 1916.

title of the Government in tribal lands and in allotted lands where no patents have been issued, implies, of course, wise management. It does not confer on the Government the right to despoil a tribe or an allottee of accrued rights. *St. Marie* v. *United States,* 24 F. Supp. 237, 240. The Commissioner has been correct in paying out per capita payments, authorized by the act of March 2, 1907, 34 Stat. 1221, only to enrolled members of the Hoopa Valley Tribe. This action is consonant with the principle that the test of the privilege of an individual Indian to share in tribal resources is tribal membership. *Halbert* v. *United States,* 283 U.S. 753.

We now turn our attention to the contention that Indians other than enrolled members of the Hoopa Valley Tribe have a claim of right to an interest in the communal lands and resources of the Hoopa Valley reservation because the twelve mile square reservation was enlarged by the addition of a contiguous area of land on which Indians of other bands were residing.

The first pertinent act of Congress providing for reservations for the Indians of California was the Act of March 3, 1853, 10 Stat. 238. This act authorized the President to "make five military reservations from the public domain in the State of California * * * for Indian purposes." The Act limited the area which might be reserved to 25,000 acres and appropriated $250,000 for subsistence and costs of removing the Indians to the reserved area. One of the areas so reserved was the Klamath River Reservation established November 16, 1855, by the Executive Order of President Franklin Pierce.

In the year 1861, a flood destroyed the arable lands of the Klamath River Reservation and some of the Indians located thereon were removed to a new temporary reservation known as the Smith River Reserve, established May 3, 1862. A majority of these Indians preferred to reside on the old reservation, however, and nearly all of them returned within a few years to the Klamath River area. Meanwhile, by the act of April 8, 1864, *supra,* the State of California was constituted one superintendency for the administration of Indian affairs and the President was authorized to set apart four additional tracts of land within the State for Indian purposes. There were already in existence at that time the following reservations: Klamath River, Mendocino and Smith River. Both the Mendocino and Smith River reservations were later discontinued by the act of July 27, 1868, 15 Stat. 221, 223. During this time, the Klamath River lands were treated as a distinct reservation administered by an Indian Agent of the United States who also oversaw the affairs and development of the Hoopa Valley Reservation approximately 20 miles away. As an aid to the administration of these two separated areas, they were brought together under the Order of October 16, 1891, which reads as follows:

> "EXECUTIVE MANSION, October 16, 1891. It is hereby ordered that the limits of the Hoopa Valley Reservation, in the State of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart in said State by act of Congress approved April 8, 1864 (13 Stat. 39) be, and the same are hereby, extended so as to include a tract of country 1 mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley Reservation to the Pacific Ocean: *Provided, however,* that any tract or tracts included within the above-described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended. BENJ. HARRISON."

The limits of the Hoopa Valley Reservation were thus extended by the Executive Order of October 16, 1891, to include a tract of land containing approximately 25,635 acres, one mile in width on each side of the Klamath River, extending from the limits of the Hoopa Valley Reservation to the Pacific Ocean. This enlarged Hoopa Reservation took a shape similar to that of a spoon with the Hoopas located in its bowl and the Klamath River Indians strung out along its handle. The following year, under the act of June 17, 1892, Congress discontinued the Klamath River Reservation as such, but preserved some rights for Indians previously located on the reservation by providing for allotments to all Indian applicants who made their selection thereon within one year. All lands not selected for allotment were opened to settlement under the public land laws. Indians who removed from the former Klamath River Reservation were relocated on the connecting strip and elsewhere, and the Klamath River Tribe became widely scattered.

The Klamath River Indians, whose ancestors formerly resided on the Klamath River Reservation, have consistently been regarded as an identifiable tribe by the Federal Government. See 33 L.D. 205, 218. These Indians are also included in the general term "Yurok" meaning downstream Indians although a Yurok Tribe, as such, was not organized until recent years. The "Yurok Tribe" has never been recognized as having jurisdiction over any

part of the "Hoopa Extension" because its membership is not confined to reservation Indians.[3]

We can find no evidence to indicate that the enlargement of the reservation was intended in any way to upset the property interests of the Hoopa tribe to the original area under its jurisdiction. We read nothing in the Order of 1891 to show an intent to confer upon the Klamath River Indians an interest in the realty of the original Hoopa Valley Reservation.

