No. 18-15309

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YUROK TRIBE,

Plaintiff-Appellant,

v.

RESIGHINI RANCHERIA and GARY MITCH DOWD,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 16-cv-02471-RMI; Hon. Robert M. Illman

APPELLANT'S OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Plaintiff-Appellant the Yurok Tribe is a sovereign Indian nation recognized by the United States government. The Yurok Tribe has no parent companies, subsidiaries, or affiliates that have issued shares to the public in the United States or abroad.

Date: May 25, 2018

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INTRODUCTION

The Yurok Tribe brought this action to protect the Klamath River fishery within the Yurok Reservation from unlawful fishing by members of the Resighini Rancheria and Gary Dowd, Defendants below. Resighini Rancheria and Dowd insist that individuals from the Rancheria may at any time in their complete discretion leave the Resighini Rancheria, enter the Yurok Reservation, and remove the resources of that Reservation, in this instance, fish, free of regulation. After the Yurok Tribe filed its motion for summary judgment in the District Court, the Defendants moved to dismiss on the grounds of sovereign immunity and Federal Rule of Civil Procedure 19. The District Court granted the motion and dismissed the action. The Yurok Tribe appeals.

The single issue raised on this appeal is whether this action may proceed between the Yurok Tribe and the individual, Gary Dowd, in the absence of the Rancheria that asserts immunity from suit. The Yurok Tribe demonstrates that an individual may not leave his own Reservation (the Resighini Rancheria), enter the Reservation of a separate tribe, the Yurok Reservation, and take the fish within the Yurok Reservation without the Yurok Tribe's permission or a fishing license from the State of California. Prohibiting Dowd from unlawfully entering the Yurok Reservation and taking Yurok resources does not implicate or affect any rights claimed by the Resighini Rancheria.

JURISDICTIONAL STATEMENT

The District Court had jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1362 (federal question jurisdiction and jurisdiction over claims brought by an Indian tribe). Judgment in favor of the defendants was entered in the District Court on January 25, 2018. Excerpt of Record ("ER") 003. The judgment was final as to all claims in the dispute. The Yurok Tribe's Notice of Appeal was timely filed on February 23, 2018. ER 001. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

ISSUE PRESENTED FOR REVIEW

The Yurok Tribe's appeal is narrow. Yurok does not appeal the decision by the District Court that Resighini Rancheria and Gary Dowd in his official capacity have immunity from suit. Yurok does assert that the district court retains jurisdiction to determine the claims against Gary Dowd as an individual. Thus, the issue presented for review here is:

> Whether an action brought by the Yurok Tribe against Gary Dowd, an individual who has relinquished all rights "whatsoever" to the resources of the Yurok Reservation, but who nevertheless enters the Yurok Reservation to remove resources from the Yurok Reservation, may proceed in the absence of the Resighini Rancheria.

Pursuant to Circuit Rule 28-2.7, an Addendum is attached to this opening brief that includes the Hoopa-Yurok Settlement Act.

STATEMENT OF THE CASE

This dispute arises from the continuous efforts of the Yurok Tribe, as an exercise of its inherent sovereignty, to restore and protect the imperiled fishery of the Klamath River within the Yurok Reservation. Unauthorized, unregulated fishing within the Yurok Reservation increases the risk of irreparable harm to the Klamath River fishery, which is already dramatically declining. The history of the Yurok people and their spiritual, social and economic connections to the Klamath River is lengthy, extending from time immemorial to the present day. The Yurok Reservation was established by Executive Order on the Klamath River in 1855 because the Yurok people have always relied on the fishery of the Klamath River. Gary Dowd, an individual member of the Resighini Rancheria, an entirely separate Indian tribe created by Congress in 1938 as a homeland for various unenrolled Indians living in Northern California, entered into an agreement with the United States in which he was paid cash in return for his waiver of all rights "whatsoever" to the property and resources of the Yurok Reservation. Nevertheless, Mr. Dowd has repeatedly fished outside the Resighini Rancheria, entering the Yurok Reservation to take fish there without a state permit or the consent of the Yurok Tribe. Dowd waived whatever rights he claims to have had in the fishery and resources of the Yurok Reservation.

He is fishing illegally. His fishing further imperils the Yurok Tribe's fishery in the Klamath River.

A. The Yurok Reservation was established within ancestral Yurok territory to preserve the Yurok fishing way of life.

The Yurok people are fishers. The Yurok Reservation was established on the Klamath River specifically to enable Tribal members to fish. The Klamath River runs through the center of the Yurok Reservation from the Yurok village of Weitchpec downriver forty-five miles to the Pacific Ocean at the village of Requa. *Mattz v. Arnett*, 412 U.S. 481, 493 (1973). The Yurok Reservation is within Yurok ancestral territory and "was ideally selected" for the Yuroks in large part because "the river, which ran through a canyon its entire length, abounded in salmon and other fish." *Parravano v. Babbitt*, 861 F. Supp. 914, 919 (N.D. Cal. 1994), *aff'd*, 70 F.3d 539, 542 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996). The Yurok Reservation was set aside for the purpose of preserving the Yurok way of life in Yurok traditional homelands. *Mattz*, 412 U.S. at 481; ER 125. This Court has acknowledged that the Klamath River Indian fishery is "not much less necessary to the existence of the [Yurok] Indians than the atmosphere they breathed." *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (internal citation omitted). The natural resources of the Yurok Reservation, including the fishery, are so integral to the Yurok Tribe that the Tribe's Constitution imposes a duty on it to protect and "to restore, enhance and manage the

tribal fishery, tribal water rights, tribal forest, and all other natural resources." ER 130; ER 122.

B. The Resighini Rancheria was established within the boundaries of the Yurok Reservation as a place for homeless Indians not affiliated with a tribe.

In contrast to the purposes of the Yurok Reservation, the Resighini Reservation was established as a land base for homeless Indians without regard to tribal affiliation. *See Coast Indian Community v. United States*, 213 Ct. Cl. 129, 550 F.2d 639, 642–44 (Ct. Cl. 1977). The Resighini Rancheria Reservation is completely surrounded by the Yurok Reservation, although it is a distinct tribal governmental entity entirely separate from the Yurok Tribe. 83 Fed. Reg. 4235 (Jan. 30, 2018). The federal government purchased the land that was to become the Rancheria in 1938 for individual, homeless, and other Indians not affiliated with an Indian tribe; the Rancheria was not, therefore, set aside for an existing tribal group but as a new reserve for these otherwise disconnected Indians. *See Coast Indian Community*, 550 F.2d at 642–44. "Beginning in 1938, at the invitation of the BIA [U.S. Bureau of Indian Affairs], certain Indian families of Del Norte and Humboldt Counties took up residence on the Rancheria." *Id.* at 643 (thirteen families lived there "and came to be known collectively, at the BIA's suggestion, as the "Coast Indian Community.").

There is nothing in the history of the establishment of the Rancheria that explicitly or implicitly confers on Rancheria members a right, reserved or otherwise,

to take the resources of the Yurok Tribe from its Reservation or outside the Resighini Reservation generally.

C. Under the terms of the 1988 Hoopa-Yurok Settlement Act, the Rancheria and Gary Dowd relinquished any claims to the resources of the Yurok Tribe and Yurok Reservation.

Fifty years after the purchase of the Resighini land for homeless Indians, Congress authorized the Resighini Rancheria to merge with the Yurok Tribe, and authorized individual Resighini tribal members to become members of the Yurok Tribe and thereby enjoy the full benefits of the resources of the Yurok Reservation. *See* Hoopa-Yurok Settlement Act (HYSA), Pub. L. No. 100–580, 102 Stat. 2924 (1988), *amended by* Pub. L. No. 101-301, § 9, 104 Stat. 210 (1990) (attached in Addendum). The Rancheria rejected the merger. Gary Dowd and other individuals declined to join the Yurok Tribe.

Section 11(b) of the HYSA authorized the Resighini Rancheria tribal government to merge with the Yurok Tribe if a majority of the adult members voted for the merger. The decision was put to a vote in 1988. ER 075. The Rancheria membership voted against the merger. ER 075.

In addition to providing the Rancheria tribal government an opportunity to merge with the Yurok Tribe, sections 6(b) and (c) of the HYSA also provided individual Indians with the opportunity to join the membership of the Yurok Tribe or Hoopa Valley Tribe. HYSA at § 6(b) (Hoopa); HYSA at § 6(c) (Yurok). Upon

electing to join the Yurok Tribe, individual Rancheria members below the age of 50 received $5,000 and those over 50 received $7,500. *Id.* § 6(c)(3).

Alternatively, individuals who declined to join either the Yurok Tribe or the Hoopa Valley Tribe received a lump sum of $15,000, commonly referred to as the "buy-out" option. *Id.* §§ 6(d)(1), (2). The HYSA provided that individuals electing the buy-out would "not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, … the Yurok Reservation, or the Yurok Tribe…." *Id.* § 6(d)(3).

As required by the HYSA, the Secretary of the Interior convened for Resighini tribal members several meetings and provided an objective assessment of the advantages and disadvantages of the enrollment and election options offered in the HYSA. ER 076. The HYSA also required that comprehensive counseling services be made available regarding the buy-out option. ER 076.

The Bureau of Indian Affairs also notified Rancheria tribal members that if an individual elected the buy-out, that individual would not be able to hunt or fish on the Yurok Reservation unless authorized by the Yurok Tribe. ER 076-77. The Bureau informed Rancheria members that the fishing rights on the Yurok Reservation would be exclusive to Yurok Tribal members only, except as authorized by the Yurok Tribe, and that a consequence of remaining in the Rancheria would be

that an individual would not have fishing rights on the Yurok Reservation. ER 076-77.

Defendant Gary Dowd was one of many individuals who declined to join the Yurok Tribe and instead accepted the $15,000 "buy-out." ER 077-78. Dowd signed an acknowledgment that the Bureau of Indian Affairs had informed him "of the rights and benefits of each option presented, the advantages and disadvantages of each option and information on counseling." ER 077-78. On June 20, 1991, as required by the HYSA, Dowd executed an affidavit swearing under penalty of perjury that he had "been afforded the opportunity to receive consultation regarding the disadvantages and advantages" of his election to be paid cash in return for extinguishing all claims of right within the Yurok Reservation flowing from membership in the Yurok Tribe. ER 078.

Despite declining to merge with the Yurok Tribe, the Rancheria asserts in divergent claims that its members have a right to the resources, including fish, on the Yurok Reservation. And despite having been paid $15,000 in return for relinquishing "any interest or right whatsoever" in the resources of the Yurok Tribe, Dowd nevertheless claims that he has a right to enter the Yurok Reservation at will and take fish at his discretion without any license or permit.

D. Unauthorized fishing by Gary Dowd is one more among other threats to the survival of the Klamath River fishery.

The facts related to the current conditions of the Klamath River fishery are also material to this dispute. Mr. Dowd's disregard of his promises in the "buy-out" agreement with the United States is not mere defiance of federal law; the adverse consequences to the Klamath River fish species of his illegal fishing within the Yurok Reservation are dramatic when viewed long term. ER 071. The Klamath River fishery is highly regulated by the United States, the Yurok Tribe,[1] other Indian tribes and the States of California and Oregon. ER 069. Due to that tight control, the fishery was closed in 2017, for the second year in a row, because there were insufficient fish to permit a harvest without creating significant risk to the future survival of the species. ER 124-25. Persons such as Gary Dowd, who fish without a state fishing license or Yurok permit, take fish that are intended to be part of the "escapement," the fish that are allowed to swim upriver to spawn and propagate the species. ER 071. Dowd's illegal fishing has compromised the ability of the Yurok Tribe to fulfill its cultural obligation to protect the Klamath River fishery from such risky and irresponsible behavior.

