

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 1 1980

RICHARD H. DEANE  
CLERK, U.S. COURT OF APPEALS

JOSEPH A. RUSS, JAMES WHIPPLE,  
and THE COVELO INDIAN COMMUNITY  
OF THE ROUND VALLEY INDIAN RESERVATION, )

Plaintiffs, Plaintiff in  
Intervention and )  
Appellees, )

No. 76-2776

v. )

D.C. No. C-73-2279-CBR

RICHARD E. WILKINS, et al., )

Defendants and )  
Appellants. )

OPINION

Appeal from the United States District Court  
for the Northern District of California  
The Honorable Charles B. Renfrew, Presiding  
Date of submission: September 11, 1978

Before: BROWNING and HUG, Circuit Judges, and HOFFMAN\*,  
Senior District Judge.

HUG, Circuit Judge:

This action concerns the boundaries of the Round Valley  
Indian Reservation in Mendocino County, California, where  
the members of the Covello Indian Community reside. The  
appellants contend that the Round Valley Indian Reservation,  
as established by a Congressional Act of 1873, was reduced  
in size by a Congressional Act of 1890. The appellees main-  
tain that the Act of 1890 merely authorized the sale to  
non-Indians of a portion of the reservation land outside  
certain boundaries, without altering the boundaries of the  
reservation.

Appellees Russ and Whipple, enrolled members of the  
Covello Indian Community, killed a deer on land that was  
within the reservation as established in 1873, but was out-  
side the boundaries established pursuant to the Act of 1890.

\*The Honorable Walter E. Hoffman, Senior United States  
District Judge for the Eastern District of Virginia, sitting  
by designation.

1 The appellees were apprehended and the deer was confiscated  
2 by appellant Wilkins, a warden of the California Department  
3 of Fish and Game. The issue presented by this appeal is  
4 whether the site upon which the deer was killed is within  
5 the Round Valley Indian Reservation and thus is "Indian  
6 country," where the California fish and game laws do not  
7 apply to the Indians, at least as to non-commercial hunting  
8 and fishing.

9 Appellees Russ and Whipple brought this action against  
10 Wilkins and the California Director of the Department of  
11 Fish and Game, seeking damages for the value of the confis-  
12 cated deer. Russ and Whipple, together with the plaintiff  
13 in intervention, the Covello Indian Community, also seek de-  
14 claratory and injunctive relief concerning the boundaries of  
15 the reservation and the jurisdiction to regulate hunting and  
16 fishing thereon.

17 The court entered summary judgment, awarding to Russ  
18 and Whipple nominal damages in the amount of \$10.00 as com-  
19 pensation for the confiscation of the deer and declared that  
20 the boundaries of the reservation are those established by  
21 the Act of 1873; that the reservation had not been dimin-  
22 ished by the Act of 1890; and that the members of the  
23 Indian Community were immune from the California fish and  
24 game laws while hunting or fishing for subsistence on land  
25 within the boundaries of the reservation as established in  
26 1873.<sup>1/</sup> We reverse.

27 I

28 BACKGROUND

29 Round Valley, located in what is now Mendocino County,  
30 California, was originally set aside for Indian use in 1858  
31 by an order of the Secretary of the Department of the Interior.  
32 The area was composed of a small, fertile valley completely

1 ringed by coastal range mountains. On March 30, 1870,  
2 pursuant to the Four Reservations Act of 1846, 13 Stat. 39,  
3 President Grant established the Round Valley Indian Reser-  
4 vation by Executive Order and expanded the tract to a total  
5 size of over 31,000 acres. However, non-Indians ignored the  
6 reservation status of the land and settled upon the land  
7 within the reservation boundaries, claiming title from the  
8 State of California under the Swamp Act of 1850, 9 Stat. 519.

9 On March 3, 1873, Congress made a major change in the  
10 reservation, 17 Stat. 633. The southern two-thirds of the  
11 agricultural land in Round Valley, approximately 12,000  
12 acres, was restored to the public domain, to be sold to non-  
13 Indians; and 89,000 acres of mostly mountainous land was  
14 added to the northern portion of the reservation, making the  
15 1873 reservation approximately 102,118 acres in size. All  
16 non-Indians living within the new reservation boundaries  
17 were to be required to leave upon being reimbursed for their  
18 improvements out of the proceeds from the sale of former  
19 reservation land. Indians living outside the reservation  
20 were to be relocated to the new reservation. The eastern,  
21 western and southern boundaries of the reservation were  
22 specifically outlined in the Act. The northern boundary was  
23 fixed at a later date by a commission established by the  
24 1873 Act.

25 Despite this congressional compromise, non-Indian  
26 settlement on reservation land continued. The movement of  
27 non-Indians from the reservation, as provided for in the  
28 1873 Act, was never effected because sale of land within the  
29 southern portion of the valley was not sufficient to pay for  
30 the interests of non-Indians living in the new reservation,  
31 and Congress did not appropriate sufficient money to make  
32 the payments. Neither court orders nor military action

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could dislodge the settlers.

