

History Resource Study

Hoopa-Yurok Fisheries Suit

Hoop Valley Indian Reservation

Del Norte and Humboldt Counties, California

by

Edwin C. Bearss

Denver Service Center
Professional Support Division
National Park Service
United States Department of the Interior
Denver, Colorado

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Plate I

"Indian Wars of the Humboldt Bay Region,"

compiled and drawn by Owen C. Coy

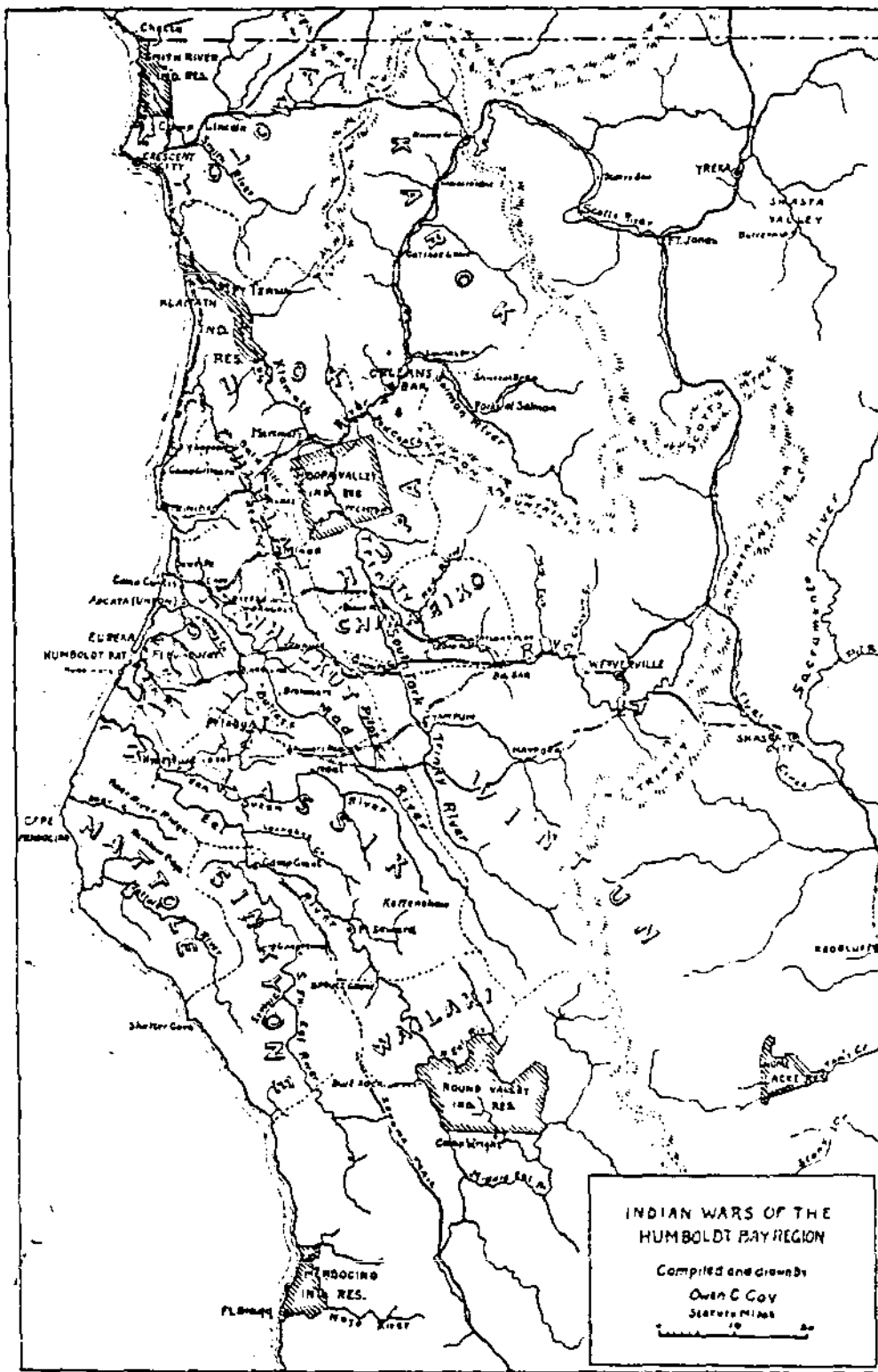


Plate II

"Map of Humboldt County, California, 1888, by J. N. Lentell"

Courtesy Library Congress



MAP OF HUMBOLDT COUNTY CALIFORNIA.

(1888.)

J. N. LENTELL.

SCALE 4 MILES TO 1 INCH

REFERENCES.

- RAILROADS
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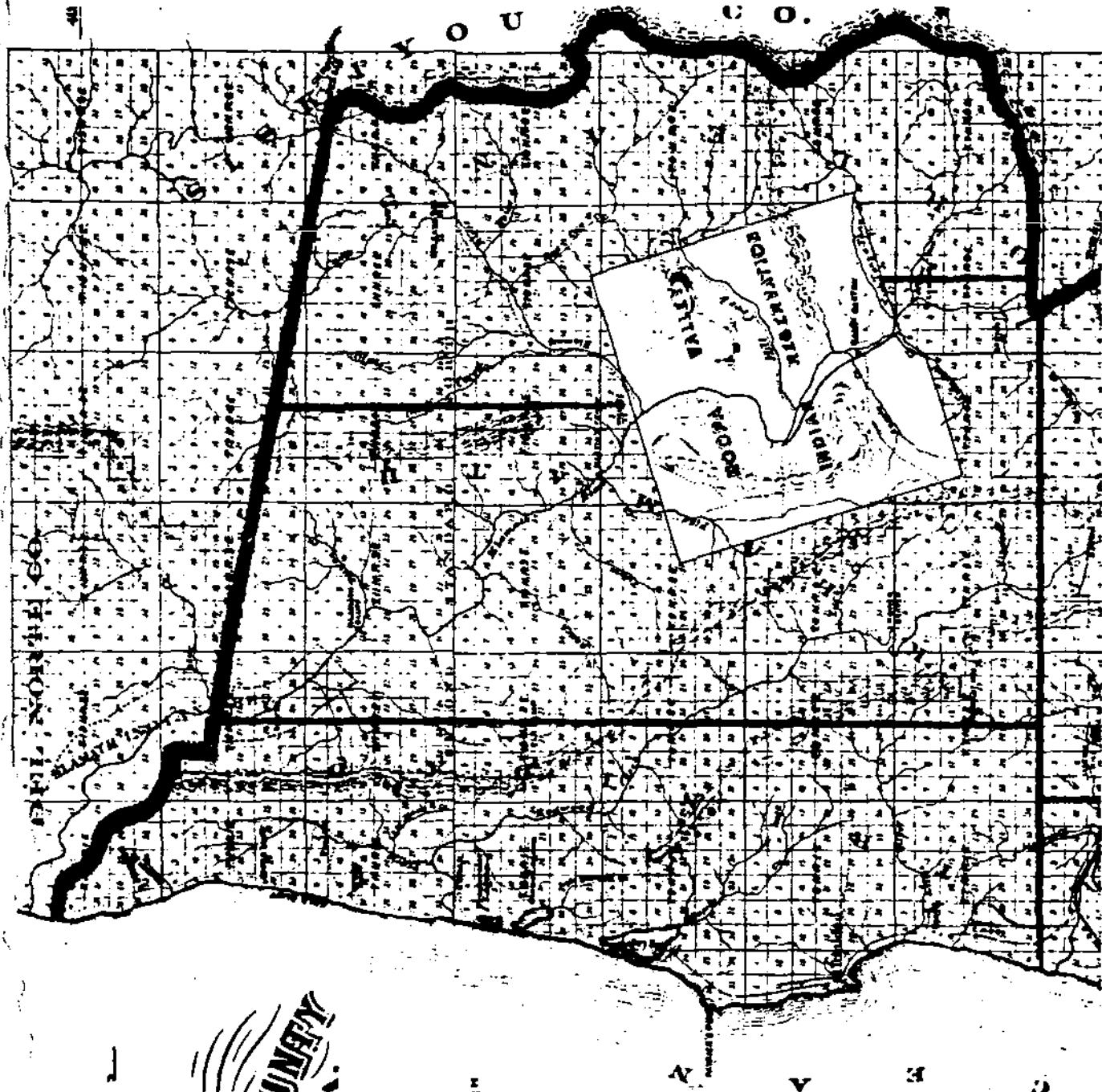


Plate III-V

"Map of the Original Klamath River Reservation, California"

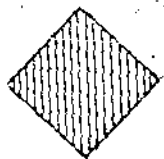
Courtesy National Archives

MAP of the ORIGINAL KLAMATH RIVER RESERVATION CAL.

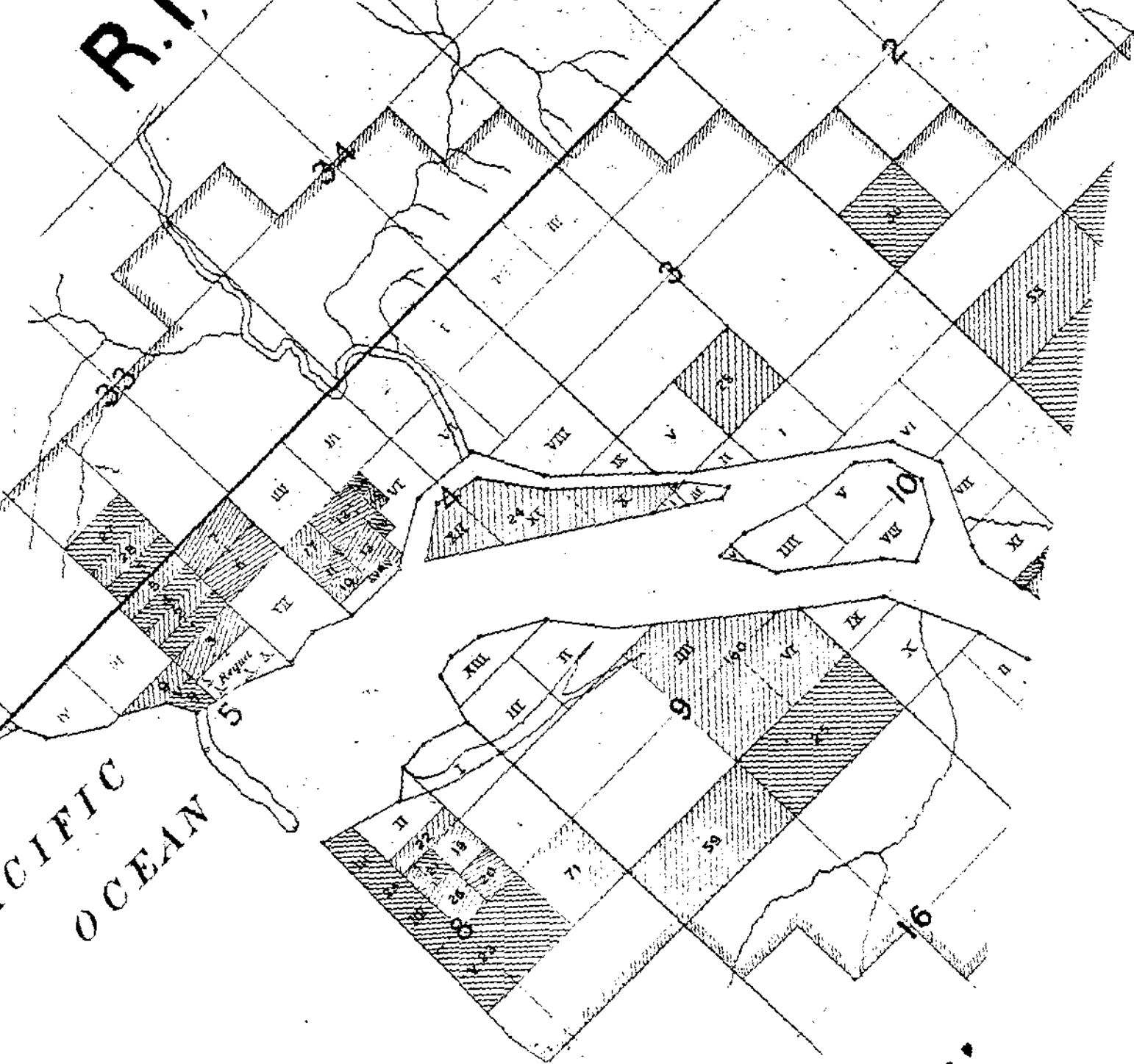
Scale: 1 mile = 4 inches

Allotments numbered from 1 to 161.

Boundaryline of the reservation



R. E. HUMBOLDT MER.



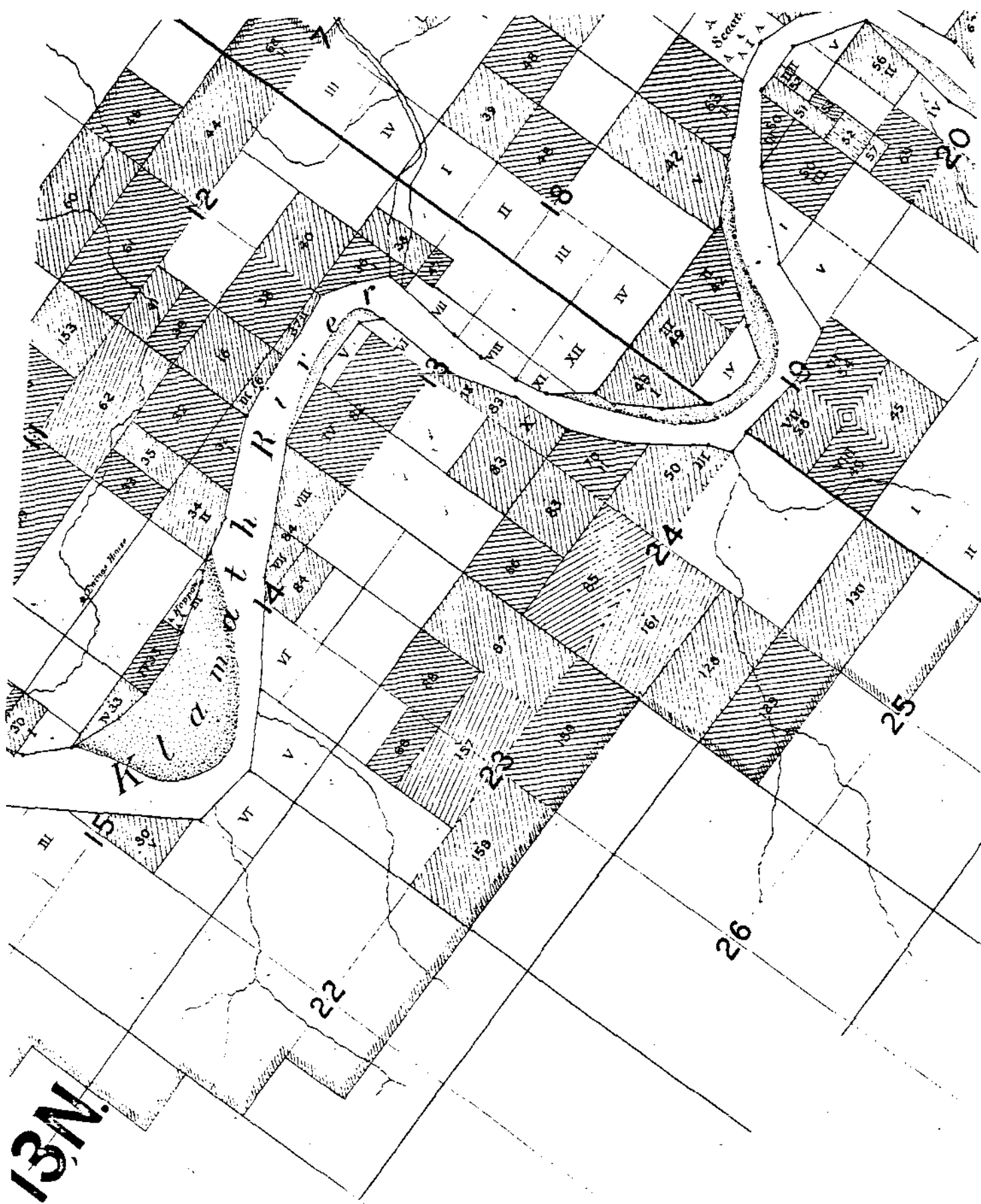


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FOREWARD

In January 1981, at the request of Lands Operations Officer Busch Loucks of the Bureau of Indian Affairs' Sacramento Area Office, I contacted Mr. David Etheridge of the Solicitor's Office, Department of the Interior, in regard to undertaking a study of the historical background of a number of "significant events concerning" the Klamath River and Hoopa Valley Indian Reservations. Attorney-Advisor Etheridge, because of his research into the background of the Hoopa-Yurok Fisheries Suit, was familiar with my History Basic Data: Redwood National Park, Del Norte and Humboldt Counties, California.

Upon meeting with Mr. Etheridge, we discussed the scope of work, which was to consist of a "survey of available historical documents--primary documents preferred--of a number of events" bearing on certain phases of the history of the subject reservations and the Humboldt Coast. These were: the California Constitutional Convention of 1849 and the state's admission to the Union, the unratified treaties of 1851-52, establishment of the Klamath River Reservation, the 1861-62 floods and establishment of the Smith River Reservation, the Four Reservations Act of 1864, establishment of the "Square," non-Indian settlement of the lower Klamath, efforts to secure homesteads along the lower Klamath, the Rising Star Tea Case, the 1891 Extension, the 1892 opening of the Klamath River Reservation to settlement by non-Indians, passage of lands into non-Indian ownership,

development of a commercial fishing industry on the Klamath and in the ocean, the Donnelly case, local development of sports fishing, development of the logging industry, establishment by initiative of the Klamath River Fish and Game District, the 1933 commercial fishing ban, the special Yurok fishing statute, a history of state regulation of river fishing, a history of California and Oregon regulation of ocean fisheries, the Copco Dam, and a history of state salmon enhancement/mitigation programs.

In preparation of a narrative history of these salient events, attention, where possible, was to be given to certain aspects: "Why was the particular action taken? Who favored it and who opposed it? What existing economic and social conditions influenced the action? What impact did the event have on various groups of people in the Klamath River area, and how did they react to the event?"

Although the report was to "discuss the practical impact of events such as statehood and establishment of the various portions of the reservations on Indians," the report "would not discuss" the legal impact of events." No legal conclusions were desired.

After reviewing the scope of work, it was agreed that the research and writing of the report would require about ten weeks. This information was formally communicated to Director Denis Galvin of the National Park Service's Denver Service Center and Area Director

William E. Finkle of the Bureau of Indian Affairs' Sacramento Area Office. It was agreed that I was to undertake the "necessary services to provide historical data related to Hoopa-Yurok fishing rights on Klamath River." In addition, it was agreed that the Denver Service Center would provide needed clerical support for the project, for which it was to be reimbursed.

A number of people have been of assistance in preparation of this report. First and foremost, I wish to express my appreciation to David Etheridge of the Solicitor's Office for introducing me to the Hoopa-Yurok Fisheries Suit and his guidance and counsel. At the Sacramento Area Office of the Bureau of Indian Affairs Busch Loucks and Norman Sahmaunt made me welcome and shared their knowledge of the Hoopa Valley Reservation and provided Humboldt Coast contacts.

Acting Superintendent Robert Hustler of the Hoopa Valley Reservation, besides being hospitable and helpful, made available the services of key members of his staff and access to the agency's electrostatic copying machines. In examining pertinent documents and newspapers on file at the agency, these ladies were particularly cooperative: in the Branch of Tribal Operations, Ruth A. Chess, branch chief, and Cora S. Mosier and Lori Carpenter; and in the Realty Branch, Barbara A. Ferris, branch chief, and Lola J. Carpenter and Janet G. Jackson. Llewellyn Proctor and Ronald Holzhouser of the Klamath Field Office went out of their way to provide me transportation into

a remote section of the Extension accessible only by four-wheel drive vehicles to tape record an interview with Princess Lawana Brawtner.

A number of Humboldt Coast residents, steeped in local lore, took time to share reminiscences of earlier days, and I would be remiss if I failed to acknowledge their contributions. They were: Walter V. Sherrick, Lawana Brantner, Harold Del Ponte, Walter McCovey, Sr., Geneva Mattz, and Florence Shaughnessy. Gary L. Rankel of the U.S. Fish and Wildlife Service, stationed at Arcata, provided a cram course on the background of the various regulatory commissions, problems, and fisheries conflicts of the mid- and late 1970s.

While on my ten-day California field trip, several libraries and archival institutions were visited. The staffs of the Eureka, Humboldt State University, and California State Libraries were sympathetic and helpful. The same can be said of the people at the California State Archives and the Federal Record Center at San Bruno. These staffs, taking cognizance of my tight schedule, went out of their way to insure that my visits were rewarding and productive.

At the National Archives, Dr. Elaine Everly of Navy and Old Army Records Branch and Robert Kvasnicka and Richard Crawford of Legislative and Natural Resources Branch were helpful as always in the suggestion and location of unpublished documents.

David Etheridge and Busch Loucks read the draft manuscript and made valued comments and recommendations. My colleague, Charles Snell, shared his knowledge of the salmon and logging industries and published sources. Last, but not least, I wish to express my appreciation to Nan Ketter and Kimberly Kuhne of the Professional Consultants Branch of the National Park Service's Denver Service Center. The former provided administrative support, while the latter had the most challenging task of all--converting my scrawl into a typed manuscript.

Edwin C. Bearss

I. CALIFORNIA BECOMES THE THIRTY-FIRST STATE

A. Mexico Cedes California and Pressure Mounts for Institution of Civil Government

On July 7, 1846, when Commo. John D. Sloat raised the "stars and stripes" at Monterey, he proclaimed California to be a permanent possession of the United States, its inhabitants to enjoy the rights and privileges of citizenship, and the advantages of stable government. His successor as commander of the Pacific Squadron, Commo. Robert F. Stockton, was even more specific in promising that a territorial government would be provided.

Months, however, were to pass before these bold declarations were honored. In accordance with the precedent established in other newly acquired territory, military government was the rule. Although this action was justified after a revolt in southern California mandated reconstruction by force, even in that district the military governors tempered martial law by encouraging the alcaldes and other local officials of the Mexican regime to continue in office. Native Californians did not object to these arrangements. In contrast, the Anglo-Americans protested bitterly against the military government. They asserted that the Constitution accompanied the flag and called for prompt installation of civil government. Curiously,

the one extant feature of civil government, alcalde rule, was seen as un-American and was roundly criticized. On February 13, 1847, Dr. Robert Semple, writing in the California Star, complained that the alcaldes exercised "authority far greater than any officer in our republic the president not excepted The grand autocrat of the Russians . . . is the only man in Christendon I know of who equals him."¹

"Whether the constitutional guaranties of civil government entered California with Sloat's proclamation, the Cahuenga Capitulation, or the Treaty of Guadalupe Hidalgo," as John W. Caughey has written, "is a question on which the jurists have engaged in inconclusive hairsplitting."² But Californians certainly did not delay their criticisms of military government until after the signing of the treaty. On February 13, 1847, one month after the Cahuenga Capitulation, the California Star called for convening a constitutional convention, and a year later, on January 22, 1848, a man complained in the same newspaper that California, "since the United States flag was hoisted over it, has been in a sad state of disorganization. . . ,

1. California Star, Feb. 13, 1847; Hubert H. Bancroft, History of the Pacific States of North America, 7 vols. (San Francisco, 1888), Vol. VI, pp.261-62.

2. John W. Caughey, California: A Remarkable State's Life History (Englewood Cliffs, N.J., 1970), pp. 210-12. The first assertion by the United States of its authority over California had been Commodore Sloat's proclamation. Though Sloat stated that "henceforward California will be a portion of the United States," he affirmed, "although I come in arms with a powerful force, I do not come among them as an enemy to California,

on the contrary, I come as their best friend." He assured the inhabitants that their civil rights of conscience, property, and suffrage would be respected; that their clergy would remain in possession of the churches, etc. To insure that "the public tranquility may not be disturbed," Sloat invited the prefects of districts and alcaldes of municipalities to retain their offices and to continue to exercise their customary functions. Bancroft, History of the Pacific States, Vol. VI, pp. 234-37.

On January 12, 1847, the Californians, having evacuated Los Angeles, encountered the battalion led by John C. Fre'mont at Rancho de Cahuenga, near San Fernando. The Californians tendered a peace offer, and the next day terms were agreed upon, and articles of capitulation drawn up and signed on January 13. The Californians agreed to surrender, to give up their arms, to return peaceably to their homes, and to conform to the laws and regulations of the United States. Fre'mont promised that, pending a peace treaty between the United States and Mexico, any Californian or Mexican citizen who so desired should be permitted to leave the country, and every citizen of California should enjoy the same privileges and rights as those enjoyed by citizens of the United States. K. Jack Bauer, The Mexican War: 1846-1848 (New York, 1974), p. 193.

we have had no government at all during the period, unless the inefficient mongrel military rule exercised over us be termed such." Other journals called on the military governors to take necessary action to restore civil government or advised the people to assume the initiative.³

The Mexican War resulted in the cession of California to the United States, and the arguments against military government became more strident. Both President James K. Polk and Congress recognized that civil government was needed in California, but they saw a number of complications. The Mexican Cession was populated by many Catholic Hispanics whom eastern Anglo-Americans suspected. In the spring of 1848, Congress granted territorial status to Oregon, but an amendment to broaden the act provide similar forms of government for California and New Mexico was voted down on the argument that "native-born" Oregon should not be coupled with territories "peopled by Mexicans and half-Indian Californians."⁴ A more important drawback involved the question of extension of slavery into the territories. President Polk and his successor Zachary Taylor (inaugurated on March 4, 1849) welcomed a delay, because

3. Ibid., pp. 211-12; California Star, Feb. 13, 1847.

4. Caughey, California, p. 212.

they wished to postpone the rancor that would attend congressional involvement in the decision to admit a territory to statehood.⁵

Meanwhile, Californians were becoming increasingly disenchanted with their military government. Col. Richard B. Mason, in announcing the formal cession to the United States on August 7, 1848, sought to pacify the Californians by forecasting that Congress would provide a civil government within a few months. He also issued a code of Laws for the Better Government of California. Throughout the summer and autumn of 1848, Californians were so preoccupied with the search for gold that they gave little consideration to politics. But, with the beginning of the winter rains and the shutting down of much of the mining activity, many prospectors found time either at their camps or in the towns and settlements to reflect upon the injustice of Washington's delay. On February 12, 1849, 400 to 500 San Franciscans assembled and "resolved that a better-defined government was absolutely necessary." They proceeded to organize a municipal government, but Mason's successor refused his sanction.⁶

5. Ibid.; William H. Ellison, A Self-governing Dominion: California, 1849-1860 (Berkeley, 1950), pp. 22-3.

6. Caughey, California, p. 213.

An influx of goldseekers from the east in the spring of 1849 further embroiled the situation. Although politics were not their major concern, they were in no mood to accept complacently the "disenfranchisement symbolized by military government." These people knew that they had brought their constitutional guarantees with them. They rallied to the support of proposals such as those championed by the San Francisco gathering and supported a plan for a constituent assembly. Mass-meetings at San Jose, Sacramento, Santa Cruz, and Monterey endorsed the proposal and scheduled the date for its convening on August 6, a Monday.⁷

B. Convention Debates and Compromises Indian Rights

Bvt. Brig. Gen. Bennett Riley, who had assumed the military governorship upon his mid-April arrival at Monterey, confronted this possibly volatile situation. To calm passions, he concluded, it would be better for a convention to gather at his invitation. Consequently, as soon as he learned that Congress had adjourned without considering territorial status for California, Governor Riley, on June 3, issued a proclamation

7. Bancroft, History of the Pacific States, Vol. VI, pp. 271-74.

naming August 1, 1849, as the day for holding a special election for delegates to a general convention for the "formation of a State Constitution, or a plan of a Territorial Government" for California.⁸

On August 1, the voters went to the polls and elected delegates to the convention, which convened in Monterey on the first day of September. A quorum not being present, the convention adjourned and reconvened on Monday, the third.⁹

The question as to what rights of citizenship should be accorded Indians under the constitution came before the convention in connection with the subject of suffrage, and, on several occasions, before the suffrage clause was adopted in final form, caused much rancor. These discussions document that there were in the convention mixed feelings toward the Indians. Native Californians and a few Anglo-Americans exhibited warm feelings for the Indians, and nearly one-half the delegates were in favor of granting to some of them the right to vote.

8. Ibid., pp. 275-76; William H. Ellison, "The Federal Indian Policy in California: 1849-1860" (University of California, 1913), p. 73.

9. Riley to R. Jones, August 30 and Oct. 1, 1849, found in J. Ross Browne, Report of Debates of the Convention of California, on the Formation of the State Constitution, in September and October 1849 (Washington, 1850), pp. 3-5, 567, 649, 171, 795.

Few delegates demonstrated a marked hostility to the Indians, while a slight majority in the convention voted to exclude all of them from exercising the right of franchise.¹⁰

On September 9, the convention considered the report of the committee on the constitution as it related to the right of suffrage, and for the first time the future status of Californian Indians was debated in the convention. The section read:

Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now, or hereafter may be, authorized by law.¹¹

Delagate Edward Gilbert of San Francisco was dissatisfied with this section as presented by the committee, and moved to amend it as follows:

After the words "United States," and before the word "of" insert, "and every male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace, exchanged and ratified at Queretaro, on the 30th day of May, 1848."¹²

10. Ellison, "Federal Indian Policy in California," p. 73.

11. Browne, Debates in the Convention of California, p. 61.

12. Ibid.

Gilbert argued that the section, as reported by committee reading, "Every white male citizen of the United States shall be entitled to the elective franchise," was too narrow. The desire was to give every Mexican citizen living in California, who elected to become a United States citizen, the right to vote. But, as Gilbert read the IX Article of the Treaty of Guadalupe Hidalgo, it did not appear that they were American citizens. Some further action by Congress was needed to make them such. The subject article, Gilbert noted, read, they "shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States), to the enjoyment of all the rights of the citizens of the United States, according to the principles of the Congress." Because Congress at its last session had failed to enact legislation admitting these people to all privileges of the United States, Gilbert deemed it essential to amend the subject section.¹³

13. W. M. Malloy, Treaties, Conventions, International Acts, Protocols and Agreements Between the United States and Other Powers. . . (Washington, 1910), Vol. 1, p. 1112; Browne, Debates in the Convention of California, p. 62.

Gilbert's proposed amendment avoided use of the word "white" found in the committee's report, a word whose meaning was well known in the United States, but not in California. C. T. Botts of Monterey agreed with Gilbert's view that citizens of Mexico would be excluded from the franchise until such time as Congress acted, and called for insertion of the word "white" before the words "male citizen of Mexico" in the Gilbert amendment, for the purpose of excluding from the privileges of the ballot Indians, whom he believed were permitted to vote under Mexican law. Indian rights were thus introduced into the convention.¹⁴

The question now arose as to whether Indians were entitled to the privileges of citizenship under the Mexican government, and as to who was allowed to vote. Pablo Noriego de la Guerra of Santa Barbara remarked that, according to Mexican law, no race was excluded from voting, and indeed some of the Republic's leaders were of Indian blood. Stephen C. Foster of Los Angeles agreed with De la Guerra, but observed that few Mexican-Indians could vote because of stringent property and occupational qualifications.¹⁵

14. Browne, Debates in the Convention of California, p. 63.

15. Ibid., pp. 63-4.

A complicated and tedious debate ensued. William M. Gwin of San Francisco and others, who opposed voting by full-blood Indians, did not object to giving the privilege to mix-bloods. Gwin argued forcefully that some restrictions should be imposed upon "uncivilized Indians," as was done in Texas, where "Indians not taxed" were denied the vote. Gwin proposed, in place of the word "white," to insert in the Gilbert amendment, "and every male citizen of Mexico, Indians, Africans, and the descendants of Africans excepted." This suggestion was acceded to by Botts.¹⁶

At the evening session, the question was again taken up. There was a lively discussion as to whether it would be proper to insert after the word "Mexico," and before the word "who," the phrase, "Indians not taxed, Africans and descendants of Africans excepted." A 25 to 15 vote to strike the words "not taxed" documents that there was a powerful sentiment in the convention against any provision in the constitution that could be construed to give the franchise to full-blood Indians in any considerable numbers. It was also evident that there was strong feeling against admitting that Indians brought under the laws of the United States by the

16. Ibid., pp. 64-5.

by the Treaty of Guadalupe Hidalgo were entitled to privileges under the Nation's laws superior to those enjoyed by citizens of the United States many of whom did not have the franchise.

On the final vote in the Committee of the Whole on the Gilbert amendment, as amended by Botts, it carried 21 to 20, thus documenting a close division on the question of total exclusion of Indians from voting.¹⁷

The amendment was considered by the convention on September 29. As to be expected, because of the hairline vote in the Committee of the Whole, determined efforts were made to modify the amendment before it was acted upon in convention. Henry W. Halleck of Monterey opposed the amendment because he feared it might be construed as being in conflict with the treaty. De la Guerra still hoped that an exception might be made in granting

17. Ibid., pp. 68-73. The first section of the article on suffrage, as adopted by the committee, read:

Sec. 1. Every white male citizen of the United States, and every male citizen of Mexico (Indian, Africans, and descendants of Africans excepted), who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May 1848, of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the country of district in which he claims his vote, thirty days, shall be entitled to vote at all elections which are now, or hereafter may be authorized by law.

be made in granting the franchise to those Indians who owned property and had heretofore exercised all the rights and privileges of freemen. Kimball H. Dimmick of San Jose, who had voted for the Gilbert amendment in committee, now concluded that it was too exclusive. He called for an amendment, which for practical purposes, excluded only Indians not taxed, and Africans and their descendants. This was amended by Captain Halleck and Francis J. Lippitt of San Francisco, to exclude Indians, not taxed as owners of real estate, and blacks.¹⁸

During the ensuing debate, opponents charged that owners of ranchos could parade large numbers "of buck Indians to the polls and carry any measure they desired." Winfield S. Sherwood of Sacramento claimed that his friend Capt. John Sutter, if he wished to become a politician and desired to hold office, could by granting a small tract of land to each Indian, control 10,000 votes. De la Guerra sought to counter this fear, by observing that the number of California Indians, who owned land and were entitled to vote under the laws of Mexico, was not more than 200, and these were all that would be entitled to vote under provisions of the Halleck-Lippitt amendment. The amendment was defeated 22 to 21, and, on October 1, the report of the Committee of the Whole was approved.¹⁹

18. Ibid., pp. 305-06.

19. Ibid., pp. 305-08.

De la Guerra persevered, and, on the 2d he submitted a resolution to reconsider the vote by which the convention had adopted the 1st Section of Article II, with a view to offering this substitute:

Every white male citizen of the United States, and every male citizen of Mexico (Indians, negroes, and descendants of negroes excepted), who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May 1848, shall be entitled to vote at all elections which are now, or may hereafter be authorized by law, but this section shall not be construed to prevent the Legislature from admitting such Indians to the elective franchise as they may in future deem capable thereof.²⁰

When the amendment was considered, Botts moved to amend the original section, as amended, by inserting the word "white" before "males" and striking the words "Indians, Africans, and descendants of Africans." These amendments were adopted and De la Guerra then offered the proviso of his amendment as withdrawn.

Thomas L. Vermeule of Stockton then moved to amend De la Guerra's amendment by striking out the same and inserting in lieu thereof:

20. Ibid., 341.

Provided, That nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians, or the descendants of Indians, in such special cases as such a proportion of the legislature body may deem just and proper.

The Vermeule amendment was unanimously approved, the section as amended adopted, and ordered engrossed for a third reading. On October 10, the article was read the third time, passed, and incorporated into the constitution.²¹ The section read:

Sec. 1. Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, that nothing herein contained, shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians, or the descendants of Indians, in such special cases as such a proportion of the legislature body may deem just and proper.²²

The United States Constitution had provided that any child born on American soil was a citizen of the United States, but this provision did not apply to Indians. The Indians "were regarded as having a tribal citizenship and as owing allegiance already to a foreign power enjoying the attributes of

21. Ibid., p.458.

22. Ibid., Appendix IV.

sovereignty." Regarded as an alien race, the Constitution expressly excluded them from enumeration as citizens. They could not become citizens unless made such by naturalization, or by act of Congress.²³

Consequently, the Indians' right to vote in the states depended upon their recognition in the constitution. There were members of the Monterey convention familiar with this situation. In the convention, the discussion of the Indian question had resulted from efforts to give the Indians the vote by constitutional enactment, as had been done in Maine, Wisconsin, and Texas. The effort, however, was doomed.²⁴

C. California Enters the Union

Californians ratified the constitution, which prohibited slavery, by an overwhelming margin. This resulted in problems on the floor of Congress, where California's admission as the 31st state became embroiled in the fight over slavery, which pitted section against section.

Meanwhile, Texas had moved to push its claims to large areas of present-day New Mexico and Colorado. Anti-slavery legislators and their constituents opposed the Texans demands,

23. George C. Butte, The Legal Status of the American Indian. . . (Berlin, 1912), p. 10.

24. Ellison, "Federal Indian Policy in California," p. 77.

because they anticipated that New Mexicans would follow the Californians' example. President Taylor recommended to Congress that California be admitted immediately as a state. Southern fire-eaters fumed and fussed. The Monterey constitution, it was charged by pro-slavery congressmen in acrimonious debates, had been "concocted" by President Taylor through Governor Riley. Others argued that Californians were a hodge-podge of adventurers who could not be trusted to manage a state government. They were ill-mannered upstarts who had not waited for an enabling act as the signal to draw up a frame of government. Such a dangerous disregard for Congress must be rebuked as an example to the rest of the west.

Pro-slavery elements hoped to put California and New Mexico through the territorial stage. Such a plan would give slaveholders time to establish themselves in these territories. Sectional animosity became so extreme that reasonable men again feared for continuance of the Union. Although Henry Clay had retired from public life to spend his declining years at his beloved Ashland, the Kentucky legislature unanimously returned him to his old place in the Senate, and during the First Session of the 31st Congress, which convened on

on December 3, 1849, Clay hammered out his most famous compromise. Known as the Compromise of 1850, it consisted of a parcel of bills, and one of these, enacted on September 9, 1850, admitted California as the 31st state.²⁵

25. Caughey, California, p. 215.

II. THE UNRATIFIED TREATIES OF 1851-52

A. Colonel McKee's Treaties

1. First Contacts Between Whites and Indians

Initially, the prospectors and those who followed them met little opposition from the Indians of the Humboldt coast. The newcomers had trade goods which, although of slight monetary value, were prized by the Indians. Moreover, the white man's firearms made resistance not only futile but disastrous. The Indians at the same time did not realize the full meaning of this invasion of their lands.

Dr. Josiah Gregg (scientist, traveler, and author) was one of those drawn to the Trinity diggings by the discovery of gold. In November 1849, he and seven companions in opening a trail from the diggings to the coast, encountered no opposition, and at times they were able to prevail on the Indians for assistance.¹ Other early exploring parties were received in similar fashion. It was not until the Indians saw that the whites were squatting on their village sites that they began to think of war. On the coast this hostility had no serious repercussions,

1. Lewis K. Wood, The Discovery of Humboldt Bay: A Narrative (Eureka, 1872), p. 38. Wood documents that Gregg's party at the mouth of the South Fork of the Trinity encountered Indians, who appeared to have some hostile intentions. But the Indians were pacified, after taking note of the Americans' skill with their firearms. At Trinidad, the Indians were friendly.

but in the interior it soon resulted in bloodshed. Two men were killed by Indians in the late summer of 1850 in the redwoods, 18 miles from Union (today's Arcata). There was also a clash on the forks of the Salmon, where in reprisal the whites burned three villages and killed a number of Indians.² Several others were to die before the year ended.

The situation worsened in 1851. In the spring of that year, a party of prospectors led by Capt. S. R. Tompkins left Trinidad, taking the trail across to the Bald Hills, and worked their way up the Klamath River.³ Halts were made at every bar showing any traces of gold. Guards had to be detailed to watch for Indians.

While the party was camped on Wingate's and Wood's bars, three of the group (Barney Ray, W. A. J. Moore, and _____ Penney) pushed ahead. In doing so, they were undoubtedly

2. Owen C. Coy, The Humboldt Bay Region, 1850-1875: A Study in the Colonization of California (Los Angeles, 1929), p. 137; Alta California, Aug. 20, 22, 1850.

3. Anthony J. Bledsoe, History of Del Norte County, California, with a Business Directory and Traveler's Guide (Eureka, 1881), p. 7. Other members of the Tompkins party were: Robert L. Williams, Captain McDermott, Charles Moore, Thomas J. Roach, Charles Wilson, Charles Southard, the Swain brothers, _____ Taggart, George Wood, W. T. Stevens, Wm. Rumley, W. A. J. Moore, Jerry Lane, John Cox, S. S. Whipple, J. W. Bourke, James Buck, and several others.

influenced by several Indians, who told the party that, if they went "one-half a sleep" farther up the Klamath, they would find good camp grounds and diggings.

When they failed to return, several men from Wood's Bar went in search of them. As they ascended the river, they sighted a tent but could see or hear nothing of the occupants. They saw a number of Indians in the area. Concluding that some misfortune must have overtaken their comrades, they returned to Wood's Bar. A volunteer force was turned out, and, on returning to the tent, they found Penney and Ray. The former was terribly wounded and the latter dead. After burying Ray, they placed Penney on a litter and took him downstream to Wingate's Bar, where he died. Several weeks later, a badly decomposed body, presumed to be Moore's, was found floating in the Klamath.⁴

Vowing vengeance, a force was organized and started in pursuit of the Indians. The Indians' trail, leading up the river, was soon discovered. This brought the prospectors to the village. Biding their time, the miners sent back to their camps for reinforcements. Just as

4. Ibid., pp. 7-8.

day was breaking and while most of the Indians were in their huts, the whites launched a vicious surprise attack, which routed the Indians.⁵

Several weeks later, the prospectors moved from Wingate's and Wood's bars and established a camp, which they called Happy Camp. This was the first permanent non-Indian settlement on the middle reaches of the Klamath.⁶ The settlers of Happy Camp were compelled to be on guard against the Indians, while getting ready to face the approaching winter.

This nasty incident and others caused many of the hard-bitten miners and packers to regard the Indians as enemies to be shot on sight. The Indians, unable to discriminate between whites who were their enemies and those who were their friends, took revenge. Whites were slain, and unfortunately for all concerned, it was seldom the ones who had committed the wrong.⁷

5. Ibid., p. 9.

6. Ibid.

7. Coy, The Humboldt Bay Region. p. 138.

2. Colonel McKee Goes North

In an effort to put a stop to these murders and prevent a war, Col. Redick McKee, a United States Indian Agent, was alerted to proceed to northwestern California and negotiate treaties with the tribes. Accompanied by a large escort, McKee left Sonoma on August 11, 1851. The expedition was accompanied by a company of soldiers led by Capt. Henry W. Wessels.⁸ Taking the Sonoma Trail, McKee's party reached the Humboldt Coast via the South Fork of the Eel River. As the column pushed ahead, stops were made to distribute beef and presents to the Indians and effect a peaceful settlement of outstanding differences. In the lower Eel River Valley, McKee saw that the Indians lived under submarginal conditions. A reservation for these Indians was established on the left bank of the Eel. C. A. Robeson, a settler who was married to an Indian, was placed in charge of the projected reservation, and with him were left three yoke of oxen and farm implements for cultivating the land.⁹

8. At its start the expedition consisted of 70 men, 140 mules and horses, and 160 head of cattle.

9. Minutes kept by John McKee, September 15-October 5, 1851, found in "Documents of the Senate of the United States," Printed by Order of the Senate, During the Special Session, Called March 4, 1853 (Washington, 1853), Serial 688, Doc. 4., pp. 134-55.

McKee, after visiting the bay settlements of Humboldt City and Union, crossed the Bald Hills to the Klamath River. While en route, he passed through the country of the Chilula, known locally as the Redwood or Bald Hills Indians. This tribe had an evil reputation among the packers, one of their camps being called "Bloody Camp," because two whites had been murdered there.

From Bloody Camp, McKee and his party proceeded to the confluence of the Klamath and Trinity Rivers, going into camp at Durkee's Ferry. The local Indians, McKee's secretary found to be

a very fine-looking race, low in stature, with smooth, regular features. The men are nearly nude, and never seen without the bow and quiver of arrows, exhibiting considerable skill in their construction. The women wear petticoats of deer skin, dressed and ornamented with tassels, beads, etc. Some of them are very handsomely made. Strings of beads and shells are also worn about the neck, and ornaments of every description are highly prized.

In the period, September 29-October 5, chiefs and headmen from the tribes living on the Klamath, both above and below the camp, and the Trinity assembled for a grand council. Some of the Indians from rancherias on the

lower Klamath were hesitant about attending, "as a party of whites had prevented their building a fishdam last summer."¹⁰

On the morning of the 6th, Colonel McKee assembled the Indians, and explained, through interpreter C. W. Durkee, that his object was "to make peace between the Indians, as well as between the Indians and whites."¹¹ He then stated that this would permit both whites and Indians to "travel along through the country without fear of molestation." To show that his intentions were honorable, McKee promised the Indians more presents. If peace were restored, he continued, measures would be taken to improve the Indians' living conditions, i.e., they should have homes of their own, be taught to build houses like white man, have clothes to wear, learn to "draw their subsistence from the soil, and not be dependent upon game and fish for food"; and they should have teachers to instruct their children in the English language.

10. Ibid., pp. 157-58.

11. The Yuroks were represented by chiefs and headmen from the Wetch-peck, Wuh-si, Cap-pel, Mor-ri-ah, Ser-s-goines, and Pak-wan bands; the Karoks by chiefs and headmen from the Ut-cha-pah, Up-pe-goines, Savon-ra, Cham-ma-ko-nee, Coc-ko-man, and Chee-nah bands; and the Hoopa or Trinity Indians by Oh-rook-nos, chief of ten rancherias.

All this, he explained, depended upon the Indians. It was theirs to choose between peace and war. "If peace, all would be well, but if war, the whites would rise in a body and kill them all, or drive them entirely out of the country." If the decision were for peace, the terms must be in writing.

The chiefs and headmen announced their willingness to enter into such an agreement, and a draft of the proposed treaty was read and explained to them by Durkee. By 4 p.m., the draft had been finalized, and the treaty signed by Colonel McKee and the chiefs of the 24 assembled bands, and witnessed by the gentlemen present. Two tribes, the Chilulas and Redwood Creek Indians, boycotted the Council.¹² See Appendix A for a copy of the subject treaty.

Breaking camp on October 9, McKee and his party ascended the canyon of the Klamath, distributing food and gifts at the villages and telling the Indians of the government's desire for peace. Simultaneously, the whites were asked to refrain from mistreating the Indians. As winter was

12. John McKee's Journal, October 6-7, 1851, and McKee to Mix, October 7, 1851, found in *ibid.*, pp. 161-62, 194-95.

approaching, Captain Wessels was determined to return to Benicia with his detachment. Upon the departure of the military, McKee, accompanied by a small party, met with the Indians at Scott's Valley. Most of the Indians either suspecting treachery or off hunting, avoided meeting with the agent. Finally, a treaty was effected, and McKee returned to San Francisco by way of Humboldt Bay.¹³

McKee was understandably pleased with the results of his expedition and declared:

Considering the results which have happily followed, the expenses are trifling. Taken as a whole, I doubt whether ever, in the history of Indian negotiations in this or any other country, as much work has been done, as much positive good effected, and as many evils averted with such comparatively inadequate means at command.¹⁴

B. The Treaties Become Scraps of Paper

1. Anglo-Americans Rally Against Ratification

Opposition to ratification of the McKee treaties, along with those negotiated by Agents G. W. Barbour and O. M. Wozencraft, which had surfaced at the beginning of their

13. John McKee's Journal, October 16-December 29, 1851, found in *ibid.*, pp. 166-80.

14. McKee to Lea, February 17, 1852, found in *ibid.*, p. 284.

undertaking, had coalesced by the winter of 1851-52. On March 13, the editor of the Los Angeles Star thundered:

To place upon our most fertile soil the most degraded race of Aborigines upon the north American continent; to invest them with the rights of sovereignty, and teach them that they are to be treated as powerful and independent nations, is planting the seeds of future disaster and ruin, with the same certainty of as an abundant a harvest as our farmers expect to see on their barley fields in the ensuing season.¹⁵

That the Indians had once occupied all of California was ignored, particularly as the economic importance of the lands soared. The claim was made that the treaties gave rights to the land which had never been admitted. It was argued that Mexico never recognized the Indians as owning land, because Indians did not cultivate fields and had no idea of the value of the soil.¹⁶ Not all Californians subscribed to these views. A minority endorsed the opinion of The Pacific, published in San Francisco, that the treaties negotiated with the Indians, giving them land upon which to live in peace and an opportunity to be weaned from their wild habits, were necessary to the people's peace and security.¹⁷

15. Los Angeles Star, March 13, 1852.

16. Ibid., August 14, 1852.

17. The Pacific, (San Francisco), February 27, 1852.

Meanwhile, the California legislature had convened for its 1852 session, and, on January 16, before most of the treaties had been received in Washington, these resolutions had been introduced and adopted by the state senate:

Resolved, That a Committee of five be appointed whose duty it shall be to prepare Joint Resolutions instructing our Senators in Congress the course this Legislature desires them to pursue in relation to the confirmation of the treaties, made by the United States Commissioners, Messers Wozencraft, McKee, Barbour, with certain tribes of Indians in this State, wherein they reserve to them extensive tracts of valuable mineral and agricultural lands, embracing populous mining towns, large portions of which are already in possession of, and improved by, American citizens.

Resolved, That said Committee be instructed to report to this body such facts as may be within their reach, in regard to the value, conditions and location of all Indian Reservations in this State, together with their opinion of the character and disposition of the various tribes to whom grants have been made, and the effect which the confirmation of said treaties may have on the interests and future prosperity of California.¹⁸

The president of the senate promptly designated the specified special committee.¹⁹

On February 11, Senator Mahlom H. Wambaugh reported to the Senate for the committee's majority. The committee held that, regardless of the circumstances which dictated

18. Journal of the California Legislature: Senate Appendix, 1862: 3d Session, Vol. 3 (San Francisco, 1852). pp. 44-5.

19. Ibid., p. 46.

the influx of people into California, the Indian commissioners had undertaken to assign to the tribes a considerable portion of the state's richest mineral lands, and ignoring the topography had allotted to them fertile agricultural acreages, the value of which the Indians were unable to appreciate. The committee found that the policy of the three commissioners was not sustained either by the practice of the Republic of Mexico, or by the United States in the years since 1807. The policies of Spain and Mexico did not admit the right of Indians to the land. United States policy had provided for removal of the Indians to some suitable territory, which certainly should not include any portion of the country west of the Sierra Nevadas. The committee recommended adoption by the senate, with concurrence of the assembly, of these resolutions:

Resolved, As the sense of the Senate and Assembly of the State of California, that the policy pursued by the Federal Government towards the Indian tribes in the State, is wholly and radically wrong, and should be rejected.

Resolved, That our Senators in Congress be instructed to oppose the confirmation of any and all treaties with Indians of the State of California granting to Indians an exclusive right to occupy any of the public lands in the State.

Resolved, That the policy so long and steadily exercised by the General Government, of removing the wild Indians beyond the jurisdiction of States, is conceived in wisdom and dictated by humanity, and is productive of tranquillity and happiness to the whole country, and that no other can with safety be adopted within this State.

Resolved, That our Senators be instructed, and our Representatives requested to use their best endeavors to procure this adoption by the Federal Government, of the same course, towards the Indians of this State, that had been pursued in other States for the last quarter of a century.

Resolved, That the Governor be requested to present to our Senators and Representatives, each a copy of the foregoing report and resolutions.²⁰

On February 13, J. J. Warner filed a minority report. The lone dissenter, he considered the proposition to remove the Indians from California as impracticable because there was no suitable place for their relocation. He believed that there was sufficient land in various parts of the state to provide the Indians permanent homes. He foresaw that whatever effect the treaties might have on the Indians was already history, and if they were rejected by the United States Senate, the Indians would look upon it as a breach of faith, and reinforce their belief that the federal government could not be trusted. He urged the state senate to consider the "propriety" of instructing our senators to study the subject treaties, and, if their

20. Ibid., Appendix, pp. 597-600.

judgment, the treaties were found to be "impolitic, or oneous, to the people" of California, they were to employ their influence to have the treaties amended to conform to the interest of the state and the people's will.²¹

The resolutions, as presented, did not pass, but this did not mean that a majority of the California Senate backed ratification.

Meanwhile, the assembly had named a select committee to investigate the treaties. When the committee made its report on February 16, it announced with regret that many and extensive reservations have been established in various sections of the state for exclusive use by the Indians. Moreover, it said, these reservations in many cases embraced within their boundaries extensive tracts of fertile agricultural and desirable mineral lands. Upon some of these lands, according to the committee, were settled large numbers of American citizens, who had acquired their lands in good faith.

21. Ibid., Appendix, pp. 602-04.

The committee claimed to have evidence that persons employed by the Indian agents had invested heavily in reservation mining claims. These claims had been sold by miners at low prices, under the impression they would soon have to abandon them. It was charged by the committee that several agents, instead of awarding contracts for furnishing beef and other supplies in the usual manner to the lowest responsible bidder, had given contracts to persons who had been and were providing supplies to the Indians at huge profits, and injury to the United States.

The committee after making its charges, a number of which were unsubstantiated, called for adoption of these resolutions:

Resolved, That our Senators in Congress be instructed and our Representatives requested to use all proper measures to prevent Congress confirming the Indian reservations which have been made in this State, but respectfully to insist that the same policy be adopted, with regard to the Indian tribes in California, which has been adopted in other new States.

Resolved, That our Senators in Congress be instructed, and our Representatives requested to urge upon Congress the great evils that would inevitably result to the people of California, the National Government, and the Indian tribes, by the confirmation of those reservations.

Resolved, That our Senators in Congress be instructed, and our Representatives requested to urge upon the proper authorities, at Washington, the importance of instituting a rigid inquiry into the official conduct of the several Indian Agents, for California, as in the opinion of the Legislature, high-handed and unprecedented frauds have been perpetrated by them, against the General Government, and the citizens of California.

Resolved, That the Governor be, and he is hereby requested to transmit a copy of each of the foregoing resolutions, to the President of the United States, and to each of our Senators and Representative in Congress.²²

Proponents of the treaties sought to rally support, but they were unsuccessful. On March 22, the assembly by an overwhelming vote of 35 to 6 adopted the resolutions.²³

Coincidentally, the California Senate had framed a memorial asking for drastic revisions in the treaties. The features focusing on payments and arrangements for provisions were sanctioned. A change in land management was advocated. The memorial proposed establishment of a mission system for the Indians to be superintended by one agent and two subagents. These missions could be organized at a few points. There the Indians could receive their annuities and could be allotted parcels of land. Such a scheme, it was held, while obviating the projected disposal of much mineral and arable lands,

22. Journal of the California Legislature: Assembly, Appendix, 1852: 3d Session, Vol. 4 (San Francisco, 1852), pp. 204-05.

23. *Ibid.*, p. 270.

would do more to promote the peace and satisfy the citizens than the one proposed in the treaties.²⁴

After being debated by the Committee of the Whole, the memorial, along with the House resolutions addressed to the California congressional delegation asking their support, passed the senate by a 19 to 4 vote.²⁵

2. United States Senate Rejects the Treaties

The treaties made with the California Indians by Agents McKee, Barbour, and Wozencraft were received at the Bureau of Indian Affairs in the period July 9, 1851, to February 18, 1852. But they were held by Commissioner Luke Lea until April 13, because he deemed it necessary to secure more information to enable the Department of the Interior to "judge correctly as to their merits and the action required in regard to their final disposition." He knew by now that the treaties had aroused violent opposition on the part of the California legislature to their ratification, and that the California congressional delegation (two senators and two representatives) was against them.²⁶

24. Journal of the Senate, 1852, Appendix, pp. 590-91

25. Journal of the Senate, 1852, pp. 195-98.

26. Lea to Stuart, May 14, 1852, found in California Treaties, 1851-52, NA, Unratified Treaties, 1821-1865, Microcopy T-494; Congressional Globe, 32d Cong., 1st Sess., Part 1, pp. 1120, 1121-22.

On May 7, Secretary of the Interior Alexander H. H. Stuart asked Commissioner Lea to provide him with back-up data relative to the treaties, especially as to whether they included any new principles. Stuart desired to know if, in Lea's judgment, the public interest would be advanced or impaired by their ratification.²⁷

Commissioner Lea answered that some of the provisions were novel, the most important of which was the one "providing for an entire relinquishment of title by some of the tribes and their permanent settlement within the limits of a State on lands not previously owned by them."²⁸ This stipulation, which the commissioner regarded as without precedent, was considered "both necessary and proper in consequences of the impracticability of removing the Indians beyond the limits of the State and of the expediency of withdrawing them from their intermixture

27. Stuart to Lea, May 7, 1852, found in California Treaties, 1851-52, NA, Unratified Treaties, 1821-1865, Microcopy T-494.

28. Thomas H. Benton's view on this point was expressed in these words, "These treaties are not like the common treaties, in which we purchase lands from Indians, with their own consent, and leave them in possession until the treaty is ratified: here we have taken the country beforehand, and mean to keep it, and the Indians are dispossessed and their country occupied by an organized population, living in towns and counties, and carrying on the business of a permanent community." Executive Documents, Printed by Order of the Senate of the United States for the 1st Session of the 33d Congress, 1853-54 (Washington, 1854), Serial 702, Doc. 87, pp. 3-4.

with the white population." They were also unique in that the annuities were not to be paid in perpetuity, according to the usual practice. This was a plus for the government, because once the annuity system was introduced, it was next to impossible to dump. Another novel provision called for all difficulties among the Indians to be adjusted by the agents, and for controversies between Indians and whites to be settled in the state's civil courts.