The former Klamath River reservation and the connecting strip are, technically, a part of the enlarged Hoopa Valley Reservation. However, to construe the order enlarging the Hoopa Valley Reservation as divesting the Hoopa Valley Tribe of their rights in their communal property would be contrary to established law. The rights of Indians to property within reservations attach when the lands are set aside. 34 Op. A.G. 171, 176 (1924). *United States* v. *Santa Fe R.R. Co.*, 314 U.S. 339. The rights of the Hoopa Indians to the Hoopa Valley reservation antedate the Executive Order of 1891. Such vested rights in the land are not affected, without the tribe's consent, by a subsequent order enlarging the area of the reservation. To distribute the income from the assets of the original part of the Hoopa Valley Reservation to all the Indians in the Northern District of California would be to give to many of them the benefit of a right to which they are not entitled. Congress, as a trustee for unassimilated Indians, has power to legislate for the proper control and management of such of their property as is held by the Government in a trust capacity, but this power is not so extensive as to enable the Government "to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation * * *; for that would not be an exercise of guardianship, but an act of confiscation." *United States* v. *Creek Nation*, 295 U.S. 103, 110, citing *Lane* v. *Pueblo of Santa Rosa*, 249 U.S. 110, 113; *Cherokee Nation* v. *Hitchcock*, 187 U.S. 294, 307-308. Cf. *United States* v. *Klamath Modoc Tribes, et al.*, 304 U.S. 119. It would be an unconstitutional taking diminishing the value of the Hoopa Indians' right of occupancy, if the Klamath River (Yurok) Indians were permitted to share the proceeds of the resources taken from the 12 mile square. The Hoopa Indians have occupied the 12 mile square area of the reservation since 1865 and the benefits of such occupancy belong to them. *Shoshone Tribe* v. *United States*, 299 U.S. 476, 496. Each and every individual member of the many tribes or bands of California Indians was privileged after 1865 to settle upon this reservation. None of them was required to do so. Those who accepted became vested with the full incidents of Indian title. Those who did not accept, and chose to remain where they were, or move elsewhere, cannot be properly regarded as being invested with enforceable rights thereon either in themselves or in their posterity. Cf. Sol. Op. M–36181, Ownership of Unallotted Lands on the Tulalip Indian Reservation in the State of Washington, February 21, 1956.

It has been alleged that the Hoopas withdrew from an existing Hoopa-Klamath tribal organization without knowledge or consent of the Klamaths. In view of the history of these tribes as set out above, that assertion is not well founded. On the contrary, the Klamath River Tribe was never merged with nor absorbed into the Hoopa Valley Tribe. Therefore, the action by which the Hoopa Valley Tribe limited the scope of its jurisdiction under its 1949 Constitution does the Klamath River Indians no injustice.

The Hoopa Indians have actively attempted for more than half a century to preserve their interests in the Hoopa Valley Reservation and to keep the Klamath River Indians, and any others, from acquiring any tribal right in the area of the original twelve mile square. There is nothing in the records to indicate a recession from the position they held before Klamath River lands were annexed to the Hoopa Valley reservation. A study of the various actions taken in connection with the allotment of land on the reservations discloses the active resistance of the Hoopa tribe to the encroachment and claims of other tribes and other Indians. At a time when a number of outsiders were attempting to obtain allotments at Hoopa Valley, the tribal council, anxious to preserve the reservation for Indians of the Hoopa tribe, stated in a letter dated June 19, 1916, to the Commissioner of Indian Affairs:

> "There are certain tribes that are regarded as having tribal rights on the Hoopa reservation. This we cannot understand. Take the Klamath for instance—they represent a different tribe, talk a different language, and have never associated with the Hoopas to amount to anything. As near as we can understand the Hoopa and Klamath River reservation were allotted twenty some odd years ago. The Klamath are today enjoying the rights of their

[3] Yurok Tribe, incorporated under laws of California, October 24, 1949. The organization is recognized for the purposes for which it was formed namely "to promote the cultural, social, educational, and economical well being of members of the Yurok Tribe." Letter from Assistant Commissioner to Mrs. Lowana Brantner, November 26, 1954.

allotments, own their lands and homes. While the Hoopas have had their land resurveyed and are now waiting to receive their allotments and are still uncertain about our land, and still they say we are linked with the other tribes—surely there must be a mistake somewhere * * *."