In 1884 a Senate committee was established to inquire into the conditions of certain Indians in California, particularly those at the Round Valley Reservation. This committee, chaired by Senator Dawes, noted in its report (Dawes Report)<sup>2/</sup> submitted on February 27, 1885, that 97,000 acres of the reservation were occupied by non-Indians, leaving the 500-600 Indians confined to about 5,000 acres in the valley floor. Most of the non-Indian claims were without legal basis. The Indians were afraid to travel on Indian land and much of their livestock was lost or stolen. Deprived of the use of their land, these Indians became dependent upon the federal government, which supported them at considerable expense.

In response to the problems between Indians and non-Indians in Round Valley, on October 1, 1890 Congress again dealt with the reservation in "An act to provide for the reduction of the Round Valley Indian Reservation. . ." 26 Stat. 658. This legislation is the focus of the present appeal. The Act provided that a portion of the reservation was to be surveyed and allotted in separate tracts to individual Indians, and an additional portion of grazing and timber lands was to be set aside to be used in common by the Indians. Non-Indian claims on the land within this area selected for Indian use were to be appraised and compensated for, with payment to be made by the Secretary of the Interior, and the non-Indians were then to be removed from these lands retained for Indian use. The rest of the land was to be sold in 640-acre plots, with the proceeds from these sales to be placed in the Treasury of the United States to the credit of the Indians. The 1890 Act provided that the specific boundaries of the land reserved for the Indians

1 would be determined by a commission composed of three dis-  
2 interested persons. The commission, in carrying out this  
3 function, allotted to the Indians the southwest portion of  
4 the reservation, consisting of approximately 43,680 acres  
5 of both valley and mountain lands, to be used for farming  
6 and grazing. The surplus was offered at public sale.

7 The sale of land from the relinquished portions of the  
8 1873 reservation was unsuccessful; only about 1,200 acres  
9 out of the 63,680 opened for non-Indian settlement were  
10 sold. On February 8, 1905, the unsold portions of the  
11 63,680 acres were opened to homestead entry and settlement;  
12 the land remaining unclaimed after five years was to be  
13 sold. See 33 Stat. 706.

14 On February 11, 1947 the Secretary of the Interior  
15 issued an order of restoration, pursuant to the Indian  
16 Reorganization Act of 1934, 48 Stat. 984. This order re-  
17 turned approximately 7,531 acres of vacant land within the  
18 relinquished parts of the reservation to tribal ownership.

## 19 II

### 20 THE EFFECT OF THE ACT OF 1890 21 ON THE BOUNDARIES OF THE ROUND VALLEY INDIAN RESERVATION

22 We must determine the exact boundaries of the Round  
23 Valley Indian Reservation; specifically we must determine  
24 whether the Congressional Act of 1890 reduced the size of  
25 the reservation as established by Congress in 1873. The  
26 district court, relying primarily on Seymour v. Superintendent,  
27 368 U.S. 351 (1962), Mattz v. Arnett, 412 U.S. 481 (1973),  
28 and DeCoteau v. District County Court, 420 U.S. 425 (1975),  
29 held that the Act of 1890 did not change the boundaries of  
30 the reservation, as established by the Act of 1873. Russ v.  
31 Wilkins, 410 F. Supp. 579 (N.D. Cal. 1976).

32 Between the time that the district court rendered its  
decision and this appeal was taken, the United States

1 Supreme Court, in Rosebud Sioux Tribe v. Kneip, 430 U.S. 584  
2 (1977), again considered the tests to be employed in deter-  
3 mining whether a Congressional Act changes or continues the  
4 boundaries of a reservation. Thus, we are assisted in our  
5 present inquiry by an additional delineation of the proper  
6 analysis to be employed in cases of this nature, which was  
7 not available to the district court.

8 In deciding whether the 1890 Act permanently reduced  
9 the size of the Round Valley Indian Reservation, we are  
10 guided by the pronouncements in Rosebud. The court stated:

11 The underlying premise is that congressional  
12 intent will control. DeCoteau v. District  
13 County Court, *supra*, at 444, 449; United  
14 States v. Celestine, 215 U.S. 278, 285 (1909).  
15 In determining this intent, we are cautioned  
16 to follow "the general rule that '[d]oubtful  
17 expressions are to be resolved in favor of  
18 the weak and defenseless people who are the  
19 wards of the nation, dependent upon its pro-  
20 tection and good faith.'" McClanahan v.  
21 Arizona State Tax Comm'n, 411 U.S. 164, 174  
22 (1973), quoting Carpenter v. Shaw, 280 U.S.  
23 363, 367 (1930); see also Mattz v. Arnett,  
24 *supra*, at 505. The mere fact that a reserva-  
25 tion has been opened to settlement does not  
26 necessarily mean that the opened area has  
27 lost its reservation status. Mattz v. Arnett,  
28 *supra*; see also Seymour v. Superintendent,  
29 368 U.S. 351 (1962). But the "general rule"  
30 does not command a determination that reservation  
31 status survives in the face of congressionally  
32 manifested intent to the contrary. DeCoteau  
33 v. District County Court, *supra*. In all cases,  
34 "the face of the Act," the "surrounding circum-  
35 stances," and the "legislative history," are to  
36 be examined with an eye toward determining what  
37 congressional intent was. Mattz v. Arnett,  
38 *supra*, at 505.

