

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 2009-5084

HOOPA VALLEY TRIBE on its own behalf, and in its capacity
as *parens patriae* on behalf of its members,
OSCAR BILLINGS, BENJAMIN BRANHAM, JR.,
WILLIAM F. CARPENTER, JR., MARGARET MATTZ DICKSON,
FREEDOM JACKSON, WILLIAM J. JARNAGHAN, SR.,
JOSEPH LEMIEUX, CLIFFORD LYLE MARSHALL,
LEONARD MASTEN, JR., DANIELLE VIGIL-MASTEN,
LILA CARPENTER, and ELTON BALDY,
Plaintiffs-Appellants,

v.

UNITED STATES,
Defendant/Third Party Plaintiff-
Appellee,

v.

YUROK TRIBE,
Third Party Defendant-Appellee.

BRIEF FOR APPELLEE THE UNITED STATES

JOHN C. CRUDEN
Acting Assistant Attorney General

KATHRYN E. KOVACS
MARY GABRIELLE SPRAGUE
United States Department of Justice
Environment & Natural Resources Division
Appellate Section
P.O. Box 23795, L'Enfant Plaza Station
Washington, D.C. 20026
202-514-2753
mary.gay.sprague@usdoj.gov

TABLE OF CONTENTS

	PAGE
STATEMENT OF RELATED CASES	x
STATEMENT OF JURISDICTION	1
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	6
A. Background	6
B. The <i>Short</i> Litigation Prior to the Settlement Act	7
C. The Legislative History of the Hoopa-Yurok Settlement Act of 1988	9
D. Summary of the Settlement Act's Provisions and Implementation .	11
1. Partition	11
2. Distribution of Pre-Settlement Act Revenues	12
<u>Creation of the Settlement Fund</u>	12
<u>Settlement Roll</u>	13
<u>Notice of Options</u>	13
<u>Distributions to Hoopa and Yurok Trust Accounts</u>	14
<u>Individual Payments</u>	16

<u>Remainder Distribution to Yurok Account</u>	17
<u>Yurok Waiver Requirement</u>	18
3. Formation of the Yurok Tribe	18
E. The <i>Short</i> Litigation Following the 1988 Settlement Act	19
F. The Yurok Tribe’s Takings Claim	20
G. Interior’s Interpretation of the Yurok Waiver Provisions	21
H. The Yurok Tribe’s Per Capita Distribution	25
SUMMARY OF ARGUMENT	26
STANDARD OF REVIEW	29
ARGUMENT	29
A. Hoopa Plaintiffs Were Not Beneficiaries of the Settlement Fund	29
1. The Settlement Act Governed Rights to the Settlement Fund and Did Not Give Individual Hoopa Indians Any Rights	29
2. Any Statutory Duty the United States Owed to Individual Members of the Hoopa Tribe under the 1864 Act and 25 U.S.C. § 407 Was Superseded by the Settlement Act	34
3. The Law of the <i>Short</i> Case Did Not Govern Rights to the Settlement Fund	36
B. Because the Hoopa Plaintiffs Were Not Beneficiaries of the Settlement Fund, They Have No Standing to Sue the United States for Breach of Trust	39

C.	Even if Individual Members of the Hoopa Tribe Were Beneficiaries of the Settlement Fund, Which They Were Not, the Hoopa Tribe Would Still Not Have Standing to Sue the United States as <i>Parens Patriae</i> for its Remaining Members	42
D.	On the Merits, Interior Reasonably Interpreted the Settlement Act to Authorize Release of the Yurok Tribe's Apportioned Share	48
	CONCLUSION	57
	ADDENDUM	58
	CERTIFICATE OF SERVICE	59
	CERTIFICATE OF COMPLIANCE	60

TABLE OF AUTHORITIES

	PAGE
CASES :	
<i>Abrams v. Heckler</i> , 582 F. Supp. 1155 (S.D.N.Y. 1984)	45
<i>Alfred L. Snapp & Son, Inc. v. Puerto Rico</i> , 458 U.S. 592 (1982)	28,42,43,47
<i>American Rivers v. FERC</i> , 201 F.3d 1186 (9th Cir. 2000)	46,47
<i>Anderson v. United States</i> , 344 F.3d 1343 (Fed. Cir. 2003)	39
<i>Brotherhood of Locomotive Engineers v. Atchison, T. & S.F.R.R.</i> , 516 U.S. 152 (1996)	51
<i>Chevron U.S.A. Inc. v. Natural Resources Defense Council</i> , 467 U.S. 837 (1984)	51-53
<i>Deal v. United States</i> , 508 U.S. 129 (1993)	51
<i>Fathauer v. United States</i> , 566 F.3d 1352 (Fed. Cir. 2009)	29
<i>Heller, Ehrman, White & MacAuliffe v. Babbitt</i> , 992 F.2d 360 (D.C. Cir. 1993)	17,26
<i>In re Blue Lake Forest Products</i> , 30 F.3d 1138 (9th Cir. 1994)	44