Though Lea approved these provisions, he was unprepared to commit himself as to whether public interest would be promoted or impaired by the treaties' ratification. He agreed with Edward F. Beale, recently named Superintendent of Indian Affairs for California, that "rejection of the Treaties without the adoption of precautionary measures against general outbreak on the part of the Indians would be hazardous and unwise."²⁹

On May 11, Beale had been asked to give his views on the treaties. Replying, he had stated that "the general line of policy pursued by the commissioners and agents in negotiating with the Indians" was "proper and expedient

29. Lea to Stuart, May 14, 1852, found in California Treaties, 1851-52, pp. 5-6.

under the circumstances." His "personal knowledge and experience in Indian affairs and particularly in reference to the tribes within the State of California," inclined him "to the opinion that to secure their peace and friendship no other course of policy, however, studied or labored it may have been could have so readily and effectively secured the objects in view." Beale approved of the reservation system, because of the impracticability of removing the California Indians, as some had suggested, beyond the Sierra Nevadas, or into Oregon. He objected to the stipulations for supplying the Indians with agricultural implements and establishment of schools among them, because, he believed, these Indians were not disposed to engage in farming, nor were they capable of appreciating the benefits to be derived from schooling. The arrangements for supplying the Indians beef cattle and brood stock, in lieu of the extinguishment of their title to lands, was correct. Beale gave his support to the treaties.³⁰

30. Beale to Lea, May 11, 1852, found in Executive Documents, Serial 688, pp. 326-330.

On May 22, Secretary Stuart transmitted the treaties, along with a number of supporting documents, to President Millard Fillmore. Stuart's accompanying letter read:

The treaties had been held by him until he could inform himself as to their merits, and be prepared to express himself with some degree of confidence as to the propriety of recommending their ratification or rejection. A slight examination of the treaties, and accompanying documents will suffice to show that it is impossible to form such an opinion from the information now in the possession of the department . . . and as the department has no present means of obtaining further or more reliable information, and as one of the Senators from the State more immediately interested has complained in his place, that the treaties have been improperly withheld from the Senate,³¹ I now submit them for your consideration, and respectfully recommend that they be communicated to the Senate, to be disposed of in such way as that body in its wisdom shall direct.³²

The 18 treaties, along with a copy of Beale's comments on them and other correspondence, were submitted by President Fillmore to the Senate on June 1, 1852. One week later, on the 7th, the President's message was read to the Senate, and, with the treaties and supporting documentation, referred to the Committee on Indian Affairs

31. Stuart's reference was to Senator Gwin of California's April 19 speech on the Deficiency Bill, found in the Congressional Globe, 32d Cong., 1 Sess., Part 11, p. 1121.

32. Stuart to Fillmore, May 22, 1852, found in California Treaties, 1851-52, p. 2.

and ordered to be printed. The treaties were then considered in secret session and rejected.³³

Records of the Senate fail to document the arguments used to doom the treaties. But it is obvious that violent opposition by white Californians to their ratification, because the treaties removed from public and private use huge tracts of land, and criticism of the methods employed by the commissioners in accumulating immense claims against the United States, were responsible for the Senate's rejection. The commissioners had made large contracts for supplies, which caused some embarrassment in Washington and considerable loss to some persons, because only a few of these claims were ever paid. The question of the government's responsibility for these obligations was first raised in Congress on March 26, 1852. Senator John B. Weller of California, addressing his colleagues, explained his views:

We who represent the State of California were compelled, from a sense of duty, to vote for the rejection of the treaties, because we knew that it would be utterly impossible for the General Government to retain these Indians in the undisturbed possession of these reservations. Why there were as many as six reservations made in a single county in the State of California, and that one of the richest mining counties in the State. They knew that those reservations included mineral lands and that, just as soon as it became more profitable to dig upon the reservations than elsewhere, the white man would go there, and that the whole Army of the United States could not expel the intruders.³⁴

33. California Treaties, 1851-52, p. 2; Congressional Globe, 32d Cong., 1 Sess., Part III, p. 2103. It was not until January 18, 1905, that the injunction of secrecy was removed from these treaties. See

Congressional Record, 58th Cong., 3d Sess., Part I, p. 1021. On January 19, 1905 in Executive Session, it was ordered that fifty copies of the eighteen treaties should be printed for the use of the Senate. See California Treaties, 1851-52, p. 1.

34. Congressional Globe, 32d Cong., 1st Sess., Part III, p. 2173.

Expressing his thoughts on the Senate's action, Weller remarked, "Public policy demanded that these treaties . . . be rejected."³⁵

United States Representative Joseph W. McCorkle of Marysville, California, lambasted the commissioners and their work:

The history of the Republic does not present an instance so flagrant of the usurpation and abuse of power as that exhibited in the action of the commissioners. They have not only usurped powers reserved in the Constitution to the President and Senate in making and executing treaties, but have assumed to themselves a power expressly given to the House of Representatives, in the appropriation of money, and have absolutely, with an arrogance unheard of, drawn upon the Treasury for hundreds of thousands of dollars. The absurdity and ridiculousness of their official action almost forbids one from characterizing and denouncing it in the terms it deserves.³⁶

Writing in 1913, California historian William H. Ellison observed:

The words of Congressman McCorkle like many popular views probably lacks a little of the judicious. But the Commissioners were presumptuous in assuming such immense obligations against the credit of the United States. An examination of the treaties shows that they were carelessly and hastily drawn. Could the treaties have been carried out, some of what are not the most populous and prosperous regions of California would have been today peopled by a few undeveloped natives, as a glance at the

35. Ibid., p. 2172.

36. Congressional Globe, 32d Cong., 1st Sess. Appendix, p. 1082.

accompanying map will show. The judgment of history must be that the Commissioners badly blundered, and that it was fortunate that their work was rejected.³⁷

President Fillmore, commenting on the failure of the Senate to ratify the treaties, cautioned, this has left our relations with these Indians "in a very unsatisfactory condition." In other parts of the Nation, districts or reserves had been set apart for exclusive occupation of the Indians, and their rights to the lands within those limits has been acknowledged and respected." But, in California and Oregon, he warned, there had been no recognition by the government of the exclusive right of the Indians to any part of the country. They were accordingly mere tenants at sufferance, and liable to be driven from place to place at the pleasure of the whites.³⁸

37. Ellison, "Federal Indian Policy in California," p. 194. Although Ellison refers to a map, he failed to include a copy of the map in his dissertation as submitted. Telephone interview, Moran with Bearss, Aug. 10, 1981. Irene Moran is a librarian at the University of California's Bancroft Library.

38. Message of the President of the United States to the Two Houses of Congress, at the Commencement of the 2d Session of the 32d Congress (Washington, 1852), Serial 673, pp. 10, 32.

III. ESTABLISHMENT OF THE KLAMATH RIVER INDIAN RESERVATION

A. The Red Cap War

Notwithstanding the controversey and rancor generated by the negotiations and rejection of the treaties, the Humboldt Coast Indians seem to have accepted them in good faith, because except for some thefts, there were no difficulties instigated by the Indians.¹ Many Californians, however, continued to agitate for removal of the Indians from the state. In April 1852, two months before the Senate rejected the treaties, several north California senators notified Governor John Bigler that during the past "few months" 130 white people had been killed and \$240,000 worth of property destroyed in their counties. Colonel McKee about the same notified the governor that the whites evinced an unjustifiable hostility toward the Indians, and urged that some action be taken to punish the offenders. In support of his position, he cited the murder of 15 to 20 Indians on Humboldt Bay in February, and a similar outrage in March, when nearly twice that number were killed on the Klamath.²

Pressure was brought to bear on Brig. Gen. Ethan Allen Hitchcock, the commander of the Department of the Pacific, by both

1. Coy, The Humboldt Bay Region, p. 141.

2. Ibid, pp. 141-42.

sides. Each asked the aid of the military in settling the difficulties. Hitchcock accordingly determined to establish a military post on the Humboldt Coast. Two companies of the 4th United States Infantry, which had arrived in California in August, were designated to establish and garrison the post. In January 1853, Capt. Robert C. Buchanan and his two companies went ashore at Humboldt Bay and established a post destined to be called Fort Humboldt.³

War finally erupted, in January 1855, along the Klamath River. On the Klamath and Trinity Rivers there had been considerable ill-feeling between whites and Indians in 1853 and 1854, but no open rupture. There was some loss of life, as a killing usually was followed by retaliation. Miners on the Klamath, in January 1855, began to desert their claims and rally on the camps for protection, while the Indians removed their women and children into the mountains. On January 6, a mass-meeting was held at Orleans Bar, and it was determined to disarm the Indians and to take vigorous action against whites suspected or found guilty of selling arms to the Indians.

3. Alta California, March 21, 1852; W. E. Elliott, History of Humboldt County, California . . . Including Biographical Sketches (Los Angeles, 1881), p. 163.

Persons hereinafter detected selling firearms to Indians were to have their heads shaved, receive 25 lashes, and be banished from the camps.

Many of the Indians complied with the call to hand over their firearms, but a few, led by the Red Caps, refused and prepared to resist. The whites struck first, burning several rancherias and committing outrages on the Indian women. The Indians fought back. A steer belonging to Stephen Smith was slaughtered, and, on January 12, the Red Caps swept down on the diggings near Weitchpec and killed six whites and wounded two others.⁴

A call for help by the miners was forwarded to Captain Buchanan at Fort Humboldt. At Trinidad, a volunteer company was organized and attacks made upon the Indians of the lower Klamath and Redwood Creek, who had heretofore lived in peace with the whites. Captain Buchanan ordered out a company of regulars under Capt. H. M. Judah. Reaching Weitchpec in the last week of January, Judah began negotiating with the Indians. The local Yuroks soon gave up and offered to assist

4. Humboldt Times, January 13, 20, 27, 1855; Bledsoe, Indian Wars of the Northwest, pp. 163-65; Rosborough to Henley, February 4, 1855, National Archives, Record Group 75, Letters Received by Office of Indian Affairs, California Superintendency. Among the whites killed in the attack were: C. Dunham, _____ Proctor, Thomas O'Neal, John Smith, and William Wheeler. The wounded were: William Lamb and James Johnson. Lamb failed to recover and died on February 3.

the Army in suppressing the Red Caps. The miners, however, refused to be a party to such an arrangement, but Judah held his ground and a settlement seemed at hand, when he was recalled by Captain Buchanan.⁵

Meanwhile, A. M. Rosborough, a special Indian agent for the County of Siskiyou, had reached Weitchpec. Even before Judah's recall, he sensed that affairs were at a critical stage, and could take an unfortunate turn at any moment. Most of the Yuroks and Karoks were still on their rancherias and wished peace, but, if the Red Caps who had fled to the mountains killed any packers, it would be impossible to prevent the miners from attacking those Indians who had chosen peace, and from driving them into the mountains. The volunteers had made one patrol in the mountains, but the Red Caps had successfully avoided them.⁶

Unless the Red Caps could be prevailed upon to come to terms with the United States, Rosborough informed his superior, Thomas J. Henley, Superintendent of Indian Affairs for California,

5. Wool to Thomas, Feb. 26, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt. Captain Buchanan reported that he had recalled Judah's company, because he could not supply it at this "season of the year." Lorenzo Thomas was acting Adjutant General of the Army at this time.

6. Rosborough to Henley, Feb. 4, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.

it would be necessary to "surrender this whole mining country to the Indians, which would be unthinkable." Currently, there were between 500 and 600 miners employed on the Klamath and Salmon Rivers diggings, who received their supplies by pack trains from Trinidad and Union. As all supplies for these diggings had to pass through Weitchpec, it would have to be held if the miners were to remain.

To defend Weitchpec, he recommended that a company of regulars be permanently posted in the Hoopa Valley. The company of soldiers, along with an Indian agent appointed to reside on the lower Klamath, would guarantee the peace.⁷

Superintendent Henley was understandably distressed to learn of the outbreak of hostilities on the Klamath. Relaying this information to Commissioner of Indian Affairs G. W. Montgomery, he reported, "business of every kind is suspended, and unless peace is quickly restored, a serious check will be given to the prosperity of that part of the State." So belligerent were the miners and packers that he and his agent were hard pressed to prevent a massacre of the Indians. In hopes of achieving an amicable settlement, he had named S. G. Whipple

7. Ibid.

as special agent for Klamath County. Whipple had resided in the area since 1850, and he was well acquainted with the miners and packers and with "the Indians' character."⁸

The withdrawal of Captain Judah and his company had compounded Rosborough's problems. Even so most of the Karoks and Yuroks remained on their rancherias, although a few more had slipped off to the mountains. Those still on the Klamath had requested protection, and the majority of the whites were anxious to grant this plea, but they lacked the manpower to guard the rancherias and at the same time pursue the hostiles and work the diggings.⁹

Rosborough feared that it would be impossible for the law-abiding whites to maintain their leadership in the camps much longer. If the Red Caps should kill any more miners or packers, it would be impossible to prevent the fire-eaters from shooting up the rancherias of the peaceably inclined Indians. If this occurred, Rosborough cautioned Superintendent Henley, there would be a general stampede for the mountains and "such Mts. and evergreen canyons are not to be found anywhere."¹⁰

8. Henley to Montgomery, Feb. 23, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.

9. Ibid.

10. Ibid.

Up to now, the vigilantes had been unable to pinpoint the 40 to 50 Red Caps who were at large. The Indians, Rosborough warned, were not "such cowards as I had thought and I am satisfied that they refrain from an attack and killing the whites mainly on the grounds of saving the Indians remaining on the rancherias."¹¹

Captain Judah, on returning to Fort Humboldt from the Klamath, had suggested to Captain Buchanan that they appeal to Brig. Gen. John E. Wool, the commander of the Department of the Pacific, to order a company of infantry to Weitchpec. To reinforce his plea, Judah pointed out that there was no law on the Klamath, not even a constable or justice of the peace. Buchanan was a typical bureaucrat and unwilling to act on his own initiative, so he ordered Judah to Oregon, while awaiting instructions from General Wool.¹²

When Rosborough learned that it would be some time before help was forthcoming from the Army, he complained to Henley that all that was needed was a company of soldiers and a deputy marshal. He believed knowledge that there was an officer

11. Rosborough to Henley, Feb. 22, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.

12. Ibid.

of the law on the Klamath, with authority to arrest offenders and send them to San Francisco for trial in a United States court, would curb the lawlessness.¹³

Already, the peaceably inclined Karoks and Yuroks had offered to go into the mountains to locate the Red Caps, but they had been disarmed by the miners. If General Wool were unable to send a company of regulars to the Klamath, Rosborough wondered if Governor Bigler could not order out a battalion of militia. As urged by Rosborough, additional volunteer companies were organized to carry the war to the Red Caps. One of these units moved out with Indian guides to show the way. The Indians led the company into an ambush, but the whites escaped without loss. Drumhead court marshals condemned 26 of the Indians to death, while an equal number were captured and two villages burned.¹⁴

As another appeal was being forwarded to Governor Bigler for additional troops, Whipple (having been named Special Indian Agent for Humboldt and Klamath Counties) arrived. He was accompanied by Captain Judah and his company of regulars.

Judah and his 30 regulars returned to the Klamath on March 22. The captain's orders were to assist Whipple "by all means

13. Ibid.

14. Wool to Davis, April 11, 1855, NA, RG 75, OIA, Calif. Supt. Jefferson Davis was Secretary of War in President Franklin Pierce's administration.

in his power, and if the agent saw fit to select a site for an Indian Reservation, to examine it in reference to its suitability as a post."¹⁵

Judah found that most of the miners and packers were prepared to let him cope with the situation. There was considerable excitement, however, and the peacefully disposed Indians were frightened by two recent events. One of their leaders, Patora, had been murdered by a white, after he had surrendered his weapons and had induced others to do likewise. Judah, on making inquiries, found that the deceased "was universally respected for his honesty and friendly attitude toward the whites."¹⁶ The other atrocity had been perpetrated by two companies of volunteers commanded by Capts. C. and F. M. Underwood. They had ridden out with their companies to a rancheria, where they called out the Indians, shook hands with them, and, after each had picked a victim, opened fire. The volunteers had then carried off the women "under the name of prisoners." Judah lost no time in telling Captain F. M. Underwood that his services and that of his men could be dispensed with.¹⁷

15. Ibid.

16. Ibid.

17. Ibid. Judah was incensed when subsequently he learned that the Underwoods and their men had made claims on the government for their pay while in service.

Captain Judah, within the week, was satisfied that for the time being it would be impossible to locate the Red Caps in their mountain retreats. He would bide his time until the fears aroused by the cowardly deed perpetrated by the volunteers had been soothed.

Accompanied by an eight-man patrol, Judah, on March 28, started down the Klamath in a canoe. The reaches of the river visited had never before been traveled by an officer of the United States Army. He found the rancherias deserted, and no Yuroks at Serper where he had sent word for those desiring peace and protection to assemble. Two Indians, who had accompanied the patrol, were sent to the mouth of the Klamath. They returned, on the evening of March 30, with 50 Yuroks, all well-armed with knives, bows, and arrows. The leaders complained to Judah of the treatment they had received at the hands of the volunteers. Judah, although it was difficult, finally satisfied the Indians that his intentions were friendly. They promised to cooperate with him in punishing those Red Caps guilty of murder.¹⁸

On April 3, a grand council was held, attended by deputations from most of the tribes living in the area. Captain Judah

18. Ibid.

reported he had inspired confidence among the Indians, and it was agreed that a war party would meet at Young's Ferry on the 6th. They would be provided with ten rifles and food, along with the names of eight Red Caps that were to be executed. All other hostiles encountered would be urged to turn themselves in, and they would be taken care of by the government, pending the establishment of a reservation.¹⁹

B. Whipple Proposes a Reservation

By mid-June, 1855, several of the Red Cap leaders were dead and most of their followers had availed themselves of the opportunity to surrender to Special Agent Whipple and the Army. According to Whipple's informants only a score of Indians were still at large, and as their hands were stained with the blood of whites, they had no hope of escaping the gallows. As they were well-armed, they could be expected to form a hard-core around which the disaffected, in event of future trouble, could rally. It might be good policy, Whipple reasoned, for the Army to hunt them down.²⁰

19. Ibid.; Report of the Commissioner of Indian Affairs to the Secretary of the Interior, found in Executive Documents of the House of Representatives for the 2d Session of the 49th Congress, 1886-87 (Washington, 1887), Serial 2486, pp. 302-03; Anthony J. Bledsoe, Indian Wars of the Northwest (San Francisco, 1885), pp. 166-76.

20. Whipple to Henley, June 19, 1855, NA, RG 75, Ltrs. Recd., OIA Calif. Supt.

Meanwhile, Whipple had reconnoitered the Klamath from its mouth to Weitchpec. The countryside was rugged, the river flowing "with a bold, though not rapid current, through deep gorges and rugged canons, which alternated with pleasant valleys and grassy flats." The Klamath was "abundantly supplied with Salmon, a fine large fish quite easily taken, and . . . which is very properly regarded by the Indian as his staff of life." Whipple asserted that the Klamath was the "best fishing grounds in North California, and thousands of Indians have stored away their annual supply of dried salmon upon these grounds for centuries." In addition, there were seals and sea lions, in large numbers, at the mouth of the river, while the rocks provided a rich harvest of mussels of which the Yuroks were fond. As far up the river as Weitchpec, there were large banks of mussel shells, which demonstrated their popularity.

The flats bounding the river seemed well adapted to the practice of agriculture.

Whipple also saw that only one white was currently residing on the reaches of the Klamath between its mouth and Weitchpec. This individual claimed to have pre-empted 160 acres near the site of Klamath City, now a deserted ghost town. No pack trails paralleled these reaches of the Klamath, nor would

it be feasible to open any, because of the rugged terrain.

Intercourse between the villages was by canoe.²¹

After completing his reconnaissance and evaluating what he had seen, Whipple notified Superintendent Henley, on June 19, that the lower 30 miles of the Klamath was a "most Eligible Site for an Indian Reservation." The proposed reservation should include within its bounds, a "strip of country five miles in width on each side of the river for the entire distance."

Residing on the land in question were 1,200 to 1,600 Yuroks, who "seemed attached to their land, regarding it as an honor to be known as residents of the Klamath." If the reservation were established, Whipple urged that all the 5,000 Indians living in Klamath County be segregated and settled thereon.²²

Apparently, Whipple was difficult to get along with. Captain Judah complained that the Indian agent was uncommunicative, and there was "no concert" of action between them. Hoping to gain the agent's cooperation, Captain Buchanan recalled Judah and replaced him with Capt. Delancey Floyd-Jones. But, when Army-Bureau relations failed to improve, General Wool brought the matter to the attention of Superintendent Henley.

21. Ibid.

22. Ibid. Klamath County was established in February 1850. At that time it included all of present day Del Norte and parts of Humboldt and Siskiyou Counties.

When he did, he pointed out that the troops would remain on the Klamath until the approach of the autumn rains, when they would be recalled to Fort Humboldt.²³

The Army was not the only agency having difficulty with the strong-willed Whipple. Superintendent Henley was complaining to his superior that the agent had overstepped his instructions, for he had no authority to locate a reservation. His instructions had been to make an investigation "with reference to the fitness of the Klamath as a temporary place of rendezvous for the Indians," at the close of the Red Cap War. He was also to acquaint the Indians with the government's plan to locate them on reservations.

But, in view of Whipple's promises, Henley felt it would be unwise for the United States to renege, because, if the Indians were now removed from the Klamath, they would resume hostilities. Moreover, it was now incumbent on the Office of Indian Affairs to forward subsistence stores for the Yuroks to the Klamath.²⁴

23. Wool to Henley, Aug. 10, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.

24. Henley to Montgomery, July 16, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.

In September, Superintendent Henley visited the Klamath and, while there, he was compelled to admit that he had underestimated Whipple's accomplishments. The area would make an excellent home for the Indians. Scaling down the size of the reservation, Henley on October 4, 1855, recommended to the Commissioner of Indian Affairs that a reservation be established on the Klamath, commencing at the coast, and enclosing a strip of territory, one mile in width, on each side of the river, for a distance of 20 miles. About 2,000 fertile acres, scattered in a number of small valleys, could be cultivated. Admiring the redwoods, Henley reported that "the supply of timber of the best quality was unlimited." The rugged terrain bounding the river should prevent encroachments by whites.²⁵

He had been assured by Whipple that the Indians, living convenient to the proposed reservation, could be removed to it at a trifling expense. As his superiors and Congress were interested in economy, Henley assured them that "the Reservation can be established and sustained, and the Indians subsisted upon it, at much less expense than at any other location with which I am acquainted in the State."²⁶

25. Henley to Mix, Oct. 4, 1855, NA, RG 75, Ltrs. Recd., Calif. Supt. Supt. C. E. Mix was Acting Commissioner of Indian Affairs.

26. Ibid.

To keep the peace, which Whipple and Captain Judah had been instrumental in establishing, Henley urged that the special agent be continued in his position and that funds be budgeted for a farm to feed the Indians.²⁷

C. President Pierce's Executive Order of November 16, 1855

1. Acts of March 3, 1853, and July 31, 1854

Congress had provided statutory authority for establishment of the reservation. On March 3, 1853, President Fillmore had signed into law legislation enacted by the 2d Session of the 32d Congress authorizing establishment of "five military reservations from the public domain in the State of California or the Territories of Utah and New Mexico bordering on said State, for Indian purposes."²⁸ Then, on July 31, 1854, President Franklin Pierce signed into law an "Act making Appropriations for the current and contingent expenses of the Indian Department" in fiscal year 1855. Among provisions of this legislation

27. Ibid.

28. George Minot (editor), The Statutes at Large and Treaties of the United States of America from December 1, 1851 to March 3, 1855 . . . (Boston, 1855), Vol. X, p. 238.

was a \$200,000 appropriation for "defraying the expenses of continuing the removal and subsistence of Indians in California, three military reservations, in accordance with the plan submitted by the Superintendent of Indian Affairs of that State, and approved by the President."²⁹

2. Act of March 3, 1855

On March 3, 1855, President Pierce approved an act to fund the Office of Indian Affairs in the year ending June 30, 1856, sanctioning the establishment of two additional California reservations, besides the three authorized by the law of July 31, 1854. One hundred and fifty thousand dollars were appropriated by the act of March 3, "for collecting, removing and subsisting the Indians of California," on the proposed new reserves--which reserves had not yet been selected. An additional appropriation of \$125,000 was voted at the same time to cover expenses of the three reserves provided for in the Act of July 31, 1854.³⁰

3. President Pierce Acts

On December 18, 1854, ten weeks before enactment of the latter legislation, Superintendent Henley had called

29. Ibid., p. 332.

30. Ibid., pp. 698-99.

attention to the need for new reservations and had asked for their establishment. He had reiterated his proposal in a report dated April 30, 1855, and had mentioned at the same time that it was "indispensable" that one of the two reserves should be in Klamath County. On June 22, Commissioner George W. Manypenny (who had replaced Montgomery) wrote Secretary of the Interior Robert McClelland recommending that the funds appropriated by the act of March 3, 1855, be employed for the establishment of two reserves--a recommendation which McClelland relayed to President Pierce on June 25. On August 8, McClelland wrote Manypenny, "The President has returned the papers with his approval of the recommendation of the Department, and they are, herewith, enclosed for the proper action of the Indian Office in the matter."

This action was taken on August 15, when Acting Commissioner C. E. Mix wrote Henley, to select these reservations from such "tracts of land adapted as to soil, climate, water privileges, and timber to the comfortable and permanent accommodation of the Indians, which tracts should be unincumbered by old Spanish grants or claims of recent white settlers," and limiting each reserve to

25,000 acres. Henley was to provide the Bureau with a geographic description of the reservation and a map.³¹

Responding on October 4, Superintendent Henley recommended that one of the reservations consist of "a strip of territory 1 mile in width and on each side of the [Klamath] river, for a distance of 20 miles." No map, however, was attached.³²

Commissioner Manypenny, on forwarding Henley's report to Secretary of the Interior McClelland, called attention to the superintendent's views as to the importance of continuing to employ an agent and to prepare for "raising a crop . . . to assure the Indians of the good faith of the Government, and to preserve the peace." Because of the great distance of the Klamath reserve from Washington and the length of time necessary to communicate with an agency there, Manypenny stressed the need for action, if practicable, before the next mail steamer sailed from New York City for Panama, on November 20.

31. Alban W. Hoopes, Indian Affairs and Their Administration With Special Reference to the Far West, 1849-1860 (Philadelphia, 1932), pp. 51-61; Manypenny to McClelland, Nov. 12, 1855, found in Charles J. Kappler (compiler), Indian Affairs: Laws and Treaties (Washington, 1904), Vol. I, p. 815.

32. Henley to Manypenny, Oct. 4, 1855, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

If the Secretary saw fit to bring the subject to the President's attention, provision should be made that, upon survey of the tract selected, "a sufficient quantity be cut from the upper end of the proposed reserve to bring it within" the 25,000-acre limitation, authorized by the act of March 3, 1855.³³

On November 12, 1855, Secretary McClelland transmitted the papers to President Pierce, and, on the 16th, the President by Executive Order approved the proposal that the Klamath River Reservation include "a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River, for a distance of 20 miles." An acreage, exceeding the statutory limitation, was to be cut off from the upper end.³⁴

D. Establishment of the Wau-Kell Agency

While on the Klamath, Superintendent Henley had told Agent Whipple to begin constructing buildings for the agency. One house was erected at Kepel (Cappell) and a second at Wau-Kell. A survey was made of the coast from the Klamath to Crescent

33. Manypenny to McClelland, Nov. 10, 1855, found in Kappler, Indian Affairs, Vol. I, pp. 816-17.

34. McClelland to President, Nov. 12, 1855, & President Pierce's Executive Order of Nov. 16, 1855, found in *ibid.*, Vol. I, p. 817.

City for the purpose of cutting a trail. The trail was to be given high priority, because travel by sea, in small boats, would be hazardous during the approaching winter months. Until the farm and gardens were under cultivation, foodstuffs, as well as other supplies, would have to be brought down from Crescent City.

To add to Agent Whipple's difficulties, the fall salmon run, on which the Yuroks were dependent, had been poor. Most of the Indians had then gone into the mountains to gather acorns.³⁵

In the spring of 1856, Whipple resigned and was replaced as agent by James A Patterson. Whereas, Whipple had possessed ability and a capacity for hardwork, Patterson spent considerable time away from the reservation, where he frequented Crescent City saloons. In 1855, while the Rogue River War raged, the residents of Crescent City had deemed it expedient to concentrate the Tolowas on a reservation near the town. There, the Tolowas were subsisted and guarded. When the war ended, Whipple had prevailed upon the Tolowas to move to Wilson Creek. To get them to agree to this move, he had promised that the government would subsist them, until

35. Whipple to Henley, Sept. 27, 1855, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.

land could be cultivated and food grown. He also promised to reimburse them for their fisheries and land (900 square miles). The payment was to be made in their currency--Ali-cachuck. With these they could purchase fisheries and farms from the Yuroks.

Patterson, after replacing Whipple, had repudiated this agreement. Whereupon, the Tolowas left Wilson Creek and returned to their rancherias on Smith River and the coast north of Crescent City. There, on October 19, 1856, they were taken in charge by Lt. Hezekiah Garder of the 4th Infantry. He concentrated them on Smith Island, where he saw that they were issued rations and clothing at the government's expense.³⁶

When he filed his annual report for fiscal year 1856, Patterson reported that, when established, there had been living on the reservation about 2,000 men, women and children. Arrival of the Tolowas had increased this number by 500. On the Klamath, above the reserve, were about 1,500 Indians, while on the Trinity there were from 1,000 to 1,200. As heretofore the

36. Alexander Hamilton to President Pierce, Sept. 27, 1856, NA, RG 75, Ltrs. Recd., OIA, Calif. Supt.; Heintzelman to Crook, Dec. 15, 1857, NA, RG 98, Ltrs. Recd., Dept. of the Pacific. In getting the Tolowas to remove to Wilson Creek, Whipple had been assisted by the military.

Indians subsisted themselves upon "fish, game, acorns, roots, etc."³⁷

Superintendent Henley, when he submitted his annual report for fiscal year 1856, placed the number of Indians on the reservation at around 2,000. They were "proud and somewhat insolent, and not inclined to labor, alleging that as they have always heretofore lived upon the fish of the river, and the roots, berries, and seeds of their native hills, they can continue to do so if left unmolested by the whites." But, in the months since establishment of the reservation, their prejudices upon these points were fast yielding before the policy of the government, and Henley apprehended no serious problems "in initiating the system of labor among them."

The flats bordering the river were adapted to cultivation of vegetables, and it was anticipated that bumper crops of potatoes and other garden crops, together with the salmon and other fish abounding in the Klamath, would constitute the principal foods for these Indians.³⁸

37. Patterson to Henley, July 15, 1856, found in Message from the President of the United States to the Two Houses of Congress at the Commencement of the 3d Session of the 34th Congress, 1856-57 (Washington, 1856), Serial 875, pp. 800-01.

38. Henley to Manypenny, Sept. 4, 1856, found in Executive Documents, Printed by Order of the House of Representatives, During the 3d Session of the 34th Congress, 1856-57 (Washington, 1857), Serial 893, pp. 789-97.

IV. THE SMITH RIVER RESERVATION: 1862-68

A. Winter Floods Wreck the Wau-Kell Agency

In December, 1861, and early January, 1862, torrential rains pounded the Humboldt Coast, causing the Klamath, as well as the other rivers and streams, to flood and destroy the Wau-Kell Agency. Surging waters swept across the flats, uprooting trees and crops, wrecking storehouses, and leaving several thousand Indians destitute. Superintendent George M. Hanson, who had been named to the position in April, 1861, wrote the Commissioner of Indian Affairs on the last day of 1861, "I am compelled to chronicle the sad tidings . . . of the entire loss of the Klamath Indian reservation, or rather the loss of everything that was on it, consisting of wheat, corn, oats, barley, potatoes, carrots, peas, beans, etc."

All surplus grain and vegetables stored on the reservation, totalling nearly 10,000 bushels, had been swept downstream. To cope with the disaster, Hanson "must take the responsibility of purchasing" rations for the Indians in San Francisco, or they would either perish for lack of food or return to their old haunts, where they would renew the war by raids on the settlers' livestock.¹

1. Hanson to Dole, December 31, 1861, found in Executive Documents, Printed by Order of the House of Representatives, During the 3d Session of the 37th Congress, 1862-63 (Washington, 1863), Serial 1157, pp. 457-58.

Before leaving San Francisco for the Klamath to inspect damage and initiate relief measures, Superintendent Hanson wired Commissioner William P. Dole, "The cries of over two thousand Indians now in a state of starvation . . . will reach the ears of the authorities in Washington."²

Superintendent Hanson reached the Klamath, on January 15. He found the farm "fields of bare cobble stone, on one side, and Sand, 3 feet deep on the other, which had taken the place of nearly every acre of arable land on the Reservation." The floods, he wailed, had destroyed the scheme to establish on the Klamath agricultural communes capable of sustaining in peace and prosperity all the Indians of northwest California.

On the flats "every panel of fencing, every Indian village, and every government buildings (over 30), except a barn," had been swept away. This included the mill, along with crops stored in granaries and all government stores. Gone were the farming and blacksmith tools, swine, poultry, and most of the cattle, "all swept into the Pacific."

2. Hanson to Dole January 5, 1862, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

Questioning the oldest Yuroks, Hanson learned that this was the worst flood in their memories.³

A soldier-diarist visiting Wau-Kell in March recorded, "Little is left of what was once the beautiful residence of the U.S. agent." All that remained of the agency was "a lone white cottage-like looking building, a barn and what was once a mill standing in the midst of a barren sandy bar."⁴

B. Establishment of the Smith River Reservation

Superintendent Hanson, having found a scene of desolation where there had formerly been prosperous farms and gardens, determined to relocate the Indians and agency employees. He toured the Northern District. An area that was suitable would have to have: (a) fertile ground for farms; and (b) be "secluded from white settlements." After satisfying himself that there was no public land nearby meeting these criteria, he determined to move the destitute Indians from the Klamath to Smith River. Reporting on the lower Smith River Valley to Commissioner Dole, Hanson wrote, it is "impregnable to floods, provided with an excellent growth of timber and living springs,

3. Hanson to Dole, Feb. 14, 1862, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

4. Fred B. Rogers, "Early Military Posts of Del Norte County," California Historical Society Quarterly, Vol. 26. p. 3.

and 20 farms," with houses and barns, two mills (flour and saw) and orchards. The settlers, when questioned, indicated a willingness to sell to the government. Hanson accordingly secured options to purchase all the arable land in the valley on the north side of Smith River, about 5,000 acres, nearly one-half of it fenced. Until such time as it could be purchased, land was rented from David Buel.

After perfecting these arrangements, Hanson began removing the Indians from the Klamath to Smith River. The Yuroks were no more eager to live among the Tolowas than the Tolowas had been among them. Refusing to go to Smith River, the Yuroks remained on the Klamath. The Indians from Mad and Eel Rivers, however, were eager to move. Numbering between 400 and 500, they "traveled through snow, rain, and mud, barefooted for 40 miles to where they expected to find something to eat." While en route up the trail to Crescent City, two of the women gave birth to children. Superintendent Hanson and his staff were surprised to see these women pushing on up the trail the next morning, "with the newcomers on their backs, as though nothing of the kind had happened."⁵

5. Hanson to Dole, Feb. 14, 1862, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

Satisfied that there was sufficient arable land in the proposed purchase to maintain all the Indians in the Northern District, who could not be removed to Nome Lockee or elsewhere, Hanson asked Brig. Gen. George Wright, commanding the Department of the Pacific, to send all the Indians his troops succeeded in capturing, in the war that had broken out, to the Smith River reserve.⁶

To subsist them, Hanson purchased a "moderate supply" of beef cattle, cows, hogs, vegetables, etc., at a price less than the freight would be from San Francisco to the other reservations. He had also procured seed, and would endeavor to cultivate 300 or 400 acres, to insure an ample supply of grain and vegetables to ration all Indians that may be removed to the area in 1862.

Several carpenters had been employed helping the Indians construct houses. Two men, assisted by the Indians, could erect a dwelling per day. The houses were built on 80-by 160-foot lots.⁷

Hanson reminded Commissioner Dole that Indians born and reared in the interior and used to subsisting on fresh water fish, rabbits, squirrels, acorns, grasshoppers, etc., "will never

6. Ibid.

7. Ibid.

willingly be confined to a reservation on the coast; and vice versa, those raised on the coast, and accustomed to sea fish and weed, cannot be induced to remain in the interior." This was the reason behind his decision to expedite housing construction.⁸

Superintendent Hanson was back in San Francisco in late March. Concerned by failure of the Bureau of Indian Affairs to act promptly on the Smith River land purchase, he wrote Commissioner Dole, urging the "importance of a sufficient appropriation" to secure that area as an Indian reservation to replace the Klamath. Unless steps were taken to consummate the purchases, the "government must suffer great loss, and about 2,500 Indians be entirely destitute of a suitable home."⁹

Commissioner Dole, confronted as he was by a fait accompli, sanctioned Hanson's actions, and on May 3, 1862, the Secretary of the Interior established the Smith River Reservation. The Secretary directed that all "land embraced in the proposed reservation . . . be withdrawn from sale for the present." At that time nearly all land fit for cultivation inside these boundaries

8. Ibid.

9. Hanson to Dole, March 31, 1862, found in Executive Documents, Serial 1157, p. 463.

was occupied and claimed by whites, excepting that rented by Superintendent Hanson. Most of the land not claimed by whites was heavily forested.¹⁰

According to the Humboldt Times, the agent and his staff were formally transferred to the Smith River Reservation, and the Yuroks left to shift for themselves on the Klamath.¹¹

C. Army Abandons Fort Ter-Waw

Fort Ter-Waw, the military post on the reservation, had been destroyed by the same floods which engulfed the Wau-Kell Agency. Capt. William G. Stuart of Company G, 2d California Infantry, whose unit was assigned to the post, was opposed to carrying out orders from his superiors to rebuilt Fort Ter-Waw, and, on May 10, 1862, he reported, "we are hemmed in here in every way, and we have no outlet except the trail on the south side of the Klamath to the coast, which the troops had recently opened." This trail intersected the Crescent City-Humboldt Bay trail. Travel was generally by canoe and very

10. Dole to Smith, April 9, 1862, found in ibid., p. 830; Whiting to Taylor, Aug. 19, 1867, found in Executive Documents, Printed by Order of the House of Representatives, During the 2d Session of the 40th Congress, 1867-68 Washington, 1868), Serial 1326, p. 108.

11. Humboldt Times, "Jubilee Edition," Dec. 7, 1904.

expensive the Yuroks owning all the canoes. Their charge for ferrying the troops across the river was four cents each way, which Stuart considered too high.¹²

Stuart reported, the people of Crescent City began to interfere with troop movements. They were distressed to learn that Captain Stuart had sent his best men to the Bald Hills to man the outpost at Elk Camp, on the trail between Trinidad and the Klamath. Recently, two-thirds of the adult males had left Crescent City for the Oregon mines. About 150 families had remained, mostly women and children, with only a 30-man militia company to protect them from the Tolowas. Most of these homeguards were armed with flintlocks. The people said harsh words about the reduction of Stuart's command, because Fort Ter-Waw was all the defense Del Norte had. With 800 Yuroks on the Klamath and as many more Tolowas on Smith River, the situation looked bleak to Stuart. To make matters worse, he said, the Karoks and Hupas were descending the Klamath, daily, to fish and trade. Persons had told him that the Yuroks had secreted 400 stands-of-arms, which they had salvaged after the flood, and that profiteers from Humboldt Bay were selling them ammunition.

12. The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington, 1880-1900), Series I, Vol. L, pt. 1, p. 1062.

In the period following the flood, Stuart reported, the Indian agent had abandoned his agency at Wau-Kell, and the Indians had dug up quantities of lead pipe and iron. When he had first reached the post, Stuart could, by using quartermaster's supplies for currency, get the Yuroks to transport government stores, but, by May, they demanded cash.¹³

Some had become so bold that they threatened the Karoks and Hupas and "others up the river will come down and clean white men out from their fishing grounds, saying 'Indians all fight against white men.'"¹⁴

Captain Stuart was shaken by these stories and unwilling to face difficulties. Besides, he was a poor match for the Crescent City politicians. Judge E. Mason of that town, on May 19, wrote Superintendent of Indians for the Northern District Hanson, complaining that his fellow citizens were disenchanted with the military. He reminded Hanson of a promise "to have at least one company of troops in Smith River Valley" by April, in return for an agreement to permit the United States to establish a reservation there. Since the departure of the men for the mines, Judge Mason said, the Tolowas had become "quite impudent going to houses where there are no men and demanding food and clothing." This had frightened the women and children, causing them to abandon their homes

13. Ibid.

14. Ibid., pp. 1062-63.

and seek shelter in Crescent City. Moreover, the Tolowas were in contact with their former enemies -- the Yuroks. The judge said Chief Ilas had made three visits to the Klamath, and fears were voiced that he was plotting a general outbreak.¹⁵

On May 21, Superintendent Hanson accordingly contacted General Wright. While Hanson, personally, had no fears of trouble in Del Norte, he would be glad to see troops posted on the new Smith River Reservation.¹⁶ General Wright, the next day, acknowledged receipt of Hanson's note and Judge Mason's letter. Before taking action, Wright wished to know the number of Indians on the Smith River Reservation, and whether all those previously living near Fort Ter-Waw had been removed.¹⁷

Hanson answered immediately. Previous to his mid-March departure from Smith River, he had removed all, or nearly all, the Humboldt and Eel River Indians and a few Yuroks to the new reservation. Counting the Tolowas, there would be about 1,000 Indians on Smith River. The Yuroks were disinclined to emigrate, and claimed that in "their old haunts they could shift or provide for themselves better than the others who had been" concentrated on Smith River. Hanson was agreeable to their

15. Ibid., p. 1088.

16. Ibid., p. 1087.

17. Ibid., p. 1092.

remaining on the Klamath until he had better means of providing for their welfare. In his opinion, there could not be in excess of 300 Yuroks within three or four miles of **Fort Ter-Waw, while there were no white settlers within 30 miles, if those married to Indian women were discounted.** Hanson would be pleased to see Stuart's company located at some point between Crescent City and Smith River.¹⁸

General Wright, since the move was advocated by the Office of Indian Affairs and no longer opposed by the post commander, agreed to abandon Fort Ter-Waw. On May 27, 1862, Captain Stuart received orders to pull his troops off the Klamath River Reservation. Stuart lost no time in carrying out his orders. A diarist wrote, on June 10, that the day was "memorable for the departure of the 1st detachment in the evacuation of Fort Ter-Waw. At early dawn the captain with 39 men took boats down the river to its mouth, then overland to Crescent City." The rest of Company G, 2d California Infantry, followed within two days, and Fort Ter-Waw had been abandoned and was soon forgotten.¹⁹

18. Ibid., p. 1093.

19. Rogers, "Early Military Posts of Del Norte County," California Historical Society Quarterly, Vol. 26, p. 3.

D. The Smith River Years

In mid-July 1862, Superintendent Hanson departed San Francisco for a five-week tour of the northern counties. At Smith River, he was delighted to find the crops much better than at any of the other reservations. The Indians, who had been relocated from the Klamath, appeared to be "happy and contented," and "express themselves as preferring to another removal." They were busy harvesting wheat, oats, and barley. To assist with the threshing, Hanson authorized hire of horses and mules.

While in Del Norte and Humboldt Counties, Hanson made arrangements for procuring rations and clothing for the 600 to 700 Indians that had been rounded up by troops led by Col. Francis J. Lippitt from the Eel and Mad Rivers. These Indians, then being held at Fort Humboldt, were to be sent to the Smith River Reservation.²⁰

By early October 1862, 840 Indians had been transferred from Fort Humboldt to the reservation, and they, as well as the more than 1,200 who had removed from the Klamath, seemed "far more contented and happy" than the Indians at the other northern California reservations. Only a few of the 840 newcomers had

20. Hanson to Dole, Aug. 18, 1862, found in Executive Documents, Serial 1157, pp. 464-65.

fled the area. The Indians, aided by the agency's white employees, were busy erecting winter quarters.²¹

As no money had been appropriated by Congress to purchase the land, Hanson renewed his agreements with the Smith Valley settlers to pay them rent for their lands, then being cultivated for Indian purposes, until such time as Washington determined to buy the acreage, or till Hanson was directed to make some other disposition of the Indians. The rent averaged from \$4 to \$5 per acre, an outlay the United States could avoid by purchase of the lands.²²

A military post, garrisoned by the troops withdrawn from Fort Ter-Waw, had been established and designated Camp Lincoln. It was about half-way between the Smith River Indians and Crescent City, and the soldiers had the mission of keeping the peace between the races.²³

Superintendent Hanson spent 13 days in June 1863, at the Smith River Reservation. This was a stop in a tour of the Northern California reservations for which he was responsible. He

21. Hanson to Dole, Oct. 10, 1862, found in *ibid.*, pp. 453-54.

22. *Ibid.*, p. 454.

23. *Ibid.*; Humboldt Times, "Jubilee Edition," Dec. 7, 1904.

found crop prospects good. While on the reservation, he closely monitored the performance of the agency's supervisor and employees, and the condition of the Indians, as to their health and want of clothing. He concluded that, although management of the reservation was superior to that at the others in Hanson's superintendency, it was apparent that more married men should be employed, and the bachelors laid off. He accordingly hired three men with wives. Two of the trio were journeymen carpenters, as well as farmers, and the other was a miller-farmer.

Hanson found that unsettled condition of three-fourths or more of the Indians, who had been compelled to sleep on the cold, damp ground since their removal from the Klamath and Fort Humboldt, had led to much sickness and a number of deaths. To cope with this situation, Hanson rented a sawmill and sent Supervisor Bryson to southern Oregon to purchase draft horses. Lumber from the mill would facilitate construction of dwellings, thus insuring the Indians a more comfortable winter in 1863-64. Priority was also given to building a hospital.

Upon checking the rolls, Hanson determined that only 130 out of the 840 Indians removed to the reservation from Humboldt Bay had fled the Smith River reserve. Most of these had slipped away the first night after their arrival. Their chief, La-ac, had since been killed.²⁴

When he submitted his annual report for the year ending June 30, 1863, Hanson called attention to complaints by Humboldt Bay whites that small parties of Indians continued to slip away from Smith River and return to ancestral homes in the bay area. Hanson's investigations indicated that these stories were untrue. The reservation Indians, according to Supervisor Bryson, were "contented and happy at the prospect of an abundant harvest and additional houses to live in through the winter."²⁵

Superintendent Austin Wiley, under the 1864 reorganization, became responsible for the Smith River Reservation. The subject reorganization had been mandated by the "Four

24. Hanson to Dole, July 18, 1863, found in Executive Documents, Printed by Order of the House of Representatives, During the 1st Session of the 38th Congress, 1863-64, (Washington, 1864), Serial 1182, p. 212.

25. Hanson to Dole, Sept. 7, 1863, found in *ibid.*, p. 208.

Reservations Act" of April 8, 1864. In accordance with the 1st Section of this legislation, the two superintendencies heretofore responsible for the administration of Indian affairs in California were reorganized and consolidated into one superintendency. At the time that Wiley submitted his annual report for fiscal year 1864, there were 745 Indians at the agency, most of whom had been removed from the Bald Hills and the Eel and Mad Rivers county. There were 28 Indian houses built of sawed lumber, which were comfortable dwellings. These were occupied by Humboldt Coast Indians, while the Bald Hills and Bear River people lived in rude huts of their own construction. Consequently, Wiley reported mortality among the latter was excessive.

Crops had been good, yielding all that will be required for subsisting the Indians through the winter of 1864-65.

As of September 1, 1864, Wiley had not had an opportunity to visit Del Norte County, so he was unprepared to make a recommendation as to whether a reservation should be permanently established in that area in accordance with the "Four Reservations Act of April 18, 1864."²⁶

26. Wiley to Dole, Sept. 1, 1864, found in Executive Documents, Printed by Order of the House of Representatives, During the 2d Session of the 38th Congress, 1864-65 (Washington, 1865), Serial 1220, p. 261.

Charles Maltby, who succeeded Wiley as superintendent, found, on visiting Smith River, that the reservation was on a 1,200-acre farm rented from Saville and Darly at a annual rent of \$1,200, and an adjoining 87-acre tract rented at four dollars per acre.

When he submitted his annual report for fiscal year 1865, Maltby recommended that either the land required for the Indians' wants be purchased from the owners, or an appropriation secured for removal of the Indians and public property to Round Valley. He believed that sufficient acreage could be purchased for a reservation, to include all lands necessary for agricultural and grazing purposes, "with a broad outlet to the mouth of the river and the coast for fishing purposes," at a cost less than that attending removal.²⁷

The reservation population was about 700 Humboldt and Wylackee Indians. Superintendent Maltby found them to be "industrious, well-disposed, and contented." This number, if it were decided to enlarge and make the reservation permanent, could be increased by bringing in the Klamath (Yuroks) and Smith River (Tolowas) Indians, who lived in the area and numbered about 1,300.²⁸

27. Maltby to Cooley, Sept. 15, 1865, found in Executive Documents, Printed by Order of the House of Representatives, During the 1st Session of the 39th Congress, 1865-66 (Washington, 1866), Serial 1248, pp. 281-82.

28. Ibid., p. 282.

Crop prospects were favorable on the reservation in the summer of 1866 and gave promise of a surplus. Little money, however, could be realized by the agency through sale of produce, because of the want of markets.

Maltby reported that many of the Indians had become dissatisfied and disenchanted with their status. This traced to their belief that the United States did not plan to buy the land, and they dreaded relocation to a less desirable reservation. Consequently, during the late spring, a number had fled the reservation. Agent George Kingsbury, assisted by the Army, was endeavouring to apprehend the runaways and compel them to return.

In view of this situation, Superintendent Maltby recommended early abandonment of the Smith River Reservation, and removal of the Indians and government property to Round Valley, because these Indians would be better satisfied there than in Hoopa Valley. At Round Valley, they would find other Humboldt and Wylackee Indians, speaking their language. To fund the removal, Maltby called for a \$5,000 appropriation.²⁹

29. Maltby to Cooley, Sept. 15, 1866, found in Executive Documents, Printed by Order of the House of Representatives, During the 2d Session of the 39th Congress, 1866-67 (Washington, 1867), Serial 1284, p. 93.

B. C. Whiting replaced Maltby as superintendent in fiscal year 1867. Like his predecessor, Whiting urged early abandonment of the Smith River Reservation, and removal of the Indians to Round Valley, or some to Round Valley and the remainder to Hoopa Valley. Echoing Maltby, he suggested that the system of renting land for the Indians' use was unprofitable to the United States and unsatisfactory to the Indians. Either an appropriation for purchase of the land should be asked or \$5,000 made available to fund removal. As the most valuable reservation property were the horses and cattle, they could be driven over a mountain trail to Hoopa and Round Valleys at a loss of not more than 10 percent. To justify this figure, he called attention to a June cattle drive from Smith River to Hoopa. The drovers had started with 81 head and had 79, when they reached their destination.³⁰

Henry Orman, the new Smith River agent, took charge on February 15, 1867. The number of Indians for whom he was responsible had shrunk to about 400. Most of this loss in population had resulted from the flight of the discontented back to their former homes in Humboldt County. In hopes of stemming the exodus, Orman "used every possible means . . . to convince them that our government will ultimately purchase the

30. Whiting to Taylor, Aug. 19, 1867, found in Executive Documents, Serial 1326, p. 108.

greater portion of this valley . . . for their future permanent homes." This seemingly had a beneficial effect.

In an effort to rally support for purchase and retention of the reservation, Orman called the Bureau's attention to the area's natural advantages. Bounded on the west by the vast Pacific, on the south by Smith River, and the north and east by low mountains, the reservation possessed resources which had enabled the Indians to subsist for centuries without the aid of whites. "The ocean and river furnished inexhaustible supplies of every known variety of fish . . . , while the surrounding hills contain game of every description in great abundance."³¹

E. Smith River Reservation is Abandoned in Favor of Hoopa Valley

On July 27, 1868, Congress enacted legislation authorizing abandonment of the Smith River Indian Farm, and removal of the Indians and government property to Hoopa Valley Reservation or to Round Valley. To undertake this mandate, there was a \$3,500 appropriation.³²

31. Orman to Whiting, July 27, 1867, found in *ibid.*, p. 109.

32. George P. Sanger (editor), The Statutes at Large, Treaties and Proclamations of the United States, from December, 1867, to March 1869 . . . (Boston, 1869), Vol. XV, p. 221.

Superintendent Whiting traveled north from San Francisco to make arrangements for accomplishing the removal. On his arrival at Smith River, he learned from Agent Orman that about 150 Indians had become alarmed at the prospect of removal and had fled to Humboldt County. Others had attempted to leave the agency, but had been apprehended and returned--40 in one group--and several smaller parties on other occasions.

Although winter was approaching, there were powerful arguments to make the move now, because with the coming of the planting season, the Smith River teams and the best farmers and working Indians were needed in Hoopa Valley; the Smith River lease was about to expire and should not be renewed for another year; and the Indians, disillusioned with their Smith River situation, were "anxious to get away to their old mountain ranges and rustic homes."

The route from Smith River to Hoopa Valley was via a "devious mountain trail." Rivers and streams must be crossed, and part of the way led along the beach and was impassable, except at ebbside and in moderate weather. Whiting employed John Chapman, an experienced mountaineer, well acquainted with the route and Indians, as special agent to oversee the removal of the Indians and livestock. A knowledgeable guide and packer, Chapman provided a train of pack mules and several packers. Having

posted notices, Whiting held a public sale on December 2, 1868, of the public property too cumbersome to move (a threshing machine, a reaper, several old wagons, etc.) and of small articles of little value, which could not be moved to the government's advantage. A torrential downpour interrupted the sale, and it was rescheduled for January 15, 1869.³³

The task of moving 295 Indians, the cattle, horses, colts, and pack train over narrow mountain trails was a challenge.

Whiting, Chapman, and Orman found themselves frequently separated, "each having about as much responsibility as a division commander."

Whiting stated that the sick, blind, and halt (38 in number), besides some of the baggage, was hauled from Smith River to the foot of Ragged Ass Hill in wagons. This was about 20 miles, and as far as wagons could proceed. From there to the Klamath (24 miles), the infirm were transported "in boxes, packed on each side of a mule, as the Californians carry smoked bacon or salmon." From the mouth of the Klamath, the sick and elderly were taken in canoes up that river to its confluence with the Trinity, and then up the Trinity to Hoopa Valley.

33. Whiting to Parker, Aug. 1, 1869, found in Executive Documents, Printed by Order of the House of Representatives, During the 2d Session of the 41st Congress, 1869-70 (Washington, 1870), Serial 1414, pp. 637-39. Realized from the sale of the Smith River property was \$5,001 in currency.

The remainder of the Indians, together with the pack train and government livestock, followed tortuous mountain trails and forded icy rivers and streams, on the 90-mile trek from the mouth of the Klamath to their new homes.

Severe storms were encountered on the march, and some calves and weak cattle lost in the surf. Others were killed or maimed by sliding over precipitous cliffs. One Indian died on the trip.

Subsequently, 95 Indians who had fled the Smith River Reservation before it was abandoned were apprehended in Humboldt County and escorted to Hoopa Valley.³⁴

34. Ibid., pp. 639-40.

V. THE FOUR-RESERVATION ACT OF APRIL 8, 1864

A. The Bureau Reviews the Situation

Establishment of the Smith River Reservation and virtual abandonment of the Klamath River Reservation caused Commissioner Dole to think about a reorganization of the northern California reserves. Consequently, on July 24, 1862, Dole called on Superintendent Hanson to provide Secretary of the Interior Caleb B. Smith with Hanson's views on these subjects:

- (a) the expediency of reducing the California reservations to two in number;
- (b) the proper location for these reservations; and
- (c) the propriety and manner of disposing of surplus reservations.¹

Responding, Superintendent Hanson argued against the proposal to pare the number of California reservations to two, unless the ones in the southern district were dispensed with as the Indians in northern California outnumbered those in the southern part of the state by three, if not four, to one, while the tribes inhabiting the mountains were hostile to the Indians of the

1. Dole to Hanson, July 24, 1862, found in Executive Documents, Serial 1157, p. 466.

coast and lower valleys. He therefore recommended retention of two of the four northern district reservations.²

The proper places for the two permanent north California reservations, he continued, were in the Smith River Valley and in Mendocino County's Round Valley. The former would be occupied principally by coastal Indians and the latter by those from the mountains. Besides arable land, Hanson cited the Smith River Reservation as possessing these advantages: "timber for fencing and building purposes and water for mill and drinking purposes . . . , together with one of the best salmon fisheries in the State."³

Hanson, in answer to Smith's third question, recommended sale by the United States of the Nome-Lackee, Mendocino, and Klamath Reservations. Since the winter's flood, he said, the latter had lost most, if not, all of its value. Monies received from the sale of lands in the three reservations to be disposed of could be used for purchase of the settlers' improvements in Smith River Valley and Round Valley.⁴

2. Hanson to Dole, Sept. 1, 1862, found in *ibid.*

3. *Ibid.*

4. *Ibid.*, pp. 467-68.

B. The Bureau's Bill Fails To Pass the 37th Congress

Consequently, when the 3d Session of the 37th Congress convened on December 12, 1862, Senator James A. McDougall of California introduced a bill (S.501), prepared by the Commissioner of Indian Affairs, providing for sale of "certain of the California reservations, and to provide for establishment of certain other reservations in the state." After being read twice, the bill was referred to the Senate Committee on Indian Affairs.⁵

S.501 provided that the Secretary of the Interior was: (a) to have surveyed and advertised for public sale the land embraced in the Mendocino and Nome-Lackee Reservations; (b) no portion of these lands were to be subject to pre-emption; (c) a commission was to meet in Round Valley to investigate the claims of settlers and to make fair and just appraisal of the improvements made previous to January 1, 1859; (d) the Round Valley Reservation was to be significantly enlarged and "set apart for the perpetual use and occupation of the Indians residing in the northern district of California, known as the Indians of the Interior, as counterdistinguished from the Coast Indians; (e) the Commissioner of Indian Affairs was to

5. John C. Rives, The Congressional Globe for the 3d Session of the 37th Congress, (Washington, 1863), pp. 703, 1301-02.

concentrate all Indians residing in the northern superintendency, but if this were impracticable the Commissioner "may procure, by lease or purchase, a proper location in some other portion" of California for establishment of the Indians; and (f) it would be unlawful for persons other than Indians and agents or employees of the Bureau to reside or enter on the Round Valley Reservation.