[1] The Yurok Tribe devotes a significant portion of its limited resources to restoring and protecting the Klamath River fishery both within and outside the Reservation boundaries. ER 068. Its Fisheries Department employs 19 fish biologists among 50 staff. ER 068. Its Watershed Department engages in River and fishery habitat restoration with 15-20 additional employees. ER 068-69. The Tribe spends between four and five million dollars each year on the fishery. ER 068-69.

E. The proceedings in the District Court resulted in a dismissal of the case without a resolution of the underlying dispute.

Knowing full well that Resighini Rancheria is an Indian nation with immunity from unconsented suit, the Yurok Tribe filed this action against the Rancheria in response to the Rancheria's invitation to allow a federal court to resolve a long-standing disagreement between the Tribes. ER 018. In response to the invitation, the Yurok Tribe filed a complaint asserting that the Rancheria, particularly after declining to merge with the Yurok Tribe, had no right to the resources of the Yurok Reservation; and that Gary Dowd breached his promise to the United States under the HYSA by continuously attempting to take fish from the Yurok Reservation. Yurok alleged that this conduct violated the Tribe's reserved fishing right. *United States v. Eberhard*, 789 F.2d 1354, 1359 (9th Cir. 1986) (the right to take fish from the Klamath River was reserved to Yurok Indians when the Reservation was established).

Pursuant to the District Court's scheduling order, the Yurok Tribe filed its motion for summary judgment. The Rancheria then moved to dismiss on immunity grounds. ER 232-58; ER 021-65. The District Court rejected the Yurok Tribe's argument that Resighini's conduct of the litigation amounted to a waiver of its immunity. ER 007; s*ee Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015) (tribal sovereign immunity "may be forfeited where [the sovereign] fails to assert it"). The District Court also rejected the Yurok Tribe's claims against Gary Dowd in his official capacity. ER 009; *but see Ariz. Pub. Serv. Co. v. Aspaas*, 77 F.3d 1128, 1134

(9th Cir. 1995) (tribal sovereign immunity does not bar claims against tribal officials acting in violation of federal law); *Maxwell v. Cty. of San Diego*, 708 F.3d 1075, 1087 (9th Cir. 2013) (tribal officials not immune from suit where the remedy would operate against the officials, not against the tribe). The District Court construed the official capacity claim against Dowd as one against the Rancheria, which was immune. ER 009. The District Court also concluded that the Yurok Tribe had somehow "waived" its claims against Dowd as a Tribal official. ER 016. The Yurok Tribe does not challenge these two rulings in this appeal.

Rather, the District Court's rejection of the claim against Gary Dowd as an individual is the subject of this appeal. The District Court concluded that the Rancheria was a required party to resolution of the dispute between the Yurok Tribe and Gary Dowd within the meaning of Federal Rule of Civil Procedure Rule 19, and that the Rancheria could not be joined because of its immunity. ER 012-15.

SUMMARY OF ARGUMENT

The District Court did not correctly apply settled principles of law to the determination of the Yurok Tribe's objections to Gary Dowd's individual conduct seeking to take without authorization the limited and precious resources of the Yurok Tribe. Gary Dowd, an individual Indian, entered into an agreement with the United States in 1991 whereby it paid him $15,000 and he relinquished "any interest or right whatsoever in the tribal . . . property, resources, or rights within . . . the Yurok

Reservation . . .." HYSA § 6(d). Despite accepting that "buy-out," Dowd continues to leave his Rancheria and without authorization, enter and fish on the Yurok Reservation, taking resources of the Yurok Tribe.[2] The Yurok Tribe seeks a declaratory judgment confirming that Dowd's conduct is in violation of federal law and in contravention of the Yurok Tribe's exclusive reserved fishing rights. Such relief would have no effect on any claims, however speculative, that the Resighini Rancheria asserts to the property and resources of the Yurok Reservation. Complete relief may be accorded the Yurok Tribe and Gary Dowd in this proceeding without impairment of any interest claimed by the Rancheria. Even of complete relief cannot be provided, this case should proceed without the Resighini Rancheria because applicable equitable factors favor resolution of the Yurok Tribe's claims against Dowd as an individual. For these reasons, this Court should reverse the District Court's dismissal of the Yurok Tribe's claims against Defendant Dowd in his individual capacity.

[2] The Yurok Tribe does not seek to prohibit Mr. Dowd from fishing in the Klamath River. The Tribe seeks only to prevent him from fishing without either a California fishing license or a permit from the Yurok Tribe while fishing within the Yurok Reservation. Unregulated, unauthorized fishing is what presents the serious risk to the future of the fishery.

ARGUMENT

I. Standard of Review

This Court reviews the District Court's granting of the Rule 19 motion to dismiss for abuse of discretion, but the legal conclusions underlying that determination are reviewed *de novo. Salt River Project Agric. Improvement & Power Dist. v. Lee*, 672 F. 3d 1176, 1179 (9th Cir. 2012).

II. The District Court's Dismissal of the Claim Against Defendant Dowd in his Individual Capacity Should be Reversed Because the Resighini Rancheria is Not a Required Party under Rule 19(a).

The District Court dismissed the claim against Defendant Dowd in his individual capacity based on its conclusion that the Resighini Rancheria was a necessary party under Fed. R. Civ. Pro. 19(a) that could not be joined due to its sovereign immunity from suit, and that under Fed. R. Civ. Pro. 19(b), equity and good conscience required dismissal. The District Court erred. The Rancheria is not a required party within the meaning of Rule 19 in a dispute between the Yurok Tribe and an individual such as Dowd who takes fish from the Yurok Reservation without either a license from California or a permit from the Yurok Tribe.

Under Rule 19(a), an absent party is required to be joined if: 1) complete relief cannot be accorded among existing parties; or 2) the absent party claims "an interest relating to the subject of the action," and its disposition in the party's absence will as practical matter impair that interest or create a substantial risk of "double, multiple or

otherwise inconsistent obligations" for an existing party. The District Court ruled that the Rancheria is a required party under the first element of this test. The District Court concluded that complete relief could not be provided as between Dowd and the Yurok Tribe because the question of whether the individual, Dowd, retained a fishing right after waiving all rights "whatsoever" to the resources of the Yurok Reservation required the court to resolve the Rancheria's claim to a federally reserved fishing right on the Yurok Reservation. ER 011. The District Court reasoned that because the Rancheria as a nonparty would not be bound by a determination of Dowd's right to fish on the Yurok Reservation, complete relief between Gary Dowd and the Yurok Tribe could not be provided. The District Court did not address the second element of Rule 19(a), whether Resighini Rancheria had asserted an interest in the case that would be impaired in its absence.

A. The Yurok Tribe's Claim Against Dowd as an Individual Can be Resolved Without the Rancheria Because, Regardless of the Validity of the Rancheria's Asserted Right, the HYSA Shows Unequivocally That Dowd Relinquished "Any Interest or Right Whatsoever" in the Resources of the Yurok Reservation.

The District Court erred when it concluded that the need to protect the Rancheria's rights required the dismissal of the Yurok Tribe's claims against Defendant Dowd in his individual capacity. In dismissing the claim, the court wrongly rested its decision on the potential impairment of the alleged rights the Rancheria may have at stake in that dispute, its off-reservation fishing rights. The

correct inquiry looks at what rights Dowd expressly gave up through his election not to join the Yurok Tribe in the HYSA and the consequences of the surrender of those rights as they pertain to the Yurok Tribe's claims against him as an individual. Under this approach, it is irrelevant whether the Rancheria has fishing rights along the entire Klamath River because Dowd, in his individual capacity, expressly, knowingly, and purposefully gave up any rights he had to resources of the Yurok Reservation and the Yurok Tribe, including any rights he may have as a Rancheria tribal member. The Rancheria's rights are not, therefore, implicated by adjudication of Yurok's claim against Dowd in his individual capacity.

The HYSA unambiguously describes the consequences for individuals electing the lump-sum payment and choosing to not join the Yurok Tribe:

> Any person making an election to receive, and having received, a lump sum payment under this subsection shall not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, … the Yurok Reservation, or the Yurok Tribe.

HYSA § 6(d)(3). Assuming, *arguendo*, that the Rancheria has a fishing right that allows it to fish off-reservation and take resources from the Yurok Reservation—an assumption that the Yurok Tribe vigorously disputes because it is legally unsupportable—Dowd gave up his ability to assert this right by accepting the lump-sum payment. The language of the HYSA is unequivocal on this point. Any other interpretation would thwart Congress' intention that the Act effect a final disposition of the uncertain status of these rights. *Id.* § 6(d)(2) (the lump-sum payment is the

"mechanism to resolve the complex litigation and other special circumstances of the Hoopa Valley Reservation and the tribes of the reservation."). Under the Act, an individual accepting the lump-sum payment relinquishes "any interest or right whatsoever" to resources he or she may claim to the Yurok Reservation. This language is not qualified by or relative to the Rancheria's rights; the language is absolute and meant as a final determination of an individual's rights to resources of the Yurok Reservation, including the fishery. Through the HYSA election, Dowd severed his individual rights from the rights of the Rancheria's and rendered the Rancheria's rights irrelevant to this dispute.

The District Court's conclusion that the Rancheria's rights are implicated by the Yurok Tribe's claims against Dowd in his individual capacity is thus incorrect. This Court should reverse the District Court's decision and allow the claims against Dowd in his individual capacity to continue without participation of the Rancheria.

B. Complete Relief Can Be Provided Between the Yurok Tribe and Defendant Dowd.

The District Court fundamentally misconstrued the Rule 19(a)(1) requirement regarding complete relief among existing parties. The District Court failed to comprehend that complete relief under Rule 19 "is concerned with consummate rather than partial or hollow relief as to those already parties, and with precluding multiple lawsuits on the same cause of action." *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F. 3d 861, 879 (9th Cir. 2004) (internal citation and quotation

marks omitted). The question is not whether complete relief can be accorded between the Yurok Tribe and the Rancheria as an absent party, but whether complete relief can be accorded between *existing* parties, the Yurok Tribe and the individual, Gary Dowd. *See Eldredge v. Carpenters 46 N. Cal. Ctys. Joint Apprenticeship & Training Comm.*, 662 F. 2d 534, 537 (9th Cir. 1981) (Rule 19(a)(1) focuses on "relief as between the persons already parties, not as between a party and the absent person whose joinder is sought."). Simply stated, the remedy sought must be "meaningful relief *as between the parties*." *Disabled Rights Action Comm.*, 375 F. 3d at 879 (emphasis added).

The District Court could have granted to the Yurok Tribe all the relief it requested against Dowd in its Complaint regardless of whether the Resighini Rancheria was joined as a party. The Yurok Tribe sought a declaration of rights as between the Tribe—protecting its primary resource, the fishery, from unlawful fishing—and the individual unlawfully fishing, Gary Dowd. Two claims against Dowd were alleged: First, Dowd was fishing on the Yurok Reservation in violation of the Hoopa Yurok Settlement Act: he had accepted Congress' offer of a payment of $15,000 in return for his complete relinquishment of any "interest or right whatsoever in the tribal, communal or unallotted land, property, resources, or rights within, or appertaining to . . . the Yurok Reservation of the Yurok Tribe." ER 272. Dowd sold whatever rights he may have had to the fishery of the Yurok Reservation.

Second, by fishing without authorization either from the Yurok Tribe or the State of California, Dowd unlawfully interfered with the Yurok Tribe's exclusive federal reserved fishing right within the Yurok Reservation. ER 273. The relief sought against Dowd was a declaratory judgment that he "has no right to fish within the Yurok Reservation" without the Tribe's or the State's authorization. ER 274. A judgment declaring the rights of Dowd as against the Yurok Tribe is complete and meaningful as between those parties, which is all that Rule 19(a)(1) requires.