<i>Kansas v. United States</i> , 748 F. Supp. 797 (D. Kan. 1990)	45,47
<i>Karuk Tribe of California v. United States</i> , 41 Fed. Cl. 468 (1998), <i>aff'd</i> , 209 F.3d 1366 (Fed. Cir. 2000)	6,21,34,36,40,49,55
<i>Kickapoo Tribe of Oklahoma v. Lujan</i> , 728 F. Supp. 791 (D.D.C. 1990)	47
<i>LeBeau v. United States</i> , 474 F.3d 1334 (Fed. Cir. 2007)	41,42,47,48,50
<i>Lucent Technologies, Inc. v. Gateway, Inc.</i> , 543 F.3d 710 (Fed. Cir. 2008)	29
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	39,40
<i>Massachusetts v. Mellon</i> , 262 U.S. 447 (1923)	28,42,46,47
<i>National Cable & Telecomm. Ass'n v. Brand X Internet Services</i> , 545 U.S. 967 (2005)	52,53
<i>Northern Paiute Nation v. United States</i> , 10 Cl. Ct. 401 (1986)	43
<i>Price v. State of Hawaii</i> , 764 F.2d 623 (9th Cir. 1985)	40
<i>Puzz v. United States</i> , 1988 WL 188462 (N.D. Cal. April 8, 1988)	10,20
<i>Quechan Indian Tribe v. United States</i> , 535 F.Supp.2d 1072 (S.D. Cal. 2008)	46

<i>Short v. United States</i> , 486 F.2d 561 (Ct. Cl. 1973) (“ <i>Short I</i> ”)	2,7
<i>Short v. United States</i> , 661 F.2d 150 (Ct. Cl. 1981) (“ <i>Short II</i> ”)	2,8
<i>Short v. United States</i> , 719 F.2d 1133 (Fed. Cir. 1983) (“ <i>Short III</i> ”)	2,8,35,38
<i>Short v. United States</i> , 12 Cl. Ct. 36 (1987) (“ <i>Short IV</i> ”)	2,7,8-9
<i>Short v. United States</i> , 25 Cl. Ct. 722 (1992) (“ <i>Short V</i> ”)	2
<i>Short v. United States</i> , 28 Fed. Cl. 590 (1993) (“ <i>Short VI</i> ”)	2,20,37-39
<i>Short v. United States</i> , 50 F.3d 994 (Fed. Cir. 1995) (“ <i>Short VII</i> ”)	2
<i>Sisseton-Wahpeton Sioux Tribe v. United States</i> , 895 F.2d 588 (9th Cir. 1990) (“ <i>Sisseton-Wahpeton I</i> ”)	44
<i>Sisseton-Wahpeton Sioux Tribe v. United States</i> , 90 F.3d 351 (9th Cir. 1996) (“ <i>Sisseton-Wahpeton II</i> ”)	43,44,47
<i>Summers v. Earth Island Institute</i> , 129 S. Ct. 1142 (2009)	41
<i>United States v. Alvarez-Sanchez</i> , 511 U.S. 350 (1994)	51
<i>United States v. Estate of Romani</i> , 523 U.S. 517 (1998)	35

<i>United States Department of the Interior v. FERC</i> , 952 F.2d 538 (D.C. Cir. 1992)	46
--	----

<i>Warth v. Seldin</i> , 422 U.S. 490 (1975)	41
---	----

STATUTES, RULES AND REGULATIONS:

Act of April 8, 1864, An Act to Provide For the Better Organization of Indian Affairs in California, 13 Stat. 39 .	6,29,34-35
---	------------

Cherokee, Choctaw and Chickasaw Nations Claims Settlement Act 25 U.S.C. § 1779f(b)	50
---	----

Hoopa-Yurok Settlement Act of 1988, Pub. L. No. 100-580, 102 Stat. 2924, codified as amended at:	
25 U.S.C. § 1300i <i>et seq</i>	1,3
25 U.S.C. § 1300i(b)(5)	31
25 U.S.C. § 1300i-1	11,54
25 U.S.C. § 1300i-1(a)	12
25 U.S.C. § 1300i-1(c)(2)	12
25 U.S.C. § 1300i-1(c)(3)	12
25 U.S.C. § 1300i-1(c)(4)	18,19,23,33,50
25 U.S.C. § 1300i-1(c)(4)(D)	54
25 U.S.C. § 1300i-1(e)	54
25 U.S.C. § 1300i-2	36-38
25 U.S.C. § 1300i-3	33
25 U.S.C. § 1300i-3(a)(1)	12
25 U.S.C. § 1300i-3(b)	12,32
25 U.S.C. § 1300i-3(c)	14,29,31
25 U.S.C. § 1300i-3(d)	14,29
25 U.S.C. § 1300i-3(e)	16
25 U.S.C. § 1300i-4(a)	31
25 U.S.C. § 1300i-4(a)(1)(c)	30,31
25 U.S.C. § 1300i-4(b)	13
25 U.S.C. § 1300i-5	13,14