39 430 U.S. at 586-87. Thus, our inquiry, as mandated by  
40 Rosebud, 430 U.S. at 588 n.4, consists of an examination of  
41 all the factors which reveal congressional intent.

42 In the present case, the meaning of the language of the  
43 1890 Act is best analyzed by reference to the circumstances  
44 that existed at the Round Valley Indian Reservation prior to  
45 enactment of the 1890 Act and by reference to the legisla-  
46 tive history of that Act. See Rosebud, 430 U.S. at 588,

1 n.4. Using this analysis, we conclude that the Act of 1890  
2 evidences a strong congressional intent to change the bound-  
3 aries of the Round Valley Indian Reservation so as to reduce  
4 its size.

5 A. Surrounding Circumstances and Legislative  
6 History Leading to the Enactment of the 1890 Act.

7 Congressional intent to disestablish a portion of the  
8 Round Valley Indian Reservation in 1890 is clear from a  
9 review of the circumstances surrounding the Round Valley  
10 Indians and the legislative history of the 1890 Act. The  
11 history of the reservation is one of constant friction  
12 between Indians and non-Indians and encroachment by non-  
13 Indians upon reservation land, an intrusion which the govern-  
14 ment was unable to curtail. This encroachment deprived the  
15 Indians of the use of their land and of the means by which  
16 they could provide for themselves. Consequently they  
17 became dependent upon the federal government for subsistence.  
18 The Act of 1890 was an attempt to remedy this situation by  
19 reducing the reservation to a manageable size, removing the  
20 non-Indians from the lands retained for the Indians, securing  
21 the reduced reservation for the exclusive use of the Indians,  
22 and opening the remaining portion of the former reservation  
23 lands for sale to non-Indians who were then able to obtain  
24 legitimate title to the land.

25 The 1885 Dawes Report concerning the Round Valley  
26 Indian Reservation clearly outlined the need for the 1890  
27 legislation. The Dawes Committee "found the greater part of  
28 the reservation in the possession of several white men,"<sup>3/</sup>  
29 who grazed livestock on the upland portion of the reser-  
30 vation. The 500-600 Indians were confined to approximately  
31 3,000 acres of valley land and 1,000-2,000 acres of grazing  
32 land. The occupancy by non-Indians was without compensation  
for the use of the land, and, in most cases, was without

1 valid title to the land. The Committee stated that these  
2 non-Indians were making large profits from the use of reser-  
3 vation land and concluded that non-Indian occupancy of  
4 reservation lands was valued at \$30,000 a year, which was a  
5 direct loss to the Indians and the federal government. The  
6 Committee reported that the full reservation embraced "land  
7 productive and well calculated for the production of every-  
8 thing necessary for the support of many more Indians than  
9 are now to be found in the State of California."<sup>4/</sup> However,  
10 the Committee found that the Round Valley Indians were so  
11 confined in the use of their land that they could not main-  
12 tain sufficient herds of livestock to sell for a profit,  
13 or even to provide for their own subsistence. Thus, the  
14 federal government had been obligated to pay for the support  
15 of the Indians upon the reservation since 1873. In some  
16 cases, the Indian Agency had purchased cattle for the Indians'  
17 consumption from the same non-Indians who were illegally  
18 using the Indians' lands. The Dawes Report stated that this  
19 outlay of government money for support of the Indians was  
20 alone "a sufficient commentary upon the folly which has  
21 marked the administration of the reservation during this  
22 time."<sup>5/</sup>

23 The Dawes Committee reported that attempts to expel the  
24 non-Indians had been feeble and unsuccessful. The 1873 Act  
25 concerning Round Valley would have required non-Indian  
26 settlers to leave the reservation upon receipt of payment  
27 for improvements which they had made upon Indian lands.  
28 However, sufficient funds to pay the settlers were not  
29 generated from the sale of former reservation lands; nor did  
30 Congress appropriate sufficient funds to make the payments.  
31 Thus, the non-Indian settlers refused to leave. The Com-  
32 mittee reported that a lawsuit concerning title to 1,080 acres



1 within the reservation had been decided against the federal  
2 government.