The bill was reported out of committee and, on February 26, 1863, was considered, and, after being amended by the Committee of the Whole, engrossed.⁶

S.501 was rejected when brought before the House on March 2, and the attempt by the Bureau of Indian Affairs to secure legislation from the 37th Congress to improve and promote the administration of the California superintendencies failed.⁷

C. Superintendent Steele Second Guesses His Predecessor

In the winter of 1863-64, Elijah Steele, who had succeeded Hanson as Indian Superintendent for the Northern District,

6. Ibid., pp. 1301-02.

7. Ibid., pp. 1486-87; Hanson to Dole, April 25, 1863, found in Executive Documents, Printed by Order of the House of Representatives, During the 1st Session of the 38th Congress, 1863-64 (Washington, 1864), Serial 1182, p. 210.

addressed a letter to United States Senator John Conness of California. He informed the senator that he was about to leave Yreka, in a few days, to tour the Humboldt Coast, "with a firm belief that I can make a satisfactory accommodation with all these hostile bands that are now costing the government so much." These Indians' country, Steele wrote, was but little needed by "our citizens," and much of the difficulty arises from "evil-disposed white men who reside among the Indians."

The Klamath River, from the mouth of the Salmon to the sea, Steele noted, coursed through a wild canyon. Had Superintendent Hanson, at the time of the 1861-62 floods, allowed the reservation Indians to take care of themselves, Steele speculated, "they would have taken to the mountains, and in a few days after the flood had subsided they would have returned to the river banks, and with fish have provided for their immediate wants." This would have saved the United States the heavy costs of their removal and subsistence at Smith River.⁸

D. The 38th Congress Enacts S.80

On January 27, 1864, Senator Conness introduced into the 1st Session of the 38th Congress a bill "to provide for the better organization of Indian Affairs in California." The bill (S.80), as considered and reported to the floor by the Senate Committee on Indian Affairs, provided:

8. Steele to Conness, March 5, 1864, found in Executive Documents Serial 1220, pp. 265-67.

That from and after the 1st day of April, A.D. 1864, the State of California shall, for Indian purposes, constitute one superintendency, for which there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a superintendent of Indian affairs for said superintendency, at a salary of \$3,600 per annum, who shall reside at a point within said State, to be selected by the Secretary of the Interior, and who, upon executing a bond, upon such terms and such sum as may be prescribed by the Secretary of the Interior, and taking the usual oath of office, shall have under his control and management, in like manner and subject to like rules and regulations as are prescribed for superintendents of other superintendencies, the Indians and Indian reservations that are or may hereafter be established in said State: Provided, that the superintendent shall be authorized to appoint a clerk, at a compensation not to exceed \$1,500 per annum.

Sec. 2. And be it further enacted, That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said State, to be retained by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said State, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended: Provided, That at least one of the said tracts shall be located in what has heretofore been known as the northern district: And provided further, That if it shall be found impracticable to establish the reservations herein contemplated without embracing improvements made within their limits by white persons lawfully there, the Secretary of the Interior is hereby authorized and empowered to contract for the purchase of such improvements, at a price not exceeding a fair valuation thereof, to be made under his direction. But no such contract shall be valid, nor any money paid thereon, until, upon a report of said contract and of said valuation to Congress, the same shall be approved and the money appropriated by law for that purpose: And provided further, That said tracts to be set apart as aforesaid may, or may not, as in the discretion of the President may be deemed for the best interests of the Indians to be provided for, include any of the Indian reservations heretofore set apart in said State, and that in case any such reservation is so included, the same may be enlarged to such an extent as in the opinion of the President may be necessary, in order to its complete adaptation to the purposes for which it is intended.

Sec. 3. And be it further enacted, That the several Indian reservations in California which shall not be retained for the purposes of Indian reservations under the provisions of preceding section of this act, shall, by the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, be surveyed into lots or parcels of suitable size, and as far as practicable in conformity to the surveys of the public lands, which said lots shall under his direction be appraised by disinterested persons at their cash value, and shall thereupon, after due advertisement as now provided by law in case of other public lands, be offered for sale at public outcry, and thence afterwards shall be held subject to sale at private entry, according to such regulations as the Secretary of the Interior may prescribe: Provided, That no lot shall be disposed of at less than the appraised value, nor at less than \$1.25 per acre: And provided further, that said sale shall be conducted by the register and receiver of the land office in the district in which such reservation or reservations may be situated, in accordance with the instructions of the Department regulating the sale of public lands.

Sec. 4. And be it further enacted, That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint an Indian agent for each of the reservations which shall be established under the provisions of this act, which said agent shall reside upon the reservation for which he shall be appointed, and shall discharge all the duties now or hereafter to be required of Indian agents by law, or by rules and regulations adopted, or to be adopted, for the regulation of the Indian service, so far as the same may be applicable. Each of the agents appointed as aforesaid shall, before entering upon the duties of his office, give bond in such penalties and with such conditions and such security as the President or Secretary of the Interior may require, and shall hold his office for the term of four years, unless sooner removed by the President and shall receive an annual salary at the rate of \$1,800.

Sec. 5. And be it further enacted, That there may be appointed, in the manner prescribed by law, for each of said reservations, if in the opinion of the Secretary of the Interior the welfare of said Indians shall require it, one physician, one blacksmith, one assistant blacksmith, one farmer, and one carpenter, who shall each receive compensation at rates to be determined by the Secretary of the Interior, not exceeding fifty dollars per month.

Sec. 6. And be it further enacted, That hereafter, when it shall become necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the General Land Office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.

Sec. 7. And be it further enacted, That all Indian agents shall reside at their respective agencies, and shall in no case be permitted to visit the city of Washington except when ordered to do so by the Commissioner of Indian Affairs. And it is hereby made the duty of the said Commissioner to report all cases of the violation of this section to the President, with the request that the agents disregarding the provisions herein contained be at once removed from office.

Sec. 8. And be it further enacted, That all acts or parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed; and all offices and employments connected with Indian affairs in California, not provided for in this act, be, and to the same are hereby, abolished.⁹

During the debate on March 18, Senator Conness sought unsuccessfully to amend S.80 to increase the compensation for the superintendent's clerk from \$1,500 to \$1,800 per annum. To justify the increase, Conness called attention to the high cost of living in California.¹⁰

9. John C. Rives, The Congressional Globe: Containing the Debates and Proceedings of the First Session of the Thirty-eighth Congress (Washington, 1864), p. 1184.

10. Ibid.

When consideration of S.80 was resumed on Monday, the 21st, Senator James R. Doolittle of Wisconsin explained to his colleagues that there were currently two superintendencies in California, a northern and a southern. In the latter there were four reservations--the Smith River, Round Valley, Mendocino, and Nome-Lackee--and in the former, one. Through the bill before the Senate, it was proposed to reduce the superintendents to one, and to pare the reservations to four. Of these, there was to be "at least one in the northern district; there may be two there and two in the southern, or one in the northern and three in the southern district." By this reorganization, there would be an annual savings to the government in salaries for the Bureau's California employees of \$9,300.

Responding to a question from Senator William P. Fessenden of Maine as to the extent of the four reservations to be set apart under S.80, Doolittle pointed out that these reservations were to be located by the Secretary of the Interior and they "may be located upon some of the existing reservations." While it was true that the bill did not restrict by metes and bounds or by acreage the size of the reservations, a limitation had been included in "relation to any improvements or any property belonging to individuals which the Secretary of the Interior may contract to purchase for the sake of these reservations."

Senator Conness interrupted to add that, in his opinion, not an acre would be purchased under that power. On the contrary, some existing reservations would be sold.

Picking up on this subject, Senator Doolittle reminded the senators that the bill authorized the disposal of some of the existing reservations, and it was hoped "that what we get for the reservations disposed of will more than pay for all the expenses we shall be subject to in purchasing" the improvements made by settlers in the valleys, where we desire to establish the new reservations.

Through this legislation, he added, it was hoped to tighten up the administration of Indian affairs in California and bring peace to a troubled land.¹¹

Before turning to the next business, the Senate took up and amended S.80 to increase the annual compensation of the superintendent's clerk from \$1,500 to \$1,800. The senators then passed S.80, which was sent to the House for a favorable vote, which was given on the last day of the month.¹²

11. Ibid., p. 1209.

12. Ibid., pp. 1209, 1364.

On April 8, 1864, President Abraham Lincoln signed into law S.80, "an Act to provide for the better organization of Indian Affairs in California."¹³

13. George P. Sanger (editor), The Statutes at Large, Treaties, and Proclamations of the United States of America, from December 1863 to December 1866 (Boston, 1866), Vol. XIII, pp. 39-41.

VI. ESTABLISHMENT OF THE SQUARE

A. Wiley Takes Office and is Given a Mission

On April 26, 1864, less than three weeks after passage of the "Four Reservations Act," Austin Wiley, already an employee of the Indian Bureau, was named Superintendent of Indian Affairs for California. Calling Wiley's attention to the recent act to set apart not more than four California reservations for use of the Indians, Acting Commissioner Charles E. Mix informed Wiley that the "proper location" of these tracts would be among his first and most important tasks. There was, Mix wrote, no more fruitful source of difficulty than that occasioned by white settlements in the vicinity of Indian reservations, and for this reason the new legislation provided that the new reservations be "as remote from white settlements as may be found practicable." Since this might be a difficult condition to meet, the act permitted the Secretary of the Interior to "contract with such settlers who may be lawfully upon the land selected, for the purchase of their improvements." In this respect, the Nation's wartime economy mandated designation of areas involving the least possible number of improvements.

The reservations must be ample in extent, and contain sufficient arable and pasture land to enable the Indians to engage in agricultural and pastoral pursuits.

To the extent of the number authorized, the present reservations could be retained, and may be enlarged to adapt them to the purposes intended. Information at hand seemed to indicate that the Round Valley and Smith River Reservations had many favorable attributes.

In passing from the old to the new system, Mix cautioned, it was reasonable to anticipate some confusion. By prompt and prudent action, it was hoped that Wiley would be able to inaugurate the new system with little delay. Wiley's predecessors had been directed to turn over to him all books, papers, records, and public property in their hands belonging to the Indian Department.¹

Wiley had filed his bond and entered upon duty by June 1. Preparatory to leaving San Francisco to inspect the Round Valley and Mendocino Reservations, he familiarized himself with local conditions. In northern California, both on and off the reservations, except in districts where partisan war-

1. Mix to Wiley, April 26, 1864, found in Executive Documents, Serial 1220, pp. 267-69.

fare flared, conditions were improving. Fish, clover, and roots were abundant. There was promise of bumper crops at Round Valley and Mendocino.

Relaying this information to the Bureau, Wiley informed his superiors that nature had intended Round Valley for a reservation. Twenty-five thousand acres should be surveyed and boundaries delineated to preclude the possibility of a white man getting a piece of land on which to settle within 25 miles of the valley. Upon this reservation, he proposed to establish all Indians south of Eel River and west of the Sacramento Valley, including the watersheds of the Russian and Ukiah Rivers. Indians from the Smith River and Mendocino Reservations would also be removed to Round Valley. They, however, would remain where they were until crops were harvested and eaten and arrangements perfected for their reception at Round Valley.

There were large numbers of Indians between Smith River and Round Valley that were not to be sent to Round Valley. These were the Indians of the Klamath, Trinity, and Redwood, with whom the United States was at war. These people must be provided a reservation south of San Francisco, from where they could not return to their homes in the Bald Hills.

At present, about 300 Indian prisoners were held by the military on Humboldt Bay. These Indians could neither be turned loose nor could they be sent to a northern California reservation, which would be tantamount to freeing them as bitter experience had proved. "Our great misfortune" in management of Indians affairs in the northern section of the state, Wiley informed the Bureau, had resulted from the former superintendents' and military leaders' erroneous belief that these Indians "might be kept and treated on the northern reservations, the same as the others." Acting under this assumption, Superintendent Henley, in 1858, had removed 800 Indians to the Mendocino Reservation and Superintendent Hanson, in 1862, 400 to 500 Indians to Smith River. All that he had heard satisfied him that "not one of those Indians remained where they were placed longer than two months; all returning to their old haunts."²

Superintendent Wiley spent two weeks in June at Round Valley and in Mendocino County. Upon his return to San Francisco, he met with General Wright, commanding the Department of the Pacific. Wright told him that the military was in control of the situation and "hostilities in Humboldt, Klamath, and

2. Wiley to Mix, June 1, 1864, found in *ibid.*, pp. 269-71.

Trinity Counties may now be considered virtually closed."

In addition to the 500 prisoners now held at Humboldt Bay, Wright continued, most of the Indians, who had taken up arms, were ready to surrender. Wright agreed with Wiley that these Indians should be sent south of San Francisco, and suggested that Catalina Island was a proper place.³

On July 9, Commissioner Dole replied to Wiley's letters of June 1 and 4. Dole was unable to understand why several months would be required to locate a reservation under the act of April 8. The files in his office contained reports from former superintendents stressing that Round Valley, "by its . . . isolated position, the extent of its arable land, and its . . . proximity to rivers and to the mountains, affording a fair supply of fish and abundance of game is most admirably adapted to the purpose, and is of sufficient capacity to accommodate a majority of the Indians of that portion of the State."

Since Wiley seemed to concur in this opinion, all that remained to be done, so far as permanently establishing it as a reserve, was for the United States to negotiate with the settlers for purchase of their claims, and to properly define a boundary.

3. Wiley to Dole, June 30, 1864, found in *ibid.*, pp. 272-74.

Dole also vetoed the proposal to remove the Indians held at Humboldt Bay and those still in arms to a point south of San Francisco. Besides the costs involved in the removal and in subsisting the Indians after their arrival in the San Pedro area, Dole believed such a transfer would be "exceedingly disastrous to the Indians."⁴

Commissioner Dole's position left Wiley with but one alternative--to locate a reservation in Hoopa Valley, on the Trinity River, where these Indians reside. An interview with Maj. Gen. Irwin McDowell, at which Col. Henry M. Black, late commander of the Humboldt Military District, was present, encouraged Wiley to take this step.

Writing Commissioner Dole, Wiley explained that the Indians with whom the government was at war, dwelled principally in Hoopa Valley. Some 75 armed warriors were there waiting to see what the United States proposed. According to Colonel Black, Hoopa Valley was about five miles in length and two miles in width, bisected by the Trinity River. Local improvements could be purchased from the settlers cheap, while there

4. Dole to Wiley, July 9, 1864, found in *ibid.*, pp. 275-76. General McDowell had assumed command of the Department of the Pacific on July 1, 1864, whereupon General Wright was named to command the District of California. Official Records, Series I, Vol. L, pt. 2, p. 886.

was sufficient arable land on which to raise grain and vegetables to subsist all the Indians in the valley and its vicinity. If Wiley could make satisfactory arrangements with the settlers, he would relocate to the valley some of the prisoners held at Humboldt Bay.⁵

Turning next to rebut the views of former Superintendent Hanson as to concentrating the prisoners in Round Valley, Wiley argued that a policy of compelling hostile Indians to relocate, unless they could be sent south of San Francisco, was suicidal. He might, however, make an agreement with them by allowing them to remain where they were, and giving them possession of the Hoopa Valley improvements. Both General McDowell and Colonel Black agreed with him on this point.

Wiley suggested that Commissioner Dole discuss this subject with Colonel Black, who was under orders to report for duty at West Point. An hour's conversation with Black would provide more information than Wiley could write in a week, "concerning the hostile Indians of the north." From personal knowledge and experience, Black would tell Dole that the "Trinity and Humboldt Indians could not be kept at Round Valley."⁶

5. Wiley to Dole, Aug. 2, 1864, found in *ibid.*, p. 277.

6. *Ibid.*, pp. 277-78.

B. Wiley's Agreement with the Hoopa Valley Indians

Wiley left San Francisco in early August and reached Hoopa Valley, on the 10th, to find "most of the hostile Indians . . . , with their guns still in their hands, waiting my arrival." They had been induced to meet with Wiley by promises of protection by the military until terms could be arranged. Many of the Indians, it was learned, had secreted other firearms and were ready to break for the mountains should an effort be made to remove them to a reservation. When questioned, they protested that they preferred death or starvation in the mountains to removal.

Wiley found among the leaders young men, whom he had known as boys. Most of these had worked among the whites as packers, herdsmen, and farm hands. These men spoke English, Wiley stated, and were intelligent, and could be dangerous enemies. Wiley, because he knew these people, was confident that they would "comply with every obligation" they might subscribe to "if I keep my faith with them." While negotiations were in progress, the older men used their influence against surrendering their firearms, protesting that Wiley was lying to them as other agents had done. But the younger men carried the day, and a "Treaty of Peace and Friendship Between the United States Government and the Hoopa, South Fork, Redwood, and Grouse Creek Indians "was hammered out."

Sec. 3. All Indians who have taken part in the war waged against the whites in this district for the past five years shall be forgiven and entitled to the same protection as those who have not been so engaged.

Sec. 4. All guns and pistols shall be delivered to the commanding officer at Fort Gaston, to be held in trust by him for the use and benefit of the Indians, to be used by them in hunting only, in such numbers and for such length of time as the agent may direct. All ammunition in their charge to be turned over to the agents and paid for at its actual value in Indian money.⁷

From the 16th to the 21st, the Indians delivered up their rifles and pistols, many of which had been hidden. As soon as all the firearms were in hand, Superintendent Wiley called a mass-meeting of the settlers on Monday, August 22. At this gathering, he issued a notice which he had drafted on Sunday. It read:

INDIAN RESERVATION NOTICE.

By virtue of power vested in me by an act of Congress approved April 8, 1864, and acting under instructions from the Interior Department, dated at Washington city, D.C., April 26, 1864, concerning the location of four tracts of land for Indian reservations in the State of California, I do hereby proclaim and make known to all concerned that I have this day located an Indian reservation, to be known and called by the name and title of the Hoopa Valley reservation, said reservation being situated on the Trinity river, in Klamath county, California, to be described by such metes and bound as may here after be established by order of the Interior Department, subject to the approval of the President of the United States. *

7. Wiley to Dole, Aug. 29, 1864, found in *ibid.*, pp. 278-80.

The agreement provided:

Sec. 1. The United States government, through Austin Wiley, superintendent of Indian affairs for the State of California, by these presents doth agree and obligate itself to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes.

Sec. 2. Said reservation shall include a sufficient area of the mountains on each side of the Trinity river as shall be necessary for hunting grounds, gathering berries, seeds, etc.

Sec. 3. The United States government shall provide suitable clothing and blankets for the men, women, and children, which shall be distributed each year by the agent in charge.

Sec. 4. Suitable instructions shall be given the squaws to enable them to make their own clothing, take proper care of their children, and become generally efficient in household duties.

Sec. 5. An agent and a sufficient number of employees to instruct the Indians in farming and harvesting shall be appointed, to reside upon the reservation, and no other white men shall be permitted to reside upon said reservation, except such as are in the military service of the United States or employed in government service.

Sec. 6. A physician shall be appointed to reside upon the reservation, whose duty it shall be to minister to the wants of the sick and look to their health and comfort.

ARTICLE II.

Sec. 1. All Indians included among those subscribing to this treaty must obey all orders emanating from the agent in charge.

Sec. 2. No Indians belonging to either of the tribes herein enumerated shall go beyond the limits of said reservation without a written pass from the agent in charge. All so offending shall not be deemed friendly, and shall be hostile Indians.

Settlers in Hoopa valley are hereby notified not to make any further improvements upon their places, as they will be appraised and purchased as soon as the Interior Department may direct.

AUSTIN WILEY,
Sup't. Indian Affairs for the State of California

FORT GASTON, CAL., August 21, 1864⁸

Wiley reported that all the settlers seemed satisfied, excepting two or three "whose associations have been exclusively among the Indians." Several of the whites declared they would remove from the valley that autumn, trusting the United States to pay them for their improvements.⁹

8. Ibid., pp. 278, 280. Much of the 1864 Klamath County is included in today's Humboldt County. Of irregular shape, Klamath County included much of the area north and south of the Klamath upstream from the confluence with the Trinity, and extending eastward to the Salmon; the area north and south from the Klamath below its junction with the Trinity to near the southern extremity of the Klamath River Reservation; the area contained within a line drawn along the Klamath for the extent of the Klamath River Reservation; then south along the coast to the mouth of Mad River; then eastward to near the future south boundary of the Hoopa Valley Reservation; and then continuing farther to the east into the Trinity Alps.

9. Ibid., pp. 278-79.

C. Wiley Names an Agent and Returns to San Francisco

Before returning to San Francisco, Wiley named L.C. Beckwith temporary agent for the estimated 600 Indians in the valley. Beckwith was authorized to assist the Indians in rebuilding their dwellings, most of which had been burned during the war. He was to incur such expenses as necessary to shelter his charges from the winter storms.¹⁰

Hastening to San Francisco from Hoopa Valley's Fort Gaston, at the end of August, Wiley forwarded a copy of the "Treaty" to Commissioner Dole, along with a report. Coincidentally, Wiley informed Dole that title to the Hoopa Valley lands was vested in the United States, and, as only the improvements must be purchased, a moderate outlay of public funds for acquisition would be involved. There were two mills, a flour and a saw mill. The valley was surrounded by mountains, well watered, with sufficient arable land to subsist all the Indians now in residence or that may remove there.

He pointed out that the Trinity River afforded the Indians fish in the spring and autumn runs, while the mountains

10. Ibid., p. 279.

abounded in acorns, berries, seeds, etc.¹¹

D. Secretary Usher and Commissioner Dole Approve the Agreement

Commissioner Dole, upon reviewing Wiley's August 29 report and the attached treaty, approved Wiley's actions. He trusted that "great good will result to the Indians, as well as the whites, by this close of hostilities and concentration of the Indians at a point where they can be controlled and measures adopted to improve their welfare."

Enclosed Wiley would find a copy of the agreement as annotated by Secretary of the Interior John P. Usher, and in this amended form Usher had given it his approval. As there was no intention by the government to make treaties with the California Indians, to be submitted by the President to the Senate for ratification, Wiley was to assemble the leading men of the tribes involved. After explaining to them the nature of the changes, Wiley was to have them sign a copy and forward it to Commissioner Dole.¹²

11. Ibid., p. 279. Fort Gaston was established on December 4, 1858, in the Hoopa Valley, on the east bank of the Trinity River, about 14 miles above its confluence with the Klamath. Its mission was to protect and control the local Indians. The post was abandoned on June 29, 1892, and the military reservation transferred to the Department of the Interior and incorporated into the Hoopa Valley Indian Reservation. Robert W. Frazer, Fortes of the West: Military Forts and Presidios and Posts Commonly Called Forts West of the Mississippi River to 1898 (Norman, 1965), p. 23.

12. Dole to Wiley, Oct. 3, 1864, found in Executive Documents, Serial 1220, pp. 281-82. The agreement, as annotated, along with other letters received by the California Superintendency, are not on file at National Archives or any other recognized repository.

E. Bureau Seemingly Approves Wiley's Proposal to Incorporate
Klamath River Reservation into Hoopa Valley Reservation

On December 12, 1864, Commissioner Dole called upon Superintendent Wiley for a report on "what changes, if any, have been made from the old system of Indian Affairs in California, in the reorganization of said affairs under the provisions of the act of April 8, 1864."¹³

Replying on January 19, of the new year, Wiley announced that he would leave San Francisco, in the morning, "to arrange matters pertaining to the location of the reservation at Hoopa," which is to "be one of the four reservations contemplated by the act" of April 8 of the previous year.

"Smith River Reservation," he continued, is "located upon unsurveyed lands, which had been leased from year to year by the Indian Department, awaiting the final action of Congress upon the location." As Wiley understood Section 2 of the Act of April 8, "it is not contemplated to locate a reservation upon land the title to which had been forfeited by the Government and vested in individuals." Because Congress had failed to give authority for purchase of land, Wiley did not believe he had the power to designate Smith River a permanent reservation.

13. Dole to Wiley, Dec. 12, 1864, NA, Ltrs. Sent by the Office of Indian Affairs, 1824-84, Microcopy M-21.

He did not propose to locate three of the four permanent reservations in north California, unless satisfied that it was mandatory. Consequently, he had been compelled to lease a portion of the Smith River land for another year.

Present plans called for relocating the Smith River Indians "upon the land formerly occupied as an Indian reservation upon the Klamath River, which was abandoned in 1861 [sic], but is still reserved by the Government." At that time, "the Hoopa Reservation will either be extended so as to cover this point, or it will be kept up as a station attached to that reservation and under the control of the same agent." Moreover, "another important object will be attained by the establishment of a station" on the Klamath, "as a care can then be had for the large numbers of friendly Indians (Yuroks) living on the Klamath River who subsist themselves, but require some protection from the Government."

Wiley next informed Commissioner Dole of the favorable state of affairs at Round Valley, and the need for the government to "be placed in possession of all the valley at the earliest day possible."

As yet, Wiley continued, he had not determined where "to locate the other two reservations, or if it will be necessary to locate more than one."¹⁴

Wiley's plan, briefly, was to abandon the Nome-Lockee, Mendocino, and Smith River Reservations, retain Round Valley, establish one in Hoopa Valley, and annex the Klamath River Reservation to the Hoopa Valley Reservation.

Acknowledging Wiley's letter, Commissioner Dole noted, "I have expressed my gratification at the improved condition of Indian Affairs in California since the re-organization under the act of 1864, and am further confirmed in my opinion of the wisdom of that measure, and the good judgment shown by you in carrying it into effect."¹⁵

When he submitted his annual report for fiscal year 1865, Commissioner Dole was able to write:

Up to the date of the report above referred to [Wiley's to the Bureau of April 1, 1865], but two of the four reservations to which the act of Congress limits the superintendency have been definitely settled upon, being those at Round Valley and Hoopa Valley.

14. Wiley to Dole, Jan. 19, 1865, NA, Ltrs. Recd by Office of Indian Affairs, 1824-81, Microcopy M-234, Doc. 829.

15. Dole to Wiley, undated, NA, Ltrs. Sent by the Office of Indian Affairs, 1824-84, Microcopy M-21.

It was intended to remove the Indians from the Smith River Reservation and place them at the Old Klamath Reservation, still owned by the Government, but to place the occupants under the charge of an employee of the Hoopa Valley Agency. No definite suggestions were made to the selection of the other two permanent reservations.¹⁶

Wiley was replaced as superintendent by Charles Maltby in May 1865, and Maltby failed to follow up on his predecessor's plan to relocate the Indians from the Smith River farm to the Klamath Reservation. Consequently, when the Commissioner of Indian Affairs submitted his annual report for fiscal year 1866, he wrote, "The reservations at present recognized in California are Round Valley in the northeast, Hoopa Valley in the northwest; Smith River, north of the latter and near the coast; and Tule River, in the interior in the southern part of the State."¹⁷

On September 15, 1866, Superintendent Maltby informed the Bureau of Indian Affairs that there were an estimated 1,800 Indians living along the Klamath. Isolated, they had preserved their cultural identity. "They obtain their subsistence

16. Annual Report of the Commissioner of Indian Affairs for Fiscal Year 1865, found in Executive Documents, Serial 1248, p. 179.

17. Annual Report of the Commissioner of Indian Affairs for Fiscal Year 1866, found in Executive Documents, Serial 1284, p. 25.

mostly from fish caught in the river, on the banks of which they reside, and are peaceable and well-disposed," he wrote. Maltby recommended that they be permitted to remain in their wild canyon, as they were averse to being removed, until such time as there was an influx of whites into the area.¹⁸

The Bureau, through inaction, acquiesced in Maltby's recommendation.

F. Delinating the Hoopa Valley Reservation and Funding the Purchase of Improvements

Meanwhile, Wiley had reached Hoopa Valley, from where on February 18, 1865, he had issued a second public notice pertaining to establishment of the reservation. It read:

To Whom It May Concern:

Be it known that by virtue of power vested in me by Act of Congress passed April 8th, 1861, and acting under instructions from the Department of the Interior, I have located and set aside for an Indian Reservation the following described tract of land to be known as the Hoopa Reservation: Beginning at a point where Trinity river flows into Hoopa valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath river as will be more particularly described by a map of said Reservation.

18. Maltby to Cooley, Sept. 15, 1866, found in *ibid.*, p. 94.

Notice is hereby given to all persons not to settle or improve upon said Indian Reservation excepting as the Agent in charge may permit, and in no manner to trespass thereon or interfere therewith.

Free transit through the Reservation will be permitted all travelers, packtrains and stock, subject to such restrictions as the local Agent may see proper to impose.

AUSTIN WILEY,
Sup't Ind. Aff's, Cal.

HOOPA RESERVATION, CAL., 19
February 18th, 1865.

Then, on March 3, President Lincoln signed into law an "act to amend an Act entitled 'An Act to provide for the better Organization of Indian Affairs in California,'" appropriating \$60,000 to pay settlers in Hoopa Valley for their improvements on the reservation.²⁰

Thus, by June 30, 1865, the Hoopa Valley Reservation, although not surveyed, had been delineated. It was a rectangle 16 miles in length by 12 miles in width. There were about 1,200 acres of bottom land. Though not of the best quality, this land, in Superintendent Maltby's opinion, "would produce more than will support the Indians now on the reservation, and those that will come in from the adjacent country." He expected the Klamath (Yuroks) Indians, numbering about 1,800, to remove to the reservation at an early day.

19. Wiley to Dole, March 22, 1865, NA, Ltrs. Recd. by Office of Indian Affairs, 1824-81, Microcopy M-234, Docs. 944-947. The map referred to is missing from the subject files.

20. U.S. Statutes at Large, 1863-1865, pp. 538-39.

In February, possession had been obtained by the United States of the improvements and valley land, excepting the Campbell and Garrett farm. This had delayed the planting season and a drought had caused crop failures.

The number of reservation Indians was about 650. They worked willingly and readily for their "own subsistence, only requiring the assistance of an overseer to direct them in the labors necessary to cultivate and improve the reservation."²¹

G. The Reservation's Early Years

1. As Seen by Dr. Moffatt

On July 1, 1865, Dr. P. Moffatt, assigned as reservation surgeon, filed an interesting report on the "habits and means of subsistence of the Indians." In the early 1850's, the Indians had spent the autumn harvesting acorns, large quantities of which were collected and stored for consumption during the winter and ensuing spring. Winters were the favored hunting season. Spring brought forth the early vegetables--

young leaves and stems of succulent plants, with their roots attached, and various species of clover. . . . This was the season when the squaws might be seen setting out in procession, each with a basket swung upon her back, and furnished with a piece of wood about three feet in length and sharpened to a point at both extremities to dig up the roots, worms, etc. Hence, the name of Diggers, by which California Indians are generally designated.

21. Maltby to Cooley, Sept. 15, 1865, found in Executive Documents, Serial 1248, p. 281.

Summer months were a continuation of the same, with the addition of soap root, a potatoe-like bulb, wild fruits and nuts, along "with the rich, fat salmon so acceptable to the civilized as well as the savage epicure."

But, by 1865, this had changed. The summers, because of the "presence and doings" of the white man were no longer seasons of abundance. Indians no longer sported on the banks of clear rivers "alive with salmon and other fish, but gaze sadly into muddy waters, despoiled almost of their finny prey by impurities from the sluice-boxes of the miners at the heads of the streams." Salmon fishing, one of the Indians' "chief means of subsistence." had been destroyed to a great extent. People familiar with the Klamath and Trinity in the early 1850's had told Dr. Moffatt that, during the summers, "they ran as clear as a crystal, and thronged with salmon from the sea; now they are muddy streams and almost deserted by this fish."²²

2. Disasters Strike

Affairs at the agency, under supervision of Agent R. L. Stockton, improved materially during fiscal year 1866.

22. Moffatt to Maltby, July 1, 1865, found in *ibid.*, pp. 284-85.

Bumper crops of grain and vegetables promised a full larder, and gave assurance that arable reservation lands, when they were all brought under cultivation will "supply all demands in the way of subsistence, and produce a surplus which would go far towards making the reservation self-sustaining."²³

A series of disasters struck the Hoopa Valley Reservation in the late winter and spring of 1867. On his late February visit, Superintendent Whiting found the agency "destitute of suitable teams for ploughing and other heavy farm work." Listed on the property returns were seven mules, seven horses, and four mares, and not a good work team among them. The mules were small and none less than 30 years old. The horses were ponies, and used principally for cowboying and "riding about to the different Indian ranches after laborers and in perserving order among the Indians."

Arrangements were made by Superintendent Whiting for hire of several teams of heavy draft horses and repair of the ploughs, and by the time he returned to San Francisco several acres had been sown in winter crops. A storm, lasting several days, then hammered the area. In March, Agent Stockton was murdered by Frank, a reservation

23. Maltby to Cooley, Sept. 15, 1866, found in Executive Documents, Serial 1284, p. 92.

Indian. Panic gripped the valley, work stopped on the farms, and several of the agency's most reliable employees resigned.

Learning of this, Whiting rushed his clerk, H. F. W. Hoffman, and several other Bureau employees up from San Francisco to fill the vacancies. The season, however, was too far along, "and several hundred acres of the best land in the valley was permitted to grow a very indifferent crop of volunteer grain. . . , a portion of which only was fit to cut even for hay, and none of it for threshing."²⁴

3. The Situation Improves

William H. Pratt assumed charge of the agency on October 26, 1867, and found the Indians engaged in a bloody feud, which had claimed six lives during the summer. The trouble had been stoked by efforts of one faction to apprehend Frank. Frank was killed soon after Pratt's arrival by a party of Indians sent in pursuit of him by the agent. This ended the killings, and, in April 1868, "an amicable settlement was effected between the belligerents, each paying for those killed, according to the Indian custom."²⁵

24. Whiting to Taylor, Aug. 19, 1867, found in Executive Documents, Serial 1326, pp. 106-07.

25. Pratt to Taylor, July 20, 1868, found in Executive Documents, Printed by Order of the House of Representatives, During the 3d Session of the 40th Congress, 1868-69 (Washington, 1869), Serial 1366, pp. 592-93.

Lt. James L. Spalding releived Pratt as agent on July 20, 1869. Management of the Indians presented the army officer with no problems. He could not say the same for the whites who frequented the reservation, selling whiskey, powder, shot, pistols, rifles, and shotguns. He reported that the practice of Indians in carrying firearms had been stopped in the valley.

Between some of the tribes on the reservation, Spalding reported, there are feuds, and he hoped to "bring about a settlement between them without them resorting to the usual mode of fighting."²⁶

H. President Grant's June 23, 1876, Executive Order

Although the Hoopa Valley Reservation had been located in fiscal year 1865, followed by a congressional appropriation for purchase of the settlers' improvements, more than a decade passed before the President confirmed Superintendent Wiley's action. Finally, on June 23, 1876, President Ulysses S. Grant by Executive Order formally defined the reservation boundaries:

26. Spalding to Parker, Sept. 5, 1869, found in Executive Documents, Printed by Order of the House of Representatives, During the 2d Session of the 41st Congress, 1869-70 (Washington, 1870), Serial 1414, p. 632.

It is hereby ordered that the south and west boundaries and that portion of the north boundary west of Trinity River surveyed in 1875 by C. T. Bissel, and the courses and distances of the east boundary, and that portion of the north boundary east of Trinity River reported but not surveyed by him, viz: "Beginning at the southeast corner of the reservation at a post set in mound of rocks, marked "H.V.R. No. 3"; thence south $17\frac{1}{2}^{\circ}$ west, 905.15 chains, to southeast corner of the reservation; thence south $72\frac{1}{2}^{\circ}$ west, 480 chains, to the mouth of Trinity River," be, and hereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and the land embraced therein, an area of 89,572. 42 acres, be, and hereby is, withdrawn from public sale, and set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in California, by act of Congress approved April 8, 1864. (13 Stats. p. 39.)²⁷

27. Kappler, Indian Affairs-Laws and Treaties, Vol. 1, p. 815.

VII. NON-INDIAN SETTLEMENT ON THE LOWER KLAMATH

A. Pressure Builds to Open the Klamath River Reservation to Settlement by Non-Indians

During the late 1860s and early 1870s, word spread that the Klamath River Reservation would be opened to settlement by whites. This belief led a number of them to locate on the reservation and to make improvements to the land. Martin Van Buren Jones of Crescent City established a fishery at the mouth of the river. A tavern for the accommodation of travelers was built by Morgan G. Tucker, and a ferry put into operation. A dozen settlers took up homesteads nearby, and others were prepared to locate there, as soon as the Indians' title was extinguished and the reservation declared open for settlement. Those who had already squatted felt secure.¹

To dispel any doubts that might be entertained as to the rights of settlers on the "abandoned reservation," United States Representative J. K. Luttrell of California applied to the Department of the Interior for information as to whether the Klamath River Reservation was still "held as such" by the federal government.²

1. Bledsoe, History of Del Norte County, p. 150.

2. Report No. 1354, May 7, 1880, found in Reports of Committees of the House of Representatives for the 1st and 2d Sessions of the 46th Congress, 1879-80 (Washington, 1880), Serial 1937, p. 1.

On February 27, 1874, Commissioner of Indian Affairs Edward Shuter informed Luttrell that the land in question was one of the two reservations for Indians in California authorized by a clause in the Indian appropriation act of March 3, 1855. In 1861-62 floods had destroyed nearly all the arable land in the Klamath River Reservation, and the Secretary of the Interior on May 3, 1862, had established the Smith River Reservation. That reservation had been discontinued on July 27, 1868. Since the great flood, the Klamath River Reservation had not been used for any public purposes, Shuter informed Luttrell, and "the department has no claim upon it."³

The Shuter letter was circulated by those interested in securing land on the lower Klamath. Just as the squatters were congratulating themselves on a successful land grab, H. R. Clum, Acting Commissioner of Indian Affairs, on August 15, 1874, notified Del Norte County Clerk P. H. Peveler that the reservation had not been relinquished. This was in reply to an inquiry from Peveler asking, "whether the lands formerly occupied as an Indian Reservation at the mouth of the Klamath" have been abandoned and whether the land was open "to settlement the same as any other unsurveyed Government land."⁴

3. Shuter to Luttrell, Feb. 27, 1874, found in *ibid.*, p. 2.

4. Frances T. McBeth, Lower Klamath Country (Berkeley, 1950), p. 47.

An attempt was now made to rally support to pressure the United States into opening the reservation to settlement. One hundred and forty-four citizens of Del Norte County petitioned the Commissioner of Indian Affairs to declare the reserve abandoned. They asserted that, since the great flood, the land has not been "occupied and used as an Indian Reservation; that on the lands formerly used. . . there are not to exceed 500 Indians of all ages, whose chief occupation is hunting and fishing." These Yuroks, at the moment, were not supervised by an agent. Within the reservation, they wrote, were about 10,000 acres "well adapted to grazing and agriculture, besides a large quantity of land valuable for lumbering." According to the petitioners, the few Yuroks living on the reserve had expressed a desire to remove to Hoopa Valley.⁵

B. Situation as Seen by Indian Agents

This information contradicted the reports the Bureau of Indian Affairs had been receiving from its agents in charge of the Hoopa Valley Reservation. On March 20, 1871, Agent S. G. Whipple, who had been relieved by the Rev. David H. Lowry the previous week, wrote Commissioner Eli S. Parker, calling attention to the situation of "the Indians of the Lower Klamath

5. Petition, Citizens of Del Norte to Commissioner of Indian Affairs, Jan. 1875, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

River, by far the most numerous and important tribe in this vicinity." Tracing the history of the Klamath River Reservation, he pointed out that, when it was abandoned following the winter of 1861-62 floods for "some rented land in Smith River Valley," only a few Indians who "had been gathered to the Klamath reservation" were removed to the new reserve. None of the reservation's original inhabitants (Yuroks) had gone.

Captain Whipple estimated that the "Lower Klamaths born and living within the boundaries of the Klamath reservation at the time it was occupied as such" numbered about 3,000. A census taken today would, he added, "show considerable diminution." Since the great flood, the condition of these Indians has been "worse than if they had never been under the fostering hand of the Government." While the Yuroks had had the opportunity to go to the Smith River Agency in 1862 or to the Hoopa Valley Agency in the years subsequent to 1864, "the love of the Indian for the home of his fathers is so strong that he will seldom leave it for any prospect of good that may be held out to him." Though no particular efforts had been made by the Bureau to induce the Yuroks to relocate, Whipple questioned whether, all things considered, they would be benefitted by removal to Hoopa Valley.

In the years since the flood of 1861-62, the Yuroks had made but little effort to continue cultivating the soil, as they were doing during the years the Klamath River Reservation was operational. Instead, they again looked to "the natural resources of the country," or sought to "gratify their desires for better food and clothing by performing occasional jobs of labor for white people."

To improve the Yuroks' quality of life, Whipple recommended that the old Klamath reservation be made a dependency of Hoopa Valley, and a subagent named to dispense medicines under instruction of the Fort Gaston physician. A farmer, along with a supply of tools, implements and seeds, should be made available to instruct the Indians in husbandry.⁶

The Reverend Lowry, when he filed his annual report for the Hoopa Valley Reservation for fiscal year 1871, echoed his predecessor. He urged the Bureau to take steps to provide, in some manner, for the not less than 2,500 Indians living on the lower Klamath. As these people were "peaceable and well disposed to the whites," they were deserving of more attention than they receive at present.⁷

6. Whipple to Parker, March 20, 1871, found in Executive Documents, Printed by Order of the House of Representatives, During the 2d Session of the 42d Congress, 1871-72 (Washington, 1872), Serial 1505, pp. 750-51.

7. Lowry to Parker, Sept. 1, 1871, found in *ibid.*, p. 748.

Superintendent Whiting, after reviewing Whipple's and Lowry's reports, also called the Bureau's attention to the "destitute and impoverished condition" of the Indians residing on the Klamath and adjacent to the Hoopa reservation. The lands along the Klamath, and for many miles on either side, Whiting explained, "are utterly useless for white settlement, and would never pay the expense of a survey." Game and fish, however, were abundant.

In view of the limited acreages available for cultivation, Whiting recommended that the Hoopa Valley Reservation "be so extended as to take the river and the land for three miles back on both sides to the Pacific Ocean, and thereby include" the Yuroks, without requiring any to remove, other than those who may prefer to live at Hoopa. The subject Indians were "kindly disposed and desirous of assistance from the government, without being obliged to leave their fishing-grounds."⁸

Agent Lowry again raised the question of the Bureau doing "something for the Klamath Indians, when he filed his annual report for fiscal year 1872. Many of these people, he noted,

8. Whiting to Parker, Sept. 1, 1871, found in *ibid.*, pp. 741-42.

were in a suffering condition, and needed assistance, "but with the limited means available in Hoopa Valley, he was unable to give them the help they required."⁹

Apparently, E. K. Dodge, who succeeded Lowry as agent for the Hoopa Valley Reservation, failed to file an annual report for fiscal year 1873. Dodge and his immediate successor did not pay much attention to the Indians of the lower Klamath and their problems.¹⁰

C. Steele's Memoir to U.S. Senate

Besides former Superintendent Whiting and ex-agents Whipple and Lowry, the Yuroks had some friends in the white community. In January 1875, Elijah Steele and others forwarded a memorial for consideration by the United States Senate. They challenged the assertion by the squatters and their allies that there were few Indians on the lower Klamath. Steele and his partisans pointed out that they were quite numerous,

9. Lowry to Whiting, Aug. 10, 1872, found in Executive Documents, Printed by Order of the House of Representatives for the 3d Session of the 42d Congress, 1872-73 (Washington, 1873), Serial 1560, pp. 764-65.

10. Letters Received by the Bureau of Indian Affairs from the California Superintendency for 1873-74, NA, Microcopy M-234.

"living upon the fish caught in the stream, the game found in the redwoods, and by means of such employment as they can obtain in passing travelers & freight in their canoes up & down the river."

Continuing, Steele and his friends observed:

The Reservation passes through a close cañon with high precipitous mountains rising from the water's edge, with small sand bars or flats at each bend in the river, and where is generally found a little brook of water flowing down from the mountain side. The Mountains are covered with a heavy growth of redwood trees and a dense underbrush, and when combined with the rough, steep and rugged hills renders the country impassable by even men afoot.

Most of the flats were occupied by rancherias. Many of the Yuroks had excellent gardens, while some had orchards. Steele and his confederates were satisfied that land grabbing whites would have no use for this area, "until the redwoods of other more accessible districts are exhausted, which will not happen for at least 100 years."

Instead of the government abandoning the reservation, it should be expanded to the topographic crests of the ridges north and south of the Klamath. The Yuroks, they petitioned, should "be allowed to remain and to provide for themselves as long as they shall be orderly and peaceable."¹¹

D. Lieutenant Wilson's Reconnaissance

Confronted by these contradictory statements, the Commissioner of Indian Affairs called on the Army at Fort Gaston for help. A thorough reconnaissance of the Klamath River Reservation was desired. Second Lt. George S. Wilson of the 12th U. S. Infantry was given the assignment. He left Fort Gaston by canoe on May 19, 1875, and took two days to reach Wau-Kell Flat. The return to the agency required five days.¹²

Taking a rough census of the Indians living on the reserve, he calculated their number at 1,125. He counted 225 houses, exclusive of sweathouses and other small structures not used as dwellings.¹³

11. Steele and Others to the U.S. Senate, Jan. 1875, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt. Steele had been Superintendent for the Northern District in 1863 and 1864.

12. Wilson to Parker, June 1, 1875, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

13. Ibid. The settlements and number of houses in each were: Rekwoi, 15; Wetlkewali, 7; Hoppaw, 7; Sa'aiti, 5; Erner, 4 including one ten miles up Blue Creek; Serper, 4; Wohkero, 10; Ko'otep, 7; and Pecwan, 19.

He reported that many of the Yuroks were in a "very miserable condition, physically, the result of venereal disease, and their number was rapidly decreasing." They seemed well fed, living on an abundance of salmon, sturgeon, and acorns. In each house that Wilson visited, he found large supplies of food on hand, with a good surplus of dried fish left over from the winter. Many of the young men were in the habit of traveling to Humboldt Bay to work on farms, cultivating potatoes.

He said the Yuroks had learned to garden and to build log and board cabins, which were beginning to replace the hewn-plank huts. Farming was on a small scale, and consisted usually of a potato patch.

Whites, with whom he had chatted, complained that the Yuroks were "adept at petty theft." A Mr. Masters stated that they had killed 30 of his cattle, but when asked by the lieutenant for proof, he was unable to produce any. Another source of complaint were the high charges made for ferrying whites and their goods across the Klamath. Captain Spott, who owned a ferry at Rekwoi, had stated that a white-operated ferry at that point was unthinkable.

Lieutenant Wilson's presence caused the Yuroks to fret, because they associated him with the scheme to remove them from the reservation. If the government sought to force them to go to Hoopa Valley, they promised to flee to the mountains and fight. If this occurred, they were well provided with firearms, especially muzzleloaders, and had a large number of canoes and some horses.

The Yuroks did not object to miners trespassing on the reservation, nor did Lieutenant Wilson get the impression that they would complain about logging, but they hated and feared cattle ranchers, because their stock destroyed the supply of acorns and berries and frightened away game. Lieutenant Wilson foresaw serious trouble if the whites continued to trespass on the Yuroks' fishing rights at the mouth of the Klamath.

If the United States wished to negotiate with the Yuroks, it would be difficult, as "there was no tribal relations of any force." No chief or headman was recognized by the entire tribe. Each village had its leader: its wealthiest individual.¹⁴

14. Ibid. Wilson found that small schooners could ascend the Klamath as far as Turwar Flat. He also delineated the redwood belt as extending from the mouth of the Klamath to Klamath Bluff.

E. The Military Takes Charge

1. Establishment of a Post Office at Requa

After reviewing Lieutenant Wilson's report, the Commissioner of Indians Affairs decided he lacked authority to declare the reservation abandoned. At the same time, he would not risk alienating the whites by ordering them off the land on which they were squatting.¹⁵ The squatters, however, felt certain of victory, when on April 10, 1878, the Postmaster General, in response to a plea, authorized establishment of a postoffice at Requa, as Rekwoi was called by the whites. Morgan Tucker would be postmaster.¹⁶

15. Bledsoe, History of Del Norte County, pp. 154-56.

16. Records of the Post Office Department, NA, RG 28, Records of Appointment of Postmasters. Tucker held the position of postmaster at Requa until March 6, 1882, when he was succeeded by Henry Albert. On January 10, 1883, the office was discontinued and transferred to Crescent City. Six weeks later, it was re-established with E. D. Smith as postmaster. The Requa Postoffice was again discontinued on June 28, 1883, and was not re-established until February 29, 1888, with Mary Ann Feheley as postmistress. It has been in continuous operation since that date.

2. The Squatters Win a Reprieve

Meanwhile, to avoid a nasty situation, the Secretary of the Interior on May 14, 1877, transferred administrative responsibility for the Hoopa Valley Reservation to the War Department.¹⁷ That spring, Lt. James Halloran, who like Lieutenant Wilson was posted at Fort Gaston, visited the Klamath River Reservation and "reported a condition of affairs likely to lead to hostilities between the whites and Indians if the cause of disagreement was not speedily removed." The inciting cause was not stated in Halloran's report, but it was hinted that liquor was being sold to the Indians.¹⁸

Lieutenant Halloran's report was forwarded to the Secretary of the Interior, through the War Department. Secretary of the Interior Carl Schurz, after reviewing the report, called on the Army to see that the squatters were removed. Acting under orders from the War Department, Brig. Gen. Irwin McDowell, the commander of the Department of the Pacific, on October 17, 1877, called upon Capt.

17. Secretary of War to Secretary of the Interior, Sept. 6, 1877, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

18. Bledsoe, History of Del Norte County, pp. 155-56.

Charles Parker at Fort Gaston to notify the settlers on the Klamath River Reservation that they were to leave immediately. Parker saw that this order was executed, and eviction notices were served on 14 persons to leave with their property. Four of these individuals, it was admitted, were living outside the reservation.¹⁹

Morgan Tucker, knowing that the California legislature was in session, wrote his representative from Del Norte County, James E. Murphy, pleading that he employ his influence to secure a stay of execution, and, barring this, to obtain a period of grace to enable them to remove their property from the reserve.²⁰

Murphy contacted the California congressional delegation, and they in turn descended on Secretary of War George W. McCrary. They told him that Congress would, in its current session, pass legislation opening the reservation to settlement. After checking with Secretary of the Interior Schurz, McCrary directed the Adjutant General

19. Ibid., p. 156; Secretary of War to Secretary of the Interior, Sept. 6, 1877, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

20. Bledsoe, History of Del Norte County, p. 150.

on December 19, 1877, to telegraph General McDowell that "the execution of the order to remove the settlers from the Klamath River Indian Reservation be suspended for six months."²¹

The settlers used this period to file protests that they had lived on the Klamath for years in the belief that they were on public lands, and

such belief was strengthened by the universal impression that such was the fact, and that the Government had relinquished its claims as evidenced by the letter . . . of the Commissioner of Indian Affairs addressed to the Hon. J. K. Luttrell, Representative from California.²²

F. The Army Moves Against the Squatters

The 45th Congress, then in session, failed to take action. In June and again in November 1878, the grace period was extended another six months. The final extension ended on May 27, 1879.²³ The Adjutant General, accordingly, on May 22, issued

21. McCrary to Secretary of the Interior, Dec. 19 & 27, 1877, NA, RE 75, OIA, Ltrs. Recd., Calif. Supt.

22. Bledsoe, History of Del Norte County, pp. 150-51, 156.

23. McDowell to Adjutant General, Dec. 19, 1877, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt. Coincidentally, Senator James T. Farley of California introduced into the Senate a joint resolution (S.R. No. 31) subjecting the Klamath River Reservation in the State of California, "to entry as other public lands in said State." The resolution was read twice and referred to the Committee on Public Lands where it was pigeon-holed. Congressional Record: Containing the Proceedings and Debates of the 1st Session, 46th Congress (Washington, 1879), Vol. IX, p. 1651.

instructions for General McDowell to see that the trespassers were evicted from the Klamath River Reservation.²⁴ General McDowell delegated responsibility for seeing that his order was carried out to his commander in northern California, Col. Henry R. Mizner. The colonel, in turn, contacted the officer in charge at Fort Gaston, Capt. E. B. Savage of the 8th U.S. Infantry.

Captain Savage, accompanied by 11 men armed and equipped for field service, left Fort Gaston by boat on June 11. His orders were: To suppress all fishing by whites and require all citizens residing on the Reservation to leave without delay with all property belonging to them.²⁵ The troops reached Requa on the 16th and called on the five squatters (Martin Van Buren Jones, Morgan G. Tucker, Robert Gibbs, James Pryor, and John M. Harrington) living in and around the village. Written notices to remove their property and vacate the reserve were served on these trespassers. On June 18, similar notices were served by the military on P. D. Holcomb near Requa; Henry K. Pilgrim of Wau-Kell, with a copy to his partner James Isle who was not at home; while a notice was left at George Richardson's house. Two days later, notices

24. McDowell to Adjutant General, July 23, 1879, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

25. Savage to Mizner, June 18, 1879, NA, RG 75, OIA, Ltrs. Recd. Calif. Supt.

were served on Benjamin Coy of Turwar, George Parker and Joseph Ewing of Hoppaw, and Charles Jones of Requa. Savage, on inspecting the property, found that all the interlopers had horses, cattle, and crops under cultivation, which because of the rugged configuration of the terrain and lack of roads, they would be compelled to abandon.²⁶

The whites were unanimous in stating that they would ignore the order to get off the reserve, but their resolve weakened when Captain Savage, pointing to his armed men, warned that he was ready to use force. After Gibbs, Holcomb, and Pryor were placed under arrest and ejected from the reservation, Harrington and Martin Jones complied with the eviction order. It was necessary to make a show of force to start Ewing, Coy, and Pilgrim packing. Soldiers were turned to breaking up Martin Jones' fishery and Tucker's trading house. Three infantrymen were posted at Hoppaw with orders to visit Wau-Kell and Turwar once every two days to see that those residing on those flats left and stayed off the reservation.²⁷

26. Ibid.

27. Savage to Mizner, June 25, 1879, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt. George Parker's house at Turwar was more than a mile from the Klamath, but he had improvements between his residence and the river.

By July 2, Savage was able to report that all squatters had been ejected or had complied with the orders to move off the reservation. Buildings and crops had not been removed, only portable property. The majority of the trespassers had expressed a desire to be forcibly evicted, as they believed "their claims to property upon the Reservation would be improved thereby."²⁸

Martin Jones had raised a question which Captain Savage was unable to answer. He wished to know if he would be permitted by the military to anchor boats in mid-channel of the Klamath and take salmon with gill nets, provided he did not land them on the reservation. Jones argued that the river was navigable, because it had 31 feet of water where he would anchor, and there the Klamath was one-half mile wide. Also, if he took fish above the reserve would he be permitted to ship them down the Klamath and across the bar by boat.²⁹

28. Savage to Mizner, July 2, 1879, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt. Charles Wilson had reached Requa, on June 27, and had been served an eviction notice. A measurement had disclosed that Ewing's dwelling was one mile and eight yards from the Klamath.

29. Savage to Mizner, June 25, 1879, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt.

Colonel Mizner, Savage's superior, could make decisions. He notified Savage that Jones' request could not be entertained. In his opinion, it would constitute an "erosion of the spirit of the orders." Under no circumstances, he warned, must the Yuroks be "deprived of the Salmon as it is their main subsistence." In addition, claims by the squatters for buildings, crops, and gardens would not "be entertained, as the parties were in unlawful possession of the same and had acquired no right to the land and are liable to prosecution for trespass."³⁰

30. Mizner to Savage, July 2, 1879, NA, RG 75, OIA, Ltrs. Recd., Calif. Supt. Typical of the claims were those of Martin Van Buren Jones and Morgan Tucker. The former listed his abandoned property with its valuation: Building (45 x 25) \$800; building (16 x 24) \$375; building (16 x 20) \$200; kitchen, smokehouse, storeroom, and woodhouse \$425; 35 tons of salt, \$900; 1,400 half-barrels, \$1,400; material for 500 half-barrels, \$200; 1 seine, \$300; 1 seine, \$150; 6 gill nets, \$300; 1 gill net \$125; 9 tanks, \$180; 1 set of cooper tools, \$60; 1 sailboat, \$50; 1 lighter \$280; 1 plow, \$25; 1 wagon, \$75; household furniture, \$100; 8 head of cattle, \$800; 4 horses, \$200; 1 pig, \$10; 300 feet 1-inch pipe and 50 feet of hose, \$100; 5 acres of fenced pasture; and a 1-acre garden. Tucker valued his property at: One building, 30-foot square, frame 1 1/2-story; one building (16 x 24); and stock in trading house, \$500; 1 horse, \$80; and a 1-acre garden.

G. Squatters Circumvent the Federal Authorities

It is reported that a number of the squatters were undaunted and these people returned to their homes as soon as Captain Savage and his soldiers returned to Fort Gaston. Several of the settlers made arrangements with friendly Yuroks to hold their land in their absence. Finally, a non-commissioned officer and several privates were posted at Requa to prevent this subterfuge.³¹

As to be expected, local whites opposed the actions of the military. Some 13 months later, in August 1880, the Del Norte Record reported that a traveler en route from Crescent City to McGarvey's store in the Klamath Canyon reach Requa, on the afternoon of the 8th. He reported that he passed Jones' cannery:

where Corp. Fischerman, with three other of Uncle Sam's boys is in charge of the Klamath River Reservation. Uncle Sam should boast in his strength when he is able to drive fifteen or twenty poor men with their families from their homes and then station a few soldiers to watch and keep them away, while their homes, fences, etc., are going to decay or being torn down by the Indians and either burnt or carried away.³²

31. McBeth, Lower Klamath County, p. 47.

32. Del Norte Record, Aug. 21, 1880.

When he filed his annual report for fiscal year 1886, Supt. William E. Dougherty of the Hoopa Valley Reservation informed the Bureau that his duties required him to exercise supervision over the Klamath River Reservation. To prevent trespassing on the Indian lands and to protect the Yuroks in the enjoyment of their only industry--salmon fishing--a small outpost manned by the military had been maintained at Requa since 1879.

The Yuroks, he continued, were "anxious for a subdivision of their lands," but before this could be accomplished, the reservation must be surveyed. If the military were withdrawn from Requa and Fort Gaston, Dougherty forecast, both the Klamath River and Hoopa Valley Reservations "would soon be overrun, and the Indians dispossessed."

The Yuroks, he reported, lived principally on salmon, although they had small gardens.³³

In 1887, Captain Dougherty took a census of the Indians living on the Klamath. He found that there were about 1,200 residing in villages along the river. These villages, which were several miles apart, extended from the mouth of the river to

33. Dougherty to Commissioner of Indian Affairs, found in Executive Documents of the House of Representative for the 2d Session of the 49th Congress, 1886-87 (Washington, 1887), Serial 2467, p. 261.

well above Weitchpec. The Yuroks were "self-sustaining, relying to a great extent for subsistence upon salmon." Of the 1,200, a little more than 200 Yuroks claimed the Klamath River Reservation as home. About one-half of these were absent from the reserve for part of each year, working on farms in Humboldt County and in lumber camps. They returned to the river during the salmon runs, however.