25 U.S.C. § 1300i-5(a)(4)(A)	13
25 U.S.C. § 1300i-5(b)	30
25 U.S.C. § 1300i-5(b)(4)	30
25 U.S.C. § 1300i-5(c)	16
25 U.S.C. § 1300i-5(c)(3)	30
25 U.S.C. § 1300i-5(c)(4)	30
25 U.S.C. § 1300i-5(d)	16,30
25 U.S.C. § 1300i-5(d)(3)	30
25 U.S.C. § 1300i-6	33
25 U.S.C. § 1300i-6(a)	17,29
25 U.S.C. § 1300i-6(b)	15,17,25,31
25 U.S.C. § 1300i-8	18,54
25 U.S.C. § 1300i-8(d)(1)	55
25 U.S.C. § 1300i-8(d)(2)	19
25 U.S.C. § 1300i-8(d)(5)	19,22
25 U.S.C. § 1300i-8(e)	19
25 U.S.C. § 1300i-11	20,49,50
25 U.S.C. § 1300i-11(c)	22,49
25 U.S.C. § 1300i-11(c)(1)	49
25 U.S.C. § 1300i-11(c)(2)	49
 Hoopa-Yurok Settlement Act of 1988, Pub. L. No. 100-580 § 13	 35
 Mississippi Sioux Tribes Judgment Fund Distribution Act	
25 U.S.C. § 1300d-26(a)	50
25 U.S.C. § 1300d-26(b)	50
25 U.S.C. § 1300d-27(a)	50
25 U.S.C. § 1300d-27(e)	50
 Pub. L. No. 101-301, 104 Stat. 206 (May 24, 1990)	 13
 25 U.S.C. § 117a	 15,57
25 U.S.C. § 407	29,34-35
25 U.S.C. § 1407	57
28 U.S.C. § 171	39
28 U.S.C. § 1295(a)(3)	1

S. Rep. No. 100-564 (Sept. 30, 1988)	10-11,14,36,37
S. Rep. No. 101-226, <i>reprinted in</i> 1990 U.S.C.C.A.N. 196	13
53 Fed. Reg. 49,361 (Dec. 7, 1988)	12
53 Fed. Reg. 49,795 (Dec. 9, 1988)	13
54 Fed. Reg. 5,552 (Feb. 3, 1989)	13
56 Fed. Reg. 12,062 (Mar. 15, 1991)	13
56 Fed. Reg. 22,996 (May 17, 1991)	14

MISCELLANEOUS:

C. Fraser, Note, <i>Protecting Native Americans: The Tribe as Parens Patriae</i> , 5 Mich. J. Race & L. 665 (Spring 2000)	45
---	----

STATEMENT OF RELATED CASES

- (a) No appeal in or from the same civil action or proceeding in the lower court was previously before this or any other appellate court. However, this case involves the Hoopa-Yurok Settlement Act of 1988, which has been addressed by this Court in other contexts in *Short v. United States*, 50 F.3d 994 (Fed. Cir. 1995) (Circuit Judges Mayer, Michel and Rader), and *Karuk Tribe of California v. United States*, 209 F.3d 1366 (Fed. Cir. 2000) (Circuit Judges Newman, Rader and Schall).
- (b) There is no case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal.

STATEMENT OF JURISDICTION

This Court has jurisdiction over an appeal from a final decision of the United States Court of Federal Claims pursuant to 28 U.S.C. § 1295(a)(3).

STATEMENT OF THE ISSUE

Whether the Court of Federal Claims correctly held that the plaintiffs were not beneficiaries of the Settlement Fund created by the Hoopa-Yurok Settlement Act of 1988 (“Settlement Act”),^{1/} could not have been injured when the Department of the Interior paid to the Yurok Tribe its apportioned share of the Settlement Fund, and therefore had no standing to litigate whether the Settlement Act authorized Interior to make that payment.

STATEMENT OF THE CASE

Twelve individual members of the Hoopa Valley Tribe, and the Hoopa Valley Tribe (“Hoopa Tribe”) in its alleged capacity as *parens patriae* for its remaining individual members,^{2/} collectively “Hoopa Plaintiffs,” sued the United

^{1/} The relevant provisions of the Hoopa-Yurok Settlement Act of 1988, Pub. L. No. 100-580, 102 Stat. 2924, codified as amended at 25 U.S.C. § 1300i *et seq.*, are in the Addendum. Provisions of the Settlement Act are referred to herein by their U.S. Code section numbers.