In reply, the Indian Bureau stated that only those persons enrolled as Indians on the Hoopa Valley Reservation or voluntarily adopted by the tribal business committee could be granted "any benefits whatever as Indians of the Hoopa Valley Reservation." [4] Allotment rolls for Hoopa Valley were closed in 1923, but were subsequently reopened when other surveys were subsequently made in 1929 and 1933.

In May of 1932, the Superintendent wrote to the Commissioner requesting definite instructions for the allotting of the Hoopa Valley. At that time about 175 selections of land for allotment had been on file at the agency for a period of nearly five years, and many Indians were in possession of definite tracts and had improved such lands. With respect to the situation on the reservation, the Superintendent made this observation:

"The Office should understand that the great majority of these Indians feel that the Klamath and the Hoopa countries are separate and distinct and there is no fixed desire on the part of the Hoopas to take over any unallotted Klamath lands, and the great majority of the Klamaths have no desire to come in and take over Hoopa country. I am not unmindful of previous statements that have been made to me by the Office to the effect that it is considered by the Office as one reservation only."

The reply to this letter announced that a representative of the Commissioner was on his way to the reservation and would "go over the situation * * * on the ground." [5]

Shortly thereafter, special allotting agent Charles E. Roblin was sent to Hoopa Valley to study the matter and report his views. The Roblin report, dated November 19, 1932, recommended that further allotments be authorized on the Hoopa Valley Reservation but that such allotment be limited to the agricultural lands, with the right to such allotments given only to those who had already occupied and improved lands for beneficial use. Two months later, in a supplemental report, Agent Roblin withdrew his recommendation that actual use be a condition precedent to allotment and recommended that claimants whose selections covered surveyed lands have their selections confirmed, provided that the individual's enrollment on the Hoopa Valley Agency rolls was regular and that he was entitled to allotment. Roblin further stated that among the Indians, a sentiment of urgency prevailed "based largely on a desire of the Hoopa Indians to exclude the Klamath River and Lower Klamath Indians from allotment on the original Hoopa Valley Reservation." It was Roblin's opinion "that the objection to the rights of these claimants *as a class,* should be disregarded." The Commissioner agreed that Indians from the "Connecting Strip" and the former Klamath River Reservation should be allotted equally with those already living on the original Hoopa Valley Reservation, but conceded that there was no sufficient available land to allot all these Indians thereon. Therefore, he approved only the allotment schedules which had been previously submitted by the Hoopa tribal council in 1921 stating, "after the schedules referred to above, no further allotments at Hoopa Valley will be made at this time." All unallotted lands were then held for tribal use under a proposed Indian Reorganization Act.

Subsequently, on November 20, 1933, the Commissioner of Indian Affairs approved a Constitution and Bylaws of the Hoopa Business Council which provided in part:

"Article III. The business council shall be composed of seven enrolled members of the Hoopa tribe; bona fide residents of Humboldt County, California, and twenty-one years of age or over."

The Council represented only the Indians of the twelve mile square Hoopa proper. The Klamath River Extension was not represented on this council, and has not been represented there since.

As a result of the enactment of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, a question arose as to whether a single referendum should be held on the enlarged Hoopa reservation; or whether separate elections should be held on the two areas permitting each section to determine its own destiny. On October 20, 1934, Commissioner John Collier communicated his decision to Mr. Roy Nash, District Coordinator for Reorganization Act in a letter containing the following sanction:

"Superintendent Boggess is authorized to hold two separate elections on the Hoopa Valley Reservation, one of them on Hoopa Valley proper for the Hoopa, and another election on

[4] Letter from Chief Clerk, Indian Bureau, to Superintendent, Hoopa Valley School, July 17, 1916.