That the Rancheria as an absent party would not be bound by a judgment against Dowd does not undermine this conclusion. *See Alto v. Black,* 738 F. 3d 1111, 1126 (9th Cir. 2013) (relief as between disenrolled members of an Indian tribe and federal officials is complete and meaningful "even if it does not bind the Tribe directly."). Rule 19(a) does not require a finding that an absent party is "required" simply because a judgment against an existing party may leave unsettled the rights of the plaintiff against an absent party. The Yurok Tribe declined to appeal the dismissal of its claims against the Resighini Rancheria on sovereign immunity grounds; the sole focus of this case on appeal is the Tribe's claims against the individual fisher, Gary Dowd.

In circumstances where the absent Tribe caused the injury, this Court has found that the inability to bind an absent tribe to a judgment against an existing party supports a finding that complete relief cannot be afforded. *See, e.g., Dawavendewa v.*

Salt River Project Agric. Improvement & Power Dist., 276 F. 3d 1150, 1155-56 (9th Cir. 2002) (court could not give complete relief to the plaintiff-employee with respect to the Navajo Nation, because the Nation could evict the employer from the reservation); *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F. 2d 1496, 1498 (9th Cir. 1991) (court could not grant complete relief to plaintiff tribe on jurisdictional question because the absent tribe would continue to assert jurisdiction over the same reservation land). By contrast with the case here, the principal injury was traced to potential actions of the absent tribe, rather than the defendant being sued. Here the Yurok Tribe's sole complaint is against Gary Dowd and his fishing within the Yurok Reservation without the consent of Yurok or the State of California. That issue can be resolved without the participation or joinder of the Resighini Rancheria because Dowd's actions are the principal cause of the injury of which Yurok complains. Resolution of the dispute between the Yurok Tribe and Gary Dowd does not depend on any action by the Resighini Rancheria.

The District Court's reliance on the supposed inefficacy of a Dowd judgment with respect to any dispute between the Yurok Tribe and the Rancheria is thus misplaced. ER 011. Resighini Rancheria is obligated to follow federal law whether or not it is a party to the judgment. *See, e.g.*, *Yellowstone County v. Pease*, 96 F. 3d 1169, 1172 (9th Cir. 1996) (noting that Tribal Court judges are obligated to follow federal law even if not bound as party to judgment); *Alto*, 738 F. 3d at 1127 (court

may assume the absent tribe will abide by agency decision on remand from vacated decision on disenrollment). That other members of the Resighini Rancheria may continue to fish unlawfully within the Yurok Reservation after a judgment against Gary Dowd, or that the Rancheria may direct them to do so, does not mean complete relief cannot be afforded to the Yurok Tribe. The Yurok Tribe will simply protect its fishery by appropriate means from those engaged in unlawful fishing in the future.

This Court rejected a similar argument in *Salt River Project Agric. Improvement & Power Dist.*, 672 F. 3d at 1180. There, this Court held that the possibility that Navajo Nation officials not party to the suit may seek to enforce the employment rights ordinance at issue in the case did not render relief between the parties incomplete. The Court stated: "[i]f in the future the plaintiffs believe that other [Navajo] officials are acting in violation of federal law, they may bring another action against those officials." *Id.* Similarly, if other Rancheria members seek to take fish from the Yurok Reservation (without a State license or Tribal permit) in the face of a declaratory judgment against Dowd, the Yurok Tribe will bring new actions against them to protect its fishery.

Rule 19 should not be interpreted to deprive the Yurok Tribe of a forum to adjudicate its claims simply because the Resighini Rancheria may in the future claim to authorize its members to violate federal law and enter the Yurok Reservation to remove fish or other resources. If the Yurok Tribe is unable to adjudicate its claims

against Gary Dowd, its imperiled fishery will be further endangered. This Court's prior straightforward interpretation of Rule 19 in *Salt River Project Agric. Improvement & Power Dist.* avoids that harsh result. *Id.* at 1179-80.

In short, meaningful and complete relief may be granted in the dispute between the Yurok Tribe and Gary Dowd, an individual who sold whatever rights he may have possessed in the Yurok fishery, but nevertheless continues to take the primary resource of the Yurok Tribe without either a State license or the Tribe's permission.

C. The Resighini Rancheria's Interest Will Not Be Impaired or Subjected to Inconsistent Obligations if the Yurok Tribe's Claims Against Dowd Are Adjudicated in Its Absence.

Because complete relief can be achieved between the existing parties, the Yurok Tribe and Mr. Dowd, the court must also consider the alternative definition of a necessary party in Rule 19(a)(2): whether Resighini asserts "legally cognizable" claims that would be affected by resolution of the dispute between Yurok and Dowd. *Disabled Rights Action Comm.*, 375 F. 3d at 880. Resighini's claimed interests here are unrelated to Gary Dowd's waiver of his rights to Yurok resources, are legally unsupportable, and in any event, are unaffected by resolution of the dispute between Yurok and Gary Dowd.

1. *Resighini's claimed interests are unrelated to the dispute between the Yurok Tribe and Gary Dowd.*

This second factor in the required party analysis "focuses on whether the absent party's participation is necessary to protect its legally cognizable interests or to

protect other parties from a substantial risk of incurring multiple or inconsistent obligations because of those interests." *Id.* Because there are few categorical rules for this analysis, courts have adopted a spectrum to guide this determination. At one end of the spectrum, this Court has ruled that the interest at stake need not be "property in the sense of the due process clause." *American Greyhound Racing v. Hull,* 305 F. 3d 1015, 1023 (9th Cir. 2002). At the other end, this Court requires that the interest "must be more than a financial stake…, and more than speculation about a future event." *Makah Indian Tribe v. Verity*, 910 F. 2d 555, 558 (9th Cir. 1990). The Supreme Court has also instructed courts to disregard the asserted interest altogether if it is frivolous on its face. *Republic of Philippines v. Pimentel*, 553 U.S. 851, 867 (2008). The interest must be a substantial, legally protected one, and practical considerations tied to the specific facts should guide the determination. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F. 3d 962, 970 (9th Cir. 2008); *Pimentel,* 553 U.S. at 868 (Rule 19 "cannot be applied in a vacuum, and it may require some preliminary assessment of the merits of certain claims.").

The dispute between the Yurok Tribe and Mr. Dowd is simply stated. In 1991, Mr. Dowd took $15,000 from the United States in return for complete relinquishment of "any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, . . . the Yurok Reservation, or

the Yurok Tribe . . .." HYSA at § 6(d)(3). Yet, Mr. Dowd continues to leave his Reservation, enter the Yurok Reservation, and take fish from the Yurok Reservation. In the absence of the Rancheria, the district court may determine whether Mr. Dowd indeed relinquished all rights "whatsoever" including his right to take fish from the Yurok Reservation. Mr. Dowd's agreement with the United States may be enforced in the absence of the Rancheria.

2. *Resighini's claims that it has sovereign authority over the Yurok Reservation and its fishery are not supported by the law.*

The District Court erred by failing to conduct a preliminary assessment of the merits of Resighini's claimed interest. *Pimentel,* 553 U.S. at 868. Resighini's claimed interests are variously described. They are unrelated to whether Gary Dowd took cash in return for relinquishing whatever rights he may have had to the resources of the Yurok Tribe. And they are entirely without support in the law.

The Rancheria described its claims as "a federally-reserved Tribal property right to fish and not a right belonging to any individual." ER 027. It also claims its members may "continue to fish in the Klamath River" outside the Resighini Reservation "pursuant to the authority granted to them by the Tribe." ER 036. It also describes its claims as an aspect of the sovereign authority of the Rancheria to "enact and enforce its own laws regulating the fishing of its members," presumably even on the Reservation of a separate tribe outside of the Rancheria. ER 036. And it also claims a federally-reserved fishing right is held by some individual members of the

Rancheria by virtue of their lineal descendancy from Yurok Indians. ER 040; ER 041-42 (averring that some members of the Resighini Rancheria are lineal descendants of the Yurok Indians who relied on the Klamath River fishery within the original Klamath River Reservation).

The common thread that runs through these various iterations of its supposed claims is that Resighini Rancheria asserts a right to take the resources of the Yurok Tribe within the Yurok Reservation but outside its own reservation; it asserts that at its will and its discretion, its members may enter the lands of the Yurok Reservation and walk away with fish and perhaps other resources. It asserts sovereign authority over the territory of the Yurok Tribe. Not surprisingly, there is no support in the law for such a claim. *See Worcester v. Georgia*, 31 U.S. 515, 557 (1832), *abrogated on other grounds* ("Indian nations [are] distinct political communities, having territorial boundaries, within which their authority is exclusive…"); Cohen's Handbook of Federal Indian Law, § 18.03[1], at 1158-59 (Nell Jessup Newton ed., 2012) (exclusive on-reservation rights implied from establishment of the reservation). An Indian tribe's right to self-government – its sovereignty – "centers on the land held by the tribe and on tribal members within the reservation." *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327 (2008). Resighini's sovereign authority extends to its acreage within only the Resighini Rancheria Reservation and over its members' activities there. It does not extend into the Yurok Reservation. In

the context of Rule 19, Resighini's claim to authority over the property, resources, and fish within the Yurok Reservation is frivolous. *Pimentel*, 553 U.S. at 867.

3. *Whatever Resighini's claims are, they are unaffected by the resolution of the dispute between the Yurok Tribe and an individual who took cash in return for relinquishing any claimed right to fish on the Yurok Reservation.*

Resighini Rancheria cannot demonstrate that its asserted interest will be affected by the adjudication of the Yurok Tribe's claim against Gary Dowd in its absence. The Yurok Tribe's claim against Mr. Dowd raises the question of whether Dowd's decision to accept money in return for a waiver of all rights "whatsoever" to the resources of the Yurok Reservation in the HYSA precludes only his ability to fish within the Yurok Reservation. The resolution of that question will not affect whatever tribally-based claims the Rancheria may make.

Under none of the Rancheria's various legal theories would the adjudication of the Yurok Tribe's claims against the individual Gary Dowd hamper the ability of the Rancheria to protect its sovereign and proprietary interests or subject those interests to inconsistent obligations. Whatever interest Gary Dowd alleges he possesses, whether a tribal right derived from his membership in the Rancheria, or an individual right derived from his Yurok ancestry, that interest was extinguished under his election in the HYSA. Any decision that goes beyond that narrow question is surplusage. The District Court could have assessed the merits of that argument without reaching any questions about whether the Rancheria somehow possesses the

sovereign authority over a fishery located outside of its Reservation and on the Yurok Reservation; whether it somehow possesses regulatory authority over the Klamath River outside its Reservation and within the Yurok Reservation; whether it or its members somehow possess a reserved fishing right in the fishery of the Yurok Reservation.

Moreover, whatever the nature of the Rancheria's interest, Gary Dowd can adequately represent it in this case. Although Dowd is no longer sued in his capacity as a Rancheria officer, he can adequately represent the Rancheria here. As this Court has noted, "[a]s a practical matter, an absent party's ability to protect its interest will not be impaired by its absence from the suit where its interest will be adequately represented by existing parties to the suit." *Washington v. Daley*, 173 F. 3d 1158, 1167 (9th Cir. 1999). This Court considers three factors: 1) whether the interests align sufficiently to expect that the existing party will make all of the absent party's arguments; 2) whether that party is capable and willing to make such arguments; and 3) whether the absent party would offer any necessary element to the case that the existing party would neglect. *Shermoen v. United States*, 982 F. 2d 1312, 1318 (9th Cir. 1992) (internal quotation marks omitted).