^{2/} While the Hoopa Tribe filed its complaint “on its own behalf” as well as “in its capacity as *parens patriae* on behalf of its members,” the Tribe subsequently acknowledged that it has no claim on its own behalf. *See* A8 n.1 (“Plaintiffs concede that the Hoopa Valley Tribe has no residual entitlement to the Fund.”).

States in the Court of Federal Claims on February 1, 2008, alleging that Interior breached its trust responsibility to them by disbursing the balance of the Settlement Fund to the Yurok Tribe on April 20, 2007. The Hoopa Tribe had received its apportioned share of the Settlement Fund in 1991. On January 15, 2008, the Yurok Tribe made a per capita distribution of a portion of that money to its members. Hoopa Plaintiffs claim, in effect, that under the law of the *Short* case,^{3/} the Yurok Tribe should have included members of the Hoopa Tribe in that distribution. Interior had no statutory or regulatory obligation to approve the Yurok Tribe's decision to make a per capita distribution after Interior disbursed the Settlement Fund balance to the Yurok Tribe. Nevertheless, the Hoopa Plaintiffs claim that when the Yurok Tribe did not include them in the per capita distribution, they became entitled to damages from the United States Treasury in

Thus, only individual claims were before the Court of Federal Claims, not a tribal claim.

^{3/} *Short v. United States*, 486 F.2d 561 (Ct. Cl. 1973) ("*Short I*"); 661 F.2d 150 (Ct. Cl. 1981) (*en banc*) ("*Short II*"); 719 F.2d 1133 (Fed. Cir. 1983) ("*Short III*"); 12 Cl. Ct. 36 (1987) ("*Short IV*"); 25 Cl. Ct. 722 (1992) ("*Short V*"); 28 Fed. Cl. 590 (1993) ("*Short VI*"); 50 F.3d 994 (Fed. Cir. 1995) ("*Short VII*"). In *Short*, as explained below, this Court held that individual Yurok Indians and other non-Hoopa members were entitled to share in per capita distributions of revenues from a joint reservation in northern California set aside for the benefit of Hoopa, Yurok and other Indians (the "Joint Reservation"). However, as explained below, the Settlement Act supplanted the holding in *Short* with respect to post-Settlement Act distributions.

the amount of the distribution they would have received had the Yurok Tribe included them in the distribution.

Congress enacted the Settlement Act to resolve longstanding disputes regarding the ownership, management and revenue of the Joint Reservation. As directed by the Settlement Act, Interior made payments from the Settlement Fund to the Hoopa Tribe and to specified classes of individual Indians (which did not include individual members of the Hoopa Tribe). In decisions dated March 1, 2007 and March 21, 2007, Ross O. Swimmer, Special Trustee for American Indians at the Department of the Interior, concluded that the Settlement Act authorized payment to the Yurok Tribe of the balance of the Settlement Fund.

Because the Hoopa Tribe had argued to Interior that the Settlement Act did not authorize Interior to make that payment to the Yurok Tribe, Interior afforded the Hoopa Tribe 30 days from its March 21, 2007 decision to file suit in federal district court under the Administrative Procedure Act (“APA”) to challenge the decision and move to enjoin the payment. The Hoopa Tribe did not file suit and Interior disbursed the balance of the Settlement Fund to the Yurok Tribe on April 20, 2007. Hoopa Plaintiffs waited nine months – until the Yurok Tribe distributed a portion of the money to its members on January 15, 2008 – and then filed suit in the Court of Federal Claims claiming that, upon the Yurok Tribe’s per

capita distribution, in which they did not share, they became entitled to damages from the United States. Hoopa Plaintiffs base their claim on the law of the *Short* case, which they say survived enactment of the Settlement Act and applies to the January 15, 2008 per capita distribution.^{4/}

Hoopa Plaintiffs filed in the Court of Federal Claims a Motion for Partial Summary Judgment (Dkt. No. 9, filed April 2, 2008), asking for “judgment as a matter of law that the United States is liable for breach of fiduciary obligation resulting from its discriminatory distribution of the proceeds of timber sales and management of the former Joint Hoopa Valley Indian Reservation to fewer than all of the Indians of the Reservation for whom the Indian trust funds were collected.”

