judgment is hereby granted. The Clerk is directed to dismiss the complaint. No costs.

IT IS SO ORDERED.

KARUK TRIBE OF CALIFORNIA, Plaintiff,

and

Carol Ammon, et al., Plaintiffs,

and

Yurok Indian Tribe, Plaintiff,

v.

The UNITED STATES, Defendant,

and

Hoopa Valley Tribe, Defendant–Intervenor.

Nos. 90–3993L, 91–1432L, 92–173L.

United States Court of Federal Claims.

Aug. 6, 1998.

The Karuk tribe of California, the Yurok tribe, and individual Indians brought suit against the government, claiming that the 1988 Hoopa–Yurok Settlement Act which partitioned the Hoopa Valley Reservation effected a Fifth Amendment taking of their property interests. The Hoopa Valley tribe intervened on the side of the government. On cross-motions for summary judgment, the District Court, Margolis, J., held that neither the 1864 Act creating the reservation nor subsequent benefits conferred thereunder vested any compensable property rights, and thus the Hoopa–Yurok Settlement Act did not implicate the Takings Clause of the Fifth Amendment.

Plaintiffs' motions denied; defendant and defendant-intervenor's motion granted.

1. Eminent Domain ⚷81.1

In order for a plaintiff to invoke the Fifth Amendment Takings Clause, it must establish a "historically rooted expectation" of compensability in the property alleged to have been taken. U.S.C.A. Const.Amend. 5.

2. Eminent Domain ⚷81.1

The range of interests qualified for protection under the Takings Clause of the Fifth Amendment is defined by the existing rules or understandings that stem from an independent source such as state law, and the relevant background principles. U.S.C.A. Const.Amend. 5.

3. United States ⚷58(1)

Any power of the executive to convey an interest in public lands must be traced to a clear delegation of Congress's Article IV power. U.S.C.A. Const. Art. 4, § 3, cl. 2.

4. Indians ⚷12

When Congress intends to delegate power to turn over public lands to the Indians permanently, one would expect to and doubtless would find definite indications of such a purpose; silence cannot be construed as congressional intent to convey such powers to the executive, nor can it be taken as acquiescence in an executive act that appears to convey a permanent interest.

5. Indians ⚷10

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. U.S.C.A. Const.Amend. 5.

6. Indians ⚷12

An Indian reservation created by Executive Order of the President conveys no right of use or occupancy to the beneficiaries beyond the pleasure of Congress or the President; such rights may be terminated by the unilateral action of the United States without legal liability for compensation in any form.

7. Statutes ⟹188

When a court is asked to decide the meaning of a statute, the first point of analysis is the language of the statute.

8. Statutes ⟹181(1), 188

Task of statutory construction is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, that language must ordinarily be regarded as conclusive.

9. Indians ⟹12

The 1988 Hoopa–Yurok Settlement Act which partitioned the former Hoopa Valley reservation did not effect a Fifth Amendment taking of Indian property interests; neither the 1864 Act creating the reservation nor subsequent benefits conferred thereunder vested any compensable property rights. U.S.C.A. Const.Amend. 5; Hoopa–Yurok Settlement Act, § 1 et seq., 25 U.S.C.A. § 1300i et seq.; Act April 8, 1864, § 1 et seq., 13 Stat. 39.

10. Indians ⟹3(1)

Treaties signed between the United States and several California tribes in 1851 and 1852 were never ratified by the Senate, and thus have no binding effect on the United States. U.S.C.A. Const. Art. 2, § 2, cl. 2.

11. Indians ⟹10

Aboriginal title may be terminated by the sovereign without any legally enforceable obligation to compensate the Indians holding such title.

12. Indians ⟹10

Aboriginal title constitutes no more than permissive title, which is vulnerable to affirmative action by the sovereign, which possesses exclusive power to extinguish the right of occupancy at will.

Dennis J. Whittlesey, Washington, DC, for plaintiff Karuk.

George Forman, Berkeley, CA, for plaintiff Yurok, with whom was John Shordike, of counsel.

William C. Wunsch, San Francisco, CA, for plaintiffs Ammon et al.

Susan V. Cook, General Litigation Section, Environmental & Natural Resources Division, United States Department of Justice, Washington, DC, for defendant, with whom were Lois J. Schiffer, Assistant Attorney General, James E. Brookshire, Deputy Chief, and Thomas L. Halkowski, Trial Attorney.

Thomas P. Schlosser, Seattle, WA, for defendant-intervenor, with whom was K. Allison McGaw.

OPINION

MARGOLIS, Judge.