3 The Dawes Report recommended that:

4 [T]he earliest measures should be taken to reduce  
5 the boundaries of this reservation to the present  
6 wants of these Indians. . . . A few thousand  
7 acres of valley land, with perhaps a small por-  
8 tion of upland for grazing purposes, is all  
9 that can be utilized for their benefit. To  
10 these needs the limits of the reservation should  
11 be reduced, and all Indians capable of taking  
12 care of themselves should be put upon a suffi-  
13 cient amount of this valley land, each in sever-  
14 alty, and in quantity sufficient for his support.

15 [I]t is the duty of the Government to take these  
16 Indians and their reservation in hand, and, after  
17 having reduced the reservation to their present  
18 wants and prospective development and apportioned  
19 to each one all his necessities, require the  
20 balance of the reservation to be sold and the  
21 money put into the Treasury for the benefit of  
22 these or other Indians. . . .

23 These Indians are now so far advanced that a little  
24 care and the proper disposition of them upon a  
25 portion of this land will result in making them  
26 not only self-supporting, but. . . useful members  
27 of the community.<sup>9/</sup>

28 The Committee recommended that measures should be taken at  
29 once to complete the appraisals and payments to non-Indians  
30 for their improvements, as required by the 1873 Act, and  
31 stated that, if necessary, the Army should be used to remove  
32 those non-Indians. It is clear that the Dawes Report, in  
33 suggesting a solution for the problems existing at Round  
34 Valley Indian Reservation in 1885, recommended reducing the  
35 size of the reservation. It proposed the establishment of a  
36 smaller reservation, which would more closely correspond to  
37 the needs of the Indians, could be properly managed by the  
38 federal government, and could be secured for the Indians  
39 against encroachment by non-Indians.

40 The findings and recommendations of the 1885 Dawes  
41 Report were largely the basis for the legislation regarding  
42 the Round Valley Indian Reservation that was considered by  
43 Congress during the period from 1886 to 1890. In January,

1 1886, President Cleveland sent a message to Congress con-  
2 taining a proposed bill, "To provide for allotments of lands  
3 in severalty to the Indians residing upon the Round Valley  
4 Reservation, in the State of California, and granting pat-  
5 ents thereof and for other purposes."<sup>7/</sup> The message was  
6 accompanied by a report from the Secretary of the Department  
7 of Interior and the Commissioner of Indian Affairs. The  
8 Commissioner's report referred to the findings contained in  
9 the Dawes Report and quoted verbatim the Committee's recom-  
10 mendations including the statement that "measures should be  
11 taken to reduce the boundaries of this reservation to the  
12 present wants of these Indians." The Commissioner concurred  
13 in the Committee's recommendations and urged passage of the  
14 bill. Also included in the 1886 message to Congress was a  
15 petition from 145 Round Valley Reservation Indians request-  
16 ing that the government regain title to the "swamp lands"  
17 within the reservation which a federal court had decided  
18 were lawfully held by non-Indians under disputed grants from  
19 California, and give allotments of the land to the Indians.  
20 The Indians' petition outlined the problems caused by the  
21 non-Indian settlers. The specific provisions of the 1886  
22 bill were similar to those of the law finally enacted in  
23 1890. The 1886 legislation was approved by the Senate,  
24 but failed to pass in the House.

25 In 1888 President Cleveland sent a strongly-worded  
26 message to Congress along with a bill "to provide for the  
27 reduction of Round Valley Indian Reservation, in the State  
28 of California, and for other purposes."<sup>8/</sup> Attached to the  
29 President's message was a lengthy report from the Secretary  
30 of the Interior which included a detailed summary of the  
31 situation at Round Valley from the Commissioner of Indian  
32 Affairs and numerous pieces of correspondence from various

1 agencies, including the United States Army, the United  
2 States Attorney's Office, the Department of War and the  
3 Department of the Interior, which agencies had dealt with  
4 the situation at Round Valley. The Commissioner's report  
5 reviewed the history of the reservation and the non-Indian  
6 encroachment upon Indian land, as had the Dawes Report,  
7 and added further information underscoring the need for  
8 congressional action. The Commissioner's report noted that  
9 repeated efforts had been made, using both the military and  
10 the courts, to dislodge the settlers, but to no avail. The  
11 report stated that a federal circuit court in 1880 decided  
12 that three of the settlers had valid title to "swamp lands"  
13 under a grant from the State of California and that the  
14 settlers were not required by the 1873 Act to vacate the  
15 reservation lands until they were paid for their improvements.  
16 The report further stated that in 1887 the Army was deployed  
17 to evict all non-Indian settlers from the reservation, but  
18 the Army was stopped by an injunction issued by a state  
19 court. The Commissioner's report quoted a letter from  
20 General Howard to the War Department regarding the situation  
21 at Round Valley which stated:

22 Most of the intruders have grown rich, arrogant  
23 and insolent in their high-handed encroachments  
24 upon the land set apart for the exclusive use  
25 and benefit of the Indians. Congressional  
26 legislation looking towards a settlement has  
27 been defeated in committee.