The United States countered with Defendant’s Combined Motion to Dismiss, or in the Alternative for Summary Judgment (Dkt. No. 20, filed July 22, 2008). That motion was based on several legal grounds, the first of which was that the Hoopa Plaintiffs had no interest in the Settlement Fund balance and could not have been injured by the 2007 disbursement to the Yurok Tribe or by the Yurok Tribe’s 2008 per capita distribution, and thus had no standing to litigate the

^{4/} The United States filed a third-party complaint against the Yurok Tribe alleging that it properly distributed the Settlement Fund balance to the Yurok Tribe, but in the event it was determined that it made the disbursement through a mistake of fact or law, the United States sought to recover the money erroneously paid to the Yurok Tribe. Dkt. No. 27, filed August 26, 2008.

question whether those actions were authorized by the Settlement Act. It has been the consistent position of the United States – and the Hoopa Plaintiffs have conceded – that Interior paid to the Hoopa Tribe in 1991 all the money the Settlement Act apportioned to it, such that the Hoopa Tribe “has no residual entitlement to the Fund.” A8 n.1; Hoopa Br. 36. It has also been the consistent position of the United States that the Settlement Act did not grant the individual members of the Hoopa Tribe any interest in the Fund at all. And it has been the consistent position of the United States that the law of the *Short* case only applies to pre-Settlement Act per capita distributions from Joint Reservation revenues, not to any post-Settlement Act distributions from the Settlement Fund.

The Court of Federal Claims agreed, concluding that the Settlement Act determined rights to the money in the Settlement Fund, and under the “plain meaning” of that Act, the Hoopa Tribe had in 2007 already received its full entitlement from the Settlement Fund and individual Hoopa members had no entitlement to the Settlement Fund at all. A8-9. Accordingly, the Court held that the Hoopa Plaintiffs were not injured by Interior’s 2007 disbursement to the Yurok Tribe or by the Yurok Tribe’s 2008 per capita distribution, and thus lacked standing to bring this suit. *Id.* The Court granted the United States’ motion for

summary judgment (A10) and entered judgment for the United States (A11).⁵⁷

STATEMENT OF FACTS

A. Background

The background facts leading up to the 1988 enactment of the Settlement Act have been repeatedly stated in the *Short* decisions and, most recently, in this Court's decision rejecting the Yurok Tribe's challenge to the Settlement Act. *See Karuk Tribe of California v. United States*, 41 Fed. Cl. 468 (1998), *aff'd*, 209 F.3d 1366, 1373 (Fed. Cir. 2000).

In brief, Congress directed the establishment of Indian reservations in California in the Act of April 8, 1864, An Act to Provide For the Better Organization of Indian Affairs in California, 13 Stat. 39 ("1864 Act"). The "Square" portion of the Hoopa Valley Reservation was established by executive order in 1876. The "Addition" was added by executive order in 1891 to create the Joint Reservation, which was inhabited by both Hoopa and Yurok Indians. *See* A125 (the Square is the "Original Hoopa Valley Reservation" and the Addition includes the "Klamath River Reservation" and the "Connecting Strip"). The Hoopa Indians organized in 1950, but the Yurok Tribe, though federally

⁵⁷ As a technical matter, having decided that the Hoopa Plaintiffs lacked standing, the Court should have dismissed the suit for lack of jurisdiction.

recognized, remained without a constitution, organized leadership or membership roll. In 1955 the Secretary of the Interior (“Secretary”) commenced making distributions of revenues from timber cut within the Square solely to members of the Hoopa Tribe.

B. The *Short* Litigation Prior to the Settlement Act

Hoopa Plaintiffs assert (Br. 5) that the “rulings in *Short* define the contours of the United States’ trust obligation and govern the Hoopa Plaintiffs’ right to recovery in this case.” It is thus important to understand the scope of the *Short* decisions.

In 1963, individual Indians of the Joint Reservation who were not Hoopa members (primarily Yurok Indians) commenced the *Short* litigation in the United States Court of Claims challenging their exclusion from the timber revenue distributions. The Court of Claims held in 1973 that the relevant statute and executive orders had established a single reservation, and that all “Indians of the Reservation” were entitled to share in the timber revenues from the Square.

Short I, 486 F.2d 561.⁶⁹ The scope of the holding in *Short I* was refined in a series

⁶⁹ In 1974, following *Short I*, Interior set up separate accounts for future timber proceeds, with 70 percent set aside for the *Short* plaintiffs and 30 percent set aside for Hoopa members, based on the relative populations of each group. A126-28. From 1957 through 1980, Hoopa members received per capita distributions totaling more than \$29 million. See *Short IV*, 12 Cl. Ct. at 39, 41.

of subsequent decisions.

In a 1981 decision, the Court of Claims addressed the standards for determining which of the plaintiffs were “Indians of the Reservation” entitled to share in the per capita distributions. The court clarified that its holding in *Short I* only applied to “revenues that were distributed to individual Indians.” *Short II*, 661 F.2d at 152, 158.