All three factors are satisfied by Defendant Dowd here. Dowd and the Rancheria share an interest in defending the claims that they have a right to fish outside the Rancheria boundaries in the Klamath River within the Yurok Reservation

without being subject to the sovereign authority of the Yurok Tribe or the State of California. Both parties were represented by the same counsel in the District Court and their defense against the Yurok Tribe's claims was coordinated and unified. With regard to the legal effect of the HYSA and the consequences to the Yurok Tribe of Rancheria members fishing in the Klamath River within the Yurok Reservation, the arguments of Dowd and the Rancheria are likely to be identical. There is no reason to believe Dowd would not make any of the arguments the Rancheria would make. And he is certainly capable and willing to make those arguments. Because he is an officer of the Rancheria, it is highly unlikely that the Rancheria would offer anything in defense of Resighini fishing rights that Dowd would not also furnish.

In sum, the first question asked under Rule 19 is whether, in this case, the Resighini Rancheria should be joined to this action. The answer is that the Rancheria is not a required party to the dispute between the Yurok Tribe and a fisherman who has sold his rights to fish on the Yurok Reservation. Complete relief may be afforded to the Yurok Tribe and Gary Dowd in the absence of the Rancheria. And, the Rancheria has asserted no legally cognizable interest that would be affected by resolution of the dispute between Yurok and Mr. Dowd.

III. The District Court's Dismissal of the Claim Against Defendant Dowd in his Individual Capacity Should be Reversed Because that Claim Can be Adjudicated in Equity and Good Conscience in the Absence of the Resighini Rancheria Under Rule 19(b).

If the court concludes that the Rancheria is a required party because it cannot be joined in consequence of its assertion of immunity, the second question under Rule 19 is whether the case may still proceed "in equity and good conscience." Rule 19(b). Here, those factors weigh heavily in favor of allowing the claims against Dowd to be adjudicated in the absence of the Rancheria.

Rule 19(b) sets forth four factors to guide the court's determination of whether an action should be allowed to proceed in the absence of a party that cannot be joined: 1) prejudice to any party or to the absent party; 2) whether relief can be shaped to lessen the prejudice; 3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and 4) whether the plaintiff has an alternative forum in which to adjudicate its claims. *Makah Indian Tribe*, 910 F. 2d at 560. The sovereign immunity of the absent party is not treated as a compelling factor in itself that would obviate the need to balance the four factors. *Confederated Tribes of the Chehalis Indian Reservation*, 928 F. 2d at 1499 (Even when the absent party is an Indian tribe with immunity, "[w]e have nonetheless consistently applied the four-part test to determine whether Indian tribes are indispensable parties."). The Rule 19(b) factors "are nonexclusive," and the "determination of whether to proceed will turn upon factors that are case specific." *Pimentel,* 553 U.S. at 862-63. The key

question is whether, it is fair for the claims among existing parties to be adjudicated without the absent party considering the four factors in 19(b) and all other relevant equitable factors presented in this particular case. The answer to that question under the facts of this case is emphatically yes.

The District Court erroneously limited its analysis under Rule 19(b) to the four factors set forth in the rule. As the Supreme Court has pointed out, the Rule 19(b) factors are "nonexclusive, as made clear by the introductory statement that '[t]he factors for the court to consider *include* . . ..'" *Pimentel*, 553 U.S. at 862 *citing* Fed. R. Civ. P. 19(b) (emphasis added). Taken as a whole, the facts here show that it would not be unfair to the Rancheria to adjudicate the Yurok Tribe's claims against Dowd in its absence. Although the Rancheria ultimately invoked its immunity to avoid adjudication of its interest, before then it's conduct suggested it was not unalterably opposed to having its dispute with Yurok resolved in federal court. Before this case was filed, the Rancheria invited the Yurok Tribe to submit the fishing rights dispute to the federal district court as "friendly litigation," and the Rancheria participated in mediation efforts to resolve the dispute outside the courthouse. ER 018. The District Court's narrow and mechanical application of the Rule 19(b) factors wrongly meant that these facts were not deemed relevant.

The District Court abused its discretion by concluding that the Yurok Tribe's claims against Dowd could not equitably proceed without the Resighini Rancheria.

As to the first Rule 19(b) factor, the court correctly noted that the prejudice assessment is the same as the impairment determination under Rule 19(a). ER 012. However, in neither its Rule 19(a) discussion nor its Rule 19(b)(1) discussion does the District Court analyze how the interest of the Rancheria will be impaired or prejudiced if the case proceeds in its absence. Rather, the court uncritically accepts the unfounded assertion of the Rancheria that it has a "federally-reserved fishing right that could be eliminated or made subject to the Yurok Tribe's regulation." ER 013. The District Court did not explain how a declaratory judgment against an individual Rancheria member who accepted money in exchange for giving up all rights in the Yurok Reservation, including fishing rights, imperils the fishing rights of the Rancheria. It is unclear from the District Court's analysis how an Indian tribe loses its reserved rights if the rights of one individual member are found to have been relinquished by that member. Moreover, as noted, the central question remaining in this case, whether Dowd's rights, whatever they might have been, were extinguished when he accepted payment in exchange for them, can and should be answered without addressing the nature and scope of any alleged tribal underlying right.

Nor would adjudication of the Yurok Tribe's claims affect the sovereign powers of the Rancheria. As noted, it has no sovereign authority over the Klamath River within the Yurok Reservation where Dowd is alleged to have been fishing, so its authority over that territory is unaffected. *See Worcester*, 31 U.S. at 557; Cohen's

Handbook of Federal Indian Law, § 18.03[1], at 1158-59. The court is not obliged to account for impairment to frivolous interests under Rule 19, such as the Rancheria's asserted interests here. *Pimentel*, 553 U.S. at 867 ("There may be cases where the person who is not joined asserts a claim that is frivolous. In that instance a court may have leeway under both Rule 19(a) . . . and Rule 19(b) . . .to disregard the frivolous claim."). The Rancheria's authority to confer on its members the ability to lawfully take resources from the Yurok Reservation has not been established—and is an assertion contrary to existing law—so that jurisdiction can hardly be impaired by a judgment in this action. The Rancheria may continue to assert sovereign authority over its own Reservation lands and its members regardless of whether one of them is adjudicated to be without fishing rights outside its Reservation. Neither claim of injury withstands scrutiny for the additional reason that the Rancheria would not be bound by a judgment against Dowd and would be free to assert whatever interests it claims in future litigation or defend those interests if the Yurok Tribe brings additional actions.

The District Court's conclusion that the second Rule 19(b) factor—the possibility of lessening prejudice to the Resighini Rancheria—weighs in favor of dismissal is likewise based on the incorrect premise that the interests of the Rancheria will be prejudiced if the case goes forward without it. It is not necessary to consider

provisions to shape the relief against Dowd in order to protect against injury to the Rancheria.

As to the third factor, the District Court wrongly concluded that a judgment as between the Yurok Tribe and Dowd would not be adequate because the Rancheria has expressed its intention to continue to assert its claim to fishing rights in the Klamath River within the Yurok Reservation, notwithstanding a judgment of a federal court that has the status of federal law. ER 013-14. That is an untenable proposition that improperly broadens the reach of Rule 19(b)(3). As the Supreme Court has observed, the purpose of the third factor is to vindicate the "public stake in settling disputes by wholes, whenever possible . . .." *Provident Tradesmens Bank & Trust Co. v. Patterson,* 390 U.S. 102, 111 (1968). The third factor does not require a judgment against Dowd to resolve each and every issue related to all aspects of the fishing rights dispute between the Yurok Tribe and the Resighini Rancheria. The Rule cannot be that expansive. Rather, the Rule requires the court to consider whether the judgment will be adequate to resolve the issues in the Tribe's claims against Dowd. On that point, there can be no doubt of the adequacy of the judgment. The interests of the courts and the public generally in the complete and efficient resolution of on-going controversies would be served by a judgment against Dowd.

Finally, the District Court's finding that the fourth factor weighed in favor of dismissal was error. The court acknowledged that the Yurok Tribe has no other

forum in which to litigate its claim against Gary Dowd. But the District Court concluded nonetheless that this fact does not outweigh the factors favoring dismissal "due to the important doctrine of sovereign immunity." ER 015. In other words, the District Court found that the Resighini Rancheria's sovereign immunity trumps the Yurok Tribe's right to a judicial forum to hear its claims. This approach is precisely the kind of inflexible analytical method that the Supreme Court warned could lead to harsh results. *Pimentel*, 553 U.S. at 863 (The question of who may or must be parties has consequences for the judicial system, the integrity of its processes "and its concern for the fair and prompt resolution of disputes.").

The District Court engaged in no analysis of whether the Rancheria's sovereign immunity outweighed the Yurok Tribe's interest in having a forum. The immunity of the absent party does not automatically lead to the conclusion that it outweighs all other interests under the fourth factor. *See Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1461 (9th Cir. 1994) (Noting that the "[p]laintiffs interest in litigating a claim *may* be outweighed by a tribe's interest in maintaining its sovereign immunity.") (internal quotations omitted) (emphasis added). As we noted earlier, this Court has observed that the Yurok Klamath River fishery is "not much less necessary to the existence of the [Yurok] Indians than the atmosphere they breathed." *Blake*, 663 F. 2d at 909 (internal citation omitted). Given the perilous state of that fishery today, the Yurok Tribe's interest is as compelling in the Rule 19(b) balancing analysis as the

immunity of the Rancheria. Therefore, Rancheria's immunity is not entitled to dispositive weight here, particularly because immunity from suit is not of the same magnitude as immunity from liability. *See, e.g.*, *Pimentel*, 553 U.S. at 878 (Stevens, J., concurring in part and dissenting in part) ("[T]he sovereign interest implicated here is not of the same magnitude as when a sovereign faces liability; the Republic's interest is in choosing the most convenient venue and time for suit to proceed.").

Also, the Rancheria has previously sought to litigate, albeit unsuccessfully, its claimed fishing rights in federal court. *Resighini Rancheria v. Bonham*, 872 F. Supp. 2d 964 (N.D. Cal. 2012) (granting defendants' motion to dismiss claim that Rancheria is entitled to fish within the Yurok Reservation and denying injunction barring California Department of Fish and Game from citing its members for fishing in that area, on the basis of lack of standing). The Yurok Tribe shares the interest of the Rancheria in resolving this dispute. Considering the stated willingness of the Resighini Rancheria to submit this dispute to judicial resolution, its delay in asserting its sovereign immunity, its previous efforts to litigate this dispute, and the harmful consequences to the Yurok Tribe if it lacks a forum to litigate the dispute with Gary Dowd, the fourth Rule 19(b) factor weighs in favor of allowing the case to proceed without the Rancheria.

CONCLUSION

For the reasons set forth here, the Yurok Tribe respectfully requests that this Court reverse the judgment of the District Court and permit the dispute between the Yurok Tribe and the individual fisherman, Gary Dowd, to be resolved on its merits.

Respectfully submitted,

Date: May 25, 2018

BERKEY WILLIAMS LLP

By: */s/Scott W. Williams*
Scott W. Williams

Attorneys for Plaintiff-Appellant,
The Yurok Tribe

STATEMENT OF RELATED CASES

The undersigned, counsel of record for the Yurok Tribe is not aware of any related cases.

Date: May 25, 2018

BERKEY WILLIAMS LLP

By: */s/Scott W. Williams*
Scott W. Williams

Attorneys for Plaintiff-Appellant, The Yurok Tribe

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number _____

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1.
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

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Signature of Attorney or Unrepresented Litigant [s/Scott W. Williams] Date [May 25, 2018]

("s/" plus typed name is acceptable for electronically-filed documents)

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Participants in the case who are not registered CM/ECF users will be served by U.S. Mail.