28 . . . .  
29 The agency cattle are driven off and the agency  
30 herder forbidden to "work" his cattle on their  
31 ranges. . . .

32 . . . .  
33 I recommend new legislation, and that in it  
34 some other method be taken to compensate claimants  
35 and intruders than by continuing them and their  
36 herds within the boundaries of the reservation.<sup>9/</sup>

37 The Commissioner also quoted the 1885 Dawes Report's  
38 recommendation. The Commissioner's report concluded that:  
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1 [w]ithout further legislation nothing will be  
2 accomplished and the present 'extraordinary and  
3 disgraceful state of affairs' will be continued  
4 for another generation.<sup>10/</sup>

5 However, the 1888 bill also failed to pass in the House.

6 A draft of the bill which was finally approved by the  
7 legislators was sent to Congress in 1889 by President  
8 Harrison. The President referred to the draft as a bill "to  
9 provide for the reduction of the Round Valley Indian Reserva-  
10 tion in the State of California, and for other purposes."<sup>11/</sup>  
11 It was accompanied by a report from the Secretary of the  
12 Interior that referred to the Commissioner's report, which  
13 had been sent to Congress with the bill proposed in 1888.  
14 That Commissioner's report had set out the history of intru-  
15 sions upon the Round Valley Indian Reservation and cited the  
16 recommendations of the Dawes Report. This bill was passed  
17 by both Houses of Congress without amendment and without  
18 much debate. The bill was reported out of both the House  
19 and Senate Committees on Indian Affairs without comment.  
20 The only congressional debate on the bill was held in the  
21 House during which the representatives briefly discussed  
22 the bill's provisions for land allocation and method of  
23 payment. There was no discussion as to boundaries or juris-  
24 diction.

25 These circumstances surrounding the enactment of the  
26 1890 Act and its legislative history indicate that Congress,  
27 in passing the 1890 legislation, was seeking to solve a very  
28 specific problem that existed at the Round Valley Indian  
29 Reservation. Following the recommendation of the Dawes  
30 Committee, the congressional solution was to reduce the  
31 Round Valley Indian Reservation to a smaller size, which  
32 would correspond more appropriately to the needs of the  
Indians and would be easier for the federal government to  
manage and preserve for Indian use. The 1890 Act was designed

1 primarily to set aside a reserve exclusively for Indians  
2 which would not be encroached upon by non-Indians. The Act  
3 accomplished this goal by authorizing a commission to reduce  
4 the size of the reservation, allot reservation land to the  
5 Indians, remove non-Indians from the reserve established for  
6 the Indians, and offer the remaining land for sale. The  
7 purpose of the 1890 Act was to solve a problem for the  
8 Indians, not to provide surplus reservation land for settle-  
9 ment by non-Indians. The sale of land to non-Indians in  
10 Round Valley was incidental to Congress's primary intent of  
11 setting aside and preserving a new, smaller reservation for  
12 the Round Valley Indians. To have allowed the reservation  
13 to remain at its 1873 boundaries would not have accomplished  
14 the separation and consolidation needed to solve the problems  
15 at Round Valley.

16 B. The Face of the Act.

17 The district court determined that the language used in  
18 the Act of 1890 was not synonymous with discontinuation,  
19 abolishment or cession, and thus did not terminate reser-  
20 vation status of the disputed lands. Russ v. Wilkins, 410  
21 F. Supp. at 582. However, when read in light of the legis-  
22 lative history of the Act and the surrounding circumstances,  
23 the wording of the 1890 Act clearly shows that the intent of  
24 Congress was to establish a smaller manageable reservation  
25 and to discontinue the reservation status of lands opened  
26 for sale to non-Indians.

27 The provisions of the 1890 Act may be summarized as  
28 follows:

29 1. The Act directed that the agricultural lands be  
30 surveyed into ten acre tracts to be allotted to the Indians  
31 severally. The President was given the discretion to allot  
32 these parcels in such quantities and to such classes of

1 Indians belonging on the Round Valley Indian Reservation as  
2 he deemed expedient and for the best interest of the Indians.  
3 Sufficient agricultural land was to be reserved for agency,  
4 school and mission purposes.

5 2. The Act further directed that a reasonable amount  
6 of grazing and timber lands be reserved for the use of the  
7 Indians in common. The President was also given discretion  
8 to allot these lands in individual parcels in severalty as  
9 he deemed expedient for the best interest of the Indians.  
10 These grazing and timber lands were to be selected by a  
11 Commission of three disinterested persons appointed by the  
12 President.