Within the Klamath River Reservation were eight villages or rancherias, containing about 60 houses, some of which were modern. Not since the destruction of the agency at Wau-Kell by floods in 1861-62 had the Yuroks had any schooling. Only when they grew to adulthood did the children learn English.³⁴

While the Yuroks continued to be on good terms with the whites, Captain Dougherty was concerned with their blood feuds, which all too frequently resulted in murders. The agent had called the civil authorities' attention to this situation. When he replied, the California Attorney General was evasive, while the District Attorney for Del Norte refused to prosecute in any case in which Indians alone were involved.³⁵

34. Executive Documents of the House of Representatives for the First Session of the Fiftieth Congress, 1887-88 (Washington, 1889), Serial 2542, p. 91.

35. Ibid.

VIII. MID-1880s ALLOTMENT PROGRAM FAILS

A. Measures Taken to Provide Indian Allotments

In the early 1880s, the subdivision of lands along the lower Klamath, part of which were included in the Klamath River Reservation, resulted in the reserve being included in these townships: 13 North, Range 1 East; 12 and 13 North, Range 2 East; and 11 North, Ranges 2 and 3 East, Humboldt Meridian. (A copy of the J. N. Lentell "Map of Humboldt County: 1901" is found in this report, and locates the subject townships.) The Bureau of Indian Affairs, cognizant of the bills before the 47th Congress providing for the allotment of Klamath River Reservation lands to the Indians before the reserve was opened to white settlement as public domain, called for a survey of the region.

Contracts for public surveys were awarded by the United States Surveyor-General for California as follows: Township 13 North, Ranges 1 and 2 East to S. W. Foreman; and Townships 11 and 12 North, Range 2 East and Township 11 North, Range 3 East by John Houghan. By the winter of 1882-83, these surveys had been approved by the United States Surveyor-General for California and accepted by the Commissioner of the General Land Office.

Consequently, on April 7, 1883, Commissioner of Indian Affairs H. Price recommended to the Secretary of the Interior that "allotments be made to the Klamath River Indians based on the public surveys . . . , and that the rest of the reservations be restored to the public domain."¹

B. Superintendent Porter Makes First Allotments

Capt. Charles Porter, the acting superintendent of the Hoopa Valley Reservation, was given the task of making the land allotments in severalty. A number of allotments were made in August 1883, before Porter found it impossible to continue with the undertaking without having in hand the surveyors' field notes, from which the General Land Office Map furnished for his guidance was compiled. Several well-informed local people had voiced grave doubts as to the surveys' accuracy. Many marks and stakes noted on the map could not be found, and others of them were incorrect and misleading. If the allotments were to be described with any accuracy, he must have access to the field notes.

1. Price to Secretary of the Interior, April 4, 1883, found in Executive Documents of the Senate of the United States for the 2d Session of the 50th Congress and the Special Session of the Senate Convened March 4, 1889 (Washington, 1889), Serial 2613, Report No. 140, pp. 2-3.

Accordingly, Porter informed the Commissioner of Indian Affairs, that the descriptions of the allotments made and reported in August could not be "depended upon, and should be carefully revised before submitted for Congressional action." Because of troubles and controversies that would arise from inaccuracies or errors in the descriptions of the Indians' allotments, Porter urged that nothing further be done toward completing the allotments in severalty until the reservation itself had been accurately surveyed, marked, and mapped.²

C. Fraudulent Surveys Cause Program's Suspension

During fiscal year 1885, the allotment program continued to be held in abeyance, while the Commissioner of the General Land Office wrestled with the problems caused by the inaccurate surveys. When he submitted his annual report for that year, Captain Porter called attention to the persistent efforts made by squatters to secure a foothold on the reservation. In certain of the more flagrant cases summary measures had been

2. Porter to Commissioner of Indian Affairs, Aug. 1, 1884, found in Executive Documents of the House of Representatives for the 2d Session of the 48th Congress, 1884-85 (Washington, 1885), Serial 2287, pp. 54-55.

required to suppress this trespassing and illegal intrusions. He looked for these people to continue their efforts, because their illegal actions enjoyed the sympathy of many elements in the white community, and current legal penalties had no terrors for the squatters.³

D. The Reservation is Resurveyed

Meanwhile, the Commissioner of the General Land Office had detailed John B. Treadwell, a special agent, to investigate the Foreman and Houghan surveys. They were found to be fraudulent, and on December 11, 1884, all subdivisions of sections of land in the subject townships were formally suspended, and the district land office alerted.

To expedite allotments to the Indians, the United States Surveyor-General for California, in February 1886, was instructed by the Commissioner of the General Land Office to call for proposals for a resurvey of the several townships embracing the Klamath River Reservation.

3. Porter to Commissioner of Indian Affairs, Aug. 1, 1885, found in Executive Documents of the House of Representatives for the 1st Session of the 49th Congress, 1885-86 (Washington, 1886), Serial 2379, p. 233.

On June 17, 1886, a contract for the resurvey was awarded John Gilcrest. He completed his work in 1887, but the resurveys by Gilcrest were subject to a lengthy correspondence between the Commissioner and the United States Surveyor-General of California. By the winter of 1888-89, despite a field review of Gilcrest's surveys and field notes, approval of the resurvey was still pending.⁴

On February 13, 1889, the Senate, in an effort to determine the reasons for the delays, called on the Secretary of the Interior for information "relative to the survey and sale of the Klamath Indian Reservation . . . in pursuance of the provisions of the act approved April 8, 1864, entitled 'An act to provide for better organization of Indian affairs in California.'"⁵

E. Bureau of Indian Affairs Reevaluates Situation

When asked by Secretary of the Interior William F. Vilas to check into this matter, Commissioner of Indian Affairs John H. Oberly found, on reviewing the correspondence, that the Bureau had never formulated a plan for survey and sale of the subject

4. Stockslager to Secretary of the Interior, Feb. 18, 1889, found in Executive Documents, Serial 2613, pp. 3-4.

5. Senate Resolution of Feb. 13, 1889, found in *ibid.*

reservation under the provisions of the act of April 8, 1864. On the contrary, the declared purpose of Superintendent Wiley had been to either extend the Hoopa Reservation to include the Klamath River Reservation, or to retain the latter as a "separate independent reservation," with a subagency reporting to the Hoopa Valley agent. Consequently, the Klamath River Reservation lands had been "held in a state of reservation from that day to this."⁶

Public surveys had been made of the reservation, but allotments of the land in severalty to the Indians had been suspended.⁷

6. Oberly to Vilas, Feb. 18, 1889, found in *ibid.*, pp. 2-3.

7. *Ibid.*, 3.

IX. COMMERCIAL FISHING ON THE KLAMATH: 1876-1928A. Jones & Richardson's Fishery: 1876-79

In the autumn of 1876, Martin V. Jones and George Richardson, pioneer Del Norte merchants, established the first commercial fishery on the Klamath. Their action was dictated by the measure enacted by the California legislature on April 1, 1876, amending the laws prohibiting the sale of fresh salmon and reports that the federal government planned to remove the Indians from Hoopa Valley to Round Valley and then to abandon the former reservation. Because of the Indians' opposition to their removal, the project was dropped. Their business involved catching and salting fish for market. The summer of 1877 found them still in business, and the Crescent City Courier for August of that year reported:

It begins to look as if the outside world has found out that there is a river here and that it is full of salmon. They [Jones & Richardson] started operations here in the fishing line. They have already put up a few cans of salmon. Mr. Jones has gone below to lay in a supply of salt and other material with which to carry on fishing on a more extensive scale.

Some three or four weeks ago, Mr. Cox of Chetco started in the same business, but will not do anything more this fall than to get ready for the spring run, which is the heaviest run and the best fish.

Yesterday Captain Gibbs with the sloop Lotta, from Rogue River, came into our harbor. Captain Gibbs was here some two months ago and saw at once that there was an opening for an enterprising man, and left with the full intention of returning as soon as possible. He is here now with fishing tackle to commence operations as soon as he can get ready. Mr. Gibbs is an enterprising man and will no doubt make a success of it. The fisheries at the mouth of the river, which have already worked quite extensively, bid fair to be as valuable as any (outside of the Columbia River) on the Pacific Coast.¹

1. McBeth, Lower Klamath Country, p. 49; Crescent City Courier, August 1877.

Captain Savage and his soldiers evicted Jones & Richardson from their property in June 1879, and the first commercial fishery on the Klamath was closed down. (For details on the closing down of the Jones & Richardson operation, the reader is referred to Chapter VII of this study, titled, "Non-Indian Settlement on the Lower Klamath.") A review of contemporary documents in pertinent War Department and Bureau of Indian Affairs Record Groups at National Archives fails to cast any light on the views of senior officials and officers that the 1876 California law could or could not authorize non-Indian commercial fishing on the lower Klamath. This situation continued into the summer of 1880, when the enumerator for the Tenth Census for Del Norte County failed to list this activity under his fourth schedule for Del Norte County.²

B. Klamath Commercial Co.

The opposition of the Indians mollified, Jones incorporated the Klamath Commercial Co. for the "purpose of lumbering and fishing at or near the mouth of the Klamath." On August 27, 1881, the Del Norte Record announced:

The milling and canning enterprise on the Klamath River is now under way. M. V. Jones, who is the general superintendent of the work, has been on the ground for some weeks with a crew of men, and has the mill and building sites all ready.³

The cannery was to be erected on Hunter Creek, more than a mile from the river. The Indians would catch and deliver the

2. Tenth Census of Del Norte County, Schedules 4: Manufacturing, California State Library.

3. Del Norte Record, Aug. 27, 1881.

salmon for so much a head. The scow Ester Cobos, drawing six feet of water, would be employed to trade between the Klamath and Crescent City.⁴ As the cannery was off the reservation and the Indians were benefitted by its presence, the military took no action to interfere with its operation.⁴

C. R. D. Hume Looks to the Klamath

Then, in July 1883, the Secretary of the Interior received a letter from Richard D. Hume of Ellensburg, Oregon, submitting a proposition to lease for ten years for \$50,000 the Klamath River Reservation salmon fisheries, with the right to use the river banks and cut timber for fuel and other uses in connection with the fishing privilege.⁵

Hume, who had established a profitable salmon cannery on Oregon's Rogue River in 1877, was familiar with Humboldt and Del Norte Counties, having passed through the region in the late 1870s and early 1880s. He was keenly interested in the Klamath River salmon runs, which like those on the Rogue, occurred twice a year. A perceptive entrepreneur, he had determined to establish a fishery at the mouth of the

4. McBeth, Lower Klamath Country, p. 42.

5. Stevens to Hume, July 23, 1883, found in Executive Documents, Serial 2613, p. 11.

Klamath. Salted or canned salmon could be then shipped quickly to San Francisco for distribution to world markets.⁶

When asked by the Secretary to respond, Acting Commissioner of Indian Affairs E. L. Stevens rejected Hume's request, because "it would be against useage and at variance with the policy of the Department in the control and management of Indian Affairs." After touching on proposals before Congress, affecting the reservation's disposal, Stevens informed Hume that the area "is still in a state of Indian reservation, and must so remain, uninterferred with, until otherwise ordered by competent authority."⁷

In view of the Bureau of Indian Affairs' rebuff, Hume, in 1884, filed a claim in the United States Land Office at Eureka for a 40-acre tract on the north bank of the Klamath, one mile above the bar. The agent, cognizant of the legislation pending in Congress, referred the question to Washington and permitted Hume to send an affidavit in behalf of his claim to Land Commissioner N. C. McFarland.

6. Gordon D. Dobbs, The Salmon King of Oregon: R. D. Hume and the Pacific Fisheries (Chapel Hill, 1959), pp. 174-75; Gordon E. Dobbs (editor), A Pygmy Monopolist: The Life and Doings of R. D. Hume Written by Himself and Dedicated to His Neighbors (Madison, 1961), p. 62.

7. Stevens to Hume, July 23, 1883, found in Executive Documents, Serial 2613, p. 11.

Hume, in his petition, traced the history of the Klamath River Reservation and its presumed abandonment. Although admitting that the land had not been surveyed, appraised, or offered for sale, Hume asserted that these omissions did not prevent him from taking the Klamath lands that he sought. His claim was rejected, but he determined to challenge the government.⁸

D. Bomhoff's Saltery

In July 1886, however, John Bomhoff of Crescent City entered into a written agreement with 26 male Yuroks "embracing all of those belonging to the Lower Klamath River Reservation from the mouth of the river up to six miles therefrom, by which he agreed to give them the use of boats and nets with which to fish for salmon and to pay them ten cents. . . for each salmon, weighing not less than ten pounds." These salmon were to be delivered to Bomhoff at his saltery on Hunter Creek, near the north boundary of the reservation, about two miles from the mouth of the Klamath River.

By this agreement the Yuroks were not to fish for any other person nor give any other white the right to fish in the Klamath. During the 1886 autumn salmon run, the Indians

8. · Dobbs, Salmon King of Oregon, pp. 174-75; Dobbs, Pygmy Monopolist, p. 62.

were said to have made \$200 per day in addition to their subsistence. During the summer of 1887, Major Morgan, found that Bomhoff was employing five Indians at \$40 per month.⁹

E. Hume's Floating Fishery

In mid-May 1887, Hume boldly challenged the United States. He took the light-draft steamer Thistle, enough Oregon men and provisions and equipment to operate a fishery, and entered the Klamath. Anchoring off Requa, Hume sent a small boat ashore with an invitation for the sergeant in charge of the outpost to come aboard. At a meeting on the vessel, both sides were adamant, the sergeant insisted that the reservation was federal property from which trespassers were to be expelled. Hume recalled his response to this threat, "I happened to have on board a Henry express rifle that had [been] bought in Edinburgh, Scotland, . . . which had been made for a Rajah in India for tiger shooting, so showed that, and told him if he meddled with us we would treat him as a highway man."

After the soldier returned to shore, Hume had Thistle's anchor weighed and took her upstream several miles. She then anchored,

9. Executive Documents of the House of Representatives for the 2d Session of the 50th Congress, 1888-89 (Washington, 1889), Serial 2637, p. 10; Morgan to Howard, Sept. 8, 1887, NA, Ltrs. Recd., Adj. Gen., Doc, F/W 5445, AGO 1887, Microcopy M-689.

and the next day Hume and his people took possession of a Yurok's fishing grounds. Hume then put out a small boat and caught several salmon and a number of sturgeon.

Hume soon returned to the Rogue River and brought down a large barge and a cargo of lumber. The barge was towed across the Klamath bar and moored near the north bank. The men next built a two-story house on the barge, the upper to serve the men as a combination messhall/kitchen and the lower as an area for salting salmon. They then began fishing for and salting salmon. Before returning to Ellensburg, Hume placed William Guerin in charge of the operation.¹⁰

The Yuroks protested Hume's presence, claiming that, as they owned the lands on either side, they also owned the river and the fish therein. Hume countered that the Klamath estuary was "free to all but that he would do nothing on the land, which is the property of the Indians."

Hume's fishermen were experts, and they placed their gill nets in such a manner as to prevent most of the salmon from being taken in Bomhoff's nets. This led to trouble, and Captain

10. Dobbs, Salmon King of Oregon, pp. 175-76; Dobbs, Pygmy Monopolist, pp. 62-3.

Spott, a Yurok, knocked down one of Hume's people with a rock. Whereupon, Hume's men began carrying firearms. Upon Hume's return from Oregon, the weapons were laid aside and tempers cooled.

At the time of Maj. M. R. Morgan's August 1887 visit to Requa, all was quiet on the lower Klamath, and the Yuroks, "with the exception of two or three dominant spirits seem contented. These last are dissatisfied either through wounded pride or, it may be, they consider Mr. Hume's presence an unjustifiable intrusion on their proprietary rights."¹¹

F. The Klamath Packing & Trading Co.

Hume and his people, having won a victory in Judge Oscar Hoffman's court, returned to the Klamath estuary for the 1888 salmon runs. During that year, Hume canned and shipped 4,400 cases of salmon and, in 1889, he organized the Klamath Packing & Trading Co., capitalized at \$10,000, with Hume contributing \$600; his brother-in-law, A. L. Duncan, \$6,400; A. H. Cook, \$100; G. S. Winsor Hume's San Francisco superintendent, \$500; and William T. Bailey, \$2,500. Bailey, a resident of Gold

¹¹. Morgan to Howard, Sept. 8, 1887, NA, Ltrs. Recd., Adj. Gen. Doc. F/W 5445, AGO 1887, Microcopy M-689. Major Morgan was Chief Commissary, Department of California.

Beach, Oregon, was named superintendent of the Klamath River operation, moved to Requa, and built a cannery in the spring of 1889.¹²

In October 1888, Maj. W. H. Heuer of the Corps of Engineers had reconnoitered the Klamath estuary to the head of navigation, as required by act of Congress of August 11. Because the river was navigable only by canoes, for some two miles above its mouth, the estuary alone was examined.¹³

On the left bank of the river was a dairy farm, and about one mile above the bar, or the Requa side, was Hume's fish-cannery and store, a dozen or so Indian cabins, and a post manned by three soldiers. During the past year, Heuer learned, all the commerce at the mouth of the river had been handled by two small tugs and the schooners--William Sparks, Mayflower and Helen Mary. Each of the schooners had made one trip, while ~~the~~ tugs ran in and out of the estuary frequently. The out-bound shipments consisted of 4,400 cases of canned salmon, 750 barrels of salmon, 50 barrels of butter, and about 15 cords of tanbark, valued in all at \$60,000.

There were, Heuer noted, two fishing companied (Hume's and Bomhoff's) in operation, and their season began in April and

12. Dobbs, Pygmy Monopolist, p. 64; Dobbs, Salmon King of Oregon, pp. 177-78.

13. Heuer to Chief Engineer, Nov. 12, 1888, found in Executive Documents of the House of Representatives for the 1st Session of the 51st Congress, 1889-90 (Washington, 1890), Serial 2719, p. 2495-96.

lasted till November. About 60 men were employed by the companies, of whom about one-half were Indians. "All commerce on the river," the engineer observed, "comes from these two fishing interests; there is no other commerce or any opening for it until the lands bordering on the river shall be opened to settlers; the timber interests would then play an important part."¹⁴

Meanwhile, in June 1888, a correspondent for the Del Norte Record reported, the schooner Williams Sparks, bound for the "Klamath Cannery was towed into the river" by the steamtug Requa. When the clothing brought up by the schooner was unpacked at the store, on Sunday, "the scene presented a most novel aspect. Every suit of clothes seemed to attract an Indian's eye and we are sure it will take a large number of salmon at ten cents apiece to pay for Sunday's expenses."¹⁵

14. Ibid., pp. 2495-97. The "Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," in fiscal year 1889, included a provision for the Secretary of War to cause "examinations or surveys, or both, to be made . . . of the Klamath River entrance and inside bars to head of navigation."

15. McBeth, Lower Klamath Country, p. 71.

On July 13, 1889, the Del Norte Record informed its readers that a "grand ball . . . was given last night at the Excelsior Packing Company's new store." The new cannery, being built by the Klamath Packing & Trading Co., had been completed and was ready for business.¹⁶

On ¹⁸⁸⁹October 5 of that year, the Record announced that the fishermen had formed a union. And, in November, the Record's editor visited Requa, and among the places called upon were Bomhoff's store and cannery and the Excelsior Packing Co. "Both stores were found to be well stocked and the canneries were equipped with the latest and most approved machinery." Although the fishing season was over for the year, a number of employees were engaged labeling and boxing the canned salmon.¹⁷

The flood of 1890 wrecked the K.P. & T. Co.'s cannery, and it and Bomhoff's merged.¹⁸

Bailey continued to have difficulty bringing his supplies in by ship over the Klamath bar and getting the salmon pack out

16. Del Norte Record, July 13, 1889.

17. Ibid., Oct. 5, 1889; McBeth, Lower Klamath Country, p. 50.

18. McBeth, Lower Klamath Country, pp. 49-50.

over it. San Francisco, in 1892, replaced Ellensburg as the mercantile center for supplying the Requa store, and became the distribution center for Hume's Klamath and Rogue River salmon operations.

Besides canned salmon, the company shipped to San Francisco, salted salmon, butter, beef hides, tanbark, and salted steel-
heads. The K.P.&T. Co. also acted as broker for local people and at times sold goods on its own account. None of the firm's operations, however, were on a grand scale.¹⁹

As it had since the 1890 merger, K.P.&T. Co., through the mid-1890s, continued to operate the only cannery on the Klamath. About a mile from the cannery was the postoffice and hotel. Nearby was the saltery of the Requa Fishery Co. The latter firm put up "a very fine article of salt salmon," and was managed by Paul Fusick, "a practical cooper and fisherman."²⁰

The K.P.&T. Co's. cannery operated principally in those years when the catch on the Rogue was low, or when an emergency

19. Dobbs, Pygmy Monopolist, p. 64; Dobbs, Salmon King of Oregon, pp. 177-78.

20. Childs, Del Norte County As It Is, n.p.

occurred, such as destruction of the Gold Beach cannery in 1893. Klamath salmon, though of superior quality, were not as numerous as those in the Rogue River runs. Moreover, the Klamath company occupied a secondary role in Hume's undertakings, because he and several of his associates, Duncan and Winsor, who were major stockholders in the K.P.&T. Co., were heavily involved on the Rogue River.

Consequently, the quantity of canned salmon marketed from the Klamath was much less than that from the Rogue. Salmon were packed on the Klamath in only a few years between 1888 and 1907: in 1888 and 1889, 1892 through 1895, and in 1899, 1902, 1904, and 1909. The total number of cases packed in these years was 17,447, an amount less than a typical year's pack on the Rogue.²¹

The company was always in the red and by January 1, 1903, it owed \$13,187.50 to Hume's San Francisco commission house. During that month, Hume determined not to pack salmon on the Klamath that season, because they were a glut on the market. Writing Winsor, on January 27, Hume cautioned that, until he

21. John N. Cobb, Pacific Salmon Fisheries (Washington, 1929), p. 571; Dobbs, Salmon King of Oregon, pp. 177-78.

could secure more agents, Klamath salmon could not be marketed, because the Alaskan Packers Association had slashed its prices on fish for the ensuing year. Hume declared that he would not back the K.P.&T. Co. for packing, because the expenditure would not "come back." Bailey could salt, he concluded, and salting salmon was all that was done henceforth on the Klamath until 1904, when 3,400 cases of canned fish were packed.²²

The canning business continued to be unprofitable, and Hammond opened a store in Requa in 1906, paring the profits from Hume's mercantile venture. Hume debated selling out and wrote his nephew, "There may be a show to get money out of the thing, but won't give it away." Bailey agreed to sell the store, but felt that it would be smart to retain the cannery. As a possible solution to their financial difficulties, Hume and Bailey discussed the feasibility of catching steelheads, the ocean-going trout that Hume was exploiting on the Rogue. They failed to follow-up on this plan, because the steelhead runs on the Klamath lagged. Soon thereafter, on September 16, 1907, Hume transferred his K.P.&T. Co. stock to R.D. Hume & Wedderburn, preparatory to winding up its affairs, with the books showing a deficit of \$13,187.50.²³

22. Dobbs, Salmon King Of Oregon, pp. 178-79.

23. Ibid., p. 179.

G. The Busy Years

In 1909, some two months after Hume's November 25, 1908, death, K.P.&T. Co., now owned by Bailey and Hume's estate, again began Packing and shipping salmon. Writing in 1909, Steve W. Scotten reported that Klamath River salmon brought the "top-notch in the market, as their reputation for superiority is far-famed." During 1909, more than 5,600 cases of salmon were shipped from the Klamath runs from Requa to Humboldt Bay, during favorable weather, with cases of fish, which were transshipped to San Francisco. On her return, the vessel brought in items needed by the cannery and supplies for the area.²⁴

It has been reported that in the heyday of commercial salmon fishing on the Klamath (1909-1928), it was not uncommon during a good run for the netters, Indian and white, to bring 7,000 to 10,000 fish daily to the canneries. Seventeen thousand was the record catch in 1912. When two canneries were in operation, as many as 100 nets were in use. These nets, with buoys and weights, were about 20 feet deep, and usually of 7 1/2-inch mesh to permit the smaller fish to escape upstream to spawn. **

24. Steve W. Scotten, Del Norte County, California, Its Industries, Resources, and Capabilities (Crescent City, 1909), pp. 18-19. Besides the cannery, there were at Requa a postoffice, Hammonds's General Store, the Requa House and Stable, a blacksmith shop, two taverns, and the ferry. Requa could be reached from Crescent City by Frank Bosch's "popular Stage line." In 1909, the telephone line connected Requa with Crescent City.

Old timers recalled that "it was quite a feat to haul in a net of fighting fish into a dugout canoe and not lose any of the catch."²⁵

Figures prepared by John N. Cobb of the Fish and Wildlife Service document the production of the Klamath River commercial canneries in the period 1888-1928. They read:

Year	Canneries operated	Chinook		Coho		Total	
		Cases	Value	Cases	Value	Cases	Value
1888	1	4,400	\$26,400			4,400	\$26,400
1892	1	1,047	4,188			1,047	
1893	1	1,600	6,400			1,600	6,400
1894	1	1,700	6,800			1,700	6,800
1895	1	1,200	5,321	400	\$1,500	1,600	6,821
1899	1	1,600	8,800			1,600	8,800
1902	1	2,500	13,500			2,500	13,500
1904	1	3,400	20,800			3,400	20,800
1909	1	5,633	33,000			5,633	33,000
1910	1	8,016	52,000			8,016	52,000
1911	1	7,400	46,000	204	816	7,604	48,816
1912	2	18,000	117,000			18,000	177,000
1913	2	6,376	40,500			6,376	40,500
1914	1	7,500	48,500	3,500	14,000	11,000	62,500
1915	1	10,400	72,800	2,500	13,000	12,900	85,800
1916	1	6,484	51,872	2,400	12,000	8,884	63,872
1917	1	5,130	56,430	2,900	23,200	8,030	79,630
1918	1	5,555	61,105	4,292	38,628	10,200	102,557
1919	1	6,291	81,783	1,145	13,740	7,731	95,523
1920	1	11,341	136,092			11,927	139,608
1921	1	7,376	74,203			7,376	74,203
1922	1	9,700	41,516			9,700	41,516
1923	1	6,000	24,360			6,000	24,360
1924	1	9,546	58,612			9,546	58,612
1925	1	14,639	93,836			14,639	93,836
1926	2	11,037	77,259			11,037	77,259
1927	2	13,285	99,638			13,285	99,638
1928	1	4,237	40,237			4,237	40,237 ²⁶

25. Del Norte Triplicate, Centennial Edition (1954), p. 5-6.

26. Cobb, Pacific Salmon Fisheries, p. 571.

X. THE RISING STAR TEA CASE

A. R.D. Hume Causes Legal Problems

On Tuesday, May 24, 1887, while Richard D. Hume was absent from the Klamath making arrangements to bring down from the Rogue River country a barge, Hoopa Valley Reservation Superintendent Dougherty telegraphed Washington, apprising his superiors of Hume's activities and of his defiance of the military's efforts to exclude him from the Klamath River Reservation. The Indians, Dougherty added, had expended much effort in cleaning the fishing grounds, and will resent Hume's intrusion.¹

Upon referring the subject, through channels, to Attorney General A. H. Garland, Commissioner of Indian Affairs J. D. C. Atkins noted that the state of California by law enacted in 1880 had declared the Klamath River to be a navigable stream from its mouth to the town of Orleans Bar.²

Garland ruled that, as the California legislature had declared the Klamath a navigable stream, the public had the "right to fish there and use it in any way that does not amount to an

1. Dougherty to Commissioner of Indian Affairs, May 24, 1887, found in Executive Documents, Serial 2613, p. 12.

2. Atkins to Secretary of the Interior, May 28, 1887, found in ibid., p. 13.

interruption of or interference with interstate or foreign commerce or navigation, or a violation of some" California law. So long as Hume, in resorting to the waters of the Klamath to fish, fell "short of invading the right of Congress to regulate commerce with foreign nations or among the several States," there was no case for federal interference.³

In an effort to get Attorney General Garland to change his stance, the Department of the Interior's lawyers prepared a brief. They challenged the contention that the Klamath was a navigable river. On doing so, they cited Special Agent Folsom's report reading, "Nature seems to have done her best here to fashion a perfect paradise for these Indians, and repel the approach of the white man. She filled the mouth of the Klamath River with a sand-bar and huge rocks, rendering ordinary navigation impossible. . . .

Can the state by declaring the Klamath navigable, when it is not, deprive the Indians of the exclusive use of the fisheries? the Bureau's attorneys inquired.

3. Garland to Secretary of the Interior, June 11, 1887, found in *ibid.*, pp. 13-14.

Can, the attorneys continued, the state of California defeat the purpose of the President in establishing the Klamath River Reservation, in conformity of an act of Congress, by granting "liberty to any and all of her citizens to enter within its boundaries and engage in the business of catching and curing fish, to the injury of the Indians for whom the reservation was created?"

The positioning of the floating cannery, which would enable Hume to conduct his operations without going ashore, would place Indian fishermen at a great disadvantage. By seining near the month, the whites "would obstruct the passage of the salmon and cut the Indians off from their accustomed supply."

Moreover, the Commissioner of Indian Affairs was required by Section 2149 of the Revised Statutes, with the approval of the Secretary of the Interior, to remove from any tribal reservations any person "whose presence may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians." Hume and his people were covered by this definition and if allowed to remain were likely to provoke hostilities.⁴

4. Brief submitted with Atkins' letter of June 21, 1887, found in *ibid.*, pp. 14-15.

In a covering letter, Commissioner Atkins urged that the United States ought to protect the Yuroks against being "robbed of the only means they have of obtaining food for their wives and children."⁵

Attorney General Garland returned the correspondence to the Secretary of the Interior, because he found the brief to be arguments answering his June 11 opinion, and he saw no reason to change his views.⁶

Responding, the Bureau pointed out that the Yuroks had "held and enjoyed exclusive fishery privileges in the Klamath River from time immemorial, and were in full possession of them at the date of the Guadalupe Hidalgo treaty, by which the territory embracing the Klamath River and the State of California was acquired by the United States." This exclusive possession had never been disturbed, and until Hume's actions had never been challenged.

The Bureau asked the Department of Justice for a determination of these questions:

(a) Did not the Klamath River Indians acquire by prescription and hold at the date of the Treaty of Guadalupe Hidalgo title or property in the subject fisheries?

5. Atkins to Secretary of the Interior, June 21, 1887, found in *ibid.*, p. 14.

6. Garland to Secretary of the Interior, June 23, 1887, found in *ibid.*, p. 16.

(b) Was not such title or property guaranteed by that treaty?

(c) Was not the legislative and executive action which fixed the present reservation a recognition of the Indians' right and title to the exclusive fishery privileges of the Klamath River within the reservation boundaries?

(d) If the Indians have rights under the Treaty of Guadalupe Hidalgo, or have acquired rights by prescription since the date of that treaty, can the state of California by direct or indirect action divest them of those rights?

(e) If the Indians have the exclusive right to fish in the Klamath within the present reservation, cannot the Bureau and its agents protect these rights within said boundaries by the enforcement of the laws and regulations made in pursuance thereof for the maintenance of peace and order on Indian reservations?⁷

Attorney General Garland held that these questions were "clearly justiciable in the appropriate courts at the suit of the Indians themselves who are interested in them." As there was nothing in the nature of the guardianship exercised by the United States over the Indian tribes that warranted the

7. Atkins to Secretary of the Interior, July 6, 1887, found in *ibid.*, p. 17.

Executive Department in "assuming to determine a controversy properly cognizable by the judicial Department, the only way of settling the questions submitted by the Department of the Interior was in the courts."⁸

B. Deputy U.S. Marshals Take Action

Consequently, in the first week of October 1887, the Secretary of the Interior requested Attorney General Garland to direct the United States Attorney for the Northern District of California to bring suit in behalf of the Yuroks, "in order that their rights in the Klamath fisheries may be judicially determined."⁹

In the period October 30 to November 24, Deputy United States Marshals kept Hume's barge, which was tied-up to the bank of the Klamath, under close observation. They saw that the barge had aboard "a large and assorted stock of goods" owned by Hume. By means of the barge, Hume's agents "wrongfully, knowingly, and willfully, introduced the said stock of goods, wares and merchandise, and engaged in trading, selling and disposing of sundry of said goods, wares and merchandise so introduced into said Reservation"

8. Garland to Secretary of the Interior, July 11, 1887, found in *ibid.*, pp. 17-18.

9. Upshaw to Secretary of the Interior, Oct. 4, 1887, found in *ibid.*, p. 18.

During the subject period, Hume's agents had vended these items to reservation Indians:

<u>Date</u>	<u>Individual</u>	<u>Items</u>
Oct. 30, 1887	Former wife of Billy Williams	1 can preserved fruits, 1 silk handkerchief
Nov. 1, 1887	Indian Tom	1 plug of tobacco
Nov. 4, 1887	Indian Tom	1 pair overalls, 1 undershirt
Nov. 6, 1887	Chief Spott	5 lbs. sugar, 5 lbs. salt, 2 plates, 1 frying pan
Nov. 10, 1887	Jack	10 lbs. sugar, 1 sack flour, 2 plugs tobacco, 1 can yeast powders, 4 lbs. salmon, 2 latches
Nov. 13, 1887	Waukell Dave	16 yds. calico
Nov. 15, 1887	Charley	1 pair boots, 2 sacks flour (50 lbs. each)
Nov. 17, 1887	Tom	5 lbs. sugar
Nov. 20, 1887	Billy	100 lbs. flour
Nov. 24, 1887	Billy	1 spool of thread ¹⁰

As it was illegal for any person to trade with "any Indian tribe without a license" from "the proper officer of the United States duly authorized to issue the same," and without giving bond, the marshals libeled and seized the merchandise. Among the items impounded were: 48 pounds of Rising Star Tea,

10. Judgment Roll, U.S. vs. 48 lbs of Rising Star Tea, etc., June 9, 1888, NA, FARC, San Bruno, RG 21SF, Crim. 1181, Box 23.

6 Alcocks' porous plasters, 9 drift nets, 8 boat sails, 1 double and 1 single block and tackle, 4 set nets, 1 pack of corks and linens (said to be for 3 nets), 28 oars, 20 oar locks, 8 masts, 8 gafts, 8 sprits, 3 anchors, 16 tanks with salted salmon, 2 empty tanks, 8 rudders, 5 gaft hooks, 1 water cask, and 2 water buckets.¹¹

C. Hume's Day in Court

A case, known as the United States vs. 48 lbs. of Rising Star Tea, etc., resulted from the impounding of the "goods, wares and merchandise." It was scheduled to be heard in the U.S. District Court for the Northern District of California, Judge Oscar Hoffman presiding.

The hearing was on Saturday, May 19, 1888, and Superintendent Dougherty was the only witness. U.S. District Attorney John T. Carey did not appear, and the government was not represented. Hume was represented by two lawyers--J.F. McElrath and D. T. Sullivan. Judge Hoffman, in explanation, noted that this was the sixth time the case had been set for a hearing, and he had decided proceed on with it, and listen to the government's arguments at a later date.¹²

11. Ibid.

12. Dougherty to Commissioner of Indian Affairs, May 29, 1888, found in Executive Documents, Serial 2613, p. 23.

Hume's attorneys after referring briefly to the facts in the case and citing the section of the statutes, "under which the alleged violation took place," focused their attention on the administrative and legislative history of the Klamath River Reservation.¹³

Attorney McElrath, to reinforce his arguments, introduced and read into the record the report made to the House of Representatives by its Committee on Indian Affairs on May 7, 1880. This jaundiced report (House Report No. 1354) is reviewed on pages 152-55 of this monograph.

Without going farther into the history of the case, McElrath outlined the facts as he saw them. There were at the mouth of the Klamath, he continued, a number of Indians, and they

13. U.S. vs. 48 lbs. of Rising Star Tea, etc., NA, FARC, San Bruno, RG 21 SF, Crim 1181, Box 23. Section 2133 of the Revised Statutes read, "Any person other than an Indian who shall attempt to reside in the Indian Country as a trader, or to introduce goods, or to trade there in without such a license shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover be liable to a penalty of five hundred dollars."

"ought to be on the Hoopa Valley reservation." These people were earning their livelihood by fishing and boating, and were not on the federal dole. It was this class of Indians that R. D. Hume desired to employ "to catch the salmon that run in that stream." To do so, Hume had "built a scow, got his nets, went up there, and employed those Indians to fish for him, and in payment gave them sugar, coffee, overalls, and such things as the Indians needed in the way of merchandise." Hume's operation, however, had been interrupted by the libeling and seizure of his goods.

Moreover, McElrath informed the court, the barge (scow) had been seized on the Klamath River, a stream that the California legislature, in 1880, had declared to be "navigable from its mouth to the town of Orleans Bar."

He had also learned from Superintendent Dougherty that the Commissioner of Indian Affairs had granted permission to another person (John Bomhoff) to fish and trade on the reservation. Here, McElrath declared, was the Indian Bureau "assuming to control that Reservation, and to keep citizens of the United States off of it as though it were either Indian

Country, or a Reservation, duly selected by the Government, and still existing." He argued that the Bureau had no authority to do this, and that the Yuroks "ought to be on the Hoopa Reservation."¹⁴

Superintendent Dougherty was then called to the stand to be questioned by Hume's attorneys and the court. In response to their questions, Dougherty stated that he had been instructed to prevent whites from settling on the Indians' land and to control unauthorized trading with the Yuroks. To enforce these regulations, three soldiers, including a senior non-commissioned officer, were stationed at Requa. They were quartered in a house formerly occupied by a fishing company-- Jones & Richardson's.

When Dougherty had reported Hume's trespass to the Indian Bureau and his immediate military superior, Maj. Gen. Oliver O. Howard, he had received instructions from both to "remove Mr. Hume and his paraphernalia from the reservation." Dougherty had then visited Requa and found that Hume's people had landed lumber, preparatory to erecting a building, and some salting tanks. He told them to get their building materials and gear back aboard the barge, which they did immediately.

14. Ibid.

He then reported what had occurred to the Commissioner of Indian Affairs, whereupon several deputy marshals visited the Klamath and seized the merchandise.¹⁵

Upon being questioned about the local Indians' source of income, Dougherty identified it as principally "from a gentleman who purchases fish of them." This man's operations had been sanctioned by the Bureau. When asked to elucidate, Dougherty explained that John Bomhoff had been granted "authority to navigate the mouth of the Klamath River, and to purchase fish of the Indians at the rate of ten cents per salmon of ten pounds or more." Bomhoff was also "permitted to furnish them boats and fishing tackle."¹⁶

Bomhoff's place of business, Dougherty explained, was not on the reservation, being on Hunter Creek, about 25 yards from the boundary. The Indians brought their fish to Bomhoff's packing house, where they were salted and packed in barrels. Bomhoff also provided the nets and boats used by the Indians.

15. Ibid. When shown a photograph of the area, Dougherty identified the barge, the building occupied by the soldiers, a barn used by the mail carriage, and an "old cannery, or packing house."

16. Ibid.

Attorney Sullivan then asked Dougherty, "Have not other people, particularly Mr. Hume, been fishing there for three or four years, and been carrying on this canning business?"

Not recently, Dougherty answered, although Jones & Richardson had operated a cannery at Requa until the late 1870s, when it had been closed on orders from the Indian Bureau. From then until 1886, there had been no commercial fishing on the Klamath, "except by the Indians for their own purposes."¹⁷

Attorney McElrath next sought to cloud the issue by inferring that the Indians on the "so-called Klamath reservation" had merely strayed from Hoopa Valley. Dougherty put him straight, remarking firmly, "No, my Indians do not go there." Dougherty placed the number of Yuroks at Requa at 65, with eight or ten rancherias between there and the Hoopa Valley Reservation.

The subject Indians made their living by fishing for salmon, ferrying people across the river, and by freighting.

McElrath then asked, is it not true that these Indians at the mouth of the river, "sometimes varying from 65 to 213, are to be found in all the northern towns of California, Eureka, Arcata, Orleans Bar, and all around?"

17. Ibid.

Dougherty allowed that, though the young men left the area every year to find employment, they returned to the rancherias for the salmon runs.¹⁸

D. Judge Hoffman Rules the Klamath River Reservation is not Indian Country

Judge Hoffman, after listening to the testimony, remarked that it was clear that the government intended to "treat this as a still subsisting reservation," because its instructions to Superintendent Dougherty extended to the Indians and "the ex-Klamath reservation." Whether the subject area was reserved for deposition in accordance with the act of April 8, 1864, it was not now necessary to inquire into. District Attorney Carey had been instructed to make this seizure, and General Howard had ordered Dougherty to take care of the Yuroks, supervise them, and maintain order. Consequently, the United States had posted a detachment at Requa, and had "continued to exercise a control over" the reservation, whether rightfully or not, "yet with the approval of the highest officers of the government, and by their instruction. I cannot say that that is all illegal, though it does look as though they had no such authority to do so." Judge Hoffman, however, withheld a decision until he heard from District Attorney Carey.¹⁹

18. Ibid.

19. Ibid.

On June 7, 1888, Judge Hoffman handed his decision. He dismissed the libel, with an opinion holding that the Klamath River Reservation did not have the legal status of an Indian reservation, though the court also held that the reservation was not open to entry as public lands.

The act of April 8, 1864, Judge Hoffman stated, had authorized establishment of four reservations; lands of old reservations not set apart within the four new reservations were under section 3 of the act not subject to the operation of the Nation's general land laws, but reverted to control of the Secretary of the Interior for survey and sale at auction. The President, the court continued, had in various orders and modifications of orders exhausted his authority under the act by creation of four reservations--The Tule River, the Hoopa Valley (as to which, Judge Hoffman noted, a suggestion that it include the Klamath River Reservation had not been adopted), the Round Valley, and the Mission Indian Reserves. The Klamath River Reservation not being included in any of these four reservations, the lands of that reservation were under section 3 of the act relinquished "for the purposes of Indian reservations," and had reverted to the United States for survey and sale as provided for by that section.

Hume, therefore, lost his argument that he could purchase lands on the Klamath with scrip, but Judge Hoffman continued:

Whether he [Hume] has committed any offense must therefore be determined on technical grounds. Assuming that trading with Indians on a reservation constitutes trading with Indians in an Indian country, my opinion is that the Klamath lands are not such a reservation as brings them within the meaning of the terms Indian Country.²⁰

Secretary of the Interior William F. Vilas, as to be expected, asked Attorney General Garland to appeal Judge Hoffman's decision. Secretary Vilas observed that, to protect the Indians, authority ought to be secured, during the pendency of the appeal, "to set apart these lands as a reservation and thus remove all doubt."²¹

E. U.S. Circuit Court Sustains Judge Hoffman

On April 1, 1889, the United States Circuit Court affirmed the decision of the district court. Judge Lorenzo H. Sawyer, speaking for the court, held that:

20. Federal Reporter: Cases Argued and Determined in the Circuit and District Courts of the United States (St. Paul, 1888), Vol XXXV, p. 403. Dobbs, Salmon King of Oregon, p. 176-77.

21. Vilas to Garland, undated, Executive Documents, Serial 2613, pp. 23-4.

The president did thereafter [following the act of April 8, 1864] act from time to time, and he did set off four tracts in different parts of the state for the purposes provided for, and he did not include in any one of them the "Klamath Indian Reservation," therefore set apart. In setting apart these four reservations without including the Klamath reservation, he necessarily exercised his discretion, and, by implication at least excluded them. As they were not retained by the future and further action of the president "for the purposes of Indian reservations, under the provisions of the preceding sections of this act," the reservation, by the terms of the act itself, abolished or abrogated the prior reservation. This necessarily follows from the provision requiring these lands not embraced in the reservations made by the action of the president under that act to be cut up into lots of suitable size and sold, as provided in the act.²²

22. The Federal Reporter, Cases Argued and Determined in the Circuit and District Courts of the United States, May-July, 1889 (St. Paul, 1889), Vol. XXXVIII, pp. 400-401.

XI. THE EIGHTEEN HUNDRED AND NINTY-ONE RESERVATION EXTENSION

A. Squatters and Allies Counterattack

1. House Committee on Indian Affairs Endorses H.R. 3454

The 1879 eviction of the squatters caused an uproar in Del Norte and Humboldt Counties that reached all the way to the Nation's capital. On January 12, 1880, United States Representative Campbell Berry of Wheatland, who had succeeded J. K. Luttrell as Third District Congressman, introduced into the 2d Session of the 46th Congress a bill (H. R. 3454) for "restoration of the Klamath River Indian reservation . . . to the public domain." The speaker ordered the bill read twice and referred it to the Committee on Public Lands.¹

The Committee on Public Lands, after considering H. R. 3454, returned it to the floor, and moved that the committee be discharged from further consideration and that the bill be referred to the Committee on Indian Affairs. This motion was approved.²

1. Congressional Record: Containing the Proceedings and Debates of the 2d Session, 46th Congress, 1879-80 (Washington, 1880) Vol. X, p. 286.

2. Ibid., p. 1143.

On May 7, the Committee on Indian Affairs, after securing "the testimony of eminent citizens of that vicinity," submitted its report. After reviewing the administrative history of the reservation and the entering of white settlers upon abandoned reservation lands, the committee, contradicting reports of military and Bureau of Indian Affairs personnel, stated boldly that less than 100 Indians were living on the subject lands. These Indians were said to belong to several tribes and were continually at war with each other. Homicides and murders were frequent. It was found that in the absence of soldiers, the restraining influence of white settlers was needed to preserve the peace.

So far the Indians had failed to make any advances in the "arts of civilized life." As proof of this, it was pointed out that all of them together did not cultivate more than five acres of land, and that amount was found in small parcels around their huts. Next, the committee assailed the configuration of the reservation as "an injustice, if not an outrage."

According to testimony submitted, the committee found that from the year 1862 until 1877, the reserve had been abandoned by the United States. It appeared that those Indians on the Klamath should be on "the reservation set apart for them, which is the Hoopah Reservation on the Trinity River." In view of the statements of Indian Commissioner Shuter to Representative Luttrell in 1874, the settlers were justified in believing the government had abandoned the reserve. While the committee would not do an injustice to the Indians, it at the same time could not sanction an "outrage to be inflicted upon the white settlers who entered upon these lands in good faith."

It was the opinion of the committee that the United States could have no use for the Klamath River Reservation. Their study had shown that the Hoopa Reservation was capable of sustaining many more Indians than were now settled upon it. "Why, then," it was asked, should these "lands in question be kept from settlement and improvement by white citizens who are eager to expend their labor and means in the development of their resources?"

The recommendation of the committee was that the Klamath River Reservation be "restored to the public domain, and again made free for the access of labor and capital of white settlers seeking homes and fields for their energy and enterprise."³

Although the Committee on Indians Affairs endorsed Berry's bill to open the reservation to settlement by whites, the legislation failed to pass the House. Consequently, Berry's actions roused the ire of many of his constituents. It seemed to them that Berry's interest was limited to words not deeds.⁴

2. Bureau of Indian Affairs Takes Position

To demonstrate his sympathy with what the voters wanted, Representative Berry reintroduced the legislation into the 1st Session of the 47th Congress. Designated H. R. 60, the bill for "restoration of the Klamath Indian Reservation . . . to the public domain" was again referred

3. "The Klamath River Indian Reservation," Report by House Committee on Indian Affairs, May 7, 1880, found in Reports of Committees of the House of Representatives for the 1st Session of the 46th Congress, 1879-80 (Washington, 1880), Serial 1937, Report No. 1354, pp. 2-4.

4. Bledsoe, History of Del Norte, pp. 151-52.

to the Committee on Indian Affairs. When called on for his comments on the bill, Commissioner of Indian Affairs H. Price responded that it was identical to H. R. 3454, a bill which the Bureau had opposed, because it "entirely ignored the Indians, who were at the time, and are now, residing upon the reservation to which the same related."

The Indians, then residing on the reservation, numbering about 212, Price reported, "are entirely self-supporting, relying for subsistence mainly upon the salmon which abound in the Klamath River, and are, in the view of this office pre-eminently entitled to consideration and protection at the hands of the government."⁵

5. "Klamath Indian Reservation, in California," Report of House Committee on Indian Affairs, April 28, 1882, found in Reports of Committees of the House of Representatives for the 1st Session of the 47th Congress, 1881-82 (Washington, 1882), Serial 2068, Report No. 1148, pp. 1-3. According to a census taken by Sergeant Blake of the 8th U.S. Infantry, the Indian population on the reservation in September, 1881, numbered:

<u>Rancheria</u>	<u>No. of Dwellings</u>	<u>No. of Males</u>	<u>No. of Females</u>	<u>No. of Children</u>	<u>Total</u>
Requa	19	30	28	6	64
Wirks-wah	4	10	8	1	19
Hop-pa	8	13	8	1	22
Wau-Kell	1	1	2	1	4
Too-rup	3	8	6	1	15
Sah-sil	5	7	8	3	18
Ai-yolch	6	16	11	5	32
Sur-ter	5	14	15	6	39
Total	51	99	86	28	213

After sketching the history of the reservation, Price agreed that the lands embraced within the reserve were not needed for Indian purposes, but the "Indians residing thereon should be protected in the peaceful occupancy and enjoyment of their homes, to which they have become much attached, and where they have gained a livelihood unaided by the government for more than a quarter of a century." To accomplish this goal, Price recommended that H. R. 60 be amended to read:

That before any of the foregoing provisions except that authorizing and directing the Secretary of the Interior to have the lands embraced in said reservation surveyed, shall be held and deemed to be in effect, there shall be selected and allotted to each Indian belonging to and residing upon said reservation, lands within the limits of said reservation as follows:

To each head of family one quarter-section.

To each single person over eighteen years of age, one-eighth of a section.

To each person under eighteen years of age, one-sixteenth of a section.

Such selections and allotments to be made under the supervision of competent commissioners, not exceeding three in number, to be appointed by the Secretary of the Interior; the title to the lands so selected and allotted to be confirmed to the allottees by patents, which the Secretary of the Interior shall cause to issue therefor; the title to all lands acquired by any Indian by virtue of this act to be inalienable and not subject to taxation, lien, or incumbrance for a period of twenty-five years from date of patent and until such time thereafter as the President may see fit to remove the restriction, which said restriction shall be incorporated in the patents when issued.⁶

6. Ibid.

H. R. 60 was approved by the Committee on Indian Affairs, but died with the adjournment of the 2d Session of the 47th Congress.

B. Barclay Henley Introduces H. R. 112

On December 10, 1883, Barclay Henley, who had succeeded Campbell Berry as Third District Representative in the 48th Congress, introduced H. R. 112 "for restoration of the Klamath River Reservation to the public domain." Once again, the bill was referred to the Committee on Indian Affairs. In recommending passage of H. R. 112, the committee, on July 2, noted that the reserve "has for over ten years . . . past been practically abandoned as an Indian reservation; that there is no Indian agent or other Federal employee living on the reservation, and only about fifty Indians, including men, women, and children, living on the reservation, and they are living on the Klamath River in two small Indian villages."

Because these Indians, the committee continued, subsisted themselves almost "exclusively" by fishing and were not inclined toward agriculture or other pursuits, it was questioned

whether legislation aimed at inducing them to accept lands by severalty would succeed. Fears were voiced that the Indians might refuse to accept their allotments.⁷

Learning that H. R. 112 was also opposed by many Humboldt Coast whites, the committee reported H. R. 7505 as a substitute for H. R. 112. The former bill "abolished" the Klamath River Reservation and directed that the lands embraced therein be surveyed and "made subject to homestead and pre-emption entry and sale the same as other public lands," with the proviso that before this was done there should be allotted lands in the stated amounts to the Indians belonging to and residing within the reservation. H. R. 7505 failed to pass.⁸

7. "Klamath Indian Reservation," Report of House Committee on Indian Affairs, July 2, 1884, found in Reports of Committees of the House of Representatives for the 1st Session of the 48th Congress, 1883-84 (Washington, 1884), Serial 2759, Report No. 2124, p. 1.

8. Congressional Record: Containing the Proceeding and Debates of the 48th Congress, 1st Session (Washington, 1884), Vol. XV, p. 5923.

C. Commissioner Atkins Comments on H.R. 112 and H.R. 7505

Commenting on these bills, as well as S.813 which had also failed to pass the 1st Session of the 48th Congress, Commissioner of Indian Affairs J. D. C. Atkins, when he submitted his annual report for fiscal year 1885, wrote:

It is my intention to ask at an early day for legislation suitable for the wants of these Indians (Yuroks). They do not need all the lands at present reserved for their use, but they should be permanently settled, either individually or in small communities and their lands secured to them by patent before any portion of their reservation is restored to the public domain.⁹

D. The 49th Congress Considers Two Bills

On December 21, 1885, some two weeks after the 1st Session of the 49th Congress had convened, identical bills (H. R. 158 and H. R. 165) were introduced by Representative Henley. They were phrased in the same language as the bills which had died in the 48th Congress. They were referred to the Committee on Indians Affairs, where they languished.¹⁰

9. Commissioner Atkins' Annual Report for Fiscal Year 1885, found in Executive Documents, Serial 2379, pp. 48-9; Congressional Record: Containing the Proceedings and Debates of the 1st Session, 48th Congress (Washington, 1884), p. 166.

10. Congressional Record: Containing the Proceedings and Debates of the 1st Session of the 49th Congress (Washington, 1886), p. 370.

E. H. R. 12104 Dies in Committee

No legislation was sponsored in the sessions of Congress convening in December 1886 and December 1887 for sale of the Klamath River Reservation. Then, on January 14, 1889, while the court case of United States v. Forty-Eight Pounds of Rising Star Tea was under appeal, Representative T. L. Thompson introduced into the House H. R. 12104 to open the reservation to public sale. This was in response to the district court's, ruling in the Rising Star Tea case that the reservation had lost its status as an Indian reserve, but had not become public land. Rather it had come into the possession of the United States under the act of April 8, 1864, for the purposes of survey and sale. H.R. 12104 provided that the reservation be regarded for the purposes of the act, as in a state of reservation within the General Allotment Act of 1887. Consequently, the subject lands should be allotted to the Indians pursuant to that act, before public sale took place. Surplus lands, after allotment--despite the contrary provisions of the General Allotment Act--were to be held as public lands subject to the laws and disposition of public lands.¹¹

H. R. 12104 died in Committee.

11. Congressional Record: Containing the Proceedings and Debates of the 2d Session of the 50th Congress (Washington, 1884), Vol. 20, p. 756.

F. The Bureau Seeks to Protect the Indians

1. House Passes H. R. 1176

On December 18, 1889, and on January 27, 1890, companion bills were dropped into the House and Senate hoppers. H. R. 113 and S.2297 provided, simply and without mention of allotments, that "all of the lands in what was the Klamath River Reservation" are "declared to be subject to settlement entry, and purchase" under the land laws.¹²

These bills were opposed by the Bureau of Indian Affairs, and Commissioner T. J. Morgan recommended to Secretary of the Interior John W. Noble that these bills be amended to provide for allotments to the Indians under the General Allotment Act. Surplus unallotted lands were to be restored to the public domain and the monies from the disposal of these lands to be placed to the credit of the Yuroks. With such a provision for allotments, the Bureau would not object to sale of the excess acreage. Without it, the Bureau would "strenuously oppose any measure looking to the opening of the lands of said reservation to

12. Congressional Record: The Proceedings and Debates of the 1st Session, 51st Congress (Washington, 1889), Vol. XXI, pp. 229, 855.

settlement or sale that did not secure to the Indians permanent title to their homes, which can best be done by allotting lands in severalty to them" as previously recommended.¹³

Amendment of H. R. 113, as urged by the Bureau, was rejected by the House Committee on Indian Affairs. On April 1, the committee reported H. R. 113, with an amendment providing that the Klamath River Reservation Indians be removed to the Hoopa Valley Reservation and there be allotted land. Proceeds from sale of the former reservation would be deposited in a fund to be employed by the Secretary of the Interior for the "removal, maintenance, and education" of the Indians residing on these lands and their children.

The bill, now designated H. R. 1176, passed the House on September 29, 1890, and in the Senate was referred to the Committee on Indian Affairs. The Senate took no action on either version of the bill.¹⁴

13. Morgan to Secretary of the Interior Jan. 7, 1891, NA, RG 75, Ltrs. Sent, 1870-1908, Doc. 1891/407.

14. Congressional Record, 1st Session of the 51st Congress, pp. 10702, 10740

2. Commissioner Morgan Suggests Extension of Hoopa Valley Reservation

Passage by the House of a bill rejecting allotment and calling for public sale galvanized the Department of the Interior into action. On December 23, 1890, Secretary of the Interior Noble suggested to Commissioner Morgan that he "consider the question whether a reservation should not be made for the Klamath River Indians," and if so Morgan was to prepare a boundary description and orders for that purpose.¹⁵

On January 7, 1891, Commissioner Morgan responded. He reviewed for the Secretary the establishment of the four reservations under the act of April 8, 1864, and questioned whether four reservations had been established under that act. On doing so, he noted that the Smith River Reservation was intended to be only temporary, while the Tule River Reservation was leased and not set apart under that act. He implied that, contrary to the premise of the court decision in the Rising Star Tea case, the President had not exhausted his authority under the 1864 act to establish four reservations in California.

15. Noble to Morgan, Dec. 23, 1890, NA, Office of the Secretary of the Interior, Indian Division, Ltrs. Sent, 1849-1903, Microcopy M-606.

Morgan likewise reviewed the proposed legislation to sell the Klamath River Reservation lands, and the opposition of the Department of the Interior to the bill unless it was amended to provide first for allotments of lands thereon to the Indians in severalty. He championed the enactment of legislation favored by the Department of the Interior for allotment of lands to resident Indians and the sale of surplus acreage, the proceeds to be used for benefit of the Indians.

Turning to non-reservation Yuroks, living on the Klamath between the Hoopa Valley and Klamath River Reservation, Morgan called attention to Special Agent Paris H. Folsom's June 1885 report recommending that the connecting strip between the subject reservations be reserved for Indian occupation.

He concluded by noting that he was not ready to recommend establishment of a new reservation, unless it became "expedient to extend the Hoopa Valley reservation so as to include lands on both sides of the Klamath River, two miles in width on each side, from that reservation to the mouth of the river."¹⁶

16. Morgan to Noble, Jan. 7, 1891, NA, RG 75, Ltrs. Sent, 1870-1908, Doc. 1891/417.

G. Bureau Finds Rationale for Reservation Extension

1. Porter Calls Attention to the Canyon Yuroks

More than six years before, on August 1, 1884, Capt. Charles Porter, acting agent for the Hoopa Valley Reservation, had called the Bureau's attention to the situation of the Canyon Yuroks, residing in villages along the Klamath, between the Hoopa and Klamath River Reservations. In numbers, they were "quite strong," and, though well armed, they were not supervised. They had adopted the white man's clothing, but were not well supplied "with this world's goods." Though they worked on occasions for whites, they looked to hunting and fishing for their subsistence.