Date: May 25, 2018

BERKEY WILLIAMS LLP

By: */s/Scott W. Williams*
Scott W. Williams

Attorneys for Plaintiff-Appellant, The Yurok Tribe

ADDENDUM

CIRCUIT RULE 28-2.7

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Public Law 100-580
100th Congress

An Act

Oct. 31, 1988
[S. 2723]

To partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Hoopa-Yurok Settlement Act.
25 USC 1300i.

SECTION 1. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the "Hoopa-Yurok Settlement Act".

(b) DEFINITIONS.—For the purposes of this Act, the term—

(1) "Escrow funds" means the moneys derived from the joint reservation which are held in trust by the Secretary in the accounts entitled—

(A) "Proceeds of Labor-Hoopa Valley Indians-California 70 percent Fund, account number J52-561-7197";

(B) "Proceeds of Labor-Hoopa Valley Indians-California 30 percent Fund, account number J52-561-7236";

(C) "Proceeds of Klamath River Reservation, California, account number J52-562-7056";

(D) "Proceeds of Labor-Yurok Indians of Lower Klamath River, California, account number J52-562-7153";

(E) "Proceeds of Labor-Yurok Indians of Upper Klamath River, California, account number J52-562-7154";

(F) "Proceeds of Labor-Hoopa Reservation for Hoopa Valley and Yurok Tribes, account number J52-575-7256"; and

(G) "Klamath River Fisheries, account number 5628000001";

(2) "Hoopa Indian blood" means that degree of ancestry derived from an Indian of the Hunstang, Hupa, Miskut, Redwood, Saiaz, Sermalton, Tish-Tang-Atan, South Fork, or Grouse Creek Bands of Indians;

(3) "Hoopa Valley Reservation" means the reservation described in section 2(b) of this Act;

(4) "Hoopa Valley Tribe" means the Hoopa Valley Tribe, organized under the constitution and amendments approved by the Secretary on November 20, 1933, September 4, 1952, August 9, 1963, and August 18, 1972;

(5) "Indian of the Reservation" shall mean any person who meets the criteria to qualify as an Indian of the Reservation as established by the United States Court of Claims in its March 31, 1982, May 17, 1987, and March 1, 1988, decisions in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63);

(6) "Joint reservation" means the area of land defined as the Hoopa Valley Reservation in section 2(b) and the Yurok Reservation in section 2(c) of this Act.

(7) "Karuk Tribe" means the Karuk Tribe of California, organized under its constitution on April 6, 1985;

(8) "Secretary" means the Secretary of the Interior;

(9) "Settlement Fund" means the Hoopa-Yurok Settlement Fund established pursuant to section 4;

(10) "Settlement Roll" means the final roll prepared and published in the Federal Register by the Secretary pursuant to section 5;

(11) "Short cases" means the cases entitled Jesse Short et al. v. United States, (Cl. Ct. No. 102-63); Charlene Ackley v. United States, (Cl. Ct. No. 460-78); Bret Aanstadt v. United States, (Cl. Ct. No. 146-85L); and Norman Giffen v. United States, (Cl. Ct. No. 746-85L);

(12) "Short plaintiffs" means named plaintiffs in the Short cases;

(13) "trust land" means an interest in land the title to which is held in trust by the United States for an Indian or Indian tribe, or by an Indian or Indian tribe subject to a restriction by the United States against alienation;

(14) "unallotted trust land, property, resources or rights" means those lands, property, resources, or rights reserved for Indian purposes which have not been allotted to individuals under an allotment Act;

(15) "Yurok Reservation" means the reservation described in section 2(c) of this Act; and

(16) "Yurok Tribe" means the Indian tribe which is recognized and authorized to be organized pursuant to section 9 of this Act.

SEC. 2. RESERVATIONS; PARTITION AND ADDITIONS. 25 USC 1300i-1.

(a) PARTITION OF THE JOINT RESERVATION.—(1) Effective with the publication in the Federal Register of the Hoopa tribal resolution as provided in paragraph (2), the joint reservation shall be partitioned as provided in subsections (b) and (c).

(2)(A) The partition of the joint reservation as provided in this subsection, and the ratification and confirmation as provided by section 8, shall not become effective unless, within 60 days after the date of the enactment of this Act, the Hoopa Valley Tribe shall adopt, and transmit to the Secretary, a tribal resolution:

(i) waiving any claim such tribe may have against the United States arising out of the provisions of this Act, and

(ii) affirming tribal consent to the contribution of Hoopa Escrow monies to the Settlement Fund, and for their use as payments to the Yurok Tribe, and to individual Yuroks, as provided in this Act.

(B) The Secretary, after determining the validity of the resolution transmitted pursuant to subparagraph (A), shall cause such resolution to be printed in the Federal Register. Federal Register, publication.

(b) HOOPA VALLEY RESERVATION.—Effective with the partition of the joint reservation as provided in subsection (a), the area of land known as the "square" (defined as the Hoopa Valley Reservation established under section 2 of the Act of April 8, 1864 (13 Stat. 40), the Executive Order of June 23, 1876, and Executive Order 1480 of February 17, 1912) shall thereafter be recognized and established as the Hoopa Valley Reservation. The unallotted trust land and assets of the Hoopa Valley Reservation shall thereafter be held in trust by the United States for the benefit of the Hoopa Valley Tribe.

(c) YUROK RESERVATION.—(1) Effective with the partition of the joint reservation as provided in subsection (a), the area of land known as the "extension" (defined as the reservation extension under the Executive Order of October 16, 1891, but excluding the Resighini Rancheria) shall thereafter be recognized and established as the Yurok Reservation. The unallotted trust land and assets of the Yurok Reservation shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe.

National Forest System.

(2) Subject to all valid existing rights and subject to the adoption of a resolution of the Interim Council of the Yurok Tribe as provided in section 9(d)(2), all right, title, and interest of the United States—

(A) to all national forest system lands within the Yurok Reservation, and

(B) to that portion of the Yurok Experimental Forest described as Township 14 N., Range 1 E., Section 28, Lot 6: that portion of Lot 6 east of U.S. Highway 101 and west of the Yurok Experimental Forest, comprising 14 acres more or less and including all permanent structures thereon, shall thereafter be held in trust by the United States for the benefit of the Yurok Tribe and shall be part of the Yurok Reservation.

(3)(A) Pursuant to the authority of sections 5 and 7 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 465, 467), the Secretary may acquire from willing sellers lands or interests in land, including rights-of-way for access to trust lands, for the Yurok Tribe or its members, and such lands may be declared to be part of the Yurok Reservation.

(B) From amounts authorized to be appropriated by the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), the Secretary shall use not less than $5,000,000 for the purpose of acquiring lands or interests in lands pursuant to subparagraph (A). No lands or interests in lands may be acquired outside the Yurok Reservation with such funds except lands adjacent to and contiguous with the Yurok Reservation or for purposes of exchange for lands within the reservation.

(4) The—

(A) apportionment of funds to the Yurok Tribe as provided in sections 4 and 7;

(B) the land transfers pursuant to paragraph (2);

(C) the land acquisition authorities in paragraph (3); and

(D) the organizational authorities of section 9 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 Act.

(d) BOUNDARY CLARIFICATIONS OR CORRECTIONS.—(1) The boundary between the Hoopa Valley Reservation and the Yurok Reservation,

after the partition of the joint reservation as provided in this section, shall be the line established by the Bissel-Smith survey.

(2) Upon the partition of the joint reservation as provided in this section, the Secretary shall publish a description of the boundaries of the Hoopa Valley Reservation and Yurok Reservation in the Federal Register. Federal Register, publication.

(e) MANAGEMENT OF THE YUROK RESERVATION.—The Secretary shall be responsible for the management of the unallotted trust land and assets of the Yurok Reservation until such time as the Yurok Tribe has been organized pursuant to section 9. Thereafter, those lands and assets shall be administered as tribal trust land and the Yurok reservation governed by the Yurok Tribe as other reservations are governed by the tribes of those reservations.

(f) CRIMINAL AND CIVIL JURISDICTION.—The Hoopa Valley Reservation and Yurok Reservation shall be subject to section 1360 of title 28, United States Code; section 1162 of title 18, United States Code, and section 403(a) of the Act of April 11, 1968 (82 Stat. 79; 25 U.S.C. 1323(a)).

SEC. 3. PRESERVATION OF SHORT CASES. 25 USC 1300i-2.

Nothing in this Act shall affect, in any manner, the entitlement established under decisions of the United States Claims Court in the Short cases or any final judgment which may be rendered in those cases.

SEC. 4. HOOPA-YUROK SETTLEMENT FUND. 25 USC 1300i-3.

(a) ESTABLISHMENT.—(1) There is hereby established the Hoopa-Yurok Settlement Fund. Upon enactment of this Act, the Secretary shall cause all the funds in the escrow funds, together with all accrued income thereon, to be deposited into the Settlement Fund.

(2) Until the distribution is made to the Hoopa Valley Tribe pursuant to section (c), the Secretary may distribute to the Hoopa Valley Tribe, pursuant to the provision of title I of the Department of the Interior and related Agencies Appropriations Act, 1985, under the heading "Bureau of Indian Affairs" and subheading "Tribal Trust Funds" at 98 Stat. 1849 (25 U.S.C. 123c), not to exceed $3,500,000 each fiscal year out of the income or principal of the Settlement Fund for tribal, non per capita purposes: *Provided, however,* That the Settlement Fund apportioned under subsections (c) and (d) shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Hoopa Valley Tribe pursuant to subsection (c).

(3) Until the distribution is made to the Yurok Tribe pursuant to section (d), the Secretary may, in addition to providing Federal funding, distribute to the Yurok Transition Team, pursuant to provision of title I of the Department of the Interior and Related Agencies Appropriations Act, 1985, under the heading "Bureau of Indian Affairs" and subheading "Tribal Trust Funds" at 98 Stat. 1849 (25 U.S.C. 123c), not to exceed $500,000 each fiscal year out of the income and principal of the Settlement Fund for tribal, non per capita purposes: *Provided, however,* That the Settlement Fund apportioned under subsections (c) and (d) shall be calculated without regard to this subparagraph, but any amounts distributed under this subparagraph shall be deducted from the payment to the Yurok Tribe pursuant to subsection (d).

(b) DISTRIBUTION; INVESTMENT.—The Secretary shall make distribution from the Settlement Fund as provided in this Act and, pending payments under section 6 and dissolution of the fund as provided in section 7, shall invest and administer such fund as Indian trust funds pursuant to the first section of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a).

(c) HOOPA VALLEY TRIBE PORTION.—Effective with the publication of the option election date pursuant to section 6(a)(4), the Secretary shall immediately pay out of the Settlement Fund into a trust account for the benefit of the Hoopa Valley Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of enrolled members of the Hoopa Valley Tribe as of the date of the promulgation of the Settlement Roll, including any persons enrolled pursuant to section 6, by the sum of the number of such enrolled Hoopa Valley tribal members and the number of persons on the Settlement Roll.

(d) YUROK TRIBE PORTION.—Effective with the publication of the option election date pursuant to section 6(a)(4), the Secretary shall pay out of the Settlement Fund into a trust account for the benefit of the Yurok Tribe a percentage of the Settlement Fund which shall be determined by dividing the number of persons on the Settlement Roll electing the Yurok Tribal Membership Option pursuant to section 6(c) by the sum of the number of the enrolled Hoopa Valley tribal members established pursuant to subsection (c) and the number of persons on the Settlement Roll, less any amount paid out of the Settlement Fund pursuant to section 6(c)(3).

Appropriation authorization.

(e) FEDERAL SHARE.—There is hereby authorized to be appropriated the sum of $10,000,000 which shall be deposited into the Settlement Fund after the payments are made pursuant to subsections (c) and (d) and section 6(c). The Settlement Fund, including the amount deposited pursuant to this subsection and all income earned subsequent to the payments made pursuant to subsections (c) and (d) and section 6(c), shall be available to make the payments authorized by section 6(d).