Two years later, in a decision upholding the trial judge’s specification of five classes of plaintiffs who were entitled to recover, this Court stressed the limited scope of the *Short* decisions:

[A]ll we are deciding are the standards to be applied in determining those plaintiffs who would share as individuals in the monies from the Hoopa Valley Reservation unlawfully withheld by the United States from them (from 1957 onward). . . . [T]he decision reached in this court [both the Claims Court and the Court of Appeals for the Federal Circuit] will obtain only for the years until final judgment, and for the years to come while the situation in the Reservation remains the same

Short III, 719 F.2d at 1143 (emphasis added, quotation marks omitted).

Once Interior completed the list of eligible “Indians of the Reservation,” the amount of damages had to be determined for each. In 1987, the Claims Court concluded that the eligible plaintiffs were entitled to the amount “they would have received had the per capita distributions been made in a non-discriminatory

manner,” including all per capita distributions made to Hoopa members before and after 1974, and whether made by the Secretary directly or by the Hoopa Tribe from monies received from the Secretary. *Short IV*, 12 Cl. Ct. at 40-42. Notably, the Claims Court rejected the *Short* plaintiffs’ argument that distributions made to the Hoopa Tribe and used by the Tribe for governmental purposes should have been included for calculation of damages, explaining that “an individual Indian’s rights in tribal or unallotted property arises only upon individualization; individual Indians do not hold vested severable interests in unallotted tribal lands and monies as tenants in common.” *Id.* at 42.

This is where the *Short* litigation stood when Congress took up the Hoopa-Yurok Settlement Act in 1988.

C. The Legislative History of the Hoopa-Yurok Settlement Act of 1988

After twenty-five years of litigation in the *Short* case, and spurred by a California district court decision regarding governance of the Joint Reservation,⁷

⁷ In 1980, a number of “Indians of the Reservation” sought to enjoin Interior from continuing to recognize the Hoopa Business Council as the governing council of the Square, claiming that they had rights equal to Hoopa members with respect to the governmental and business affairs of the Joint Reservation. *Puzz v. United States*, No. C80-2908 (N.D. Cal.). After many years of litigation, the district court ruled in favor of plaintiffs and directed Interior to take over management of the Joint Reservation for the benefit of all Indians of the Reservation. *Puzz v. United States*, 1988 WL 188462 (N.D. Cal. April 8, 1988).

Congress sought through the Hoopa-Yurok Settlement Act to provide “a fair and equitable settlement of the dispute relating to the ownership and management of the Hoopa Valley Reservation.” A152 (S. Rep. No. 100-564 (Sept. 30, 1988) (“Senate Report”)).

The Senate Report (A139-79) explained that the decisions in the *Short* case resulted from the unique circumstances of the federal government’s establishment and management of the Joint Reservation. A150 (the decisions in *Short* and *Puzz*, “while perhaps correct on the peculiar facts and law, have had a very unhappy result”). The Act was intended to change the legal status of the reservation, and revenues derived therefrom, so that the law of the *Short* and *Puzz* cases would not apply going forward. The Senate Report explained that the “intent of this legislation is to bring the Hoopa Valley Tribe and the Yurok Tribe within the mainstream of federal Indian law,” which recognizes “tribal property rights and tribal governance of Indian reservations” rather than “individual interests.” A140.

The Senate Report expressed the understanding that neither the Hoopa Tribe, the Yurok Tribe nor any individual Indian had a vested interest in the Joint Reservation land and resources. A150-52. Accordingly, Congress believed that it could work out a fair resolution of the competing interests. A152 (“there are no tribal or individual vested rights in the reservation and . . . Congress has full power

to dispose of the reservation as proposed”). The Senate Report also expressed the understanding that no one had any vested rights in the escrow accounts that were to be included in the Settlement Fund. A153 (bill “in no way is to be construed as any recognition of individual rights in and to the reservation or the funds in escrow”).

D. Summary of the Settlement Act’s Provisions and Implementation

Congress directed three major actions: (1) partitioning the Joint Reservation into the Hoopa Valley Reservation and the Yurok Reservation; (2) distributing equitably the trust funds that were derived from the Joint Reservation prior to partition (and were still held by the Secretary) among the Hoopa Tribe, Yurok Tribe, individual members of the Yurok Tribe, and other “Indians of the reservation” who did not wish to enroll in either the Hoopa Tribe or Yurok Tribe; and (3) organizing the Yurok Tribe so that it could manage the Yurok Reservation.

1. Partition

Congress partitioned the Square to the Hoopa Tribe and the Addition to the Yurok Tribe. 25 U.S.C. § 1300i-1. The Square contained about 89,000 acres of tribal trust land. A144, A275. Although the Addition had originally contained about 58,000 acres of tribal trust land, after allotment to individual Indians and the opening of the remainder to homesteading by non-Indians, the Addition contained

only about 3,000 acres of tribal trust land as of 1988.^{8/} A144-45, A275.