[5] Letter to Superintendent from Assistant Commissioner, dated September 16, 1932.

the territory occupied by the Klamath Indians, when the Secretary calls such election."

The records further show that on December 15, 1934, the Indians on the Hoopa Valley Reservation voted to make the Indian Reorganization Act inapplicable on that reservation. The Klamath River Indians also opposed the application of the act to lands occupied by themselves. Thus, in two separate elections, which might have resulted in more closely tying the extension lands with the original twelve mile square area, both the Hoopa Indians and the Klamath River Indians defeated the reorganization measure. The total of votes for each of these tribes is recorded separately.[6]

Inasmuch as the Indian Reorganization Act provided a method of uniting the Hoopa and Klamath River tribes, and both tribes rejected such a plan, these groups remain and must be recognized as independent tribal groups until such time as they affirmatively and voluntarily form a consolidated governmental body having jurisdiction over the entire reservation. Such a confederation or consolidation has not taken place.

In summary, it is our opinion that the contentions on behalf of the Yurok Indians have not been substantiated, and that the Bureau of Indian Affairs has properly carried out its responsibilities in the premises. In reply to your specific questions, no Indians other than those enrolled as members of the Hoopa Tribe of the original 12 mile square reservation and their descendants have rights of participation in the communal property on that part of the Hoopa Valley Reservation.

The Indian inhabitants of the Hoopa Extension and the other areas outside the jurisdiction of the Hoopa Valley Tribe may associate as a separate Indian tribe, or tribes, under constitutions acceptable to them and to the Bureau of Indian Affairs. But no such association can work to vest such Indians with an interest in the Hoopa Valley proper.

EDMUND T. FRITZ,
Deputy Solicitor.

CONDEMNATION ACTIONS INVOLVING INDIAN LANDS WITHIN THE RANDALL DAM AND RESERVOIR PROJECT, SOUTH DAKOTA

February 27, 1958.

Memorandum

To: Commissioner of Indian Affairs
From: Solicitor
Subject: Condemnation actions involving Indian lands within the Randall Dam and Reservoir Project, South Dakota

Subsequent to the memorandum of January 17, 1958, from the Acting Assistant Solicitor, Indian Appeals and Litigation, on this subject, additional correspondence on the subject from the Director of the Missouri River Basin Investigations Project was referred to this office. In his letter to you dated January 17, 1958, the Director recommended that the Secretary of the Interior request the Department of Justice to delay calling any of the Indian tracts to trial until after Congress shall have had a chance to consider further the matter of a settlement by legislation.

A check on the proposed legislation discloses the following situation. The Department's proposed report on H.R. 6125, a bill "To provide for the acquisition of lands by the United States required for the reservoir created by the construction of Randall Dam on the Missouri River and for rehabilitation of the Indians of the Crow Creek Sioux Reservation, South Dakota, and for other purposes" was submitted July 3, 1957, to the Bureau of the Budget for advice concerning the relationship of the proposed report to the program of the President. The proposed report recommends that Section 1 of H.R. 6125 be revised to read:

> "In addition to the fair value of the lands or interests in lands belonging to the Indians of the Crow Creek Reservation that were acquired by the United States for the purposes of the Randall Dam and Reservoir project by condemnation in the case of *United States* v. *Crow Creek Tribe of Sioux Indians, et al.*, Civil Action 844, S.D., covering 269.24 acres, and Civil Action 184, covering 9,148.69 acres filed in the United States District Court for the District of South Dakota, Central Division, such Indians shall receive the additional payments and benefits provided for in this Act."

The reasons given in the proposed report for this suggested amendment are as follows:

> "Title to the lands in question is already vested in the United States pursuant to a condemnation action that is now pending in which a Declaraion of Taking has been filed. The bill should recognize this fact rather than purport to convey to the United States a title which the United States already has acquired.

[6] Haas, "Ten Years of Tribal Government Under I.R.A.," U.S. Indian Service, 1947, p. 14.