In this consolidated action, plaintiffs, the Karuk Tribe of California ("Karuk"), the Yurok Indian Tribe ("Yurok"), and individual Indians led by Carol McConnell Ammon ("Ammon Group"), move for summary judgment, claiming that the 1988 Hoopa–Yurok Settlement Act, 25 U.S.C. § 1300i *et seq.*, effected a Fifth Amendment taking of their property interests in the former Hoopa Valley Reservation ("Reservation"). All plaintiffs rely upon the Act of April 8, 1864, 13 Stat. 39, as the basis for their vested property claims. Plaintiffs further point to actions of defendant, the United States, such as allocation of funds for the tribes on the Reservation, allotment of land to individual Indians, and provision of education and other benefits to tribe members as support for their contention. Plaintiff Ammon Group also alleges that defendant is collaterally estopped by prior litigation from denying plaintiffs' vested interests in the Reservation. Defendant and defendant-intervenor, the Hoopa Valley Tribe, cross move for summary judgment, contending that neither the 1864 Act nor any subsequent benefits conferred thereunder vested any compensable property rights. As a result, defendant and defendant-intervenor argue, the 1988 Act does not implicate the Takings Clause of the Fifth Amendment. Defendant and defendant-intervenor also move for summary judgment on the basis that plaintiffs are collaterally estopped from claiming a taking due to a prior case involving the Reservation. After a full briefing and oral argument on the issue, this court grants defendant and defendant-intervenor's motion for summary judgment, based solely

on the takings grounds, and denies plaintiffs' summary judgment motions.

FACTS

The Hoopa Valley Reservation was created pursuant to the Act of April 8, 1864, 13 Stat. 39 ("1864 Act"). The pertinent part of the 1864 Act states that

> [t]here shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended....

13 Stat. at 40. In 1865, the Reservation's boundaries, encompassing a 12-mile square tract, were provisionally determined. President Ulysses S. Grant, in an 1876 executive order, formally defined the borders of the Reservation, which was also referred to as "the Square." *See Jessie Short v. United States,* 202 Ct.Cl. 870, 874, 486 F.2d 561 (1973). By executive order of President Benjamin Harrison, the Reservation was extended in 1891. The territory added to the Reservation has been referred to as "the Addition." *See id.* From the beginning of the Reservation until the present, the Square has been dominated by the Hoopa Valley Tribe ("Hoopa"), and the Addition by the Yurok, with the Karuk dispersed in both areas.

A dispute over which Indians had rights to revenues generated from sales of timber on the Square was the basis of *Jessie Short v. United States,* 202 Ct.Cl. 870, 486 F.2d 561 (1973) ("*Short I* "), 228 Ct.Cl. 535, 661 F.2d 150 (1981) ("*Short II* "), 719 F.2d 1133 (Fed. Cir.1983) ("*Short III* "), and 12 Cl.Ct. 36 (1987) ("*Short IV* "). In *Short I,* the Court of Claims held that none of the Indians on the Reservation had a superior right to the revenues generated by the sale of timber cut from the Square, regardless of whether the Indian lived on the Square or the Addition. *See Short I,* 202 Ct.Cl. at 884–85, 486 F.2d 561. Following that lengthy litigation, Congress in 1988 passed the Hoopa–Yurok Settlement Act of October 31, 1988 ("1988 Act"); 25 U.S.C. § 1300i *et seq.* The 1988 Act partitioned the Reservation, granting the use of the Square to the Hoopa as a reservation, and giving the use of the Addition to the Yurok for a reservation. The Karuk were not given any of the Reservation for use as their own.

The 1988 Act's partitioning of the Reservation instigated this litigation.

DISCUSSION

Plaintiffs contend that the 1864 Act vested their ancestors or tribes with compensable rights in the Reservation. As a result, plaintiffs claim they have been subject to a taking under the Fifth Amendment to the United States Constitution, which forbids the taking of property by the government without just compensation. The Yurok contend they had a compensable expectancy in the Square taken away by the 1988 Act. The Karuk claim their vested interest in the entire Reservation was deprived by the 1988 Act. Finally, the Ammon Group claim their vested rights in the Reservation were destroyed without compensation by the 1988 Act. The United States has filed a motion for summary judgment, alleging that plaintiffs do not possess a compensable expectancy in the Reservation because the 1864 Act did not grant vested property rights to the Indians, and that plaintiffs are collaterally estopped from relitigating the issue of vested property rights, which, defendant contends, was resolved in *Short I.* Defendant-intervenor, the Hoopa, has joined in the United States's motion.

Plaintiffs oppose defendant's motion and have separately filed cross-motions for summary judgment,[1] arguing that as a matter of law they have compensable expectancies in the Reservation through the 1864 Act, or alternatively on grounds such as legislative

1. Although the Yurok and the Ammon Group both filed cross-motions for summary judgment after the United States and the Hoopa filed their motion for summary judgment, the Karuk filed its own motion for summary judgment shortly after defendant and defendant-intervenor filed their motion.