Porter feared that a sudden change in their conditions or prospects might make these people of the wild canyon "aggressively hostile." Such a circumstance could be triggered by the abandonment of the Klamath River Reservation and the ensuing influx of whites. "Should the salmon-run on the Upper Klamath be sensibly diminished by the fisheries at its mouth," Porter warned, "and should white men, disappointed, as they will be, with the

resources of the abandoned reservation, crowd into the adjoining lands," the Canyon Yuroks might be goaded into going to war.¹⁷

2. Special Agent Folsom's Reconnaissance

Alerted to the situation of the Canyon Yuroks by Acting Agent Porter's communication, the Commissioner of Indian Affairs named Paris H. Folsom to undertake to investigate and report on these people's living conditions and needs. Folsom visited the canyon in June 1885, and found that nature had done her best

to fashion a perfect paradise for these Indians, and to repel the approach of the white man. She filled the mouth of the Klamath River with a sand-bar and huge rocks, rendering ordinary navigation impossible, and pitched the mountains on either side into such steep and amazing confusion that the river has a hard struggle to drive its way through the wonderful gorges The banks and hills shoot up abruptly from the river in jauntily irregularity, as if formed solely for the capricious life and limited aspirations of the Indians. Tremendous boweders and cragged points jut into the river and change its course, forming innumerable eddies and back currents, where salmon seek rest, to be taken in large numbers by means of Indian nets. No level land . . . is to be found here. I presume if the most level spot along the river was cleared of trees and scrub growth it would scarcely measure 5 acres.¹⁸

17. Porter to Commissioner of Indian Affairs, Aug. 1, 1884, found in Executive Documents, Serial 2287, p. 55.

18. Folsom to Commissioner of Indian Affairs, June 25, 1885, found in Executive Documents, Serial 2613, p. 7.

The Canyon Yuroks, Folsom observed, formed a "respectable peasantry," supporting themselves without a dole from the government by "fishing, hunting, raising a little stock, cultivating patches of soil, and by day's labor at the Arcata lumber-mills." Their villages were perched on mountain sides, well above flood level.

Nearly all the men and most of the women spoke English. The older men kept the nets in order and fished; the women dressed and dried fish, gathered acorns, and fetched wood and water; and the men, besides working periodically for whites, looked after their hogs and horses. Most of the Indians had small gardens, in which they grew potatoes, beans, corn, etc.

Folsom searched in vain

for war-paint and formation of lines on the war-path; heard no mutterings of revenge, no "blood sign on the moon," no indication of disturbance or attempts to settle difficulties by their own hands; no withdrawal from their peaceful pursuits or neglect of their meager crops and resources to gather in bands or agitate their grievances.¹⁹

19. Ibid., pp. 7-8.

Turning to the question before the Bureau, "Shall these Indians be allowed to remain here or be removed?" Folsom noted that pending legislation (H. R. 7505) "contemplates . . . the possession of land by Indians where improvements have been made of any value whatever." With respect to the Canyon Yuroks, this could be answered in the affirmative. There were, he pointed out, fisheries, delineated by staging for supporting the fishermen and their nets, which dotted the river. Their dwellings were permanent, and the Indians wished to continue to live on the Klamath, a home that was dear to them.

There were 14 villages, averaging about one and a half miles apart. These villages, beginning with the lower boundary of the Hoopa Valley Reservation and going downstream to the upper limit of the Klamath River Reservation, were:

<u>Name</u>	<u>Side of River</u>	<u>Male Inhabitants 20 or Older</u>
Witch-peck	Right	39
Wah-sook	Right	20
Kay-neck	Left	4
Kay-neckie-ko	Right	3

Cappel	Left	12
Moo-ruck	Right	10
Hayk-meek	Right	2
Nata-koo	Left	7
Met-tah	Left	13
Shrayq-ron	Right	13
Sock-ter	Left	5
Peck-wan	Right	33
Cot-tep	Right	17
Wah-tek	Right	<u>30</u>
Total		217 ²⁰

3. Folsom's Recommendations

To insure the peace, Folsom recommended that: (a) a tract, a parallelogram 2 miles wide, taking in the Klamath River from the Hoopa Valley Reservation to the Klamath River Reservation, be set aside and appropriated for use and possession of the non-reservation Indians; (b) all squatters be removed; and (c) "any homesteads entered upon or taken within these borders be yielded up under the prior right and possession of the Indians." All improvements, where entries had been made, were to be paid for by the United States.

20. Ibid., p. 9.

Lands set apart for the Indians would be surveyed and staked off in 100acre lots. These lots were to be subject to occupation and "final possession" of the Indians, upon certain improvements being made, under such restrictions and regulations as may be established by the Secretary of the Interior.

Folsom also urged that these latter provisions be extended to the Indians of the Klamath River Reservation, "and that the lower and remaining portion of that reservation be thrown again with the public lands," provided "security and protection to the fisheries of the Indians above the mouth of the Klamath River," was afforded.²¹

H. Assistant Attorney General Shields' Opinion

Before taking action on Commissioner Morgan's recommendations, Secretary of the Interior Noble sought the opinion of George H. Shields, an assistant attorney general, assigned to the Department. On doing so, Shields considered three questions, whether: (a) the Department "is authorized to cause the removal of intruders from the said reservation"; (b) "the lands within the limits of said reservation can be allotted to the

21. Ibid., pp. 10-11.

Indians living upon them, as reservation Indians, or under the legislation providing for allotments to non-reservation Indians", and (c) "the Hoopa Valley Reservation may not 'be legally extended so as to cover the ground of the Klamath Reservation.'"

Shields, upon reviewing the establishment of the various reservations under the act of April 8, 1864, stressed that the reservations had been created of noncontiguous parcels and by orders and successive orders and the setting aside of substituted lands as reservations. This led to the conclusion that: (a) no formal order of the President was deemed necessary, retaining an existing reservation, but the Tule River Reservation's "actual retention by the officers of the Indian Bureau was sufficient to constitute it one of the four authorized reservations"; (b) "contiguity was not an essential, but a reservation might be composed of several noncontiguous parcels [the Mission Reservation for example]"; and (c) the President, in that respect, had not exhausted his authority in setting apart the "four tracts" as reservations.²²

22. Shields to Secretary of the Interior, Jan. 20, 1891, NA, RG 48, Records of the Office of the Assistant Attorney General, 1890-1909.

Attorney Shields next identified five "special circumstances" documenting his opinion that the Department had retained the Klamath Reservation under the Act of April 8, 1864, and that it was part of the Hoopa Valley Reservation. These were: (a) Superintendent Wiley's letter of January 19, 1865, to Commissioner Dole, referring to Wiley's intention to extend the Hoopa Valley Reservation to include the Klamath River Reservation. (b) Commissioner E. A. Hayt's letters to the Secretary of the Interior of August 14, 1877, and March 8, 1878, stating that, when the Wau-Kell agency was moved from the Klamath to Smith River, in 1862, and the Indians, except one band, refused to relocate, "it was not deemed advisable to recommend its [the reservations] restoration to the public domain." (c) The Secretary's statement, in his annual report for fiscal year 1888, that "Indians have continued to reside on the Klamath River lands, and those lands have been and are treated as in a state of reservation for Indian purposes, the jurisdiction is under the U. S. Indian agent for the Hoopa Valley agency." (d) The rejection by the Commissioner of R. D. Hume's 1883 proposal to lease the Klamath River salmon fisheries by the statement that "the reservation is still in a state of Indian reservation,

and must so remain"; and (e) the circumstances of the Secretary's 1883 approval of a recommendation that allotments be made to the Indians of the Klamath River Reservation.²³

On the basis of these documents, Shields concluded that the Klamath Indian Reservation was part of the Hoopa Valley Reservation, one of the four reserves authorized by the act of 1864, and accordingly intruders could be expelled therefrom.

Focusing on the opinion of the district court in the Rising Star Tea case, which Shields recognized as contrary to his views, he pronounced it a dictum. Moreover, he had no quarrel with the decision, because the Klamath was a navigable waterway from which fishermen could not be excluded.

The principal reason underlying the district court's opinion, Shields held, was the absence of an executive order setting aside the Klamath River Reservation as part of the Hoopa Valley Reservation, an omission which could be easily rectified by such an order.²⁴

I. President Harrison's October 16, 1891, Executive Order

On January 21, 1891, the Secretary accordingly asked the Commissioner of Indian Affairs to prepare the necessary

23. Ibid.

24. Ibid.

order for extension of the Hoopa Valley Reservation.²⁵

Acting Commissioner R. V. Belt delayed responding to the Secretary's request until May 5, because the Senate was considering a bill for disposition of the Klamath River Reservation, which it was thought might become law with amendments satisfactory to the Department. When he replied, Belt transmitted to the Secretary a draft of an executive order extending the Hoopa Valley Reservation to include a tract 1 mile in width on each side of the Klamath River from the present boundary to the Pacific²⁶

Some five months later, on October 12, 1891, Secretary Noble transmitted to President Benjamin Harrison, requesting his signature, a draft of the subject executive order. Among the enclosures was Assistant Attorney General Shields' opinion, which Secretary Noble wrote, traced the history of the reservation and "the reason for the issuance of the order in the premises."²⁷

On October 16, President Harrison signed the executive order.

It read:

25. Noble to Commissioner of Indian Affairs, Jan. 21, 1891, Office of the Secretary of the Interior, Indian Division, Ltrs. Sent, 1849-1903, Microcopy M-606.

26. Belt to Secretary of the Interior, May 5, 1891, NA, RG 75, Ltrs. Sent, 1870-1908, Doc. 1891/10596.

27. Noble to Harrison, Oct. 12, 1891, Office of the Secretary of the Interior, Indian Division, Ltrs. Sent, 1849-1903, Microcopy M-606.

EXECUTIVE MANSION,

October 16, 1891.

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

BENJ. HARRISON.²⁸

28. Kappler, Indian Affairs: Laws and Treaties, Vol. 1, p. 815.

XII. OPENING THE KLAMATH RIVER RESERVATION TO SETTLEMENT

A. President Harrison Signs the Act of June 17, 1892

Congressional advocates of the public sale of the Klamath River Reservation and their constituents were not intimidated by President Harrison's October 16, 1891, executive order. On January 5, 1892, Representative Thomas J. Geary of California introduced into the 1st Session of the 52d Congress H. R. 38, declaring that all lands embraced in "what was the Klamath River Reservation" were to be subject to settlement, entry, and purchase with a proviso that the proceeds of the sale should constitute a fund to be used by the Secretary for the "removal, maintenance and education of the resident Indians."¹

The House Committee on Indian Affairs, to whom the bill was referred, reported it with an amendment changing the aforementioned phrase to read "removal, maintenance or education." The committee held that the reservation had been abandoned and that it was useless to allot any of its lands to the resident Indians, estimated to number from 50 to 100, because they were "semicivilized, disinclined to labor, and have no conception

1. Congressional Record: Containing the Proceedings and Debates of the 1st Session of the 52d Congress (Washington, 1892), Vol. XXIII, p. 125.

of land values or desire to cultivate the soil." That even if it were advantageous to allot lands to such Indians, the subject reservation lands were unsuitable, "being alone valuable for lumbering, for mining, and stock-raising," whereas the nearby Hoopa Valley Reservation was adapted for allotments. Finally, while the Yuroks had not been supervised by the United States since the winter of 1861-62, the government might, in the future, desire to do so, and for this purpose proceeds from the land sales would constitute a fund for their removal, maintenance, and education.²

No mention was made in the report or in the House debates of any extension of the Hoopa Valley Reservation to include the Klamath River Reservation, of President Harrison's October 16, 1891, Executive Order, or of any recent change in status of the Klamath River Reservation.³

The bill as reported passed the House on March 1,⁴ but in the Senate was stricken and another version substituted, so as to delete the reference to removal of the Indians and to provide

2. Report of Committees of the House of Representatives of the 1st Session of the 52d Congress, 1891-92 (Washington, 1892), Serial 3042, Rpt. 161, pp. 1-2.

3. Congressional Record, 1st Session of the 52d Congress, Vol. XXIII, p. 1599.

4. Ibid., pp. 1598-99.

that, before public sale, the lands be allotted under the General Allotment Act of 1887, as amended. The Senate Committee on Indian Affairs, in doing this, adhered to the recommendation of the Secretary of the Interior "to draw the bill as reported."⁵ As amended, the bill (H. R. 38) passed both House and Senate and was signed into law by President Harrison on June 17, 1892.

The act declared the reservation, as established by President Pierce's executive order of November 16, 1855, open "to settlement, entry, and purchase under the laws of the United States granting homestead rights," provided:

That any Indian now located upon said reservation may, at any time within one year from the passage of this act, apply to the Secretary of the Interior for an allotment of land for himself and, if the head of a family, for the members of his family, under the provisions of the act of February eighth, eighteen hundred and eight-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and, if found entitled thereto, shall have the same allotted as provided in said act. . . . Provided, that lands settled, improved, and now occupied by . . . qualified persons under the land laws shall be exempt from such allotment unless one or more of said Indians have resided upon said tract in good faith for four months prior to the passage of this act and the Secretary of the Interior may reserve from settlement, entry, or purchase any tract or tracts of

5. Ibid., p. 3918; Miscellaneous Documents of the Senate of the United States for the 1st Session of the 52d Congress, 1891-92 (Washington, 1892), Serial 2907, Rpt. 153, p. 1.

land upon which any village or settlement of Indians is now located, and may set apart the same for the permanent use and occupation of the said village or settlement of Indians.

And any person entitled to the benefits of the homestead laws of the United States who had in good faith prior to the passage of this act, made actual settlement upon any lands on the same reservation not allotted under the foregoing proviso and not reserved for the permanent use and occupation of any village or settlement of Indians, with the intent to enter the same under the homestead law shall have the preferred right, at the expiration of said period of one year to enter and acquire title to the land so settled upon, not exceeding one hundred and sixty acres, upon the payment therefor of one dollar and twenty-five cents per acre.

Proceeds from the sale of the reserve were to be paid into a fund to be used by the Secretary of the Interior for "the maintenance and education" of the Yuroks.⁶

B. Steps are Taken Toward Making Allotments

Some three months after passage of the act of June 17, 1892, the question of inaugurating measures to make the prerequisite allotments on the former Klamath River Reservation and Connecting Strip was taken up by senior Department of the Interior officials. Instructions to guide the allotment agent were prepared by Acting Commissioner of Indians Affairs Belt and submitted to Secretary of the Interior Noble.

Then, on September 29, Noble called President Harrison's attention to Belt's report and requested authority to make the

6. The Statutes at Large of the United States of America from December 1891, to March, 1893, and Recent Treaties, Conventions, and Executive Proclamations . . . (Washington, 1893), Vol. XXVII, pp. 52-3.

mandated allotments. According to Commissioner Belt, not more than "forty allotments will be claimed by Indians who are resident on the original Klamath River Reservation," while 475 Indians resided on the Connecting Strip. Noble agreed with Belt that, when lands were allotted under the act of June 17, 1892, they should also be made to Indians on the Strip. He accordingly recommended that authority be granted for allotments in severalty under the act of February 8, 1887, as amended by the act of February 28, 1891, to the Indians of the Strip, except that portion embraced within the original Klamath River Reservation on which allotments were authorized by the act of February 8, 1887.⁷

On September 30, 1892, President Harrison approved the proposal, and one week later Secretary Noble named Ambrose H. Hill "to make these allotments and also the allotments on the original Klamath River Reservation." Special Agent Hill's instructions, besides providing procedural rules, informed him that each and every Indian on the Klamath River Reservation

7. Noble to Harrison, Sept. 29, 1892, NA, Office of the Secretary of the Interior, Indian Division, Ltrs. Sent, 1849-1903, Microcopy M-606.

is "entitled to 80 acres of agricultural land, or a double quantity of grazing land. No Indian is entitled to an allotment unless he was located on said reservation" on June 17, 1892.⁸

8. Belt to Hill, Sept. 23, 1892, NA, RG 75, Ltrs. Sent, 1890-1908, Doc. 1892/25287. Chizuka Toda to Acting Chief, Coordinating Staff, July 29, 1954, files Hoopa Valley Indian Reservation (cited hereinafter as files HVIR). Hill's instructions read:

1. The allotments are to be made under the Act of February 8, 1887, "or any act amendatory thereof." Said act has been amended by the act of February 28, 1891. Under the former act as amended by the latter, each and every Indian located on the reservation, [Original Klamath River] is entitled to 80 acres of agricultural land, or a double quantity of grazing land. No Indian is entitled to an allotment unless he was located on said reservation on the 17th of June, 1892.
2. You will allow the Indians to select their lands, each male head of a family selecting for himself, his wife, and minor children, and each female head selecting for herself and minor children.
3. Selections for orphans will be made by yourself and the Agent in charge of the Hoopa Valley Agency.
4. Every allotment should be distinctly marked and each allottee of sufficient age should be personally shown the boundaries of the allotment selected by him, so that he will understand exactly where the land selected by him lies, and every possible means should be taken to familiarize him with his boundary lines.
5. The tracts given to each allottee should ordinarily be contiguous, but he may be allowed to select detached tracts if necessary in order to give him a proper proportion of wood and water privileges. Forty-acre tracts of agricultural land may be divided into fractional parts of 20, 10, 5, or 2 1/2 acres, if necessary, to secure each family or single adult a due proportion of agricultural land.
6. Each Indian should be allowed to select his land so as to retain any improvements made by him. Where the improvements of two or more Indians are located on the same legal subdivision, a provisional line should be run dividing the land between them as provided in Section two of the Act of February 8, 1887, unless an arrangement can be made between them by which the tract can be given to one of them. Such arrangements, however, must be satisfactory to all the parties.
7. Your attention is called to the provision of the Act of June 17, 1892, which exempts lands settled upon, improved, and then occupied by settlers in good faith, from allotments, unless one or more Indians have resided upon such tract for four months prior the the passage of the Act.
8. White husbands of Indian women are not entitled to allotments unless regularly adopted.

9. In all cases where Indian women have been married to Indian husbands and have children born of such marriage and have been divorced from their husbands after the Indian custom, the mother should be allowed to select land for her minor children not under the charge of the father at the date of these instructions, if competent to do so.

10. As soon as you have completed the allotments on the original Klamath River Reservation you will prepare a schedule of the same, each family being grouped by itself, and the relationship of each member to the head, shown in the column of remarks.

C. The Hill/Turpin Allotments

Hill spent the autumn of 1892 and the winter of 1892-93 on the reservation. On February 13, 1893, he submitted a schedule approved on August 11, 1893, listing 161 tracts of "lands allotted to Indians located on the Original Klamath River Reservation." The subject allotments varied greatly in size, from 8 to 160 acres, averaging 60 acres for a total of 9,762 acres. Of the allottees, two were known to be Hupas, who had lived on the subject reservation for many years before the executive order of October 16, 1891.

By the end of January 1894, when Charles W. Turpin replaced Hill as special agent, the "allotments" on the Klamath River Reservation had "all been made and approved." When he submitted his annual report for fiscal year 1894, Superintendent Dougherty wrote, "Seven hundred and forty-four allotments have been made to date from the mouth of the Klamath to the mouth of the Trinity, and 125 patents have been received of which 72 have been delivered to the patentee. The land allotted can never be used for agriculture, but the allotment secures the Indians in the tenure of their homes."⁹

9. Jessie Short et al. v. the United States, in the United States Court of Claims, No. 102-63, May 22, 1972, files HVIR; Dougherty to Commissioner of Indian Affairs, Aug. 20, 1894, found in Executive Documents of the House of Representatives for the 3d Session of the 53d Congress, 1894-95 (Washington, 1895), Serial 3306, p. 117. Hill had resigned because of ill health.

Coincidentally, Dougherty reported, that many white settlers, some of whom have been here for more than a score of years, were living among the Yuroks. These settlers and the Yuroks had "generally intermarried, so a considerable part of the Lower Klamath population" was mixed blood. Some of the mixed bloods were well educated, and "many of the families of those who are longest established there have amassed wealth and property." The Yuroks who had not intermarried with the whites were generally "poor and lead a hand-to-mouth life, subsisting chiefly on salmon."

The only arable land occupied by the Yuroks was on the flats along the river in tracts of a few acres or less. These were generally cultivated as gardens.¹⁰

D. Initial Township 13 North Allotments and Entries

The Indian allotments made, non-Indians prepared to make their entries. Information that lands on the former reservation would soon be available to those interested in acquiring a homestead was carried by the Del Norte Record in April 1894.

The announcement read:

10. Dougherty to Commissioner, Aug. 20, 1894, found in Executive Documents, Serial 3306, p. 117.

To Whom it may Concern

The Klamath Indian Reservation opened

May 21, 1894, a.m. Now prepared

to receive applications for homesteads.¹¹

The lower reaches of the Klamath River Reservation embraced Township 13 North, Range 1 East, Humboldt Meridan, particularly Sections 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, and 16. (See map accompanying this report titled "Map of the Original Klamath River Reservation, Cal.") By February 13, 1893, the Indian allotments in these sections had been entered and by mid-August had been approved.¹² Initial entries by non-Indians in these sections were made at the Eureka Land Office in the summer of 1894.

1. Section 3

In Section 3, the only Indian allotment was to Sara Norris, and consisted of 40 acres in the southwest quarter. The remainder of the section, excepting the northwest quarter of the southwest quarter, on Spruce Creek, segregated as swamp land by the surveyor-general, was entered on by non-Indians-- Sara L. Smith (154.97 acres), Edward B. Schnaubelt (75.69 acres), and Mary J. Duffy (156.12 acres)--in the months between August and October 1894.¹³

11. McBeth, Lower Klamath Country, p. 48.

12. California Tract Book, Vol. 222, Humboldt Meridian, pp. 145-49, WNRC, RG 49.

13. Ibid., p. 145; "Map of the Original Klamath River Reservation, Cal.," NA. RG 75. Map #1418.

2. Section 4

These Indians (Kitty Waneich, Joseph Edwards, Kitty Ginson, Susan Jack, James Ginson, George Malach, Mrs. George Malach, and Bessy Safford) received allotments in Section 4, varying in size from 1.40 to 11 acres. Non-Indians securing land in the section were: William T. Bailey, Patrick Feheley, and Fred P. Barrow. On May 1, 1890, the former had preempted the 46.06-acre tract on which he filed for a homestead in mid-May, four years later. The land involved included Lot 7 in Section 5 and a tract in Section 4--Lot 5. The latter began at a point 70 chains south of the northwest corner of Section 4, then east 10 chains, then south 2 chains, then east 7 chains, then south 7 chains to right bank of river, then down the Klamath to a point 4 chains and 60 links south of the place of beginning, and then north to the place of beginning. On this lot Bailey had built a house and had planted an orchard. To secure title to his homestead, Bailey paid the clerk at the Eureka Land Office \$57.58.¹⁴

Patrick Feheley, who had settled on Lots 3 and 4 (82.49 acres) in June 1885, secured title to these tracts in April 1898 under the Homestead Act. Fred P. Barrow acquired title to 133 acres on June 7, 1894.¹⁵

14. Humboldt California, Klamath River Indian Reservation, Cash Certificates, WNRC, RG 49; "Map of the Original Klamath River Reservation, Cal."

15. Ibid.

In addition, the surveyor-general segregated as swamp lands, the northeast quarter of the northeast quarter and the southeast quarter of the northeast quarter and Lot Nos. 2, 7, 8, 9, and 13 of Section 4. The subject lands fronted on Hunter Creek.¹⁶

3. Section 5

Indian allotments accounted for all land in Section 5, excepting Lots 2, 3, and 7. Lot 2 was purchased by Hume Mercantile, Lot 3 was homesteaded by Lewis J. Lockwood, and Lot 7 by William T. Bailey. Lockwood, who neglected to file until July 1903, had been living on this property since 1886. Indians holding allotments in this section were: Paca Spott (10.76 acres), Captain Spott (10.76 acres), John Requa (15 acres), Alice Frank (10 acres), Joseph Requa (21.18 acres), Cahtipeson Requa (21.17 acres), William Johnson (8.65 acres), and Peter Thomas (8.66 acres). In addition, the village of Requa encompassed 19.94 acres of reserved lands.¹⁷

16. California Tract Book, Vol. 222, Humboldt Meridian, p. 146, WNRC, RG 49; "Map of the Original Klamath River Reservation, Cal."

17. Ibid.; Humboldt California, Klamath River Indian Reservation, Cash Certificates, WNRC, RG 49.

4. Section 6

Section 6 was Pacific Ocean, except 31.55 acres entered on by Frank B. Lockwood, a non-Indian, on December 22, 1910.¹⁸

5. Section 8

A number of Indian allotments were made in Section 8, fronting on the Klamath bar. These were entered in the names of Sally Williams (4.50 acres), Emila Cooper (10 acres), Lucinda Cooper (10 acres), Daisey Williams (5.70 acres), John Shortman (15.20 acres), and Charles Williams (19.31 acres). Lot No. 1 of 34.99 acres was segregated by the surveyor-general as swamp land, while two non-Indians--Thomas Keenan and Hannah Watson--purchased from the Eureka Land Office two tracts. The latter's tract was the south one-half of the southeast quarter (80 acres) and the former's the southeast one-fourth of the southeast one-fourth and part of Lot No. 2 (94.16 acres).¹⁹

6. Section 9

William Norris' 122.19-acre allotment was the only Indian entry in Section 9. Two non-Indians--Charles Fortain and

18. California Tract Book, Vol. 222, Humboldt Meridian, p. 146, WNRC, RG 49.

19. Ibid., p. 147; "Map of the Original Klamath River Reservation, Cal."

William C. Harris--each secured 80-acre tracts in the subject section in the mid-1890s. Then, on February 13, 1901, the surveyor-general segregated Lot Nos. 1, 2, 3, 4, and 5 as swamp land.²⁰

7. Section 10

Only one Indian allotment was made in Section 10. On February 13, 1893, Rosa Jack Hoppell selected a 5.37-acre tract, a part of Lot No. 11. Non-Indians purchasing lands in the section were: Henry P. Schnubelt (160 acres), Phineas D. Holcomb (138.63 acres), Robert M. Nixon (13.98 acres), Joseph B. Otto (166.23 acres), and Mattie C. Otto (144.94 acres). Lot Nos. 3, 4, 5, 7, 8, and 11 (160.11 acres) were segregated as swamp land by the surveyor-general.²¹

8. Section 11

On February 13, 1893, allotments were made to these Indians in Section 11: James Williams (40 acres), Peter Williams (80 acres), Michael Beh-Tah (80 acres), Josie Williams (20 acres), and Anna Hodge (80 acres). Non-Indians Charles Wagner purchased on August 8, 1894, 160 acres and William F. Stout on June 11, 1897, 130 acres in the subject section.²²

20. California Tract Book, Vol. 222, Humboldt Meridian, p. 147.

21. Ibid., p. 148.

22. Ibid.

9. Section 12

Seven Indians received allotments in Section 12. They were: Lawrence Jackson (40 acres), Mary Jackson (80 acres), William Norris (80 acres), Adelia Norris (80 acres), Jefferson Davis George (40 acres), Harry George (20 acres), and John Malach (50.95 acres). Non-Indians Hermine M. George purchased from the Eureka Land Office on February 24, 1900, a 40-acre tract and Andrew Jackson on October 17, 1894, a 120-acre tract.²³

10. Section 13

Five Indians received allotments in Section 13. John Riley entered on 60 acres; Joseph Redwood, 16.57 acres; Sally George, 6 acres; Mary Redwood, 4.73 acres; and Jennie Waukell 85.34 acres. Non-Indians Andrew Jackson on July 5, 1895, purchased 60 acres and on November 7, 1895, William Mellon bought from the Eureka Land Office 139.37 acres. Then, on October 21, 1939, Secretary of the Interior Harold L. Ickes reserved as an Indian rancheria the north one-half of the southwest quarter and Lots Nos. 9 and 10.²⁴

23. Ibid.

24. Ibid., p. 149.

11. Section 14

On February 13, 1893, allotments were made in Section 14 for these Indians: James Jack Hoppell, 59.08 acres; Fannie Williams, 35.18 acres, and Nettie Waukell, 63.93 acres. A 8.50-acre tract was also set aside for the village of Hoppaw. Non-Indians purchasing land in this section were Henry K. Pilgrim, 160 acres, on August 21, 1894; Ferdinand Trustman, 25.55 acres, on August 6, 1900; Asa Nye, 26.55 acres, on November 14, 1905; and Wilhelm Crone, 24.55 acres, on January 31, 1911. On October 21, 1939, Secretary Ickes reserved the south quarter of the southeast quarter, the northeast quarter of the southeast quarter, the south quarter of the southeast quarter, the southeast quarter of the southwest quarter, and Lot No. 6 as an Indian rancheria.²⁵

12. Section 15

Section 15 embraced two Indian allotments--Billy Williams' of 92.48 acres and Jack Hoppell's of 80.08 acres. Non-Indian entries were recorded by John G. Sherman, 160 acres, dated May 18, 1893; Lucy L. Ewing, 133.51 acres, August 14, 1894; Peter

25. Ibid.

Johnson, 160 acres, May 12, 1896; and George E. Jamer, 41.41 acres, March 16, 1897. In addition, the surveyor-general segregated the northeast quarter of the northeast quarter as swamp land.²⁶

13. Section 16

No Indian allotments were recorded in section 16. On that part of the section formerly included in the Klamath Indian Reservation, these non-Indians made purchases: George W. Pierce the north one-half of the northwest quarter and the southeast quarter of the northwest quarter (120 acres) on February 23, 1897; Inez B. Luther the northwest quarter of the northeast quarter and the south one-half of the northeast quarter (120 acres) on February 10, 1897; and Frank Luther the southeast quarter (160 acres) on February 10, 1897.²⁷

Today, land held in trust in the subject sections has shrunk from 66 to 8 allotments. These allotments were entered in the names of:

26. Ibid.

27. Ibid., p. 150.

<u>No. of Allotment</u>	<u>Section</u>	<u>To Whom Made</u>	<u>Date</u>
1	5	Captain Spott (Wettawah)	2/13/93
2	5	Paca Spott (Tenowah)	2/13/93
12	4	James Ginson	2/13/93
13	4	Kitty Ginson	2/13/93
14	4	George Mahach	2/13/93
15	4	Mrs. George Mahach	2/13/93
*16	4	William T. Bailey	3/28/94
18	4	Kitty Waneich	2/13/93

* cancelled March 20, 1917.

It is impossible to determine, without additional travel from Washington to Hoopa, the current ownership status of the other 58 Indian allotments in these sections.²⁸

28. Ibid., p. 146; telephone interview, Barbara Ferris with Bearss, July 30, 1981.

XIII. DEVELOPMENT OF OCEAN COMMERCIAL FISHING FOR SALMON

A. Origin and Expansion: 1880-1949

In the early 1880s, ocean trolling for salmon off the California coast began in Monterey Bay. Commercially this form of fishing was of little consequence until the late 1890s.

About 1898, mild curing of salmon commenced and acted as a stimulus to the ocean fisheries. This early trolling was done from small sail boats rigged with leg-o-mutton sails. About 1908, the Sacramento River gill netters began using powerboats, and many of these fishermen took their craft in to Monterey Bay to troll for salmon in the summer. These power gill netters were a big improvement over the boats which had been previously in use, but they would be regarded as too small for trolling as practiced by the 1930s and 40s.¹

By 1914, troll fishing had spread from Monterey Bay north to Point Reyes. In 1916, boats tested the area off Fort Bragg and Shelter Cove and there was some trolling out of Eureka and Crescent City.

1. Donald H. Fry, Jr., "The Commercial Fish Catch of California for the Year 1947 with an Historical Review, 1916-1947," California Division of Fish and Game, Bulletin No. 74 (Sacramento, 1950), pp. 41-42; California's Living Marine Resources and their Utilization, edited by Herbert W. Frey (Sacramento, 1971), p. 43.

The most popular size ocean trollers by 1937 were from 28 to 30 feet, and about 90 percent of the boats were between 24 and 40 feet in length. By 1947, the most common sizes were still 28 and 30 feet, but craft 32 to 45 feet in length were more popular than ten years before. The number of trollers had coincidentally increased, and, in 1947, more than 1,100 boats landed ocean-caught salmon, and of these 876 put ashore more than 1,000 pounds each. This was nearly double the 570 trollers operating off the California coast in the mid-1930s.²

B. Mechanization of the Troller

A typical troller of the 1920s and early 1930s was a hand operator, usually employing two or four trolling poles and could fish as many as nine lines. Some of these lines might have four or more hooks, and as much as 30 pounds of lead to keep the hooks at a proper depth. When the salmon were feeding, the one or two men on the troller had an exhausting task. By the late 1930s, most trollers had mechanized their equipment and let the engine handle the back-breaking work of lifting the fish and lead to the surface.

2. Fry, "Commercial Fish Catch in California," Fish and Game Bulletin No. 74, p. 43.

Most boats by the late 1940s, employed four poles and fished six lines. Four hooks per line was usual. This was fewer lines and hooks than many of the hand pullers employed, but power pulling was so much faster that no more were needed. Fishermen now took less time to get fish on board and the lines trolling again, and spent less time battling fighting salmon.

Key to a typical power pulling rig was a set of six small gurdies. These were mounted three on a shaft, one shaft for the port and the other for the starboard. Each gurdy was equipped with a clutch and brake. The line was stranded stainless steel 1/16-inch in diameter. A single sinker, perhaps weighing as much as 50 pounds, was attached to the end of the line. Hooks were secured to leaders and each leader was snapped onto the line. Small "stoppers" fastened to the lines kept the snaps from sliding. Lures employed included spoons, wooden plugs, and sardines.

When a salmon struck, the fisherman engaged the clutch of gurdy and wound in the line. When a hook surfaced, he un-snapped it unless the salmon was on the hook, and permitted the gurdy to wind until the fish surfaced. If the salmon were

of legal size, the fisherman usually hit it on the head with a combination gaff-club, then gaffed it in the head, and lifted it aboard. Fish of questionable legal size were measured and the small ones released. Methods of release varied and were controversial. Some methods were comparatively easy on the fish, other probably killed more than they saved.³

C. Technological Advances of the 1930s and 1940s

The transition from hand to power pulling was slow. In 1931, a Seattle firm started marketing power gurdies, but more than a decade passed before such equipment reached the California fisheries in any quantity. During the 1930s, some California fishermen employed home-built equipment to apply power to their lines, but, by 1941, the majority of California fishermen were still pulling by hand. About 1943, factory-made gurdies and steel lines began appearing, and by the end of World War II the change to power encompassed most of the larger craft and full-time operators.

A second technological advance, which in the mid-1940s, greatly increased the efficiency of the trolling fleets was radio-telephone. About 1944, some trollers began using radio

3. Ibid., pp. 43-4.

and by 1946 most of them had sets. Formerly, when a fisherman encountered a salmon school, there might be a lapse of days before most of the fleet learned of it. Now the interval could be only a matter of minutes. Fishermen, formerly very secretive about the whereabouts of schools of salmon, now went to the other extreme.⁴

D. Dr. Snyder's 1930 Evaluation of Trolling

Salmon expert Dr. J. O. Snyder of Stanford University, who had been studying the anadromous salmoid since 1919, reported, in 1930, that ocean trolling resulted in the taking of "immature fish in considerable number." When compared with the river catch, it was "found to be relatively rich in two-and-three-year fish."⁵

E. Part Time Summer Trollers

During the 1960s, the troll fleets were reinforced by many summer fishermen, who worked at other jobs during the remainder of the year. Some of these people were serious commercial fishermen with powerful ocean-going boats and gear, but the

4. Ibid., pp. 44-5.

5. J. O. Snyder, "Salmon of the Klamath River," California Division of Fish and Game, Bulletin No. 34 (Sacramento, 1931), p. 122.

majority employed sports type craft that could be conveniently towed on a trailer. These latter people were either financing a vacation or using a commercial license because they did not want to be subject to the three-fish sports fisherman limit.⁶

F. Ocean Trolling Becomes Major Industry

By the late 1940s, ocean trolling off the California coasts had developed into one of the state's major industries, having accounted for a catch of approximately 1,433 to 5,179 tons of salmon annually since 1916. In the years between 1947 and 1970, ocean-based fisheries off California harvested some one-half million to one million chinook salmon annually. Coincidentally, sports fishermen accounted for a relatively small percentage of the total catch.

Before 1963, chinook salmon constituted the vast majority of salmon landed, but, between 1963 and 1973, coho salmon landings soared to 25 percent of the total, an increase that was coincident with artificial propagation programs in Washington and Oregon. Writing in 1971, H. W. Frey reported that trollers had significantly reduced the number of chinook that survived to

6. Frey, California's Living Marine Resources and Their Utilization, p. 43.

the end of their fourth or fifth years, while W. E. Ricker associated, in a large measure, the troll fishery with a 50 percent reduction in the mean weight of chinook harvested in the half century ending in 1980, and with a decrease of one year in the average age of chinook spawners.⁷

During the years between the late 1960s and 1975, the number of registered California fishing vessels nearly doubled. Despite greater seasonal restrictions placed on commercial troll fishing in 1979, chinook salmon landings in California increased over levels of recent years, and landings at Eureka, which presumably constituted a relatively large proportion of Klamath River salmon, zoomed by about 55 percent over the 1978 level.⁸

In 1980, Pacific Fisheries Management Council (PFMC), in conjunction with its program to manage fisheries off the California, Oregon, and Washington coasts, imposed a six-week seasonal closure on the commercial troll fisheries in the Fishery Conservation Zone extending from Point Arena in the south to Cape Blanco in the north. Despite this closure and

7. Annual Report Klamath River Fisheries Investigation Program 1980 (Arcata, 1981), p. 85.

8. Ibid.

a number of days of bad ocean fishing conditions, preliminary data revealed that California chinook salmon landings, during the year, barely exceeded the mean annual landings for 1971-75 (approximately 575,000 vs. 563,000). Landings at the three northern California fishing ports numbered 299,000 chinook in 1980, as it had during the years 1971-75.⁹

Representatives of the ocean commercial fishing industry, when questioned, took the position that offshore trolling accounted for "relative few Klamath River salmon." Beach seinings conducted by the United States Fish and Wildlife Service on the Klamath in 1980 contradicted these claims, because "nearly one in three of the adult chinook salmon captured bore hook scars." Many fish were missing eyes, maxillaries, and mandibles, and trolling hooks were imbedded in some of the salmon. Nearly one in four of the grilse examined, which had been exposed to the ocean fisheries for some 12 months, likewise exhibited hook mutilations.¹⁰

A table has been compiled from the annual reports of the Department of Commerce detailing the annual commercial salmon catch in pounds off the northern coast of California from Punta Arena north to the Oregon line for the years 1929 to 1976. The table reads:

9. Ibid.

10. Ibid., p. 90.

	<u>Haul Seines</u>	<u>Gill Nets</u>	<u>Troll Lines</u>	<u>Salmon</u>	<u>Chinook</u>	<u>Coho</u>	<u>Pink</u>
1929	12,394	467,411	2,294,510				
1930	40,444	379,723	2,330,393				
1931	30,436	667,975	2,803,128				
1932	18,014	576,278	3,346,462				
1933	37,554	592,445	2,498,940				
1934	18,492	423,920	2,913,635				
1935				2,769,300			
1936				3,449,900			
1937				3,479,800			
1938				1,853,700			
1939				1,673,100			
1940				3,369,500	-		
1941				2,413,400			
1942				2,255,900			
1943				2,162,300			
1944				3,762,100			
1945				4,627,700			
1946				4,544,000			
1947				5,868,600			
1948				4,034,000			
1949				2,601,400			
1950				2,221,500			
1951				2,002,400			
1952					1,750,300	740,500	
1953					2,415,900	533,900	
1954					3,516,400	412,500	
1955					4,488,200	1,600,664	
1956					5,837,700	473,900	
1957					3,002,900	1,018,083	
1958					1,455,600	143,400	
1959					1,685,300	686,449	
1960					2,329,900	107,500	
1961					3,660,300	474,600	
1962					3,832,700	360,300	
1963					2,960,500	816,900	
1964					4,022,700	2,170,106	
1965					4,168,200	1,316,000	
1966					6,092,300	839,300	
1967					2,856,100	2,429,400	
1968					2,225,300	1,836,400	

	<u>Haul Seines</u>	<u>Gill Nets</u>	<u>Troll Lines</u>	<u>Salmon</u>	<u>Chinook</u>	<u>Coho</u>	<u>Pink</u>
1969					2,317,600	1,040,000	
1970					2,797,300	1,145,200	
1971					2,896,000	2,730,000	7,000
1972					1,758,000	1,601,600	
1973					2,891,400	2,785,400	23,900
1974					2,005,800	3,117,000	700
1975							
1976					2,160,400	2,677,700	2,000

From 1927 through 1934, the catch was broken down by mode of taking salmon.

From 1935 through 1951, the total catch of salmon was given with no breakdown as to species.

From 1952 to 1976, the catch is broken down as to species.

XIV. DONNELLY VS. UNITED STATES

A. James Donnelly is Arrested, Tried, and Convicted of Murder

In December 1908, soon after Jesse B. Mortsolf was named superintendent of the Hoopa Valley Reservation, Oscar Chapman, a white who owned and operated a store at Johnsons, was killed and robbed. This was the "third of a mysterious series of murders in the vicinity," all of which seemed to have been planned and executed by the same gang of outlaws. As the killing was on the reservation, Deputy U.S. Marshal J. A. Prentice interested himself in the case. From U.S. Marshal C. T. Elliott of San Francisco, Prentice secured a \$1,000 allotment to assist in the investigation.

Prentice, in the spring of 1909, made several trips into the Klamath country, and from his investigations concluded that James Donnelly, a Pecwan half-breed, was one of the gang. Circumstantial evidence was secured linking Donnelly with another of the murders, as an accessory of Harrison Bullhead, another mixed-blood. Because the evidence was circumstantial, and Prentice was doubtful of securing an indictment, he decided to pursue another unsolved killing.

During the course of the Chapman investigation, Prentice had discovered evidence that Donnelly had killed Chickasaw, the last of the male line in the Jimmy Hope band, in October 1901. Several of Donnelly's drinking companions had told of Donnelly's boasting of being paid \$15 for shooting Chickasaw.¹

Chickasaw's death had its genesis in a blood feud triggered by a drunken row at a dance at Johnsons, where Billy Williams was stabbed by Jimmie Janes. To settle the matter in Indian fashion, Chickasaw, a friend of Janes, reimbursed Williams. Whereupon, Janes relocated on Janes Creek, near Alliance. There, Janes was murdered and his kin suspected that his killers were friends of Billy Williams. Next, Lagoon Charlie, an intimate of Williams, was slain by Blansheim, a white who lived among the Indians. Soon thereafter, Chickasaw was shot and killed from ambush, while bathing at Johnsons. There was no motive for Chickasaw's murder, except as a settlement of a "grudge" according to Indian custom.²

1. Mortself to Commissioner of Indian Affairs, Feb. 21, 1910, NA, RG 75, Central Classified Files, 1907-39, DOC 26195/09/150, Hoopa Valley.

2. Mortself to Commissioner of Indian Affairs, April 12, 1917, NA, RG 75, Central Classified Files, 1907-39. Doc. 26195/09/150, Hoopa Valley.

Donnelly was accordingly arrested and taken to San Francisco. While Donnelly was jailed, Prentice continued to investigate the Chapman murder, in expectation that with Donnelly absent, local Indians would not be afraid to talk. Additional evidence was secured, and on November 1, 1909, a grand jury indicted Donnelly on two separate counts of murder. It was planned to try the Chapman case first. A point of jurisdiction, however, was raised by Donnelly's attorneys, and it was determined by the prosecution to try the Chickasaw murder first.

The trial before Judge William C. Van Fleet of the United States Circuit Court for the Northern District of California resulted in the jury finding Donnelly guilty and fixing his sentence at life imprisonment.³

B. Donnelly's Attorneys Carry Their Appeal to the Supreme Court

From San Francisco, Donnelly was taken under guard to the federal prison at Leavenworth, Kansas. His attorneys, John F. Quinn and W. F. Clyborne, determined to appeal the case, and it was carried to the United States Supreme Court. The court heard their arguments on December 18, 1912, and handed down its decision on April 7, 1913.

3. Mortsof to Commissioner of Indian Affairs, Feb. 21, 1910, April 12, 1917; Sells to Commissioner of Indian Affairs, May 26, 1917, NA, RG 75, Central Classified Files, 1907-39, Doc. 26195/09/150, Hoopa Valley.

C. The Supreme Court Rules on Six Questions

The Supreme Court, in addressing the appeal, considered these points, which "must all be answered favorably to the Government" in order that Donnelly's conviction be sustained:

- (1) Was the Extension of the Hoopa Valley Reservation lawfully established?
- (2) Does it include the bed of the Klamath River?
- (3) Is the place of the homicide, for particular reasons to be mentioned, not a part of the reservation?
- (4) Is the Extension (lawfully established) "Indian country" within the meaning of Section 2145, Rev. Stat.?
- (5) Is the killing of an Indian by one who is not of Indian blood, when committed upon an Indian reservation within the State of California, punishable in the Federal courts?
- (6) Was the evidence offered to show an alleged confession by Joe Dick properly excluded?⁴

1. Court Decides Extension Legally Established

The court, taking up the question of whether the Extension was lawfully established, reviewed the history of the California reservations, and what "has been done by the executive and legislative departments of the Federal Government respecting them." On doing so, it was satisfied

4. United States Reports: Cases Adjudged in the Supreme Court at the October Term, 1912, Charles Henry Butler (Reporter), (New York, 1913), Vol. 228, p. 225.

that in 1864, California Indian affairs were in such a state of flux that "Congress could not reasonably have supposed that the President would be able to accomplish the beneficent purposes" of the act of April 8, 1864, if he were obliged to act at once "with respect to establishment of the several new reservations that were provided for."

Congress, it was pointed out, had recognized the Hoopa Valley Reservation as lawfully extant on several occasions before President Grant's June 23, 1876, executive order formally setting it aside and fixing its boundaries.⁵ And, in the year following President Harrison's October 16, 1891, executive order, the Extension was cited in the annual reports of the superintendent of the Hoopa Valley Reservation as "being occupied by the Lower Klamath Tribe" during fiscal years 1893 and 1894. These reports had been transmitted to Congress by the Secretary of the Interior, "and there is nothing to show any disapproval of the status of the Extension as an Indian reservation."

5. Ibid., pp. 256-57. On July 27, 1868, Congress had appropriated monies "to pay the settlers of Hoopa Valley for their personal property left upon the Hoopa Valley Reservation at the time the Government took possession," and on April 10, 1869, when it appropriated money for pay of a reservation miller, and "to supply a deficiency for removing Indians from Smith's River Reservation to Hoopa Valley and Round Valley Reservations."

Moreover, Presidents Ulysses S. Grant, Rutherford B. Hayes, James A. Garfield, Grover Cleveland, and Benjamin Harrison had, successively, acted with respect to one or more of the four reservations established under the act of April 8, 1864, as to confer a "continuing descretion upon the Chief Executive." They had each issued orders altering and changing the boundaries of the subject reservations. The court, therefore, was bound to hold that "President Harrison's order of October 16, 1891, extending the Hoopa Valley Reservation was within the authority of the act of 1864."⁶

2. Court Determines River Bed Included in Reservation

The court next focused on the question whether the reservation included the bed of the Klamath River. The judges, upon reviewing the text of the executive order, "a tract of country one mile in width on each side of the Klamath River and extending," found it absurd to treat

6. Ibid., pp. 257-59.

absurd to treat the order as intended to include the mountains on either side of the river, and coincidentally exclude the stream. Documents centering on the history of the Yuroks proved that they had established themselves along the river "to gain a subsistence by fishing."⁷

In reviewing the question as to whether the river was navigable, the court called attention to the April 23, 1880, act of the California legislature, declaring the Klamath River to be navigable from its mouth to the town of Orleans Bar. This legislation had been repealed on March 11, 1891, and "an enumeration . . . made of all the navigable rivers of the State," which did not include the Klamath. The latter act had been held by the California Supreme Court "to be exclusive, so that no other rivers are navigable under the laws of California." The act of March 11, 1891, predated by seven months President Harrison's October 16, 1891, executive order.

Also of interest was the April 13, 1850, enactment by the California legislature adopting English common law, "so far as not repugnant to or inconsistent with the

7. Ibid., p. 259.

Constitution of the United States or the constitution or the laws of the State of California." In view of the judicial history of the state subsequent to passage of the subject act, "this act must be held to have operated at least from the admission of the State into the Union, as a transfer to all riparian proprietors, including the United States, of the property of the State, if any she had, in the non-navigable streams and soil beneath them."

Consequently, it appeared to the justices that by legislation and adjudication by appropriate California authorities, "not only that the Klamath River has been placed in the category of non-navigable streams, but that the title of the United States to the bed of it where it runs through the public lands has been distinctly recognized." Whether the river was navigable or not, the court held that the river bed was "included within the Extension of the Hoopa Valley Reservation."⁸

3. Court Holds U.S. Title to Site of Homicide Valid

The court next took up the proviso of the President's October 16, 1891, executive order reading, "That any

8. Ibid., pp. 262-64.

tract or tracts included within the above described boundaries, to which valid rights have attached under the laws of the United States, are hereby excluded from the reservation as hereby extended."

Upon tracing the history of a mining claim filed October 20, 1880, and introduced as evidence at Donnelly's trial, the court held that the record was "too meagre and indefinite to furnish support for a finding that at the time of the" subject executive order, "or at any time, valid rights had attached to the placer-claim."

Moreover, at the trial, it had been maintained that, prior to the executive order, the Humboldt County Board of Supervisors had established a school district including within its bounds the place where the homicide had occurred, and that subsequent to October 16, 1891, the county had created out of this district, a second school district, which encompassed the site in question. As the school district was maintained by the county, it was argued that the state and county had assumed jurisdiction over lands on either side of the Klamath for school

purposes before extension of the Hoopa Valley Reservation.

The Supreme Court, however, held that "creation and maintenance of such a school district by the State could not in any wise impair the title of the United States to the lands included in such district, or limit the authority of the United States over such lands when set apart for any Indian reservation."⁹

4. Court Rules Extension is Properly Constituted as Indian Country

The court next considered the contention by Donnelly's attorneys that the term "Indian country" was confined to lands to which the Indians retain the right of possession, and is not applicable to those set apart as an Indian reservation out of the public domain, and not previously occupied by Indians." After a review of the Indian Intercourse Act of June 30, 1834, and pertinent court cases, the justices held that

9. Ibid., pp. 264-68. Personnel at the San Bruno Federal Records Center, San Bruno, Calif., were unable to locate the transcript of the Donnelly trial before Judge Van Fleet.

nothing can more appropriately be deemed "Indian Country" within the meaning of those provisions of the Revised Statutes that relate to the regulation of the Indians and the government of the Indian country, than a tract of land that, being a part of the public domain, is lawfully set apart as an Indian reservation.¹⁰

5. Court Decides Question of Murder of an Indian by a Non-Indian

The court next considered the question, "Is the killing of an Indian by a person not of Indian blood, when committed upon an Indian reservation within the limits of a state, cognizable in the Federal courts?" The justices, in holding that the subject crime was punishable in the federal courts, zeroed in on the contention that the admission of California into the Union "on an equal footing with the original States," without any express reservation by Congress of governmental jurisdiction over the public lands contained within her borders. This, if was argued, conferred upon the state undivided authority to punish crimes committed upon those lands, even when set apart as an Indian reservation, excepting crimes committed by Indians.

The court was satisfied that offenses committed by or against Indians were not within the principles of the McBratney (104 U.S. 621) and Draper (164 U.S. 240) cases.

10. Ibid., pp. 268-69.

In the subject cases, the courts had held, in effect, that the organization and admission of states qualified the former federal jurisdiction over Indian country, included therein by withdrawing from the United States and conferring upon the states control of offenses committed by whites against whites, in absence of some law or treaty to the contrary. In both the aforementioned cases, the question was reserved as to the effect of the admission of the state into the Union upon federal jurisdiction over crimes committed by or against the Indians themselves. Such had been held, in respect to crimes committed by Indians, in the Kagama case (118 U.S. 375, 383), where the constitutionality of the "second branch" of the act of March 3, 1885, had been sustained upon the ground that the Indian tribes were wards of the Nation.¹¹

This same reasoning applied with greater logic in respect to crimes committed by whites against the persons or property

11. In the cases of United States vs. McBratney (104 U.S. 621), Draper vs. United States (164 U.S. 240), and United States vs. Kagama (118 U.S. 385), it had been held that the state, not the United States, had jurisdiction over the crime of murder committed within the limits of an Indian reservation within the boundaries of a state by a white person against a white person.

of the Indian tribes, while the Indians occupied reservations set apart for the purpose of segregating them from the whites and others not of Indian blood.¹²

6. Court Rules Against Introduction of Hearsay Evidence

The final question arose because of the exclusion by the trial judge of testimony offered by the plaintiff in error, demonstrating that Joe Dick, an Indian, now deceased, had confessed that he and not Donnelly had shot Chickasaw. A review of the transcript revealed that Dick was dead at the time of the trial, thereby accounting for the failure to call him as a witness. Donnelly's attorneys also brought attention to certain circumstances pointing to Dick as the guilty party: (a) he lived in the area and presumably knew the habits of Chickasaw; (b) tracks on the sand bar at the scene of the crime led toward the acorn camp where Dick was staying rather than in the direction of Donnelly's cabin; and (c), besides the tracks, there was at one place an impression indicating a stop such as might be made by a person having a shortness of breath such as Dick, who had an advance case of consumption.

12. U.S. Reports, Vol. 228, pp. 269-72. The subject legislation provided for punishment of certain enumerated crimes, when committed by Indians within the territories, and also provided for the punishment of the same crimes when committed by an Indian on an Indian reservation within a state.

The justices held that hearsay evidence, except for a few recognized exceptions, was excluded by courts adhering to the principles of common law. Moreover, there was "a great and practically unanimous weight of authority in the state courts against admitting evidence of confessions made out of court and tending to exonerate the accused." After reviewing a number of cases and quoting Chief Justice John Marshall, in the Mima Queen and Child vs. Hepburn case, the court's majority held that the evidence of Dick's confession was properly excluded.¹³

D. Court Reviews Case and Recalls Portion of Decision Dealing with Navigability of Klamath

Donnelly's attorneys petitioned for and were granted a rehearing on the last day of May 1913. The petition, as entertained, raised several points, only one of which was deemed worthy of consideration. This involved a contention that the court, in resting its decision upon the California acts of February 24 and March 11, 1891, and the decision of the

13. Ibid., pp. 272-77. Three justices--Oliver Wendell Holmes, Horace H. Lurton, and Charles E. Hughes--dissented on this aspect of the case. They argued that the confession of Dick, coupled with circumstantial evidence, had a "strong to make any one outside of a court of justice believe that Donnelly did not commit the crime." Ibid., pp. 277-78. In Mima Queen and Child vs. Hepburn (1813), 7 Cranch, 290, 295, 296, 297, a suit was brought in which the petitioners claimed freedom, and certain depositions were rejected by the trial court as hearsay.

state supreme court in Caldwell vs. County of Sacramento, to the effect that the enumeration of the state's navigable rivers, as made by the legislature, was exclusive and that no other rivers were navigable under California laws, had overlooked the effect of California Supreme Court decisions in certain other cases--People vs. Elk River M. & L. Co., Forestier vs. Johnson, and People vs. Kerber. These decisions were said to be important to a determination of the navigability of the Klamath and state ownership of the river bed.

The Supreme Court held that the judgment affirming the correction of Donnelly's conviction could be sustained without considering this point. After reviewing the trial transcript, the court determined that Donnelly was not entitled to call upon it to decide the merits of the question of the navigability of the river and its effect upon the jurisdiction of the United States Circuit Court over the homicide. But, as it had been suggested that the court had passed upon a question that had not been adequately argued, and which, in its consequences, involves important interests, other than Donnelly's, the court recalled so much of its opinion as held:

By the acts of legislation mentioned, as construed by the highest court of the State--(a) the act of 1850, adopting the common law and thereby transferring to all riparian proprietors (or confirming in them) the ownership of the non-navigable streams and their beds; and (b) the acts of February 24 and March 11, 1891, declaring in effect that the Klamath is a non-navigable stream--California has vested in the United States, as riparian owner the title to the bed of the Klamath, if in fact it be a navigable river.

This subject the court left undecided. But as it had been previously documented that Donnelly's conviction could stand without regard to that question, and, because this issue was peripheral to the main thrust of the case and not of sufficient import to upset the decision, the court refused the request for a rehearing of the oral arguments. Instead, it recalled that portion of its opinion dealing with navigability of the Klamath, and thus left unresolved the question of title to the river bed.¹⁴ The court, therefore, deemed that no useful purpose would be served by further oral argument.

E. Donnelly's Sentence is Commuted

Donnelly was fated to spend another eight years at Leavenworth. Then, in February 1921, his sentence was commuted by President Woodrow Wilson and he was released.

14. Ibid., pp. 708-12; Renda to Area Director, BIA, Nov. 12, 1974, files HVIR.

XV. SPORTS FISHING ON THE KLAMATH

A. Improved Roads and the Automobile Open the Area to Sports Fishing

The opening of a through road from Crescent City to Eureka in the late summer of 1894, followed by the coming of the automobile, made the Humboldt Coast easily accessible to sportsmen and tourists. By 1915, there was a guide for motorists. According to this publication, it was possible to reach Eureka from Medford, Oregon, via Grant's Pass, and through the redwoods of Smith River to Crescent City. South from Crescent City, the road passed through more redwood groves to Requa, where the tourist crossed the Klamath on a ferry. He then drove southward skirting the proposed "Redwood National Park" down the valley of Prairie Creek, "through the grandest redwood growths known to Orick." From Orick the road led southward, "along the margins of placid lagoons. . . and rock-bound coast," to Trinidad and Eureka.¹

Meanwhile, better roads were coming to the area. In 1909, the Redwood Highway had been created as a state highway by a bond issue. It was October 19, 1917, before any action to expedite

1. Humboldt County, California, The Land of Unrivalled Undeveloped Natural Resources on the Westernmost Rim of the American Continent (Eureka, 1915), p. 29.

its construction was taken in Del Norte County. At that time, the Board of Supervisors announced plans to secure the right-of-way for the Redwood Highway between Crescent City and Wilson Creek. A contract was let in July 1919, for construction between Cushing and Wilson Creeks. In 1923, the section from the head of Richardson Creek to Hunter Creek was built by prison labor. By the end of 1923, the Redwood Highway, except for the bridge across the Klamath, had been completed and opened to through traffic in Del Norte and Humboldt Counties. The ferry continued to carry sportsmen and tourists across the Klamath until the autumn of 1926, when the Douglas Memorial Bridge was completed and opened to traffic.²

B. Zane Grey Fishes the Klamath

By the early 1920s, the lower Klamath had a well deserved reputation among sportsmen as one of the Pacific Coast's great fishing rivers. Among those popularizing salmon fishing on the river was Zane Grey, famed author and sportsman. Driving south from Crescent City in late September, 1923, Grey

2. McBeth, Lower Klamath County, pp. 61-5.

come to a quaint little village called Requa. All we knew of it was that it was the place where we had to ferry across the Klamath River. The town perched upon the bluff, high over the wide river, and appeared to have one street. A long, low white tavern, old and weather beaten faced the sea and the few stores and houses were characteristic of a fishing village.