13 3. The Act specified that the Commission was to ap-  
14 praise and the Secretary of Interior was to pay for certain  
15 lands and improvements "within the reservation, as hereby  
16 established." The payments were to be based upon the fol-  
17 lowing:

18 a. The value of all agricultural land which  
19 had been acquired by individuals as a result  
20 of a purchase from the State of California  
21 together with the value of the improvements  
22 on those lands. (This took care of the non-  
23 Indians who had purchased land from the State  
24 of California under the Swamp Act.)

25 b. The value of improvements only on the  
26 agricultural land or common land which had  
27 been reserved for the Indians under the terms  
28 of this Act. (This took care of reimbursing  
29 non-Indians for the value of the improvements  
30 they had placed on land to which they did  
31 not have title.)

32 4. The Act provided that the remainder of the grazing  
and timber lands "in the reservation as at present existing"  
be surveyed into tracts of 640 acres each and the "boundary  
lines of the reserved lands shall be run and properly marked."  
(Emphasis added). The 640-acre parcels were to be appraised  
together with any improvements on them. The parcels were  
then to be sold at not less than the appraised price, and not

1 less than one dollar and a quarter per acre. A person  
2 having appraised improvements on a parcel had a preference  
3 right to purchase at the appraised price.

4 5. The net proceeds derived from the sale of the  
5 lands, after payment of expenses of the survey, appraisement  
6 and sale, and reimbursement for the payments made to non-  
7 Indians for the lands and improvements, were to be placed in  
8 a fund in the United States Treasury to be used for the  
9 Indians.

10 The circumstances surrounding the enactment of the 1890  
11 Act indicate that the solution to the problems at Round  
12 Valley necessitated reduction and consolidation of the  
13 reservation and a complete separation of Indian lands from  
14 non-Indian settlements. The language used by the 1890 Act  
15 was precisely directed to that purpose. The words of section  
16 2 of the 1890 Act emphasize a distinction being made by  
17 Congress between "the reservation established under the act  
18 of Congress approved March third, eighteen hundred seventy-  
19 three" and the "reservation, as hereby established."  
20 (Emphasis added). At another point in section 2 the 1890  
21 Act refers to the "reservation as herein established."  
22 (Emphasis added). The language of section 3 of the 1890 Act  
23 further indicates this distinction between the 1873 reser-  
24 vation and the reservation established by the 1890 Act in  
25 providing: "That the remainder of the grazing and timber  
26 lands included in the reservation as at present existing  
27 shall be surveyed into tracts of six hundred forty acres  
28 each, and the boundary lines of the reserved lands shall be  
29 run and properly marked." (Emphasis added). There would be  
30 no need to use the qualifying phrase "at present existing"  
31 if the reservation were to retain its then current boundaries.

32 The use of the word "reduction" in the title of the

1 1890 Act ("An act to provide for the reduction of the Round  
2 Valley Indian Reservation. . .and for other purposes"),  
3 reinforces this indication of congressional intent to dis-  
4 establish a portion of the reservation as recommended by the  
5 Dawes Committee. Although the title of the Act cannot en-  
6 large or confer powers or control the words of the Act, the  
7 title may be helpful in interpreting ambiguities within the  
8 context of the Act. Cornell v. Coyne, 192 U.S. 418, 430  
9 (1904); see United States v. Union Oil Co., 343 F.2d 29, 32  
10 (9th Cir. 1965). The clear intent of the statute is shown  
11 by the words "reduction of the Round Valley Indian Reserva-  
12 tion." The use of these words in the title of the Act is a  
13 reflection of the recommendations of the Dawes Report that  
14 "measures should be taken to reduce the boundaries of this  
15 reservation to the present wants of these Indians."<sup>12/</sup>

16 The living pattern of the Indians and non-Indians at  
17 Round Valley did not suggest that Congress needed or in-  
18 tended to continue reservation status on the relinquished  
19 lands. The lands opened for sale were largely within one  
20 contiguous body and were not inhabited by Indians. Non-  
21 Indians were removed from that portion of land reserved for  
22 the Indians. Thus, discontinuance of reservation status  
23 of the relinquished land did not jeopardize the Indians' use  
24 of the reservation lands specifically set aside to meet the  
25 Indian needs, because all non-Indians were removed. It  
26 therefore did not, at the time, result in a "checkerboard"  
27 jurisdiction between the state and federal government that  
28 was sought to be avoided. See DeCoteau 420 U.S. at 428;  
29 United States v. Long Elk, 565 F.2d 1032, 1039 (8th Cir.  
30 1977); City of New Town, North Dakota v. United States,  
31 454 F.2d 121, 126 (8th Cir. 1972); cf. Rosebud. By defining  
32 a smaller, manageable reservation and removing the non-



1 Indians from that reservation, the Indians were better  
2 served than by a larger reservation that was dominated by  
3 non-Indians whom the government had been unsuccessful in  
4 removing. This was the major purpose of the 1890 Act.

