

*John W. Corbett*

Question 1. Doesn't the Yurok Constitution require a referendum vote of the Tribal membership to approve a waiver?

Short Answer: NO

Explanation:

The provision in the Constitution that refers to a waiver of claims contains the language "laws that affect the fundamental rights of Tribal members." The word "laws" in this provision of the constitution refer to Ordinances adopted by the Yurok Tribe. No Ordinance was adopted by Tribal Council as to the waiver of claims. What was adopted was a Resolution. Nothing in the Constitution requires a referendum vote of the membership for the Council to adopt a Resolution. This provision will only need to be complied with if an Ordinance is passed by Council that would affect the distribution of the money. Then, and only then, would a referendum be put out to the membership.

This matter was also resolved by the passage of the 1988 Hoopa Yurok Settlement Act. The Act allows a person to choose a membership option (either Yurok, Hoopa, or Buyout). One of the conditions of Yurok Tribal membership was to grant to the Interim Council an irrevocable proxy waiving the right to sue the federal government. The language of the Act reads: "Any such person shall also be deemed to have granted to members of the ... Council ... an irrevocable proxy directing them to approve a proposed resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provisions of this Act, and granting tribal consent as provided in section 9 (d) (2)". The statute authorizes that the Council "shall have full authority to adopt a resolution waiving any claim the Yurok Tribe may have against the United States arising out of the provision of this Act." (See Section 8 (d) (2) (i).

"Irrevocable" means not able to be revoked, or cannot be taken back. A "proxy" is someone who is authorized to act as a substitute for another, or who is authorized to vote for another. When a person chose the option to join the Yurok Tribe, they granted the Interim Council an "irrevocable proxy" to vote for them on whether or not to pass a resolution to waive claims against the United States. Because this irrevocable proxy is contained within a Statute (the Hoopa-Yurok Settlement Act), it cannot be changed by a referendum vote of the Tribal membership.

When it dismissed the Hoopa claim which raised this issue, The Interior Board of Indian Appeals noted that the "Special Trustee accepted a resolution from the Yurok Tribal council as a waiver of claims that meets the requirements of the Settlement Act."

The Yurok Constitution clearly provides that no money can be spent until there is a vote and approval of the Yurok membership. This provision will be complied with. Council has adopted a Yurok Tribal member public participation program in order to ensure that all members get to make input. We appreciate your coming here today to give that input and advice to council.

Question 2. Are *Jesse Short* plaintiffs entitled to monies from the Settlement Fund?

Answer: NO

Explanation:

- If a *Short* plaintiff is NOT on the Settlement Roll, the HYSA denies that person a right to the Settlement Fund
- If a *Short* plaintiff IS on the Settlement Roll, the HYSA provides that each option (Yurok Tribal membership, Hoopa Tribal Membership or Lump Sum Buyout) is considered a waiver of any rights to sue the U.S. Government.
- The statute of limitations for claims against the waiver by *Short* plaintiffs has now run out. The legal right to challenge the provisions of the Hoopa Yurok Settlement Act expired in 1989.

Question 3. Is the Settlement Fund money *Jesse Short* money?

Short Answer: NO

Explanation: When the Settlement Fund was created, certain portions were set aside. One portion was set aside to for *Jesse Short* plaintiffs, one portion was set aside for the Hoopa Tribe, and the final portion was set aside for the Yurok Tribe. The Yurok Tribe never received its portion, and that is what remains in the Settlement Fund.

Question 4. Does the waiver affect fishing rights or other Tribal rights:

Short Answer: NO

Explanation:

The waiver does not affect individual fishing or other rights under the 1988 Hoopa Yurok Settlement Act. What the waiver does is prevent the Yurok Tribe from suing the government over any other provisions of the Settlement Act.