Indeed the whole place smelled fishy. I saw Indians lolling around on board walks, and as we drove down under the bluff toward the ferryboat, I espied numerous Indian canoes and long net boats, sharp fore and aft.³

Grey had not planned to fish the Klamath but while waiting for the ferry, he overheard three men talking about the fishing. They showed him three chinook, averaging 30 pounds, and several large steelheads, all of them caught that morning with hand lines and spoons. Whereupon, Grey decided to stop over.

Next day found Grey in a fishing skiff bound downstream from Requa. A number of other fishermen were about, but only one of them besides Grey was using a rod, the rest were taking fish with hand lines and spoons.

The first chinook hooked and boated by Grey was a 22-pounder. Later, he hooked and boated with his light tackle and rod a 57-pound beauty.

3. Zane Grey, "At the Mouth of the Klamath," Outdoor America, Vol. 2, No. 6, Jan. 1924, p. 213.

As he prepared to call it a day, Grey told his companions

to take a last look at the most thrilling and fascinating place to fish I had ever seen. The world is wide and there must be innumerable wild beautiful places yet unexplored that await the hunter and fisherman. Of these I am always dreaming and creating mental pictures. Yet the waters a fisherman learns to love always call him back.⁴

C. Changes in Fishing Practices During the 1920s

Stanford University fisheries expert Dr. Snyder spent considerable time and energy, beginning in 1919, on the Klamath studying the salmon and its life-cycle. On numerous trips to the Humboldt Coast, Snyder saw that, when the upstream placer miners were not polluting the river with silt, the waters cleared and numerous chinook salmon were caught by sports fishermen in the lower estuary by means of trolling or casting with spinners. When hooked by light tackle in the river, the salmon was not given to leaping and breaking water like the steelhead. His rushes, however, were powerful and frequently persistent. Occasionally, the salmon preferred to fight it out by sulking on the bottom, but then a "new impulse sets him going again and he is off to resume the struggle."

4. Ibid., pp. 263-66, 316.

Trolling with heavy line and sinker by the late 1920s had been generally superseded by use of light rods. Long-distance casting with a free reel was increasingly popular with sportsmen.

At the height of the season, the estuary was crowded with hundreds of fishermen. Several small canneries, in the mid-1920s, had opened at Klamath. They catered to the successful sports fisherman, who could have his fish preserved in the usual manner, "the can even bearing a colored label with his name."

As the salmon did not feed after returning to the river, the majority of them "having initiated their long fast while still at seas," it was believed by the fishermen that the flashing spinner aroused the salmon's fighting instinct. Some chinook salmon grilse, large and small coho salmon of both sexes, and occasionally a steelhead were caught in the same manner. Salmon were also caught by fishermen with spinners at any place along the river, but they seemed to be most easily taken below an obstruction such as an irrigation dam.⁵

5. Snyder, Salmon of the Klamath River, p. 43. The small canneries catering to sportsmen were: Del Norte Salmon Canning Co.; W. G. Press; Klamath River Canning Co.; and Requa Cooperative Packing Co.

D. Post-World War II Boom

Except for the World War II years with their gas and tire rationing, the lower Klamath through the 1930s and 1940s continued to draw an increasing numbers of sports fishermen to the area, intent on catching the big chinook salmon and wily steelhead.

Galen McClure, writing in the September 1950 edition of The California Highway Patrolman, noted that, when the first rains ushered in the autumn season, fishermen from all sections of California, as well as out of state, begin their annual trek to the lower Klamath. Although many big salmon and prize steelheads were taken during the summer by tourists, the big season was in September and October. It was in these months that the justly famed autumn runs occurred, as salmon entered the estuary en route to the upper reaches of the Klamath drainage to spawn.

At the height of the season, small boats were moored near the bar, tied so near to each other as to form a "veritable bridge." Other eager fishermen lined the edge of the river, each person

seemingly having only enough elbow room to cast his line.

Other anglers were seated, patiently or impatiently, as circumstances dictated, waiting his or her turn to fish.⁶

Many of the Yuroks now made a comfortable seasonal living as guides for the fishermen.⁷

E. The Catch Dwindles

During the period, July 15 to October 1, 1954, an estimated 15,000 salmon were taken by sportsmen on the reach of the Klamath between its mouth and the Douglas Memorial Bridge. In 1955-56, records document that in this same area from 1,200 to as high as 3,200 salmon were landed, daily, during the run. This figure did not include salmon caught above the Douglas Memorial Bridge or the steelheads landed.

There was an acceleration in logging operations on the Klamath watershed in the mid-1950s, and, in the years 1958-60, the number of salmon landed declined drastically, and, on the best days, the number taken rarely exceeded 600. In 1961,

6. Galen McClure, "Fishing on the Klamath, Yesterday and Today," The California Highway Patrolman, Vol. 14, No. 7, Sept. 1950, p. 21; taped interviews Walter V. Sherrick with Bearss, March 27, 1981, and Harold Del Ponte with Bearss, March 28, 1981.

7. McClure, "Fishing on the Klamath," p. 100.

the number of salmon caught by sportsmen climbed slightly over that reported in the previous three years, but even then was far short of the normal take. The 1961 steelhead run, however, took a drastic decline.⁸

In the 1960s, however, thousands of salmon anglers continued to be attracted to rivers and streams from Santa Cruz County north. Of the coastal rivers, the Klamath system continued to receive the most attention, followed by the Smith, Russian, and Eel. Much of this fishing occurred in the estuaries. The Klamath and Smith River months drew large numbers of fishermen from great distances, who congregated in a limited area. The term "madhouse" was appropriate during the peak of a good run.⁹

But, by the late 1970s, the take of Chinook by anglers on the Klamath below the Highway 101 bridge had dwindled. In 1978, the number of adult chinook landed exceeding 23 inches in length was 854; in 1979, 484; and in 1980, 533.¹⁰

F. Offshore Sports Fishing for Salmon

Before 1950, few sportsmen fished for salmon in the ocean. Pioneers in the field were usually local people employing

8. Assembly Interim Committee on Fish and Game, "Status of Salmon and Steelhead on the North Coast," Oct. 10, 1961, p. 79.

9. California's Living Marine Resources and Their Utilization, p. 44.

10. Ltr., Boydston to Bearss, Aug. 10, 1981. L. B. Boydston is Associate Marine Biologist, Klamath River Project.

small under-powered open boats, who fished the "safe" tides and then hastened to shore with their catches. This changed in the 1950s with the introduction of and the popularity of glass, metal, and plastic boats that revolutionized the boat-building industry. Coupled with this was an increase in the power and efficiency of motors. Given a dependable seaworthy craft, the sportsman now traveled to offshore fishing grounds that would have been unsafe a few years before. These small craft "tended" to outnumber the commercial boats and invaded coastal waters formerly fished exclusively by commercial trollers.

In sports fisheries, two types of boats predominated: the skiff or outboard kicker, and the party or charter boat. The latter usually employed better angler success, because of their greater cruising range and experienced captains. They also carried more people than the smaller limited-range outboards.¹¹

California required a sports fishing license. Charter skippers were also required to send a daily log of their passengers' catches to the Department of Fish and Game. Spot checks were

11. Henry O. Wendler, "The Importance of the Ocean Sport Fishery to the Ocean Catch of Salmon in the States of Washington, Oregon, and California," California Fish and Game, Vol. 46, No. 3, July 1960, p. 292.

also made to test the accuracy of these reports. In 1955 and 1956, a federal grant underwrote the cost of a detailed study of charter boat, skiff, and other ocean sport salmon catches, principally by sampling the marinas at various ports. California also used a post card survey method to estimate the trend of sport fishing catches during many of the years from 1936 to 1957.¹²

Offshore sport fishing for salmon in California, in the 1950s, occurred principally from Monterey Bay northward. Significant catches were made in Monterey Bay, off San Francisco Bay, out from Fort Bragg, and northward from Eureka. Dr. Henry O. Wendler, drawing on information provided by the Marine Resources Branch, California Department of Fish and Game, was able to determine that, in the period 1947-1958, of the total salmon catch in California, the take by ocean sportsmen ranged from less than 1 percent in 1947 to a high of 22 and 21 percent in 1953 and 1955 for chinook and coho (silver) salmon respectively. The dramatic surge in landings, which began in 1951, fell off sharply in 1957 and 1958. The Wendler chart read:

12. Ibid., p. 293.

Commercial catch			Sport catch		Total fish		Percent sport	
Year	Chinook	Coho	Chinook	Coho	Chinook	Coho	Chinook	Coho
1947	610	87	5	0.4	615	87.4	0.8	0.5
1948	421	93	11	1	432	94	2.5	1.1
1949	400	89	23	2	423	91	5.4	2.2
1950	430	85	57	5	487	90	11.7	5.6
1951	416	58	103	8	519	66	19.8	12.1
1952	474	92	123	10	597	102	20.6	9.8
1953	490	100	141	11	631	111	22.3	9.8
1954	771	64	171	14	942	78	18.2	17.9
1955	747	56	184	15	931	71	19.8	21.1
1956	958	68	163	13	1,121	81	14.5	16.0
1957	482	89	64	5	546	94	11.7	5.3
1958	350	20	65	5	415	25	15.7	20.0 ¹³

The ocean sport fishing boom continued through the 1960s. In 1970, it was estimated that "sport fishery has taken about 14 percent of the total number of salmon landed since 1950." Of this 14 percent, charter craft had taken about 65 percent and private boats the remainder. San Francisco Bay ports remained, during the decade of the 60s, the homeports for most of the charter boats. Nevertheless, craft operating in Monterey Bay and southward reported catching about 6,300 salmon in 1968. Numerous private boats fished for salmon out of ports and harbors northward from Monterey, but few small private craft sailed from San Francisco Bay, because of the long trip, strong tides, and rough seas encountered passing through the Golden Gate. From 1965 through 1967, the total marine sport effort expended on salmon was about 133,000 angler-days per year.¹⁴

During the decade of the 1970s, U.S. Fish and Wildlife biologists estimated that the ocean fisheries annually accounted for approximately 280,000 Klamath River chinook salmon. Of these, about 95 percent were taken by commercial trollers and the remaining five percent by ocean sport fishermen.¹⁵

13. Ibid., p. 296.

14. California's Living Marine Resources and Their Utilizations, pp. 44.

15. Annual Report Klamath River Fisheries Investigation Programs 1980, p. 91.

XVI. DEVELOPMENT OF THE LOGGING INDUSTRY ON THE LOWER KLAMATHA. Early Sawmills

The first commercial sawmill on the lower Klamath was one of several ventures undertaken by the Klamath Commercial Co., which had been incorporated by R. D. Hume for the "purpose of lumbering and fishing at or near the mouth of the Klamath River." Martin Van Buren Jones was named general superintendent. On August 27, 1881, it was reported in the Del Norte Record that Jones had been on the ground for several weeks with a crew of workers, and "has the mill and building sites all ready and timber cut for the frames." Jones planned to saw cedar, laurel, and oak, which would be shipped to Crescent City on small schooners and then sent to the San Francisco market on steamers.¹

The sawmill was not successful, however. In 1890, Edward and Henry Schnaubelt built a mill on Hunter Creek. With its engine and boiler brought in by a schooner from Crescent City, the Schnaubelt Brothers' mill was "a model of ingenuity and good convenience to the farmers" of the area who had been accustomed for "years to split out all the materials for

1. Del Norte Record, Aug. 27, 1881; McBeth, Lower Klamath Country, p. 51.

buildings, fences, etc. etc." Subsequently, Ed Hughes acquired and operated the mill.²

B. Logging on the Klamath

About the close of World War I, Bull & Dunn began logging the Klamath Bluff area. To get their logs out, it was necessary to float them down the Klamath to its mouth, where they would be made into rafts. G. G. Davis had rafted logs during World War I in Alaska and Canada. An ingenious plan for putting together ocean-going rafts had been developed by Davis. These rafts, called swifterns, on which Davis and his sons held 32 patents, were held together by cables laced in a fashion designed to hold the raft together and keep it from breaking up when towed to sea. So efficient were the Davis patents that one of their rafts which was en route down from Alaska, when cut loose during a storm, drifted across the Pacific and ended up aground on the coast of Japan. A huge swifter raft would hold up to several million feet of timber.

2. Del Norte Record, June 21, 1890; Robert J. Jenkins, Del Norte County As It Is. . . (Crescent City, 1894), p. 46.

The Davis rafts were towed out to sea and down the coast from the Klamath to Eureka. There they were broken up, and the cedar exported to Japan.³

One of the problems encountered by the Davises, in rafting logs out of the Klamath, was shallow water found over the Klamath bar, during prolonged droughts. On September 25, 1926, it was reported that Bull & Dunn Cedar Co. had experienced difficulty in getting out their rafts, because of "unseasonably low water and the deplorable condition of the mouth of the river." Nevertheless, three rafts, after being assembled by Davis' crew in the slough below the Douglas Memorial Bridge, were one after the other towed downstream. Near the bar, lines were sent aboard the rafts from Golden West anchored outside the bar. At flood tide the rafts were floated across. The little freighter then headed down the coast to Eureka, with the three cedar rafts in tow.⁴

It was known that enough additional logs were coming down the Klamath for Davis and his boys to build two more rafts. To get the logs over shoals, Jackson Ames and Frank Ryvison were out with their motorboats.⁵

3. Personal Interview, Matthew Davis with Bearss, April 23, 1969. Davis is the son of G. G. Davis, and during the 1920s and 30s, he assisted his father in assembling rafts at the mouth of the Klamath.

4. Del Norte Triplicate, Sept. 25, 1926.

5. Ibid.

Superintendent Davis and his crew were called on during the second week of October to assist Captain Olsen of the gasoline schooner Martha. Captain Olsen, scoffing at the fears of others, attempted to cross the bar. He hugged the north shore too closely and stranded his vessel. Davis and his people quit work on the rafts and rushed to Olsen's assistance. A channel was cut around Martha, lines run out, deadmen positioned, and the craft winched off the bar. She floated free, but before she could gain steerageway, she was caught by a powerful eddy. Lines parted, and she was again driven hard aground, but this time on the south beach. She was freed a second time. Once again, she was buffeted by the current and driven ashore. A final effort succeeded in freeing Martha, and she beat her way up the coast.⁶

While Martha was aground, the channel through which the Klamath discharged into the Pacific was obstructed, and the river began to back up. It continued to do so, until it covered the flat on the south side of the Klamath, where cars drove onto the ferry. A number of motorists turned their vehicles around, drove back down the road, and turned

6. Ibid., Oct. 15, 1926; Personal Interview, Davis with Bearss, April 23, 1969.

into the new road, leading down Richardson Creek to the Douglas Memorial Bridge. Although the road crews tried to flag them down, they drove across the bridge. Though dedicated in May, 1926, the structure was not yet officially opened to traffic.

As soon as Martha was freed, the waters rushed out through the channel. The pool that had been backed up quickly drained and the south approach to the ferry was again open to traffic.⁷

On October 18, 1926, Golden West crossed the bar, using the channel opened by Davis' men in freeing Martha. She lashed onto a raft of cedar logs. As she headed out into the Pacific, the little freighter grounded on the south beach, and "the raft floated out, made a circle, and struck on the south beach near the boat, causing the raft to go to pieces with every breaker pounding floating logs end wise against the sides of Golden West." The freighter was refloated at flood tide, and most of the logs salvaged. These incidents, however, were indicative of the difficulties experienced in rafting logs out of the Klamath during the 1920s and 1930s.⁸

7. Del Norte Triplicate, Oct. 22, 1926.

8. Ibid.

C. The Lumber Industry in Del Norte County--1939-55

Immediately following the end of World War II, the lumber industry of Del Norte County, which had died prematurely when Hobbs, Wall Co. shut down in 1939, received "a most effective shot in the arm." Operators from Washington and Oregon were looking toward a rapid expansion of the industry. To whet the operators' interest, the Del Norte Chamber of Commerce circulated promotional literature, calling attention to the bountiful supply of timber in the region. When they came, the northern operators brought with them "know-how and skills" that quickly changed Crescent City "from a slow-moving, relaxed resort town into a busy, small town metropolis with visions of a promising future."

With the companies came experienced loggers, mill hands, truckers, and shippers. Between 1940 and 1952, the population of the county doubled. Gone were the colorful days of the logging camps, donkeys, skid roads, and railroads. The operators of the late 1940s and early 1950s used power saws, bulldozers, rafts, tugs, trucks, and trailers. Instead of living in camps, the loggers were family men, who commuted to and
 9
 from work.

9. Leona Hammond, "Lumber Epitomizes Centennial's 'One Hundred Years of Progress,'" Del Norte Triplicate, Centennial Edition (1954), p. 2-AA.

The lumbering industry, as before the closing of Hobbs, Wall, again became the county's major industry. By 1955, of the county's aggregate labor force of nearly 4,500, there were 2,800 engaged in lumbering and related industries. Nine of the 40 logging, lumber, and plywood operations in Del Norte owned standing timber. According to the county assessor, there were on his books, 140,000 acres of privately owned commercial timberlands. This acreage held 5,725,000,000 board feet, of which 75 percent was owned by five companies--Simpson Logging, M & M Woodworking Co., S. A. Agnew, Howard Mill, and Arrow Mill.

The annual timber harvest zoomed from 23,000,000 feet in 1947 to 290,000,000 in 1953. As another index of the importance of the lumbering industry, it was pointed out that in 1953, the six largest operators had paid more than 40 percent of the taxes needed to keep the county in business. (See Appendix B for a table giving the annual Del Norte County timber harvest in the years 1947-1980.)¹⁰

In 1953, there were in the county about 400,000 acres of public land administered by the United States Forest Service, on which there was an estimated 5,800,000,000 board feet of

10. Henry Trobitz, "Del Norte County Logging Industry Has Good Future,"; Nancy Kelty, "Lumber Industry Major Factor in D. N. Economy," Del Norte Triplicate, Centennial Edition (1954), p. 4-AA, p. 8-E.

marketable timber. Jurisdiction over this timber was divided between the Siskiyou and Six Rivers National Forests. Most of this timber was Douglas fir. Guidelines established by Department of Agriculture foresters permitted this timber to be cut at a rate of 50-60,000,000 feet per year on a sustained yield basis. Coincidentally, cuttings had fallen short of the sustained yield capacity, because of the inaccessibility of much of the timber. Roads would have to be opened to get at much of the federally owned stumpage.¹¹

The two state parks, Jed Smith and Del Norte, in 1953 embraced 15,000 acres, containing 1,800,000,000 board feet of virgin timber.¹²

News that 300,000,000 feet of timber had been harvested in 1953 caused concern to conservationists. Checking this figure against reserves, they found that this figure greatly exceeded the sustained yield of the county. It was urged that the cut figure be reduced to 150-200 million feet per year.

11. Ibid.

12. Kelty, "Lumber Industry Major Factor in D. N. Economy," found in *ibid.*, 4 AA.

Another pressing problem was to provide for "an orderly removal of the over-mature and decadent portions of the stands, using wisely with as little waste as possible." Fire must be controlled, and the logged areas left in good condition for rejuvenation.¹³

D. Sportsmen Challenge Loggers

Rapid expansion of the logging industry on the lower Klamath in the post World War II years caused serious problems. By the early 1950s, logging and rafting operations on the river had reached a point where sports fishermen took action.

President George Difini of the Associated Sportsmen of California approached the loggers to see if a solution to the manifold problems resulting from rafting operations could be compromised. When the loggers seemed to drag their feet in agreeing to standards which would allow fishing and rafting to be carried out harmoniously, the California Wildlife Federation, under the leadership of Difini, prevailed on Senator A. W. Way of Humboldt County, to introduce legislation to suspend all log-rafting on the river for three months, from July 15 to October 15, during the peak of the fishing season.

13. Trobitz, "Del Norte County Logging Industry Has Good Future," Del Norte Triplicate, Centennial Edition (1954), 8-E.

To head off passage of S.1287, concerned loggers met in February 1955, with representatives of the Corps of Engineers, State Water Pollution Control Board, State Chamber of Commerce, and the North Coast Conservation Board. An agreement was reached by which the loggers were given a one-year grace period in which to voluntarily police themselves; operate strictly in accordance with guidelines established by the Corps of Engineers, the Water Pollution Control Board, and themselves, and to "do everything possible to make their operation. . . compatible with the fishermen's right to use the river."¹⁴

E. Fish and Game Committee's Klamath Field Trip

1. August 27, 1955, River Reconnaissance

Some six months later, a study was made of multiple useage of the Klamath River by sportsmen and logging interests by the California Assembly's Interim Committee on Fish and Game. The hearings, chaired by Frank P. Belotti, were held in Humboldt and Del Norte Counties in late August 1955.

The problem of multiple useage had been brewing for a number of years, inasmuch as the sports fishermen maintained that the loggers, in using the lower 30 to 35

14. Report 1957 Interim Committee on Fish and Game, "Problems Relative to the Lower Klamath River" (Sacramento, 1957), pp. 95-6.

miles of the Klamath for rafting logs downstream, had contaminated the waterway with bark from the logs to an extent that the water was becoming untenable for fish life. Moreover, they charged that rafting logs, during low water, disturbed the bottom along the shallower reaches, destroying potential spawning grounds.

Loggers refuted these charges, arguing that their mode of operation left little bark in the river, and that rafting could have little affect on spawning, because spawning was confined to the upper reaches of the Klamath or its tributaries.

To familiarize themselves with existing conditions, the committee people spent August 27 on the lower Klamath. They first visited the bar at the mouth. Here, they saw sportsmen standing almost shoulder to shoulder, casting for salmon and steelhead. Several log reload stations were viewed. These had bark traps and in several instances conveyor belts for removing the bark from the traps onto the bank.

The convoy then proceeded upstream, and encountered a number of log rafts undertow. The river stage was low and several rafts were found hung up in the shallower

reaches with towboats struggling to break them loose. When they were freed, there was a certain amount of gouging of the river bed, documented by a brown discoloration in the waters.

Above the town of Klamath, the committee landed to inspect log reloading installations, and identified operating bark traps, wing dams, and weirs. Farther upstream, they stopped at dumps to which logs were trucked, and where they were sometimes debarked and formed into rafts. At these points, slackwater areas had been formed by wing dams and weirs.

At various places along the river, on both banks, runaway logs had lodged. Some of these logs had been caught afloat by the companys' patrol and pulled in and anchored to the shore, while others had stranded when the river stage fell. Loggers informed the committee that these stray logs, which had broken loose from rafts, were periodically removed by a contractor.

During the 35-mile run upstream, the legislators saw numerous fishermen casting from either bank. Coincidentally, there were many outboard power boats, either

headed up or downstream or trolling. Frequently, these craft in passage interfered with lines cast from the shore.

Occasional pieces of floating bark were encountered. In some cases the bark was partially submerged, thus menacing outboard motor shear pens.¹⁵

2. August 28, 1955, Visit to Logging Areas

Next day, several members of the committee toured areas where heavy logging was underway. They saw "small creeks and streams tributary to the Klamath completely obliterated . . . by earth moved into the stream bed to form a 'cat' roadway and in other cases by being choked with logging debris." Some of this damage was current and was caused by recent logging, while some of the damage viewed dated to the 1930s and 1940s, particularly where streams had been clogged by redwood slash and debris. There, because of the slow deterioration of redwood, the damage remained for years.

15. Ibid., pp. 23-4. Subsequent studies have documented that bark has little or no adverse impact on migrating salmon. Telephone interview, Rankel with Bearss, Aug. 10, 1981.

Members of the committee, seeing this situation, held that the "potential threat to the fish life of the river was very great and that corrective action was urgently needed."¹⁶

F. August 29, 1955, Eureka Hearings

1. Carl Anderson's Testimony

On Monday, August 29, public hearings on multiple useage of the river were held at Eureka. The first witness was Carl Anderson of the Association of Northern California Logger and Klamath River Timber Industries. He traced the measures taken by the industry to keep bark out of the river by installation of bark traps, and the steps taken to operate tugs in such a manner as to interfere as little as possible with the sports fishermen. Next, he sketched the importance of the industry to regional economy. In 1954, contracts had been let to bring 70 million board feet of logs down the Klamath, which when sawed into finished lumber had a value of \$11,700,000.

Coincidentally, Anderson noted, that in 1939, only 400,000 California fishing licenses had been sold, but, by 1954, the number had soared to 1,750,000. He

16. Report 1957 Interim Committee on Fish and Game, "Problems Relative to the Lower Klamath River," p. 24.

wondered how much has been done to "equalize the number of fish in the river and the great demand that has been placed on the fish population in the last 15 years in northern California in the way of fish hatcheries, fish rescue work, etc.?"¹⁷

2. Bradley Page's Views

Bradley Page, Secretary-Manager of the Del Norte County Chamber of Commerce, urged continued multiple use of the navigable reaches of the Klamath. Page stated that any practices by loggers that may have been inimical to the interests of "true sportsmen fishing on the river" had been corrected, and that "there is no logical or valid reason for complaint of the present method of marketing logs by way of the river highway." Fishermen opposed to rafting were termed selfish and likened to those people who resisted opening of an already dedicated street that would better serve the business community.

Claims that log-rafting was detrimental to fish culture, Page sought to refute by pointing out that the 1954 season on the Klamath had been one of the most productive

17. Ibid., pp. 87-9.

in recent years, for both salmon and steelhead sports fishing.¹⁸

3. Elmer Myers' Testimony

Chairman Elmer Myers of the Klamath Chamber of Commerce on Klamath River Problems agreed with Page that the loggers now engaged on the Klamath had gone far afield "in their efforts to keep the river free of debris and floating logs." Improvements in rafting practices during 1953-54 had been commendable.

He and his committee had interviewed 75 anglers, who had fished the river annually for periods of 5 to 15 years, and had found only one man irrevocably opposed to multiple use of the river. Most of the people questioned were of the opinion that "small boat traffic and drift fishing from boats in riffles where fishermen concentrate caused more interruptions than the log rafts."

Myers and his group held that hatcheries could not effectively replace the natural spawning areas that were to be lost by the Trinity diversion. They accordingly

18. Ibid., p. 89-91.

recommended that the smaller streams tributary to the Klamath, including the Trinity, be closed to fishing and designated spawning areas, and that more extensive salvage work be undertaken in streams that dry up in late spring or early summer.¹⁹

4. Everett Watkins' Views

Dr. Everett Watkins of the North Coast Conservation Council addressed the regional economic benefits of the sports and logging industries. He spoke of the 3,000 fishermen on the lower Klamath daily during the height of the salmon and steelhead runs. It seemed unfair that a small group of loggers should be "allowed the right to do anything which would destroy the recreational use of this river and [its] fishery without giving the sportsmen any consideration." The river and fish, he reminded the committee, were public property.

It might well be impossible to maintain the salmon and steelhead fisheries on the Klamath, Watkins warned, even if increased angling pressures was the only problems.

19. Ibid., pp. 91-3.

But now, he continued, the annual runs were threatened by destruction of the natural fish hatcheries--the small feeder streams--by logging operations, "which are allowed under present law to choke and make these feeder streams impassible and unfit for use by the spawning salmon." To compound this problem, there was the proposed diversion of the Trinity, with its principal spawning beds upstream from the projected Lewiston dam site. Then, since the early 1920s, the California-Oregon Power Co. had caused the flow of water through the penstocks of its Copco dam to fluctuate in volume, and the consequent daily rise and fall of the waters trapped and killed annually uncounted salmon and steelhead fingerlings.²⁰

5. Princess Lowana Brantner States Yuroks' Position

Princess Lowana Brantner was an articulate spokeswoman for the Yuroks. She voiced the Indians' concern about logging practices that were destroying spawning beds in small tributary streams; the blocking of the upper Klamath by the Copco dam; and the future diversion of the Trinity for benefit of the Central Valley Project.

20. Ibid., pp. 93-5.

Continuation of fishing, she stressed, was necessary and vital to the economic stability of the Yuroks, and, if the small tributary streams were not kept "clean by the logging companies there will be no spawning beds." My people owned these fisheries, she reminded the committee, "long before the white man landed on the American Continent."

The Yuroks were not against the logging industry, Ms. Brawtner observed, they were against destructive logging practices. "When there is no more timber to log like in other parts of the United States," she added, "we the Indian people will need our salmon to can and dry for our livelihood."²¹

6. Colonel Vredenberg Outlines the Corps' Responsibilities

At the Eureka hearings, Col. Paul Vredenberg of the U.S. Corps of Engineers made the point that the Corps deemed rafting a "legitimate aspect of navigation," and preferred to cope with the loggers on an individual basis rather than enter into legal proceedings for removal of stray logs from the river.

21. "Transcript of Proceedings, Assembly Interim Committee on Fish and Game, Subcommittee Hearing on Multiple Use of Klamath River, Aug. 29, 1955," pp. 104-106, files California State Archives; taped interview, Ms. Brawtner with Bearss, March 28, 1981.

In its consideration of navigational control of the river, fish life was not taken into account by the Corps, because it had no navigational connotation, Vredenberg volunteered.

Colonel Vredenberg admitted that three wing dams had been built on the Klamath without the Corps' authority, and that these had destroyed some of the riffles. He then explained that applications for authority to dredge riffles were placed on public notice for 30 days to allow all interested parties to comment.

A copy of the notice was always referred to the State Lands Commission, which, if the dredging were in the interest of navigation, would voice no objection. Questions raised by sports fishermen would not alter decisions made by the Corps, unless they affected navigation.²²

Turning to release of water from the Copco dam, Colonel Vredenberg told the committee that the Corps had no control over it, as that was the responsibility of the California-Oregon Power Co.²³

22. Report 1957 Interim Committee on Fish and Game, "Problems Relative to the Lower Klamath River," pp. 25-6.

23. "Transcript of Proceedings," pp. 21-2.

7. J. Stuart Watson Speaks for the State Land Commission

J. Stuart Watson of the State Lands Commission informed the committee that the legislature had declared the Klamath to be navigable from its mouth to its confluence with the Shasta, some ten miles downstream from the Copco dam. His commission and the Corps, he explained, had concurrently issued permits for 10 or 12 logs dumps on the upper reaches of the lower river and five reloads on its lower reaches. These permits were based on specific plans submitted, which described the amount of navigable waters to be occupied, the inclusion of bark traps, and a guarantee that, when operations were terminated, the improvements were to be removed.²⁴

G. The Committee Makes its Recommendations

The Interim Committee on Fish and Game, following its field trips and hearings, found that:

1. Much of the logging area adjacent to the lower Klamath River is not served by roads linked to the State Highway System which would permit the hauling of logs directly by truck.
2. The movement of logs from the area adjacent to the lower Klamath River by means of rafting on the river is the most economical method available.

24. Report of 1957 Interim Committee on Fish and Game, "Problems Relative to the Lower Klamath River," pp. 26-7.

3. All log dumping and reloading points have installed some method of removing the bark from the river. This is accomplished by bark traps and screens or by weirs or wing dams from which the bark is periodically removed and burned on shore.
4. The logging industry has banded together to provide a river patrolling system which secures runaway logs and reports stranded logs to a contract pickup service which assures the removal of these hazards as soon as possible.
5. The logging industry has agreed to abstain from rafting on certain days so that fishermen can pursue their sport without interference on those days.
6. Some of the loggers are "cold decking" wherever and whenever economically feasible.
7. The appropriate experts of the California Department of Fish and Game have stated unequivocally that there is insufficient bark in the river to be considered a menace to fish life by pollution or contamination.
8. The California Department of Fish and Game has stated that there is no spawning of any consequence on the lower Klamath River, but that instead the fish spawn in the upper parts of the tributaries to the river.
9. The California Department of Fish and Game has stated that a potential danger to fish life in the river exists on the tributaries by virtue of logging practices which tend to destroy the spawning grounds.
10. Since much of the fishing on the river is done by casting from the banks, the passage of sports boats up and down the river apparently causes more interference and ill-feeling than does the passage of log rafts.
11. There is some evidence that certain sportsmen "hog" the available space on the sand bar at the mouth of the Klamath River from which some of the best fishing in the river is to be had.

12. Since the lower Klamath River is, by law, a navigable waterway, the United States Corps of Engineers is the only agency having jurisdiction on the use of the river for navigational purposes, which includes log rafting.

13. The State Lands Commission has no jurisdiction over the river itself, but may grant permits for dumping and reloading stations on those portions of the banks of the river which are owned by the State.

14. The lumbering industry in the vicinity of the Klamath River represents a major factor which is vital to the economy of the region.

15. Sport fishing on the Klamath River also represents a factor which is of some importance to the economy of the region, but apparently not as great as the logging industry.

16. There is considerable evidence that the two factions involved are gradually finding solutions to their mutual problems by voluntary and cooperative action.²⁵

H. The December 1955 Flood and Its Effect on S.1287

In late December 1955, four months after the Eureka hearings, disastrous floods on the lower Klamath destroyed the log dumps, reloads, and weirs. The banks were stripped clean, placing the loggers in the position of starting from "scratch." This permitted them to "follow standards and agreed to procedures . . . where a log dump or reload is to be built." The committee accordingly urged that spokesmen for the loggers and fishermen continue to explore means of cooperation with a view to further eliminating and minimizing areas of friction between the two groups.

25. Ibid., pp. 30-1. Logs are "cold decked" when they are cut, hauled, and stacked like toothpicks.

It was the committee's consensus that there was no "clear-cut" evidence to document that log-rafting on the lower Klamath was causing injurious effects to the salmon and steelhead fisheries. Neither was there evidence that log-rafting, in its present form, constituted a potential danger to the fisheries in the future. In view of the cooperative attitudes displayed by both groups, the committee was of the opinion that, at present, there is no need for legislative action. The situation, however, should be monitored to insure a continuation of the cooperative efforts by the two factions.²⁶

I. The Fish and Game People and the Forest Practices Act

On April 12, 1956, the California Department of Fish and Game, taking cognizance of the hearings, published a 98-page booklet titled, "Effects of Logging on Fish Production." This publication provided data on the "irreparable" damage done to the salmon and steelhead fisheries by bad logging practices.²⁷ In the booklet, it was pointed out that more than 1,300 miles of north coast streams had been destroyed or adversely affected by bad logging practices.

26. Ibid., p. 31; Del Norte Triplicate, Dec. 22 & 29, 1955.

27. "Effects of Logging on Fish Production," (Sacramento, 1956).

Under the California Forest Practices Act, the lumber industries had been permitted to police their operations. Members of the Forest Practice Committee, it was pointed out to the legislators, were people who either were actively engaged in or had a financial interest in the industry. They could accordingly be expected to adopt rules and guidelines favorable to lumber interests. One of the greatest weaknesses of the Forest Practices Act, which sportsmen continually harked to, was that there was no provision or responsibilities for protection of the streams and wildlife.²⁸

28. Assembly Interim Committee on Fish and Game, "Status of Salmon and Steelhead on the North Coast," Oct. 10, 1961, pp. 76-7.

XVII. ESTABLISHMENT BY INITIATIVE OF THE KLAMATH RIVER FISH AND
GAME DISTRICT

A. Electro-Metals Announces Plans for Hydroelectric Development

In the summer of 1922, Electro-Metals Co. announced plans to build a 200-foot high dam across the Klamath, some 40 miles upstream from the river's mouth, to supply electricity to reduce British Guiana bauxite to aluminum at a smelter to be located at Trinidad Head, north of Eureka. This news caused an uproar on the part of commercial and sports fishermen. Maintaining that the proposed dam would "destroy the last salmon stream on the Coast, resulting finally in the extinction of salmon on California shores," the executive board of the California State Fish and Game Commission met in San Francisco, on August 17, to plan a campaign to oppose the undertaking. The commission hoped to present its arguments before the Federal Power Commission in the Nation's capital, when the latter group met in September to consider Electro-Metals' application for a license to proceed.¹

1. San Francisco Chronicle, Aug. 18, 1922. According to N. D. Scofield, Commissioner of Commercial Fisheries, the Klamath was the only "stream on the Pacific Coast now that is free for salmon to make their 'run' in, with the exception of the Sacramento, which has so many power plants along it that it has practically lost its usefulness as a salmon 'run'."

B. Fish and Game Commission Declares its Opposition

At the September hearings, the Fish and Game people warned that construction of high dams on the lower Klamath would destroy the salmon runs. They argued that sufficient electrical power can be generated from waters on the upper tributaries to alleviate the necessity of placing insurmountable barriers that would prevent the fish from reaching their spawning grounds. They contended that the fish entering the Klamath belonged to the people, and that "the people's proprietary right to fish can not legally be taken from them." Moreover, it was pointed out that "the comparative money value of the fish as compared with the power that would be developed should not enter into the discussion although" it constituted a major part of the arguments of power promoters and electrical engineers.

After listening to the proponents and opponents, the Federal Power Commission denied Electro-Metals' application for a permit for high dam construction.²

2. California Fish and Game, Vol. 8, No. 4, Oct. 1922, p. 287. Records of the Federal Power Commission for these years are not on file at National Archives.

C. The Battle is Joined

Undaunted, Electro-Metals officials carried their case to the California Division of Water Rights. There was on file before the division an appropriation made by Carl Langford in 1908 for 500,000 inches of water flowing in the Klamath, a figure in excess of four times the mean flow. The point of diversion was Ishi Pishi Falls, and at the time of the appropriation that area was without roads. All construction materials had to be brought in by pack animals. No roads had been opened by Langford, "and the only construction accomplished toward capitalizing on the vast allotment, outside of surveys and plans, was the boring of a 1,700-foot partially completed tunnel. Plans had called for directing water through the tunnel and a canal to a proposed power installation below the falls.

The proposal now pushed by Electro-Metals called for construction of a dam, 250 feet in height, which would close the Klamath above the structure to salmon and steelhead runs. To accomplish its construction goal, the company called for a 10-year extension of the water appropriation to "complete its proposed development." To justify the Division of Water

Rights in granting such an extension, it was incumbent on the applicant to proceed with "due diligence in proportion to the magnitude of the project."³

At the May 1, 1923, hearing, State Fish and Game Spokesman R. D. Duke reminded the Division of Water Rights people that the state owned and operated a hatchery on Fall Creek and an egg taking station at Klamathon, where annually an average of 5,000,000 steelhead and 20,000,000 salmon eggs were handled, and used for stocking the Klamath, as well as other California rivers. If this permit were granted, Duke warned, "it means the end of this source of supply and the practical confiscation" of the subject hatchery and egg taking station, as their utility would be destroyed. Already, Duke continued, hydroelectrical developments on the Sacramento and San Joaquin waterways had destroyed 90 percent of the California spawning grounds for salmon and steelheads.⁴

3. California Fish and Game, Vol. 9, No. 3, July 1923, p. 103; State of California, Fish and Game Commission, 27th Biennial Report for the Years 1920-1922 (Sacramento, 1923) pp. 34-5.

4. California Fish and Game, Vol. 9, No. 3, July 1923, pp. 103-04.

In rebuttal, Electro-Metals officials spoke of the use of fishways to enable migrating fish to bypass the dam. Commissioner Henry O'Malley of the U. S. Bureau of Fisheries challenged this assumption. He was of the opinion that it was "practically impossible successfully to pass adult salmon over a dam or obstruction of a greater height than 30 feet." He found Electro-Metals' mitigation plan to construct a fishway in rises of 30 or 40 feet, and then to establish resting pools to be novel. It would be impossible for him to say whether it would be successful. He, however, would hesitate to recommend such a proposal "for a river which is supporting a commercial run of salmon that would be destroyed if it were not to prove successful."⁵

D. California Department of Public Works Approves Water Allotment Application

But, on July 26, 1923, the California Department of Public Works approved an application of Electro-Metals to appropriate 8,000 cubic feet of water per second from the Klamath

5. O'Malley to Shebley, undated, found in *ibid.*, pp. 104-105.

in connection with its proposed power plant at Ishi Pishi Falls. The granting of the application was protested by Oregon farming interests and the California Fish and Game Commission.⁶

E. Electro-Metals Refines its Plans

As a follow-up on this decision, officials of the San Francisco-based company announced that the firm would proceed with its plans for construction of a 250-foot high dam and development of facilities capable of generating some 150,000 horsepower. Asserting that the Klamath River "is the one remaining undeveloped great power stream in California and that competent authorities have estimated its potential power resources at 1,500,000 h.p.," a company spokesman stated that this power is particularly adapted for use in electro-metallurgical and chemical industries. Because of the proximity to deep water transportation, he continued, "the Klamath presents certain advantageous features," which do not occur in many North American rivers.

6. San Francisco Chronicle, July 27, 1923.

In commenting on development of electro-metallurgical and chemical industries in California, it was noted by the company spokesman that these industries, a generation ago, made possible the hydroelectrical development of the Niagara, by providing a market for the power at a time when no other market existed.⁷

The State Fish and Game Commission, the company official admitted, had vigorously opposed Electro-Metals in its program for development of the Klamath. This opposition, it was contended, was based upon the belief that the projected dam would destroy the salmon and steelhead runs on the middle and upper Klamath and its tributaries. The company countered that the salmon, the only fish taken commercially on the Klamath, were of "insignificant economic importance to Californians." Moreover, he stated, the opinion of the Fish and Game people that development of hydroelectric projects would destroy the salmon runs was not concurred in by the United States Bureau of Fisheries, which was on record that a means could be devised for having the fish bypass the dam.

7. Ibid., Aug. 2, 1923.

Electro-Metals also challenged the Fish and Game Commission's contention that sports fishing on the Klamath would be destroyed by the project. Objections to power development on the Klamath, officials stated, "came from misguided people 'who erroneously claim that sport fishing would be interfered with and who take the attitude that their pleasure takes precedence over the development of natural resources and consequent industrial benefit to the entire State.'"⁸

F. Sports and Agricultural Interests Take a Stand

Harry C. Donoho, a respected columnist, spoke for sports fishermen in an article carried in the San Francisco Chronicle and other California newspapers. Determined opposition by California sportsmen to the proposed hydroelectric development, he wrote, was engendering the interest of anglers in all parts of the Nation. Chinook salmon and steelhead, he warned, once so plentiful in the rivers and streams of the state, have today "their last stronghold in the Klamath and Eel rivers," and "the fight to guard the sole remaining spawning grounds has vastly more than a sentimental interest to the half million or more men and women who seek to guard the wild life resources of the State."

8. Ibid.

The chinook salmon, Donoho informed his readers, was notable for its migrations. Though hatched in small tributary mountain streams, the chinook spent most of its life in the ocean, returning to fresh water to spawn. There were two migrations--one in the spring and the other in the autumn, the latter being more important. In its southern range, the chinook salmon appeared in Monterey Bay in sufficient numbers to bring out commercial fishermen in mid-April. Unlike the Eel and Mad Rivers, which had only a fall run, the Klamath boasted both.

Coincidentally, the Shasta steelhead afforded the "best angling to be found anywhere in the country." So popular was this fish that it had been introduced into selected rivers in the eastern United States, Australia, and Argentina. Klamath River steelheads, Donoho continued, ran to the sea and furnished "the best supply of eggs for the State hatcheries on that stream."⁹

Northern California and Southern Oregon agricultural interests also rallied to oppose the project. In Siskiyou County there was a mass-meeting on Friday evening, August 17, to protest

9. Harry C. Donoho, "Last Stronghold of the Fish," found in San Francisco Chronicle, July 30, 1923.

the State Division of Water Right's decision. Petitions were circulated, and more than 2,000 persons signed a protest against the decision. It was charged that the Water Rights people had "virtually" given Electro-Metals first claim on water now used for irrigation purposes by scores of farmers and ranchers and three of the county's largest irrigation districts.¹⁰

G. The Appellate Court Affirms Action of Water Rights Division

In an effort to prevent construction of the dam, the Fish and Game Commission applied for a writ of review of the evidence upon which the Division of Water Rights had granted "a certificate of due diligence to Electro-Metals Company" for damming the Klamath at Ishi Pishi Falls.

Spencer Burroughs, appearing for the Water Rights Division, argued before Judge Herzinger's Superior Court of Siskiyou County that granting of the subject certificate in no way adversely affected the Fish and Game Commission. He declared that such a certificate did not certify the right of the metal company to build a dam or appropriate water, but was issued to protect the rights of the company, if it had any rights.

10. San Francisco Chronicle, Aug. 17, 1923.

R. D. Duke, representing the Fish and Game Commission, charged that the Water Rights people, in granting the certificate, had "perpetrated an outrage on the people of California."

On November 6, after listening to the arguments, Judge Herzinger overruled a motion by the company's attorney to quash the commission's application for a writ of review of the evidence. He then gave the litigants 30 days in which to file responses, and at that time a date would be set for a review of the testimony upon which the decision of the Water Rights Division was based.¹¹

On December 9, to remove the case from Judge Herzinger's court, the Division of Water Rights asked the State Third District Court of Appeals for a writ of prohibition to restrain the Siskiyou Superior Court from proceeding with the writ of review sought by the Fish and Game Commission. The division's attorneys contented that Judge Herzinger's court had no authority under the law to review the action of the Water Rights Division in granting the certificate to Electro-Metals.

11. Ibid., Nov. 7, 1923.

The appellate court granted a temporary writ returnable on Christmas Eve.¹²

H. Water Rights Division Grants More Applications

The appellate court, upon reviewing the case, affirmed the action of the Water Rights Division and ordered the license reissued. Consequently, on May 1, 1924, the division granted the application of a Mr. Jackman for 9,000 cubic feet of water, and two additional applications by Electro-Metals, each one involving 3,000 feet of water. With these two and the one issued the previous year, the company now had permits to develop a total of 103,000 horsepower of electrical energy on the lower Klamath. Applications for similar grants had been filed by company attorneys with the Federal Power Commission in Washington.

Company plans now called for construction of two dams--the first a 75-foot high concrete dam, near the mouth of Slate Creek about seven miles below Orleans, and the high dam at Ishi Pishi Falls, just above the confluence of the Klamath and Salmon Rivers.

12. Ibid., Dec. 10, 1923.

I. Sports and Agricultural Interests Seek to Checkmate Electro-Metals by Initiative

Meanwhile, on April 29, the California Fish and Game Commission determined to support an initiative measure to constitute a Klamath River Fish and Game District, and to prohibit construction or maintenance of any dam or other artificial obstruction in the waters of the subject district. The initiative effort had been launched on April 7, when the Siskiyou Board of Supervisors, after all other legal means had been exhausted, voted \$1,000 to start a campaign to save the Klamath from spoliation.¹³

In an open letter to Californians urging them to support the measure, President F. M. Newbert of the Fish and Game Commission thundered, "the Klamath River must be saved as a fish refuge to furnish eggs for the future stocking of our 26,000 miles of streams and hundreds of lakes." It was on the Klamath that the commission took most of the salmon and steelhead eggs for its hatcheries.

There were, Newbert warned, applications before the State Division of Water Rights and the Federal Power Commission for permission to construct three dams on the Klamath--one 250

13. California Fish and Game, Vol. 10, No. 3, July 1924, p. 120.

high at Ishi Pishi; a second, 20 miles downstream to rise 90 feet; and still another of the same height 20 miles below the second--three dams in a distance of 40 miles. Should these structures be built, they would "form an impassible barrier to salmon and exterminate this species of fish, a valuable food supply to the state of California."

The salmon and steelhead runs on the Klamath, "a non-navigable river, not needed for irrigation, a river safe from pollution, thus forming one of the most wonderful natural fish refuges in all California must be saved if the Fish and Game Commission is to continue with its propagation work." California, Newbert wrote, needed more fish, not less. In his lifetime, he had watched the great runs of salmon in the San Joaquin, Calveras, Kern, Merced, Stanislaus, and Sacramento slowly but surely disappear.¹⁴

In an unsuccessful effort to defuse opposition to the project, company president W. G. Devereaux announced that, in constructing the dams, they would build fish ladders for salmon to surmount, thus insuring a continuation of the runs. Electro-Metals, like California-Oregon Power Co. several years before, would also build a hatchery for salmon and stock the rivers and streams.¹⁵

14. Ibid., pp. 120-21.

15. San Francisco Chronicle, May 2, 1924.

Meanwhile, the Fish and Game Commission, sportsmen, and agricultural interests had been joined in their opposition to the undertaking by the Klamath River Packers' Association, which operated a cannery at Requa. The cannery, President Devereaux belittled by telling the press, had "an average annual pack of about 11,000 cases of one-pound tins of salmon valued at about \$140,000." But, he added, the annual value of the electrical energy from the Klamath River facilities would be \$21,600,000.¹⁶

J. Federal Power Commission Grants Preliminary Permits

On July 18, 1924, the Federal Power Commission held a hearing. Once again, the Fish and Game people recited their principal objections to the project. They were: (a) because of the height of the dams the salmon and steelhead runs would be destroyed; (b) that the hydroelectric development would ruin the watershed's sports fishing and recreational attractions; (c) that the commission's hatchery and egg collection stations would be rendered valueless; (d) that the people had a proprietary interest in the fish, and it was questionable whether a dam or dams could be legally constructed; and (e) the people would be deprived of a food supply.¹⁷

16. Ibid.

17. Ibid., May 2, July 17, & Sept. 17, 1924.

After listening to the arguments, pro and con, the Federal Power Commission granted preliminary permits to the associated interests of Electro-Metals Co. and P. Seybold for construction of three dams on the Klamath River. The licenses were granted on condition that the applicants work out plans for the protection of the salmon runs and fisheries. At the hearings, the power industries spoke of spending more than one hundred million dollars in construction monies.¹⁸

K. U.S. Representative Raker Introduces H.R. 8708

To halt development of the power complex, the Fish and Game Commission also sought legislative assistance. On the national level, First District Representative John E. Raker introduced a bill (H.R. 8708) "to amend an act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of public lands in relation thereto; and to repeal section 18 of the rivers and harbors appropriation act, approved August 8, 1917, and for other purposes' approved June 10, 1920," while in California more and more money and energy were concentrated on the campaign to bring the question before the voters as an initiative measure.¹⁹

18. Ibid., July 17, 1924.

19. Congressional Record: Containing the Proceedings and Debates of the 1st Session of the 68th Congress, 1923-24 (Washington, 1924), p. 6516.

To counter proponents of the initiative sponsored by the Fish and Game Commission and northern California agricultural interests, the Eureka Chamber of Commerce made public a letter from the Federal Power Commission to Representative Raker. The commission chairmen assured Raker that the United States would "guarantee preservation of the fish in the river, while at the same time permitting the harnessing of its power." Experiments on the Columbia River were cited as evidence that the problem of passing salmon over high dams could be solved.²⁰

L. "San Francisco Chronicle" Calls for Defeat of Proposition No. 11

The campaign to get the question before the people was successful, and it was placed on the general election ballot for November 4, 1924. To rally support for the developers, the influential San Francisco Chronicle carried an editorial, on October 28, headlined, "Electric Power Before Fish." The people were warned that, "Constitutional Amendment No. 11, if approved . . ., would permanently shut off one of the greatest natural sources of power in Northern California a source three times greater than Muscle Shoals."

Arguments by the initiative's proponents that the Klamath should be "preserved as a fisherman's paradise and maintained for the propagation of fish," the editor held, counted for little when "contrasted with the benefits to be derived from an unlimited supply" of electrical energy. Moreover, fishing

20. San Francisco Chronicle, Sept. 17, 1924.

ladders would mitigate the spawning problem. And, while fishing on the Klamath was open to a comparative few, "power light, and heat" were "necessary to the well being of every resident of the state."²¹

M. Voters Adopt Proposition No. 11 by Overwhelming Majority

On November 4, the citizens trooped to the polls, and by a nearly two to one margin approved Proposition No. 11, thus dooming the \$500,000,000 power project. Los Angeles County supported the measure by a whopping majority, while in San Francisco County it was backed by 40,000 voters. Sacramento County was the only populous area backing the power interests.²²

The measure as adopted and taking effect on December 17, 1924, provided:

SECTION 1. The Klamath river fish and game district is hereby created and shall consist of the Klamath river and the waters thereof, following its meanderings from the confluence of the Klamath river and the Shasta river in the county of Siskiyou to the mouth of the Klamath river in Del Norte county.

SEC. 2. Every person, firm, corporation or company who constructs or maintains any dam or other artificial obstruction in any of the waters of said Klamath river fish and game district is guilty of a misdemeanor and upon conviction must be fined not less than five hundred dollars (\$500.00) or be

21. Ibid., Oct. 28, 1924.

22. Ibid., Nov. 5 & 6, 1924. Nearly complete returns on the 6th, placed the vote as 502,232 for and 338,333 against.

imprisoned in the county jail of the county in which the conviction shall be had, not less than one hundred days, or by both such fine and imprisonment, and any artificial obstruction constructed, placed or maintained in said district is hereby declared to be a public nuisance.²³

N. Sporting Interest Use Porposition No. 11 as Shield Against
Federal Encroachment

Despite passage of Proposition No. 11, sports and commercial fishermen became alarmed in August 1929, when Secretary of the Interior Ray Lyman Wilbur ordered hearings held in conjunction with a controversy growing out of a 1925 resurvey of the area north of the Hoopa Valley Reservation. On the 15th, Charles L. Gilmore, attorney for the Klamath River Anglers Association, introduced the power question, when he noted that the Federal Power Commission had, in 1924, granted permits along the Klamath, although asked to withhold action, while the initiative was before the voters. He declared that Electro-Metals had retained its "blanket" permit from the Federal Power Commission.

23. Statutes of California, Constitution of 1879 as Amended, Measures Submitted to Vote of Electors, 1924, General Laws, Amendments, Passed at the Regular Session of the Forty-sixth Legislature, 1925 (Sacramento, 1925), pp. XCII-XCIV.

Next, John C. Piver of the Anglers Association urged that the resurvey be rejected, if it would adversely affect California's control of the Klamath. Similar opinions were voiced by spokesmen representing the California Federation of Women's Clubs and a group championing Indian rights. These organizations were apprehensive that if the resurvey were sustained by Secretary Wilbur, portions of the river would be brought under federal control. If so, hydroelectric dams might be permitted by Washington authorities in contradiction to the 1924 initiative.²⁴

The hearings had been undertaken upon the protest of John C. Gist, a Weitchpec rancher, against a resurvey made in 1925 by F. F. Joy, which would establish a "no-man's-land" north of the Hoopa Valley Reservation. If the resurvey were upheld, the subject land would be declared "unsurveyed public land" and would revert to the control of the federal government.²⁵

On Saturday, the 17th, before the hearings adjourned, Gilmore commented on the "strange . . . hiatus" that follows so closely upon the granting of power permits. Before returning to Washington, Northcutt Ely, Wilbur's executive secretary,

24. San Francisco Chronicle, Aug. 16, 1929.

25. *Ibid.*, Aug. 18, 1929.

asked the counsel for the public survey office and the sportsmen to submit briefs on how "best to obtain California's control of the Klamath, whether by act of Congress, or recommendation to the Federal Power Commission by" the Secretary of the Interior.²⁶

26. Ibid., Aug. 18, 1929.

XVIII. A BRIEF HISTORY OF STATE REGULATION OF RIVER FISHING: 1852-1941

A. Nineteenth Century Salmon Fishery/Indian Legislation

The California General Assembly enacted its first legislation pertaining to fishing rights on April 12, 1852, when the governor signed into law an "Act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon." While this act forbid certain activities, it also provided that:

This Act shall not apply to any of the Indian tribes, so as in any manner to preclude them from fishing in accordance with the custom heretofore practiced by them.¹

On May 15, 1854, the legislature amended this act by providing for a prohibition against the sale of fresh salmon. The subject statute declared that it was not to be directed against California Indians.²

1. Theodore H. Hittell, The General Laws of the State of California from 1850 to 1864 . . ., 2 Vols. (San Francisco, 1865), Vol. I, p. 453; The Statutes of California Passed at the Third Session of the Legislature . . . (San Francisco, 1852), pp. 135-36.

2. The Statutes of California Passed at the Fifth Session of the Legislature . . . (Sacramento, 1854), pp. 122-23.

The California legislature, on April 1, 1876, amended prior laws prohibiting the sale of fresh salmon. Under the 1876 statute, salmon caught in Del Norte, Humboldt, Shasta, and Mendicino Counties could be legally sold. Taking advantage of this law, Jones & Richardson established a commercial fishery at Requa that autumn. The Jones & Richardson fishery, however, was on the Klamath River Reservation, where the state lacked jurisdiction to legalize such an activity. This led to an acrimonious conflict with the Bureau of Indian Affairs, and the eventual eviction of Jones & Richardson.³ (For additional data on this subject, see Chapter VII, "Non-Indian Settlement on the Lower Klamath" and Chapter IX, "Commercial Fishing on the Klamath: 1876-1928.")

B. The 1907 Changes in the Season and Size of Mesh

When the 38th Session of the Legislature convened on January 7, 1907, the California Fish and Game Commission recommended a change of five days in the closed season for taking salmon. They suggested that the closed season begin on September 15, instead of on the 10th, and end October 21 instead of the 16th. Spokesmen for the cannery interests had complained

3. Acts Amendatory of the Codes of California Passed at the Twenty-first Session of the Legislature, 1875-1876 (San Francisco 1876), pp. 114-15.

that, in recent years, the fall salmon runs had been later; that the closed season commenced before the run reached its apogee; and accordingly most of the salmon were passing through the fishing grounds during the closed season. The cannerymen and sportsmen had asked for a two-week extension of the season. This led to a compromise, and a change of one week was effected. The act signed into law by Governor James N. Gillett on March 15, 1907, provided for a closed season on taking of salmon, shad, striped bass, and sturgeon to begin September 17 and to end October 23.