5 The district court indicated that the lack of a specific  
6 delineation of the boundaries of the reservation within the  
7 Act militates against finding a termination of a part of the  
8 reservation, 410 F. Supp. at 583. However, in our view, the  
9 congressional decision to set up a commission to establish  
10 boundaries, rather than to outline them within the Act it-  
11 self, is immaterial to the issue of whether or not the  
12 reservation status of the land was continued. The method of  
13 defining the boundaries does not appear to us to relate to  
14 the purpose for which the boundaries were set.

15 The 1890 Act, when read as a whole and viewed against  
16 the background of the legislative history of the Act and the  
17 circumstances surrounding its enactment, evidences a con-  
18 gressional intent to reduce the size of the reservation, to  
19 consolidate and secure it for the Indians and to terminate  
20 the reservation status on the remaining lands that were  
21 opened for sale.

22 C. Subsequent Legislative and Administrative  
23 Interpretations of the Act.

24 Legislative and administrative interpretations of the  
25 1890 Act, made contemporaneously with enactment or shortly  
26 thereafter, also indicate that Congress intended to reduce  
27 the size of Round Valley Indian Reservation and to disestab-  
28 lish that portion of the reserve opened for sale. Inter-  
29 pretations of a statute by those charged with administering  
30 and enforcing it, and their practices which reflect their  
31 understanding of the provisions they must implement, have  
32 been given deference by courts when faced with a problem of  
statutory construction. Red Lion Broadcasting Co. v. FCC,

1 to be retained for the Indians" (emphasis in original) and  
2 the Commission established the Eel River as the western  
3 boundary of the "territory to be retained" for Indian use  
4 for grazing and timber.<sup>17/</sup> The minority report specifically  
5 mentioned reservation boundaries.<sup>18/</sup> In the minority report,  
6 Commissioner Hunt commented on the duty of "establishing the  
7 line and marking off the boundaries of the new reserve" and  
8 expressed his desire "to settle the boundaries of the new  
9 reservation."<sup>19/</sup> He referred to the majority report's  
10 decision to "take within the new Reservation from 40 or 45  
11 thousand acres" of upland, while he recommended taking only  
12 "25 or 30 thousand acres. . .for the new reserve."<sup>20/</sup>

13 Other administrative documents reflect a congressional  
14 intent to reduce the size of the reservation in 1890. The  
15 Round Valley Reservation Commission selected approximately  
16 43,680 acres of land for the new reservation from the approx-  
17 imately 102,000-acre reserve established in 1873. In the  
18 1890 Annual Report of the Commissioner of Indian Affairs to  
19 the Secretary of the Interior, the acreage listed for the  
20 Round Valley Indian Reservation was 102,118 acres, as estab-  
21 lished by the 1873 Act.<sup>21/</sup> However, in the 1891 Annual  
22 Report, issued after the work of the Round Valley Reserva-  
23 tion Commission had been completed, the acreage for the  
24 Round Valley Indian Reservation was listed as 43,680 acres,  
25 as established by the 1890 Act.<sup>22/</sup> Although appellees con-  
26 tend that acreage tables were often reduced to reflect the  
27 land allotted to Indians, this factor could not have been  
28 responsible for the acreage reduction at Round Valley between  
29 1890 and 1891 because no acreage had been allotted.

30 A letter from the Commissioner of Indian Affairs to the  
31 Secretary of Interior, dated March 30, 1892, stated that:

32 Round Valley Commission, with its report dated  
March 10, 1891, submitted a plat which they

1 certified to correctly show the exterior  
2 boundaries of the Round Valley Indian Reservation  
3 as reduced under the provisions of the act  
4 aforesaid to be as follows [description follows].

5 The report of the Commission fixing the bound-  
6 aries of the reservation as above described was  
7 approved by the Department by letter dated  
8 July 8, 1891.<sup>23/</sup>

9 In the 1893 Annual Report of the Commissioner of Indian  
10 Affairs, the Commissioner stated that:

11 Since the last annual report of this office a  
12 Commission was appointed by the President to  
13 appraise the grazing and timber lands and  
14 improvements thereon included in the Round  
15 Valley Reservation as established under the  
16 act of March 3, 1873 (17 Stats., 633), but out-  
17 side of the limits of the reservation as dimin-  
18 ished by section 2 of the act of Congress approved  
19 October 1, 1890 (26 Stat., 658).

20 The said lands are to be restored to the public  
21 domain and sold at public sale at a price not  
22 less than the appraised value, the proceeds of  
23 said sale to be placed at the credit of the  
24 Indians.<sup>24/</sup>

25 Although appellees cite other administrative documents  
26 indicating some ambiguity among officials, it appears clear  
27 from the statements of the Round Valley Reservation Commis-  
28 sion and from the Commissioner of Indian Affairs, who were  
29 charged with the primary responsibility of administering the  
30 1890 Act, that it was their understanding that Congress  
31 intended to reduce the size of the reservation.<sup>25/</sup>

32 D. Subsequent History of State and Federal  
Jurisdiction.

33 In Rosebud, the Supreme Court noted that the subsequent  
34 jurisdictional history of the area was an important factor  
35 for consideration. The subsequent jurisdictional history of  
36 this area reinforces the view that reservation status  
37 terminated on the lands beyond the boundaries established  
38 under the 1890 Act. The record reveals that the federal  
39 government has not exercised jurisdiction over the land  
40 relinquished by the 1890 Act, and the State of California  
41 has exercised jurisdiction over this area.