25 USC 1300i-4.

SEC. 5. HOOPA-YUROK SETTLEMENT ROLL.

(a) PREPARATION; ELIGIBILITY CRITERIA.—(1) The Secretary shall prepare a roll of all persons who can meet the criteria for eligibility as an Indian of the Reservation and—

(A) who were born on or prior to, and living upon, the date of enactment of this Act;

(B) who are citizens of the United States; and

(C) who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe.

(2) The Secretary's determination of eligibility under this subsection shall be final except that any Short plaintiff determined by the United States Claims Court to be an Indian of the Reservation shall be included on the Settlement Roll if they meet the other requirements of this subsection and any Short plaintiff determined by the United States Claims Court not to be an Indian of the Reservation shall not be eligible for inclusion on such roll.

(b) RIGHT TO APPLY; NOTICE.—Within thirty days after the date of enactment of this Act, the Secretary shall give such notice of the right to apply for enrollment as provided in subsection (a) as he deems reasonable except that such notice shall include, but shall not be limited to—

(1) actual notice by registered mail to every plaintiff in the Short cases at their last known address;

(2) notice to the attorneys for such plaintiffs; and

(3) publication in newspapers of general circulation in the vicinity of the Hoopa Valley Reservation and elsewhere in the State of California.

Contemporaneous with providing the notice required by this subsection, the Secretary shall publish such notice in the Federal Register. Federal Register, publication.

(c) APPLICATION DEADLINE.—The deadline for application pursuant to this section shall be established at one hundred and twenty days after the publication of the notice by the Secretary in the Federal Register as required by subsection (b).

(d) ELIGIBILITY DETERMINATION; FINAL ROLL.—(1) The Secretary shall make determinations of eligibility of applicants under this section and publish in the Federal Register the final Settlement Roll of such persons one hundred and eighty days after the date established pursuant to subsection (c). Federal Register, publication.

(2) The Secretary shall develop such procedures and times as may be necessary for the consideration of appeals from applicants not included on the roll published pursuant to paragraph (1). Successful appellants shall be added to the Settlement Roll and shall be afforded the right to elect options as provided in section 6, with any payments to be made to such successful appellants out of the remainder of the Settlement Fund after payments have been made pursuant to section 6(d) and prior to division pursuant to section 7.

(3) Persons added to the Settlement Roll pursuant to appeals under this subsection shall not be considered in the calculations made pursuant to section 4.

(e) EFFECT OF EXCLUSION FROM ROLL.—No person whose name is not included on the Settlement Roll shall have any interest in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Tribe, the Hoopa Valley Reservation, the Yurok Tribe, or the Yurok Reservation or in the Settlement Fund unless such person is subsequently enrolled in the Hoopa Valley Tribe or the Yurok Tribe under the membership criteria and ordinances of such tribes.

SEC. 6. ELECTION OF SETTLEMENT OPTIONS. 25 USC 1300i-5.

(a) NOTICE OF SETTLEMENT OPTIONS.—(1) Within sixty days after the publication of the Settlement Roll as provided in section 5(d), the Secretary shall give notice by certified mail to each person eighteen years or older on such roll of their right to elect one of the settlement options provided in this section. Mail.

(2) The notice shall be provided in easily understood language, but shall be as comprehensive as possible and shall provide an objective assessment of the advantages and disadvantages of each of the options offered. The notice shall also provide information about the counseling services which will be made available to inform individuals about the respective rights and benefits associated with each option presented under this section. It shall also clarify that on election the Lump Sum Payment option requires the completion of a sworn affidavit certifying that the individual has been provided with complete information about the effects of such an election.

(3) With respect to minors on the Settlement Roll the notice shall state that minors shall be deemed to have elected the option of section 6(c), except that if the parent or guardian furnishes proof satisfactory to the Secretary that a minor is an enrolled member of Children and youth.

a tribe that prohibits members from enrolling in other tribes, the parent or guardian shall make the election for such minor. A minor subject to the provisions of section 6(c) shall, notwithstanding any other law, be deemed to be a child of a member of an Indian tribe regardless of the option elected pursuant to this Act by the minor's parent. With respect to minors on the Settlement Roll whose parent or guardian is not also on the roll, notice shall be given to the parent or guardian of such minor. The funds to which such minors are entitled shall be held in trust by the Secretary until the minor reaches age 18. The Secretary shall notify and provide payment to such person including all interest accrued.

(4)(A) The notice shall also establish the date by which time the election of an option under this section must be made. The Secretary shall establish that date as the date which is one hundred and twenty days after the date of the publication in the Federal Register as required by section 5(d).

(B) Any person on the Settlement Roll who has not made an election by the date established pursuant to subparagraph (A) shall be deemed to have elected the option provided in subsection (c).

(b) HOOPA TRIBAL MEMBERSHIP OPTION.—(1) Any person on the Settlement Roll, eighteen years or older, who can meet any of the enrollment criteria of the Hoopa Valley Tribe set out in the decision of the United States Court of Claims in its March 31, 1982, decision in the Short case (No. 102-63) as "Schedule A", "Schedule B", or "Schedule C" and who—

(A) maintained a residence on the Hoopa Valley Reservation on the date of enactment of this Act;

(B) had maintained a residence on the Hoopa Valley Reservation at any time within the five year period prior to the enactment of this Act; or

(C) owns an interest in real property on the Hoopa Valley Reservation on the date of enactment of this Act,

may elect to be, and, upon such election, shall be entitled to be, enrolled as a full member of the Hoopa Valley Tribe.

(2) Notwithstanding any provision of the constitution, ordinances or resolutions of the Hoopa Valley Tribe to the contrary, the Secretary shall cause any entitled person electing to be enrolled as a member of the Hoopa Valley Tribe to be so enrolled and such person shall thereafter be entitled to the same rights, benefits, and privileges as any other member of such tribe.

Claims.
Jesse Short.

(3) The Secretary shall determine the quantum of "Indian blood" or "Hoopa Indian blood", if any, of each person enrolled in the Hoopa Valley Tribe under this subsection pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63).

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Yurok Indian Reservation or the Yurok Tribe or in the Settlement Fund.

(c) YUROK TRIBAL MEMBERSHIP OPTION.—(1) Any person on the Settlement Roll may elect to become a member of the Yurok Tribe and shall be entitled to participate in the organization of such tribe as provided in section 9.

Claims.
Jesse Short.

(2) All persons making an election under this subsection shall form the base roll of the Yurok Tribe for purposes of organization

pursuant to section 9 and the Secretary shall determine the quantum of "Indian blood" if any pursuant to the criteria established in the March 31, 1982, decision of the United States Court of Claims in the case of Jesse Short et al. v. United States, (Cl. Ct. No. 102-63).

(3) The Secretary, subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. 1407), shall pay to each person making an election under this subsection, $5,000 out of the Settlement Fund for those persons who are, on the date established pursuant to section 6(a)(4), 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.

(4) Any person making an election under this subsection shall no longer have any right or interest whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation or the Hoopa Valley Tribe or, except to the extent authorized by paragraph (3), in the Settlement Fund. Any such person shall also be deemed to have granted to members of the Interim Council established under section 9 an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act, and granting tribal consent as provided in section 9(d)(2).

(d) LUMP SUM PAYMENT OPTION.—(1) Any person on the Settlement Roll 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: *Provided*, That such individual completes a sworn affidavit certifying that he or she has been afforded the opportunity to participate in counseling which the Secretary, in consultation with the Hoopa Tribal Council or Yurok Transition Team, shall provide. Such counseling shall provide a comprehensive explanation of the effects of such election on the individual making such election, and on the tribal enrollment rights of that persons children and descendants who would otherwise be eligible for membership in either the Hoopa or Yurok Tribe.

(2) The option to elect a lump sum payment under this section is provided solely as a mechanism to resolve the complex litigation and other special circumstances of the Hoopa Valley Reservation and the tribes of the reservation, and shall not be construed or treated as a precedent for any future legislation.

(3) Any person making an election to receive, and having received, a lump sum payment under this subsection shall not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe or, except authorized by paragraph (1), in the Settlement Fund.

SEC. 7. DIVISION OF SETTLEMENT FUND REMAINDER. 25 USC 1300i-6.

(a) Any funds remaining in the Settlement Fund after the payments authorized to be made therefrom by subsections (c) and (d) of section 6 and any payments made to successful appellants pursuant to section 5(d) shall be paid to the Yurok Tribe and shall be held by the Secretary in trust for such tribe.

(b) Funds divided pursuant to this section and any funds apportioned to the Hoopa Valley Tribe and the Yurok Tribe pursuant to subsections (c) and (d) of section 4 shall not be distributed per capita to any individual before the date which is 10 years after the date on

which the division is made under this section: *Provided, however,* That if the Hoopa Valley Business Council shall decide to do so it may distribute from the funds apportioned to it a per capita payment of $5,000 per member, pursuant to the Act of August 2, 1983 (25 U.S.C. 117a et seq.).

25 USC 1300i-7.

SEC. 8. HOOPA VALLEY TRIBE; CONFIRMATION OF STATUS.

The existing govening documents of the Hoopa Valley Tribe and the governing body established and elected thereunder, as heretofore recognized by the Secretary, are hereby ratified and confirmed.

25 USC 1300i-8.

SEC. 9. RECOGNITION AND ORGANIZATION OF THE YUROK TRIBE.

(a) YUROK TRIBE.—(1) Those persons on the Settlement Roll who made a valid election pursuant to subsection (c) of section 6 shall constitute the base membership roll for the Yurok Tribe whose status as an Indian tribe, subject to the adoption of the Interim Council resolution as required by subsection (d)(2), is hereby ratified and confirmed.

(2) The Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended, is hereby made applicable to the Yurok Tribe and the tribe may organize under such Act as provided in this section.

(3) Within thirty days (30) after the enactment of this Act the Secretary, after consultation with the appropriate committees of Congress, shall appoint five (5) individuals who shall comprise the Yurok Transition Team which, pursuant to a budget approved by the Secretary, shall provide counseling, promote communication with potential members of the Yurok Tribe concerning the provisions of this Act, and shall study and investigate programs, resources, and facilities for consideration by the Interim Council. Any property acquired for or on behalf of the Yurok Transition Team shall be held in the name of the Yurok Tribe.

(b) INTERIM COUNCIL; ESTABLISHMENT.—There shall be established an Interim Council of the Yurok Tribe to be composed of five members. The Interim Council shall represent the Yurok Tribe in the implementation of provisions of this Act, including the organizational provisions of this section, and subject to subsection (d) shall be the governing body of the tribe until such time as a tribal council is elected under a constitution adopted pursuant to subsection (e).

(c) GENERAL COUNCIL; ELECTION OF INTERIM COUNCIL.—(1) Within 30 days after the date established pursuant to section 6(a)(4), the Secretary shall prepare a list of all persons eighteen years of age or older who have elected the Yurok Tribal Membership Option pursuant to section 6(c), which persons shall constitute the eligible voters of the Yurok Tribe for the purposes of this section, and shall provide written notice to such persons of the date, time, purpose, and order of procedure for the general council meeting to be scheduled pursuant to paragraph (2) for the consideration of the nomination of candidates for election to the Interim Council.

(2) Not earlier than 30 days before, nor later than 45 days after, the notice provided pursuant to paragraph (1), the Secretary shall convene a general council meeting of the eligible voters of the Yurok Tribe on or near the Yurok Reservation, to be conducted under such order of procedures as the Secretary determines appropriate, for the nomination of candidates for election of members of the Interim

Council. No person shall be eligible for nomination who is not on the list prepared pursuant to this section.