Before the partition of the Joint Reservation would become effective, the Hoopa Tribe had to adopt a resolution within 60 days of enactment waiving any claim the Tribe may have had against the United States arising out of the Settlement Act and affirming tribal consent to the contribution of Hoopa escrow monies to the Settlement Fund. 25 U.S.C. § 1300i-1(a). Partition was effected on December 7, 1988 with the publication in the Federal Register of the Hoopa waiver resolution. A194-95 (53 Fed. Reg. 49,361 (Dec. 7, 1988)).

2. Distribution of Pre-Settlement Act Revenues

Creation of the Settlement Fund. The Settlement Act, 25 U.S.C. § 1300i-3(a)(1), directed the Secretary to deposit into a new Settlement Fund account all undistributed revenues from the Joint Reservation being held in the enumerated escrow funds. The Settlement Fund was to be invested and administered as an Indian trust fund account. 25 U.S.C. § 1300i-3(b).

Settlement Roll. Section 1300i-4 then directed the Secretary to prepare a Settlement Roll of persons who were “Indian[s] of the Reservation” as defined in

^{8/} In recognition of the relatively small amount of tribal trust land that would become the Yurok Reservation, Congress provided for the addition of some federal land to the Yurok Reservation and also authorized the Secretary to acquire some additional land for the Yurok Tribe. 25 U.S.C. §§ 1300i-1(c)(2) and (3).

Short but who were not enrolled Hoopa members. The Secretary gave notice of the right to be included on the Settlement Roll. 25 U.S.C. § 1300i-4(b). *See* 53 Fed. Reg. 49,795 (Dec. 9, 1988); 54 Fed. Reg. 5,552 (Feb. 3, 1989) (correcting deadline for applications to April 10, 1989). The Settlement Act directed the Secretary to complete the Settlement Roll within 180 days of that deadline, but Interior received over 8,000 applications and encountered “logistical difficulty” in determining eligibility. *See* S. Rep. No. 101-226, *reprinted in* 1990 U.S.C.C.A.N. 196. Congress amended the Settlement Act to facilitate this process. Pub. L. No. 101-301, 104 Stat. 206 (May 24, 1990). The Settlement Roll was published on March 15, 1991 (56 Fed. Reg. 12,062).

Notice of Options. The next step was to give notice to persons on the Settlement Roll of their right to elect enrollment in (1) the Yurok Tribe (assuming specified qualifications were met), (2) the Hoopa Tribe (assuming specified qualifications were met), or (3) neither Tribe and receive a \$15,000 lump sum payment. 25 U.S.C. § 1300i-5. The Secretary provided notice by certified letters dated April 12, 1991, and, pursuant to 25 U.S.C. § 1300i-5(a)(4)(A), stated that the option election date was July 19, 1991 (120 days after publication of the

Settlement Roll). A196-208.^{9/}

Distributions to Hoopa and Yurok Trust Accounts. Under the Settlement Act, Sections 1300i-3(c) and (d), the April 12, 1991 notice triggered the Secretary's obligation to determine the Hoopa and Yurok Tribes' shares of the Settlement Fund and to transfer those shares into separate trust accounts. These provisions contained a drafting error. Each Tribe's share was to be calculated using the number of the Tribe's enrolled members (including any persons who would enroll pursuant to 25 U.S.C. § 1300i-5) as the numerator, and the sum of the number of enrolled Hoopa members and the number of Indians on the Settlement Roll as the denominator. The Secretary could not implement these provisions exactly as drafted because it was not possible to make distributions to the Hoopa and Yurok Tribes on the date notice was provided of the option election deadline and to include in these distributions payment for individuals who would thereafter elect enrollment in the Hoopa and Yurok Tribes. The Senate Report had described a two-step process whereby an initial payment would be made to the Hoopa Tribe's account on the notice date based on its then-current membership, followed by an adjustment after the persons on the Settlement Roll made their

^{9/} While not required by the Settlement Act, the Secretary also published notice of the enrollment options in the Federal Register. A209 (56 Fed. Reg. 22,996 (May 17, 1991)).

enrollment elections. A158. Interior resolved the ambiguity in the statutory text by proceeding on April 12, 1991 as described in the Senate Report. The Hoopa's share was determined to be about \$34 million (about 40% of the Settlement Fund, which was then a total of about \$86 million).^{10/} A211-14 .

Section 1300i-6(b) permitted the Hoopa Tribe to make a \$5,000 per capita distribution from its apportioned funds. On April 15, 1991, at the direction of the Hoopa Business Council, the Secretary sent checks to Hoopa members.^{11/} A211. The balance of around \$14 million was moved into a separate trust account for the Hoopa Tribe. A212.