1 from the Round Valley Indian Reservation.

2 III

3 CONCLUSION

4 Appellees argue that the "reduction" of Round Valley  
5 Indian Reservation was not meant to decrease the size of the  
6 reservation because the 1890 Act was passed at a time when  
7 the prevailing government policy was to assimilate Indians  
8 into the culture of the non-Indian settlers; and thus, the  
9 approach of the allotment system was to allot reservation  
10 land severally to Indians and to sell the surplus to settlers  
11 within the reservation, while leaving the original reserva-  
12 tion boundaries intact. Although the rationale for the  
13 allotment under some statutes was to promote the integration  
14 and assimilation of Indians into non-Indian culture, this  
15 was not a goal of the 1890 Round Valley legislation. To the  
16 contrary, the intent of Congress was to provide the Indians  
17 with a separate reserve where they would be secure from non-  
18 Indian encroachment. The Act of 1890 removed the non-  
19 Indians from the reservation, rather than integrating them  
20 with the Indians, because of the problems which had occurred  
21 in the past on that reservation.

22 It is clear to this court that the intent of Congress  
23 in enacting the 1890 Act was to reduce the size of Round  
24 Valley Indian Reservation and to abolish reservation status  
25 of the opened lands. This intent is shown by the circum-  
26 stances existing at Round Valley prior to 1890, by the  
27 legislative history of the Act, and by the language of the  
28 Act itself which was designed to meet the specific situation  
29 at Round Valley. The particular problems of the Round  
30 Valley Indians required a solution that reduced, consol-  
31 idated and secured the reservation for the exclusive use of  
32 Indians, and that opened and relinquished lands for sale to

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those who sought legitimate title to the land. The Act of  
1890 was enacted to effect this solution.

REVERSED.

FOOTNOTES

1		
2	<u>1/</u> Page 2	The court stated that it made no determination whether the immunity extended to non-subsistence hunting and fishing.
3		
4	<u>2/</u> Page 4	S. Rep. No. 1522, 48th Cong., 2d Sess. 1 (1885).
5	<u>3/</u> Page 7	<u>Id.</u> at 2.
6	<u>4/</u> Page 8	<u>Id.</u> at 3.
7	<u>5/</u> Page 8	<u>Id.</u>
8	<u>6/</u> Page 9	<u>Id.</u> at 7-8.
9		
10	<u>7/</u> Page 10	H.R. Exec. Doc. No. 21, 49th Cong., 1st Sess. 1 (1886).
11	<u>8/</u> Page 10	H.R. Exec. Doc. No. 33, 50th Cong., 1st Sess. 1 (1888).
12	<u>9/</u> Page 11	<u>Id.</u> at 13-14.
13	<u>10/</u> Page 12	<u>Id.</u> at 15.
14	<u>11/</u> Page 12	H.R. Exec. Doc. No. 72, 51st Cong., 1st Sess. 1 (1889).
15		
16	<u>12/</u> Page 16	S. Rep. No. 1522, <u>supra</u> , note 2, at 7-8.
17	<u>13/</u> Page 18	Letter from P.V. Belt, Acting Commissioner of the Office of Indian Affairs, to Round Valley Reservation Commission (November 3, 1890).
18		
19	<u>14/</u> Page 18	<u>Id.</u> at 2-3.
20	<u>15/</u> Page 18	<u>Id.</u> at 4.
21	<u>16/</u> Page 18	<u>Id.</u> at 8.
22	<u>17/</u> Page 19	Report from D. W. Shryock, Chairman, Round Valley Indian Commission, to Commissioner of Indian Affairs 2 & 9 (March 10, 1891).
23		
24	<u>18/</u> Page 19	Report from H. C. Hunt, Member, Round Valley Indian Commission, to Commissioner of Indian Affairs (undated, 1891).
25		
26	<u>19/</u> Page 19	<u>Id.</u> at 3.
27	<u>20/</u> Page 19	<u>Id.</u> at 4-5.
28	<u>21/</u> Page 19	Fifty-Ninth Annual Report, by Commissioner of Indian Affairs to Secretary of Interior (1890).
29		
30	<u>22/</u> Page 19	Sixtieth Annual Report, by Commissioner of Indian Affairs to Secretary of Interior (1891).
31		
32	<u>23/</u> Page 20	Letter from Commissioner of Indian Affairs