(3) Within 45 days after the general council meeting held pursuant to paragraph (2), the Secretary shall hold an election by secret ballot, with absentee balloting and write-in voting to be permitted, to elect the five members of the Interim Council from among the nominations submitted to him from such general council meeting. The Secretary shall assure that notice of the time and place of such election shall be provided to eligible voters at least fifteen days before such election.

(4) The Secretary shall certify the results of such election and, as soon as possible, convene an organizational meeting of the newly-elected members of the Interim Council and shall provide such advice and assistance as may be necessary for such organization.

(5) Vacancies on the Interim Council shall be filled by a vote of the remaining members.

(d) INTERIM COUNCIL; AUTHORITIES AND DISSOLUTION.—(1) The Interim Council shall have no powers other than those given to it by this Act.

(2) The Interim Council shall have full authority to adopt a resolution—

(i) waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this Act, and

(ii) affirming tribal consent to the contribution of Yurok Escrow monies to the Settlement Fund, and for their use as payments to the Hoopa Tribe, and to individual Hoopa members, as provided in this Act, and

(iii) to receive grants from, and enter into contracts for, Federal programs, including those administered by the Secretary and the Secretary of Health and Human Services, with respect to Federal services and benefits for the tribe and its members.

(3) The Interim Council shall have such other powers, authorities, functions, and responsibilities as the Secretary may recognize, except that any contract or legal obligation that would bind the Yurok Tribe for a period in excess of two years from the date of the certification of the election by the Secretary shall be subject to disapproval and cancellation by the Secretary if the Secretary determines that such a contract or legal obligation is unnecessary to improve housing conditions of members of the Yurok Tribe, or to obtain other rights, privileges or benefits that are in the long-term interest of the Yurok Tribe.

(4) The Interim Council shall appoint, as soon as practical, a drafting committee which shall be responsible, in consultation with the Interim Council, the Secretary and members of the tribe, for the preparation of a draft constitution for submission to the Secretary pursuant to subsection (e).

(5) The Interim Council shall be dissolved effective with the election and installation of the initial tribe governing body elected pursuant to the constitution adopted under subsection (e) or at the end of two years after such installation, whichever occurs first.

(e) ORGANIZATION OF YUROK TRIBE.—Upon written request of the Interim Council or the drafting committee and the submission of a draft constitution as provided in paragraph (4) of subsection (d), the Secretary shall conduct an election, pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.) and rules and regulations promulgated thereunder, for the adoption

of such constitution and, working with the Interim Council, the election of the initial tribal governing body upon the adoption of such constitution.

25 USC 1300i-9.

SEC. 10. ECONOMIC DEVELOPMENT.

(a) PLAN FOR ECONOMIC SELF-SUFFICIENCY.—The Secretary shall—

(1) enter into negotiations with the Yurok Transition Team and the Interim Council of the Yurok Tribe with respect to establishing a plan for economic development for the tribe; and

(2) in accordance with this section and not later than two years after the date of enactment of this Act, develop such a plan.

(3) upon the approval of such plan by the Interim Council or tribal governing body (and after consultation with the State and local officials pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Congress.

(b) CONSULTATION WITH STATE AND LOCAL OFFICIALS REQUIRED.—To assure that legitimate State and local interests are not prejudiced by the proposed economic self-sufficiency plan, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State. The Secretary shall provide complete information on the proposed plan to such officials, including the restrictions on such proposed plan imposed by subsection (c) of this section. During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess, and shall request comments and additional information on the extent of any State or local service to the tribe.

(c) RESTRICTIONS TO BE CONTAINED IN PLAN.—Any plan developed by the Secretary under subsection (a) of this section shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken and held in the name of the United States for the benefit of the tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax;

(B) foreclosure or sale in accordance with the laws of the State pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) APPENDIX TO PLAN SUBMITTED TO THE CONGRESS.—The Secretary shall append to the plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) naming each individual and official consulted in accordance with subsection (b) of this section;

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any party named in paragraph (1).

SEC. 11. SPECIAL CONSIDERATIONS.

25 USC 1300i-10.

(a) ESTATE FOR SMOKERS FAMILY.—The 20 acre land assignment on the Hoopa Valley Reservation made by the Hoopa Area Field Office of the Bureau of Indian Affairs on August 25, 1947, to the Smokers family shall continue in effect and may pass by descent or devise to any blood relative or relatives of one-fourth or more Indian blood of those family members domiciled on the assignment on the date of enactment of this Act.

(b) RANCHERIA MERGER WITH YUROK TRIBE.—If a majority of the adult members of any of the following Rancherias at Resighini, Trinidad, or Big Lagoon, vote to merge with the Yurok Tribe in an election which shall be conducted by the Secretary within ninety days after the date of enactment of this Act, the tribes and reservations of those rancherias so voting shall be extinguished and the lands and members of such reservations shall be part of the Yurok Reservation with the unallotted trust land therein held in trust by the United States for the Yurok Tribe: *Provided, however,* That the existing governing documents and the elected governing bodies of any rancherias voting to merge shall continue in effect until the election of the Interim Council pursuant to section 9. The Secretary shall publish in the Federal Register a notice of the effective date of the merger.

Federal Register, publication.

(c) PRESERVATION OF LEASEHOLD AND ASSIGNMENT RIGHTS OF RANCHERIA RESIDENTS.—Real property on any rancheria that merges with the Yurok Reservation pursuant to subsection (b) that is, on the date of enactment of this Act, held by any individual under a lease shall continue to be governed by the terms of the lease, and any land assignment existing on the date of the enactment of this Act shall continue in effect and may pass by descent or devise to any blood relative or relatives of Indian blood of the assignee.

SEC. 12. KLAMATH RIVER BASIN FISHERIES TASK FORCE.

(a) IN GENERAL.—Section 4(c) of the Act entitled "An Act to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes" (16 U.S.C. 460ss-3) is amended—

(A) in the matter preceding paragraph (1), by striking out "12" and inserting in lieu thereof "14"; and

(B) by inserting at the end thereof the following new paragraphs:

"(11) A representative of the Karuk Tribe, who shall be appointed by the governing body of the Tribe,

"(12) A representative of the Yurok Tribe, who shall be appointed by the Secretary until such time as the Yurok Tribe is organized upon which time the Yurok Tribe shall appoint such representative beginning with the first appointment ordinarily occurring after the Yurok Tribe is organized".

(b) SPECIAL RULE.—The initial term of the representative appointed pursuant to section 4(c) (11) and (12) of such Act (as added by the amendment made by subsection (a)) shall be for that time which is the remainder of the terms of the members of the Task Force then serving. Thereafter, the term of such representatives shall be as provided in section 4(e) of such Act.

16 USC 460ss-3 note.

SEC. 13. TRIBAL TIMBER SALES PROCEEDS USE.

Section 7 of the Act of June 25, 1910 (36 Stat. 857; 25 U.S.C. 407) is amended to read as follows:

"SEC. 7. Under regulations prescribed by the Secretary of the Interior, the timber on unallotted trust land in Indian reservations or on other land held in trust for tribes may be sold in accordance with the principles of sustained-yield management or to convert the land to a more desirable use. After deduction, if any, for administrative expenses under the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), the proceeds of the sale shall be used—

"(1) as determined by the governing bodies of the tribes concerned and approved by the Secretary, or

"(2) in the absence of such a governing body, as determined by the Secretary for the tribe concerned.".

25 USC 1300i-11.

SEC. 14. LIMITATIONS OF ACTIONS; WAIVER OF CLAIMS.

(a) Any claim challenging the partition of the joint reservation pursuant to section 2 or any other provision of this Act as having effected a taking under the fifth amendment of the United States Constitution or as otherwise having provided inadequate compensation shall be brought, pursuant to 28 U.S.C. 1491 or 28 U.S.C. 1505, in the United States Claims Court.

(b)(1) Any such claim by any person or entity, other than the Hoopa Valley Tribe or the Yurok Tribe, shall be forever barred if not brought within the later of 210 days from the date of the partition of the joint reservation as provided in section 2 or 120 days after the publication in the Federal Register of the option election date as required by section 6(a)(4).

(2) Any such claim by the Hoopa Valley Tribe shall be barred 180 days after the date of enactment of this Act or such earlier date as may be established by the adoption of a resolution waiving such claims pursuant to section 2(a)(2).

(3) Any such claim by the Yurok Tribe shall be barred 180 days after the general council meeting of the Yurok Tribe as provided in section 9 or such earlier date as may be established by the adoption of a resolution waiving such claims as provided in section 9(d)(2).

Reports.

(c)(1) The Secretary shall prepare and submit to the Congress a report describing the final decision in any claim brought pursuant to subsection (b) against the United States or its officers, agencies, or instrumentalities.

(2) Such report shall be submitted no later than 180 days after the entry of final judgment in such litigation. The report shall include any recommendations of the Secretary for action by Congress, including, but not limited to, any supplemental funding proposals necessary to implement the terms of this Act and any modifications to the resource and management authorities established by this Act. Notwithstanding the provisions of 28 U.S.C. 2517, any judgment

entered against the United States shall not be paid for 180 days after the entry of judgment; and, if the Secretary of the Interior submits a report to Congress pursuant to this section, then payment shall be made no earlier than 120 days after submission of the report.

Approved October 31, 1988.

LEGISLATIVE HISTORY—S. 2723 (H.R. 4469):

HOUSE REPORTS: No. 100-938, Pt. 1, accompanying H.R. 4469 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 100-564 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 30, considered and passed Senate.
Oct. 3, 4, considered and passed House.

Public Law 101–301
101st Congress

An Act

May 24, 1990
[S. 1846]

To make miscellaneous amendments to Indian laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Public Law 100–581 is amended—

(1) by striking out "shall take effect upon enactment of this Act" in section 203 and inserting in lieu thereof "shall take effect upon enactment of this Act if the plan has not taken effect before the enactment of this Act";
102 Stat. 2939.

(2) by striking out "section 201" in subsections (a) and (c) of section 212 and inserting in lieu thereof "section 206";
25 USC 450m–1.

(3) by striking out section 213;
25 USC 608.

(4) by striking out "section 3" in section 702(a) and inserting in lieu thereof "section 703";
102 Stat. 2946.

(5) by striking out "section 602" in the last sentence of paragraph (1) of section 703(b) and inserting in lieu thereof "section 702"; and
102 Stat. 2948.

(6) by striking out "section 602" in section 703(c) and inserting in lieu thereof "section 702".

(b) Subsection (c) of the first section of the Act of July 28, 1955 (69 Stat. 392; 25 U.S.C. 608(c)) is amended to read as follows:

Real property.

"(c) Lands and interests in lands acquired by the Secretary pursuant to subsection (a)(1) and for the benefit of the Yakima Indian Nation pursuant to section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465) shall be held in trust by the United States for the benefit of the Yakima Indian Nation.".

SEC. 2. (a) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.) is amended—

(1) by inserting a comma after "688)" in section 4(e) (25 U.S.C. 450b(e)),

(2) by striking out "the appropriate the Secretary" in section 4(j) and inserting in lieu thereof "the appropriate Secretary",

(3) by striking out "pursuant to this Act" each place it appears in section 4(j) and inserting in lieu thereof "under title I of this Act",

(4) by striking out "the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.)," in section 5(a)(2) (25 U.S.C. 450c(a)(2)) and inserting in lieu thereof "chapter 75 of title 31, United States Code",

(5) by striking out "the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95–224; 92 Stat. 3)" in section 9 (25 U.S.C. 450e–1) and inserting in lieu thereof "chapter 63 of title 31, United States Code",

(6) by striking out "an Indian appointed" in section 104(m) (25 U.S.C. 450i(m)) and inserting in lieu thereof "an Indian (as defined in section 19 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 479)) appointed (except temporary appointments)",

(7) by striking out "sub-contracts in such cases where the tribal contractor has sub-contracted the activity" in section 105(a) (25 U.S.C. 450j(a)) and inserting in lieu thereof "sub-contracts of such a construction contract",

(8) by striking out "the Single Agency Audit Act of 1984 (chapter 75 of title 31, United States Code)" in section 106(f) (25 U.S.C. 450j-1(f)) and inserting in lieu thereof "chapter 75 of title 31, United States Code",

(9) by striking out "agency personnel" in section 106(i) (25 U.S.C. 450j-1(i)) and inserting in lieu thereof "agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency)", and

(10) by striking out "providing notice and hearing" in section 109 (25 U.S.C. 450m) and inserting in lieu thereof "providing notice and a hearing".