No change was made in the "important feature of the law," which prohibited taking salmon above tidewater before November 15. On the Klamath River, tidewater was established by the legislature as a point on the river north of James McGarvey's residence. Without this restriction, there was nothing to prevent boats from trailing the schools upstream, and decimating the runs before they reached the spawning grounds.

The 38th legislature also adopted a Commission recommendation that the mesh of a net with which salmon could be legally taken be reduced from 7 1/2 to 6 1/2 inches. This was dictated by a desire to catch the many small but mature fish,

which passed through the larger mesh and made their appearance in large numbers between the racks at the spawning stations, where they were deemed a nuisance. Marine biologists considered it undesirable to breed from the smaller stock.⁴

C. The State is Divided into Fish and Game Districts

1. Lower Klamath Assigned to District 1

In 1911, the legislature by law divided the state into six fish and game districts to be designated the first fish and game district, the second fish and game district, etc. The first fish and game district was to include these counties: Del Norte, Siskiyou, Modoc, Lassen, Shasta, Trinity, Humboldt, and Tehama.⁵

2. Lower Klamath Reassigned to District 2

Then, in 1913, the act was amended and the state was divided into seven fish and game districts. The second

4. Twenty-first Biennial Report of Board of Fish and Game Commissioners of the State of California for the Years 1909-1910 (Sacramento, 1910), pp. 20-1; The Fish and Game Laws of the State of California (Sacramento, 1907), pp. 36-8.

5. State of California Fish and Game Laws, 1911-1912 (Sacramento, 1911), pp. 50-1.

district to which Del Norte and Humboldt Counties were assigned, also included Mendocino, Glenn, Colusa, Lake, Sonoma, Napa, Yolo, Solano, and Marin Counties.⁶

3. Lower Klamath Reassigned to District 6

In 1915, the general assembly amended the act of 1913 dividing the state into seven fish and game districts. The new legislation, signed into law by Governor Hiram W. Johnson on May 15, established 29 districts, and placed the lower Klamath in District 6. The subject district was to "consist of and include the ocean waters and tidelands of the State to high water mark lying between a line extending west from the extreme westerly point of Point St. George, in Del Norte County, and a line extending due west from the extreme westerly point of Mussel Point," in Humboldt County, and "shall exclude all sloughs, streams and lagoons in said counties, except the Klamath River from its mouth to the mouth of Terwah Creek."⁷

6. State of California Fish and Game Laws, 1914-1915 (Sacramento, 1914), pp. 80-1.

7. State of California Fish and Game Laws, 1915-1917 (Sacramento, 1915), p. 97.

4. Rationale for Establishing Districts

The salmon laws, as enacted by the legislature between 1872 and 1911, inclusive, had applied to all areas in the state. But, in 1911, the legislature had constituted fish and game districts, and, in 1915, the districts were increased from seven to 29. This was done for the benefit of commercial fishing interests, so that when future laws effecting the take and seasons were enacted reference was always made to the particular districts.⁸

D. 1913 and 1915 Season and Bag Limits

The 40th Legislature, meeting in 1913, had accordingly amended the law to permit the taking of "salmon in the waters of the Klamath river between the fifteenth day of June and the fifth day of September of each year, with spear, hook and line or gill net, the meshes of which gill net are, when drawn closely together are measured inside the knots, six and one half inches or more in length." A second autumnal season was to begin September 20 and extend to November 1 of each year. Any person who took, caught, or killed a salmon on the Klamath, except with hook and line and spear, between November 1 and June 15 and September 5 to 20, was to be deemed guilty of a misdemeanor.

8. Ray Archibald, Fish and Game Conservation and Preservation, (Berkeley, 1947), p. 32.

As heretofore, tidewater in the Klamath was deemed to extend from its mouth to a point on the river north of James McGarvey's residence.⁹

In 1915, upon establishment of District 6, the salmon fishing seasons therein were limited and defined as applying to

every person who . . . between the first day of November and the fourteenth day of June, inclusive, of the year following, and between the sixth day of September and the nineteenth day of September, inclusive, of any year, except with spear or hook and line, said hook and line to be used in the manner commonly known as "angling," takes, catches, or kills any salmon, or who uses any net for the purpose of taking salmon; any of the meshes of which are, when drawn closely together and measured inside the knots, less than six and one-half inches in length; or who, in fish and game district six, uses any net for the purpose of catching salmon or steelhead, in the daytime, between the hours of 6 a.m. and seven thirty p.m., between the first day of August and the fifth day of September inclusive, of any year, is guilty of a misdemeanor.¹⁰

E. Redefining Tidewater on the Lower Klamath

The 1917 General Assembly redefined tidewater on the Klamath as extending from the mouth to the mouth of McGarvey's Creek, rather than the mouth of Terwah Creek.¹¹

9. State of California Fish and Game Laws, 1914-1915, pp. 45,47.

10. Ibid., pp. 50-1.

11. State of California: Laws Relating to Fish and Game, 1921-1923 (Sacramento, 1921), p. 31.

F. The 44th Legislature Changes the Seasons

Then, in 1921, the legislature changed the seasons in District 6. District waters were to be closed from December 1 to April 14, June 1 to 30, and September 6 to 19, to certain modes of fishing. The amended law provided:

Every person who . . . between the first day of December and the fourteenth day of April of the year following. . . , or between the first day of June and the thirtieth day of June . . . , or between the sixth day of September and the nineteenth day of September . . . , except with spear or hook and line. . . catches or kills or has in his possession more than three fresh salmon in any one calendar day, or buys, sells, offers or exposes for sale, any fresh salmon, or who, at any time takes, catches or kills any salmon with any net, any of the meshes of which are . . . less than six an one-half inches in length, or who uses any net for the purpose of catching salmon in the daytime between the hours of six a.m. and eight p.m. between the first day of August and the fifth day of September . . . is guilty of a misdemeanor.¹²

G. A Declining Catch Threatens the 1923 Season

In 1922, the salmon catch on the Klamath and other California rivers was so poor that "most salmon fishermen and fish dealers" became satisfied that the reason was overfishing and that radical restrictions must be adopted if Californians were to save the remnant of the run of this valuable fish. Efforts

12. Ibid., p. 144.

by the Fish and Game Commission in the years since the Great War to limit the take had been opposed by both river and ocean fishermen. This opposition, aided by Sacramento lobbyists, had stifled enactment of meaningful conservation legislation.

If radical measures were not undertaken at the next session of the general assembly, Department of Marine Fisheries spokesman N. B. Scofield warned, "to further protect the salmon, we are sure to see the same old story enacted again--of action being taken only after the species has become commercially extinct."¹³

Despite Scofield's views, state legislators failed to act, and no changes were made looking toward closing or limiting the 1923 season.¹⁴

H. 1925 Steelhead and Coho Salmon Conservation Measures

In 1925, the California legislature finally enacted several conservation measures for regulation of commercial fishing on the Klamath. The late coho salmon season was closed, and it was made unlawful to take steelheads in nets or to sell

13. N. B. Scofield, "Commercial Fishery Notes," California Fish and Game, Vol. 8, No. 4, Oct. 1922, p. 237.

14. Statutes of California 1923: Constitution of 1879 . . . (San Francisco, 1923).

steelheads which been caught in District 6. Coincidentally, to prevent steelheads from being taken by gill nets employed on the lower Klamath for salmon, the minimum size of mesh which could be used in the gill nets was raised from 6 1/2 to 7 1/2 inches. Because the steelheads running between July 1 and September 6--the present netting season for salmon--were small, few, if any, would be taken in the 7 1/2-inch gill net.¹⁵

Commenting on this legislation, Scofield noted, "These measures . . . should allay any fear sportsmen may have had that the steelhead run on the river will be damaged. There is no need to stop commercial fishing on the river as far as steelheads are concerned."¹⁶

I. 48th Legislature Seeks to Cope with Declining Take

The laws as amended, in 1929, by the 48th General Assembly, to cope with a continually declining catch, provided that:

15. "New Laws Relating to Commercial Fisheries," California Fish and Game, Vol. 11, No. 3, July 1925, p. 115; N. B. Scofield, "The Status of Salmon in California," California Fish and Game, Vol. 15, No. 1, Jan. 1929, p. 17.

16. Scofield, "The Status of Salmon in California," California Fish and Game, Vol. 15, No. 1, Jan 1929, p. 17.

In tidewater in the Klamath River district salmon may be taken with hook and line between the twenty-ninth day of May and the 31st day of December, both dates inclusive, or with gill nets of not less than seven and one-half inch mesh between the first day of July and the fifth day of September, both dates inclusive; provided that no net may be used between the hours of six a.m. and 8 p.m. between the first day of August and the fifth day of September, both dates inclusive.

During the netting season there was to be no bag limit, but at other times there shall be a bag limit of two per day. For the purpose of this act tidewater on the Klamath river shall be that portion of the river between its mouth and the Douglas memorial bridge. Above tidewater in the Klamath river district salmon may be taken between the twenty-ninth day of May and the thirty-first day of December with hook and line. Spears may be used only between August first and October thirty-first Not more than two salmon per day may be taken.¹⁷

Coincidentally, it was made unlawful to "catch or kill any salmon on any spawning bed or within ten miles of any salmon spawning taking station" (the division of fish and game to designate spawning areas in accordance with the subject act), "or in state waters at the mouth of any interstate stream within three miles north and south of a line drawn due west from the center of mouth of said stream; or to use nets at any time of year between sunrise Saturday and sunset of the following Sunday."

Any salmon taken in Districts 1, 1 1/2, 2, 2 1/2, 3, 12A, and the Klamath River District (except in tidewater) could not be sold.¹⁸

17. State of California Laws Relating to Fish and Game . . . SSacramento, 1929), pp. 191-92.

18. Statutes of California 1929, Constitution of 1879 . . . (San Francisco, 1928), pp. 1709-10.

The 49th Session of the Legislature, meeting in 1931, passed two acts, the first approved by the governor on April 2 and the second on June 12, amending Section 634 of the Penal Code, relative to the protection of fish and game. Neither act made any changes in rules and regulations covering the taking and sale of salmon in the Klamath River Fish and Game District.¹⁹

J. Fiftieth Legislature Enacts New Fish and Game Code

The General Assembly, which convened in January 1933, enacted a comprehensive Fish and Game Code, "therein revising and consolidating the laws relating to fish and game and other wild life, and repealing certain provisions of law therein specified." This code was approved by the governor on April 11 and became effective on August 21, 1933.²⁰

Among sections of the code applying to the Klamath Fish and Game District and salmon fishing on the lower Klamath were:

1. Districts

96. Klamath River district. The following shall constitute the Klamath River fish and game district: The waters of the Klamath River as described in the initiative

19. Statutes of California 1931, Constitution of 1879 . . . (San Francisco, 1931), pp. 134-39, 1591-93.

20. Statutes of California 1933, Constitution of 1879 as Amended . . . (Sacramento, 1933), Ch. 73, pp. 3-4.

act to create the Klamath River fish and game district, approved by electors November 4, 1924.

97. Trinity and Klamath River district. The following shall constitute the Trinity and Klamath River fish and game district: The Klamath River and the waters thereof, following its meanderings from the mouth of the Klamath River in Del Norte County to its confluence with the Salmon River, and also the Trinity River and the waters thereof, following its meanderings from its confluence with the Klamath River in the county of Humboldt to its confluence with the south fork of the said Trinity River.²¹

2. General Regulations--Miscellaneous

482. It is unlawful, between July fifteenth and October fifteenth, to pollute, muddy, or roil the waters of the Trinity and Klamath River district, or deposit, or permit the depositing of, any substance in said waters, so that the clarity thereof is affected. The clarity of said waters shall be deemed affected only when said waters, for a distance of one mile or more, contain more than fifty parts per million, by weight, of suspended matter. Any structure or contrivance which contributes to the condition, the causing of which is herein prohibited, is a public nuisance.

483. The provisions of this article relating to the Trinity and Klamath River district do not affect the laws applying to the territory included in said district which relate to birds, mammals and fish.

484. The provisions of this article relating to the Trinity and Klamath River district do not apply to the construction, repair or maintenance of public works by the Federal or State government, or any political subdivision thereof.²²

21. Ibid., p. 406

22. Ibid., pp. 440-41.

3. Sale of Fish Taken in Klamath and Smith Rivers

484.5 It is unlawful to sell or purchase any fresh, canned, or cured fish taken in the Klamath River district or in the waters of the Smith River.²³

494. As used in this part, tidewater on the Klamath River is that portion of the river between its mouth and the Douglas Memorial bridge.²⁴

4. Taking of Salmon by Sportsmen

655. In Klamath River district, above tidewater, salmon may be taken with hook and line, between May 29 and December 31; spear, between August 1 and October 31. The bag limit is 2 per day.

656. In Klamath River district, in tidewater, salmon may be taken with hook and line, between May 29 and December 31. The bag limit is 2 per day between May 29 and June 30 and between September 6 and December 31; at other times any number of salmon may be taken.

(Effective until January 1, 1934. See following section.)

656. In the Klamath River district, in tidewater, salmon may be taken with hook and line, between May 29 and December 31. The bag limit is 5 per day between May 29 and September 5, and 2 per day between September 6 and December 31. Not more than one daily bag limit may be possessed by any person during one day.

(Amended by Ch. 657, Stats. 1933. In effect January 1, 1934. The act contains the following section: "Sec. 4. This act shall go into effect on January 1, 1934.")

657. In districts 6, 7, 8, 9, salmon may be taken with hook and line, between April 1 and September 15. There is no bag limit. The size limit is as provided in section 661 of this code. In districts 8 and 9, not more than two salmon may be possessed by any person during one day, or sold, between September 16 and December 31 and no salmon taken during said period in said districts may be sold.²⁵

23. Ibid., p. 441.

24. Ibid., p. 442.

25. Ibid., p. 455.

665. Salmon taken in districts 1, 1 1/2, 2, 2 1/2, 3, 12A and the Klamath River district, except in tidewater, may not be sold. In District 5 the bag limit is 2 per day between May 29 and December 31.²⁶

5. Nets

843. Any net found in a boat is prima facie evidence that the owner or person in possession of said net is or has been using the same in the district where found.

(Effective until January 1, 1934. See following section.)

843. Any net found in a boat, or within 500 feet of tidewater in the Klamath River district is prima facie evidence that the owner or person in possession of said net is or has been using the same in the district where found.

(Amended by Ch. 657, Stats. 1933. In effect January 1, 1934. See note to section 656.)²⁷

Sections 863, 876, 887, and 942 were to be repealed, the repeal to take effect January 1, 1934. The subject sections read:

863. In tidewater in the Klamath River gill nets, the meshes of which are at least 7 1/2 inches in length may be used to take salmon between July 1 and September 5; but between August 1 and September 5 they may be used only between the hours of 8 p.m. and 6 a.m. of the following day.

876. In district 5, drift gill nets may be used. The mesh of gill nets and seines to take salmon in district 5 between August 15 and October 31 must be at least 5 1/2 inches in length.

26. Ibid., p. 456.

27. Ibid., p. 470.

887. In the Klamath River district, in tidewater, drift gill nets may be used.

942. In district 5 beach nets may be used, the meshes are at least 5 1/2 inches in length.²⁸

K. The Bag Limit and Season As Established in 1935

The Fish and Game Code, as amended in 1935, provided that in the Klamath River District, above tidewater, salmon could be taken with hook and lure, between May 29 and December 31. The bag limit was two per day. In tidewater, the season embraced the same months, but the daily bag limit was five. Not more than one daily bag limit could be possessed by any person during one day.

Salmon taken in the district still could not be sold.²⁹

The seasons and bag limits for salmon in the Klamath River Fish and Game District remained unchanged through 1941.

28. Ibid., pp. 472-73, 478.

29. State of California Fish and Game Code 1935-1937 (Sacramento, 1935), pp. 105-06, 128.

XIX. THE 1933 COMMERCIAL FISHING BAN

A. Fisheries Expert Scofield Attributes Declining Runs to Ocean Trolling

By the late 1920s, a succession of poor salmon runs on the Klamath caused many sportsmen to charge that the runs were being destroyed by the river's commercial fisheries. They also complained loudly that the steelhead-run was being destroyed by gill nets and urged that the river be closed to commercial fishing. Fish and Game Commission expert on this subject, N. B. Scofield disagreed with the sportsmen on this volatile issue.

In an article published in California Fish and Game, Scofield reminded sportsmen that before 1913 the salmon fishing seasons on the Klamath and Sacramento Rivers were coincident, despite inherent differences in the seasonal runs. Moreover, it had been lawful to net steelheads on California's northern rivers. Then, in 1913, the legislature had mandated the present autumn season, and had restricted commercial fishing to the lower six miles of the Klamath.

There had been three canneries at Requa in 1913. By the next year, one of these had gone out of business, and, since then, except in 1926 and 1927, there had been only two canneries on

the river. This did not take into consideration "two or three small, portable canneries termed 'sportsmen's canneries' because they can salmon and steelheads which the sportsmen catch."

Under the act of 1913, Scofield continued, the chinook runs on the river had increased, as documented by a larger commercial catch, coupled with an increasing take of eggs at the Klamathon (Hornbrook) racks, where eggs were taken from salmon which had escaped the gill nets and had ascended the river during the closed season. From 1913 to 1929, the fall chinook season closed on September 6, and it was believed that a sufficient portion of the run entered the Klamath, after that date, to spawn and maintain the population even if all salmon entering the river during the open season were caught. This belief had been verified by a decided increase of the number of salmon in the river.¹

Coincidentally, there was no ocean trolling for salmon off the Humboldt Coast to act as an added drain on the river's salmon population. Unimproved roads made it unprofitable for the

1. Scofield, "The Status of Salmon in California," California Fish and Game," Vol. 15, No. 1, Jan. 1929, pp. 16-17.

San Francisco fresh fish markets to truck down salmon from the Klamath. Consequently, marine biologists reported that the river's salmon population was building up.

But, Scofield continued, by the mid-1920s ocean fishermen had begun operating out from Eureka, and were soon trolling off the mouth of the Klamath, where they took salmon in large numbers. Improved roads, opening off the Redwood Highway, and construction and dedication of the Douglas Memorial Bridge had brought sportsmen to the lower Klamath in record numbers, besides making it possible for the fresh fish markets to send buyers to the area to truck out salmon and steelheads. The depletion of salmon in the Sacramento and off the Monterey coast had increased the "zest with which they are sought in the Klamath and in the sea outside the mouth." Because of this situation, the chinook runs were declining, and Scofield was satisfied that ocean fishing was the principal cause of this depletion, "and the salmon in the river would have held their own if it had not been for the development of the sea trolling off" the mouth of the Klamath.²

2. Ibid., p. 17.

B. 1930 Status of Commercial Fishing as Seen by Dr. Snyder

Writing in 1930, Dr. John O. Snyder of Stanford University, who had been studying the subject since 1919, reported that "commercial fishing is now confined to the lower estuary of Klamath River, partly as a matter of convenience and partly because of legal restrictions." In the past, gill nets had been used at certain places as far upstream as Blue Creek, and occasionally beyond. Advantage had been taken of slack water below swift riffles, and netters had been active at Ferry Drift and Hollow Tree Drift. An official tide limit, above which commercial fishing was illegal had been first fixed at the mouth of McGarvey Creek. Subsequently, in 1929, it had been moved downstream to the point where, in 1924-1926, the Douglas Memorial Bridge had been erected and dedicated.³

Salmon had been taken commercially during these years by drifting gill nets, laid across the river principally between the lower most island and a safe distance upstream from "The Jaws." Fishermen were in the habit of beginning their layout at a blast from the cannery whistle, usually about 8 p.m. The nets were laid from the decked stern of a large dory, one man

3. Snyder, "Salmon of the Klamath River," p. 7.

at the oars and a second handling the net. Occasionally, a skillful waterman managed both oars and net. Layouts were accomplished simultaneously from both sides of the river, "thus interdigitating across" the river. After the layout, the nets drifted with the current until hauled in. The fisherman passed slowly from end to end of his net removing entangled salmon, evidence of which was revealed by bobbing corks. Sometimes the evening's work was over in short order, and in "rare cases the fish became entangled so rapidly that no time is lost in bring in both net and fish." Far too frequently, however, drift after drift was made with scant success.

Large sturgeon sometimes became fouled in the nets. Harbor seals, small sharks and skates, and other kinds of deep sea fish could become entangled. The taking of some steelheads could not be avoided.⁴

The number of commercial fishermen varied from year to year, and also during the season. More boats operated after the migration was well under way. Some fishermen were willing to

4. Ibid., pp. 7-8.

allow others to do "the prospecting and preliminary exploring when fish may be scarce and hidden snags not definitely located." Fishing was seemingly better on bright moonlight nights.

Most of the commercial fishermen, as well as the employees in the cannerys, were Yuroks. "Salmon," Dr. Snyder observed, had "always furnished a great part of their food, and they have come to depend pretty largely upon the money earned during the fishing season for the few necessities of a simple life."⁵

C. Snyder Warns of Salmon Depletion

Dr. Snyder, in his 1930 monograph, warned that the Klamath River salmon were being depleted at an "alarming rate." Moreover, there was evidence that artificial propagation, alone was unable to cope with the situation.

Gill net fishing in the estuary, he reported, was a "deleterious straining process that permits the escape of small fish which later appear in ill-proportioned numbers on the spawning beds." If this led to a tendency to mature early, it could result in "a weakening of the entire stock in so far as it is of commercial value."

5. Ibid., p. 8.

The weekend closure of the river to fishermen during the annual runs, in Snyder's opinion, had failed to accomplish its goal.⁶

D. Fiftieth General Assembly Closes River to Commercial Fishing

California sportsmen, for a number of years, had been urging that commercial fishing be banned on the Klamath estuary, because "the waters were being denuded of salmon." In 1929, at the insistance of the Klamath River Anglers' Association, the California General Assembly named an investigative committee to make a study and report on the "decline of salmon egg production" on the Klamath.

The committee recommended closure of the river to commercial fishing, but several bills embodying this view failed to pass the 49th Legislature, in 1931. Another study by a legislative committee, in 1932, held that commercial fishing must be stopped if the salmon were to be saved.⁷

The question of closing the Klamath to commercial fishing, as urged by many California sportsmen and the legislative committees, came to a head in 1933 at the Fiftieth Session of the

6. Ibid., p. 121.

7. "Salmon Netting Banned on The Klamath," The National Waltonian, Aug. 1933, Vol. I, No. 2, p. 10.

California General Assembly. After a bitter contest, the lawmakers passed several measures bearing on the subject. They included the addition of Section 484.5 to the Fish and Game Code, which provided:

It is unlawful to sell or purchase any fresh, canned, or cured fish taken in the Klamath River district or in the waters of Smith River.⁸

And amended Section 655 to read:

In the Klamath River district, in tidewater, salmon may be taken with hook and line, between May 29 and December 31. The bag limit is 5 per day between May 29 and September 5, and 2 per day between September 6 and December 31. Not more than one daily bag limit may be possessed by any person during one day.⁹

After passage of the legislation, opponents appealed to Governor James Rolph to veto the bills, claiming that prohibiting gill netting of salmon would deprive many Indian fishermen of their livelihood. Proponents of the bills denied this, pointing out that such fishermen "could earn more money as boatpullers and guides for vacationists than they could during the brief commercial season."¹⁰

8. "Fish and Game Legislation," California Fish and Game, Vol. 19, No. 4, Oct. 1933, p. 268; Statutes of California 1933, Constitution of 1879 as Amended . . . Ch. 73, Sec. 484.5.

9. Ibid.; Statutes 1933, Ch. 73, Sec. 656.

10. "Salmon Netting Banned on Klamath," National Waltonian, p. 12.

On June 2, 1933, Governor Rolph signed the measures. These changes were to take effect January 1, 1934. Coincidentally, the legislature

appropriated out of any money in the fish and game preservation fund not otherwise appropriated the sum of fifteen thousand dollars (\$15,000) to be expended in accordance with law for the purchase of the Klamath River Packers' Association cannery near Requa, used in connection with the canning of salmon in the Klamath River district, more particularly described as follows:

That certain tract of land consisting of one hundred acres, more or less, together with all improvements and personal property thereon, located on the north bank of the Klamath River in Del Norte County about one-half mile from the town in Requa.¹¹

According to the National Waltonian, a sports and conservation-oriented publication, "Sportsmen the country over will rejoice that the Klamath, famed for its piscatorial delights and source of the stock of rainbow trout, has been saved for the public."¹²

E. Closing of Commercial Fishing Brings Hard Times to the Yuroks

1. As Seen by Walter McCovey

Persons thrown out of work by the commercial fishing ban would not agree with the National Waltonian. Most of

11. Ibid.; Statutes 1933, Ch. 656, Sec. 5.

12. "Salmon Netting Banned on the Klamath," National Waltonian, p. 10.

these people were of Yurok blood, and they and their ancestors had lived on and fished the Klamath for generations. One of these was Walter McCovey, Sr.

Born in February 1896, he was denied employment on the river by closure of the Klamath to commercial fishing. His father, a Civil War veteran and a white, had been a commercial fisherman before Walter was born, taking salmon and vending them to the Klamath Packing & Trading Co. The family at that time lived at Natchko.

As a youth, Walter and his older brother, Bill, fished commercially. At first, McCovey recalled, the Indians and mixed-bloods owned the boats and nets. Later, white men joined some of the Indians and mixed-bloods as partners. During his first year as a commercial fisherman, Walter earned \$450 for the season, "which wasn't bad for a 12-year-old," he added, with a twinkle in his eye. At 17, he went to work in the woods as a logger. In May 1917, he enlisted in the army, and did not return to the Klamath country until 1919.

At the time of McCovey's arrival back on the Klamath, only one of the three cannerys--the Klamath River Packers'

Association (Field's)--that had been there when he left was in business. From 1919 through the 1933 season, McCovey worked the lower Klamath during the salmon runs as a commercial fisherman. When not on the river, he toiled in the woods. During the 1919 and 1920 runs, his fishing partner was Harry Williams.¹³

Walter McCovey recalled that, during the season, they fished at night, putting out their nets following a blast on the cannery's whistle. If they "laid out" their nets too early or fished after quitting time in the morning, the fishermen were fined. As soon as McCovey and his partner filled their boat, they proceeded to the cannery, where the salmon were delivered, weighed, and receipted for. "If there was a heavy run and you were lucky you might make several trips between the fisheries and cannery during the night," he added.

During the 1920s, there were good and bad seasons on the river. Prices paid by the cannery fluctuated, and the best return McCovey was able to recall was 14 cents per pound.

13. Taped interview, McCovey with Bearss, March 28, 1981.

The California fish and game laws were enforced by the Del Norte County sheriff's department and game wardens. On one occasion, probably in 1928, the authorities, in enforcing the law placing the upper limit for commercial fishing on the Klamath at the Douglas Memorial Bridge, intercepted and shot McCovey's boat full of holes. After that, when fishing on the river, McCovey packed a gun.

The commercial fishermen had a union, which monitored working conditions and relations with the cannery's management. Pete Williams was the union president. At the end of the season, union dues were used to help defray the costs of a celebration featuring a dance, boat races, and banquet.¹⁴

By the late 1920s, McCovey recalled, the number of sportsmen fishing the lower Klamath was rapidly increasing. This publicizing the river as a sportsmen's paradise was caused by improved roads and the opening of the Douglas Memorial Bridge. Salmon caught, in the early 1930s, and taken to the cannery, when processed had a muddy taste. The price plummeted to 1 1/2 cents per pound. Then, the state legislature passed a law closing the Klamath and Smith

14. Ibid.; taped interview, Mesdames Shaughnessy and Mattz with Bearss, March 28, 1981.

Rivers to commercial fishing for salmon at the close of the 1933 season. The cannery then ceased operations, William Field died, and people from the Fish and Game Commission paid McCovey \$150 in gold for his boat and nets, which were worth at least \$500.

Walter McCovey, a favored source of livelihood destroyed by the state, then worked in the woods full time for the next 45 years.¹⁵

2. As Seen by Mesdames Shaughnessy and Mattz

Mesdames Florence Shaughnessy and Geneva Mattz, of Indian descent and long-time area residents, vividly recall the glory days of commercial fishing on the Klamath estuary. Mrs. Shaughnessy was born in Requa, in June 1902, and Mrs. Mattz in the same village, two years later. The two ladies remembered that at one time or another there were four cannerys in and around Requa. The major cannery (the Klamath River Packers' Association) was near Windy Point. It was managed by William Bailey in the first decades of the 20th century and

15. Taped interview, McCovey with Bearss, March 28, 1981.

then owned and operated by William Field and his estate. Other cannerys recalled were: The Requa Cooperative Packing on Safford's Island (1917-18), and the Klamath River Canning Co. (1911-13), Del Norte Salmon Canning (1912-13), and W. R. Press on Salt Creek. The latter never opened. There were also several small operators in the 1920s and early 1930s who canned or smoked fish for sportsmen.¹⁶

Most of the commercial fishermen were Indians or mixed-bloods, the ladies recalled. The Klamath River Packers' Association sold boats, nets, and other equipment to the fishermen on credit.

Like most of those in the community, the two ladies worked at the Klamath River Packers' Association cannery. The employment, however, was seasonal and the cannery opened for the year coincident with the beginning of the late summer run, shutdown for 13 days in September, and closed at the end of the year's commercial fishing season. The cannerys, principally the Klamath River Packers' Association, and the commercial fisheries provided an opportunity for the Yuroks to make a good living, thus improving their "quality of life." Some of the Indians and mixed-bloods, during the season, fished at night and worked a shift at the cannery the next day.

16. Taped interview, Mesdames Shaughnessy and Mattz, with Bearss, March 28, 1981.

There were salmon seasons that brought big runs, resulting in long hours, hard work, and fat payrolls for the community. Then, there were the lean years. Hours and pay shrunk.¹⁷

Mrs. Shaughnessy recalled that, in the early 1930s, with the Nation caught in the throes of a world-wide depression, disaster struck the community. The meat of the Klamath River salmon began to exhibit a muddy taste. Del Monte and Libby, McNeill and Libby, who purchased much of the prime salmon canned by the Klamath River Packers' Association, returned hundreds and hundreds of cases of canned salmon. This caused Field to file for bankruptcy, and was closely followed by legislation banning commercial fishing on the Klamath and Smith Rivers. This was a terrible economic blow to the community. The standard of living fell, and, to find employment, the Indians and mixed-bloods either had to go into the woods as loggers, a highly hazardous occupation, or migrate south to the bay cities, Los Angeles, and San Diego. The two ladies remember that the State Fish and Game

17. Ibid.

Commission paid few, if any, of the commercial fishermen, thrown out of work by the ban, for their boats, nets, and equipment.¹⁸

Sports fishermen had began to throng to the area in the 1920s, the ladies recalled, with opening of the Redwood Highway and construction of the Douglas Memorial Bridge. Mrs. Shaughnessy is of the opinion that local sportsmen had little influence in promoting the 1933 ban on commercial fishing, a view which is not shared by Walter McCovey. Mesdames Shaughnessy and Mattz agreed that, in the years after January 1, 1934, the annual influx of sports fishermen to the Klamath estuary did not greatly benefit the economic status of the Yuroks. Few of the Indians and mixed-bloods were able to find employment as guides and at the camp ground catering to the sports fishermen.¹⁹

F. Illegal Netting in Post Ban Years

It was reported that closing of the river to commercial fishing was followed by illegal netting, the guilty parties employing nets with as small as three-inch mesh. These

18. Ibid. Unfortunately, the records of the Klamath River Packers' Association for the 1920s and 30s have been either destroyed or scattered.

19. Taped interviews, McCovey, Mesdames Shaughnessy and Mattz with Bearss, March 28, 1981.

allowed nothing except the fingerlings to escape. So flagrant and defiant of the laws were these people that they loaded their trucks with netted salmon in broad daylight, then trucked to Oregon wholesalers for sale and distribution. This condition got so bad during World War II that Del Norte sportsmen telegraphed Governor Earl Warren, either to take immediate action to stop the depredations, or they would.

Governor Warren accordingly ordered Otis Wright, a hard-boiled warden, to Del Norte. According to the Del Norte Triplicate, from the day that Wright stopped his first truck-load of fish on U.S. 199, en route for Oregon, illegal netting was on its way to extinction.²⁰

20. "Shipping, Fishing Fleet, Cannery in Old Requa Era," found in Del Norte Triplicate, Centennial Edition (1954), p. 5-C.

XX. SURVEY HISTORY OF YUROK FISHING STATUTE

A. 83d Congress Enacts Public Law 280

Before 1953, the California Indians, while on their reservations, except those on the Palm Springs Reserve, hunted and fished without regard to state laws, because such statutes did not apply to their situation.¹ These activities were regarded by the Indians as "rights," though there were no specific treaties or agreements between the Indians of California and the United States, or any federal statute that afforded them any "right, privilege or immunity" with respect to hunting or fishing. Then, by the act of August 15, 1953, the 1st Session of the 83d Congress passed legislation, "to confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes."

Public Law 280 did not grant total jurisdiction to the states, and there were several important exceptions to it. One of these exceptions provided that nothing in the act should

1. Holmes to Myers, July 14, 1965, files HVIR. Graham Holmes was Commissioner of Indian Affairs in July 1965.

"deprive any Indian or Indian tribe, band or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."²

Pertinent sections of a 1948 enactment defining Indian Country and Public Law 280 read:

Section 1151. Indian Country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of the patent and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. June 25, 1948, c. 645, 62 Stat. 757; May 24, 1949, c. 139, and Sec. 25, 63, Stat. 94.

Section 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

2. "Public Law 280, Relating to Criminal Jurisdiction," Chapter 505, Title 18, U.S. Code, Sections 1151, 1162; Gifford to Clausen April 21, 1965, files HVIR.

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota.	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin.	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section. Added Aug. 15, 1953, c. 505, Sec. 2, 67 Stat. 588, and amended Aug. 24, 1954, c. 910 Sec. 1, 68 Stat. 795; Aug. 8, 1958, Pub.L. 85-615, Sec. 1, 72 Stat. 545.³

B. Enactment of Section 12300 and 7155 California Fish and Game

Code

The Hoopa Extension, as established by President Harrison's executive order of October 16, 1891, did not feature any reservation or grant of hunting or fishing rights to the

3. Ibid.

Indians. Moreover, there were no agreements between the United States and the Indians of the lower Klamath or any congressional statute that afforded "any right, privilege or immunity" to Indians of the Extension with respect to hunting and fishing.⁴

Subsequent to passage of Public Law 280, these "rights" were challenged and representatives from various Indian groups in the state prevailed upon the California General Assembly to enact legislation to clarify the rights and privileges of the Indians to hunt and fish. As signed by Governor Goodwin J. Knight on May 5, 1955, this act, designated Section 12300 of the Fish and Game Code, read:

Indians; applicability of code. Irrespective of any other provision of law, the provisions of this code are not applicable to California Indians whose names are inscribed upon the tribal rolls, under those places and circumstances in this State where the code was not applicable to them immediately prior to the effective date of Public Law 280, Chapter 505, First Session, 1953, Eighty-third Congress of the United States.

No such Indian shall be prosecuted for the violation of any provision of this code occurring in the places and under the circumstances hereinabove referred to. Nothing in this section, however, prohibits or restricts the prosecution of any Indian for the violation of any provision of this code prohibiting the sale of any bird, mammal, fish, or amphibia.⁵

Some four years before, on July 12, 1951, the California General Assembly, as urged by members of the Yurok tribe, had enacted legislation, designated Section 7155 of the

4. Gifford to Edwards, Oct. 17, 1963, files HVIR. Selene Gifford was Assistant Commissioner of Indian Affairs in October 1963.

5. Gifford to Clausen, April 21, 1965, and Latham to Rube, Aug. 25, 1966, files HVIR; Deering, California Fish and Game Code, Section 12300, p. 528; Statutes of California 1954 and 1955 . . . (Sacramento, 1955) Vol. I, p. 845.

Fish and Game Codes, providing that "notwithstanding" any other provision of the Fish and Game Code, "California Indians who are bona fide registered members" of the Yurok Tribe may "take fish, for subsistence purposes only from the Klamath River between the mouth of that river and the junction of Tectah Creek with it, exclusive of tributaries, without regard to seasons," under these conditions:

- (a) Upon application therefore, the department shall issue to any Yurok Indian who is listed on the register of the Yurok Tribal Organization, as furnished to the department, a renewable, nontransferable permit to take fish pursuant to this section for a period of one calendar year. Any Indian of the Yurok tribe while taking fish pursuant to this section shall have upon his person such valid permit, and shall display it upon the request of any duly authorized officer.
- (b) Hand dip nets, and hook and line only may be used for taking fish pursuant to this section.
- (c) Pursuant to this section not more than three trout or salmon or combination thereof, or more than one sturgeon, may be taken in any one day. There is no bag limit on any other fish.
- (d) No Yurok Indian while fishing pursuant to this section may be accompanied by any person who does not possess a valid permit as prescribed by this section. It is unlawful for any person who does not hold such permit to accompany any Yurok Indian who is taking fish pursuant to this section.
- (e) The sale of any fish taken under the provisions of this section shall constitute cause for permanent revocation by the commission of the permit held by the person making the sale.⁶

This act was known as the "Yurok Fishing Statute."

6. Deering, California Fish and Game Code, Section 7155; Gray to Minton, April 9, 1954, files HVIR; taped interview Ms. Brawtner with Bearss, March 28, 1981.

C. A. B. 544 Fails to Pass

On February 5, 1958, the Interior Department ruled that, in effect, the Hoopa Valley tribe living on the Hoopa Valley Reservation and the Yuroks and other Indians on the Extension were two "distinct and separate groups." Then, in January 1963, at the request of the California Fish and Game Department, the State Attorney General rendered an opinion, which involved an interpretation of Section 12300 of the Fish and Game Code. One of the questions involved the Yuroks and their right to enjoy the benefits of Section 12300.⁷

Attorney General Stanley Mosk held that the "Yurok tribe cannot claim the benefits of Section 12300 while hunting or fishing on the Hoopa Valley Reservation or its extension or any other reservation." The tribe, he added, had no reservation of its own or a recognized tribal organization.⁸

To nullify in part Mosk's opinion, a bill (A.B. 544) was introduced into the California legislature at the request of the Yurok Tribal Organization, Inc., by Assemblyman Frank Belotti of Humboldt County. The bill aimed to restore to the Yuroks their fishing rights, provided they were listed on the

7. Gifford to Edwards, Oct. 17, 1963, Williamson to Roberts, April 1964, and Gifford to Clausen, April 21, 1965, files HVIR.

8. Sacramento Bee, April 3, 1963; Morrison to Belotti, April 29, 1963, HVIR; Opinions, Calif. Atty. Gen. No. 62/227.

register of the Yurok Tribal Organization. On March 28, this provision was deleted from the bill by amendment, and in its place was added the words, "such persons as those listed by the Bureau of Indian Affairs as eligible to be enrolled on the tribal roll of the Hoopa Valley Extension."

Assembly Bill 544 was opposed by one faction of Yuroks, because it might prejudice the tribe's efforts to achieve recognition as part of the Hoopa Valley Tribe. Such recognition was an issue in the Jessie Short et al. v. the United States.

On April 2, Princess Lowana Brantner, president of the Yurok Tribal Organization, testified before the Assembly Fish and Game Committee. She told the group that the Mosk ruling was a mistake, and presented arguments that the Yuroks were organized and lived on a reservation that was an extension of the Hoopa Valley Reservation.

After listening to Princess Lowana's testimony, the committee approved A.B. 544 and sent it to the floor of the assembly, where, on the 4th, it was amended to include "those persons listed by the Bureau of Indian Affairs as having a claim to participate in the tribal assets of the Hoopa Extension Reservation."

As introduced, A.B. 544 only amended Section 12300, but the March 28 amendment added an amendment to Section 7155, which, in effect, provided that those Indians who would be allowed to hunt and fish under the amendment to section 12300 could not also claim the right to fish granted by Section 7155.⁹

Assembly Bill 544, in view of the Yurok factional fight, failed to pass and died on the floor of the assembly.

D. "Elser vs. Gill Net No. 1": October 31, 1966

In the mid-1960s, following the failure of A.B. 544, a Department of Fish and Game warden, in April 1964, seized gill nets belonging to Grover Reed and Dewey George, because the meshes of each exceeded the mesh size permitted by pertinent sections of the Fish and Game Code. Both nets were found within the Extension of the Hoopa Valley Reservation. The two men were Yuroks; descended from Indians allotted land in the Extension; had been born, had lived, and had fished most of their lives in the area where the nets were found; and were enrolled as Yurok Indians and as "wards" of the government on Bureau of Indian Affairs rolls.¹⁰

When the case was brought to trial before the Superior Court, in Humboldt County, Judge William G. Watson ruled against the Fish and Game Commission. The state appealed, and the case

9. Morrison to Belotti, April 29, 1963, files HVIR; Sacramento Bee, April 3, 1963; taped interview, Ms. Brantner with Bearss, March 28, 1981.

10. West's California Reporter, Vol. 54 (St. Paul, 1967), pp. 570-71.

was brought before Judge J. Taylor of the District Court of Appeal, First District, Division No. 2. Before Judge Taylor, attorneys for the commission argued that the trial court had erred in concluding that Reed and George were "eligible for the general exemption provided by section 12300 because they have been accorded special and more restricted benefits by section 7155, which provides, so far as pertinent: Right of members of Yurok Indian tribe to take fish from Klamath River"¹¹

On October 31, 1966, Judge Taylor ruled against the Fish and Game Commission. He held that:

Yurok Indians who were enrolled as members of recognized tribe with recognized tribal rights on several official records of Bureau of Indian Affairs which were prepared not as a census of Indian residents, but as a record to identify those entitled to tribal rights in certain area met "tribal roll" requirements of statute providing that provisions of Fish and Game Code are not applicable to California Indians whose names were inscribed on tribal rolls, and they were entitled to exemption provided therein.¹²

The state next appealed the case to the California Superior Court, which affirmed Judge Taylor's decision. Among the major issues raised in deciding the case were the:

11. Ibid., pp. 568, 571.

12. Ibid; p. 568.

(a) Statutory grant under Section 7153 "of limited fishing privileges to Indians for subsistence purposes only in certain area beyond their reservation is not unconstitutional discrimination in favor of the tribe covered therein and in no way limits the general privileges granted by Section 12300 of Fish and Game Code."¹³

(b) Statute providing that California Indians who are bona fide registered members of Yuork Indian tribe may take fish, for subsistence purposes only, from certain area without regard to seasons under certain conditions merely granted members of the Yurok or Lower Klamath tribes certain limited fishing privileges in an area.¹⁴

E. "Mattz vs. Arnett": June 11, 1973

In September 1969, a California game warden seized five nylon gill nets owned by Raymond Mattz, a Yurok, who since the age of nine had fished, as his grandfather had before him, with dip, gill, and trigger nets at Brooks Riffle on the Klamath. The nets were stored nearby on real estate owned by a logging company, but on land referred to as the Hoopa Valley Indian Reservation. The California State Fish and Game Department petitioned the Superior Court of Del Norte County for authority to sell or destroy the nets. Mattz intervened in the action, claiming the State Fish and Game Code was not applicable to Indians fishing on their reservations. Superior Court Judge Frank S. Peterson did not agree and ordered the nets forfeited.

13. Ibid., p. 568.

14. Ibid.

When Mattz carried his case to the State Court of Appeals, Judge J. Christian held that opening of the old Klamath Reservation to "unrestricted homestead entry terminated existence of Indian reservation and Indian who fished on lands which had been part of reservation was not entitled to exemption from fish and provisions by virtue of being enrolled Indian."¹⁵

The California Supreme Court refused to hear the case, and Mattz's attorneys carried it to the U.S. Supreme Court on a writ of certiorari. On June 11, 1973, the Supreme Court reversed the judgment. In an opinion by Judge Harry A.

Blackmun, expressing the unanimous view of the court, it was held that the "lower 20 miles" of the Klamath River, on which the nets were seized, was still a reservation, despite the opening of the land to non-Indian settlement by the Act of June 17, 1892, and "that the land within the reservation boundaries is still 'Indian country' under 18 USCS, Section 1151." In announcing the decision, Judge Blackmun wrote:

By the specific terms of that (1891 Executive Order), the Hoopa Valley Reservation, . . . was extended so as to include all land, one mile in width on each side of the river, from the present limits of the Hoopa Valley Reservation to the Pacific Ocean. The Klamath River Reservation, . . . thus was made part of the the Hoopa Valley Reservation, as extended.¹⁶

15. "Arnett vs. 5 Gill Nets," West's California Reporter, Vol. 97 (St. Paul, 1972), pp. 894-98. Mattz, in appealing the case, was represented by four attorneys from California Indian Legal Services.

16. "Mattz vs. Arnett," United States Reports, Vol. 412. Cases Adjudged in the Supreme Court at October Term, 1972, Henry Putzel, Jr. (Reporter) (Washington, 1974), pp. 481-506.

F. "Arnett vs. Five Gill Nets": May 27, 1975

When the case was remanded for a determination of "the existence of Mattz's fishing rights and to the applicability of California law, notwithstanding reservation status," the trial court concluded that the state of California may not regulate fishing by Indians on the former Klamath River Reservation, because the federal government, in transferring jurisdiction over Indian reservations to the state of California by Public Law 280, exempted the fishing rights involved. The Superior Court of Del Norte County ordered the return of the gill nets seized by the state game warden to Mattz.

Whereupon, the state appealed Judge Peterson's order to the California Court of Appeals. And on May 27, 1975, Harold C. Brown, acting presiding judge of the 1st District Court of Appeals:

held that state did not acquire jurisdiction to regulate fishing rights on reservation by reason of federal government's transfer of jurisdiction over reservation to state since transfer did not deprive Indian of any right afforded under federal treaty, agreement or statute with respect to hunting, trapping or fishing on reservation or the control, licensing or regulation thereof; that right of Indian to fish on reservation which was created by presidential executive order were derived from a federal statute and thus not subject to state regulation; and that section of Fish and Game Code restricting rights of Indians to fish on reservation was invalid.¹⁷

17. "Arnett vs. 5 Gill Nets," found in California Reporter, Vol. 121, pp. 906-13.

The state appealed and another writ of certiorari was filed regarding the regulatory position of the State Fish and Game Department. The state took the position that the asserted fishing rights were not based on treaty, statute, or agreement, but on an executive order by which the reservation was established. Attorneys for the state contended that Public Law 280 did not exempt rights based on the executive order.

On March 29, 1976, the U.S. Supreme Court denied certiorari.¹⁸ By this action, the court upheld the rights of the Indians to fish on the reservation, free from state regulation, thereby invalidating Section 7155, which had heretofore restricted the rights of Indians to fish on the "lower 20 miles" of the Klamath River.

Points made in Arnett vs. 5 Gill Nets which invalidated Sections 7155 (the Special Yurok Fishing Statute) were:

1. Validity

Where Indians on reservation had fishing rights derived from Congress, state qualification of those rights was precluded by force of supremacy clause and state's attempt to regulate fishing by passage of this section regarding fishing on reservation was invalid.

2. In general

Where creation of Indian reservation by presidential executive order could be traced to act under which Congress authorized president to make reservations for Indian purposes, right of Indians to fish on reservation were derived from a federal

18. Finale to Cranston, Sept. 29, 1975, & Finale to Lagomarsino, Oct. 22, 1976, files HVIR.

"statute" within meaning of law providing that federal government's transfer to state of jurisdiction over Indian reservation does not deprive Indian of any right afforded under any federal treaty or statute with respect to hunting, trapping or fishing or the control, licensing and regulation thereof and thus were not subject to state regulation.

3. Conservation

In proceeding challenging validity of this section providing that Indians could obtain permit to fish on reservation river for subsistence under conditions not permitting gill netting, record showing, inter alia, that gill netting increased number of fish taken from river before they could get to hatcheries 100 miles from the mouth of the river, that state restricted gill netting on first 20 miles of river but permitted gill netting on other sections of river before fish reached hatcheries and that state had not tried other conservation methods did not support contention that this section was necessary in the interest of conservation.¹⁹

While Arnett vs. 5 Gill Nets was under appeal, the California Indian Legal Services assisted the Klamath River Indians in the formation of an Ad Hoc Fishing Committee to develop within the Indian community a vehicle and procedures to regulate themselves. The committee called for establishment of Indian deputies, trained by the Bureau of Indian Affairs to work with State Fish and Game wardens along the river for enforcement against Indian violators.²⁰

19. West's Annotated California Fish and Game Code, Vol. 31 (St. Paul, 1981), p. 173.

20. Finale to Lagomarsino, Oct. 22, 1976, files HVIR.

XXI. THE COPCO DAM AND THE PROPAGATION OF SALMON

A. Construction of the Copco Dam and the Fishway Issue

In January 1913, the California & Oregon Power Co. began construction of a concrete dam across the Klamath, two and one-half miles above the mouth of Fall Creek, in Siskiyou County. The dam, to be 110 feet in height, was brought to the attention of the California State Fish and Game Commission and involved much study by department personnel. Questions were raised as to whether an efficient fishway could be constructed for a dam of this height, and, if such a fishway were built, what would be its benefit.

The principal runs of fish on the Klamath along these reaches of the river were salmon and steelhead. Since 1913, the United States Bureau of Fisheries had operated a salmon egg collection station at Hornbrook, 15 miles below the dam site, and the number of fish ascending the river above these racks was limited. If these racks were removed and the salmon allowed to ascend the river, and a fishway constructed at the dam to permit passage of the breeding salmon, this would not solve the problem. When the fry sought to return to the sea, many of them would be mangled in the turbines of the hydro-

electric plant. Fish and Game biologists were of the opinion that it would be impossible to successfully screen a pipe possessing such a suction as those feeding the turbines. Consequently, it would be a waste of money and time to build a fishway to facilitate passage of salmon above the Copco Dam.¹

B. Ramsby-Sprague Study

After construction was underway, sportsmen on the upper Klamath complained bitterly, when there was no annual salmon run. Concerned officials of the California & Oregon Power Co. called for an investigation to "determine if the cause lay in any way at the Klamath River dam" then building.

Biologists C. M. Ramsby and A. J. Sprague undertook the study in the late summer and early autumn of 1914. No salmon were found below the dam site. This led to further investigation, and the cause was found at Hornbrook, "where the United States bureau of fisheries has established racks, traps and field station for the taking of salmon eggs." Ramsby and Sprague

1. State of California Fish and Game Commission 27th Biennial Report of the Years 1920-1922 (Sacramento, 1922), pp. 38-9.

pinpointed two separate racks extending entirely across the river from bank to bank, effectively interdicting the salmon run.

The biologists accordingly absolved the power company of responsibility for there being no salmon on the upper reaches of the Klamath.²

Meanwhile, sportsmen had called attention to the dam's effect on the trout--both the steelheads, a sea-run fish, and non-migratory rainbows--of the upper Klamath and its tributaries. Most of these up-river trout frequented pools. These fish, it was suggested, could be increased and the stock improved by establishment of a hatchery on the Klamath below the Copco Dam, where fry could be hatched and each season planted in the upper reaches of the river above the dam. Trout also could be expected to thrive in the cold, deep water of the impoundment.³

C. Enactment of Section 637 California Fish and Game Code

Such a proposal would be facilitated by provisions of a law enacted by the 42d Session of the General Assembly and

2. Klamath Falls Evening Herald, Oct. 30, 1914; John C. Boyle, 50 Years on the Klamath (Medford, 1976), p. 23.

3. State of California Fish and Game Commission 27th Biennial Report, pp. 38-9.

approved by Governor William Stephens on June 1, 1917. In pursuing this action, California took its cue from measures being implemented by the federal government in Alaska and a law recently enacted by the Washington legislature.

The California act provided:

Section 637. 1. It shall be the duty of the State Board of Fish and Game Commissioners to examine, from time to time, all dams and artificial obstructions in all rivers and streams in this state naturally frequented by salmon, trout, shad and other fish; and if, in its opinion, there is not free passage for fish over and around any dam or artificial obstruction, to order in writing the owners or occupants thereof to provide the same, within a specified time, with a durable and efficient fishway, of such form and capacity, and in such location as shall be determined by the State Board of Fish and Game Commissioners, or persons authorized by them, and such fishway must be completed by the owners or occupants of such dam or artificial obstruction to the satisfaction of said commissioners, within the time specified, and it shall be incumbent upon the owners or occupants of all dams or artificial obstructions where the State Board of Fish and Game Commissioners require such fishways to be provided, to keep the same in repair and open and free from obstructions to the passage of fish at all times, and no person shall willfully destroy, injure, or obstruct any such fishway; provided, that the owners or occupants of any dam or artificial obstruction shall allow sufficient water at all times to pass through such fishway to keep in good condition any fish that may be planted or exist below said dam or obstruction; provided further, that during the minimum low of water in any river or stream permission may be granted by the State Board of Fish and Game Commissioners to allow the owners or occupants of any dam or artificial obstruction to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below said dam or artificial obstruction when in the judgment of the State Board of Fish and Game Commissioners it is impracticable to pass the water through the fishway to the detriment of the owner or occupant thereof.

Whenever, in the opinion of the State Fish and Game Commission it shall be impracticable, because of the height of any dam or other artificial obstruction, or other conditions, to construct a fishway over or around said dam or other artificial obstruction, the Fish and Game Commission may order in lieu of said fishway the owners or occupants of said dam or other artificial obstruction to completely equip within a specified time, on a site to be selected by said Fish and Game Commission, a hatchery, together with dwellings for help, traps for the taking of fish, and all other equipment necessary to operate a hatchery station, according to plans and specifications furnished by the Fish and Game Commission, who shall thereafter operate said hatchery without further expense to said owner or occupant of said dam or other artificial obstruction. The aforesaid hatchery station shall not be of a size greater than necessary to supply the said stream or river with a reasonable number of such fish. The said owners or occupants of said dam or other artificial obstruction shall permit said Fish and Game Commission to locate the aforesaid hatchery, dwellings, traps and other equipment upon any of the land of the owners or occupants of said dam or other artificial obstruction upon a site or sites to be mutually agreed upon by the Fish and Game Commission and the said owners or occupants of said dam or other artificial obstruction.

If the said owners or occupants of said dam or other artificial obstruction shall generate electricity at said place of said dam or other artificial obstruction, then and in that case said owners or occupants shall furnish sufficient light, without expense for the use of said hatchery when located and established.

Said owners or occupants shall also permit the use of water, without expense, to operate said proposed hatchery; provided, however, that the Fish and Game Commission may, in lieu of said fishway, hatchery dwellings, traps and other equipment necessary to operate a hatchery station as aforesaid, order the owners or occupants of said dam or other artificial obstruction to plant, under the supervision of the Fish and Game Commission, the young of such fish as naturally frequent the waters of said stream or river, at such times, in such places and in such numbers as the Fish and Game Commission may order; provided, further, that said owners or occupants of said dam or other artificial obstruction shall accord to the public for the purpose of fishing, the right to the waters

impounded by said dam or other artificial obstruction, during the open season for the taking of fish in such stream or river, subject to the rules and regulations of said Fish and Game Commission.

The said owners or occupants of said dam or other artificial obstruction shall not be liable in damages to any person exercising the right of access to the waters impounded by said dam or other artificial obstruction, as aforesaid, who shall suffer injury through coming in contact with, or meddling with, any of the property of said owners or occupants.

The Fish and Game Commission may sell, at cost to it, to such owners or occupants of such dam or other artificial obstruction the young of fish ordered to be planted in such stream or river.

Every person found guilty of any of the provisions of this act must be fined in a sum of not less than one hundred fifty dollars or imprisonment in the county jail of the county in which the conviction shall be had, not less than one hundred days, or by both such fine and imprisonment; and all fines and forfeitures imposed and collected for any violation of this act shall be paid into the state treasury, to the credit of the fish and game preservation fund.⁴

D. California & Oregon Power Builds Fall Creek Hatchery in

Lieu of Fishway

Steps were accordingly taken by the California Fish and Game Commission to apprise the management of California & Oregon Power Co. of the character of this legislation. All members of the utility company's board of directors were enthusiastic fishermen, and, by the spring of 1918, a plan had been agreed

4. California Laws Relating to Fish and Game and Federal Game Regulations, 1919-1921 (Sacramento, 1919), pp. 153-59.

to whereby the Federal Bureau of Fisheries would relinquish its control of the egg collecting station at Hornbrook to the California Fish and Game Commission, and turn over to the state people the buildings, racks, and spawn-taking equipment. California & Oregon Power would build an up-to-date hatchery on its Fall Creek property, which, because of the clear and even temperature of the water, would provide a perfect environment for hatching and caring for fry and fingerlings of fish native to the region. The California Commission would take the spawn and hatch fish and then deliver to the Oregon Fish and Game Commission and the game wardens of Klamath County, Oregon, fry and fingerling necessary to stock abundantly the numerous lakes, rivers, and streams in that section of Oregon.⁵

The U.S. Bureau of Fisheries had been operating its salmon egg collecting station at Hornbrook since 1913. Eggs taken at that station had been principally shipped to Sisson, where they had been hatched, reared, transported back, and planted in the Klamath River. The Bureau had also hatched some fry at Hornbrook and these had been planted early in the spring.

5. Klamath Falls Evening Herald, March 7, 1918; Boyle, 50 Years on the Klamath, p. 22; State of California Fish and Game Commission, 27th Biennial Report, p. 39.

The station, however, "was not well equipped for general operations and the water supply was poor and uncertain and consequently the extent of the operations was limited and the results obtained far from adequate."⁶

When it was agreed to have California & Oregon Power Co. establish a hatchery in lieu of a fishway, the California Fish and Game Commission took up the subject with the U.S. Bureau of Fisheries, with the object of having the two conservation agencies cooperate in management of the new station. The Bureau declined, and "kindly relinquished all their interests on the river so that the California Fish and Game Commission could have sole management of the operations."⁷

In 1917, title to the Hornbrook facility was transferred by the Bureau to the state.

During the summer of 1918, plans were prepared by the Department of Fishculture for relocation of the salmon egg collecting station from Hornbrook to nearby Klamathon. By autumn, new racks had been positioned, and a small number of eggs were secure and trucked to Fall Creek, where work was underway on the new hatchery.

6. State of California Fish and Game Commission 26th Biennial Report for the Years 1918-1920 (Sacramento, 1921), pp. 24-5; Cobb, Pacific Salmon Fisheries, p. 645.