As to the Yurok Tribe, the Secretary had no way of knowing on April 12, 1991 how many persons on the Settlement Roll would elect membership in the Yurok Tribe and how many would elect the \$15,000 lump sum payment, and the Secretary could not practically move the Yurok Tribe's share out of the Settlement

^{10/} As it turned out, only four persons on the Settlement Roll elected the Hoopa tribal membership option. A107. The Hoopa Tribe opposed their enrollment and none has been enrolled. A107-08. No adjustment to the April 12, 1991 Hoopa share determination was therefore required.

^{11/} Where the Secretary holds funds in trust for an Indian tribe, and the tribe determines to make a per capita distribution to tribal members, the Secretary may make the distribution pursuant to 25 U.S.C. § 117a.

Fund into a separate account as the Settlement Act directed.^{12/} The Yurok Tribe's apportioned share thus remained in the Settlement Fund account set up in 1988.

Individual Payments. Upon election by the persons on the Settlement Roll of one of the three options (July 19, 1991 was the option election deadline), 25 U.S.C. § 1300i-5(c) directed the Secretary to "pay to each person making an election [to become a member of the Yurok Tribe], \$5,000 out of the Settlement Fund for those persons who are, on [the option election date], below the age of 50 years, and \$7,500 out of the Settlement Fund for those persons who are, on that date, age 50 or older." Section 1300i-5(d) provided that, at the same time, "[a]ny person on the Settlement Roll [who does not wish to enroll in either the Hoopa Tribe or the Yurok Tribe] may elect to receive a lump sum payment from the Settlement Fund and the Secretary shall pay to each such person the amount of \$15,000 out of the Settlement Fund."^{13/} The Secretary made these payments as

^{12/} In a report submitted to Congress on March 15, 2002, Interior noted that, in Fiscal Year 1991, "[a]ccording to the Act, a separate account for Yurok should have been established and [the Yurok's share] transferred." A253.

^{13/} Pursuant to 25 U.S.C. § 1300i-3(e), the United States made a \$10 million contribution to the Settlement Fund toward the cost of these lump sum payments. A158.

directed. A215-17.¹⁴

The Settlement Act did not provide for any payments from the Settlement Fund to individual Hoopa members, but only permitted the Hoopa Tribe to make per capita distributions from its apportioned share. *See* 25 U.S.C. § 1300i-6(b).

Remainder Distribution to Yurok Account. Upon the completion of payments to the Hoopa Tribe, individual members of the Yurok Tribe, and Indians of the Reservation who opted not to enroll in either the Hoopa Tribe or Yurok Tribe, Section 1300i-6(a) directed that “any funds remaining in the Settlement Fund . . . shall be paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe.”¹⁵ While Congress intended that this remainder would be transferred to the Yurok Tribe’s separate trust account, the Secretary had not

¹⁴ As explained in the October 24, 1991 memorandum of the Acting Director, Office of Tribal Services (A215-17), the United States District Court for the District of Columbia ordered some money withheld from these individual payments to compensate the *Short* plaintiffs’ attorneys. In November 1991, the Secretary made partial payments in accordance with the district court’s order. Following reversal by the D.C. Circuit on May 18, 1993, *Heller, Ehrman, White & MacAuliffe v. Babbitt*, 992 F.2d 360 (D.C. Cir. 1993), the Secretary paid the individuals the amounts withheld from their 1991 payments.

¹⁵ The references to the “division” of the Settlement Fund remainder in the section’s heading and in subsection (b) are remnants of an earlier version of S. 2723 (A134), which had provided that the remainder be apportioned between the Hoopa Tribe and Yurok Tribe. As enacted, however, the Yurok Tribe received the entire remainder.

created a separate account for the Yurok Tribe, as explained above. However, once the required payments to the Hoopa Tribe and to the specified individuals were made, the balance in the Settlement Fund account was in fact a separate trust account for the Yurok Tribe.

Yurok Waiver Requirement. Section 1300i-1(c)(4) precluded the Secretary from releasing these funds to the Yurok Tribe until it adopted a waiver resolution:

The

- (A) apportionment of funds to the Yurok Tribe as provided in sections 1300i-3 and 1300i-6 of this title;
- (B) the land transfers pursuant to paragraph (2);
- (C) the land acquisition authorities in paragraph (3); and
- (D) the organizational authorities of section 1300i-8 of this title

shall not be effective unless and until the Interim Council of the Yurok Tribe has adopted a resolution waiving any claim such tribe may have against the United States arising out of the provisions of this subchapter.

As explained below, Congress provided for election of the Yurok Interim Council about six months after the date on which Congress directed the division of funds and establishment of separate accounts for the Hoopa and Yurok Tribes (the date of publication of the option election date).

3. Formation of the Yurok Tribe

Although federally recognized for many years, the Yurok Tribe had no constitution, organized leadership, or membership roll. Congress specified in the Settlement Act, Section 1300i-8, a process for election of a Yurok Interim