(b) Subsection (b) of section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m-1(b)) is amended to read as follows:

"(b) The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.".

(c) Subparagraph (C) of section 3371(2) of title 5, United States Code, is amended by striking out "section 4(m)" and inserting in lieu thereof "section 4".

SEC. 3. (a) Notwithstanding section 18 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 478), sections 2 and 17 of that Act (25 U.S.C. 462 and 477) shall apply to— 25 USC 478-1.

(1) all Indian tribes,

(2) all lands held in trust by the United States for Indians, and Real property.

(3) all lands owned by Indians that are subject to a restriction imposed by the United States on alienation of the rights of the Indians in the lands.

(b) The proviso of section 13 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 473) is amended by striking out "sections 2, 4," and inserting in lieu thereof "sections 4,".

(c) Section 17 of the Act of June 18, 1934 (25 U.S.C. 477), is amended—

(1) by striking out "by at least one-third of the adult Indians," and inserting in lieu thereof "by any tribe,";

(2) by striking out "at a special election by a majority vote of the adult Indians living on the reservation" and inserting in lieu thereof "by the governing body of such tribe";

(3) by striking out "ten years any of the land" and inserting in lieu thereof "twenty-five years any trust or restricted lands".

SEC. 4. Subsection (c) of section 1 of Public Law 100-425 is amended by striking out "NE¼E½,NW¼" each place it appears and inserting in lieu thereof "NE¼,E½NW¼". 25 USC 713f note.

SEC. 5. (a) Paragraph (5) of section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is amended by striking out "104(a)" and inserting in lieu thereof "103(a)".

(b) Subsection (a) of section 5209 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2508) is amended by striking out "105" and inserting in lieu thereof "104".

(c) Subparagraph (C) of section 5314(e)(1) of the Indian Education Act of 1988 (25 U.S.C. 2604(e)(1)(C)) is amended to read as follows:

State and local governments. Children and youth.

"(C) No local educational agency may be held liable to the United States, or be otherwise penalized, by reason of the findings of any audit that relate to the date of completion, or the date of submission, of any forms used to establish, before April 28, 1988, a child's eligibility for entitlement under the Indian Elementary and Secondary School Assistance Act.".

(d)(1) Subsection (c) of section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008(c)) is amended—

(A) by striking out "0.133 percent" in paragraph (3)(A) and inserting in lieu thereof "0.2 percent",

(B) by striking out "$4,000" in paragraph (3)(C)(i) and inserting in lieu thereof "$5,000",

(C) by striking out clause (ii) of paragraph (3)(C) and inserting in lieu thereof the following:

"(ii) the lesser of—

"(I) $15,000, or

"(II) 1 percent of such allotted funds,".

(D) by striking out paragraph (2), and

(E) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(2) Section 5324(c)(4)(B) of the Indian Education Act of 1988 (25 U.S.C. 2624(c)(4)(B)) is amended by striking out "section 1128(c)(4)(A)(i)" and inserting in lieu thereof "section 1128(c)(3)(A)(i)".

25 USC 2001 note.

(e)(1) Subsection (b) of section 5504 of Public Law 100-297 (25 U.S.C. 2001, note) is amended—

(A) by inserting "the Executive Director of the National Advisory Council on Indian Education and of" after "which shall consist of" in paragraph (1),

(B) by inserting "(but not the Executive Director of the National Advisory Council on Indian Education)" after "Task Force" in paragraph (3), and

(C) by adding at the end thereof the following new paragraph:

"(7) Sums appropriated under the authority of section 5508 shall not be used to pay the salaries of employees of the Department of the Interior or the Department of Education who are assigned as staff to the Task Force; but the salaries of such employees shall be paid out of funds appropriated to the employing Department under the authority of other provisions of law.".

25 USC 2001 note.

(2) Subsection (a) of section 5506 of Public Law 100-297 is amended—

(A) by striking out "and" at the end of paragraph (5),

(B) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and

(C) by adding at the end thereof the following new paragraph:

"(7) the chairman of the National Advisory Council on Indian Education.".

25 USC 2001 note.

(3) Section 5508 of Public Law 100-297 is amended by striking out "1988, 1989, and 1990" and inserting in lieu thereof "1990, 1991, and 1992".

(f) Subsection (d) of section 1128A of the Education Amendments of 1978 (25 U.S.C. 2008a(d)) is amended by adding at the end thereof the following new paragraph:

"(4) In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act with respect to an Indian tribe or tribal organization that—

"(A) receives funds under this section for administrative costs incurred in operating a contract school or a school operated under the Tribally Controlled Schools Act of 1988, and

"(B) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act,

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs, and of the indirect costs, that are associated with operating the contract school, a school operated under the Tribally Controlled Schools Act of 1988, and all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.".

(g)(1) Paragraph (2) of subsection 5205(a) of the Tribally controlled Schools Act of 1988 (25 U.S.C. 2504(a)) is amended to read as follows:

"(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 105 of the Indian Self-Determination Act (25 U.S.C. 450j), or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to all those referenced under section 1126(d) of the Education Amendments of 1978, or any other law), and".

(2) Subsection (b) of section 5205 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2504(b)) is amended by adding the following new paragraph:

"(4) Notwithstanding the provision of paragraph 5204(a)(2) of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2503(a)(2)), with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant under such paragraph (a)(2), the grantee shall maintain a separate account for such funds and shall, at the end of the period designated for the work covered by the funds received, render a separate accounting of the work done and the funds used to the Secretary. Funds received from these accounts may only be used for the purposes for which they were appropriated and for the work encompassed by the application or submission under which they were received. Where the appropriations measure or the application submission does not stipulate a period for the work covered by the funds so designated, the Secretary and the grantee shall consult and determine such a period prior to the transfer of funds: *Provided,* That such period may be extended upon mutual agreement.".

25 USC 2703 note.

SEC. 6. Notwithstanding any other provision of law, the term "class II gaming" includes, for purposes of applying Public Law 100-497 with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100-497.

SEC. 7. Section 9 of the Lac Vieux Desert Band of Lake Superior Chippewa Indians Act (25 U.S.C. 1300h-7) is amended—

(1) by striking out "Notwithstanding" and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary shall accept as voters eligible to vote on any amendments to the constitution of the Keweenaw Bay Indian Community—

"(1) all those persons who were deemed eligible by the Keweenaw Bay Indian Community to vote in the most recent election for the Tribal Council, and

"(2) any other person certified by the Keweenaw Bay Indian Community Tribal Council as—

"(A) a member of the Keweenaw Bay Indian Community, and

"(B) eligible to vote in any election for the Tribal Council.".

SEC. 8. Section 3(l) of the White Earth Reservation Land Settlement Act of 1985 (25 U.S.C. 331, note) is amended—

(1) by inserting "(not including laws relating to spousal allowance and maintenance payments)" immediately after "inheritance laws of Minnesota in effect on March 26, 1986", and

(2) by adding at the end of section 7 the following new subsection:

"(e)(1) After publication of the second list under subsection (c), the Secretary may, at any time, add allotments or interests to that second list if the Secretary determines that the additional allotment or interest falls within the provisions of section 5(c) or subsection (a) or (b) of section 4.

Federal Register, publication.

"(2) The Secretary shall publish in the Federal Register notice of any additions made under paragraph (1) to the second list published under subsection (c).

"(3) Any determination made by the Secretary to add an allotment or interest under paragraph (1) to the second list published under subsection (c) may be judicially reviewed in accordance with chapter 7 of title 5, United States Code, within 90 days after the date on which notice of such determination is published in the Federal Register under paragraph (2). Any legal action challenging such a determination that is not filed within such 90-day period shall be forever barred. Exclusive jurisdiction over any legal action challenging such a determination is vested in the United States District Court for the District of Minnesota.".

Courts, U.S. Minnesota.

SEC. 9. The Hoopa-Yurok Settlement Act (25 U.S.C. 1300i, et seq.) is amended—

25 USC 1300i-4.

(1) by adding at the end of paragraph (2) of section (5)(a) the following new sentence: "Children under age 10 on the date they applied for the Settlement Roll who have lived all their lives on the Joint Reservation or the Hoopa Valley or Yurok Reservations, and who otherwise meet the requirements of this section except they lack 10 years of Reservation residence, shall be included on the Settlement Roll.",

(2) by adding at the end of subsection (d) of section 5 the following new paragraph:

"(4) For the sole purpose of preparing the Settlement Roll under this section, the Yurok Transition Team and the Hoopa Valley Business Council may review applications, make recommendations which the Secretary shall accept unless conflict-

ing or erroneous, and may appeal the Secretary's decisions concerning the Settlement Roll. Full disclosure of relevant records shall be made to the Team and to the Council notwithstanding any other provision of law.". Records.

(3) by striking out "counseling," in section (9)(a)(3) and inserting in lieu thereof "counseling and assistance, shall", and 25 USC 1300i-8.

(4) by adding at the end of subsection (a) of section 14 the following new sentence: "The Yurok Transition Team, or any individual thereon, shall not be named as a defendant or otherwise joined in any suit in which a claim is made arising out of this subsection.". 25 USC 1300i-11.

SEC. 10. The Secretary of the Interior is authorized to retain collections from the public in payment for goods and services provided by the Bureau of Indian Affairs. Such collections shall be credited to the appropriation account against which obligations were incurred in providing such goods and services. 25 USC 14b.

SEC. 11. There is authorized to be appropriated to the Secretary of Health and Human Services, Administration for Native Americans, $1,000,000 for the purpose of conducting a feasibility study for the establishment of a National Center for Native American Studies and Policy Development. Appropriation authorization.

SEC. 12. (a) The following proviso in title I of the Act of June 24, 1967 (81 Stat. 59), under the heading "Office of the Solicitor", is repealed: *"Provided,* That hereafter hearing officers appointed for Indian probate work need not be appointed pursuant to the Administrative Procedures Act (60 Stat. 237), as amended". 25 USC 372-1.

(b) Hearing officers heretofore appointed to preside over Indian probate proceedings pursuant to the proviso repealed by subsection (a), having met the qualifications required for appointment pursuant to section 3105 of title 5, United States Code, shall be deemed to have been appointed pursuant to that section. 25 USC 372-1 note.

(c) The first sentence of section 1 of the Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), is amended by deleting "his decision thereon shall be final and conclusive" and inserting in lieu thereof "his decisions shall be subject to judicial review to the same extent as determinations rendered under section 2 of this Act".

SEC. 13. Notwithstanding the Act of March 7, 1928 (45 Stat. 210-211), and the Act of August 7, 1946 (60 Stat. 895-896), the Secretary

of the Interior is authorized to allocate not to exceed $2,000,000 from power revenues available to the San Carlos Irrigation Project to pay for the operation and maintenance charges associated with the delivery of 30,000 acre-feet of water from the Central Arizona Project to the San Carlos Irrigation Project.

Approved May 24, 1990.

LEGISLATIVE HISTORY—S. 1846:

SENATE REPORTS: No. 101-226 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 136 (1990):
May 2, considered and passed Senate.
May 10, considered and passed House.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):
May 24, Presidential statement.