7. State of California Fish and Game Commission 27th Biennial Report, p. 40.

Among the facilities at the new Fall Creek hatchery were a substantial building (125 feet long and 60 feet wide) housing 100 hatching troughs, a cottage for the foreman, and quarters for the workmen. The hatchery, equipped for fishculture activities and of sufficient capacity to handle regional needs, was completed in the first week of January 1919 and began operation that spring. The million chinook salmon eggs, taken at Klamathon the previous autumn, were hatched and the fry reared for distribution in the Klamath and its tributaries during the spring and summer. In addition to the salmon, 670,000 rainbow trout eggs were received from the Bogus Creek Station, in the spring of 1919, and reared and planted that summer in the Klamath above and below the Copco dam and in tributary streams.⁸

E. Effect of the Copco Dam on the Stage of the Lower Klamath

Former commercial fisherman Walter McCovey recalled that, in the 1920s and 30s, when water was being released from the Copco Dam, there was a marked rise in the stage of the Klamath

8. State of California Fish and Game Commission 26th Biennial Report, pp. 24-6; Klamath Falls Evening Herald, Jan. 3, 1919.

above tidewater. The surge would reach Klamath Glen some 48 hours after the penstocks were opened.⁹ Mesdames Shaughnessy's and Mattz's recollections of these rises are similar to McCovey's.¹⁰

These fluctuations in the river's stage, the trio stated, ceased in 1961 upon completion of the Iron Gate Dam, located downstream from the Copco Dam.¹¹

9. Taped interview, McCovey with Bearss, March 28, 1981.

10. Taped interview, Mesdames Shaughnessy and Mattz with Bearss, March 28, 1981.

11. Taped interviews, McCovey and Mesdames Shaughnessy and Mattz with Bearss, March 28, 1981.

XXII. SURVEY HISTORY OF STATE ENHANCEMENT AND MITIGATION PROGRAMS

A. Hatcherys and Egg Collecting Facilities

1. Early Salmon Propagation: Federal and Private

The first hatchery on the Klamath watershed was established by the United States at Fort Gaston, on the Trinity in Hoopa Valley, in 1889. In view of the urgent and many requests from Rocky Mountain and Pacific Coast sportsmen to stock their waters, Lt. Comdr. J. J. Brice, U.S. Navy, was directed to make the prerequisite reconnaissances and studies. At his recommendation, the Hoopa Valley Reservation was decided upon as affording necessary requirements for artificial propagation of salmon. Here, in one of the most inaccessible sections of the state as far as transportation was concerned, the United States Fish and Wildlife Commission established a hatchery.

Operations began by bringing in salmon eggs from the federal hatchery on the Pit River, a tributary of the Sacramento. Because of the difficulty encountered in securing spawning fish at Fort Gaston, an egg taking station was established on Redwood Creek in 1893. After

several years, because of its remoteness, the Fort Gaston hatchery and its Redwood Creek and Korbel sub-stations were closed by the Fish and Wildlife Commission in 1898.¹

Meanwhile, in the early 1890s, R. D. Hume had established a small private hatchery on a stream near the mouth of the Klamath. Eggs were brought from Oregon's Rogue River, and salmon, in large numbers, were hatched and introduced into the Klamath near its mouth, and also into Hunter and High Prairie Creeks. Many of the fish were retained for about a year and then liberated. These were fed canned salmon roe, ground-up sturgeon, smelt, and other fish. Adults later returned to the creeks into which they had been introduced, but no permanent runs were established in either Hunter or High Prairie Creeks. None of the young salmon were carried up the Klamath beyond the mouth of Hunter Creek.²

After the shutting down of the Fort Gaston hatchery and termination of Hume's activities in this sphere, artificial

1. Snyder, Salmon of the Klamath, p. 117; Cobb, Pacific Salmon Fisheries, p. 644.

2. Snyder, Salmon of the Klamath, p. 117.

propagation of salmon on the Klamath was continued by the U. S. Fish and Wildlife Commission, employing eggs taken from Battle Creek, a tributary of the Sacramento. In 1896, the federal commission had erected facilities on ground owned by the state at Battle Creek, and had taken over and operated the hatchery developed at that site the previous year by the California Fish and Game Commission.

Fisheries expert, Dr. Snyder, was unable to comprehend "why it was deemed necessary to import fish to the Klamath, or why a stream [the Sacramento] where depletion was already apparent should be further robbed." But, be that as it may, large numbers of salmon eggs from the Sacramento were transported to the Klamath from Battle Creek in 1908, 1912, and 1914. In the years after 1918, however, no salmon from other streams were brought to the Klamath, except a limited number for experimental purposes.³

In 1913, the U.S. Bureau of Fisheries established a hatchery and egg collecting station at Hornbrook, on

3. Ibid., p. 111; Cobb, Pacific Salmon Fisheries, p. 644.

the Klamath River. At first, this facility specialized in rainbow trout, but subsequently the collection and distribution of coho and chinook salmon was undertaken.

As the Hornbrook hatchery was on private property, the U.S. Bureau of Fisheries, in 1915, relocated the buildings from the east bank to land owned by the government on the west side of the river. Then, in 1918, the Bureau of Fisheries transferred the Hornbrook activity to the California State Fish and Game Commission. The state people then positioned the salmon taking racks at Klamathon, from where the eggs taken were trucked to state hatcheries at Fall Creek and Sisson.⁴ (For details regarding construction of the Fall Creek hatchery see Chapter XXI, "The Copco Dam and Propagation of Salmon.")

2. State Fish and Game Department's Sisson and Fall Creek Hatcheries

In 1885, the California legislature had enacted and the governor had signed into law a bill authorizing establishment of a state hatchery. Consequently, a hatchery

4. Cobb, Pacific Salmon Fisheries, p. 645.

had been established on Hat Creek, a confluent of Pit River. This site proved to be unsatisfactory and, in 1888, the facilities were relocated at Sisson, in Siskiyou County. This hatchery took charge of and handled eggs turned over to it by the United States Bureau of Fisheries people and the resulting fry were liberated in the Sacramento and its tributaries.⁵

Upon completion of the Copco Dam, a hatchery was built and opened at Fall Creek, in January 1919 (see Chapter XXI). Owned and managed by the California Fish and Game Commission, this hatchery, in conjunction with the salmon racks at Klamathon, promised to demonstrate whether "artificial propagation may maintain the species on a par with natural propagation elsewhere" in the Klamath Basin.⁶

3. Situation in 1923

Writing in California Fish and Game, in 1923, Dr. Harold C. Bryant reported that most of the Commission's salmon culture operations now centered on the Klamath, the

5. Cobb, Pacific Salmon Fisheries, p. 644; Snyder, Salmon of the Klamath River, p. 111.

6. Snyder, Salmon of the Klamath River, p. 111.

state's only remaining river with a good salmon run. Coincidentally, the Klamath provided most of the trout eggs utilized at California hatcheries, there being four egg-collecting station's on that river's tributaries.

The shift from the Sacramento to the Klamath, Dr. Bryant wrote, had been necessitated because of the poor take of eggs in recent years at the U.S. Bureau of Fisheries' Mill Creek and Baird, egg-collecting stations, and because of a desire by the Commission to divorce itself of federal aid.⁷

4. Fall Creek Hatchery Closes to be Replaced by Iron Gate Facility

The Commission closed its Fall Creek hatchery in December 1949. By that year the buildings were in poor condition, but it was decided not to dispose of the facilities, pending completion of studies of the salmon and steel-head situation on the Klamath and its tributaries.

7. Harold C. Bryant, "Salmon Fishcultural Operations on the Klamath River," California Fish and Game, Vol. 9, No. 1, p. 19.

Closing of the hatchery had been mandated by plans of California & Oregon Power Co. to construct a dam and power station on the Klamath at Iron Gate, seven miles downstream from its Copco Dam. In 1950, the California Fish and Game Department initiated action in the courts against California & Oregon Power to compel the utility company to reduce the fluctuation of the river level, and the resulting stranding of salmon and steelhead and hazards to fishermen downstream from the Copco Dam (see Chapter XXI).⁸ This resulted in a seven-year legal battle over jurisdiction. Then, in 1957, Copco applied for a Federal Power Commission (FPC) license to construct the Iron Gate Dam and power station.

Whereupon, the California Fish and Game Department intervened in the matter before the FPC, and negotiations were resumed with Copco relative to provisions for fish and wildlife conservation. These revolved around eliminating the nuisance caused by the severe fluctuations in the river's stage, and for facilities to compensate for loss of salmon and steelhead spawning areas above Iron Gate.⁹

8. State of California Department of Fish and Game, 42d Biennial Report for the Year 1950-1952 (Sacramento, 1952), p. 38.

9. Forty-Fifth Biennial Report: Department of Fish and Game (Sacramento, 1958), p. 41.

On July 27, 1959, the Department, the Fish and Game Commission, and the California & Oregon Power Co. finally entered into an agreement bringing an end to nine years of litigation and a 40-year problem over the utility company's operations. Under the agreement, the Department's court action against the company was dismissed, and Copco agreed to construct the Iron Gate Dam to "regulate" the flow of the Klamath. In addition, the company agreed to build necessary facilities to trap and take eggs from fish which would normally spawn above the dam site.

Copco and the Department also reached agreement on minimum flows below Iron Gate for protection of fish life. Future negotiations would determine responsibilities for construction and operation of a fish hatchery in connection with the dam.¹⁰

Work on the Iron Gate Dam and power station was completed in late autumn of 1961. By the end of fiscal year 1962, there was agreement in principle as to the scope of the fish propagation facilities required. But the Department

10. Forty-Sixth Biennial Report 1958-1960, California Department of Fish and Game (Sacramento, 1961), p. 57.

and Copco disputed who was to be responsible for construction of the hatchery and who would be saddled with its operating and maintenance costs.¹¹

Meanwhile, Pacific Power & Light (PP&L) had purchased California & Oregon Power. Soon thereafter, the FPC made a decision requiring PP&L to construct fish trapping, egg collecting, and hatchery facilities, but federal-state issues continued to plague those involved concerning operating and maintenance costs.

The FPC then ruled that California should share to the extent of 20 percent in the operating and maintenance costs of the hatchery. Whereupon, the appellate court remanded this question and that of operation and maintenance of the trapping and egg collecting facility back to the FPC for clarification.¹²

The federal court upheld the FPC's decision requiring the state to pay 20 percent of operating costs of the hatchery and to absorb all maintenance costs of the egg-taking

11. Forty-Seventh Biennial Report, July 1, 1960 to June 30, 1962 (Sacramento, 1962), p. 38.

12. State of California--Resources Agency, Department of Fish and Game, 48th Biennial Report, 1962-1964 (Sacramento, 1964), p. 33.

facilities mandated by the Iron Gate Dam. The state carried the issue to the U.S. Supreme Court, but the court refused to review the lower court's decision.¹³

Coincidentally, workmen funded by Pacific Power & Light had completed the hatchery, egg collecting station, and fish ladder. On March 22, 1966, personnel from California Department of Fish and Game assumed responsibility for management and operation of the hatchery. PP&L retained title to the hatchery and associated improvements under terms of its agreement with the state and the FPC. Earlier, in 1962, PP&L had transferred title to the fish ladder and spawning grounds to the Department of Fish and Game.¹⁴

5. Construction and Operation of the Trinity River (Lewiston Dam) Hatchery

In the 1950s, the United States Bureau of Reclamation undertook the Central Valley Project, which, when completed in 1963, resulted in a mean annual diversion

13. State of California--Resources Agency: Department of Fish and Game, 1964-1966, 49th Biennial Report (Sacramento, 1966), p. 6.

14. Telephone interview, Curt Wiser with Bearss, June 9, 1981. Curt Hiser is the manager of the Iron Gate Hatchery.

of approximately 1.2 million acre-feet of Trinity River water through a transmountain aqueduct into the Sacramento River Valley. This resulted in a 80 percent reduction of Trinity River flow immediately below the project site. Dam construction resulted in the loss of 59 miles of chinook salmon spawning and nursery habitat and larger segments of steelhead and coho salmon habitat above the project site.¹⁵

To partially compensate for this loss of habitat, the Bureau of Reclamation, in 1958, constructed a weir and small hatchery at the site of the Lewiston Dam, as an interim facility. This hatchery was staffed and operated by personnel from the California Department of Fish and Game. Then, in the summer and autumn of 1962 and the ensuing winter and spring, a permanent Trinity River Hatchery was built by the U.S. Bureau of Reclamation to replace lost salmon and steelhead spawning areas upstream and downstream from the Trinity and Lewiston Dams. The facility, which was dedicated on May 15, 1963, was

15. Gary L. Rankel, "Depleted Chinook Salmon Runs in the Klamath River Basin: Causes, Consequences and Constraints on Management," paper presented at Annual Meeting of the Western Division of the American Fisheries Society in Kalispell, Montana, July 15, 1980, files HVIR; taped interview, Rankel with Bearss, March 27, 1981.

staffed and operated by the California Department of Fish and Game, though funded by the Bureau of Reclamation.¹⁶

B. Coping with Pollution of Rivers and Streams by Mining Interests

In the mid-1930s, the California General Assembly enacted the "Quinn Bill," in response to demands by sportsmen and conservationists that miners cease dumping mining effluents into the streams at the headwaters of the Klamath and Trinity. The legislation signed into law by Governor Frank F. Merriam on May 14, 1937, provided:

Section 482. (a) It is unlawful to conduct any mining operations in the Trinity and Klamath River fish and game district between July 1 and November 30, both dates inclusive, except when the debris, substances, tailings or other effluent from such operations do not and can not pass into the waters in said district.

(b) It is unlawful between July 1 and November 30, both dates inclusive, to pollute, muddy, contaminate, or roil the water of the Trinity and Klamath River fish and game district. It is unlawful between said dates to deposit in or cause, suffer, or procure to be deposited in, permit to pass into or place where it can pass into said waters, any debris, substance or tailings from hydraulic, placer, milling or other mining operation affecting the clarity of said waters. The clarity of said waters shall be deemed affected when said waters at a point a distance of one mile below the confluence of the Klamath River and the Salmon River or at a point a distance of one mile below the confluence of the South Fork of Trinity River and

16. 48th Biennial Report, p. 7; telephone interview, Jerry Bedill with Bearss, June 9, 1981. Jerry Bedill is the manager of the Trinity River Hatchery.

the Trinity River contain fifty (50) parts per million, by weight, of suspended matter, not including vegetable matter in suspension and suspended matter occurring in said stream or streams due to an act of God.

(c) It is unlawful, between July 1 and November 30, both dates inclusive, to carry on or operate any hydraulic mine of any kind on, along, or in any waters flowing into said Trinity and Klamath River district; provided, however, nothing herein contained shall prevent the operation of a hydraulic mine where the tailings, substance, or debris, or other effluent therefrom does not or will not pass into said waters of said Trinity and Klamath river fish and game district, between said dates, and provided further that any person, firm or corporation engaged in hydraulic mining shall have the right until the fifteenth day of July to use water for the purpose of cleaning up.

(d) Any structure or contrivance which causes or contributes, in whole or in part, to the condition, the causing of which is in this section prohibited, is a public nuisance, and any person, firm or corporation maintaining or permitting the same shall be guilty of maintaining a public nuisance, and it shall be the duty of the district attorney of the county where the condition occurs or the acts creating the public nuisance occur, to bring action to abate such public nuisance.

(e) Any person, firm, or corporation violating any of the provisions of this section is guilty of a misdemeanor.

Section 483. The provisions of this article relating to the Trinity and Klamath River district do not affect the laws applying to the territory included in said district which relate to birds, mammals and fish.

Section 484. The provisions of this article relating to the Trinity and Klamath River district do not apply to the construction repair or maintenance of public works by the Federal or State government, or any political subdivision thereof.¹⁷

17. Statutes of California 1937: Constitution of 1879 as Amended
 . . . (Sacramento, 1937), pp. 679-80.

Despite passage of the "Quinn Bill" many miners continued to operate as heretofore. The situation became so grim in the summer of 1941, that citizens of Klamath and others living along the lower reaches of the river took action aimed at the mining interests who continued to pollute the river. They brought the problem to the attention of the Del Norte County district attorney and Judge Harvey Falk of Eureka. The judge was prevailed upon to sign a restraining order stopping the miners from polluting the Klamath. It had been documented by those involved that the miners were "maintaining a public nuisance" in violation of Part D of Section 482, State Fish and Game Code.

Though Judge Falk's order would not "amount to a great deal," because the anti-pollution law lacked teeth, it served notice on the miners that stronger measures might be forthcoming.

San Francisco Chronicle sports columnist Ted Powell, in commenting on this action, wrote:

The miners have their investments and their rights, but so do land owners, resort owners and the citizens of the State of California, who would enjoy an unpolluted stream and the last stream of consequence which they had voted for and had hoped for for some midsummer and autumn fishing. Year in and year out these "gentlemen's agreements" have become capital jokes.

Mining interest lobbyists have taken care of their interests, along with some of their representatives during the legislative sessions. The public be damned! Sportsmen's associations sit on the side lines and spend time and money on inconsequential fish and game matters.¹⁸

Petitions were circulated in a determined campaign to secure enough signatures to place on the ballot an initiative measure to effectively curb the polluting of California rivers and streams by miners.¹⁹

The attack on Pearl Harbor and entry of the United States into World War II focused attention and energy elsewhere, and the sportsmen's and conservationists' plans for the desired constitutional change failed. The "Quinn Bill," in the post-World War II years, again came under fire from sportsmen and conservationists, because it afforded little protection to salmon spawning grounds, and in the mid-1950s there were calls for its repeat.²⁰

18. Tod Powell, "Klamath Men Open Fight on Mining Pollution," found in San Francisco Chronicle, Aug. 20, 1941.

19. Ibid.

20. "Effects of Mining Silt on Yield of Fry from Salmon Spawning Bed," Fish and Game Quarterly, Vol. 29, No. 1, Jan. 1943, pp. 29-31; Assembly Interim Committee on Fish and Game, "Status of Salmon and Steelhead on the North Coast," pp. 74-75.

C. Removal of Dams, Log Jams, and Other Obstructions

1. Passage of Section 482.5

A new law (Section 482.5 of the Fish and Game Code), passed by the 1951 session of the California General Assembly, required removal of log jams and other types of obstructions by person causing them. The Department planned to remove only those barriers, the responsibility for which could not be fixed.²¹

2. Removal of Abandoned Dams

Even before enactment of this legislation, 22 abandoned dams, in the years between 1922 and the autumn of 1951, had been removed from the Klamath and Trinity tributaries in Siskiyou and Trinity Counties under auspices of the Fish and Game Commission, while two others had been washed out by freshets. These dams had been built many years before to divert water for domestic and mining purposes. Over the years, the runs of fish into the streams with dams had been reduced to numbers consistent with the spawning area available.

21. 42d Biennial Report, p. 99.

Removal of these barriers, it was estimated by officials of the Fish and Game Department, had opened at least 210 miles of good spawning streams at a cost to the state of \$3,000.²²

D. Establishment of Wildlife Conservation Fund and Initial Klamath Basin Projects

The 1947 session of the California General Assembly diverted from the general fund \$9,000,000 due the state from horse racing operations to the Wildlife Conservation Fund. These monies were allocated for various fish and game projects, several of which were on the Klamath watershed. Included were:

<u>Project</u>	<u>Description</u>	<u>Status, March 31, 1950</u>
Shasta River Fish Counting	Construction of counting	Board allotted
Dam, Siskiyou Co., near	dam for steelhead and	\$16,000 on
confluence of Shasta and	salmon to replace pre-	8/25/49.
Klamath Rivers.	sent poorly located dam,	
	6 miles upstream, also	
	attendants' cabin.	

22. John Handley and Millard Coots, "The Removal of Abandoned Dams in the Upper Klamath River Drainage, California," California Fish and Game, Vol. 39, No. 3, July 1953, pp. 365-74.

Bennett-Smith Dam Fish Ladder, Siskiyou Co., on South Fork of Salmon River.	To replace present inadequate, poorly located ladder.	Board allotted \$6,000 on 9/23/49.
Burnt Ranch Fish Ladder, Trinity Co., on Trinity River.	Creation of fish ladder by blasting pools out of bedrock in more difficult rapids.	Board allotted \$8,000 on 9/23/49.
Canyon Creek Fish Ladder, Trinity Co., 4 miles upstream from confluence of Canyon Creek with Trinity.	Replacement of unsatisfactory warden ladder with better located ladder and larger steps.	Board allotted \$10,000 on 1/6/50.
Sawyer's Bar Auxiliary Dam, Siskiyou Co., on North Fork of Salmon.	Present fish ladder at Sawyer's Bar Dam is unsatisfactory. Auxiliary dam to raise water level in pool below existing structure called for to allow fish to ascend.	Board allotted \$3,500 on 9/23/49. ²³

23. Seth Gordon (Consultant), California's Fish and Game Program (Sacramento, 1950), pp. 234-45.

When the Bennett-Smith Dam was washed out in the October 1950 flood, the fishway became superfluous and the project was cancelled by the Wildlife Conservation Board.²⁴

E. Positioning of Fish Screens

In 1952, the state legislature amended the fish screen laws to provide that the Department of Fish and Game "will install, maintain, repair, and replace screens in non-power ditches under 250 second-feet in capacity." Fish screen construction, installation, and maintenance were handled out of the Department's shops at Yreka and Weaverville.²⁵

F. Mitigation of Destruction of Habitat by Loggers

1. 1955 Committee Hearings and Report

In the mid-1950s, the General Assembly's Interim Committee on Fish and Game held public hearings focusing on stream pollution problems and clogging detrimental to maintaining resident fisheries, as well as destroying spawning beds. It was found that indiscriminate logging practices,

24. 42d Biennial Report, p. 46.

25. *Ibid.*, p. 32.

forest fires, and floods had decreased available fish habitat to an alarming degree on the Humboldt Coast.

Representatives of the Fish and Game Commission informed the committee that there were two approaches to insure against clogging of streams. One was to enforce the laws and regulations designed to prevent the clogging and pollution of streams, and the other was to do the physical work of stream improvement at the expense of the Commission. The latter particularly involved removal of obstacles that could not be attributed to any specific operator, i.e., log jams, landslides, rock jumbles, etc.²⁶

It was the Commission's view that the small fines levied on logging operators for violation of Section 481.5 of the Fish and Game Code did little to remove debris from streams or to insure that clogging did not occur.

26. To cope with the first problem, there was on the books Section 481.5 of the Fish and Game Code, reading, "Whenever it is determined by the commission that a continuing and chronic condition of pollution exists, that commission shall report such condition to the appropriate water pollution control board and shall cooperate with and act through such board in obtaining correction in accordance with any laws administered by such board for control of practices for sewage and industrial disposal."; Report of 1957 Interim Committee on Fish and Game, "Problems of Stream Pollution and Congestion," pp. 31-32.

The Commission spokesman informed the committee that the U.S. Forest Service provided data on logging practices designed to prevent clogging of streams by logging debris, i.e., leasing buffer strips on either side of the watercourse. He also pointed out that it was a very expensive operation to clear the debris from even a small stream.²⁷

Another witness before the committee spoke of "gypo" loggers, who bought or contracted for small tracts of timber stumpage and had no interest in the land or the preservation of other natural resources, such as fish and game, and the recreational values, but were merely interested in a quick profit. These people's methods of operation were generally conceded to constitute "bad logging practices," and, in numerous instances, agencies responsible for the inspection of these undertakings, i.e. the Division of Forestry and the Department of Fish and Game, were unaware of their presence, in a particular area until it had been stripped and the "gypo" operator had departed.

27. Report of 1957 Interim Committee on Fish and Game, "Problems of Stream Pollution and Congestion," p. 32.

This witness estimated that about 925 miles of Humboldt Coast fish producing streams had been ruined or impaired by bad logging practices. Among these was the Ah Pah watershed, which was toured by the committee. To combat this problem, conservation-minded witnesses urged: (a) establishment of a screening strip along the banks of principal rivers and spawning tributary streams to afford stream bed protection from excessive erosion and debris; (b) prohibition of use of stream beds for heavy equipment roadways; and (c) proper drainage of all skid roads and logging roads as further protection to the streams and rivers against excessive erosion and siltation.

Some of the lumber companies, conscious of the need for better logging practices, had already taken measures to alleviate this situation.²⁸

The committee, upon submitting its report to the assembly, called attention to:

28. Ibid., pp. 32-3.

1. There are many streams which have been eliminated or impaired as fish spawning areas due to certain factors, primarily those resulting from logging operations.
2. There has been a definite trend toward increased cognizance of this situation by loggers and cooperation of the lumbering industry to alleviate this problem.
3. State agencies can materially aid in an educational program to help cooperating logging operators in an orientation of their employees on logging practices beneficial to wildlife management.
4. A sound preventive approach for the effecting of logging practices to insure the sustained yield of fish and wildlife as well as lumber would be to provide an adequate number of inspecting personnel to the Division of Forestry. The Division of Forestry is requesting rolling equipment in its five year plan which will allow foremen of fire control stations to perform this responsibility.
5. Continuing studies are needed to develop logging methods which will prevent or minimize stream damage while not penalizing the logging operators.
6. There is need for continuing evaluations of fish habitat damage so that appropriate steps might be taken to enforce abatements. These evaluations would also serve to educate logging industry personnel to a clearer understanding of these economic values of the State's wildlife resource.²⁹

2. Wildlife Conservation Board's 10-Year Program

Then, in 1960, the Wildlife Conservation Board approved a 10-year \$500,000 coast stream clearance program. Major projects were scheduled and implemented to improve the

29. Ibid., p. 34.

salmon and steelhead habitat in more than 100 miles of streams in Del Norte, Humboldt, Mendocino, and Santa Clara counties.³⁰ The clearing of logging debris was undertaken by inmate labor under supervision of Division of Forestry personnel.³¹

In calendar year 1968, a project aimed at rehabilitating 21 1/2 miles of waterways on the tributaries of the lower Klamath was completed at a cost of \$19,500.³²

30. 47th Biennial Report, p. 10.

31. 48th Biennial Report, p. 5.

32. Outdoor California, March-April, 1969, p. 10.

XXIII. HISTORY OF CALIFORNIA-OREGON REGULATION OF OCEAN FISHERIES

A. California Legislation Before 1945

The California General Assembly first moved to regulate off-shore fishing in 1919, when it enacted a law giving the Fish and Game Commission jurisdiction over "fishing boats, barges, lighters or tenders, commercial fishermen, fish canners, packers or preservers, fish reduction plants, dealers in fish," etc., insofar as to insure that the fish were taken and delivered to the cannery in a sanitary condition.¹ California laws at this time provided for a closed season on chinook and coho salmon in the fish and game districts fronting on the Pacific Ocean from the flood tide line to three miles offshore. Thus the only state laws and regulations pertaining to the taking of salmon beyond the three-mile limit were those enacted in 1919 for control of fishing boats, etc.

Then, in 1925, the General Assembly passed and the governor signed Senate Bill No. 522, aimed at correcting defects in the present law which made the closed season for salmon trolling at sea unenforceable. S. B. No. 522 made it unlawful to have any salmon in possession in the ocean districts during the closed season. This provision applied to sportsmen, as well as commercial fishermen, because the closed season could not be properly enforced against the commercial catching of salmon, if three salmon per day could be taken on an angling license as heretofore permitted.

1. California Laws Relating to Fish and Game, 1921-1923, pp. 58-62.

The open trolling season in the various districts was also redefined. In District 6, extending from Eureka harbor north to the Oregon line, the open trolling season was to extend from June 1 to September 15.²

B. 1945 California Additions to Fish and Game Code

The mid-1940s increase in ocean fishing by both commercial fishermen and sportsmen led the California General Assembly, in 1945, to enact legislation making it illegal to fish for salmon with snag or gaff-hooks, set lines, or lines having more than two attractor blades or more than three hooks per line, or to take any salmon except by angling. It was also declared to be unlawful to fish for salmon with more than one line except under a valid commercial fishing license. The provisions of Sections 650 to 659, inclusive, were not to affect any provisions of the Fish and Game Code permitting the taking of salmon in nets as provided in Sections 860 and 861, or the taking of salmon by ocean trolling in the districts open to commercial salmon fishing by holders of valid commercial fishing licenses.³

2. "New Laws Relating to Commercial Fisheries," California Fish and Game, Vol. 11, No. 3, July 1925, p. 111.

3. Fish and Game Code, 1945-1947 (Sacramento, 1945), p. 135.

Some eight years later, in 1953, the legislature provided that in Districts 6, 7, 10, 11, 15, 16, 17, and 18, persons with a commercial fishing license could take chinook salmon with a hook and line between May 1 and September 1 and coho salmon between July 1 and September 30. There would be no bag limit, but minimum sizes were established.

This section of the Fish and Game Code was to be in "full force and effect only during such times as the States of Oregon and Washington have in effect laws or regulations prohibiting the taking" of coho salmon by commercial trolling prior to July 1st of any year. At all other time, Sections 651 and 660 were to be in effect insofar as commercial fishing is concerned.

Section 651 provided that, in the enumerated districts, salmon could be taken by hook and line between May 1 and September 30, with no bag limit.⁴

4. State of California, Department of Fish and Game Code, 1955-1957 (Sacramento, 1955), pp. 136-37. District 6 included the ocean and tidewaters of the state to high-water mark, lying between the northern boundary of the state and a line extending due west from the west end of the north jetty at the entrance to Humboldt Bay, exclusive of all sloughs, streams, and lagoons.

C. 1957 California Fish and Game Code and Subsequent Changes

In 1957, the 62d Session of the California General Assembly enacted a new Fish and Game Code to take effect on September 11 of that year. The new code repealed and re-enacted the 1933 Fish and Game Code, and incorporated therein Chapter 1447, Statutes of 1947, relating to the Pacific Marine Fisheries Compact.

As to be expected, the new code contained a number of sections focusing on commercial fishing for salmon, which perforce must be offshore. The new code required that "every person who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take fish for profit, or who brings or causes fish to be brought ashore at any point in the State for the purpose of selling them in a fresh state," must procure a commercial license.⁵

A commercial fishing license entitled the holder to take fish from April 1 to March 31, of the ensuing year. The fee was set at \$15.⁶

5. Deering's California Codes: Fish and Game Code Annotated of the State of California, Adopted May 21, 1957 (San Francisco, 1957), Sec. 7850, pp. 316-17.

6. Ibid., p. 318.

Section 8210 of the new code established the season for taking salmon in Districts 6, 7, 10, 11, 15, 16, 17, 18, and 19 as from April 15 to September 15. There was no bag limit, and salmon could only be taken by hook and line. Size limits for chinook and coho salmon were designated.⁷

In 1975, this section was amended to establish the season for chinook salmon as between April 15 and September 30 and for coho salmon between May 15 and September 30. Coincidentally, the minimum size for coho salmon was reduced.

Earlier, the legislature had mandated that the Department of Fish and Game, in cooperation with representatives of the commercial fishing industry and sports fishermen, was to evaluate the provisions of this act, and submit recommendations thereon to the General Assembly before December 10 in each of these years--1973, 1974, 1975, and 1976. In event of the Department, in its annual report, finding that, as a result of this act, there had been "substantial harm to the silver [coho] salmon resource," additional restrictions would be placed on the take of coho salmon in the next ensuing year.

7. Ibid., p. 369.

Consequently, the legislature, in 1976, enacted Section 8210.3 permitting the taking with hook and line species of salmon other than chinook and coho between April 15 and September 15.⁸

Section 8211 of the 1957 Code, besides establishing seasons and minimum size limits for chinook and coho salmon, in the enumerated ocean districts, provided that this section was to be

in full force and effect only during such time that the States of Oregon and Washington have in effect laws or regulations prohibiting the taking of silver [coho] salmon by commercial trolling prior to July 1st of any year. At all other time, Sections 2361 and 8210 are effective insofar as commercial fishing is concerned.

Upon receipt of statements annually from the Secretaries of State of the States of Oregon and Washington that laws or regulations prohibiting the taking of salmon as described are in effect the Secretary of State of California shall notify the department that this section is in effect for the year concerned. In order for this section to be effective such notification shall be made prior to April 15th of each year.⁹

8. West's Annotated California Codes, Fish and Game Code, Sections 1 to End, Vol. 31 . . . (St. Paul, 1980), pp. 198-99.

9. Deering's California Codes, Fish and Game, 1957, pp. 368-69. The minimum limit provided that no chinook was to be taken measuring less than 26 inches in length nor any coho measuring less than 22 inches. The salmon were to be measured from the tip of the snout to the extreme tip of the tail. The Pacific Marine Fisheries Compact had little effect on the commercial troll fishing season, which from the late 1940s until the mid-1970s began on April 15 and closed on September 30. Telephone interview, Boydston to Bearss, Aug. 14, 1981.

The subject section was amended on several occasions and repealed by the 69th General Assembly in 1971.¹⁰

Sections 8212 through 8217 of the 1957 Code focused on sale and transportation or sale of salmon in certain enumerated districts.¹¹ In 1959, Section 8212 was amended and Section 8216 repealed. The latter had provided, "In Districts 12, 12B, and 13, salmon may not be sold at any time when fishing with nets is prohibited in those districts."¹²

Section 8218 made it unlawful to gaff, club, or otherwise injure any chinook or coho salmon under legal size.¹³ The 65th General Assembly amended this section by adding the words ". . . otherwise injure or possess any"¹⁴

Section 8219 provided that salmon could

not be taken for commercial purposes in District 6 at the mouths of the Smith and Klamath Rivers within three nautical miles north and south of a line drawn due west for three nautical miles from the center of the mouth of each of those streams, or during the months of August and September in District 7 at the mouth of the Eel River within two nautical miles north and south of a line drawn due west for two nautical miles from the center of the mouth of that stream.¹⁵

10. West's Annotated California Codes, Fish and Game, 1980, p. 200.

11. Deering's California Codes, Fish and Game, 1957, pp. 369-72.

12. Ibid., p. 372; West's Annotated California Codes, Fish and Game, 1980, p. 200.

13. Deering's California Codes, Fish and Game, 1957, p. 373.

14. West's Annotated California Codes, Fish and Game, 1980, p. 200.

15. Deering's California Codes, Fish and Game, 1957, pp. 373-74.

The next three sections--8220 through 8222--had the goal of giving effect to recommendations of the Pacific Marine Fisheries Commission "in providing comparable regulations coastwide for salmon" These sections provided: 8220, it would be unlawful to net salmon within the waters of the Pacific over which the state had jurisdiction. This prohibition was not to apply to the waters within Districts 12B and 16. Section 8221, it would be unlawful for any Californian to employ a net to take salmon in Pacific Ocean international waters. Section 8222, it would be illegal for any person to transport through the state's Pacific waters or to have in his possession anywhere within the state, any salmon taken by a net within international waters or within California's territorial waters, or of another state or territory or country where fishing for salmon with nets was unlawful.¹⁶

According to Section 8223 of the Fish and Game Code, the aforementioned three sections were to become inoperative one year from their effective date, "unless laws or regulations are in effect in Oregon, Washington and Canada which are determined" by the Director of the Fish and Game Department

16. Ibid., pp. 374-76.

"to be in substance or effect similar either to Sections 8220 and 8221 or to the provisions of Section 8222 relating either to transportation or possession."¹⁷

Section 8224 provided that the provisions found in Sections 8220-8222 should not be construed to make it illegal to take salmon by nets for purposes of scientific investigation where authorized by the state.¹⁸

Sections 8220 to 8224, having been amended, were repealed in 1971.¹⁹

D. The Pacific Marine Fisheries Commission

In 1947, the 57th Session of the General Assembly authorized the governor to execute a compact on behalf of the state "with one or both the States of Oregon and Washington for the purpose of cooperating with such states in the formation of a Pacific Marine Fisheries Commission." Subsequently, the act was amended to include the states of Alaska and Idaho.²⁰

17. Ibid., p. 376.

18. Ibid., p. 377.

19. West's Annotated California Codes, Fish and Game, 1980, p. 200.

20. Deering's California Codes, Fish and Game, 1957, p. 535; West's Annotated California Codes, Fish and Game, 1980, p. 271.

Under the Pacific Marine Fisheries Compact, the contracting states agreed to:

Article I

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean over which the States of California, Oregon, and Washington jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the aforesaid states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever two or more of the States of California, Oregon and Washington have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent.

Article III

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as the Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be invested with the powers and duties set forth herein.

The term of each commissioner of the Pacific Marine Fisheries Commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commis-

sioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time, to a deputy, the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

Article IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous in all of those areas of the Pacific Ocean over which the States of California, Oregon and Washington jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell, and anadromous fisheries in all of those areas of the Pacific Ocean over which the States of California, Oregon and Washington jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell or anadromous fish and fish eggs or joint stocking by one or all of such states and when two or more of the said states jointly stock waters the commission shall act as the coordinating agency for such stocking.

Article V

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

Article VI

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

Article VII

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of the Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

Article VIII

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

Article IX

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

Article X

The states agree to make available annual funds for the support of the commission in proportion to the primary market value of the products of their fisheries as recorded in the latest published reports (five-year average); provided, no state shall contribute less than two thousand dollars (\$2,000) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars (\$100).

The compacting states agree to make available initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the latest five-year catch records. Subsequent budgets shall be recommended by a majority of the commission and the total amount thereof allocated equitably among the states in accordance with the above formula.

SCHEDULE OF INITIAL ANNUAL STATE CONTRIBUTIONS

California	\$11,000
Oregon	2,000
Washington	<u>2,000</u>
Total	\$15,000

Article XI

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.²¹

21. Deering's California Codes, Fish and Game, 1957, pp. 535-39.

Coincidentally, legislation was enacted designating the number of members of the commission to be named by the governor of California and their qualifications; their term of office, procedure for removal, and method of filling vacancies; compensation and traveling expenses; enumeration of duties of state officers in respect to the compact and directing them to provide the commission with pertinent requested data; provision for the commission's accounts and annual reports; and the required retial in the compact.²²

Amendments by the 1959, 1961, and 1969 General Assemblies resulted in several major substantive changes and a number of minor alterations in the compact's wording. In 1959, provision was made for Alaska to join the compact. Article X was rewritten to read:

The states agree to make available annual funds for the support of the commission on the following basis:

Eighty percent of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean. No less than 5 percent of the annual budget shall be contributed by any other member state. The balance of the annual budget shall be shared by those member states having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

22. Ibid., pp. 529-41.

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22. Ibid., pp. 529-41.

A XII Article was added, providing:

Hawaii or any other state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of the Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.²³

The Pacific Marine Fisheries Commission, through the years, has maintained a low profile. It has been far less controversial and conspicuous than the Pacific Fishery Management Council (PFMC), which was established by federal legislation in the mid-1970s. The latter organization, as it sets harvesting procedures and establishes catch quotas, is highly visible and controversial. The Pacific Marine Fisheries Commission has, in recent years, concentrated its attention on projects such as coordinating the fish marking programs in member states.²⁴

E. Passage of P.L. 94-265 and Organization of PFMC

In 1976, Congress enacted the Fishery Conservation and Management Act to take effect March 1, 1977, establishing a 200-mile United States fishery conservation zone. With passage of

23. West's Annotated California Codes, Fish and Game, 1980, pp. 271-74.

24. Telephone interview, Rankel with Bearss, June 11, 1981.

P.L. 94-265, the United States declared its intent to manage all fish and shellfish, excepting tuna, within a 200-mile conservation zone and beyond for anadromous species, principally salmon.

Possibly the most significant feature of P.L. 94-265 was that it did not simply extend United States territorial jurisdiction, but set forth a national policy to manage the fishing resources found off United States coasts to satisfy conservation, economic, and social needs. The act did not shut the door to foreign fishing, but required that fishery resources not fully utilized by United States-based fisheries be made available for foreign fishermen. Management plans developed pursuant to the act were to be based on the best scientific data available and were required to be consistent with the exacting national standards set forth in the act.²⁵

In the weeks following passage of the act, 13 voting and non-voting members were named to the Pacific Fishery Management Council (PFMC) and a headquarters established in Portland, Oregon, with a staff of six. A scientific and statistical committee, an advisory panel, and several management plan development teams were named.

25. Mel Odemar, "The 200-mile Limit: What's Happened in the Pacific Fishery Zone," Outdoor California, November-December 1976, p. 1.

Among the first items on the agenda of PFMC were preparation of two preliminary management plans for salmon and trawl fishing. The salmon plan provided for no foreign take of salmon, other than those in the existing bilateral agreement with Canada.

After March 1, 1977, the primary council task would be development of fishery management plans for salmon and anchovy. The salmon was of primary importance because of: (a) recent court actions in Washington state allocating salmon to Washington and Oregon treaty Indians; and (b) the need to increase escapement of salmon into the Columbia River system in Idaho's Salmon and Snake Rivers.²⁶

The Secretary of Commerce, upon approval of offshore fishery management plans prepared by PFMC, issued fishing regulations in the "fishery conservation zone," extending from three to 200 miles offshore, in accordance with the Fisheries Conservation and Management Act of 1976. Inside the three-mile limit, individual states continued to exert management authority over offshore areas falling within their jurisdiction.²⁷

26. Ibid., pp. 2-3.

27. Rankel, "Depleted Chinook Salmon Runs in the Klamath River Basin: Causes, Consequences and Constraints on Management," p. 25.

F. Legal Opinions Pertaining to Oregon Regulation of Ocean Fisheries

In the twentieth century, the courts and the state attorney general made a number of decisions focusing on the authority of the state of Oregon to regulate fisheries off its coasts.

In 1921, the Oregon Attorney General held that the 1921 statutes did not authorize the fish commission to close the waters of the Pacific within the three-mile limit to the taking of salmon and other food fish "by any means whatsoever."²⁸

Oregon courts held that, though a state could not make it unlawful to catch fish beyond the three-mile limit, "which according to the law of 1919 merely prohibited within the state the sale or possession of fish caught outside such limits," it was within the state's power to make effective its prohibition against taking fish during the closed season from waters over which it had jurisdiction.²⁹

In 1923, the Oregon Attorney General ruled that fish taken by trolling could be legally brought into the state and possessed between August 25 and September 10, provided they were caught

28. New Oregon Digest: Digest of Oregon Legal Authorities, State and Federal, Vol. 13, Federal Civil Procedure to Homestead (San Francisco, 1961), 13 or D-115.

29. *Ibid.*, p. 13 Or D-122.

or taken in waters over which the state of Oregon had no jurisdiction and "other than the waters beyond the three-mile line outside the Columbia."³⁰

The Oregon Attorney General, in 1925, held that the State Fish Commission was authorized and required to enforce the provisions of the law requiring the payment of a poundage fee on salmon, sturgeon, and shad, received or purchased by canners, packers, buyers, or wholesalers, when brought by such transactions within the state of Oregon, regardless of where such fish were originally taken or received.³¹

In 1931, the Oregon Attorney General ruled that the state had no jurisdiction over fishing in the waters of the Pacific behind the three-mile limit.³²

But, in 1956, the State Attorney General held that Oregon had the sovereign power to regulate its own citizens and vessels registered in the state as to conduct on the high seas beyond the three-mile limit, particularly in regard to fishing, as long as its laws thereto pertaining did not conflict with federal legislation or treaty.³³

30. Ibid., p. 13 Or D-149.

31. Ibid., p. 13 Or D-124.

32. Ibid., p. 13 Or D-123.

33. Ibid., p. 13 Or D-129.

The Oregon Attorney General ruled, in 1975, that, taking into consideration the state's fisheries conservation zone, Oregon could regulate commercial fishing by citizens of other states or foreign nations in the waters of the Pacific Ocean within three nautical miles of its coastline; or to an unlimited extent if the fishermen had sufficient local contacts with Oregon, i.e., use of the Oregon ports to land their catch.³⁴

A chronology of Oregon ocean salmon sport fisheries' regulations for the years from 1946 to the present reveals these changes:

Years	Regulations
1946	Bag limit 3 salmon or steelhead in the aggregate per day; 9 in possession. No annual limit.
1947	Bag limit 2 salmon or steelhead in the aggregate per day; 6 in possession or in 7 consecutive days. No annual limit.
1948-55	Bag limit 2 in the aggregate in any one day of steelhead and salmon 20 inches and over in length; 4 in possession or in 7 consecutive days; not more than 20 such fish in any one calendar year.
1955-64	Bag limit 2 per day, 4 in possession or in 7 consecutive days and annual limit of 40 fish (not more than 20 salmon and 20 steelhead). Salmon less than 20 inches could not be taken from ocean.
1965-69	Bag limit 3 per day, 6 in possession or in 7 consecutive days. Annual limit 20 salmon - 20 steelhead. Salmon less than 20 inches could not be taken from the ocean.
1970-75	Bag limit 3 per day, no 7-day possession limit as in past, annual limit 40 fish. (40 salmon or 40 steelhead or an aggregate catch of salmon and steelhead not to exceed 40 fish). Salmon less than 20 inches may be taken from the ocean south of Tillamook Head.

34. New Oregon Digest: Digest of Oregon Legal Authorities State and Federal, Col. 13, Federal Civil Procedure to Homestead (St. Paul, 1981), 13 Or D-96.

- 1976 Bag possession and annual limit same as above. North of Tillamook Head chinook size limit 24 inches, coho 16 inches. No size limit south of Tillamook Head. Season May 1 through December 31 (first time any limitation on season).
- 1977 Bag and size limits same as above. Season April 30 through October 31.
- 1978 Bag limit same as above. North of Cape Falcon chinook size limit 24 inches, south of Cape Falcon chinook size limit 22 inches. Coastwide size limit for coho, pink, chum and sockeye 16 inches. Season April 29 through October 31.
- 1979 Bag limit 2 per day south of Cape Falcon, 3 per day north of Cape Falcon of which only 2 may be chinook or coho. No 7-day possession limit. Annual limit 40 fish. Season May 12 through September 16. Size limit same as above.
- 1980 Bag limit 3 per day, reduced to 2 per day effective July 16. No 7-day possession limit. Annual limit 40 fish. Season: All species - May 10 through September 14. Chinook only, south of Cape Falcon - September 15 through October 31. Size limit same as 1978.
- Note: On August 22, the NMFS Regional Director closed the area outside 3 miles to salmon angling effective September 2, except chinook south of Cape Falcon could still be taken through October 31.
- 1981 Bag limit 2 per day. No 7-day possession limit. Annual limit 40 fish. Season: North of Cape Falcon all species May 23 - September 7. South of Cape Falcon all species May 15 - September 20, chinook only. South of Cape Blanco September 21 - October 31. Size limit same as 1978.³⁵

35. Fish Division, Oregon Department of Fish & Wildlife to Bearss, August 3, 1981.

APPENDIX A

Treaty

With

The Pohlik or Lower Klamath, etc., 1851

TREATY WITH THE POHLIK OR LOWER KLAMATH, ETC., 1851

Treaty Made and Concluded at Camp Klamath, at the Junction of Klamath and Trinity Rivers, State of California, October 6, 1851, Between Redick McKee, Indian Agent on the Part of the United States, and the Chiefs, Captains and Head Men of the Pohlik or Lower Klamath, etc., Tribes of Indians.

A treaty of peace and friendship made and concluded at Camp Klamath, at the junction of the Klamath and Trinity rivers, between Redick McKee, one of the Indian agents specially appointed to make treaties with the various Indian tribes in California, on the part of the United States, and the chiefs, captains, and head men of the tribes or bands of Indians now in council at this camp, representing the Poh-lik or lower Klamath, the Peh-tsick or upper Klamath, and the Hoo-pah or Trinity river Indians; containing also stipulations preliminary to future measures to be recommended for adoption, on the part of the United States.

Article 1. The said tribes or bands acknowledge themselves, jointly and severally under the exclusive jurisdiction, authority and protection of the United States; and hereby bind themselves to refrain hereafter from the commission of all acts of hostility or aggression towards the government or citizens thereof, and to live on terms of peace and friendship among themselves, and with all other Indian tribes which are now or may hereafter come under the protection of the United States.

Art. 2. Lest the peace and friendship established between the United States and the said tribes should be interrupted by the misconduct of individuals, it is expressly agreed that, for injuries received on either side, no private revenge or retaliation shall take place or be attempted; but instead thereof, complaints shall be made by the party aggrieved to the other, through the Indian agent of the United States in their district, whose duty it shall be to investigate, and, if practicable, adjust the difficulty; or, in case of acts of violence being committed upon the person or property of a citizen of the United States by an Indian or Indians belonging to or harbored by either of said tribes or bands, the party or parties charged with the commission of the crime shall be promptly delivered up when demanded, to the civil authorities of the State of California for trial; and in case the crime has been committed by a citizen or citizens of the United States upon the person or property of an Indian or Indians of either of said tribes, the agent shall take all proper measures to bring the offender or offenders to trial in the same way.

Art. 3. The said tribes or bands hereby jointly and severally relinquish, cede, and forever quit claim to the United States, all their right title, claim or interest of any kind which they or either of them have to lands or soil in California.

Art. 4. To promote the settlement and improvement of said tribes or bands, it is hereby stipulated and agreed, on the part of the United States, that the following tract or district of land shall be appropriated and set apart as an Indian reservation, and the use and possession thereof forever guaranteed to the said tribes, their successors, and to such other tribes as the United States may hereafter remove from other parts of the valleys of the Trinity or Klamath rivers, or the country adjacent, and settle thereupon, to wit: commencing at the mouth of a stream called John's creek, emptying into Trinity river on the north side thereof, about fourteen miles above this camp; thence running up the middle of the same with its windings, to a distance of five miles; thence north to the summit of the first ridge lying beyond the "Red Cap's" bar; thence due west to the summit of the first ridge lying beyond the Klamath river; thence southwestwardly along the summit of said ridge to a point due north of the mouth of Pine creek; thence south to the mouth of Sand creek; thence up Pine creek with its windings, to a point due south of the place of beginning; and thence north to said place of beginning. The said reservation including, by estimation, a tract twenty miles in length by twelve miles in width, and containing in all six or seven square miles of farming land. It is, however, understood and agreed that the United States reserves the right of way over said lands, and of using for farming purposes any quantity thereof not exceeding one thousand acres; also the right to establish such military posts, erect such buildings, and make such improvements for the accommodation of their agent and other officers or servants as the President may direct; also that said tribes or bands shall never sell or alienate their right or claim to any part thereof, except to the United States, nor shall they ever lease to or permit white men to settle, work or trade upon any part thereof without the written permission of the United States Indian agent for the district.

Art. 5. It is further stipulated and agreed that the said tribes or bands shall, within three years from the date hereof, or sooner, if thereto required by the United States, remove to and settle upon said reservation; and that whenever said removal and settlement shall be ordered by the United States or made by said tribes, such farmers, mechanics, and school-teachers to instruct them in the language, arts, and agriculture of the whites as the President may deem expedient and proper, shall be assigned, provided for, and settled among them, so as to place the Indians on said reservation in a situation as favorable for their improvement (being in like manner supplied with facilities for

farming, stock-raising, etc.,) as by the treaty of Lu-pi-yu-ma on the 20th day of August, 1851, is stipulated to be assigned to and provided for the Clear Lake Indians. It is understood, however, that if upon examination by the Indian agent it is found that any of the articles or supplies provided in said treaty for the Clear Lake Indians shall be unnecessary for or unsuited to the Indians on the Trinity and Klamath, the President may in his discretion withhold the same, and invest the value thereof in other and more suitable goods. And it is further expressly agreed and understood that if either of said tribes or bands, or other Indians harbored by them shall be guilty of theft, robbery or murder, either upon the persons and property of Indians or whites, the United States may exclude such tribe or band from all the benefits of this treaty.

Art. 6. As early as convenient after the ratification of this treaty by the President and Senate, the United States will deliver to the said Klamath and Trinity Indians, through their agent, during each of the years 1852 and 1853, viz: five hundred pairs two and half point Mackinaw blankets, five hundred pairs strong cotton pantaloons, five hundred cotton (hickory) shirts, five hundred red flannel shirts, five hundred strong cotton or linsey gowns, three thousand yards of calico, three thousand yards of four-fourths brown sheetings, thirty pounds Scotch thread, five thousand needles, six dozen pairs scissors, two gross thimbles, ten pounds pins, ten dozen nine-inch flat files, thirty-five dozen large size butcher knives, ten mattocks, one hundred garden or corn hoes, two hundred chopping axes, handled, common size, two hundred chopping axes, handled, small size; one hundred sheet-iron camp kettles, large size; one hundred sheet-iron camp kettles, second size.

It is understood, however, that the agent shall use a sound discretion as to the time when, and the tribes or person to whom the said goods shall be distributed, having reference to their peaceful disposition and good conduct.

Art. 7. In consideration of the premises, the United States, in addition to the numerous presents of beef, bread, sugar, blankets, shirts, etc., made to said tribes at this camp, will, within sixty days from the date hereof, furnish them free of charge at the ferry of C.W. Durkee, in Klamath river, to enable them to rebuild the houses recently destroyed by the whites, with four dozen chopping axes, handled, ten sacks of hard bread, and four bullocks, sixteen pairs heavy blankets, to be distributed among them by said Durkee, according to their respective losses.

Art. 8. These articles to be binding upon the contracting parties when ratified by the President and Senate of the United States.

In testimony whereof the parties have hereunto signed their names and affixed their seals this sixth day of October, anno Domini 1851.

[Seal.]

REDICK McKEE
United States Indian Agent for California

For and in behalf of the Wetch-peck tribe, living at mouth of Trinity.

WUCK-UG-GRA, his x mark	[Seal.]
WA-PE-SHAW, his x mark	[Seal.]
SA-SA-MICH, his x mark	[Seal.]
EN-QUA or AMOS, his x mark	[Seal.]

For and in behalf of Wuh-si tribe, living three miles below mouth of Trinity.

MO-RU-KUS, his x mark	[Seal.]
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For and in behalf of the Cap-pel tribe:

MAH-ON, his x mark	[Seal.]
--------------------	---------

For and in behalf of the Mor-ri-ahs:

MAH-ON, his x mark	[Seal.]
WUS-SUR, his x mark	[Seal.]
UP-PER-GASH, his x mark	[Seal.]

For and in behalf of the Ser-a-goines:

UP-LA-GO-PUS, his x mark	[Seal.]
MOO-ROO-KUS, his x mark	[Seal.]
SA-ET-MA-GEHL, his x mark	[Seal.]

For and in behalf of the Pak-wan tribe:

CAP-PEL-LA-WAH, his x mark	[Seal.]
----------------------------	---------

For and in behalf of the Ut-cha-pah tribe, living near the mouth of Bluff creek:

E-NE-NUCK, his x mark	[Seal.]
MOW-WEIGHT, his x mark	[Seal.]

For and in behalf of the Up-pa-goines, living near "Red Cap's" bar, on Klamath River:

KEE-CHAP, his x mark	[Seal.]
RED CAP or MIK-KU-REE, his x mark	[Seal.]

For and in behalf of the Sa-von-ra tribe:

SA-VON-RA, his x mark	[Seal.]
UP-PA-GRAH, his x mark	[Seal.]
EX-FIN-E-PAH, his x mark	[Seal.]

For and in behalf of Cham-ma-ko-nee tribe:

KA-TOP-KO-RISH, his x mark	[Seal.]
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For and in behalf of Coc-ko-man tribe:

PA-NA-MO-NEE, his x mark [Seal.]

For and in behalf of Chee-nah tribe, living ten miles below the mouth of Salmon river:

AK-KA-REE-TA, his x mark [Seal.]

For and in behalf of the Hoo-pahs or Trinity river Indians, residing in twelve rancherias or villages:

Principal chief, AH-ROOK-KOS, his x mark [Seal.]

TE-NAS-TE-AH or John, his x mark [Seal.]

MET-POOKA-TA-MAH, his x mark [Seal.]

NIC-A-WA-EN-NA, his x mark [Seal.]

WASH-TEN, his x mark [Seal.]

Signed, sealed and delivered, after being duly explained, in presence of--John McKee, Secretary

C. W. Durkee, } Interpreters.
George Gibbs, }

H. W. Wessels, Brevet Major, U. S. A., commanding escort.

Walter Van Dyke, } Interpreters
Geo. W. Ellsworth, }

Morris S. Thompson,

Walter McDonald,

A TREATY SUPPLEMENTARY TO THE FOREGOING TREATY

The undersigned chiefs, captains and head men of the Si-wah, Op-pe-o, He-ko-neck and In-neck tribes or bands of Indians, residing at and near to the mouth of the Cor-a-tem or Salmon river, having had the terms and stipulations of the foregoing treaty, concluded at Durkee's ferry on the 6th instants, fully explained to them by Redick McKee, Indian agent of the United States, having expressed an earnest desire to become parties to the said treaty in all its articles and stipulations, it is therefore agreed by and between the said agent and the said chiefs, etc., that the said bands be and hereby are admitted as parties to the same, and to the advantages thereof, and become bound by the stipulations therein contained as fully in all respects as if they had been parties thereto originally.

In testimony whereof the parties have herunto signed their names and affixed their seals at Camp Cor-a-tem, near mouth of Salmon river, this twelfth day of October, anno Domini, 1851.

[Seal.]

REDICK MCKEE

United States Indian Agent

For and in behalf of the Si-way band:

ESSE-PISH-A, his x mark.	[Seal.]
RES-SOW, his x mark.	[Seal.]
CHEE-FEE-CHA, his x mark.	[Seal.]
PI-RA-TEEM, his x mark.	[Seal.]

For and in behalf of the OP-pe-o band:

CA-POR-U-PUCK, his x mark.	[Seal.]
PEEK-NEETS, his x mark.	[Seal.]

For and in behalf of the He-ko-neck band:

YAH-FEE-PAH, his x mark.	[Seal.]
HON-A-PUCK-IF-MA, his x mark.	[Seal.]

For and in behalf of the In-neck band:

SISH-KAH, his x mark.	[Seal.]
-----------------------	---------

Signed, sealed and delivered after the foregoing treaty of 6th instant,
and this addenda had been fully explained in presence of--

John McKee, Secretary.

C. W. Durkee, Interpreter.

George Gibbs, _____.

H. W. Wessells, Brevet Major U. S. A. commanding escort

John S. Griffin, Assistant Surgeon U. S. A.

Walter McDonald.

APPENDIX B

Del Norte County Timber Production
(Millions of board feet, local scale)

<u>Year</u>		<u>Year</u>	
1947	23.4 MMbf	1963	307.4 MMbf
1948	34.5	1964	350.2
1949	61.4	1965	319.3
1950	142.0	1966	240.5
1951	174.5	1967	303.8
1952	203.8	1968	302.0
1953	288.9	1969	269.8
1954	240.2	1970	210.5
1955	305.7	1971	236.0
1956	234.8	1972	240.2
1957	201.2	1973	217.9
1958	283.1	1974	229.8
1959	336.9	1975	208.9
1960	258.0	1976	242.5
1961	229.7	1977	265.4
1962	192.3	1978	292.5
		1979	250.6
		1980	179.1

Ltr., Cockran to Bearss, July 29, 1981. Gerald D. Cockran is the assessor for Del Norte County, California.

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